

**ORDER**

23.04.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, learned Deputy District Attorney alongwith Ghulam Shabir, Assistant Secretary for the official respondents present. Private respondents No. 6 in person present.
2. Vide our detailed judgment of today placed on file, we are unison to dismiss the appeal in hand having no force in it. 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 23<sup>rd</sup> day of April, 2024.*

  
(FAREEHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

\*Kaleemullah

01.12.2022. Now appellant is at serial No. 8 of Patwari seniority list . So he will have to be promoted at his own turn on the basis of seniority cum-fitness.

10. For what has been discussed above, we are unison to dismiss the appeal in hand. Costs shall follow the event. Consign.

11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 23<sup>rd</sup> day of April, 2024.*

  
(FAREEHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

\*Kaleemullah

8. Appellant in his departmental appeal requested for promotion to the post of TRA and Kanungo BPS-11. Under the rules both of the post are two different posts and criteria for filling of post of Tehsil Accountant is by promotion on the basis of seniority-cum-fitness from amongst the Naib Tehsil Accountant having three year service as such. Admittedly appellant was patwari, who was assigned duty in his own pay scale and is not Naib Tehsil Accountant, therefore, he was not eligible to be promoted as Tehsil Accountant ; for this he will have to be appointed as Naib Tehsil Accountant/Naib office Kanungo on the basis of permanent transfer and after serving for three years as such will be considered subject to seniority.

9. So far post of Kanungo BPS-14 is concerned same is filled by way of promotion on the basis seniority cum fitness from amongst the Patwari's and Naib Office Kanungo of District concerned with three year service as such and have passed departmental examination of Kanungo. So, appellant's channel of promotion is provided to the post of Kanungo but on the basis of seniority cum fitness. Perusal of seniority list for the year 2014 reveals that appellant is at serial No. 13, while respondent No. 6 is at serial No. 2 and had passed Kanungo exam while his date of appointment is 21.12.1995 while appellant's date of appointment is 30.03.2009. Official at serial No. 3 Abdur Rehman had also passed Kanungo exam who was promoted as Kanungo vide order dated 24.10.1995 while official at serial No. 5 & 6 were regularly promoted as Kanungo on 09.09.1990. Official at serial No. 7 to 9 were also promoted on



Kanungo (BPS-11) and he was ignored. Appellant through instant appeal had challenged two orders of respondents with contention that same are illegal, against the rules main contentions to declare promotion notification of respondent No. 6 dated 18.11.2015 to the post of Kanungo BPS-11 by setting aside it with direction to respondent to promote him as Kanungo/TRA BPS-11.

7. Appellant filed instant appeal under section 4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974 which reads as:

*“Any civil servant aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him, prefer an appeal of the appeal having jurisdiction in the matter.”*

Any civil servant aggrieved from final or appellate order may file service appeal before Tribunal in accordance with above referred section. Appellant filed departmental appeal against the order dated 16.11.2018 vide which his request to appoint him as TRA was turned down. That order was passed upon application submitted by appellant for his promotion to the post of DRA BPS-14 on 16.01.2018. Now, appellant challenged promotion order of respondent as Kanungo BPS-11 which was not challenged in his initial application for his promotion to the post of DRA BPS-14. Therefore, to this extent his appeal was not maintainable as no departmental appeal was filed to extent of challenging promotion order of respondent No.6 in his departmental appeal.




appellant as well as the learned Deputy District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that the appellant has not been treated in accordance with law. He further argued that the impugned order are illegal, against the law, contrary to the prescribed service rules, non-speaking, capricious and against the facts, hence liable to be set aside and appellant is deserved to be promoted to the post of Kanungo/TRA. He further argued that appellant had rendered excellent service and performed his duty in his own pay scale against the posts of ADK & TRA despite having requisite qualification and experience and was not promoted, which is unwarranted under the law.

5. Conversely, Learned Deputy District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that promotion case of the appellant to the post of Kanungo will be considered on his turn subject to fulfillment of required criteria. He further contended that private respondent No.6 fulfilling all the required criteria.

6. Perusal of record reveals that appellant was inducted into service in the respondent department as Patwari vide order dated 23.04.2005. He passed the Kanungo exam in the year 2007. On 04.04.2009, he was directed to perform duty of Assistant District Kanungo Hangu in addition to his own duty in his own pay scale. On 08.05.2012 an office order was issued whereby he was directed to perform duty as TRA in his own pay scale. On 18.11.2018 promotion order was

 issued whereby Noor Ul Amin, TRA (BPS-8) was promoted to the post of

a. "On acceptance of this appeal, the impugned order dated 24.04.2019 and 16.11.2018 passed by respondent No.2 may be set aside being illegal, against the law, non-speaking, contrary to the prescribed service rules and also against the facts and circumstances of the case and the appellant may be considered for promotion to the post of Kanungo/TRA BPS-11 being most deserving, qualified and having got all the required experience and

b. that the promotion order of respondent No. 6 dated 18.11.2015 to the post of Kanungo may also be set aside being illegal, against the law, against the prescribed service rules and ineffective upon the promotional rights of the appellant.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was inducted into service in respondent department as Patwari vide order dated 23.04.2005. He passed the Kanungo exam in the year 2007. On 04.04.2009, he was directed to perform duty of Assistant District Kanungo Hangu in addition to his own duty in his own pay scale. On 08.05.2012 an office order was issued whereby he was directed to perform duty as TRA in his own pay scale. On 18.11.2018 promotion order was issued whereby Noor ul Amin, TRA (BPS-8) was promoted to the post of Kanungo (BPS-11) and he was ignored. Feeling aggrieved, he preferred departmental appeal, which was filed, hence the instant service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the



**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 651/2019

**BEFORE: MRS. RASHIDA BANO** ... **MEMBER (J)**  
**MISS FAREEHA PAUL** ... **MEMBER (E)**

Mr. Amjid Ali Khan S/O Wajid Ali Khan, Presently serving as Patwari, Halqa Naryab, Tehsil and District Hangu.

.... (*Appellant*)

**VERSUS**

1. Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
3. Commissioner Kohat Division Kohat.
4. Deputy Commissioner Hangu.
5. Assistant Commissioner Kohat.
6. Noor ul Amin, Kanungo (BPS-11) Gharbi, Tehsil and District Hangu.

... (*Respondents*)

Noor Badshah Bangash  
Advocate ... For appellant

Mr. Asif Masood Ali Shah  
Deputy District Attorney ... For respondents

Date of Institution.....03.09.2019  
Date of Hearing.....23.04.2024  
Date of Decision.....23.04.2024

**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:

