BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal No. 2323 / 2023

Said Rahman. ... Appellant

- VERSUS -

Govt: of KP and others. ...Respondents

Rejoinder by Appellant

Respectfully Sheweth:

Preliminary Objections:

Preliminary objections of the comments are incorrect, hence denied.

Objections of Facts:

1. Para No. 1 needs no reply.

2. Para No. 2 of the reply is incorrect. In fact

   i. Before 22-10-2011, Sub-Rule (2) of Rule 9 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 was as under:

   (2): So long as civil servant holds the acting charge appointment, a civil servant junior to him shall not be considered for regular promotion but may be appointed on acting charge basis to a higher post.

   The aforesaid Sub-Rule (2) was deleted by notification No. SOR-VI(E&AD)1-3/2009/Vol-VIII dated 22-10-2011. So, not only order dated 30-05-2018 regarding the promotion of 15 members of Assistants (BPS-16), mentioned therein to the post of Superintendent (BPS-17) on acting charge basis, was illegal, unlawful and

unauthorized, but in fact the said promotion was also on regular basis. Moreover, if the said promotion was on acting charge basis (which is denied) even then the said illegal, unlawful and unauthorized order could not be made a ground for depriving the appellant of his accrued right.

ii. It is incorrect that vide notification dated 11-02-2019, the appellant has been promoted to the post of Assistant on acting charge basis. Moreover, it is worth mentioning that even the DPC in its meeting held on 28-12-2018 had recommended the promotion of appellant to the post of Assistant (BPS-16) on regular basis due to deletion of Sub-Rule (2) of Rule 9 *ibid*.

3. Para No. 3 is incorrect.

i. The appointment of one Mr. Ismail Khan has no concern with the promotion, seniority or any other right of the appellant, nor the said order of Ismail Khan, without giving an opportunity of hearing to appellant, could have any adverse effect upon the appellant, any such order effecting the rights of appellant, is ineffective upon the rights of appellant.

ii. Any departmental appeal by one Mr. Ismail Khan and any decision therein, without hearing of appellant, is not maintainable, is illegal, unlawful, unauthorized and liable to be declared ineffective upon the rights of appellant.

iii. In letter dated 13-12-2022, paragraph No. 2, it has been expressly mentioned that appellant has been promoted on regular basis to the post of Assistant (BPS-16) due to deletion of Sub-Rule (2) of Rule 9 *ibid*.

iv. Since appellant was promoted on regular basis to the post of Assistant (BPS-16) on 11-02-2019, thus there was no need of any opinion.

v. Letter dated 13-03-2023 of the Establishment Department, regarding misinterpretation of Rule ((2) of APT Rules and requisition of resubmission of promotion to DPC is illegal, unlawful, unauthorized and ineffective upon the rights of the appellant.

vi. The department selection committee meeting held on 25-09-2023, wherein the appellant was held to be senior clerk (BPS-14), working as Assistant on acting charge basis and also its recommendation to promote the appellant on regular basis from the date of notification, is illegal, unlawful, unauthorized and ineffective upon the rights of the appellant.

vii. Since, the meeting of DPC dated 25-09-2023, its recommendations etc are illegal and unlawful, thus, the impugned order dated 08-08-2023, is also illegal and may please be declared null and void.

viii. That appellant had already promoted to the post of Assistant (BPS-16) vide order dated 11-02-2019, which is still intact i.e. neither cancelled nor withdrawn, therefore, any subsequent order adversely affecting the rights of the appellant is illegal and ineffective upon the rights of the appellant.

4. Para No. 4 is incorrect, hence denied. Departmental appeal was filed within time against the impugned order, returned with certain objections and after removal of the objections, appeal was resubmitted within time.

Grounds:

Grounds of comments are incorrect, hence denied. Detailed answer has been given in objections on facts above.

It is therefore, humbly prayed that the service appeal filed by the appellant may kindly be allowed.

Appellant

Said Rahman

Counsel for Appellant:

Asghar Ali
Advocate Supreme Court

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Affidavit:

I, **Said Rahman (Appellant)**, do hereby solemnly affirm and declares on oath that, all the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been kept concealed therein from this august court.

Deponent:

S. R

Said Rahman
(Appellant In Person)

Minhas

ATTESTED

Ms. Minhas Yousafzai Advocate
Oath Commissioner
S.No 87
Date 24-8-2024
District Courts Swat