

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**
MUHAMMAD AKBAR KHAN ... **MEMBER (E)**

Service Appeal No. 2227/2019

Date of presentation of Appeal.....13.11.2019
Date of Hearing.....13.06.2024
Date of Decision.....13.06.2024

Shah Jehan, Assistant (BPS-16), office of Deputy Commissioner,
Swat.....(Appellant)

VERSUS

1. Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
2. Commissioner, Malakand Division, Swat.
3. Deputy Commissioner, Swat.
4. Government of Khyber Pakhtunkhwa, through Chief Secretary Peshawar.
5. Syed Javed Iqbal Superintendent (BPS-17), Office of Deputy Commissioner Swat.....(Respondents)

NOOR MUHAMMAD KHATTAK,
Advocate

--- For appellant.

MUHAMMAD JAN,
District Attorney

--- For respondents

AMIN UR REHMAN YOUSAF ZAI,
Advocate

--- For private respondent No. 5

JUDGMENT

MUHAMMAD AKBAR KHAN, MEMBER (E):-The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

"On acceptance of this appeal the respondents may kindly be directed to promote the appellant as Superintendent (BPS-17) in the office of Deputy Commissioner Swat with effect from 07.01.2019 with all back benefits."

02. Brief facts of the case are that the appellant was working as Assistant BPS-16 in the respondent department and according to the seniority list of the office of Deputy Commissioner Swat, notified on 11.01.2019 he was at the top of seniority list. A post of Superintendent (BS-17) fell vacant after retirement of Mr. Obaid Ullah, Superintendent on attaining the age of superannuation w.e.f. 06.01.2019; that as per service rules notified vide Notification dated 23.01.2015, the post of Superintendent was to be filled by promotion on the basis of seniority cum fitness from amongst the Assistants (BPS-16) with atleast five years experience. However the Service Rules were amended vide Notification dated 27.06.2019 making the post of Superintendent (BS-17) a Divisional cadre post and joint final seniority list was notified vide Notification dated 26.07.2019. Feeling aggrieved, the appellant filed departmental appeal on 17.09.2019 which was not responded, hence preferred the instant service appeal on 13.11.2019.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant, learned District Attorney for the respondents and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the omissions and commissions of the respondents are illegal and void ab-initio; that the mandatory provisions of law have been violated by the respondents and the appellant is not treated according to law and rules governing the subject; that after retirement of Obaid Ullah, Superintendent from the promotion quota, the post of Superintendent (BPS-17) became vacant and the appellant was entitled

to be promoted on the same; that vide Notification dated 12.09.2019 one Syed Javed Iqbal Superintendent of the Deputy Commissioner Bajaur was transferred and posted as Superintendent (BPS-17) in the office of Deputy Commissioner Swat and the appellant was not promoted; that as per rules at that time the post of Superintendent (BPS-17) was to be filled by promotion and not by a transfer, thus the transfer of private respondent No. 5 Syed Javed Iqbal is something not fair; that amendments dated 27.06.2019 cannot be applied retrospective rather the same are having prospective as per the judgment of Badshah Gul Wazir case of the Apex Court. The promotion case of the appellant was under process and even working paper was prepared, thus valuable rights had accrued in favor of the appellant which cannot be snatched at the will of someone or through the amendment in Service Rules; that there are plethora of judgments of the Superior Courts on the point of Ante-dated promotion according to which a Civil Servant shall be promoted from the date on which the vacancy in promotion quota becomes vacant, the appellant is as such entitled to be promoted as Superintendent (BPS-17).

05. Learned District Attorney on behalf of official respondents and Mr. Amin-Ur-Rehman, Yousafzai, Advocate for private respondent No. 5 contended that after Notification of the amendments dated 27.06.2019 in the District Ministerial Service Rules, the post of Superintendent fell in the Divisional Cadre after which transfer order dated 12.09.2019 of the private respondent No. 5 was issued by the competent authority in pursuance of these rules. The promotion or seniority of the appellant has not been affected by transfer of the private respondent No. 5; that there is no question of seniority

of the appellant and respondent No. 5 one being Assistant (BPS-16) and the other being Superintendent (BPS-17) on regular basis since 14.06.2016.

06. The stance of the appellant is that before amendment in the Service Rules dated 27.06.2019 his case for promotion to the post of Superintendent (BPS-17) was initiated, however, after coming into the force of the new service rules he was not considered due to low position in the joint seniority list of Assistant (BPS-16). As per the previous Service Rules Notified on 23.01.2015 the post of Superintendent was a District Cadre post and was filled from amongst Assistants working in the office of Deputy Commissioner. However, in the rules notified on 27.06.2019 the posts of Superintendent (BPS-17) have been declared as Divisional cadre having joint seniority of Assistant (BPS-16) in the office of Commissioner and Deputy Commissioners in the Division. Record reveal that before amendment in the service rules no working paper was placed before the Departmental Promotion Committee and promotion has been made after promulgation of new service rules dated 27.06.2019. Since the appellant in the joint seniority list was junior to his other colleagues, therefore, he was not considered for promotion by the DPC in its meeting dated 02.08.2019 wherein two available vacancies of Superintendent were recommended to be filled by promotion of Assistant on the basis of joint seniority list. The appellant has not challenged the said promotion nor the joint seniority list prepared on the basis of Service Rules notified on 27.06.2019 stand objected or challenged by the appellant before any authority or any forum. The contention of the appellant regarding transfer of the private respondent No. 5 in the office of Deputy Commissioner Swat being illegal effecting his right of promotion does not carry legal weightage.

The private respondent was promoted as Superintendent (BS-17) in the office of the then Political Agent Bajaur in accordance with the prevalent service rules in the year 2016. He was transferred against the vacant post in the office of Deputy Commissioner Swat after notification of new service rules in 2019 where-under the post of Superintendent stands a divisional cadre post. Moreover, there is no legal dispute between the appellant and private respondent as the former was Assistant in BS-16 and later Superintendent in (BS-17).

07. Foregoing findings in view we dismiss the appeal in hand having no merit in it. Costs shall follow the event. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 13th day of June, 2024.*



(KALIM ARSHAD KHAN)
CHAIRMAN



(MUHAMMAD AKBAR KHAN)
MEMBER (E)

ORDER

13.06.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for official respondents present. Learned counsel for private respondents No. 5 present. Arguments heard and record perused.
2. Vide our detailed judgment of today, separately placed on file, we dismiss the appeal in hand having no merit in it. Costs shall follow the event. Consign.
3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 13th day of June, 2024.*



(KALIM ARSHAD KHAN)
CHAIRMAN



(MUHAMMAD AKBAR KHAN)
MEMBER (E)