

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

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

Service Appeal No.578/2023

Date of presentation of appeal.....17.03.2023
Dates of Hearing.....20.09.2024
Date of Decision.....20.09.2024

Sifat Ullah Ex-Constable No.124 District Police Nowshera R/O
Aza Khel Bala Tehsil and District Nowshera.....(**Appellant**)

Versus

1. **District Police Officer**, Nowshera.
2. **Deputy Inspector General of Police**, Mardan Region, District Mardan.
3. **Inspector General of Police**, Police Headquarters, Police Line, Peshawar.....(**Respondents**)

Present:

Mr. Muhammad Arif Jan, Advocate.....For the appellant
Mr. Naseer Ud Din Shah, Assistant Advocate General...For respondents

**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT,
1974 AGAINST THE ORDER NO.1377-83/E-V
DATED 07.05.2021 AND LETTER NO.1392-97/E-V
DATED 07.05.2021 AGAINST WHICH THE
APPELLANT FILED DEPARTMENTAL APPEAL
ON 18.05.2021 WHICH IS NOT YET RESPONDED.**

JUDGMENT



KALIM ARSHAD KHAN CHAIRMAN: Brief facts of the case, as per averments of appeal, are that the appellant was serving as Assistant in the respondent department; that he referred to Serial No.2 of Appendix 'A' of Notification dated 14.04.1974 (The Khyber Pakhtunkhwa Police Department Ministerial Service Rules, 1974) whereunder, the mode of promotion for the post of Superintendent has been prescribed; that by promotion could be made from among members of the service holding

the post of Assistant, Stenographers and Auditors, with at least five years service as such, provided that the Stenographers must have passed the departmental examination prescribed for confirmation of Assistants; that the order dated 07.05.2021 regarding constitution of a committee for course contents and conducting test for Stenographer/Assistant, have been impugned being violation of the said provisions of service rules; that the appellant filed Writ Petition No.3114-P/2021, which was dismissed in limine vide order dated 13.06.2021 on the question of maintainability under Article-212 of the Constitution of Islamic Republic of Pakistan, 1973; that for the purpose, he filed the instant service appeal before filing of departmental appeal as he was going to be retired on 13.06.2021.

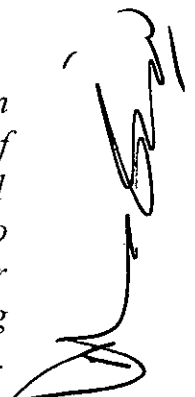
2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and submitted reply.

3. We have heard learned counsel for the appellant and learned District Attorney 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 District Attorney controverted the same by supporting the impugned order.

5. Prayer made in the appeal is as under:

"It is, therefore, humbly prayed that on acceptance of the Petition in hand, the decision of the DPC/Competent authority dated 06.05.2021 regarding conducting of Test for the Promotion to the post of Superintendent circulated Vide letter dated 1392-97/E- dated 07-05-2021, being illegal, unjustified and without lawful authority.



*be set aside and the respondents be directed to consider/promote the Appellant to the post of Superintendent from the date which the post fall vacant on proforma basis.
Any other remedy deem proper in the matter may also please be given with costs throughout."*

6. Learned counsel for the appellant very fairly informed that later on, after certain litigation, the condition of conducting test for promotion to the post was withdrawn and vide Notifications dated 13.09.2024, promotions were made ignoring the appellant. There is no denial of the fact that the appellant had retired even before filing of this appeal and by the time, the Departmental Promotion Committee could meet, the appellant had retired some three years earlier than that.

7. In view of the above, we see no merit in this case, which is dismissed with costs. Consign.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 20th day of September, 2024.*



KALIM ARSHAD KHAN
Chairman



RASHIDA BANO
Member (Judicial)

Mutaazem Shah



S.A #.578/2023

ORDER

20th Sep. 2024

1. Learned counsel for the appellant present. Mr. Naseer Ud Din Shah, Assistant Advocate General for respondents present.

2. Vide our detailed judgment of today placed on file, instant service appeal is dismissed with costs. Consign.

3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 20th day of September, 2024.*

(Rashida Bano)
Member (J)

(Kalim Arshad Khan)
Chairman

Mutazem Shah