

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.5740/2021

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

Fawad Yousaf S/O Mian Nisar Yousaf R/O Takhtbhai Mardan presently
serving as PASI at Mardan District (Regional No. 351/MR)

.... (Appellant)

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa Peshawar and 85 others.

.... (Respondents)

Mr. Ali Gohar Durrani
Advocate For appellant

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

Mr. Noor Muhammad Khattak
Advocate For private respondents

Date of Institution.....29.03.2021
Date of Hearing.....11.03.2024
Date of Decision.....11.03.2024

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:

1. That this Honorable Tribunal may please declare the
approval/confirmation dated 13.11.2020 of 2016
supernumerary PASIs Shuhada wards against/contrary to
the prescribed rules and law.

2. That this Honorable Tribunal may please direct the
respondent no 1 and 2 to revise the list 'E' and shall
consider the name of capable candidate appellant who has



secured his position by competing the exam and completed the probationary tenure as per rules and law.

Need to be confirmed immediately.

3. That this competent Tribunal may please direct and restrict the respondent authorities to adhere the criteria of supernumerary posts, gradual abolition, regularization rules and the rules laid down in consultation with the provincial government which is not victimizing the seniority rights of the commissioned officers if properly implemented.

4. That this Honorable Tribunal may please be direct to confirm the Services of the Appellants forthwith.

As any other relief which this Honorable Tribunal deems fit in favor of appellant may very graciously be granted.

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 questions of law and facts are involved:

1. Service Appeal No. 5741/2021
2. Service Appeal No. 5742/2021
3. Service Appeal No. 5743/2021
4. Service Appeal No. 5744/2021
5. Service Appeal No. 5745/2021
6. Service Appeal No. 5746/2021
7. Service Appeal No. 5747/2021

3. Brief facts of the case as given in the memoranda of appeals are that the appellants were appointed as PASIs upon the recommendation of Khyber Pakhtunkhwa Public Service Commission in the year 2017 in terms of Chapter 12 of Rule 6 of the Police Rules, 1934. Finance Department vide letter dated 26.08.2015, created 300 Supernumerary posts of (ASI BPS-09) subject to the condition that with gradual retirement of ASIs holding permanent/regular posts, the senior most from 300 holders of the supernumerary posts would be adjusted against the posts falling vacant and the corresponding supernumerary posts would stand abolished accordingly in a gradual manner. On 12.01.2016,

by the appointees appointed through Shuhada Quota, who were not regularly appointed but rather appointed on supernumerary/temporary basis. He further argued that there must be clear criteria for the promotion and seniority and supernumerary/temporary PASIs should not be treated as regular employees from the date of temporary appointment.

6. Conversely, learned counsel for private respondents, assisted by learned Deputy District Attorney, contended that appellant has been treated in accordance with law and rules. He further contended that no one can be appointed as PASI against Deceased's Son Quota, therefore, seniority of PASIs appointed through Public Service Commission is immaterial as there is no concept of appointment as PASI against Deceased's Son Quota. He argued that the PASIs of Kohat Region have been assigned seniority with respect of age.

7. Perusal of record reveals that appellants in the instant service appeal challenged the confirmation order of supernumerary PASI of 2016 batch of Mardan Region dated 13.11.2020 which affect their seniority. The appellant were directly recruited as PASIs vide order dated 20.07.2017 upon the recommendation of Khyber Pakhtunkhwa Public Service Commission dated 08.02.2017 after completion of process of recruitment initiated on the basis of publication/advertisement No. 4/2014 dated 18.07.2014. Respondent No. 4 to 85 were appointed on 12.01.2016 on temporary basis against supernumerary post of Shuhada quota which were created and sectioned by the Finance Department's letter dated 26.08.2015. It is clearly mentioned that Finance Department agrees to the creation of the 300 supernumerary posts of PASI (BPS-09) subject to the condition that with gradual retirement of ASI holding permanent/regular post, the senior most of the 300 from the holders of the supernumerary post and the supernumerary posts will be adjusted against the

private respondents No. 4 to 85 were appointed on temporary basis against supernumerary posts (ShuhadaWards). In respect of seniority between deceased son quota and regular PASIs of Kohat Region, seniority is given to PASIs coming under direct recruitment through the Public Service Commission over those who come through deceased son quota. By implementing the aforementioned policy, the RPO, Mardan adjusted 10 supernumerary PASIs in 5% quota specified for the Shuhada wards in due manner and they were entitled for confirmation with reference from the date of their adjustment. The RPO Mardan confirmed 68 supernumerary PASIs in the rank of ASI from the date of their temporary appointment on supernumerary posts on the basis of rules meant for direct/regular PASIs which was against approved policy contained in the Finance Department letter dated 26.08.2015 mentioned above. Feeling aggrieved, the appellant filed departmental appeal on 30.11.2020, which was not responded, hence the instant service appeals.

4. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Deputy 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. He further argued that confirmation order passed by the RPO Mardan violates the law of natural justice, which is evident from the rules that supernumerary posts should be regularized on the subsequent adjustment upon the gradual retirement of ASIs and by issuance of such order, seniority of the appellant was affected. He further argued that the directly recruited PASIs through the Public Service Commission had undergone through the process of written and physical examination prescribed in the chapter 12 rule 6 of Police Rules, 1934, and they shall not be victimized

post will stand abolished accordingly in a gradual manner. Government had also notified vide notification dated 27.02.2005 that police shuhada sons will be place Junior from the ASIs who were appointed through Public Service Commission.

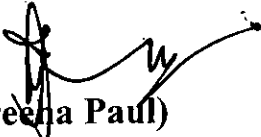
8. Regional Police Officer Mardan adjusted ten supernumerary PASI in 5 % quota of the Shuhada Son vide adjustment order dated 31.08.2017. Regional Police officer issued confirmation order of supernumerary PASI Mardan region on 13.11.2020 in accordance with which they were confirmed from the date of their temporary appointment including those who are not yet adjusted against regular posts on the basis of DPC meeting held on 09.06.2016 in accordance with 8(4) Civil Servant Act, 1973 where seniority on post, service or order to which a civil servant is promoted/appointed shall be determined from the date of appointment or promotion to a regular post, and in the instant case, it is clearly mentioned in the letter of Finance Department dated 26.08.2015 that supernumerary posts are temporary post. So confirmation of private respondents No. 4 to 84 from the date of their appointment i.e 12.01.2016 when they were appointed against temporary posts and not regular post they will have to be adjusted against regular post in accordance with rules. First, they will have to be adjusted against regular post and then they will be confirmed from the date of regular appointment as PASIs. When there was no regular post sanctioned by the Finance Department, then how, without converting these supernumerary posts to regular posts, committee considered it regular. Committee without giving due regard to the rules and clear directions of the Finance Department, considered all appointees of supernumerary posts as regular employees without citing any law on the basis of which they formed their opinion and took the decision, which is not in accordance with law on subject. Although respondent No 4 to 84 were



appointed on 12.01.2016 but again on temporary post and not against regular post. Lets for the sake of arguments, if we presume that respondent No 4 to 84 were appointed against regular posts on 12.01.2016 and appellants were appointed on 20.02.2017 then too appellants will be senior to respondents No 4 to 84 because process of their selection started with publication of advertisement No 4/2014 on 18.07.2014, wherein posts of the appellants were advertised by Public Service Commission in response of requisition sent by the government in accordance with Rules 17(2) of (Appointment, Promotion and Transfer) Rules, 1989 on the principle of earlier selection process.

9. In view of the above discussion, we accept the instant appeal as well as connected service appeals to the extent of prayer No. 1 and 3. Cost shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 11th day of March, 2024.*



(Fareeha Paul)
Member (E)



(Rashida Bano)
Member (J)

04.01.2024

01. Counsel for the appellant present. Mr. Habib Anwar, Addl. AG alongwith Bilal Hakeem, Inspector (Legal) for the official respondents and junior to counsel for private respondents present.

02. Request for adjournment was made on behalf of learned counsel for private respondents. Absolute last chance is given. To come up for arguments on 11.03.2024 before the D.B. Parcha Peshi given to the parties.


(FAREEHA PAUL)
Member(E)


(RASHIDA BANO)
Member (J)


Fazle Subhan, P.S


ORDER

11.03.2024. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney alongwith Atta Ur Rehman for the official respondents present. Learned counsel for the private respondents present.

2. Vide our detailed judgment of today placed on file, the appeal in hand is accepted to the extent of prayer No. 1 and 3. Cost shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 11th day of March, 2024.*


(Fareeha Paul)
Member (E)


(Rashida Bano)
Member (J)

Kaleemullah