


9. As far as the quota for promotion of Superintendent to the next higher post is concerned, in the rules of 2010, it was 4% which was already enhanced to 6% in the rules of 2018. Here we would like to clarify that making the service rules, determining the qualification for a specific post and quotas for appointment on that post is the exclusive domain of the executive and we should not interfere unnecessarily in this function of the executive. We do not see any injustice meted out to the appellant in the service rules notified in 2018, rather they are very much in line with the rules as notified by the Establishment Department, which is considered as the parent department governing the service matters of all the employees in provincial government.

10. In view of the above discussion, the service appeal in hand as well as the connected service appeals, are 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 18<sup>th</sup> day of April, 2024.*

  
(FARAHIA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member(J)

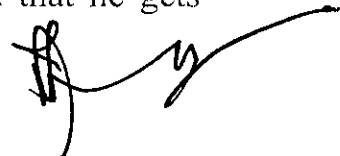
*\*FazleSubhan P.S\**

promoted from ministerial cadre level to the level of officer. In case of service rules of the Directorate of Excise & Taxation notified in 2010, it has been noted that the post of Excise & Taxation Officer was in BS- 17 and that of Superintendent in BS- 16. The channel of promotion provided from Superintendent to Excise & Taxation Officer was in line with the one provided by the Establishment Department to the Superintendent where he was promoted to the post of Section Officer. The service rules of Directorate of Excise & Taxation were notified again on 19.02.2018, according to which, the post of Assistant Excise & Taxation Officer was placed in BS- 17 whereas the post of Excise & Taxation Officer was upgraded to BS- 18. In the rules of 2018, the Superintendent gets promoted to the Assistant Excise & Taxation Officer (BS- 17) and this channel of promotion has been impugned before us. Here one must not forget that upgradation of the post of Superintendent to BS- 17 does not qualify him to be included in the cadre of officers who get inducted in the provincial government at the initial level of BS- 17. A Superintendent is a ministerial level position and when he enters into the cadre of officers, he has to enter at the lowest level, which is BS- 17. A Superintendent in the Directorate General of Excise & Taxation has to be promoted to the post of officer in BS- 17, which is the Assistant Excise & Taxation Officer. The plea taken by the learned counsel for the appellant before us that he should be promoted to the post of Excise & Taxation Officer does not hold ground as the post is in BS- 18 and anyone from ministerial level in BS- 17 cannot simply be promoted to an officer level in BS- 18, without first being promoted to BS- 17 officer level.



Assistant Excise & Taxation Officer.	<p>ii. Four per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Superintendents (BS- 16) with at least 5 years service as such, who have passed the departmental examination in higher grade; and</p> <p>(b) Fifty per cent by initial recruitment, on the recommendations of NWFP Public Service Commission based on the result of a competitive examination conducted by it, in accordance with the syllabus prescribed for the Competitive Examination under Government of North-West Frontier Province Provincial Management Service Rules, 2007.</p>
	<p>By promotion, on the basis of seniority-cum-fitness, from amongst the holders of the post of Inspectors, with at least five years service as such, and who have passed Departmental examination in higher grade.”</p>

8. Perusal of both sets of rules shows that the positions of Excise & Taxation Officer, Assistant Excise & Taxation Officer as well as Superintendent were upgraded. The post of Superintendent was upgraded as a result of general upgradation given to various posts of ministerial staff at different times by the provincial government. Superintendent is a post of ministerial cadre. While taking strength from the service rules at the level of Provincial Civil Secretariat, issued by the Establishment Department, being the parent department dealing with the service matters, it appears that when the post was in BS- 16, the incumbent was promoted to the level of Section Officer (BS- 17). After upgradation of the post of Superintendent to BS- 17, there is no change in the channel of promotion and he is still promoted to the post of Section officer (BS- 17) which is acceptable to a prudent mind that he gets



service rules were not person specific but for the whole province. He requested that the appeal might be dismissed.

7. Through the instant service appeal, the appellant has impugned the service rules notified on 19.02.2018 to the extent of serial no. 11 (which is actually serial no. 10) and 15. Serial no. 10 and 15 are reproduced as follows:-

- “10. Excise and Taxation Officer (BPS- 18) By promotion on the basis of seniority-cum-fitness from amongst the Assistant Excise and Taxation Officers with at least five years service as such who have passed Departmental Examination in higher grade.
15. Assistant Excise and Taxation Officer (BPS- 17). (a) Six percent by promotion, on the basis of seniority-cum-fitness, from amongst the Superintendents, with at least five years service as Superintendent and Stenographers, who have passed the Departmental Examination in higher grade;  
(b) fifty four percent by promotion, on the basis of seniority-cum-fitness, from amongst holder of the post of Inspectors, with at least five years service as such who have passed Departmental Examination in higher grade; and  
(c) forty percent by initial recruitment.”

He has compared the impugned rules with the ones notified in 2010.

Relevant rules are reproduced as follows:-

Nomenclature of post	Method of recruitment
Excise & Taxation Officer.	(a) i. Forty six per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Assistant Excise & Taxation Officers (BS- 16) with at least 5 years service as such, who have passed the departmental examination in higher grade; and



to the post of ETO was abolished. After getting knowledge about the rules, appellant filed departmental appeal. The department scheduled several meetings to redress the anomaly created by service rules of 2018 but no fruitful result was attained. They also did not respond to the departmental appeal of the appellant within statutory period of ninety days; hence the instant service appeal.

4. Respondents were put on notice who submitted written replies/comments on the appeal. We heard the learned counsel for the appellant as well as the learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

5. Learned counsel for the appellant, after presenting the case in detail, argued that the service rules 2018 were against the law, facts, norms of justice and material on record, therefore not tenable and liable to be modified to the extent of serial no. 15. He argued that while framing rules of 2018 and abolishing quota of Superintendents, the department neither took their consent nor circulated any material in that regard and they were deprived from promotion to the post of BPS- 18. He argued that it was evident from the letter dated 20.09.2019 of the D.G Excise & Taxation addressed to the Secretary Excise & Taxation that due to amendment in service rules certain anomalies were created and a reforms committee was constituted for resolution of various issues. He requested that the appeal might be accepted.

6. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the respondents had the power to amend the service rules at any time. He further argued that amendments in



statutory period of ninety days. It has been prayed that on acceptance of the appeal, the impugned service rules dated 19.02.2018 might be modified to the extent of serial no.15 and serial no. 11 and the Superintendent quota might be excluded from the list of promotion to the post of AETO and the quota of Superintendent for promotion (BPS- 17) to the post of ETO BPS- 18 might be restored as per Rules 2010 to the extent of the modification that the quota might also be increased from 4% to 10%, alongwith any other remedy which the Tribunal deemed appropriate.

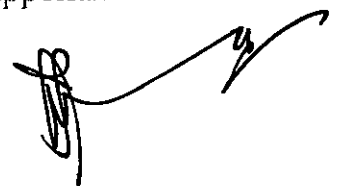
3. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was working as Superintendent in the respondent department. The service structure and service rules of 2010 was a hope for Superintendent to be promoted to the next higher grade, but the department amended the service rules of 2010 in 2018 and promotion quota for Superintendent to the post of ETO was abolished. In service rules of 2010, 4% promotion quota to the post of ETO was provided, but after amendment in 2018 in the said rules, an anomaly was created and the whole promotion structure of Superintendent was changed which affected the promotion and seniority of the appellant and decreased his chances of promotion. The department disturbed the promotion of Superintendent by illegally allocating 6% quota to Superintendent for promotion to the post of AETO, BPS- 17 i.e. BPS- 17 to 17. As a result of that, the Superintendents would remain in BPS- 17 and only their designation would be changed and they would become junior to their junior officials in AETO cadre. Till 2018, 4% posts of ETOS were filled by promotion from amongst Superintendents but after that the said quota of Superintendent for promotion



3. Service Appeal No. 8874/2020, Irfan Ali,
4. Service Appeal No. 8875/2020, Faisal Khan,
5. Service Appeal No. 8876/2020, Syed Iamza,
6. Service Appeal No. 8877/2020, Atif Qayum,
7. Service Appeal No. 8878/2020, Saifullah,
8. Service Appeal No. 8879.2020, Zar Ali Khan,
9. Service Appeal No. 8880/2020, Usman Ali,
10. Service Appeal No. 8881/2020, Zar Jan,
11. Service Appeal No. 8882/2020, Arshad Zaman,
12. Service Appeal No. 8883/2020, Muhammad Akram,
13. Service Appeal No. 8884/2020, Ashfaq Ahmad,
14. Service Appeal No. 8885/2020, Sir Anjam Khan,
15. Service Appeal No. 8886/2020, Majid Khan,
16. Service Appeal No. 8887/2020, Shahid Tehseen,
17. Service Appeal No. 8888/2020, Hameedullah Khan,
18. Service Appeal No. 8889/2020, Shakeel Arshad,
19. Service Appeal No. 8890/2020, Shakir Ullah and
20. Service Appeal No. 8891/2020 Nasir Iqbal

Vs. the Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa Peshawar and others.

2. The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned service rules dated 19.02.2018 to the extent of serial no. 11 & serial no. 15 and against not taking any action on the departmental appeal of the appellant within the



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

**Service Appeal No. 837/2021**

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

Mr. Pervaiz Akhar, Superintendent (BS- 17) Excise, Taxation and Narcotics Control Department Khyber Pakhtunkhwa. ....(Appellant)

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa excise, Taxation & Narcotics Control Department, Khyber Pakhtunkhwa, Peshawar.
3. The Standing Rules Committee (SSRC) through its Chairman/Secretary (Establishment) Khyber Pakhtunkhwa Civil Secretariat Peshawar.
4. The D.G Excise, Taxation & Narcotics Control Department, Peshawar.
5. The Secretary Finance, Khyber Pakhtunkhwa Civil Secretariat Peshawar.
6. The Secretary Establishment, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar. ....(Respondents)

Mr. Muhammad Asif Yousafzai,  
Advocate

... For appellant

Mr. Asif Masood Ali Shah,  
Deputy District Attorney

... For respondents

Date of Institution.....	17.07.2020
Date of Hearing.....	18.04.2024
Date of Decision.....	18.04.2024

**CONOLIDATED JUDGEMENT**

**FAREEHA PAUL, MEMBER (E):** Through this single judgment, we intend to dispose of instant service appeal as well as the following connected service appeals as in all the appeals, common questions of law and facts are involved:-

1. Service Appeal No. 8872/2020, Ijaz Anwar,
2. Service Appeal No. 8873/2020, Nasir Mehmood,






SA 837/2021

18<sup>th</sup> Apr. 2024 01. Mr. Muhammad Asif Yousafzai, 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 08 pages, the appeal in hand 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 18<sup>th</sup> day of April, 2024.*

  
(FAREEHA PAUL)  
Member (I)

  
(RASHIDA BANO)  
Member(J)

*\*Fazal Subhan PS\**