

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, AT CAMP COURT
SWAT

Service Appeal No.10409/2020

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

**Mr. Kamran Ali, 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.....08.09.2020
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appointed as Beldars vide order dated 21.10.2011, vide order dated 04.11.2011, appointment order of the appellant was withdrawn without any reason. 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 requested that instant appeal might be accepted as prayed for.

5. Conversely, learned Additional Advocate General contended that appellant has been treated in accordance with law and rules. He further contended that the appellant was appointed as Beldar vide order dated 31-10-2011, but neither he submitted charge report nor any duty was assigned to him. He further contended that his appointment order was rightly withdrawn as the merit was violated by ignoring the local candidate of the District as the appellant was also overage at the time of appointment and the appellant was overage by 3 years 08-months and 06-days. Furthermore, according to the Khyber Pakhtunkhwa Civil Servants (Appointments, Promotion and Transfer) Rules, 1989, local person shall be given priority for appointment as Class-IV but the appellant was resident of Village Qasim Khan Banda Shergarh Tehsil Takht Bhai District Mardan whereas the post of Beldar against which appointment was offered to him was lying vacant at District Malakand instead of Mardan. He requested that instant appeal might be dismissed with cost.

6. Perusal of record reveals that appellant through instant appeal requested for setting aside impugned order 29.04.2020 vide which appellant was terminated from service by the respondents. Initially offer of appointment as Beldar was issued by the respondent on 31.10.2011 upon recommendation of DSC on contract basis but said order was withdrawn on 04.11.2011 by the authority. Appellants filed writ petition bearing No. in Hon'ble Peshawar High Court, Peshawar which was decided on 11.12.2018 and respondents were directed to reinstate appellants into service by setting aside order dated



04.11.2011. Respondents were left at liberty to initiated departmental proceedings against the petitioners, if it appears to them that he has procured his appointment through illegal means and has committed any sort of misconduct. Respondents challenged said order 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;

1. *"that you were offered the post of Beldar vide order No. 2404/7-E(Sub), dated 31.03.2011 against the vacancy falling in District Malakand, whereas you are resident of the Sher Garh, District Mardan.*

2. *That you were overage by 3 years, 8 months and 6 days of 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.*

3. *The above facts explicit that you have managed your appointment through illegal means."*

7. Appellant filed reply of show notice, wherein he denied the allegations levelled against him failed to satisfy inquiry committee in respect of his appointment as Class-IV employees at Malakand despite being resident of Mardan and matter of his appointment at the age of 33 years and 6 months i.e over age. Appellant admitted the factum of his residence domicile at district Mardan and as per recruitment policy of the government all posts of Class-IV employees would be filled from the locals of the district where post of Class-IV i.e Beldar was lying vacant. In the instant case posts were available at Malakand District while appellant is resident of district Mardan. So appointment on the post of Balder in District Malakand was the right of local

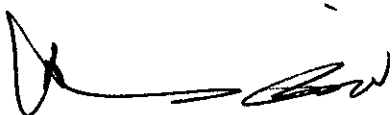
resident/domicile holder of district Malakand and not of any other district including Mardan of which appellant is permanent resident and is domicile holder.

8. Admittedly at the time of appointment appellant was over age by 3 year 8 months and 6 days. For age relaxation, appellant would have to file age relaxation application to Home Department and after grant of relaxation by the Home Department, DSC 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 be 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 days 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 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

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