

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
AT CAMP COURT, ABBOTTABAD

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**
MUHAMMAD AKBAR KHAN ... **MEMBER (Executive)**

Service Appeal No.944/2023

Date of presentation of Appeal.....13.06.2022
Date of Hearing.....24.04.2024
Date of Decision.....24.04.2024

Muhammad Ajmal, Inspector No.72/H Police Training Center,
Mansehra.

.....(*Appellant*)

Versus

1. **Provincial Police Officer**, Khyber Pakhtunkhwa, Peshawar.
2. **Regional Police Officer**, Hazara Region, Abbottabad.
3. **District Police Officer**, Mansehra....(*Respondents*)

Present:

Mr. Muhammad Aslam Tanoli, Advocate.....For the appellant
Mr. Shoaib Ali, Assistant Advocate GeneralFor respondents

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APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST NOTIFICATION NO.CPO/E-I/PROMOTION/332 DATED 18.02.2022 OF THE PPO KHYBER PAKHTUNKHWA PESHAWAR WHEREBY APPELLANT'S JUNIOR HAS BEEN PROMOTED TO THE RANK OF DSP (BPS-17) IGNORING THE PETITIONER WITHOUT ANY REASON AND ORDER NO. CPO /CPB/196 DATED 27.04.2022 WHEREBY HIS REPRESENTATION HAS BEEN REJECTED.

JUDGMENT

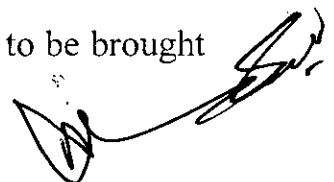
KALIM ARSHAD KHAN CHAIRMAN: Appellant's case in brief,

as per the averments of the Appeal, is that he was inducted in the

Sindh Police Force in the year 1987 and was later on transferred to

Khyber Pakhtunkhwa Police vide order dated 03.12.2013; that vide

Notification dated 05.11.2014 the appellant was ordered to be brought



on promotion list "F" as recommended by the Departmental Selection Committee held on 16.10.2014 and his name was placed above the name of S.I Azmat Ali No.K/200; that seniority lists were issued from time to time and the appellant was promoted to the rank of Inspector; that his name was still above the name of Azmat Ali (his junior colleague); that vide order dated 18.02.2022, his colleagues including his junior colleague Azmat Ali were promoted while the appellant was not considered for promotion.

2. Feeling aggrieved of the impugned promotion order dated 18.02.2022, the appellant filed departmental appeal on 18.03.2022, which was filed on 09.05.2022. Therefore, he filed the instant service appeal.

3. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

3. We have heard learned counsel for the appellant and learned Assistant Advocate General for respondents.

4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Assistant Advocate General controverted the same by supporting the impugned order(s).



5. Prayer of the appellant in this appeal is that orders dated 18.02.2022 and 27.04.2022 of the Provincial Police Officer/Inspector General of Police Khyber Pakhtunkhwa might be set aside/modified to the extent of appellant and he might be promoted as DSP (BPS-17) w.e.f 18.02.2022 when his junior was promoted according to seniority with grant of all consequential service back benefits.

6. There is no dispute that name of the appellant was existing in the seniority list of both above the name of Azmat Ali promoted vide Notification dated 18.02.2022 (impugned herein). It is also undisputed that after absorption of the appellant from Sindh Police to Khyber Pakhtunkhwa Police vide orders dated 03.10.2013 of the Sindh Police and 26.12.2013 of the Khyber Pakhtunkhwa Police, his services were to be governed on the terms & conditions enumerated in both the letters, which terms & conditions were accepted by him. The first term and condition, as enumerated in both the above two letters, is as:

"That the appointment will be treated as fresh appointment for the purpose of seniority and accordingly he will get seniority from the date of joining the Khyber Pakhtunkhwa Police and will be placed at the bottom of the officials of his rank."

7. After absorption of the appellant in the Khyber Pakhtunkhwa Police, his name was brought in the relevant list of Sub Inspectors vide Notification dated 05.11.2014 at Serial No.7 and next below him were S.I Azmat Ali No.K/200 and others. Similarly, the appellant was promoted and then confirmed as Inspector vide Notification dated 10.04.2016. In the revised seniority list of Inspectors, and Sub Inspectors as it stood on 22.06.2018, name of the appellant figured Serial No.210 while on 211, the name of Azmat Ali No. K/200

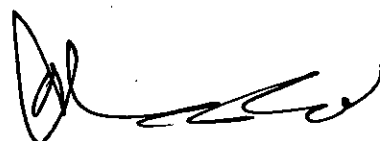


existed. This shows and proves that appellant had been senior to Azmat Ali in all the seniority lists since his absorption in the Khyber Pakhtunkhwa Police till promotion of the latter on 18.02.2022. The only reason of not considering the appellant in the promotions made on 18.02.2022, stated by the respondents in their reply as well as the impugned letter, whereby, the departmental appeal of the appellant was in a way rejected, was stated to be that the appellant had been transferred from Sindh Police to Khyber Pakhtunkhwa Police on the condition that he would be at the bottom of seniority and would not claim **"any further seniority"**. Portion of the order dated 27.04.2022 that **"appellant will not claim further seniority"** is nowhere existent in the terms & conditions of letters of either of the Sindh Police or of the Khyber Pakhtunkhwa Police. The said portion is also against the provisions of Rule 8 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, which deals with the inter-provincial transfer of the civil servants serving either under Federal or Provincial Governments. It, being relevant to the case in hand is reproduced:

"8. Inter-Provincial Transfer:-(1) Persons holding appointment in BPS 1 to 15 under Federal Government and other Provincial Government may, in deserving cases, be transferred to equivalent posts under these rules:-

Provided that:-

- (i) the Federal Government or the Government of the Province concerned, as the case may be, has no objection to such a transfer;***
- (ii) the person seeking transfer possesses the requisite qualification and experience and the post to which his transfer is intended can, under the rules, be filled by transfer;***
- (iii) the person concerned holds appointment to the post in his parent Department on regular basis;***



(iv) the person concerned is a bona fide resident of the Khyber Pakhtunkhwa.

(v) a vacancy exists to accommodate the request for such a transfer; and:

(vi) Provided further that in most deserving cases, the merit of which shall be determined on case to case basis and the decision of the Competent Authority in that behalf shall be final, Government may allow transfer of a civil servant in BPS-16 and above, subject to the aforesaid conditions.

(2) A person so transferred shall be placed at the bottom of the cadre strength which he joins for the purpose of determining his seniority vis-à-vis other members borne on the cadre.

(3) It will be the sole discretion of the appointing authority to accept or refuse a request for transfer under this rule and any decision made in this behalf shall be final and shall not be quoted as precedence in any other case."

8. The issue of transfer from other provinces and absorption in Khyber Pakhtunkhwa Police was also discussed in Writ Petition No.1587-P of 2022 titled "Shah Mumtaz & others versus the Government of Khyber Pakhtunkhwa & others" and in the judgment so delivered on 29.08.2023, the Peshawar High Court also discussed the judgments relied upon by the respondents in the cases of "Ali Azhar Khan Baloch & others versus Province of Sindh & others" reported as 2015 SCMR 456 and Contempt of Court Proceedings against the Chief Secretary, Sindh & others reported as 2013 SCMR 1752. Peshawar High Court in the judgment rendered in the above writ petition, has found that the judgments of the Supreme Court were rendered in completely different situations, which was not the case before the Peshawar High Court, so is the situation in this appeal also.

9. For what has been discussed above, we are constrained to allow this appeal, set aside the impugned appellate order directing the respondents to consider the appellant for further promotion to the rank of DSP, according to the seniority already fixed from the date of his



transfer to the Khyber Pakhtunkhwa Police and on the basis of which, he had also been promoted to different lists/posts from the post of S.I to Inspector but very strangely, for unknown reasons, he was deprived of promotion to the post of DSP on totally irrelevant considerations. Consign.

10. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 24th day of April, 2024.*



KALIM ARSHAD KHAN
Chairman
Camp Court Abbottabad



MUHAMMAD AKBAR KHAN
Member (Executive)
Camp Court Abbottabad

Mutazem Shah

S.A #.944/2022

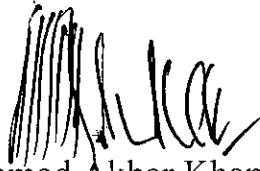
ORDER

24th Apr. 2024

1. Learned counsel for the appellant present. Mr. Shoaib Ali, Assistant Advocate General for the respondents present.

2. Vide our detailed judgment of today placed on file, we are constrained to allow this appeal, set aside the impugned appellate order directing the respondents to consider the appellant for further promotion to the rank of DSP, according to the seniority already fixed from the date of his transfer to the Khyber Pakhtunkhwa Police and on the basis of which, he had also been promoted to different lists/posts from the post of S.I to Inspector but very strangely, for unknown reasons, he was deprived of promotion to the post of DSP on totally irrelevant considerations. Costs shall follow the event. Consign.

3. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 24th day of April, 2024.*



(Muhammad Akbar Khan)
Member (E)



(Kalim Arshad Khan)
Chairman
Camp Court, Abbottabad