

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No. 857/2017**

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

Syed Imran Ali Shah S/o Syed Sardar Ali, R/o Nawa Kalay Toru  
Road Opposite Sheikh Maltoon Town, Tehsil & District Mardan.

.... (*Appellant*)

**VERSUS**

1. Government of Khyber Pakhtunkhwa through its Chief Secretary,  
Civil Secretariat, Peshawar.
2. Senior Member Board of Revenue (SMBR), Civil Secretariat,  
Peshawar.
3. Director Land Records, Directorate of Land Records, Civil  
Secretariat, Peshawar.
4. Assistant Secretary (Establishment) Revenue & Estate Department,  
Civil Secretariat, Peshawar.
5. Gul Shahzada, Tehsildar, Dasso District Kohistan.
6. Iqbal Hussain, Inspector Stamp, Malakand.
7. Naimat Ullah, Tehsildar, Daggar Buner.
8. Muhammad Arif, Tehsildar, Dara FR Kohat.
9. Asghar Ali, Tehsildar, Hangu.
10. Khaib Gul, Tehsildar, Judba Tor Ghar.
11. Jamroz Khan, Tehsildar Kolai Plas, District Kohat.
12. Fazal Wahid, DK Malakand.
13. Awal Khan, DK Haripur.

.... (*Respondents*)

Amin Ur Rehman Yousafzai  
Advocate

... For appellant

Mr. Asif Masood Ali Shah  
Deputy District Attorney

... For respondents



Date of Institution.....16.08.2017  
 Date of Hearing.....30.04.2024  
 Date of Decision.....30.04.2024

### 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:

**“The impugned office order dated 31.08.2016 of respondent No.2, may be modified and be given effect from 02.07.2013 i.e. the date of appointment of appellant as District Kanungo on acting charge basis, and in pursuance whereof, the impugned tentative seniority list of District Kanungos’ as stood on 31.12.2016, circulated vide letter dated 03.04.2017 may suitably be rectified and appellant may be placed in the seniority list in accordance with law/rules governing the subject.”**

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was appointed as Patwari (BPS-5) vide order dated 10.08.2009. He was promoted to the post of Girdawar (BPS-11) on 20.10.2010. Upon the recommendation of Departmental Promotion Committee he was further promoted to the post of District Kanungo on acting charge basis vide order dated 02.07.2013 and was regularized as District Kanungo on 31.08.2016 but with immediate effect. Respondents issued tentative seniority list of District Kanungo as stood on 31.12.2016 and circulated it vide letter dated 03.04.2017.

wherein appellant was placed at serial No.20 instead of serial No.8



against which appellant preferred departmental appeal which was filed on 17.07.2018, hence the instant service appeal.

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

4. Learned counsel for the appellant argued that the impugned office orders dated 31.08.2016 and 17.07.2017 alongwith seniority list as stood on 31.12.2016 are against the law/rules, hence carry no weight.

5. Conversely, learned Deputy District Attorney contended that the appellant had been treated in accordance with law and rules. He further contended that according to Tehsildar / Naib Tehsildar Service Rules, the post of District Kanungo shall be filled in by promotion on the basis of seniority-cum-fitness, from amongst the Kanungo of the concerned District with at least 3 year service as such. As the appellant was promoted as Kanungo on 20.10.2010 and District Kanungo on acting charge basis on 02.07.2013 due to non-completion the prescribed length of service. Later on his services were regularized as District Kanungo through proper Departmental Promotion Committee on 31.08.2016. According to Rule 8(4) of the Khyber Pakhtunkhwa Civil Servant Act, 1973 seniority in a post , service or cadre to which a civil servant is promoted shall take effect from the date of regular promotion to the post, therefore, he was granted seniority from the date of his regular

promotion i.e 31.08.2016. Therefore, his departmental appeal was rightly rejected by the competent authority.

6. Perusal of record reveals that appellant was appointed Patwari BPS-5 by the competent authority, vide office order dated 10.08.2009, and was promoted as Girdawar BPS-11 on regular basis vide office order dated 20.10.2010, promoted to the rank of District Kanungo (BPS-14), in terms of Rules 4 & 5 of the West Pakistan Kanungo Service (Northern Zone) Rules, 1962, on the recommendation of Departmental Promotion/Selection Committee vide office order dated 02.07.2013, on acting charge basis, and finally was regularized as District Kanungo on the recommendation of DPC, vide order dated 31.08.2016 with immediate effect instead from the date of his promotion as District Kanungo on acting charge basis i.e. 02.07.2013.

7. Appellant was posted as Kanungo on acting charge basis vide order dated 02.07.2013 as by that time required length of service of three years was completed and there was deficiency, his service was short of 3 months 16 day which will be completed on 18.07.2013.

8. Record further reveals that meeting of DPC was held on 18.12.2013, and at that time appellant required length of service was completed but his case was not put up by respondent for consideration of DPC which is inaction on their part, otherwise it is held by Supreme Court in PLD 2006 SCMR that;

*"b) ---S.S---Promotion---Acting charge---Date of promotion---Determination---Civil servants were*


*promoted on 31-8-2000, on acting charge basis but Departmental Promotion Committee issued their notification of promotion on 27-5-2003---Grievance of civil servants was that their promotion was not considered from the date when they were promoted on acting charge basis---Validity---Civil servant who was asked to hold a higher post to which he was subsequently promoted on regular basis, was entitled to the salary etc. attaching to such post for the period that he held the same-Such civil servant was also entitled to any other benefits which might be associated with such post-If a vacancy existed in the higher cadre to which a civil servant was qualified to be promoted on regular basis but was not so promoted without any fault on his part and was instead put on such post on officiating basis, then on his regular promotion to such post, the civil servant would be deemed to have been so promoted to the same from the date from which he was allowed to hold the higher post, unless justifiable reasons existed to hold otherwise---Supreme Court converted petition for leave to appeal into appeal and set aside the judgment passed by Service Tribunal---Supreme Court declared the civil servants to be deemed to be promoted from 31-8-2000 and not from 27-5-2003---Appeal is allowed."*


Appellant being eligible for regular promotion on 20.10.2013 and after that meeting of the DPC was convened on 18.12.2013 in which respondents had to consider him for promotion on regular basis which was not done, due to inefficiency and inaction of the respondents, therefore, he had to be promoted from such date i.e. 18.12.2013.

9. For what has been discussed above, we are unison to accept the appeal with direction to respondent to consider appellant for antedated

promotion from the date when his deficiency i.e. short service length period completed. Costs shall follow the event. Consign.


10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 30<sup>th</sup> day of April, 2024.*


  
(FAREEHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

**ORDER**  
30.04.2024


1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney for the respondents present.
2. Vide our detailed judgement of today placed on file, we are unison to accept the appeal with direction to respondent to consider appellant for antedated promotion from the date when his deficiency i.e. short service length period completed. 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 30<sup>th</sup> day of April, 2024.*


  
(FAREEHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

08.04.2024 1. Appellant alongwith his counsel present. Mr. Muhammad Jan learned District Attorney for the respondents present.

2. Appellant requested for adjournment on the ground that his learned counsel is busy in campaign of Khyber Pakhtunkhwa Bar Association, 2024. The case pertains to the year, 2017, it is adjourned to 09.04.2024 for arguments before D.B. P.P given to parties.


  
(Fareeha Paul)  
Member (E)

  
(Rashida Bano)  
Member (J)

Kaleemullah

09.04.2024 1. Appellant alongwith his counsel present. Mr. Muhammad Jan learned District Attorney alongwith Ghulam Shabir, Assistant Secretary for the respondents present.

2. Learned counsel for the appellant informed the Tribunal that appellant has been promoted to the post of Assistant Commissioner, PMS (BPS-17), therefore, appellant is directed to produce said notification. Representative of respondent is directed to produce seniority list on the basis of which he was promoted to the post of PMS (BPS-17). Adjourned. To come up for record and arguments on 30.04.2024 before the D.B. P.P given to the parties.

  
(Fareeha Paul)  
Member (E)

  
(Rashida Bano)  
Member (J)

Kaleemullah

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