

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 5968/2021

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

Jamil Ahmad Qureshi, Assistant Director (Litigation), Directorate of Labour,
FC Building, Peshawar.....(*Appellant*)

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar.
2. Secretary Labour, Labor Department, Civil Secretariat, Khyber Pakhtunkhwa, Peshawar.
3. Director Labour, Labour Directorate, Peshawar Cantt.
4. Secretary Establishment, Establishment Department, Civil Secretariat, Khyber Pakhtunkhwa, Peshawar.
5. Secretary Finance, Finance Department, Civil Secretariat, Khyber Pakhtunkhwa, Peshawar.
6. Standing Service Rules Committee, through its Chairman, Secretary Labour Department, Peshawar.
7. Asif Ahmad, Inspector of Factories (Technical), Directorate of Labour, Labour Department, Peshawar Cantt.
8. Rahimullah, Inspector of Factories (Technical) Directorate of Labour, Labour Department, Peshawar Cantt. (*Respondents*)

Mr. Bailal Ahmad Kakaizai,
Advocate

... For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney

... For respondents

Mr. Nascерullah Uzair,
Advocate

... For private respondents
No.7 & 8.

Date of Institution..... 11.06.2021
Date of Hearing..... 21.03.2024
Date of Decision..... 21.03.2024

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the prayer as follows:



“On acceptance of the service appeal, impugned notification dated 24.09.2020, whereby rules were amended/notified and quota of promotion for the Inspector of Factories (Technical) was enhanced from 50% to 100% to the post of Chief Inspector of Factories (BS- 18) may be declared ultra-vires, in consequence whereof, the designation of Assistant Directors (BPS- 17) of any category may also be included/mentioned at serial no. 2 column 5 of the rules alongwith the post of Inspector of Factories (Technical) or else 50% enhanced quota may be allocated to the Assistant Directors (BPS- 17) of any category as mentioned in serial no. 3 column no. 5 with such other relief as may deem fit in the circumstances of the case may also be granted.”

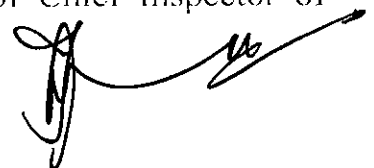
2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed in the year 1998 as KPO in the establishment of Peshawar High Court, Peshawar. The second phase of appellant's career started in June 2019 when he was placed at the disposal of respondent No. 2. He was further adjusted as Assistant Director (Litigation) from surplus pool of Establishment & Administration Department to the Directorate of respondent No. 3 vide order dated 09.08.2019. In February 2020, the appellant was sent on deputation to the Provincial Ombudsperson Secretariat. During the tenure of his deputation, Service Rules were amended and notified by the Labour Department vide notification dated 24.09.2020. Appellant was repatriated to



his parent department i.e. Directorate of Labour on 15.01.2021. When he was repatriated and joined his duties, he came to know about the amendment in rules and issuance of impugned notification dated 24.09.2020. Feeling aggrieved, he preferred representation/appeal to the respondent No. 2, which was not responded within the statutory period; hence the instant service appeal.

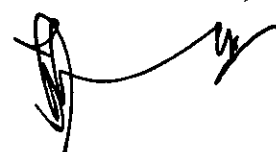
3. Respondents were put on notice who submitted their joint parawise comments on the appeal. We heard the learned counsel for the appellant, learned Deputy District Attorney for the official respondents as well as learned counsel for private respondent No. 8 and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that the impugned notification dated 24.09.2020 to the extent of serial no. 2, column no. 5 was illegal, unlawful, void and ineffective. He argued that the quota of promotion for the post of Chief Inspector of Factories (BPS- 18) was enhanced malafidely and without consultation with any of the affected parties. He argued that the post of Inspector of Factories (Technical) was in BPS- 17 and the post of Assistant Director was also in BPS-17. He argued that there were 26 posts of Assistant Directors, Assistant Director Labour, Assistant Director Labour (Litigation) and Assistant Controller Weight & Measure for the whole province whereas the number of posts of Inspector of Factories (Technical) was only two. Learned counsel argued that the number of posts of Chief Inspector of Factory (BPS-18) was only one, which further had channel of promotion to the post of Director Labour (BPS- 19) and only Inspector of Factories (Technical) could be promoted to the post of Chief Inspector of



Factories according to the serial no. 2, column no. 5 of the impugned rules. According to him, the number of posts of different cadres, including Deputy Director (Planning), Deputy Controller W&M and Chief Inspector of Factories which further had channel of promotion to the post of Director Labour (BPS-19), was 09. He said that the sitting Director and his predecessor were also promoted from amongst the Chief Inspector of Factories. Moreover, the sitting Director had occupied the post of Director since 2010 and his date of retirement was 2026 after which the Chief Inspector of Factories would again be promoted to the post of Director and would be incharge of the post till his date of retirement in 2052. He argued that with enhancement of quota of promotion for the post of Chief Inspector of Factories, the prospects of promotion of the appellant had become exceptionally marginal. He further argued that as per Labour Laws, most of the functions were entrusted to and performed by the Assistant Director Labour. So far as the functions performed by the Inspector of Factories (Technical) were concerned, learned counsel argued that he implemented only one chapter of Khyber Pakhtunkhwa Factories Act, 2013, which related to health and safety at the factory. In view of the functions performed by the Assistant Director Labour etc. and to provide them a chance of promotion to the post of Chief Inspector of Factories, he requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that upon receipt of request from Directorate of Labour regarding amendments in various sections of the Service Rules of Directorate of Labour Khyber Pakhtunkhwa on 19.02.2020, the



Labour Department placed the same before the Standing Service Rules Committee and accordingly, the SSRC in its meeting held on 10.06.2020 approved the amendments in Service Rules. The learned DDA informed that different cadres of employees including Assistant Director Labour, Assistant Controller Weights & Measures and Assistant Director Labour (Litigation) of Directorate of Labour preferred appeals to club their cadres with the seniority of Inspector of Factories (BPS- 17) to avail the opportunity of promotion to the post of Chief Inspector of Factories (BPS- 18), but the department, keeping in view the status of post of Inspector of Factories being a technical post, did not consider the appeals/representations of the officers. He further argued that the Labour Department, in consultation with the Establishment Department and Finance Department, vide notification dated 05.10.2021 amended the rules and inserted another post of Additional Controller (BPS- 19). With the insertion of that post, the Deputy Directors BPS- 18 and Chief Inspector of Factories BPS- 18 both could be promoted to the post of Additional Controller (BPS- 19) by promotion, on the basis of seniority-cum-fitness, which further had channel of promotion to the post of Director BPS-19. He requested that the appeal might be dismissed.

6. Through this service appeal, the appellant has challenged the vires of the service rules of the Government of Khyber Pakhtunkhwa, Labour Department notified on 15.09.2020 and published in government gazette on 24.09.2020. There are three parts of the prayer before us, as follows:-

- (i) Notification dated 24.09.2020, whereby rules were amended and quota for promotion of Inspector of Factories (Technical) was

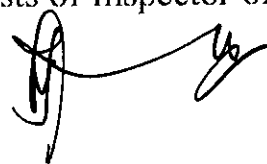


enhanced from 50% to 100% to the post of Chief Inspector of Factories (BPS- 18) be declared as ultra-vires.

(ii) The designation of Assistant Director (BS-17) of any category be included/mentioned at serial no. 2, column. 5 of the rules alongwith the post of Inspector of Factories (Technical).

(iii) 50% enhanced quota be allocated to the Assistant Directors (BS-17) of any category as mentioned a serial no. 3, column. no. 5.

7. Coming to the first part of the prayer, where the quota for promotion to the post of Chief Inspector of Factories had been enhanced to 100%, it was noted that there was only one post of the Chief Inspector of Factories, as mentioned by the appellant himself in his appeal and seconded by the learned Deputy District Attorney also. When compared with the old rules of 2013, the method of recruitment to the post of Chief Inspector of Factories was 50% by promotion on the basis of seniority-cum-fitness from amongst the Inspector of Factories (Technical) with five years service as such. The copy of rules annexed with the appeal is silent on the remaining 50%, but it was confirmed by the respondents that the remaining 50% was by initial recruitment. They produced a copy of advertisement no. 6/2015 dated 10.09.2015 of Khyber Pakhtunkhwa Public Service Commission vide which one post of Chief Inspector of Factories (BS- 18) was advertised, at serial no. 46. As there was only one post of Chief Inspector of Factories, therefore, as stated by the respondents, it was reserved 100% by promotion from amongst the Inspector of Factories (Technical), on the basis of seniority-cum-fitness, with five years service as such in the new rules. The number of posts of Inspector of Factories

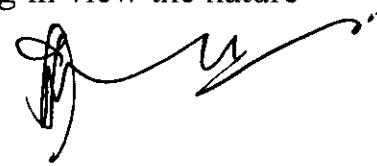


is two, as per record produced before us. Here we do not see any illegality on the part of respondents when they fixed 100% quota of Chief Inspector of Factories (BS- 18) by promotion, as there is only one post of Chief Inspector and as stated by the respondents, when the post was advertised under the old rules, it remained vacant for the sake of a qualified person. Hence the quota was revised to 100% by promotion.

8. The second part of the prayer is regarding inclusion of the designation of Assistant Director (BS- 17) of any category for promotion to the post of Chief Inspector of Factories. Here we refer again to the post of Chief Inspector of Factories (BS- 18), for which only Inspector of Factories (BS- 17) is eligible for promotion. The same service rules at serial no. 10 provide the minimum qualification for initial recruitment of Inspector of Factories (Technical) BPS- 17 as follows:-

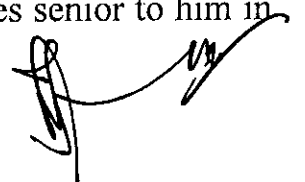
- (i) *First Class Bachelor's Degree in Mechanical, Electrical, Chemical, Civil, Mining, Electronics or Mechatronics Engineering or equivalent qualification in the same discipline from a recognized University; and*
- (ii) *six months certificate in Advance Office automation from a recognized Institute.*

When we compare the qualification of Inspector of Factories (Technical) with that of various Assistant Directors (BS- 17), we see that they are all non-technical positions and there is no comparison with the qualification of Inspector of Factories (Technical). This shows that all the positions of BS- 17 cannot be accommodated for promotion to the post of Chief Inspector of Factories except Inspector of Factories (Technical), keeping in view the nature



of the job that is being performed by them. Moreover all the Assistant Directors (BS- 17) have an avenue of promotion to the posts of Deputy Directors, as per the service rules produced before us. The Inspectors of Factories cannot be promoted to the posts of Deputy Directors. The rules show that they are two different cadres and have different lines of promotion from BS- 17 to BS- 18 and hence cannot be intermingled with one another.


9. Third part of the prayer is regarding allocation of 50% enhanced quota of Chief Inspector of Factories to the Assistant Directors of any category. As mentioned above the Assistant Directors and Inspector of Factories are two different cadres, with specific qualifications. The Inspector of Factories is the one who is eligible for promotion to the post of Chief Inspector of Factories. The Assistant Directors, on the other hand, are to be promoted to the posts of Deputy Directors. As far as enhancement of quota from 50% to 100% is concerned, there is only one post of Chief Inspector of Factories and the same has been allocated the quota of 100% by promotion by the provincial government for the reason clearly explained. As far as the plea taken by the learned counsel for the appellant is concerned that he would not get a chance of promotion to the post of Director Labour (BS- 19), on the ground that a young officer from the post of Chief Inspector of Factories, when gets promoted to the post of Director, would remain there till such time that the appellant would retire, the seniority list as of 31.12.2022 produced before us shows that he is at serial no. 7. If any post in BS- 18 is available for promotion, the ones senior to him have the first right of promotion based on the service rules. Moreover, his date of birth makes him senior in age as compared to the ones senior to him in



the seniority list at serial no. 2 to 6, which shows that he will retire at an early date as compared to all of them. This means that the plea taken by the learned counsel is not tenable.

10. In view of the above discussion, we arrive at a conclusion that determining the qualification and criteria for recruitment and fixing the quota for a specific position is the domain of the provincial government and the Service Tribunal cannot interfere in their authority. Hence, the service appeal in hand is dismissed, being groundless. Cost shall follow the event. Consign.

11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 21st day of March, 2024.*


(FAREEHA PAUL)
Member (E)

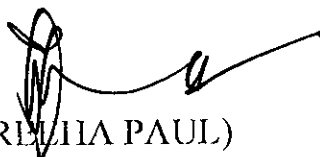

(RASHIDA BANO)
Member(J)

SA 5968/2021

21st Mar. 2024 01. Mr. Bilal Ahmad Kakaizai, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the official respondents present. Mr. Nascerullah Uzair, Advocate for private respondents No. 7 & 8 present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 09 pages, the appeal is dismissed, being groundless. Cost shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 21st day of March, 2024.*


(FARUKH PAUL)
Member (E)


(RASHIDA BANO)
Member(J)

Fazal Subhan PS