

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1355/2022

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

Mr. Barakat Ullah, S/o Muhammad Zaman as Mali, Presently Posted as
Mali Sport Complex Lakki Marwat, R/o Mohallah Ghafoor Khel Abba
Khel Lakki Marwat

.... (*Appellant*)

VERSUS

1. The Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa, Ministry of Sports and Youth Affairs, Civil Secretariat Peshawar.
3. The Director General Sports, Khyber Pakhtunkhwa, Directorate of Sports Complex, Peshawar Cant. Peshawar.
4. The Director Youth Affairs, Khyber Pakhtunkhwa, Plot No.28, Sector E-8, Phase-VII, Hayatabad Peshawar.

.... (*Respondents*)

Mr. Jalal ud Din
Advocate

... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

... For respondents

Date of Institution.....15.09.2022
Date of Hearing.....15.02.2024
Date of Decision.....15.02.2024

CONSOLIDATED JUDGMENT

RASHIDA BANO, MEMBER (J):The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“It is, therefore, most humbly prayed that on acceptance of this appeal:-

1. **Non-Consideration of the appellant for promotion on the basis of seniority cum fitness to Junior Clerk BPS-11 in accordance with the service structure/rules in utter violation of law, rules, regulations, fundamental rights**



and Constitution of Islamic Republic of Pakistan, 1973 and may please be declared as such.

2. Appropriate directions may kindly be issued to the respondent department to treat the appellant at par with the employees of the Directorate of Youth Affairs, who are similar with the appellant and are already promoted under the same service structure/rules, under the control of one and the same Ministry and governed under the same rules, regulations and same service structure.
3. Appropriate directions may kindly be issued to the respondents department to promote the appellant to BPS-11 in view of service structure/rules and notification dated 29.04.2019 as the appellant is having the requisite qualification and experience for the promotion to BPS-11 on the basis of seniority-cum-fitness with all back benefits.
4. Any other relief which is deemed proper and not specifically asked by the appellant may be pleased be granted to the appellant in the circumstances.

2. Through this single judgment, we intend to dispose of the instant service appeal as well as connected service appeals which are mentioned below as in all these appeals common question of law and facts are involved:

1. Service Appeal No.1356/2022
2. Service Appeal No.1357/2022
3. Service Appeal No.1358/2022
4. Service Appeal No.1359/2022
5. Service Appeal No.1360/2022
6. Service Appeal No.1361/2022
7. Service Appeal No.1362/2022
8. Service Appeal No.1363/2022
9. Service Appeal No.1364/2022
10. Service Appeal No.1365/2022
11. Service Appeal No.1366/2022
12. Service Appeal No.1367/2022

3. Brief facts of the case, as given in the memoranda of appeals, are that appellants were initially appointed as class-IV Mali, Naib Qasid, and

05.07.2022 but despite lapse of stipulated period of sixty days respondents failed to decide the fate of the representation of the appellants, hence, the instant service appeal.

4. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellants as well as the learned District Attorney and perused the case file with connected documents in detail.

5. Learned counsel for the appellant argued that appellants have not been treated in accordance with law and rules and respondents violated Article 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973. He further argued that action and inaction of the respondents for not considering the appellants for promotion and not to decide the departmental representation within stipulated period is void ab-initio, arbitrary, without jurisdiction, illegal and without any lawful authority hence untenable in the eyes of law. He further argued that appellants were discriminated by the respondents as similarly placed employees were promoted vide order dated 17.11.2020.

6. Conversely, learned District Attorney contended that appellants had been treated in accordance with law and rules. He further argued that prior to the decision of the Hon'ble Peshawar High Court, Peshawar in writ petition No. 2676/2021, seniority list of class-IV employees was compiled/updated, in the meanwhile, the Establishment Department amended the Service Rules of the Junior Clerks on 18.07.2019, wherein the matriculate were placed eligible for promotion for the post of Junior Clerk for a period of 04 years. Accordingly, the Service & Recruitment Rules of Directorate General of Sports, Khyber Pakhtunkhwa, were amended by the SSRC after approval of competent authority. Then Sports Department notified the same vide Notification dated 11.04.2022, wherein 33 percent quota was allocated for

Chowkidar, in the Directorate of Sports Khyber Pakhtunkhwa, Sports Complex Lakki Marwat and during the service, they had improved their qualification. That since the appointments of the appellants, they are working as member and staff of Directorate of Sports, which is under the control of Sports, Culture, Tourism, Archaeology and Youth Affairs Department, Civil Secretariat, Peshawar. That the Government of Khyber Pakhtunkhwa, Sports, Tourism, Archaeology and Youth Affairs Department through a Notification bearing No.SO (Sports) 1-8/2019/S. Rule dated 29.04.2019, notified rules for the employees of the Directorate General of Sports. That the Directorate of Youth Affairs also under the control of Sports, Culture, Tourism, Archaeology and Youth Affairs Department, Civil Secretariat, Peshawar, and government under the same rules/services Structure have promoted class-IV employees of the Directorate to the post of Junior Clerk (BPS-11) on regular basis with immediate effect vide office order dated 17.11.2020. That the appellants being also beneficial from the said rules/service structure for promotion of class-IV employees, has also submitted their joint representation to the respondents/Director General Sports Khyber Pakhtunkhwa on 29.01.2021 which was not responded. That thereafter, the appellants filed Writ Petition No.2676-P/2021 before the Hon'ble Peshawar High Court Peshawar, wherein notices were issued to the respondents for filling of their written comments, hence after filling of comments, the Hon'ble Peshawar High Court Peshawar heard the parties and disposed of the Wirt Petition vide order dated 28.06.2022, with direction to the respondents to decide the appellants representation in accordance with law and rules on the subject within a period of two months from the date of receipt of the copy of that order, however, if grievances of the appellants were not redressed by the respondents then in that eventuality, they might approach the competent Court of law. Again appellants filed representation before the respondents on



promotion on the basis of seniority-cum-fitness with at least second division, Intermediate certificate or its equivalent qualification, and progress from all Districts Sports offices of the Province of Khyber Pakhtunkhwa for the Seniority list of class-IV employees. He requested that instant appeal might be dismissed.

7. Perusal of record reveals that appellants were appointed as Class-IV in respondent department. The department issued notification/service rules bearing No.SO(Sports)I-8-2019/S.Rule on 29.04.2019, wherein method of recruitment, qualification and other condition for employees of the department on posts of junior clerk in the Directorate General were specified in column No.3 to 5 of appendix to notification which is applicable to the post mentioned in column No.2 of the said appendix. The Directorate of Youth Affairs had promoted Class-IV employees on regular basis in the light of new rules dated 29.04.2019. Appellants requested to treat them like promotees of youth affairs on the basis of having F.A qualification.

8. It is admitted fact on record that through an amendment dated 18.07.2019 cushion period of four years was provided to the matriculate Class IV employees for promotion to the post of Junior Clerk by the Establishment Department which amendment was adopted by the respondents vide notification dated 11.04.2022 which read as;

“(a) Thirty-three per cent by promotion. on the basis of seniority-cum-fitness, from amongst the Naib Qasids (BPS-03), Chowkidars (BPS-03). Security Guards (BPS-03). Watchmen (BPS-03). Malies' (BPS-03). Ground-men (BPS-03). Cleaners (BPS-03). Conductors (BPS-03), including holders of other equivalent posts in the Directorate General of Sports having at least two years' service as such who have passed Intermediate Examination; and

(b) sixty-seven per cent by initial recruitment.

Note: For the purpose of promotion, a joint seniority list of Naib Qasids, Chowkidars, Security Guards, Cleaners, Watchmen, Malies, Ground-men, Conductors, including holders of other equivalent posts in the Directorate General of Sports shall be maintained.

“Note: A joint seniority list of Naib Qasids, Chowkidars, Security Guards, Watchmen, Malis, Ground-men, Cleaners, Conductors shall be maintained for the purpose of promotion with reference to the date of appointment or acquiring the qualification as specified in Column No. 3, whichever is later Provided that-

i. if two or more officials have acquired the F.A/F Sc qualification in the same session, the inter-se-seniority in the lower post shall be maintained for the purpose of determining seniority the higher post; and

ii. where a senior official does not possess the requisite qualification at the time of filling of a vacancy, the official next junior to him possessing the requisite qualification shall be promoted in preference to the senior official or officials:

Provided further that the condition of F.A/F.Sc or its equivalent qualification from a recognized Board, as laid down at clause (a) shall not apply till the expiration of the period specified in the second proviso of Column No. 5 against Serial No. 4 of the Establishment Department's amendment Notification No. SOE-IV(E&AD)/1-35/2014, dated: 18.07.2019, the existing matriculate incumbents of the posts of Naib Qasid, Security Guards, Watchman, Mali, Ground-man, Cleaners, Conductors for promotion to the posts of Junior Clerk (BPS-11).

9. Learned Counsel for the appellant argued that appellants possess qualification of F.A and B.A and are entitled to be promoted and respondents are duty bound to prepare and maintain separate seniority list of Class IV employees having F.A & B.A qualification by excluding matriculate or uneducated Class IV. This argument of learned counsel has no force in it because department will have to maintain seniority list of all its employees irrespective of their qualification.



10. In the rules, it is clearly mentioned that where a senior official does not possess requisite qualification at the time of filling of vacancy, the official next junior to him possessing the requisite qualification shall be promoted in preference to the senior official or any officer. Moreover the cushion period of four years expired on 18.07.2023, now respondent will have to promote only those Class-IV employees who have qualification of F.A in accordance with existing rules having regard to the seniority of Class-IV employees as promotion is on the basis of seniority-cum-fitness. If appellants are qualified, based on their seniority list, they will be promoted on their own turn upon availability of posts.

11. As a sequel to above discussion, respondents are directed to promote the appellants upon their own turn subject to the availability of posts of Junior Clerks in accordance with existing rules issued vide notification dated 29.04.2019. Hence the instant service appeal as well as connected service appeals are disposed of accordingly. Costs shall follow the event. Consign.

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


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

08.01.2024

Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for respondents No. 1 & 4 present. Mr. Jalal-ud-Din, Legal Advisor for respondents No. 2 & 3 also present.

Learned counsel for the appellant as well as Legal Advisor for respondents No. 2 & 3 made joint request that as they have not gone through the record, therefore, an adjournment may be granted. Adjourned. To come up for arguments on 15.02.2024 before the D.B. Parcha Peshi given to the parties.

SCANNED
10/02/24
Peshawar

ORDER

15.02.2024

Naem Amin

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney alongwith Mr. Jalal-ud-Din Legal Advisor for the respondents present.

2. Vide our detailed judgment of today placed on file, respondents are directed to promote the appellants upon their own turn subject to the availability of posts of Junior Clerks in accordance with existing rules issued vide notification dated 29.04.2019. Hence, the instant service appeal is disposed of accordingly. Costs shall follow the event. Consign.

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

(FAREHA PAUL)
Member (E)

(RASHIDA BANO)
Member (J)