

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No. 1482/2023**

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

Mr. Asif Shahzad, Inspector BPS-16 DTS, 4<sup>th</sup> Floor, FC Plaza, Peshawar  
Cantt.

.... (Appellant)

**VERSUS**

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Secretary Establishment, Khyber Pakhtunkhwa, Peshawar.
3. Secretary Sports, Culture and Tourism, Government of Khyber Pakhtunkhwa, Peshawar.

....(Respondents)

Mr. Bashir Khan Wazir  
Advocate

... For appellant

Mr. Muhammad Jan  
District Attorney

... For respondents

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Date of Institution.....19.06.2023  
Date of Hearing.....15.03.2024  
Date of Decision.....15.03.2024

**JUDGMENT**

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

**“On acceptance of the instant Appeal, the appellant being eligible and entitled for the post of Assistant Controller/Assistant Director (BPS-17) on Regular Basis as per length of service and seniority list, but the respondents violated the seniority of the appellant, therefore, the respondents may very kindly be directed to promote the**



**appellant to the post of Assistant Controller/Assistant Director (BPS-17) on regular basis.”**

2. Through this single judgment, we intend to disposed of instant service appeal as well as connected service appeals as in all of these appeals common questions of law and facts are involved, the details of which is given as under:

1. Service Appeal No. 1483/2023
2. Service Appeal No. 1484/2023
3. Service Appeal No. 1485/2023
4. Service Appeal No. 1486/2023
5. Service Appeal No. 1487/2023
6. Service Appeal No. 1488/2023
7. Service Appeal No. 1489/2023
8. Service Appeal No. 1666/2023

3. Brief facts of the case, as given in the memoranda of appeals, are that the appellants were appointed in the Directorate of Tourist Services. On 31.10.2017, a notification was issued by the Government of Khyber Pakhtunkhwa, Sports, Tourism, Department in pursuance of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 which laid down the method of recruitment, qualification and other conditions. Subsequently certain amendments were made in the service rules vide notification dated 25.04.2022. A working paper was prepared by the Directorate of Tourist Services for promotion/appointment to the post of Assistant Controller/Assistant Director/Assistant Director-Cum-Assistant Controller on regular/acting charge basis. Meeting of the Departmental Promotion Committee of the



Directorate of Tourist Services Khyber Pakhtunkhwa, Peshawar was held on 07.11.2022 under the Chairmanship of the Secretary Sports and Tourism Department. Being aggrieved of the minutes of the meeting, the appellants filed appeals/representations to the Chief Secretary to declare the decision of the DPC null & void and to issue directions to conduct fresh DPC and recommendation of the appellants for promotion as per rules. Under the purview of Section 8 of the Khyber Pakhtunkhwa Tourism Act 2019, the services of appellants were to be placed in surplus pool. To stop from processing the case of the appellants for placement in surplus pool, he approached the Honourable Peshawar High Court in writ jurisdiction for seeking directions of holding of DPC meeting. It was during the pendency of writ petition that meeting of DPC was held on 07.11.2022. Subsequently the writ petition was also dismissed, hence, the instant service appeals.

4. Respondents were put on notice who submitted their joint written reply/comments on the appeals. We heard the learned counsel for the appellants 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 appellants argued that appellants have not been treated in accordance with law and rules. He further argued that act of the respondents of not considering the appellants for promotion is illegal, unlawful, unnatural, ab-initio, null and void in the eyes of law.

He further argued that appellants are eligible for promotion under the



service rules as the length of service has been completed. He submitted that in accordance with Section-8 of Khyber Pakhtunkhwa Tourism Act, 2019 the competent authority issued notification dated 25.07.2022 under which DTS ceased to exist and authority was established, hence services of the appellants were placed on the disposal of Establishment Department as appellants being civil servants have right of promotion in accordance with law and rules.

6. Conversely, learned Deputy District Attorney contended that appellants have been treated in accordance with law and rules. He further argued Departmental Promotion Committee meeting was held on 07.11.2022 and committee recommended the appellants to the post of Assistant Director/Assistant Director cum Assistant Controller (BPS-17) on acting charge basis, due to non-completion of the required service length as per Service Rules of DTS. He further contended that appellants were the employees of Directorate of Tourists Services which is no longer in existence after the approval of the provincial cabinet in its meeting held on 24.06.2023. All the posts in the directorate of Tourist Services were declared as surplus for further adjustment under the surplus pool Policy, 2001 by the Establishment Department.

7. Perusal of record reveals that appellants were appointed in respondent department. The Service Structure of the appellants were regulated by the Service Rules of Directorate of Tourist Services vide notification dated 31.10.2017 and subsequently amended vide notification dated 24.04.2022.



The Khyber Pakhtunkhwa Culture and Tourism Authority was established under the Act known as Khyber Pakhtunkhwa Tourism Act 2019, Section-8 of the ibid Act stated that the Directorate of Tourist Services will be seized and merged into the newly established authority and surplus pool shall be created for the employees. In the light of Section-8 of the ibid Act, the competent authority has issued notification dated 25.07.2022, under which the Directorate of Tourist Services (DTS) ceased to exist and authority was established, hence the appellants being civil servants placed on the disposal of respondent No.2. Moreover after issuance of this notification the appellants being civil servants have the right of promotion in accordance with law and rules. According to amended Service Rules of Directorate of Tourist Services the appellants have completed the required length of service and are eligible to be promoted to the post of Assistant Controller/Assistant Director BPS-17 under original Rules.

8. Appellants alleged that upon their applications meeting of DPC was held on 7.11.2022 to consider promotion cases of the appellants wherein although appellants promotion cases were discussed but not considered. Perusal of amended rules dated 25.04.2022 reveals that required length of service as Inspector for promotion to the post of Assistant Controller/Assistant Director BPS-17 is three years. Promotions of the appellants were deferred by DPC held on 07.1.2022 due to non-completion of required length of service of three years. Appellants were appointed on 29.04.2020 and their three years of service will be completed on 28.04.2023, while meeting of the DPC was held on 07.11.2022 and at that time their services were short of 5 months which means five months less in required length of service. Therefore, they were rightly not considered by the DPC.

Appellants can't seek promotion on acting charge basis as of right.



9. Learned counsel for the appellants argued that due to creation of surplus pool, they will be sent there and respondents will try to get adjusted them in some other departments, where they will definitely be placed juniors to regular employees of that department, due to which legitimate expectation and right of promotion of appellants will be denied, which is against principle of justice and fair play. In our humble view when the entire department will cease to exist then to promote appellants on acting charge basis is unwarranted under the law, because along with abolition of Directorate of Culture and Tourism Service, all the posts of it automatically no longer in existence and abolished vide order dated 07.09.2023. After absorption in other cadres or departments right of promotion of appellants will be governed by the rules and regulation and terms and conditions of the cadre into which they will be absorbed. Although now required length of service of three years is completed but we would have to see the matter from the time of DPC as appellants cases were considered in it. So, now completion of three years of service is of no help to the appellants because the department was ceased and posts are no longer in field/existence.

10. For what has been discussed above, we are unison to dismiss the instant service appeal as well as connected appeals being devoid of merits. Costs shall follow the event. Consign.

11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 15<sup>th</sup> day of March, 2024.*

  
(FARZHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

- 12.03.2024 1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Hashmat Ullah, Superintend for the respondents present.
2. Learned counsel for the appellant produce some additional documents which is placed on file. A copy of the same is handed to learned Deputy District Attorney. Learned DDA seeks time to clarify the position regarding service rules which were considered in the meeting of DPC held on 07.11.2022. Granted. To come up for arguments on 15.03.2024 before the D.B. PP given to the parties.

(Fareeha Paul)  
Member (E)

(Rashida Bano)  
Member (J)

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**ORDER**

- 15.03.2024 1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney for the respondents present.
2. Vide our detailed judgment of today placed on file, we are unison to dismiss the instant service appeal being devoid of merits. Costs shall follow the event. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 15<sup>th</sup> day of March, 2024.*

(FAREEHA PAUL)  
Member (E)

(RASHIDA BANO)  
Member (J)