

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

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

Service Appeal No. 1226/2021

Date of presentation of Appeal.....19.01.2021
Date of Hearing.....22.07.2024
Date of Decision.....22.07.2024

**Zia Ullah S/O Saiful Wali, Chowkidar. Darul Kafala for beggar
Dalazak Road, Peshawar.Appellant**

Versus

1. The Chief Secretary, Civil Secretariat Peshawar, Government of Khyber Pakhtunkhwa.
2. The Secretary, Social Welfare, Special Education and Women Empowerment Department, Khyber Pakhtunkhwa.
3. The Director, Directorate of Social Welfare and Women Development Department, Khyber Pakhtunkhwa.
4. The Deputy Director (Admn), Social Welfare, Special Education and Women Development Department, Khyber Pakhtunkhwa.
5. The District Officer Social Welfare Department, Peshawar.
6. The Deputy Commissioner, Peshawar.
7. Mr. Umar Ali Khan, Junior Clerk, Office of the Welfare Home Bannu.
8. Mr. Sajid Ali, Junior Clerk, Office of the Directorate of Social Welfare Peshawar.
9. Mr. Naeem Kokar, Junior Clerk, Office of the GIB (M) Peshawar.
.....(Respondents)

Present: -----

Mr. Muhammad Asif Yousafzai, Advocate.....For appellant
Mr. Muhammad Jan, District AttorneyFor official respondents
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JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: According to the facts gathered from the record, the appellant was initially appointed as Chowkidar in the ADP scheme under the Directorate of Social Welfare

and Women Development Department and was later on regularized vide order dated 08.06.2007 with effect from 01.07.2007. The appellant has challenged the promotion order dated 30.07.2020, whereby, according to him, juniors to him were promoted to the post of Junior Clerk while he was ignored being senior and eligible. Feeling aggrieved, the appellant filed departmental appeal, which was not responded, hence, the appellant filed the instant service appeal before this Tribunal for redressal of his grievance.

2. On receipt of the appeal and its admission to regular hearing, the respondents were summoned. Official 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 in the seniority list issued on 31.07.2017, the appellant was placed at Sr. No. 23, while the private respondents (No. 7, 8, and 9) were placed at Sr. No. 30, 38, and lower, respectively, therefore, the appellant was entitled to promotion over his juniors based on the seniority-cum-fitness principle. He next contended that the department had framed rules on 25.09.2019, reserving 30% promotion quota based on seniority-cum-fitness and requiring an FA/F.Sc qualification and two years of service and the appellant asserted compliance with the criteria, ignoring him from promotion arbitrarily and unjustly. He further contended that by not promoting the appellant alongside his juniors adversely affected his future career prospects, pension, and other benefits. In the last he

contended that the legal rights of the appellant had been sidelined in a whimsical and capricious manner without adherence to due process therefore, the appeal in hand may be accepted.

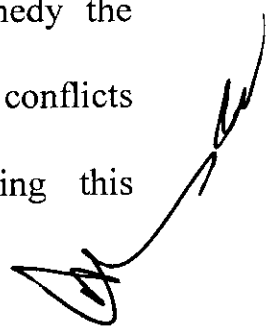
4. On the other hand, learned District Attorney for the respondents contended that pursuant to the up-gradation of Junior Clerks from BPS-07 to BPS-11, Service Rules of the respondent-department were revised and only those Class-IV employees were directed fit for promotion to the post of Junior Clerk (BPS-11), who had availed a minimum of F.A/F.SC qualification. He next contended that in the light of revised Service Rules, 2019, seniority list was prepared on the basis of acquisition of the prescribed qualification i.e F.A/F.SC, wherein the appellant was placed at serial No. 49 of the revised seniority list, therefore, he was not considered for promotion. He further contended that position of the appellant in the revised seniority list was at the lower end of the seniority list, as per the revised rules, justifies the non-promotion. He also contended that the appellant has filed the instant appeal for promotion without rectifying his seniority position in the seniority list pertaining to the year 2019, therefore, the appeal in hand is liable to 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 would show that the appellant was initially appointed as Chowkidar in ADP Scheme of the Department under the Directorate of Social Welfare and Women Development Department,

Peshawar on fixed pay basis vide appointment order dated 24.03.2005.

However, vide office order dated 08.06.2007, the services of the appellant were regularized with effect from 01.07.2007. Admittedly, the appellant has challenged the promotion order dated 30.07.2020, whereby private respondents No. 7 to 9 were promoted to the post of Junior Clerk (BPS-11). The contention of the respondents is that the promotion was done on the basis on revised service rules that required a minimum FA/F.Sc qualification, seniority, and fitness for promotion. They further clarify that the appellant was placed at Serial No. 49 in the revised seniority list, making him ineligible for promotion according to the rules in place. The record further reveals that in the instant appeal, the appellant has sought promotion to the post of Junior Clerk (BPS-11) instead of addressing the issue of his seniority position in the seniority list. It is acknowledged that in the most recent seniority list for the year 2019, the appellant was placed at serial No. 49. Therefore, it is imperative for the appellant to rectify his seniority position before pursuing the promotion. Failure to address this discrepancy may lead to potential confusion and complications in the promotion process. In the present scenario, the appellant choice to prioritize filing an appeal for promotion over rectifying his position in the seniority list for the year 2019 raises pertinent issues. It is undisputed that his current placement at serial number 49 necessitates immediate correction to accurately reflect his seniority status. Neglecting to address and remedy the seniority discrepancy may lead to complications and potential conflicts during the promotion evaluation process. By overlooking this




Service Appeal No.1226/2021 titled "Zia Ullah versus The Chief Secretary, Civil Secretariat Peshawar, Government of Khyber Pakhtunkhwa and others", decided on 22.07.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman and Mr. Aurangzeb Khattak, Member Judicial. Khyber Pakhtunkhwa Service Tribunal, Peshawar.

fundamental aspect of his professional standing, the appellant risks undermining the credibility and validity of his promotion appeal.

7. As a sequel to the above, the appeal in hand stand dismissed. Cost shall follow the events. Consign.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 22 day of July, 2024.*


KALIM ARSHAD KHAN
Chairman


AURANGZEB KHATTAK
Member (Judicial)


Naeem Amin


Service Appeal No. 1226/2021 titled "Zia Ullah Versus The Chief Secretary, Civil Secretariat Peshawar, Government of Khyber Pakhtunkhwa and others".

ORDER

22nd July, 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 judgment of today placed on file, the appeal in hand stand dismissed. Cost shall follow the events. Consign.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 22 day of July, 2024.*


(Aurangzeb Khattak)
Member (Judicial)


(Kalim Arshad Khan)
Chairman