BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 590/2016

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

Haider Shah S/O Mian Nawaz Shah, Daftari BPS-2, Peshawar Irrigation Circle Peshawar. ... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary Government of the Province Khyber Pakhtunkhwa Peshawar.
2. Secretary Irrigation Government of Khyber Pakhtunkhwa Peshawar.
3. The Chief Engineer (South) Irrigation Department Peshawar.
4. Superintending Engineer, Irrigation Department Warsak Road, Peshawar.
5. Haroon Khan Junior Clerk BPS-11, Warsak Canal Division Irrigation Peshawar.
6. Mohammad Israr, Junior Clerk BPS-11, Kohat Irrigation Department Division Kohat. ... (Respondents)

Mr. Iltaf Hussain
Advocate ... For appellant

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

Date of Institution.....27.05.2016
Date of Hearing.....08.03.2024
Date of Decision.....08.03.2024

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:

"On acceptance of this appeal, the respondent No.1 to 4 may be directed to consider the appellant for regular promotion to the post of Junior clerk BPS-11 of respondent No. 5-6, from the date when the respondent No. 5-6 was promoted to the post of junior clerk BPS-11 i.e w.e.f. order dated 09.12.2015 vide office order No. 119/2-E, dated 14.12.2105 vide order No. 120/2E, dated 14.12.2015 vide order dated 4110/2-E, with all consequential benefits. Any other remedy which this August Tribunal deems fit that may also be awarded in the favor of the appellant."

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was appointed as Mali BPS-1 on 16.04.2010 and promoted as Daftri (BPS-2) vide order dated 08.05.2015. That private respondent No.5 Haroon Khan was appointed on 14.04.2011 as Baildar and was promoted to the post of Dak runner on 02.09.2013. That private respondent No.6 was appointed on 26.12.2013 as Daffadar. Respondent department promoted private respondent No. 5 and 6 to the post of Junior Clerk (BPS-11) and appellant was ignored. Feeling aggrieved, he filed departmental appeal on 14.12.2015, which was not responded, hence the instant service appeal.

3. 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.

4. Learned counsel for appellant argued that appellant has not been treated in accordance with law/rules and respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan. He further argued that the impugned orders issued by the respondents are against the law, facts, norms of

natural justice and materials on record, hence not tenable and liable to be set aside. He further argued that juniors to the appellant have been promoted on the post of Junior Clerk (BPS-11) but appellant has been ignored in the said promotion despite senior most employee of the respondent department.

5. Conversely learned Deputy District Attorney contended that appellant has been treated in accordance with law and rules. He further argued that appellant was appointed basically as Mali (under matriculate) and on passing SSC exam in November 2013 he was promoted to the post of Daftari on 08.05.2016. An employee on the post of Mali is not directly promoted to the post of Junior Clerk. He further contended that appellant was not in the cadre of promotion for the post of Junior Clerk at the time of promotion of the respondent No. 5 and 6 nor the appellant was in the zone of promotion to be considered by the Departmental Promotion Committee.

6. Perusal of record reveals that appellant was appointed as Mali BPS-1 in respondent/department vide order dated 16.04.2010. Private Respondent No. 5 was appointed as Beldar BPS-1 on 14.04.2011 while Private Respondent No.6 as Daffadar BPS-1 vide order dated 26.12.2013. Private Respondent No. 5 was promoted as Dak Runner vide order dated 02.09.2013, Private Respondent No. 5 and 6, despite being junior to the appellant, were promoted to the post of Junior Clerk (BPS-11) on 09.12.2015 and 25.11.2014 respectively by ignoring appellant who was promoted as Daftari (BPS-2) vide order dated 08.05.2015. Appellant termed it injustice/discrimination because he contended that like private respondents No.5 & 6, he is also Class-IV employee of the department and was inducted into service at an earlier date as compared

to them, therefore, he will have to be promoted before promotion of private respondents.

7. The Government of Khyber Pakhtunkhwa Irrigation, Department notified Rules vide notification dated 17.02.2011 published in official gazette on 02.04.2011 which reveal that post of Mali (BPS-01) mentioned at Serial No.91. Promotion ladder for Mali (BPS-01) was provided in the said rules which is promotion to the post of Head Mali (BPS-4) mentioned at Serial No.90 of the rules. But respondent promoted appellant to Daftari (BPS-02) upon his own choice because in the Rules of the department, no further promotion ladder is provided for the post of Head Mali BPS-4. The post of junior clerk mentioned as Serial No.13 of the rules, is to be filled by 67% by initial recruitments and 33% by promotion from amongst the Daftaries, record lifters, Naib Qasids, Chowkidars, and other equivalent posts, who have Secondary School Certificate and are under 45 years of age and have at least two years of service as such in the respective regional and circle office cadre.

8. Appellant was promoted as daftari because ladder for his promotion was provided in the rules. Appellant was promoted as daftari on 08.03.2015 and in the Seniority list of the year 2015, his name was not mentioned because at that time his cadre was of Mali BPS-1 which is separate cadre having its separate seniority which will be mantained for the purpose of promotion to the post of Head Mali BPS-04.

9. Although name of the appellant was mentioned in seniority list of Class-IV employees issued on 12.12.2013 but same was in-advertently mentioned because appellant at that time was having different cadre of Mali and that is why his name was deleted/removed from the seniority list of Class-

IV employees which was mentioned for the purpose of promotion to the post of Junior Clerk. Now appellant is a daftari and his name is mentioned in seniority list of Class-IV employees and he will be promoted at his own turn. Names of private respondents No.5 & 6 were mentioned at their due place in Class-IV employees who were rightly promoted as channel of promotion was provided in the category of equivalent post to the post held by them at the time of their promotion.

10. For what has been discussed above, we are unison to dismiss the instant service appeal. Cost shall follow the event. Consign.

11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 8th day of March, 2024.*

(Fareeha Paul)
Member (E)

(RashidaBano)
Member (J)

*Kaleemullah

ORDER
08.03. 2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney alongwithMr.Behramand Khan, Assistant Director (Litigation) and Mr. MehtabGul, Law Officer for the respondents present.

2. Vide our detailed judgment of today placed on file,we set aside the impugned order and reinstate the appellant for the purpose of de-novo inquiry and remand case back to the respondent to conduct de-novo inquiry within a period of sixty days, by providing proper opportunity of self-defense and cross examination. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 8th day of March, 2024.*

(Fareeha Paul)
Member (E)

(RashidaBano)
Member (J)

*Kaleemullah

02.02.2024 1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney alongwith Mr. Ayaz Khan, Superintendent for the respondents present. Private respondent No. 5 & 6 in person present.

2. Private respondents requested for adjournment on the ground that his counsel is not available due to bar council election. Adjourned. To come up for arguments 08.03.2024 before D.B. P.P given to the parties.

(Muhammad Akbar Khan)
Member (E)

(Rashida Bano)
Member (J)