

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR
AT CAMP COURT, SWAT

BEFORE: **KALIM ARSHAD KHAN ...CHAIRMAN**
RASHIDA BANO ...MEMBER (Judicial)

Service Appeal No.366/2023

Date of presentation of appeal.....24.02.2023
Dates of Hearing.....02.09.2024
Date of Decision.....02.09.2024

Mr. Momin Khan, Depot Cooli (BPS-04) Office of District Director Agriculture, District Malakand at Batkhela.

.....(*Appellant*)

Versus

1. **The Government of Khyber Pakhtunkhwa** through Secretary Agriculture, Livestock, Fisheries and Cooperation Department, Khyber Pakhtunkhwa, Peshawar.
2. **The Director General** Agriculture (Extension), Khyber Pakhtunkhwa, Peshawar.
3. **The District Director** Agriculture District Malakand at Batkhela.
.....(*Respondents*)

Present:

Mr. Umar Farooq Mohmand, Advocate.....For the appellant
Mr. Umair Azam, Additional Advocate General.....For respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED INACTION OF THE RESPONDENTS BY NOT PROMOTING THE APPELLANT WITHIN 75% QUOTA TO THE POST OF BUDDER AND AGAINST THE INACTION OF THE RESPONDENTS BY NOT DECIDING THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Appellant's case in

brief is that he was appointed as Depot Cooli (BPS-01) vide

order dated 03.08.1998; that accordingly, his service book was prepared by the authorities and was serving in the said capacity; feeling aggrieved of not promoting from the cadre of Class-IV despite 35 years service and availability of vacancies, he filed departmental appeal for promotion to the next higher grade, but the same was not responded within the statutory period of ninety days, therefore, he filed the instant service appeal.

2. 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.

3. We have heard learned counsel for the appellant, learned counsel for private respondent and learned Additional Advocate General for the respondents.

4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Additional Advocate General, for respondents, controverted the same by supporting the impugned order.

5. Perusal of record reveals that appellant was appointed as Depot Cooli in BPS-01. However, from time to time, his post was upgraded twice, i.e. to BPS-02 and then to BPS-04. Appellant was feeling aggrieved as to why he was not

promoted to the post of Junior Clerk as there were vacancies available in the respondent department. For the said purpose, he filed departmental appeal, but the same was not responded, therefore, the appellant filed the instant service appeal before this Tribunal.

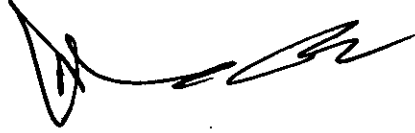
6. Main grievance of the appellant was that he had served the department for more than 35 years, but was not given promotion to the post of Junior Clerk. However, there are some requirements for promotion to the post of Junior Clerk, which the appellant lacks. The criteria for promotion to the post of Junior Clerk has been notified vide Notification No.SOE(AD)2(1)429/2020/EW/SSRC dated 26.11.2020, wherein, 40% quota has been reserved for promotion on the basis of seniority-cum-fitness from amongst all Class-IV posts and Store Keeper, Typist, Depot Keeper and Laboratory Assistant with three year service as such having second class F.A/F.Sc or an equivalent qualification from recognized board. In the Notification dated 26.11.2020, there is no mention of Depot Cooli, which could justify the claim of appellant for promotion to the post of Junior Clerk. Besides, for promotion to the said post, F.A/F.Sc qualification was also mandatory and the appellant lacked the said qualification.



Service Appeal No366/2023 titled "Momin Khan Vs. The Government of Khyber Pakhtunkhwa through Secretary Agriculture, Livestock, Fisheries and Cooperation Department, Khyber Pakhtunkhwa, Peshawar and others", decided on 02.09.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mrs. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, Swat.

7. In this view of the matter, the appellant could not justify his stance, therefore, the appeal in hand is dismissed with costs. Consign.

8. *Pronounced in open Court at Swat and given under our hands and the seal of the Tribunal on this 2nd day of September, 2024.*



KALIM ARSHAD KHAN
Chairman
Camp Court, Swat



RASHIDA BANO
Member (Judicial)
Camp Court, Swat

Mutazem Shah

S.A # 366/2023

ORDER

2nd Sep. 2024

1. Learned counsel for the appellant present. Mr. Umair Azam, Additional Advocate General alongwith Mr. Asad Ud Din Asif Jah, Superintendent for the respondents present. Heard.

2. Vide our detailed judgment of today placed on file, the appellant could not justify his stance, therefore, the appeal in hand is dismissed with costs. Consign.

3. *Pronounced in open Court at Swat and given under our hands and the seal of the Tribunal on this 2nd day of September, 2024.*



(Rashida Bano)
Member (J)
Camp Court, Swat



(Kalim Arshad Khan)
Chairman
Camp Court, Swat

Mutazenz Sjah