


SA 1900/2022

25th Apr. 2024 01. Mr. Taimur Ai Khan, Advocate for the apellant 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 07 pages, we
are unison that the apellant was eligible and qualified for
promotion to the post of Assistant Treasury Officer/Sub-
Treasury Officer under rule 6(a) of the service rules notified
on 10.08.2018. The service appeal is, therefore, allowed.
Respondents are directed to promote him from the date when
his junior colleagues were promoted i.e. w.e.f 29.11.2018.
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 25th day of April,
2024.*


(FAREHIA PAUL)
Member (I)


(RASHIDA BANO)
Member(J)


Fazal Subhan PS

SAS examination. In case an Assistant Accountant qualifies the required examination, he becomes eligible for promotion under part (a) of rule (6).

8. The appellant qualified the SAS examination in January 2018. The meeting of Departmental Promotion Committee was held in October 2018 but he was not considered for promotion, rather his junior colleagues were promoted. The arguments presented by the learned District Attorney, that he qualified the SAS examination at a later date and hence was not considered, does not appeal to a prudent mind. How could the department go against the service rules which clearly state two points; first, seniority-cum-fitness and second, qualifying the SAS examination. The moment the appellant qualified the SAS examination, he was eligible for promotion on the basis of seniority-cum-fitness, and the department could not deny promotion to him in such a scenario where they promoted certain officials junior to him.

9. In view of the above discussion, we are unison that the appellant was eligible and qualified for promotion to the post of Assistant Treasury Officer/Sub-Treasury Officer under rule 6(a) of the service rules notified on 10.08.2018. The service appeal is, therefore, allowed. Respondents are directed to promote him from the date when his junior colleagues were promoted i.e. w.e.f. 29.11.2018. Cost shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 25th day of April, 2024.*


(FARZEHA PAUL)
Member (I)

FarzeSubhan P.S


(RASHIDA BANO)
Member(J)

Accountants.” According to them, the promotions were made in the light of service rules read with the judgment dated 16.07.2009 of Service Tribunal.

7. Coming to the service rules notified on 10.08.2018, rules no. 6 is reproduced as follows:-

- | | |
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| Assistant Treasury Officer/
Sub-Treasury Officer. | (a) Sixty per cent by promotion, on the basis of seniority –cum-fitness, from amongst the Assistant Accountants who have qualified PIPFA or SAS Examination. |
| | (b) twenty per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Assistant Accountants. |
| | (c) twenty per cent by initial recruitment; |

A simple perusal of the rules shows that promotion is to be made on the basis of seniority-cum-fitness. Seniority has been very clearly defined in Part-VI of the Khyber Pakhtunkhwa (Appointment, Promotion and Transfer) Rules 1989 and is determined from the date of regular appointment. This means that in the case in hand, the seniority of the Assistant Accountants would be determined from the date when they were regularly appointed on that post as a result of promotion from the post of Sub-Accountants. For their further promotion to the post of Assistant Treasury Officer/Sub Treasury Officer, only those Assistant Accountants would be considered who have qualified the SAS Examination. Those who are senior and fulfill the criteria would be promoted whereas those who have not qualified the SAS examination would be either deferred for the sake of fulfilling the criteria or placed in the category of part (b) of rule 6 of the service rules which is meant for those Assistant Accountants who have not qualified the



promoted earlier than the appellant to the post of Assistant Treasury Officer/Sub Treasury Officer in the light of judgment dated 16.07.2009 of the Service Tribunal. He further argued that the respondent department had been amending its service rules of 1981 from time to time without affecting the laid down criteria of promotion of the appellant as well as private respondents. As far as passing of SAS exam of the appellant was concerned, his seniority on the basis of said qualification was intact and he would be promoted on his own turn in 60% quota. He further argued that departmental appeal of the appellant was examined and regretted, being contrary to the decision dated 16.07.2009 of the Service Tribunal. He requested that the appeal might be dismissed.

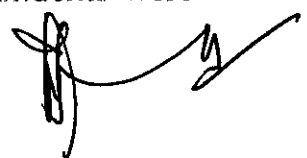
6. Arguments and record presented before us transpire that the appellant is Assistant Accountant in the Treasuries and Accounts attached with the provincial Finance Department and stood at sr. no. 62 of the seniority list as on 31.12.2017. He has impugned a promotion order dated 29.11.2018 before this Tribunal vide which his colleagues, junior to him in the seniority list of 2017, were promoted to the post of Assistant Treasury Officer but he was not considered for that promotion. The reason stated by the respondents before us was that he had not qualified the SAS examination which was a prerequisite for promotion. They referred to a judgment of this Tribunal dated 16.07.2009 in a service appeal no. 301/2009 according to which "the vacancies of SAS qualified Assistants shall be filled through them on the basis of their seniority fixed with respect of the dates of their passing of the SAS examination, and not on their simple seniority as Assistant



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 the impugned order dated 29.11.2018 and rejection order dated 07.12.2022 was against the law, facts, norms of justice and material on record, therefore, not tenable in the eyes of law and liable to be set aside. The appellant was senior to the private respondents in the seniority list as on 31.12.2017 but they were promoted to the post of Assistant Treasury Officer while he had been discriminated. He further argued that the department notified the rules on 08.12.2018 wherein promotion to the post of Assistant Treasury Officer/Sub Treasury Officer was mentioned as Sixty percent (60%) by promotion on the basis of seniority cum fitness, from amongst the Assistant Accountants, who had qualified PIPFA or SAS examination without mentioning in the rules that seniority of Assistant Accountant would be fixed with respect to the dates of their passing of SAS examination, which meant that the post of Assistant Treasury Officer/Sub Treasury Officer would be filled on the basis of seniority cum fitness from amongst the Assistant Accountants who had qualified PIPFA or SAS examination. The appellant had good service record but was deprived of his legal rights while his juniors were promoted in violation of law and rules. 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 the private respondents were



proceedings of the case, the respondent department submitted the comments in which they relied on the judgment dated 16.07.2009 of the Tribunal passed in service appeal No. 301/2009 and other connected appeals as the Tribunal disposed of those appeals with certain observations about framing of fresh rules of the department and mentioned that the vacancies of SAS qualified Assistant Accountants should be filled through them on the basis of their seniority fixed with respect to the dates of their passing of SAS examination and not on their simple seniority as Assistant Accountants. When the rules were proposed, certain observations were made by the Law Department vide letter dated 13.04.2010. When the rules were framed and notified on 10.08.2018, the Establishment Department through its letter dated 16.01.2020 to the Finance Department mentioned that the case had been examined in light of Service Tribunal judgment dated 16.07.2009 and the new Service Rules of Treasury Establishment of Finance Department notified on 10.08.2018 were quite clear and there was no need of further amendments in the said Rules. The Service appeal of the appellant was heard and disposed of on 17.10.2022 with the directions to the appellate authority to decide the departmental appeal of the appellant through a speaking order within the period of one month of the receipt of copy of that judgment but the appellate authority rejected the departmental appeal of the appellant on 07.12.2022; 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. 4 to 10 were placed ex-parte vide order sheet dated 16.02.2023. We heard the



when his junior colleagues were promoted, alongwith any other remedy which the Tribunal deemed appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed in the year 1990, while private respondent No. 4 was appointed in the year 1993, respondent No. 5 in the year 1988, respondents No. 6, 7 and 8 in the year 1995 and respondents No. 9 and 10 were appointed in the 2004. The appellant was at Serial No. 62, while the private respondents No. 4, 5, 6, 7, 8, 9 and 10 were at serial No. 78, 85, 90, 92, 99, 125 and 129 respectively in the seniority list as on 31.12.2017, issued on 15.01.2018, of Assistant Accountants (BPS- 16), meaning thereby that the appellant was senior to private respondents No. 4 to 10. The respondent department issued the rules on 10.08.2018, wherein promotion to the post of Assistant Treasury Officer/Sub Treasury Officer was mentioned as sixty percent (60%) by promotion on the basis of seniority cum fitness from amongst the Assistant Accountants, who had qualified PIPFA or SAS examination. The appellant had passed the SAS exam alongwith other officials on 15.01.2018. Private respondents No. 4 to 10 were promoted to the post of Assistant Treasury Officer (BPS-17) vide order dated 29.11.2018, while the appellant, despite being senior to respondents No. 4 to 10, was deprived from his legal right of promotion to the post of Assistant Treasury Officer (BPS- 17) by the respondent department. The departmental appeal against the impugned order was not responded within the statutory period of ninety days. After the stipulated period of ninety days, the appellant filed service appeal No. 952/2019 in the Service Tribunal and during the



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1900/2022

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

Mr. Mir Azam Khan Assistant Accountant (BPS-16) Treasury
Establishment, Finance Department, Peshawar.(Appellant)

Versus

1. The Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
2. The Secretary Finance, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Director, Treasuries and Accounts, Khyber Pakhtunkhwa, Peshawar.
4. Mr. Ayub Ur Rehman, Assistant Treasury Officer BPS-17, Office of the District Accounts Officer, Bannu and 6 others.(Respondents)

Mr. Taimur Ali Khan,
Advocate

... For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney

... For official respondents

Date of Institution.....	22.12.2022
Date of Hearing.....	25.04.2024
Date of Decision.....	25.04.2024

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 29.11.2018 whereby the private respondents No. 04 to 10, despite being junior to the appellant, were promoted to the post of Assistant Treasury Officer (BPS-17) and against the order dated 17.12.2022 whereby the departmental appeal of the appellant was rejected. It has been prayed that on acceptance of the appeal, the impugned orders might be set aside and the respondents be directed to consider the appellant for promotion to the post of Assistant Treasury Officer BPS- 17 from the date

