

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

Service Appeal No. 1906/2022

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

Nisar Muhammad Khan, Deputy Superintendent of Police Presently posted as Acting SP Motor-Transport Peshawar.....(*Appellant*)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar and others.....(*Respondents*)

Present:-

ABDULLAH BALOCH,
Advocate --- For Appellant

MUHAMMAD JAN,
District Attorney --- For official respondents No. 1 to 5

Date of Institution.....12.12.2022
Date of Hearing..... 25.06.2024
Date of Decision..... 25.06.2024

CONSOLIDATED JUDGMENT.

MUHAMMAD AKBAR KHAN, MEMBER(E):- Through this judgment we intend to disposed of both the appeals filed by the appellant in service appeals bearing No. 1906/2022 & 293/2023.

02. Brief facts, as averred in the memorandum of service appeal No. 1906/2022 are that the appellant was recruited as Probationer Assistant Sub Inspector (BPS-09) alongwith his other colleagues/batch-mates through proper recommendations of Khyber Pakhtunkhwa Public Service Commission in the Police Department vide Notification dated 01.01.1995 and the appellant was at serial No. 32 in the said Notification; that on

satisfactory completion of probation period of 03 years the appellant was confirmed as ASI and brought on list-E w.e.f 13.07.2001 instead of from the date of his initial appointment i.e. 01.01.1995. He was promoted to the rank of officiating Sub Inspector vide order dated 17.04.2004 and later on he was confirmed as Sub Inspector on 25.08.2006. The respondent department issued the impugned seniority list of DSPs dated 05.08.2022 whereby the name of the appellant was shown at serial No. 83 below the name of Mujeeb Ur Rehman and above the name of Mr. Rahmat Ullah, while the officers junior to him have been placed at serial No. 37 to 44 who were recruited in 1998 batch. Feeling aggrieved from the impugned seniority list dated 05.08.2022 the appellant filed departmental appeal on 12.08.2022 which was not responded within the statutory period, hence preferred the instant service appeal on 12.12.2022.

03. Brief facts, as averred in the memorandum of service appeal No. 293/2023 are that the appellant is aggrieved of the impugned Notification dated 05.09.2022 whereby junior from the appellant have been promoted to the post of Superintendent of Police (BS-18) while the appellant has been ignored. Feeling aggrieved from the impugned Notification dated 05.09.2022, the appellant filed departmental appeal on 30.09.2022 which was not responded, hence preferred the instant service appeal on 30.01.2023

04. Notices were issued to the official respondents as well as private respondents, but they failed to submit their comments and their right for submission of reply/comments stands struck off vide order dated 14th Nov, 2024. We have heard arguments of learned counsel for the appellant and

learned District Attorney and have gone through the record with their valuable assistance.

05. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned District Attorney, controverted the same by supporting the impugned seniority list issued on 05.08.2022 & promotion Notification dated 05.09.2022.

06. Perusal of record reveals that the appellant was initially appointed as Assistant Sub Inspector on 05.01.1995 on the recommendation of Khyber Pakhtunkhwa Public Service Commission and he was at serial No. 32 of the seniority list; that on satisfactory completion of probation period of 03 years the appellant was confirmed as ASI and brought on list-E w.e.f 13.07.2001 instead of the date of his initial appointment i.e. 09.01.1995. He was promoted to the rank of officiating Sub Inspector vide order dated 17.04.2004 and later on he was confirmed as Sub Inspector on 25.08.2006. The appellant was promoted to the rank of DSP (BS-17) w.e.f 24.01.2014 and as per the seniority list issued on 05.08.2022 he was placed at serial No. 83. The appellant filed departmental appeal for rectification/correction in the seniority list but he was not confirmed as ASI from the date of his initial appointment and the private respondents who were junior to him were placed senior to the appellant. According to Rule 17 (1) (a) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 the inter se seniority of civil servant shall be determined in case of persons appointed by initial recruitment, in accordance with the merit assigned by Public Service Commission. Police Rules clearly state that the

probationer ASIs directly appointed on the basis of recommendation of Public Service Commission on permanent posts after completion of 03 years probation periods are liable to be confirmed from the date of their appointment. As such seniority is to be reckoned from the date of initial appointment of the appellant. Since the appellant was appointed on 01.01.1995 and he has successfully completed his probation period, therefore, he is eligible in all respect to be confirmed alongwith his batch mates and brought to the seniority list "E" w.e.f the date of his initial appointment i.e. 01.01.1995. Regarding the issue of promotion from BS-17 to BS-18 challenged in service appeal No. 293/2023 batch mates/colleagues allegedly junior to him were promoted to the rank of SP (BS-18) while the appellant was ignore.

07. Moreover, this Tribunal has already decided similar nature service appeal No. 991/2019 titled "Abdul Hai versus Government of Khyber Pakhtunkhwa through Home Secretary and others" who was batchmates of the appellant. Operative Paras of the said judgment is reproduced as below;

6. *We are conscious of the fact that time limitation needs to be kept in mind, but in the lights of judgments of Supreme Court of Pakistan referred to above and in view of provisions of S.23 of Limitation Act 1908, the appellant has a continuous cause of action and issuance of seniority list at belated stage by respondents created a fresh cause of action for the appellant, not knowing the fact that his late confirmation in 2006 would entail seniority issue at a later stage. In order to ascertain the actual situation, representative of RPO D.I. Khan was summoned by Court, who stated at bar that there was nothing adverse against the appellant during the time, but the change in seniority might be due to clerical mistake, which travelled along the seniority of the appellant and culminated into the final seniority list issued in 2018. We also did not find anything adverse on record except his late confirmation due to unknown reasons. It*

is also established from the prevailing rules that civil servants selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter se seniority as in the lower post. Moreover this tribunal as well as Supreme Court of Pakistan in number of Judgments have granted relief in similar cases.

7. In the light of facts and circumstances of the present case, the impugned seniority list dated 22-03-2018 is set aside and the instant appeal is accepted as prayed for. No orders as to costs. File be consigned to the record room.

08. The case of the appellant is similar to the above mentioned service appeal having the same facts, therefore, both the cases are remitted back to the respondent department for similar treatment at par with his colleagues/batch mates. Costs shall follow the event. Consign.

09. 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

25.06.2024 1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for official respondents present. Arguments heard and record perused.

2. Vide our detailed judgment of today placed on file of service appeal No.1906/2022 titled "Nisar Muhammad versus Government of Khyber Pakhtunkhwa, the case is remitted back to the respondent department for similar treatment at par with his colleagues/batch mates. 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)