

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**
RASHIDA BANO ... **MEMBER(Judicial)**

Service Appeal No.531/2020

Date of presentation of Appeal.....22.01.2020

Date of Hearing.....05.07.2024

Date of Decision.....05.07.2024

Inayat Ullah Junior Clerk Deputy Commissioner Officer Mardan
Resident of Jalala Tehsil Tabkht Bhai.....(**Appellant**)

Versus

1. **Additional Commissioner**, Mardan Division, Mardan.
2. **Deputy Commissioner**, Mardan.
3. **Departmental Promotion Committee** through its Chairman
Deputy Commissioner, Mardan.
4. **Fitness Test Committee** through its Chairman/Assistant
Commissioner, Mardan.
5. **Ajmeer Khan** son of Khushmir Khan village Mayar Tehsil and
District Mardan Naib Qasid Deputy Commissioner Office
Mardan.....(**Respondents**)

Service Appeal No.532/2020

Date of presentation of Appeal.....22.01.2020

Date of Hearing.....05.07.2024

Date of Decision.....05.07.2024

Farzand Ali Junior Clerk Deputy Commissioner Officer Mardan
Resident of Par Hoti.....(**Appellant**)

Versus

1. **Additional Commissioner**, Mardan Division, Mardan.
2. **Deputy Commissioner**, Mardan.
3. **Departmental Promotion Committee** through its Chairman
Deputy Commissioner, Mardan.
4. **Fitness Test Committee** through its Chairman/Assistant
Commissioner, Mardan.
5. **Ajmeer Khan** son of Khushmir Khan village Mayar Tehsil and
District Mardan Naib Qasid Deputy Commissioner Office
Mardan.....(**Respondents**)

Present:

Mr. Noor Muhammad Khattak, Advocate.....For the appellants

Mr. Asif Masood Ali Shah, Deputy District Attorney...For official respondents

Mr. Taimur Ali Khan, Advocate.....For private respondent No.5

APPEALS UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER OF RESPONDENT NO.1 DATED 19.12.2019 WHEREIN PROMOTION ORDERS OF THE APPELLANTS FROM NAIB QASID TO JUNIOR CLERK DATED 12.06.2019 HAS BEEN SET ASIDE WITHOUT GIVING ANY OPPORTUNITY OF HEARING TO THE APPELLANTS WHICH IS ILLEGAL, AGAINST LAW AND FACTS.

CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Through this single judgment, the above two appeals, are jointly taken up, as both are similar in nature and almost with the same contentions, therefore, can be conveniently decided together.

02. Brief facts of the cases as per averments of the appeals, are that appellants were serving in the Deputy Commissioner Office Mardan as Naib Qasids; that vide promotion order dated 12.06.2019, they were promoted to the post of Junior Clerk; that private respondent No.5 filed departmental appeal on 25.06.2021 against their promotion order; that in response to the departmental appeal of private respondent No.5, the promotion order dated 12.06.2019 was set aside vide impugned order dated 19.12.2019, therefore, they filed the instant service appeals.

03. On receipt of the appeals and their admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeals by filing written replies raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellants.

04. We have heard learned counsel for the appellants, learned Deputy District Attorney for official respondents and learned counsel for private respondent No.5.

05. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy District Attorney assisted by learned counsel for private respondent No.5, controverted the same by supporting the impugned order(s).

06. For filling the posts of Junior Clerk (BPS-11) from the promotion quota of Naib Qasid, Departmental Promotion Committee was held. The DPC in its minutes recorded the following observations and decision:

1. PROMOTION OF CLASS-IV EMPLOYEES TO THE POSTS OF JUNIOR CLERKS:

As per Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 read with Board of Revenue notification No.2074/Est:I-II/135/SSRC, dated 23.01.2015, 33% quota has been reserved for Class-IV employees to be promoted against the post of Junior Clerks, on the basis of seniority-cum-fitness. DC office, Mardan, has 03 vacant posts of J/Clerks (BPS-11), which are to be filled in from amongst Class-IV employee on the basis of seniority-cum-fitness, under the ibid rules. Since there are no ACRs of Class-IV employees, and the rules are also silent about any clear mechanism to assess their fitness: therefore, a balanced & well-articulated test formula was prepared to ascertain fitness of the Class-IV employees, which has been given below:

A 100 Marks Criteria for evaluation/assessment	
Typing Speed Test (30 Marks)	Written Test (70 Marks)
One mark will be given for each correct word upto 30 words per minute (prescribed speed for fresh candidate is 30 w.p.m) and there will be no marks for beyond 30 w.p.m speed. However less than 12 w.p.m (40% of the prescribed speed for fresh candidates) will be considered failed).	35 marks each for English & Urdu, composed of only routine office work related questions. (However a person who failed in getting at least 35 marks in this category will be considered failed)
Qualifying aggregate Marks will be 50%. Senior most Class-IV employee will be promoted as Junior Clerks, amongst the candidates qualified the said assessment test.	

For written/typing test, a Sub Committee in the Chairmanship of Ac, Mardan was constituted which had to carry out the said process and to submit its report to the DSC. The Committee accordingly submitted its report wherein the following 04 candidates have been declared qualified.

S #	Name of Class-IV Employee	Designation	Written test score out of 70	Typing Test score	Total Marks	No. in Seniority	Remarks

1.	Farzand Ali s/o Mohib Gul	Naib Qasid	37.5	15	52. 5	23	Passed
2.	Shakeel s/o Siraj Muhammad	Naib Qasid	37	15	52	55	Passed
3.	Inayat Ullah s/o Musafar Khan	Naib Qasid	40.5	19	59. 5	68	Passed
4.	Muhammad Taseef Khan s/o Imtaiz Khan	Naib Qasid	38	22	60	83	Passed

Decision:

In the light of seniority list stood on 31.12.2018 and test result submitted by the Committee constituted for the purpose of ascertaining fitness of the candidates, the Departmental Promotion Committee unanimously recommended the following three Naib Qasids (BPS-03) to the posts of Junior Clerk (BPS-11):

1. Farzand Ali s/o Mohib Gul
2. Shakeel s/o Siraj Muhammad
3. Inayat Ullah s/o Musafar Khan

07. Aggrieved of the above promotion order, private respondent No.5 filed departmental appeal on 26.06.2019 before the appellate authority i.e. Commissioner Mardan Division, Mardan but the appeal was decided by the Additional Commissioner, Mardan Division, Mardan vide order dated 19.12.2019, setting aside the promotion order with the direction to constitute fresh DPC for appointment appellants/eligible candidates on seniority-cum-fitness basis in the light of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989.

08. First point mooted before us was that appellate order by appellant was made to the Commissioner; whereas, appellate order was passed by the Additional Commissioner. Second point agitated by the appellant was that appellant had passed the typing test and departmental authority could undergo the candidates through some test to assist the fitness. In rebuttal, the learned counsel for the private respondent No.5 contended that the appellants had not filed any departmental appeal against the appellate

order. Secondly, that the order passed by the departmental authority, after setting aside the appeal by the Additional Commissioner, was not challenged by the appellants.

09. As to the point contested before us regarding passage of the appellate order by the Additional Commissioner Mardan Division, Mardan instead of appellate authority i.e. Commissioner Mardan Division, we observe that the Commissioner was appellate authority while the appellate order was passed by the Additional Commissioner. The respondents failed to show us whether the Additional Commissioner was appellate authority or not and mere saying that the powers were delegated to the Additional Commissioner would not be sufficient for two reasons, first, because there is no express order in this regard shown to us, and secondly, because in service discipline, the powers could least be further delegated.

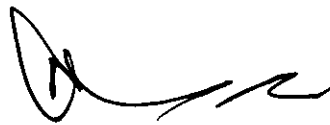
10. As to the other point urged before us regarding non filing of appeal against the appellate order and filing direct appeal before the Tribunal, we may observe that against the original order of the departmental authority only one appeal lies U/S-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 and Appeal Rules, 1986 i.e. to the Commissioner in this case. We may add that in service matters, appeal is not always filed against cause of action, rather against the order of an authority either original or appellate, before the Tribunal. We are supported to hold like that as doing so, would start a series of endless representations. As to the last point agitated by the learned counsel for



the appellants that the order of promotion of private respondent passed in consequence of the order of the Additional Commissioner, setting aside the promotion order of the appellants, was not challenged by the appellants, we observe in this respect that the promotion order was an offshoot of the appellate order, therefore, in case, we set aside the appellate order, the superstructure built on such order has to raze to the ground.

11. For what has been stated above, we allow these appeals and hold that orders passed by the Additional Commissioner were not passed by the appellate authority, therefore, remit these matters to the Commissioner Mardan Division, Mardan for passing order on the departmental appeal of the private respondent No.5. Needless to say that the orders passed in pursuance of the appellate order would have no value. The Commissioner may pass appropriate orders in accordance with law and rules, within 60 days of the receipt of this judgment. Costs shall follow the event. Copy of this judgment be placed on file of connected appeal. Consign.

12. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 5th day of July, 2024.*



KALIM ARSHAD KHAN
Chairman



RASHIDA BANO
Member (Judicial)