

19.04.2023 1. Learned counsel for the petitioner present. Mr. Muhammad Jan District Attorney alongwith Noor Badshah, ADEO for the respondents present.

2. Petitioner filed instant execution petition for implementation of order dated 18.10.2022 passed in service appeal No. 407/2017 which was in these terms "At the every outset, learned counsel for the appellant stated at the bar that the appellant would be satisfied if direction is issued to the respondents to consider him in accordance with relevant rules and law for promotion to the post of Junior Clerk in upcoming meeting of DPC. Respondents shall consider the appellant for promotion to the concerned post in the fourth coming of accordingly"

3. Perusal of appeal No. 407/2017 reveals that petitioner had prayed as follows;

"On acceptance of this appeal, respondents may kindly be directed to promote the appellant from Lab Attendant to Junior Clerk"

It is pertinent to mention here that respondent in their reply specifically mentioned that petitioner was not considered for promotion as he was not eligible being holder of 3rd Division in SSC because under the rules promulgated on 28th Jan, 2013 at serial No.9 post of Junior Clerk will have to be filled with a ratio of 33% by promotion on the basis of seniority-cum-fitness and 67% by initial recruitment. Only those class-iv will have to be promoted who had passed SSC examination with second division having at least two year service at their credit. It will not be out of place to mention here that



during pendency of appeal vide notification dated 02.08.2017 Rules of 2013 were amended wherein 3rd division were made eligible for promotion to the post of Junior Clerk and petitioner requested this Tribunal for giving direction to respondents to consider him according to prevailing Service Rules which was accepted and this Tribunal had not passed any order on merit.

4. Respondent submitted implementation report in accordance with which petitioner was considered twice by the DPC in its meeting held on 16.11.2023 but he was found not eligible for promotion as he was low in the seniority position being at serial No. 148. So, order of this Tribunal to consider the petitioner was complied with. So far as contention of learned counsel for the petitioner that retrospective effect be given to amendments in the Service Rules notified on 02.08.2017 is concerned, in my humble view when it was not specifically mentioned in any law about the retrospectivity then retrospective effect could not be given to it.

5. It is also very astonishing that petitioner seek promotion on the basis of seniority list of Class-IV employees issued in the year 2012 in accordance with the amendment dated 02.08.2017, while as per seniority dated list of the year 2012 when this Tribunal directed the respondents to consider the petitioner for promotion in accordance with the relevant rules, he was at serial No. 11. Perusal of seniority list of 2012 reveals that same was not properly maintained as official appointed in 1986, 1989, 1995 and 1998 were shown junior to the petitioner at serial No.12, 13, 15 and 16 respectively. Now after

merger proper seniority list was issued in accordance with which petitioner was placed at serial No. 148 which is his due seniority position.

6. In view of above it is held that order of this Tribunal dated 18.10.2022 was complied with and this execution being fruitless be consigned to record room after completion and compilation. Consign.

7. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 19th day of April, 2024.*


(RASHIDA BANO).
Member (J)