

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 510/2019

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MR. AURANGZEB KHATTAK ... MEMBER (J)

Muhammad Sajid Saleem S/o Haji Obaidullah, R/o Qasuria Town D.I.Khan
presently posted as Naib Tehsildar Paharpur, District Dera Ismail Khan.

... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through the Chief Secretary
Government of Khyber Pakhtunkhwa, Peshawar.
2. The Senior Member Board of Revenue, Khyber Pakhtunkhwa,
Peshawar. (Respondents)

Mr. Abdullah Baloch,
Advocate

--- For appellant

Mr. Muhammad Jan,
District Attorney

--- For respondents

Date of Institution.....17.04.2019

Date of Hearing13.08.2024

Date of Decision13.08.2024

JUDGMENT

RASHIDA BANO, MEMBER (J):- Facts of the instant appeal are that the appellant was appointed as Naib Tehsildar on acting charge basis vide order dated 21/10/2008, due to the non-availability of a regular post. However, the appellant was allegedly then promoted as Naib Tehsildar on regular basis vide order dated 10/02/2009, which was withdrawn on 09/09/2016. Later, on 12/12/2018, the appellant was again promoted to Naib Tehsildar on a regular basis. The appellant filed departmental representation on 28/01/2019, seeking retrospective seniority and promotion from the date of first availability of vacancy, however the same was not responded within the statutory period of 90 days. The

appellant has now approached this Tribunal, asserting that the promotion order dated 12.12.2018 was issued with immediate effect, rather than retrospectively.

2. Respondents were put on notice, who submitted their reply on appeal.


3. Learned counsel for the appellant has argued that the appellant being civil servant was entitled to fundamental rights, including the right to justice as mentioned in Article 9 of the Constitution as established in Sheikh Riaz-ul-Haq's case. He next argued that the appellant was eligible for promotion to the post of Naib Tehsildar from the date of availability of vacancy under the seniority-cum-fitness principle, therefore, his promotion with immediate effect, rather than retrospectively, is contrary to established practices and well-settled law. He further argued that the appellant had been served as Naib Tehsildar on Acting Charge basis since 2008 and was later made regular in 2009, however, this order was withdrawn in 2016, creating ambiguity and affecting his entitlement to seniority and retrospective promotion. He also argued that by not granting promotion and seniority from the date of eligibility and availability of vacancy, the respondents have violated norms of justice, depriving the appellant of his due rights. In the last he argued, that the appeal in hand may be accepted as prayed for.

4. On the other hand, learned District Attorney for the respondents argued that the appellant was initially appointed as Naib Tehsildar on Acting Charge basis due to the non-availability of a regular post, however, upon availability, his case was properly reviewed, resulting in

his promotion on 12/12/2018 with immediate effect, in line with promotion policy 2009. He next argued that Para VI of the promotion policy 2009 and Rule 8(4) of the Civil Servant Act 1973, stating that promotions are effective immediately and seniority commences from the date of regular appointment, justifying the December 2018 effective date. He further argued that the case of the appellant for antedate promotion was reviewed and not found justified until 2018, as the regular promotion through an administrative order was illegal and thus rightfully withdrawn in 2016. He also argued that the promotion order of the appellant as Naib Tehsildar on regular basis in 2018 followed a proper Departmental Promotion Committee order, thereby complying with established legal and procedural standards. In the last he argued that the appeal in hand may be dismissed with costs.

5. We heard the learned counsel for the appellant as well as learned District Attorney for the respondents and perused the case file with connected documents in detail.

6. Perusal of the case file reveals that the appellant prayer in the appeal in hand is that he seeks ante-dation of his promotion with effect from availability of vacancy and seniority as alleged by the appellant that he was promoted on regular basis vide order dated 10/02/2009 and he worked on the post of Naib Tehsildar for long seven years, therefore, he is entitled for fixation and determination of the seniority from 10/02/2009. The departmental appeal filed by the appellant indicates that his request to the departmental authority was to have his name included in the seniority list effective from 10/02/2009, as per Rule-17 of the



Appointment, Promotion, and Transfer (APT) Rules, 1989. The appellant prayer in the departmental appeal did not pertain to the ante-dation of his promotion order dated 12/12/2018 for the purpose of determination of his seniority from 10/02/2009. Such a request, aiming to antedate the promotion order from the date a vacancy became available, is not tenable as it was not initially presented to the departmental authority in the departmental appeal. Regarding the issue of determining seniority starting from 10/02/2009, in his departmental appeal, the appellant requested that his seniority be fixed according to Rule-17 of the APT Rules, 1989, which is reproduced as below:-

“17. Seniority :- (1) the seniority inter se of civil servants 55 (appointed to a service, cadre or post) shall be determined:-


(a) in the case of persons appointed by initial recruitment, in accordance with the order of merit assigned by the Commission 56[or as the case may be, the Departmental Selection Committee;] provided that persons selected for appointment to post in an earlier selection shall rank senior to the persons selected in a later selection; and

(b) in the case of civil servants appointed otherwise, with reference to the date of their continuous regular appointment in the post; provided that civil servants selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter se seniority as in the lower post.”

7. For seniority determination under Rule-17 of the APT Rules, 1989, the appellant must establish his seniority in the lower grade and his promotion order relating to his cohort. However, in this case, the appellant has not annexed any seniority list or promotion orders of his colleagues or juniors. It is crucial to note that the appellant promotion order dated 10/02/2009 was rescinded by the authority on 09/09/2016 as it was issued not based on recommendations of the Departmental

Promotion Committee, but rather as an administrative order. The appellant filed a departmental appeal and a Service Appeal No. 1178/2016 against this order in this Tribunal, which was dismissed as withdrawn vide order dated 10.01.2019. Therefore, the order dated 09/09/2016, upon which the appellant bases his claim for seniority, is no longer applicable, preventing the determination or fixation of his seniority from that date.


8. The respondents, in their reply and the meeting conducted on 14/02/2019 for determining the seniority of the appellant, stated that no clear vacancy was available in the appellant/ministerial staff quota before 12/12/2018 when the appellant was regularly promoted. Therefore, he could not be promoted before a clear vacancy was established. Though the learned counsel for the appellant referred to the Departmental Promotion Committee minutes dated 21/10/2008, which mentioned 05 vacant seats within the ministerial staff quota, it was also noted the appellant as a junior Assistant due to his excellent service record, was recommended for promotion on acting charge basis, indicating that he was not eligible for regular promotion in 2008. The Committee comments reflected an acting charge promotion recommendation, not regular promotion. If the appellant met the criteria for promotion, i.e., seniority and fitness, he should have claimed his promotion from the date when he was promoted on an acting charge basis vide order dated 21/10/2008. The appellant was under obligation to provide details showing a clear vacancy in his share, as respondents denied this, but no such evidence or records were filed, even after submitting a written reply from the respondents, which included the



minutes of the meeting dated 14/02/2019. Therefore, lacking a clear vacancy within the appellant cadre and share, the appellant is not entitled to antedate his promotion or have his seniority determined from a date earlier than his regular promotion on 12/12/2018, as seniority is invariably determined from the date of regular promotion.

9. In view of the above, the appeal in hand being meritless is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 13th day of August, 2024.*


(AURANGZEB KHATTAK)
Member (J)



(RASHIDA BANO)
Member (J)

S.A No. 510/2019

09.08.2024

This case was fixed for 20.08.2024 for arguments, as the appeal pertains to the year 2019 and its old one, therefore, the appeal file was requisitioned, and office is directed to accelerate and fix it for arguments on 13.08.2024 before the D.B. P.P given to the parties.


*Kaleemullah



(Rashida Bano)
Member (J)

ORDER

13th August, 2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, the appeal in hand being meritless is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 13 day of August, 2024.*


(Aurangzeb Khattak)
Member (Judicial)
13/08/2024


(Rashida Bano)
Member (Judicial)

Naeem Amin