

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

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

Service Appeal No.1150/2012

Date of presentation of appeal.....22.10.2012
Dates of Hearing.....10.07.2024
Date of Decision.....10.07.2024

Abdul Rahim, Executive Engineer (Acting Charge) PHE Division
Haripur(*Appellant*)

Versus

1. **Government of Khyber Pakhtunkhwa**, through Secretary Public Health Engineering Department, Peshawar.
2. **Chief Engineer**, Public Health Engineering Department, Khyber Pakhtunkhwa, Peshawar.
3. **Amil Muhammad XEN** (Acting Charge) PHE Division, Kohat.
4. **Shahzada Behrarm XEN** (Acting Charge) PHE Division Tor Ghar.
5. **Kifayat Ullah XEN** (Acting Charge) PHE Division Buner.....(*Respondents*)

Present:

Mr. Javid Iqbal Gulbela, Advocate.....For appellant
Mr. Muhammad Jan, District Attorney.....For official respondents No.1 & 2
Mr. Hamed Khan, Advocate.....For private respondent No.3
Mr. Noor Muhammad Khattak, Advocate...For private respondent No.5

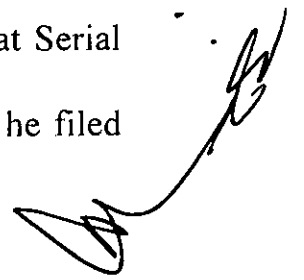
**SERVICE APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT,
1974 FOR MAKING CORRECTION IN THE
SENIORITY LIST OF SUB DIVISIONAL OFFICERS
(BPS-17) DATED 31.05.2012 AND PLACING NAME OF
THE APPELLANT AT CORRECT AND PROPER
PLACE.**

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: According to the memorandum and grounds of appeal, the appellant was initially appointed as Sub Engineer (BPS-11) vide order dated 16.09.1993 in the Public Health Engineering Department. That on 30.05.1994,



amendments were introduced in the NWFP Irrigation and Public Health Engineering Department (Recruitment and Appointment) Rules, 1979 regarding fixation of quota for various categories of Sub Engineers. That working paper was prepared by the Department, wherein, Diploma Associate Engineers and Graduate Engineers were categorized, and Graduate Sub Engineers were further categorized as Direct Graduate Engineers and In-Service Graduate Engineers. That the Departmental Promotion Committee recommended rest of the Engineers for promotion to the post of Assistant District Officer (BPS-17) and the Direct Graduate Sub Engineers (including the appellant) were deferred, however, they were posted as Assistant Engineers (BPS-17) on Acting Charge Basis vide order dated 16.09.2008. That two direct Graduate Sub Engineers filed Service Appeals No.195 & 196 of 2009 which were dismissed. That the judgment of the Tribunal was challenged before the Supreme Court of Pakistan and the Hon'ble Supreme Court vide through judgment passed in CP No.438-P/09 and CP No.439-P/09 directed that the office order dated 16.07.2008 be modified/amended to the extent that service of the appellants shall be deemed to be made on regular basis with all service benefits. That in the light of the direction of the Supreme Court of Pakistan, the appellant was regularized as SDO w.e.f 16.09.2008 instead of 25.03.2008. That a tentative seniority list was issued, whereupon, objections were made and final seniority list was issued on 31.05.2012, wherein, the appellant was placed at Serial No.15 instead of allegedly at Serial No.12. Feeling aggrieved, he filed



departmental appeal which was not responded, hence, the instant service appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were issued notices. They put appearance and submitted reply.

3. We have heard learned counsel for the appellant, learned District Attorney for official respondents and learned counsel for private respondents.

4. 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 assisted by the learned counsel for private respondents controverted the same by supporting the impugned order.

5. The appellant has challenged final seniority list dated 31.05.2012 mainly on the grounds that:

"That by virtue of Rule-17 of the NWFP Civil Servants (Appointment, Promotion and Transfer) Rules 1989, the senior person deferred for the time being for want of certain information or incompleteness of record or for any other reason not attributing to his fault or demerit shall regain his seniority on his promotion, even if made subsequent to the junior person, but this mandate of law has been overlooked in the case of the appellant.

That Mr. Kifayat Ullah Khan was on long leave since 01.10.2003 upto 17.01.2008 and as per rules/ promotion policy at the relevant time he could not be promoted at the time of promotion of the appellant. His promotion is latter in point of time than the appellant and his seniority will be reckoned from the date of promotion."

6. Learned counsel for the appellant referred to the judgment of the august Supreme Court of Pakistan passed in Civil Petitions No.438 &



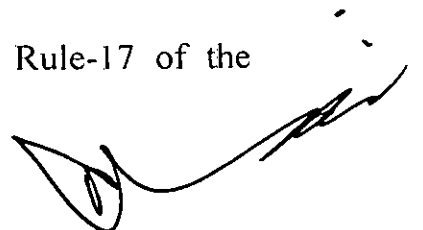
439-P of 2009 and particularly referred to Paragraphs No.5 & 6 which are reproduced below:

"5. We have inquired from the learned Additional Advocate General as to whether if an officer is on long leave, could it debar the departmental promotion committee to promote the officer next in line. He cannot offer any plausible explanation. We have noticed that the NWFP Government has itself laid down policy in its letter dated 4.7.2006, which provides that no post should be reserved for the officers who are on deputation abroad or on long leave and the next officer(s) should be considered for promotion. The officer who is on long leave or on deputation abroad should be considered for promotion on his return after he earns one PER. His seniority shall be determined from the date of promotion. However, to safeguard against non-availability of vacancies subsequently, this procedure should be adopted for cadres where sizeable cadre strength is available. In view of this policy, which the NWFP Government has adopted, the petitioners should have been promoted on regular basis instead of posting them on acting charge basis. The department and the learned Tribunal were in error in overlooking the implications of the policy framed by the Government in this regard.

6. We accordingly set aside the judgments of the learned Tribunal while converting these petitions into appeals and allow the same. The office order dated 16.9.2008 of the respondent No.1. be modified/amended to the extent that services of the appellants shall be deemed to be made on regular basis with all service benefits."

7. The appellant was accordingly promoted on regular basis w.e.f 16.09.2008 and his name was incorporated in the same manner in the seniority list.

8. When confronted with the situation as to how could the appellant be given seniority over the private respondents who were promoted on 25.03.2008 i.e a date prior to the date of promotion of the appellant, he submitted that the appellant could, at least, be given benefit of the period of deferment. In this respect, Rule-17 of the



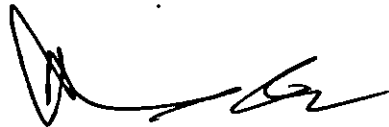
Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 is clear. Relevant portion of the same is Explanation-II which is reproduced below in which the bold and highlighted portion is worth seeing:

"If a junior person in a lower post is promoted to a higher post by superseding a senior person and subsequently that senior person is also promoted the person promoted first shall rank senior to the person promoted subsequently; provided that junior person shall not be deemed to have superseded a senior person if the case of the senior person is deferred for the time being for want of certain information or for incompleteness of record or for any other reason not attributing to his fault or demerit."

9. Learned counsel for the appellant failed to show us as to how the appellant was relegated in the seniority and also as to how the appellant was deprived of any other rights, especially when the seniority has been fixed in accordance with the judgment of the Supreme Court of Pakistan.

10. Therefore, this appeal failed and is dismissed. Costs shall follow the event. Consign.

11. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 10th day of July, 2024.*



KALIM ARSHAD KHAN
Chairman



MUHAMMAD AKBAR KHAN
Member (Executive)



S.A No.1150/2012

ORDER

10th July, 2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney alongwith Mr. Wilayat Ullah, Chief Engineer PHE Department for official respondents present. Private respondents present through counsel.
2. Vide our detailed judgment of today placed on file, instant service appeal is dismissed. Costs shall follow the event. Consign.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 10th day of July, 2024.*

(Muhammad Akbar Khan)
Member (E)

(Kalim Arshad Khan)
Chairman