

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, AT
CAMP COURT SWAT**

Service Appeal No.12443/2020

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MRS. RASHIDA BANO ... MEMBER (J)

Mr. Salar Mohammad, Ex-Beldar, O/O the Executive Engineer, Malakand
Irrigation Division, Malakand.

.... (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary Irrigation Department, Civil Secretariat, Peshawar.
2. The Chief Engineer (North), Irrigation Department, Peshawar.
3. The Executive Engineer, Malakand Irrigation Division, Malakand.

... (Respondents)

Umar Farooq Mohmand ... For appellant
Advocate

Mr. Umair Azam ... For respondents
Additional Advocate General

Date of Institution.....18.09.2020
Date of Hearing.....04.09.2024
Date of Decision.....04.09.2024

JUDGMENT

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

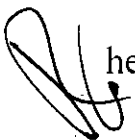
“On acceptance of this service appeal, the impugned order dated 29.04.2020 may very kindly be set aside and the appellant may be reinstated into service with all back benefits. Any other remedy which this August Tribunal

deems fit that may also be awarded in favour of the appellant.”

3. Brief facts of the case are that appellant was appointed as Beldar vide order dated 31.10.2011 and subsequently vide impugned order dated 04.11.2011, appointment order of the appellant was withdrawn. Feeling aggrieved, appellant filed departmental appeal followed by filing writ petition No. 767-M/2016 before the Peshawar High Court, Mingora Bench which was decided alongwith other connected writ petitions vide consolidated judgment dated 11.12.2018. Appellant after obtaining the judgment submitted the same before concerned authority for implementation but the authority filed CPLA which was also disposed of vide judgment dated 10.03.2020. On 02.02.2020, respondents issued a show notice, which was replied by the appellant, thereafter respondent vide impugned order dated 29.04.2020 terminated the appellant from service. Feeling aggrieved, he filed departmental appeal, which was not responded, hence the instant 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. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and rules. He further argued that the impugned order passed by the respondents is against the law, facts, norms of natural justice, hence liable to be set aside. He further argued that no charge sheet and statement of allegation was issue before issuance of impugned order. He submitted that neither regular inquiry was conducted nor chance of personal hearing was afforded to the appellant and he was condemned unheard. He



one of the family member had already availed the opportunity, therefore, respondents are not liable to be appointed under the 25% employees son reserved quota.


8. Admittedly at the time of appointment appellant was over age by five years and one month. For age relaxation, appellant would have to file age relaxation application to Home Department and after grant of relaxation by the Home Department, Departmental Selection Committee could consider him for promotion but no such application and order of relaxation was produce by the appellant from which it could established that he was granted age relaxation by the concerned authority. Appellant was afforded proper opportunity of hearing and defence by the respondent to justify his appointment wherein he failed to establish that his appointment order was issued in accordance with merit.

9. As only offer of appointment was issued by respondents as a result of which appellant has not assumed charge of the post besides offer of appointment was withdrawn on the 4th day of its issuance, therefore, there is no need to issue proper charge sheet and statement of allegations.

10. For what has been discussed above, the appeal in hand is dismissed being devoid of merits. Costs shall follow the event. Consign.

11. *Pronounced in camp court at Swat and given under our hands and seal of the Tribunal on this 4th day of September, 2024.*


(KALIM ARSHAD KHAN)
Chairman
Camp Court, Swat


(RASHIDA BANO)
Member (J)
Camp Court, Swa

in Hon'ble Peshawar High Court in CPLA, which was maintained vide order dated 10.03.2020 by the apex court with addition that proceedings be concluded within 2 months however, after 2 months it may reinstate them if proceedings are not concluded, on the basis of which a show cause notice was issued to the appellant on 02.04.2020 with the allegations that;

2. That office record reveals that your father was retired on 06.03.2003 as Mali and your brother Mr. Ikram Muhammad was appointed as Beldar under 25% employees son quota which explicit that you have managed illegal means for getting appointment as Class-IV in irrigation department by concealing the facts.

3. That you were overage by 5 years and 1 month at the time of appointment as per recruitment rules for various positions in irrigation department circulated vide Notification No. SO(E)IRR/23-5/73 dated 20.06.2006.

7. Appellant filed reply of show cause notice, wherein he admitted the allegations levelled against him but failed to satisfy inquiry committee in respect of his appointment as Class-IV on retired employees son reserved quota and being over age despite the fact his brother had already been appointed on 25% Employee Son Quota and matter of his appointment at the age of 5 years and 1 months i.e over age. Appellant admitted the factum of his brother appointment (Mr. Ikram Muhammad) that he was already appointed under 25% employees son reserved quota vide order No. 1985/7-E(SUB) dated 06.11.2009. As per Khyber Pakhtunkhwa Establishment Department circular dated No. SOR-I (S&GAD)4-1/80(Vol-III), dated 23.05.2000, that


ORDER


04.09.2024

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

2. Vide our detailed judgment of today placed, the appeal in hand is dismissed being devoid of merits. Costs shall follow the event. Consign.

3. *Pronounced in open court at camp court Swat and given under our hands and seal of the Tribunal on this 4th day of September, 2024.*


(KALIM ARSHAD KHAN)
Chairman
Camp Court, Swat


(RASHIDA BANO)
Member (J)
Camp Court, Swat