

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR

BEFORE: RASHIDA BANO ... MEMBER (J)
MUHAMMAD AKBAR KHAN ... MEMBER (E)

Service Appeal No. 6330/2020

Date of presentation of Appeal.....25.06.2020
Date of Hearing.....25.06.2024
Date of Decision.....25.06.2024

Engr. Syed Atiq Ur Rehman S/o Syed Muhammad Ibrahim R/o Sakha Kot,
Tehsil Dargai, District Malakand.....(Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Communication & Work Department, Civil Secretariat, Peshawar.
3. Government of Khyber Pakhtunkhwa through Secretary Establishment & Administration, Civil Secretariat, Peshawar.
4. Chief Engineer (Central) Communication & Works Department, Civil Secretariat, Peshawar.....(Respondents)

SAIFULLAH KHALIL,
Advocate

For appellant.

MUHAMMAD JAN,
District Attorney

For respondents

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 impugned order of the respondent dated 17.12.2019 & 24.12.2019 and any other appellate order may very kindly be set aside and the appellant be given antedated promotion as SDO BPs-17 as per policy and as per order of the Hon'ble Apex Court dated 03.10.2018

from the year 2007 alongwith all back benefits with the direction to implement the order of the Hon'ble Supreme Court in C.P No. 76-K of 2015 dated 03.10.2018 in letter & Spirit alongwith any other relief deem appropriate in the large interest of justice."

02. Brief facts of the case are that the appellant was initially appointed as Sub Engineer vide order dated 13.13.1988. The appellant applied for study leave which was granted and he completed his B.Sc Civil Engineering degree from CECOS University in the year 2002; that after obtaining the Engineering Degree the appellant became entitled to be included in the list of in-service Graduate Engineers. The appellant worked against the post of Assistant Director/Sub-Divisional Officer (SDO) in his own pay & scale from 2007 till December 2019; that the appellant while posted as SDO (OPS) C&W Sub Division Shangla was transferred and asked to report to Chief Engineer (Center) C&W Peshawar; that on 24.12.2019, the appellant was adjusted as Sub Engineer in the office of XEN C&W Division Tribal District Orakzai against his original post. Feeling aggrieved, the appellant filed departmental appeal on the ground that he was at serial No. 3 amongst the in-service Graduate Sub Engineers in C&W Department and after serving as SDO (OPS) for 12 years he was demoted back to Sub Engineer which was not decided within the statutory period. He approached the Hon'ble Peshawar High Court, Peshawar in Writ Petition No. 1659-P/2020 which was dismissed on the ground of jurisdiction vide judgment dated 04.03.202. Thereafter he preferred the instant service appeal on 25.06.2024

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 and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the order of respondent dated 24.12.2019 by demoting the appellant from the post of SDO to the post of Sub Engineer and by not giving regular promotion to the post of SDO (BS-17) from the year 2007 alongwith all back benefits is against the rules, cannon of natural justice, law & facts as such liable to be set aside; that the appellant has served the respondents honestly to their entire satisfaction and got the degree in B.Sc Civil Engineering with the permission and consent of the respondents in the year 2002 and registered with Pakistan Engineering Council and as such was entitled to get the fruit of the same degree as the government benefited from the knowledge, degree and experience of the appellant; that due to illegal promotion of the diploma holders in violation of the Apex Court judgment, the appellant was illegally and unlawfully deprived from his legal right of promotion which needs to be struck down.

05. On the other hand, learned District Attorney contended that the promotion cases are considered by the Departmental Promotion Committee as per service rules and on the completion of codal formalities, whereas the appellant posting as SDO in own pay and scale cannot be termed as promotion; that the case of the appellant is not covered under the rules, he has not been deprived of any fundamental or constitutional rights; that the appellant was correctly dealt with in accordance with law/equity and no rights of the appellant have been infringed/jeopardized; that no discrimination was made by the respondents in case of the appellant, therefore, his appeal has no legal force.

06. Scrutiny of record reveal that the appellant joined service as diploma holder Sub-Engineer. During service he obtained a degree in Civil Engineering and was posted as SDO (BS-17) in his own pay and scale since September 2007. Vide order dated 17.12.2019 his services were placed at the disposal of Chief Engineer (Center) C&W Department Peshawar for further posting as Sub Engineer which the appellant has impugned in his service appeal taking the stance that he has been demoted from the post of SDO. Record further reveals that the appellant has never been promoted to the post of SDO (BS-17) rather he worked as SDO since the year 2007 to 2019 in his own pay & scale. During course of arguments the appellant stated that during the year 2007 to 2019 so many promotions of Sub Engineer to the post of SDO were made by the respondent department including juniors to him. He has never made any representation before the departmental authority nor challenged the same in any court of law including Tribunal. He stood retired from government service as Sub Engineer on 19.02.2020. Since he has never been promoted to the post of SDO, therefore, the question of demotion does not arise, therefore, the instant appeal being devoid of any legal merit is dismissed. Costs shall follow the event. Consign.

07. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 25th day of June, 2024.*



(RASHIDA BANO)
Member (J)



(MUHAMMAD AKBAR KHAN)
Member (E)

ORDER

- 25th June, 2024
1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.
 2. Vide our detailed judgment of today, separately placed on file, the instant appeal being devoid of any legal merit is dismissed. 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 25th day of June, 2024.*


(RASHIDA BANO)
Member (J)


(MUHAMMAD AKBAR KHAN)
Member (E)