



15th May, 2024 1. Learned counsel for the appellant present. Mr. Umair Azam, Additional Advocate General for the respondents present.

2. Learned counsel for the appellant requested for adjournment in order to prepare the brief. Adjourned. To come up for arguments on 27.06.2024 before D.B. P.P given to the parties.

SCANNED
KI 3T
Peshawar


(Muhammad Akbar Khan)
Member (E)


(Kalim Arshad Khan)
Chairman

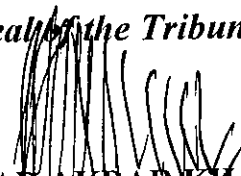
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ORDER

27.06.2024 1 Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, learned Deputy District Attorney alongwith Muhammad Qasim, Road Inspector, for respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to dismiss the appeal in hand. Costs shall follow the event. Consign.

3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 27th day of June, 2024.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

*Kaleemullah

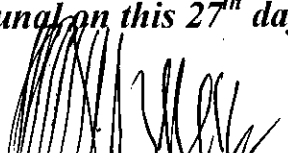
the case may be, of such civil servant, to a posts in any of the basic pay scales 3 to 11 in Provincial cadre post and basic pay scales 3 to 12 in District cadre posts:"

Under Section 10(4) deceased employee son or retired Class-IV employees son can only be appointed while father of the appellant was not Class-IV employee rather he was Senior Account Clerk which is evident from his pension Roll Slip annexed with the comments.

9. So, appellant was not entitled to be appointed against the 25% quota reserved for Class-IV employees sons as his father was not Class-IV. That is why within a few days of appointment authority realized his mistake and sent letter for approval of cancellation of appointment letter to his Senior appellate authority on 21.03.2018 which was accordingly, granted and appellant appointment was cancelled vide impugned order dated 05.04.2018 within a month after his appointment and no salary was released to him. When the very basis of appointment of the appellant is illegal and unjustified and appellant was in probation period then there is no need to conduct regular inquiry because it is an admitted fact that father of appellant was not Class-IV employee, which gives right to his son i.e. appellant to be appointed against 25% quota fixed for retired Class-IV employees son under section 10(4).

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 at Peshawar and given under our hands and seal of the Tribunal on this 27th day of June, 2024.


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

Committee. After obtaining medical certificate the appellant submitted his arrival report and thereafter his service book was prepared by the respondent department. The appellant performed his duty with full devotion and hard work and no complaint whatsoever has been made against the appellant. On 21.03.2018 a cancellation letter regarding service of the appellant has been issued to respondent No.3 by the respondent No.4 against which the appellant filed writ petition No. 950-P/2020 which has been disposed off on 13.10.2020 on the ground of lack of jurisdiction. Appellant filed service appeal No.4801/2021 and during the pendency of that very service appeal the impugned order dated 05.04.2018 has been communicated to the appellant on 01.06.2022.

7. Appellant mainly contended that after appointment, he became civil servant and before cancellation of his appointment order respondent were required to provide him opportunity of defence by conducting regular inquiry which was not done by the respondent, so this render his cancellation order illegal and against rules.

8. Perusal of appointment order dated 07.03.2018 of the appellant reveals that he was appointed as Painter "in light of section 10 (4) APT Rules, 1989 under employees sons quota". So, his appointment was under 10(4) of APT Rules, 1989 which read as;

"Where a civil servant dies or is rendered incapacitated or invalidated permanently during service or retired on medical board, notwithstanding the procedure provided for in sub-rule (2), the appointing authority may appoint one of the children of such civil servant or if the child has not attained the age prescribed for appointment in Government service, the widow or wife as

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2. Brief facts of the case are that the appellant was appointed as Painter on retired son quota in respondent department vide order dated 07.03.2018 and since his appointment he performed his duty up to the entire satisfaction of his superiors. On 21.03.2018, a cancellation letter regarding service of the appellant was issued to respondent No. 3 by respondent No.4, which was challenged by the appellant in Writ Petition No. 950-P/2020 which was disposed of on 13.10.2020 on the ground of lack of jurisdiction. Thereafter, he filed service appeal No. 4801/2021 and during the pendency of the appeal the impugned order dated 05.04.2018 which was communicated to the appellant on 01.06.2022 with parawise comments whereby appointment order of the appellant was withdrawn. The appellant submitted departmental appeal on 01.07.2022 against the impugned order, which was not responded to, hence the present 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 Deputy 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 Deputy District Attorney controverted the same by supporting the impugned order(s).

6. Perusal of record reveals that the appellant was appointed as painter on retired son quota in C&W Department, Bannu vide office order dated 07.03.2018 upon recommendation of District Department Selection



BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.725/2023

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

Mr. Waseem Ullah Qureshi S/o Muhammad Israil Qureshi R/o Kotka Molvi
Muhammad Khalil Mandan, P.O Bada Mir Abbas Khan Tehsil and District
Bannu.

.... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary C&W Department Khyber
Pakhtunkhwa, Peshawar.
2. Chief Engineer (Centre) C&W Department, Khyber Pakhtunkhwa, Peshawar.
3. Superintendent Engineer C&W Division, Bannu.
4. Executive Engineer C&W Division, Bannu.

.... (Respondents)

Kabir Ullah Khattak
Advocate

... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

... For respondents

Date of Institution.....22.03.2023
Date of Hearing.....27.06.2024
Date of Decision.....27.06.2024

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant appeal instituted under section 4 of
the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as
below:

“On acceptance of this appeal, the impugned order dated 05.04.2018 may
kindly be set aside and the appellant may kindly be reinstated into his

service along with all back benefits.”

