BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 597/2023

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Mr. Raza Khan Superintendent (BPS- 17) Directorate of Tourist Services Peshawar Khyber Pakhtunkhwa.
..... (*Appellant*)

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary Government of Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
2. The Sports, Culture, Tourism, Museum and Youth Affairs Department through Secretary Tourism to the Government of Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
3. The Finance Department, through Secretary Finance to the Government of Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
4. The Establishment Department through Secretary Establishment to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
5. The Administration Department, through Secretary Administration to the Government of Khyber Pakhtunkhwa Civil Secretariat, Peshawar.
6. Directorate of Tourist Services, through Director General Tourist Services, Peshawar. ***.....(Respondents)***

Mr. Ali Gohar Durrani, Advocate ... For appellant

Mr. Asif Masood Ali Shah, Deputy District Attorney ... For respondents

Date of Institution..... 20.3.2023
Date of Hearing..... 15.03.2024
Date of Decision..... 15.03.2024

CONSOLIDATED JUDGEMENT

FAREEHA PAUL, MEMBER (E): Through this single judgment, we intend to dispose of instant service appeal as well as connected service appeal No. 598/2023, titled "Muhammad Amjad Versus the Government of Khyber Pakhtunkhwa through Chief Secretary, Civil

Secretariat, Peshawar and others", service appeal No. 599/2023, titled "Shaher Yar Khan Versus the Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar and others", and service appeal No. 600/2023 titled "Rafiq Ahmad Versus the Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar and others", as in all the appeals, common questions of law and facts are involved.

2. The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the prayer that on acceptance of the appeal, the respondents might be directed to grant promotion to the appellant and the decision taken in the minutes of meeting of the DPC dated 07.11.2022 be set aside, alongwith any other remedy which the Tribunal deemed appropriate.

3. Brief facts of the case, as given in the memorandum of appeal, are that the appellant entered in the government service on 16.11.1989 and was serving as Superintendent (BPS- 17) in the Directorate of Tourist Services Khyber Pakhtunkhwa, Peshawar. Vide notification dated 27.12.2017, he was promoted from the post of Senior Clerk (BPS- 14) to Assistant (BPS- 16). He was then promoted to the post of Superintendent BPS- 17 on acting charge basis vide notification dated 26.11.2020. Directorate of Tourist Services Peshawar issued a joint seniority list of Inspectors and Assistants of Directorate of Tourist Services vide notification dated 03.01.2022. On 31.10.2017, a notification was issued by the Government of Khyber Pakhtunkhwa,

Sports, Tourism, Department in pursuance of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 which laid down the method of recruitment, qualification and other conditions. Subsequently certain amendments were made in the service rules vide notification dated 25.04.2022. A working paper was prepared by the Directorate of Tourist Services for promotion/appointment to the post of Assistant Controller/Assistant Director/Assistant Director-Cum-Assistant Controller on regular/acting charge basis. Meeting of the Departmental Promotion Committee of the Directorate of Tourist Services Khyber Pakhtunkhwa, Peshawar was held on 07.11.2022 under the Chairmanship of the Secretary Sports and Tourism Department. Being aggrieved of the minutes of the meeting, the appellant filed an appeal/representation to the Chief Secretary to declare the decision of the DPC null & void and to issue directions for fresh DPC and recommend the appellant for promotion as per rules/entitlement. Under the purview of Section 8 of the Khyber Pakhtunkhwa Tourism Act 2019, the services of appellant were to be placed in surplus pool. To stop from processing the case of the appellant for placement in surplus pool, he approached the Honourable Peshawar High Court in writ jurisdiction for seeking directions of holding of DPC meeting. It was during the pendency of writ petition that the meeting of DPC was held on 07.11.2022. Subsequently the writ petition was also dismissed; hence the instant service appeal.

4. Respondents were put on notice who submitted their joint written reply/comments on the appeal. We heard the learned counsel for the

appellant as well as the learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

5. Arguments and record presented before us transpire that the appellants were serving in the Directorate of Tourist Services of the province. Appellants in service appeal No. 597/2023 (Mr. Raza Khan) and 600/2023 (Mr. Rafiq Ahmad) were Assistants whereas the ones in service appeal No. 598/2023 (Muhammad Amjad) and 599/2023 (Shaheryar Khan) were Computer Operators. Working paper was prepared for meeting of Departmental Promotion Committee in which the names of the appellants in service appeal No. 597/2023 and 600/2023 were mentioned as eligible for promotion to the post of Assistant Controller/Assistant Director-cum-Assistant Controller on regular basis. As far as the appellants in service appeals No. 598/2023 and 599/2023 are concerned, they were shown as eligible for promotion to the post of Assistant Director (IT/Planning) on regular basis. The meeting of DPC was held on 07.11.2022 and while considering the working paper, in case of appellants Mr. Raza Khan and Mr. Rafiq Ahmad, following recommendation was made:-

> *"Raza Khan Superintendent (ACB) (BS- 17)*
>
> *The said official has already been promoted to the post of Superintendent (BS- 17) on ACB in light of Service Rules of DTS duly notified on 31.10.2017 and there is no provision for promotion of said official to the post of Assistant Director/Assistant Controller/Assistant Director-cum-Assistant Controller in the Amended Service Rules of DTS notified on*

25.04.2022. Hence the Committee deferred the promotion of said incumbent.

Rafiq Ahmad Assistant (BS- 16)

The DPC deferred the promotion of said official due to objections raised on the Service Rules of DTS by Representative of Establishment & Finance Department and DG DTS was directed to rectify the Service Rules of DTS."

6. If we look at the service rules of the department notified on 31.10.2017, read with the amendments notified on 25.04.2022, we fail to understand why the appellant, Mr. Raza Khan, was given the acting charge of the post of Superintendent? A simple perusal of the Service Rules shows that the post of Superintendent is to be filled by promotion, on the basis of seniority-cum-fitness, from amongst the Stenographers with at least five years service as such, whereas the appellant, Mr. Raza Khan, was an Assistant, who, according to the rules, was to be promoted to the post of Assistant Controller/Assistant Director/Assistant Director-cum-Assistant Controller (BS- 17). In case of Mr. Rafiq Ahmad (Assistant), the representatives of Establishment and Finance raised objection on the service rules. The departmental representative present before us was asked to clarify the points raised in the meeting of DPC based on which promotion of both the officials was deferred. He replied that other than the rules notified on 31.10.2017 and 25.04.2022, there was no other set of rules and that the working paper was prepared in the light of those rules. When asked that the rules were extremely clear and that both the officials qualified for promotion based on those rules, than why the DPC raised those absurd objections, the departmental

representative as well as the learned Deputy District Attorney could not respond.

7. In case of Muhammad Amjad and Mr. Shaheryar, Computer Operators, BS- 16, the DPC deferred their promotion due to objections raised on the service rules by the representative of Finance Department. Recommendations are reproduced as follows:-

> *"The DPC deferred the promotion of said officials due to objections raised on the Service Rules of DTS by Representative of Finance Department and DG DTS was directed to rectify the Service Rules of DTS."*

Here, one fails to understand that when the service rules were approved by the provincial government and notified in the official gazette, then why some individual from Finance Department raised observation with the direction to rectify the service rules? The minutes are silent on the nature of observation and the required rectification.

8. There is no second opinion that the working papers were prepared in the light of existing service rules which were approved by the provincial government and duly notified. If any amendment or rectification was required, it was to be done in some future time and had to be made effective after following the due procedure. The cases of promotion which were ripe for consideration of DPC could not be deferred for the sake of any new rules on the directions of representative of Finance Department, who was simply a Deputy Secretary in the department. He had no authority to direct the DG DTS to rectify the

service rules that had already been approved by the provincial government.

9. In view of the above discussion, one can safely say that the appellants qualified the conditions laid down in the service rules in the light of which working papers for their promotions were prepared and presented before the DPC. The DPC, however, failed to take into consideration the service rules presented before them and raised objections which were groundless. All the appeals presented before us are, therefore, allowed as prayed for. Respondents are directed to promote the appellants from the date when the meeting of DPC was held i.e 07.11.2022. Cost shall follow the event. Consign.

10. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 15th day of March, 2024.

(FAREEHA PAUL)
Member (E)

(RASHIDA BANO)
Member (J)

Fazle Subhan, P.S

SA 597/2023

15th Mar. 2024 01. Mr. Ali Gohar Durrani, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 07 pages, one can safely say that the appellant qualified the conditions laid down in the service rules in the light of which working paper for his promotion was prepared and presented before the DPC. The DPC, however, failed to take into consideration the service rules presented before them and raised objections which were groundless. The appeal presented before us is, therefore, allowed as prayed for. Respondents are directed to promote the appellant from the date when the meeting of DPC was held i.e 07.11.2022. Cost shall follow the event. Consign.

03. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 15th day of March, 2024.

(FAREEHA PAUL)
Member (E)

(RASHIDA BANO)
Member(J)

Fazal Subhan PS