

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

In the matter of

Service Appeal No. 1405/2023

Mr. Sahibzada Muhammad Qaiser AIG Prisons, (RPO) Peshawar

..... (Appellant)


VERSUS

1. Najam Hussain Abbasi, Superintendent, District Jail, Mansehra.

..... (Respondent No.5)

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NAJAM HUSSAIN ABBASI
SUPERINTENDENT DISTRICT JAIL
(RESPONDENT # 05)

N.D - 15-04-24
Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

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Mr. Sahibzada Muhammad Qaiser AIG Prisons, (RPO) Peshawar

.....(Appellant)

VERSUS

1. Najam Hussain Abbasi, Superintendent, District Jail, Mansehra.

..... (Respondent No.5)

SUBJECT: PARA-WISE COMMENTS ON BEHALF OF RESPONDENT NO. 5 ARE AS UNDER.

Khyber Pakhtunkhwa
Service Tribunal

Respectfully Sheweth:-

Diary No. 12185

PRELIMINARY OBJECTION:

Dated 15-4-24

- i. That the Present service appeal is incompetent in its present form.
- ii. That the appellant has got no locus standi to file the instant appeal.
- iii. That the appellant is estopped by his own conduct to file appeal.
- iv. That the appellant has not come to this Honourable Tribunal with clean hands.
- v. That the present appeal is bad for mis-joinder and non-joinder of necessary parties.
- vi. That the present appeal is badly Time-barred.
- vii. That the present appeal is not based on solid ground hence liable to be dismissed with costs.

Objection on Facts:

1. Pertains to record.
2. Admitted to extent that the appellant was appointed to the Post of Deputy Superintendent jail (BPS-17) on acting charge basis vide Notification dated 28-04-2015 due to less length of required service i.e. five years. Later on the appellant was promoted to the post of Deputy Superintendent Jail (BPS-17) on regular basis with immediate effect and the appellant actualized his regular promotion on 09-02-2016 without challenging the order of his promotion with the immediate effect whereas the undersigned joined the cadre/post of Deputy Superintendent Jail (BPS-17) on 9th October 2015 through initial requirement vide advertisement No. 2/2014 dated: 22-04-2014 which is much more earlier from his regular promotion in BPS-17. Previously the appellant also submitted application/objection on the seniority list of the Deputy Superintendent jail (BPS-17) which was accordingly considered by the competent authority and was filed being not covered under the Rules as conveyed vide Home Department letter dated 27-09-2018. The appellant has hidden from the Honourable Tribunal the fact that his review/representation against the seniority list of Deputy Superintendent Jail BPS-17 was filed being not covered under the rules which was conveyed to the appellant vide No. 10724-I-2016-28514 Dated:

02/10/2018 and still the appellant approached this honourable tribunal after a lapse of 05 years. In view of the above the plea of the appellant is neither justified nor covered under the rules.

3. Incorrect. The length of qualifying five years' service as Senior Assistant Superintendent Jail (BPS-16) of the appellant completed on 10-08-2015 as he assumed the charge in (BPS-16) on 11-08-2010 and as per rule 8 (4) of KP Civil Servants Act, 1973, seniority would be reckoned from the date of confirmation/regular appointment in a post. Upon completion of required length of Service/PER etc by the appellant as well as his other colleagues, the promotion case prepared by Respondent No.1 and submitted to Respondent No.2 on 22/09/2015 for placing before Departmental Promotion Committee. Accordingly Respondent No.2 scheduled DPC meeting on 28/10/2015. According to the DPC meeting minutes, the appellant as well as his other colleagues were recommended for promotion to the post of Deputy Superintendent Jail (BPS-17) on regular basis with immediate effect. After obtaining of approval of the competent authority (Chief Secretary) Home Department notified his promotion on regular basis on 19/01/2016 with immediate effect. The appellant has not made the competent authority i.e. the Chief Secretary a party thus appeal is liable to be dismissed for non-joinder. The plea of the appellant for grant of seniority is not maintainable as not covered under the rules and as the appellant didn't challenge the promotion order/notification vide which he was promoted with immediate effect and he took over the charge under the same notification. The appellant never approached competent authority for a special meeting of Departmental Promotion Committee to only consider him for the promotion. Selection process for the recruitment of the respondent started in February 2014 so if the claim of the appellant is true than the respondents are also entitled for similar treatment and should be appointed from the date of advertisement.
4. Incorrect as explained in the preceding paras. The appellant never approached competent authority for a special meeting of Departmental Promotion Committee to only consider him for the promotion and he was promoted along with five others out of which 03 were senior to him nor the appellant after the notification/order of his promotion filed any appeal/review to any authority challenging the very order. The appellant waited for the issuance of the seniority list but never challenged the promotion order/notification on the basis of which the appellant was promoted to the post of Deputy Superintendent Jail BPS-17 and was claiming the seniority. Selection process for the recruitment of the respondent started in February 2014 so if the claim of the appellant is true than the respondent is also entitled for similar treatment and should be appointed from the date of advertisement.

5. As per own accord of the appellant he in the year 2020 i.e. after a lapse of 05 years, instead of approaching the proper forum i.e. Honourable Service Tribunal, he filed a writ petition in the Peshawar High Court Mingora Bench. The Writ petition was dismissed in limine on 18/01/2021 with the remarks that admission to regular hearing would amount to an exercise in futility and wastage of court's time.
6. Not admitted. As per Rule 8 (5) of the KP Civil Servant Act, 1973 reiterated vide notification No. SOR-I (E&AD)3-15/88/(Vol.I) dated: 9th May, 2002 which requires the issuance of the seniority list on yearly basis, the seniority lists of Deputy Superintendent Jail (BPS-17) including the appellant in question, which determines the seniority in due place, were notified by Home Department on 17-05-2021 and thereafter respondent No.2 also circulated the same to all concerned. And if any seniority list was not received to the appellant, he should have applied for the same during that very year but he slept over his right.
7. Incorrect and not admitted. The final seniority lists of Deputy Superintendent Jail (BPS-17) were notified every year by Home Department vide No. SO(Prisons)HD/1-57/Seniority List/2016 Dated: 13/02/2017, No. SO(P&R)HD/1-57/2017 Dated: 27/09/2018, No. SO(P&R)HD/1-57/2018 Dated: 21/05/2019, No. SO(P&R)HD/1-57/2020 Dated: --/--/2020, No. SO(P&R)HD/1-57/2020 Dated: 17/05/2021. Thus, the plea taken by the appellant is baseless and unjustified. And if any seniority list was not received to the appellant, he should have applied for the same during that very year but he slept over his right.
8. As explained in Para-02 above, application/appeal of the appellant was considered by the competent authority and was regretted being not covered under the rule. As far as his representation against the seniority list of BPS-18 is concerned, it is stated that the same was not addressed to the competent authority i.e. Chief Minister and was also not maintainable at the belated stage. Moreover, his seniority in BPS-18 was determined on the basis of his seniority in the lower cadre/post i.e. BPS-17 which is strictly in accordance with the rules and the appeal of the appellant is badly time barred. Appellant in his prayer has requested for the grant of seniority over the respondent as Deputy Superintendent Jail BPS-17 but he after being promoted from BPS-17 to BPS-18 in October 2021 asked the department on 12-01-2023 for the seniority list of Deputy Superintendent BPS-17 for the year 2021. It is very interesting and first of its kind that the appellant has approached this honourable Tribunal against the Notification/Seniority Lists of BPS-17 & BPS-18 at the same time i.e. Appeal No. 1404/2023 for BPS-17 and Appeal No. 1405/2023 for BPS-18 on the same day by annexing condonation application with both hence admitting that the appellant has approached

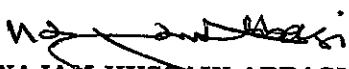
the honourable Tribunal after a considerable delay of almost seven years for BPS-17 and two years for BPS-18.

OBJECTION ON GROUNDS:

- A) Incorrect and not admitted. The appellant was not treated with any discrimination as he was promoted along with five other officials out of which 03 were senior to him. As per law / rule he was promoted to next higher scale in very first DPC meeting held after him attaining the minimum threshold for promotion.
- B) Admitted to the extent that when a public servant possessing required qualification as mandatory for next higher scale becomes eligible, he is considered for promotion in next higher scale and the same was done by considering and subsequently promoting the appellant in very first DPC meeting held after he attained the requisite length of service alongside many others.
- C) Incorrect and not admitted. Detail of this para is elaborated in Para-B above furthermore the process of recruitment of respondent started way before the appellant became eligible for promotion.
- D) Incorrect and not admitted. Detail is given in Para-2 above. Furthermore, the recruitment process of the respondent did not start after the appellants becoming due for promotion but it almost took more than one and half years to complete. The appellant even challenged the recruitment of the respondents but the same was decided in favour of the respondent by the Honourable Service Tribunal back in 2015.
- E) Details of this para is elaborated in Para-03 above of the factual objection above.
- F) Details of this para is elaborated in Para-03 above of the factual objection above.
- G) Details of this para is elaborated in Para-02 & 03 above of the factual objection above.
- H) The respondent would also seek the permission of this Honourable Tribunal to raise additional objection/grounds at the time of arguments.

Prayer:

It is therefore most humbly prayed that on the acceptance of instant joint para-wise comments, the instant service appeal filed by the appellant may please graciously be dismissed being devoid of Merit & Law.


NAJAM HUSSAIN ABBASI
SUPERINTENDENT DISTRICT JAIL
(RESPONDENT # 05)

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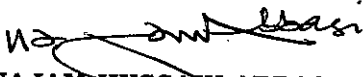
..... (Respondent No.5)

Subject: REPLICATION ON CONDONATION OF DELAY APPLICATION.

1. Pertain to Judicial proceeding. Hence needs no comments.
2. Incorrect and not admitted. The appellant did not approach this tribunal within time and made an excuse just to wash out the issue of limitation.
3. Incorrect and not admitted, the appeal of the appellant is not maintainable under limitation Act 1908 as he did not knock the door of this Court within reasonable time as specified under the Act *ibid*. Moreover, his plea is also hit by an important maxim that "law helps to the vigilant rather than to the indolent".
4. Details of this para is given as para-3 above.
5. Incorrect. Pertains to Judicial proceeding.

Prayer.

It is therefore most humbly prayed that on acceptance of this instant reply on condonation of delay application the appeal of appellant may please be dismissed with cost being devoid merit of law.


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..... (Respondent No.5)

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NO.5

I, Najam Hussain Abbasi, Superintendent District Jail, Mansehra do hereby solemnly affirm and declare that the content of the para wise comments in the above cited appeal are true and correct to the best of my knowledge and belief and no material/facts have been concealed from this Hon'ble Tribunal.

Najam Hussain Abbasi

NAJAM HUSSAIN ABBASI
SUPERINTENDENT DISTRICT JAIL
(RESPONDENT # 05)

ATTESTED



15-04-2024