

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2307/2023

BEFORE: MR KALIM ARSHAD KHAN ... CHAIRMAN
MRS. RASHIDA BANO ... MEMBER (J)

Muhammad Sajid S/O Abdul Qayyum R/O Khwaja Bagh Near Mian Gul Kalay, Tehsil and District Mardan.

.... (*Appellant*)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa Climate Change, Forestry, Environment & Wildlife Department, Civil Secretariat, Peshawar.
3. Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar.
4. Chief Conservator Central Southern Forest Region-I, Khyber Pakhtunkhwa, Shami Road, Peshawar.....(*Respondents*)

Mr. Hazrat Said
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....07.11.2023
Date of Hearing.....01.07.2024
Date of Decision.....01.07.2024

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:

“It is therefore, most humbly prayed that on acceptance of the instant appeal stand with cost, the respondents may



kindly be directed to recommend the appellant with seniority/regular promotion in the cadre of SDFO (BPS-17) since the date of availability of the vacancy w.e.f 13.05.2015 under Promotion Quota, on the retirement of SDFO Jan Nisar and to restore his assigned seniority by the PCS after Muhammad Shakeel (currently serving as DFO Khyber BPS-18)."

2. Brief facts of the case are that appellant was appointed as Range Forest Officer (BPS-17) and was placed after his batch mate namely Muhammad Shakeel RFO; that vide Notification dated 15.01.2015, Muhammad Shakeel was promoted to the post of SDFO (BPS-17) on regular basis and the appellant was also promoted to the said post, however, he was granted promotion on acting charge basis; that one Jan Nisar, SDFO was retired from service on 13.05.2015 and his seat fell vacant; that Mr. Muhammad Shakeel was later on promoted to the post of DFO (BPS-18) while the appellant was still requesting for regular promotion to the post of SDFO (BPS-17); that for the purpose of granting regular promotion w.e.f the date of occurring of vacancy i.e. 13.05.2015, the appellant made application to the authority, however the same remained un-responded, hence, the instant service appeal.

3. 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.

4. We have heard learned counsel for the appellants and learned District Attorney for the respondents.

5. 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 controverted the same by supporting the impugned order(s).

6. Appellant was consider for promotion on acting charge basis to the post of SDFO (BS-17) by the DPC in its meeting held on 20.11.2014 due to non-availability of regular post and notification in this respect was issued on 15.01.2015. Charge sheet was issued to him on 27.09.2016 and said inquiry was completed on 11.06.2020 wherein appellant was exonerated from charges. During this period, DPCs were conducted but appellant due to the pending inquiry, department had not submitted his case for regular promotion to the post of SDFO (BPS-17).

7. Learned Counsel for the appellant argued that appellant was promoted to the post of SDFO vide notification dated 08.12.2020 and his inter seniority was restored with effect from 13.12.2018 vide notification dated 14.06.2021 upon his application. Appellant along with Mr. Shakeel S/o Fazil Rehman was directly appointed Range Forest Officer vide order dated 23.06.2007 upon recommendation of Public Service Commission on the basis of merit order. Appellant was placed at Serial No.9 below the Mr. Shakeel his batch mates who stood at Serial No.8. Appellant was not regularly promoted due to non-availability of post in meeting held on 20.01.2014 and was recommended for promotion on acting charge basis who later on promoted as SDFO on 08.12.2020. but as regards the question of determination of seniority of the appellant or for that matter the persons selected in one combined competitive examination, they will squarely be belonging to the same batch and their inter se seniority was necessarily to be determined in accordance with their respective orders of merit prepared by the selection authority, as required by Section-8 of the Khyber Pakhtunkhwa Civil Servants Act,



1973 and Rule 17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Transfer and Promotion) Rules, 1989. Both the provisions are reproduced as under:

Khyber Pakhtunkhwa, Civil Servant Act, 1973:

"8. Seniority:- (1) For proper administration of a service, cadre or [post], the appointing authority shall cause a seniority list of the members for the time being of such service, cadre or [post] to be prepared, but nothing herein contained shall be construed to confer any vested right to a particular seniority in such service, cadre or [post] as the case may be.

(4) Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post; Provided that civil servants who are selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter-se-seniority as in the lower post.

(5) The seniority lists prepared under sub-section(1), shall be revised and notified in the official Gazette at least once in a calendar year, preferably in the month of January.

Khyber Pakhtunkhwa, Civil Servants (Appointment, Promotion & Transfer) Rules, 1989:

"(b) in the case of civil servants appointed otherwise, with reference to the dates of their continuous regular appointment in the post; provided that civil servants selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter se seniority as in the lower post.

Expalanation-II.---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 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

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information or for incompleteness of record or for any other reason not attributing to his fault or demerit.”

8. The appellant was promoted, therefore, the official respondents were bound to determine his seniority by following the provisions of section 8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 and Rule 17 (1) (b) Explanation-II of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, which, as the record reflects or/and the facts and circumstances brought before us, was never done.

9. As a sequel to above discussion, the instant service appeal is partially allowed and respondents are directed to fix the seniority of the appellant in accordance with their respective seniority with his batch mates. Appellant is not entitled for arrears of pay and back benefits. 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 01th day of July, 2024.*



(KALIM ARSHAD KHAN)
Chairman



(RASHIDA BANO)
Member (J)

24.06.2024 1. Appellant alongwith his counsel present. Mr. Muhammad Jan, District Attorney for the respondents present.

2. Security fees have not been deposited, therefore, appellant is directed to deposit security fee within three days. To come up for arguments on 01.07.2024 before D.B. P.P given to the parties.

SCANNED
Khalid
Peshawar


(Muhammad Akbar Khan)
Member (E)


(Rashida Bano)
Member (J)

KAMRANULLAH

ORDER

01.07.2024


1. Learned counsel for the appellant present. Mr. Muhammad Jan, learned District Attorney for official respondents present.
2. Vide our detailed judgment of today placed on file, the instant service appeal is partially allowed and respondents are directed to fix the seniority of the appellant in accordance with their respective seniority with his batch mates. Appellant is not entitled for arrears of pay and back benefits. 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 01th day of July, 2024.*


(KALIM ARSHAD KHAN)
Chairman


(RASHIDA BANO)
Member (J)

14.02.2024 01. - Junior to counsel for the appellant present. Mr. Habib Anwar, Additional Advocate General for the respondents present.


02. Reply/comments on behalf of respondents submitted which are placed on file. Copy of the same handed over to junior of learned counsel for the appellant who sought time to go through the same. Adjourned. To come up for preliminary hearing on 29.02.2024 before S.B. P.P given to the parties.


(Muhammad Akbar Khan)
Member (E)

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29.02.2024 1. Learned counsel for the appellant present. Mr. Habib Anwar, Additional Advocate General alongwith Mr. Zahid Iqbal, Deputy Director for the respondents present. Preliminary arguments heard.

2. Points raised need consideration. The appeal is admitted for regular hearing subject to all just and legal objections by the other side. Appellant is directed to deposit security fee within ten days. Reply/comments on behalf of respondents have already been submitted. To come up for arguments on 01.07.2024 before D.B. P.P given to the parties.


(Muhammad Akbar Khan)
Member (E)

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