



SA 1306/2023

- 16th Apr. 2024
01. Arbab Saiful Kamal, Advocate for the appellant present.
Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.
02. Vide our detailed judgment consisting of 05 pages, the appeal in hand is allowed as prayed for. 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 16th day of April, 2024.*


(FARIHA PAUL)
Member (I)



(RASHIDA BANO)
Member(J)


Fazal Subhan PS

respondent department? No cogent reason could be offered by the respondents about the delay in implementing the earlier judgment of this Tribunal and subsequent promotion of the appellant.

8. In view of the above discussion, the service appeal in hand is allowed as prayed for. Cost shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 16th day of April, 2024.*


(FAREEH PAUL)
Member (E)


(RASHIDA BANO)
Member(J)

FazleSubhan P.S

appellant was promoted to the post of Naib Tehsildar (BS-14) w.e.f. 25.04.2009. He requested that the appeal might be dismissed.

6. This is the second round of litigation. In an earlier service appeal, the appellant had requested for promotion to the post of Naib Tehsildar from the date when his juniors were promoted. His service appeal was allowed and vide judgment dated 24.09.2019, the respondents were directed to consider the case of the appellant for promotion to the post of Naib Tehsildar from the date when his erstwhile juniors were promoted. In pursuance to that order, the department issued an order dated 10.03.2022 vide which he was promoted to the post of Naib Tehsildar w.e.f. 25.11.2009. It was highlighted by the learned counsel for the appellant that during pendency of the earlier service appeal, private respondent No. 3, who was junior to the appellant, was further promoted to the rank of Tehsildar on 04.07.2019 and later on to the post of Provincial Management Service (BS- 17) on 18.03.2021.

7. After going through the record and hearing the arguments presented by learned counsel for the appellant as well as the learned Deputy District Attorney, it transpires that the appellant was entitled for promotion to the post of Naib Tehsildar and the fact was admitted by this Tribunal and directions were issued vide its judgment dated 24.09.2019 for that promotion from the date when his erstwhile juniors were promoted. The order of this Tribunal was implemented at a much belated stage on 10.03.2022. Had it been implemented at an earlier date, the appellant would have been further promoted to the post of Tehsildar (BS- 16) and PMS (BS- 17) also. Why should the appellant be punished for any lag or delay on the part of the



respondent No. 3 was promoted as Tehsildar and later on as Assistant Commissioner and was serving in Ladha North Waziristan. Feeling aggrieved, he preferred departmental appeal on 22.02.2023 to respondents No. 1 and 2 for proforma promotion to the post of Tehsildar and Assistant Commissioner which was not responded; hence the instant service appeal.

3. Respondents were put on notice. The official respondents submitted their joint parawise comments on the appeal while private respondent No. 3 was placed ex-parte vide order dated 25.03.2024. We heard the learned counsel for the appellant as well as learned Deputy District Attorney for the official respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that during the pendency of the appeal other orders of promotion of juniors were made to the post of Tehsildar followed by subsequent orders of promotion to the post of Assistant Commissioner while the appellant had been ignored. He further argued that though the judgment of the Tribunal was implemented but not in letter and spirit because during pendency of the appeal, juniors were promoted to the post of Tehsildar and Assistant Commissioner and hence the appellant was also entitled for the said promotion. He requested that the appeal might be accepted.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was not promoted due to deficient ACRs. He argued that the judgment of the Service Tribunal had already been implemented vide order dated 10.03.2022 wherein the



Commissioner with effect from the date his junior (respondent No. 3) was promoted with all service benefits, alongwith any other relief which the Tribunal deemed appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Junior Clerk in the year 1980 and then promoted as Junior Scale Stenographer in the year 1992. In the seniority list of Junior Clerks and Assistants for the year 2003, the appellant's name figured at serial no. 02 whereas name of respondent No. 03 was at serial no. 03. Out of cadre incumbents were promoted by respondent No. 1 through executive orders, so the appellant, feeling aggrieved, preferred Service Appeal No. 382/2010 in the Service Tribunal for recalling the illegal promotion orders and to promote him to the post of Tehsildar as per his right. Respondent No. 1 issued orders whereby juniors were promoted to the post of Tehsildar and later on Assistant Commissioner in violation of seniority, rules and merit. In the same line, respondent No. 3 was promoted as regular Tehsildar on 04.07.2019 during the pendency of service appeal No. 380/2010. Vide judgment dated 24.09.2019, the Tribunal allowed the appeal of the appellant by directing the official respondents to consider him for promotion to the post of Naib Tehsildar from the date when his erstwhile juniors were promoted. Respondent department implemented the judgment of the Service Tribunal by issuing notification dated 10.03.2022, whereby the appellant was promoted to the post of Naib Tehsildar with effect from 25.11.2009. He was retired from service on 04.04.2021 but was not promoted to the post of Tehsildar and Assistant Commissioner as his junior



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.1306/2023

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

Muhammad Asad Ullah S/O Muhammad Yar, R/O Mohallah Gosayan Wala,
Dera Ismail Khan, Ex-Naib Tehsildar, Revenue Department.

.....(Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
3. Sher Bahadar, Assistant Commissioner, Ladha South Waziristan.
.....(Respondents)

Arbab Saiful Kamal,
Advocate

... For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney

... For official respondents

Date of Institution..... 12.06.2023
Date of Hearing..... 16.04.2024
Date of Decision..... 16.04.2024

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 10.03.2022 whereby the appellant was promoted to the post of Naib Tehsildar w.e.f. 25.11.2009 but was not promoted to the post of Tehsildar and Assistant Commissioner and thus discriminated and not treated at par with his junior and colleagues. It has been prayed that on acceptance of the appeal, order dated 10.03.2022 of the respondents be set aside/modified/amended to the effect that the appellant be given proforma promotion to the post of Tehsildar and Assistant

