

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

Service Appeal No. 941/2019

BEFORE: MR. SALAH-UD-DIN ... MEMBER (E)  
MISS FAREEHA PAUL ... MEMBER (E)

**SCANNED**  
**KPST**  
**Peshawar**

Mr. Khan Muhammad, Naib Qasid, GHSS Jalala, Takht Bhai.  
..... (Appellant)

Versus

1. The Secretary E&SE Department, Khyber Pakhtunkhwa, Peshawar.
2. The Director E&SE , Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (Male), District Mardan.  
..... (Respondents)

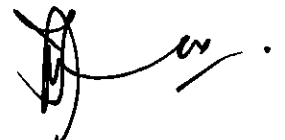
Mr. Umar Farooq,  
Advocate ... For appellant

Mr. Asad Ali Khan,  
Assistant Advocate General ... For respondents

Date of Institution..... 10.01.2020  
Date of Hearing..... 12.09.2023  
Date of Decision..... 12.09.2023


**JUDGEMENT**

**FAREEHA PAUL, MEMBER (E):** The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 22.06.2019, communicated to the appellant on 11.09.2019, whereby he was adjusted against the post of Naib Qasid with immediate effect rather than retrospective effect and no back benefits granted to him for the intervening period i.e. w.e.f 17.04.2010 and against no action taken on the departmental appeal of the appellant within the statutory period of ninety days. It has been prayed that on acceptance of the appeal, the impugned order dated 22.06.2019 might



be modified/rectified to the extent that the appellant might be adjusted against the post of Naib Qasid with retrospective date with all back benefits i.e. w.e.f. 17.04.2010 alongwith any other remedy which the Tribunal deemed fit and appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Naib Qasid at GHSS Pirsaddi District Mardan (disable quota) vide order dated 24.03.2010. After appointment, the appellant started performing his duty and received one month salary as Naib Qasid at GHSS Pir Saddi. The appointment order of the appellant was held in abeyance by the authority on the directions of the local MPA but later on that order was withdrawn by the concerned authority and the appellant was adjusted on the post of Chowkidar vide order dated 24.08.2010. Feeling aggrieved, he filed departmental appeal, followed by service appeal No. 511/2011 which was decided in favour of the appellant with the direction to adjust the appellant on his original post of Naib Qasid. Respondent department issued fresh appointment order against a post of Chowkidar vide order dated 17.05.2016. Feeling aggrieved from the order dated 17.05.2016, the appellant filed departmental appeal and knocked the door of the Service Tribunal in appeal No. 1062/2016. During the pendency of that service appeal, the respondent department issued order dated 22.06.2019, which was produced before the Tribunal on 11.09.2019, whereby the appellant was adjusted against the post of Naib Qasid but with immediate effect rather than retrospective effect. After receiving the order dated 22.06.2019, the appellant withdrew the service appeal No. 1062/2016

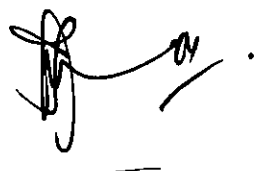


vide order dated 11.09.2019 with the permission to file a fresh appeal if needed. Against the order dated 22.06.2019, the appellant preferred departmental appeal but no reply was received, hence the instant service appeal.

3. Respondents were put on notice who submitted their reply/comments on the appeal. We heard the learned counsel for the appellant as well as the learned Assistant Advocate General for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that the appellant had not been treated in accordance with law and rules by the respondent department and they violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973. He further argued that the respondent department acted in arbitrary manner while adjusting the appellant against the post of Naib Qasid with immediate effect rather than retrospective effect. He argued that the appellant was fully entitled for the grant of back benefits with effect from 17.04.2010 but the respondent department unlawfully and malafidely adjusted him against the post of Naib Qasid with immediate effect. He requested that the appeal might be accepted as prayed for.

5. Learned Assistant Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was appointed against the post of Chowkidar vide order dated 17.05.2016, which was purely made on his willingness on the condition as mentioned at Sr. No. 8 of the terms & conditions of his appointment order that he would



be adjusted against the post of Naib Qasid whenever the said post was available in his locality. The appellant agreed and had taken over the charge of the post of Chowkidar. He further argued that the appellant had performed duty as Chowkidar from 17.05.2016 to 22.06.2019 and had also drawn salary on the said post. Later on, the respondent department issued adjustment order dated 22.06.2019, whereby the appellant was adjusted at GHSS Jalala Takht Bhai Mardan against the vacant post of Naib Qasid in the light of the Service Appeal No. 1062/2016 and fulfilling condition No. 08 of the terms and conditions of notification dated 17.05.2016. He requested that the appeal might be dismissed.

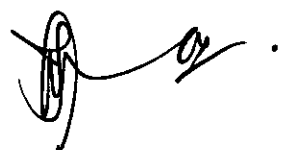
6. Arguments and record presented before us shows that the appellant was initially appointed as Naib Qasid on disable quota vide order dated 24.03.2010, which was held in abeyance vide an order dated 17.04.2010. On the same date i.e. 17.04.2010, a corrigendum was issued and the appellant's post was changed from Naib Qasid to Chowkidar. Order dated 24.08.2010 available on record shows that the order under Endst. No. 3681/G dated 17.04.2010, held in abeyance, was released with effect from the date of its issuance, and the appellant, alongwith other two officials, was posted as Chowkidar in GPS Zaristan Banda. Vide another order dated 17.05.2016, in pursuance of the judgment of this Tribunal, he was appointed against the post of Chowkidar in GPS No. 1, Sher Garh. Condition No. 8 of his appointment order mentioned that he would be adjusted against the post of Naib Qasid as and when the said post was available in his locality. After that, in pursuance of another order of this



Tribunal dated 28.01.2019, the appellant was adjusted as Naib Qasid, against a vacant post, at GHSS Jalala (Takht Bhai) Mardan, vide order dated 22.06.2019, impugned before us.

7. The appellant is aggrieved with the order as it is stated therein that he is adjusted as Naib Qasid "with immediate effect", instead of giving it effect from a back date i.e. 17.04.2010, the date when he was appointed in government service. When confronted that why at the initial stage his post was changed from Naib Qasid to Chowkidar, the respondents replied that the appointment was made erroneously against the post of Naib Qasid and that no vacant post of Naib Qasid was available at that time and therefore, the appellant was adjusted as Chowkidar on 17.04.2010. As regards the order dated 17.05.2016, this Tribunal fails to understand that if no post of Naib Qasid was available and the appellant was already working on the post of Chowkidar, then why another order of appointment on the post of Chowkidar was issued?


8. As far as the impugned order of 22.06.2019 is concerned, this Tribunal fully understands that appointment cannot be given retrospective effect. We have been informed by the learned AAG that the positions of Naib Qasid and Chowkidar, both fall in the category of Class-IV and there is no difference of salary in these positions. Similarly, as stated by him, a common seniority list is maintained for all the Class-IV employees. As the appellant has already drawn his salaries against the positions on which he was posted in the past, therefore there is no financial issue involved. As far as his seniority is concerned, the department is directed to look into the




matter and place him in the seniority list at his appropriate place, based on the appointment letter issued on 17.04.2010, when he was initially appointed and adjusted against the post of Chowkidar at GGPS Zaristan Banda.

9. With the above observations, the appeal in hand is disposed of accordingly. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 12<sup>th</sup> day of September, 2023.*

  
(FAREEHA PAUL)  
Member (E)

*\*Fazle Subhan, P.S\**

  
(SALAH-UD-DIN)  
Member (J)

S.A 941/2019

12<sup>th</sup> Sept. 2023 01. Mr. Umar Farooq, Advocate for the appellant present. Mr.

Asad Ali Khan, Assistant Advocate General for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, the appeal in hand is disposed of accordingly. Costs shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 12<sup>th</sup> day of September, 2023.*



(FAREEHA PAUL)  
Member (E)



(SALAH-UD-DIN)  
Member (J)

SCANNED  
KAST  
Peshawar

\*Fazle Subhan, P.S\*