

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No.433 /2018**

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

**Abdul Hameed, Inspector (BPS-16), Excise Taxation & Narcotics Control  
Department, KPK, Peshawar. .... (Appellant)**

**VERSUS**

1. The Secretary to Government, Excise Taxation & Narcotics Control Department, KPK, Peshawar.
2. The Director General, Excise Taxation & Narcotics Control Department, KPK, Peshawar.
3. Miss. Shabina, Inspector, at S.No.89 through, D.G Excise Taxation & Narcotics Control Department, KPK, Peshawar.
4. Miss. Sameera, Inspector, at S.No.90 through, Excise Taxation & Narcotics Control Department, KPK, Peshawar.
5. Mr. Zakirullah, Inspector at S.No.91 through, D.G Excise Taxation & Narcotics Control Department, KPK, Peshawar.
6. Mr. Talat Nawaz, Inspector, at S.No.92 through, D.G Excise Taxation & Narcotics Control Department, KPK, Peshawar.
7. Mr. Bilal Shah, Inspector, at S.No.93 through, D.G Excise Taxation & Narcotics Control Department, KPK, Peshawar.
8. Mr. Maikal, Inspector, at S.No.94 through, D.G Excise Taxation & Narcotics Control Department, KPK, Peshawar.
9. Mr. Noman Akhtar, Inspector, at S.No.95 through, D.G Excise Taxation & Narcotics Control Department, KPK, Peshawar.

... (Respondents)

Syed Noman Ali Bukhari  
Advocate ... For appellant

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



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Date of Institution.....14.02.2018  
Date of Hearing.....27.05.2024  
Date of Decision.....27.05.2024

### 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:

**“On acceptance of this service appeal, the order dated 27.11.2017 may be modified and respondents may be directed to consider the appellant for anti-date promotion from the date the appellant was eligible and vacancies were available with all backs and consequential benefits. Any other remedy which this august Tribunal deems fit and proper that may be also be granted in favor of the appellant.”**

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was appointed as Junior Clerk in Excise & Taxation Narcotics Control Department in the year 1994. He performed his duty with zeal and zest. He was promoted/appointed as Sub-Inspector BPS-09 on acting charge basis vide order dated 16.08.2012. Later on he was regularly promoted to the rank of S.I on 09.02.2017 with immediate effect. Appellant alleged that despite vacant posts and required length of service, he was promoted to the post of Inspector BPS-15 vide order dated 27.11.2017 with immediate effect and not from the date when vacancies were available which effect his seniority. Feeling aggrieved, he filed departmental appeal, which was not responded, hence the present 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 appellant argued that appellant has not been treated in accordance with law and rules. He further argued that the impugned order dated 27.11.2017 is against the law, rules and material on record, hence liable to be modified. He further argued that appellant was promoted to the rank of S.I on 27.11.2017 with immediate effect and according to superior court judgments that if post is available the civil servant should be promoted on regular basis when vacancy became available. He requested that instant appeal might be accepted as prayed for.

5. Conversely, learned Deputy District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that the appellant was not eligible to be promoted to the post of Inspector because he had not passed Departmental Examination in higher grades which is mandatory for promotion and he was promoted to the post of Sub Inspector on acting charge basis.

6. Perusal of record reveals that appellant joined Excise and Taxation, Narcotics Control Department in the year 1994 as Junior Clerk and was appointed as Sub Inspector (BPS-09) on acting charge basis being eligible against the vacant post vide order dated 16.08.2012. Appellant was serving as SI (BPS-09) on acting charge basis since 2012 about 5 years, but despite that he was promoted as SI (BPS-09) as regular on 09.02.2017 with immediate

effect. The appellant aggrieved from the order dated 09.02.2017 filed departmental appeal for antidation of promotion and termination of probation period on which the department made correspondence and declared that the appellant had already completed his 5 years of service against his respective post and also held him eligible for promotion to the post of Inspector. The department delayed the case of the appellant for promotion without any reason despite being well in knowledge about the fact that officials through initial recruitment were coming to join the department. Thus the initial recruits from S.No.89 to 95 in seniority list joined the department as Inspector on respective date mentioned against their names in seniority list. The vacancies of Inspector were laying vacant which is evident from the letter dated 19.10.2017 and 25.05.2017. Appellant filed applications for promotion again and again but matter was delayed by the respondents and at last appellant was promoted as Inspector vide order dated 27.11.2017 with immediate effect not from the date when vacancies were available.

7. Appellant through instant appeal wants to antidate his promotion as Inspector from 27.11.2017 to date of availability of vacancy before induction of fresh appointees mentioned at S.No.89 to 95 of the seniority list who were appointed through Public Service Commission upon its recommendation on 17.08.2017 to 11.09.2017.

8. Record further reveals that appellant was appointed on acting charge basis on 06.08.2012 as Sub Inspector BPS-9 and on 09.02.2017 as regular Sub Inspector. Upon his application, department condoned/terminated condition of probation period and consider his period of acting charge as regular that is why

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he was promoted to the post of Inspector vide order dated 27.11.2017 otherwise his tenure as regular Sub Inspector was only a month and 17 days. So, department gave favor to the appellant and accommodate him by considering/counting acting charge period towards his regular service. Department had not delayed the process of promotion of the appellant because appellant passed mandatory exam required for promotion on 20.07.2017 and submitted written application to his high ups in September 2017 as same was received by respondent on 19.10.2017 and on that very day PUC was put up which was accepted and agreed as department already had given opinion about termination of probation period and concession of required length of service vide letter dated 10.10.2017 to administrative department after meeting was convened and appellant was promoted vide order dated 27.11.2017.

So, far as seniority of direct recruitees/fresh appointments recommended by Public Service Commission is concerned, requisition for their appointment was sent in year 2016 which is evident from joint application of appellant along with others dated 16.08.2016 wherein they mentioned that direct quota of Inspectors post were sent to PSC for induction,


جیکہ ڈائریکٹ کوٹہ انسپیکٹر ان کی آسامیاں بھرتی کے لیے محکمہ پبلک سروس کمیشن کے  
حوالہ کی گئی ہیں۔“

At the time of sending requisition to Public Service Commission by respondent for induction of direct recruitees was under probation period of Sub Inspector after his regular promotion on 09.02.2017 which was terminated vide letter dated 19.10.2017, therefore appellant cannot claim seniority from there.

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9. For what has been discussed above, we are unison to dismiss the appeal being meritless. 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 27<sup>th</sup> day of May, 2024.*


  
(Fareeha Paul)  
Member (E)

  
(Rashida Bano)  
Member (J)

**ORDER**

27.05.2024

1. Learned counsel for the appellant present. Mr. Asif Masaood Ali Shah, learned Deputy District Attorney alongwith Miss Parkha Aziz, Legal Advisor for the respondents present.
2. Vide our detailed judgment of today placed on file, we are unison to dismiss the appeal being meritless. 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 27<sup>th</sup> day of May, 2024.*



(Fareeha Paul)  
Member (E)



(Rashida Bano)  
Member (J)

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S.A No.433/2018

24<sup>th</sup> May, 2024

1. Junior to counsel for the appellant present. Mr. Muhammad Jan, District Attorney alongwith Miss. Parkha Aziz, Legal Advisor for the respondents present.

2. On the previous date, the case was adjourned for today on the request of junior counsel for the appellant, but today, neither the appellant nor his counsel is present and junior counsel again requests for adjournment. This case pertains to the year 2018, therefore, it is adjourned for Monday i.e.

27.05.2024, *with a last chance & 1/2* on payment of cost of Rs.20,000/- to be paid by

*appellant* the appellant. In case of failure to argue the appeal, it shall

be deemed to have been dismissed. To come up for arguments on 27.05.2024 before D.B. P.P given to the parties.



(Muhammad Akbar Khan)  
Member (E)



(Kalim Arshad Khan)  
Chairman