

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
RASHIDA BANO ... MEMBER (Judicial)

Service Appeal No.1729/2023

Date of presentation of Appeal.....11.08.2023

Date of Hearing.....30.07.2024

Date of Decision.....30.07.2024

Muhammad Ishaq, Assistant (BPS-16) Deputy General Secretary, Employees Welfare Association, BOR (Ministerial Staff), Address: Board of Revenue, Civil Secretariat, Peshawar(**Appellant**)

Versus

1. Government of Khyber Pakhtunkhwa, through **Secretary Revenue and Estate** Department, Civil Secretariat, Khyber Pakhtunkhwa Peshawar.
2. Government of Khyber Pakhtunkhwa, through **Secretary Establishment** Department, Civil Secretariat, Khyber Pakhtunkhwa Peshawar.
3. Government of Khyber Pakhtunkhwa, through **Secretary Finance** Department, Civil Secretariat, Khyber Pakhtunkhwa Peshawar.
4. Government of Khyber Pakhtunkhwa, through **Secretary Law** Department, Civil Secretariat, Khyber Pakhtunkhwa Peshawar.
5. Mr. Haroon Ur Rasheed Turk, Computer Operator (BPS-16), Board of Revenue, Civil Secretariat, Peshawar, Khyber Pakhtunkhwa and Six (06) other private respondents (Impleaded vide order sheet dated 15.10.2023).....(**Respondents**)

Present:

Malik Shehbaz Khan, Advocate.....For the appellant

Mr. Muhammad Jan, District Attorney.....For respondents

Mr. Ahmad Sultan Tareen, Advocate.....For private respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED AMENDED NOTIFICATION,NO.ESTT:I/SSRC/TEHSILDAR/2022-3/1312-3 DATED 30.05.2023 VIDE WHICH THE RESPONDENTS HAVE PLACED THE COMPUTER OPERATORS IN 5% QUOTA ALREADY

RESERVED FOR THE ASSISTANTS AND SENIOR SCALE STENOGRAPHER FOR PROMOTION TO THE POST OF TEHSILDAR AND SUBSEQUENTLY THE DEPARTMENTAL APPEAL OF THE APPELLANT WAS REGRETTED BY HIGHLY NON-SPEAKING ORDER, MAY KINDLY BE DECLARED AS ILLEGAL, WITHOUT JURISDICTION AND WITHOUT LAWFUL AUTHORITY.

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Appellant's case as reflected from the record, is that he was serving in the Revenue Department, as Assistant (BPS-16); that as per Notification 04.02.2009, the post of Tehsildar was to be filled through different methods, wherein, 20% quota was allocated to Assistants and Senior Scale Stenographers of the Board of Revenue and Director Land Records; that the said Notification was amended on 30.03.2011, whereby, in the 20% quota of Assistants and Senior Scale Stenographers of Board of Revenue and Director Land Records, Senior Scale Stenographers of the offices of Commissioners, Additional Commissioners, Political Agents and Sub-Registrars were also included; that the Notification dated 04.02.2009 was again amended on 30.06.2016, wherein, 16% quota was reserved for the Senior Scale Stenographers of the offices of Commissioners, Additional Commissioners, Political Agents and Sub-Registrars and 4% quota was allocated to the Assistants, Senior Scale Stenographers of Board of Revenue, for promotion to the post of Tehsildar; that once again, amendment was made on 13.05.2019 vide which, 15% quota was allocated to

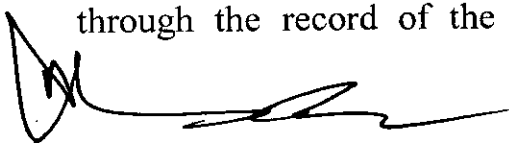
the Assistants and Senior Scale Stenographers of the offices of Commissioners, Deputy Commissioners, while remaining 5% quota was allocated to the Assistants, Senior Scale Stenographers of Board of Revenue and Director Land Records; that vide another amendment made on 30.05.2023, Computer Operators were also included in the 5% quota already allocated to the Assistants, Senior Scale Stenographers of Board of Revenue and Director Land Records; that feeling aggrieved, the appellant alongwith others filed departmental appeal against the amended Notification dated 30.05.2023, which was regretted vide order dated 19.07.2023, therefore, the appellant filed the instant service appeal.

02. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

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

04. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy District Attorney controverted the same by supporting the impugned order(s).

05. After hearing the learned counsel for the parties and going through the record of the case with their assistance and after



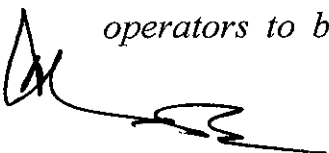
perusing the precedent cases cited before us, it appears to us that appellant was serving as Assistant (BPS-16) in the Board of Revenue and Estate Department, Khyber Pakhtunkhwa, Peshawar and brought this appeal in his capacity as Deputy General Secretary of Employees Welfare Association Board of Revenue (Ministerial Staff). Initially, vide Notification dated 04.02.2009, 20% quota for promotion to the post of Tehildar was reserved for Assistants and Senior Scale Stenographers of Board of Revenue and Director Land Records. The said quota was further divided through amendments made from time to time and lastly, vide Notification dated 30.05.2023, in the 20% quota, 5% was reserved for the Assistants and Senior Scale Stenographers of Board of Revenue and Director Land Records, however, Computer Operators were also included in the said 5% quota. Feeling aggrieved of the said inclusion and reservation of quota, the appellant assailed that notification through departmental appeal followed by the instant service appeal.

06. In the appeal rules, there is joint representation. The contents of appeal show that the appellant brought the appeal in representative capacity.

07. The disputed amendments in the service rules, have very much been explained and justified in reply to para 06 to appeal. Para-06 of the reply of respondents, is reproduced as under:

"That Para No.6 of the appeal is correct to the extent of inclusion of Computer Operators in 05% quota for promotion to the post of

Tehsildar. The remaining para is incorrect, the inclusion of Computer Operators in the Quota is not arbitrary, a great care and due diligence was exercised in notifying such quota, in order to satisfy the long standing demand of the Computer Operators to bring them at par with other cadres of service. It is further added that vide notification dated 13.05.2019 (Annex-A), Quota of the employees of BOR and DLR, for promotion to the post of Tehsildar had been enhanced from 04% to 05%, thereafter on the demand of Computer Operators on the basis of natural justice Computer Operators were also included in the joint seniority with Assistants/Senior Scale Stenographers for further promotion to the post of Tehsildar vide notification dated 30.05.2023. The inclusion of Computer Operators in the seniority list is based on natural justice, fair play and equity. It is further added that Assistants and Senior Scale Stenographers both of the cadres are getting benefits from dual line of promotions. Assistants can be promoted vertically to the post of Superintendent BPS-17 or horizontally to the post of Tehsildar BPS-16, while Senior Scale Stenographers have the opportunities to advance to either vertically to Private Secretary BPS-17 or horizontally to the post of Tehsildar. In contrast, Computer Operators within the department have no similar advancements, even as revenue records transition to digital formats. In light of this disparity Tehsildar rules have been amended by incorporating provisions that also allow computer operators to be eligible for dual line of promotions, fostering a

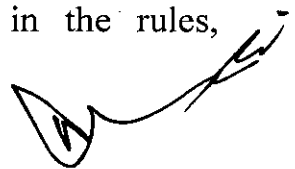


more equitable and inclusive promotion rules within the department. Moreover Assistants /Senior Scale Stenographers are not adversely affected by the inclusion of Computer Operators in the 5% Quota of Tehsildar rules as the Department has created 8 more posts i.e. (Three posts of Assistant Secretaries, Senior Assistant Secretary HR, Senior Assistant Secretary TAX, Senior Assistant Secretary NMAs, Senior Private Secretary, Senior Scale Stenographer) for Assistants /Senior Scale Stenographers in their existing line/channel of promotion and some of them have been promoted recently against the newly created posts."

08. Besides, the inclusion of Computer Operators in the 5% quota for promotion to the post of Tehsildar was done after careful consideration and due diligence to address the long-standing demand for equal opportunities and the amendments aimed to promote natural justice, fair play, and equity, and did not adversely affect the appellants' promotional prospects as the department created additional posts for Assistants and Senior Scale Stenographers, ensuring they were not disadvantaged by the inclusion of Computer Operators in the quota.

09. The appellant failed to convince the Tribunal as to what was wrong with the amendments in the Rules and what terms & conditions of service were violated and no malafide could be pointed out by the appellant on the part of the respondents.

10. Therefore, the tribunal finds no merit in this appeal, which is accordingly dismissed, and the amendments in the rules,



Service Appeal No.1729/2023 titled "Muhammad Ishaq versus Government of Khyber Pakhtunkhwa through Secretary Revenue & Estate Department and others", decided on 30.07.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mrs. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

including the inclusion of Computer Operators in the quota, are upheld as reasonable and equitable. Consign.

11. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 30th day of July, 2024.*



KALIM ARSHAD KHAN
Chairman



RASHIDA BANO
Member (Judicial)

Mutazem Shah