

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**
AURANGZEB KHATTAK ... **MEMBER (Judicial)**

Service Appeal No. 6179/2021

Date of presentation of Appeal.....03.06.2021
Date of Hearing.....24.07.2024
Date of Decision.....24.07.2024

Karim Ullah S/o Arsala Khan, Ex-Stenographer (BPS-16), R/o Sorizai Payyan.Appellant

Versus

1. Secretary Finance, Government of Khyber Pakhtunkhwa, Peshawar.
2. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
3. Additional Inspector General of Police, Headquarters, Khyber Pakhtunkhwa.
4. Assistant Inspector General of Police, Bomb Disposal Unit, Special Branch, Khyber Pakhtunkhwa, Peshawar.(Respondents)

Present:

Mr. Haq Nawaz Khan, Advocate.....For appellant
Mr. Muhammad Jan, District AttorneyFor respondents

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JUDGMENT



KALIM ARSHAD KHAN, CHAIRMAN: According to the facts gathered from the record, the appellant was initially appointed as a junior clerk on 13.04.1982 and was later on absorbed as a steno-typist on 13.10.1988. He was promoted to the post of stenographer (BPS-16) in the year 2011 and, as of the seniority list dated 30.06.2020, ranked at serial No.3. Upon the promotion of Bashir Ul Haq (ranked at serial No. 1) to the post of Office Superintendent (BPS-17), the appellant moved to serial No.2. The appellant fulfilled all requirements, such as providing a No Departmental Inquiry and Medical Fitness Certificate timely. Despite being at serial No. 2 on the seniority list and availability of 14 sanctioned posts of Office Superintendents (BPS-17) for newly merged districts in

the KPK, the appellant was not promoted. Feeling aggrieved, the appellant submitted departmental appeal on 02.02.2021, which was not responded and the appellant subsequently retired on 09.02.2021. The appellant has now approached this Tribunal through filing of instant appeal for redressal of his grievance.

2. On receipt of the appeal and its admission to regular hearing, the respondents were summoned. Respondents put appearance through their respective representative and contested the appeal by way of filing para-wise reply, raising therein numerous legal as well as factual objections.

3. Learned counsel for the appellant contended that the appellant despite being at serial No. 2 on the seniority list and fulfilling all requirements, was not promoted to the post of Office Superintendent (BPS-17), violating his right to career progression. He next contended that the respondents disregarded the appellant seniority, which was a fundamental principle in promotions, and instead allowed junior to supersede him. He further contended that the appellant met all eligibility criteria, including providing a No Departmental Inquiry and Medical Fitness Certificate, yet was still denied promotion. He also contended that there were 14 sanctioned posts of Office Superintendent (BPS-17) available, but the respondents failed to utilize these vacancies to promote deserving officials like the appellant. In the last, he contended as the appellant had retired from service on 09.02.2021, therefore, he might be granted pro-forma promotion, as he was eligible and deserving for promotion before his retirement.

4. On the other hand, learned District Attorney for the respondents contended that no promotions had occurred after December 1, 2020, therefore, the claim of the appellant for promotion was legally not sustainable. He next contended that Departmental Promotion Committee (DPC) considered the appellant data appropriately but promoted 13 Assistant Grade Clerks and one stenographer, Bashir Ul Haq, as one stenographer, Bashir Ul Haq, was senior to the appellant. He further contended that the appellant retired from service before his turn for promotion, which would align with Muhammad Anwar's unaddressed seniority. In the last he contended that the appeal in hand might be dismissed with costs.

5. We have heard the arguments of learned counsel for the appellant as well as learned District Attorney for the respondents and have perused the record.

6. A perusal of the record show that the he appellant, initially appointed as a junior clerk in the Khyber Pakhtunkhwa Police on 13.04.1982 and was later on absorbed as a steno-typist on 13.10.1988. The appellant was promoted to the post of stenographer (BPS-16) in 2011. According to the seniority list dated 30.06.2020, the appellant was listed at Serial No.3. However, upon the promotion of Mr. Bashir Ul Haq, who was at Serial No.1, to Office Superintendent (BPS-17), the appellant moved up to Serial No.2. In order to decide this appeal we may refer to paragraphs 5 & 8 as well as grounds B, C and E of the reply, which are reproduced as under:-

FACTS:-

5. Correct to the extent that on promotion of Bashir-ul-Haq appellant stood at serial No. 2 of the seniority list of Stenographer. However, this is worth mentioning that Muhammad Anwar whose name stood at serial No. 1 of the

seniority list of Stenographers has not yet been promoted. Therefore appellant has wrongly claimed pro-forma promotion. He retired on attaining the age of superannuation before his turn of promotion.

8. Incorrect, appellant was not on turn of promotion and his prayer amounts to out of turn promotion.

GROUNDS:-

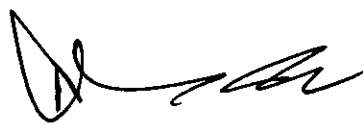
B. Incorrect, Muhammad Anwar stenographer senior to appellant has not yet been promoted. The promotions were made on merit. Appellant has not pointed out and specified any junior stenographer promoted prior to him. Appellant retired on attaining the age of superannuation much before his turn of promotion.

C. Incorrect, appellant was treated in accordance with law. Follow of merit policy in promotion and denial of out of turn promotion does not amount to inaction or omission on the part of respondents.


E. Incorrect, respondents have passed no order or remarks with regard to ineligibility of appellant. He retired much before his turn of promotion."

7. The above reply has not been denied by the appellant rather the appellant has admitted at the bar that no junior to him was promoted at the time he retired nor his turn had come before this retirement. Therefore, this appeal is misconceived and is hereby dismissed. Costs shall follow the event. Consign.

8. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 24 day of July, 2024.



KALIM ARSHAD KHAN
Chairman




AURANGZEB KHATTAK
Member (Judicial)


Service Appeal No. 6179/2021 titled "Karim Ullah Versus Secretary Finance, Government of Khyber Pakhtunkhwa, Peshawar and others".

ORDER

24th July, 2024

1. Learned counsel for the appellant present. Mr. Muhammad Ayaz, Sub-Inspector (Legal) alongwith Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, this appeal is misconceived and is hereby 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 24 day of July, 2024.*


(Aurangzeb Khattak)
Member (Judicial)


(Kalim Arshad Khan)
Chairman