

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL AT CAMP COURT
ABBOTTABAD

Service Appeal No.6138/2020

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

**Mr. Ghulam Qadir S/O Gul Qadir, Presently Electrician in C&W
Department Abbottabad.**

.... (*Appellant*)

VERSUS

1. Secretary to Government of Khyber Pakhtunkhwa Communication & Works Department, Civil Secretariat, Peshawar.
 2. The Chief Engineer, Communication & Works Department, Abbottabad.
 3. Superintendent Engineer, Communication & Works Department, Abbottabad.
 4. Executive Engineer, Communication & Works Department, Abbottabad.
- (*Respondents*)

Mr. Sabir Hussain Tanoli
Advocate

... For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney

... For respondents

Date of Institution.....29.04.2020
Date of Hearing.....24.07.2024
Date of Decision.....24.07.2024

JUDGMENT

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

“On acceptance of this appeal, the respondent department may kindly be directed to promote the appellant as a Supervisor in BPS-9 as similarly placed employees have been promoted.”

2. Brief facts of the case are that appellant was appointed as Electrician in the respondent department in 1988 and has been serving in that position since



then without any promotion, maintaining an unblemished record. Subsequently, Muhammad Khalid retired from the post of Supervisor (BPS-9), and in his place, Shahid, a carpenter, was promoted to Supervisor. Appellant challenged the impugned order before this tribunal by filing service appeal No. 1220/2013, but during pendency of appeal, respondent No. 3 withdrew the promotion order, leading to the dismissal of the appeal as it became infructuous, as per the order dated 20/04/2016. Thereafter appellant sought promotion through respondent No. 3, who was informed by respondent No. 4 in a letter dated 10/06/2016 that several electricians in BPS-5 had previously been promoted to Supervisors in BPS-9. Despite this, the appellant was not promoted. Feeling aggrieved, he filed writ petition No. 579A/2018 before the Peshawar High Court. The court disposed of the petition on 30.05.2018, directing respondent No. 3 to decide on the appellant's appeal within two months. When respondent No. 3 failed to comply with the Court order, the appellant filed a contempt of court petition COC No. 82-A/2018. The respondents replied, stating that the position was required to be filled through initial recruitment and that no promotion could be granted, leading to the dismissal of the contempt petition. The appellant, dissatisfied with this response, filed another writ petition No. 852/2019, which was withdrawn on 07/11/2019, allowing the appellant to seek redress from the appropriate forum. The appellant subsequently filed a representation before the competent authority, 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. We have heard learned counsel for the appellant and learned Deputy District Attorney for the respondents.

5. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy District Attorney controverted the same by supporting the impugned order(s).

6. Perusal of record reveals that appellant was appointed as Electrician BPS-5 in respondent department in the year 1985. One Muhammad Khalid, Supervisor was retired from service who was serving as Supervisor Bp-9 and instead of appellant being senior most having unblemished record One Shahid carpenter was promoted to the post of Supervisor. Appellant also alleged that many BPS5 electrician have been promoted to the post of Supervisor BPS-9 vide order dated 29.05.2006 and 22.02.2013 but now respondents are reluctant to promote him which is discrimination and not equal treatment as provided by the constitution of Pakistan, 1973.


7. Respondent in their reply raised two points, one is that the post of Work Supervisor as per rules had to be filled by way of initial recruitment and secondly post of work supervisor is abolished now. Perusal of government of NWFP Communication & Works department Rules 1996 published and notified on 11 June, 1997 reveals that post of Supervisor is mentioned at serial NO.5 of it. The method of recruitment is mentioned as initial recruitment while qualification for it is secondary School Certificate or equivalent qualification from a recognized board and Diploma in the relevant filed of technical education (Later on vide notification dated 25.03.2010 bearing No.


SOE/C&W D/8-12/2009 qualification was changed and same was enhanced to 3 years diploma in civil technology). When post is not to be filled by promotion then no one including appellant could be promoted to it.

8. Respondents produced letter dated 17.03.2021 written by Budget Officer to Secretary to government of Khyber Pakhtunkhwa Communication & Works Department vide which 28 posts of C&W Department declared delaying cadre and abolished including post of Supervisor mention at serial No.2 of it. When post of the Supervisor is abolished and is no more in existence then appellant could not claim promotion on it. Furthermore, promotion order of Shahid carpenter has been withdrawn by the Superintendent Engineer C&W Circle Abbottabad. Vide office order dated 18.06.2015 due to which appellant seek indulgence of this tribunal and from which he is aggrieved. So far as question of similarly placed employees promotion are concerned same was done before abolishing the posts benefits of which now when posts of supervisors is not in existence cannot be extended the appellant.

9. For what has been discussed above, we are unison to dismiss the service appeal in hand having no force in it. Costs shall follow the event. Consign.

10. Pronounced in camp court at Abbottabad and given under our hands and seal of the Tribunal on this 24th day of July, 2024.



(FAREEHA PAUL)
Member (E)
Camp Court, Abbottabad



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

26th June, 2024

Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney present.

Respondents are directed to produce the working papers and minutes of meeting on the basis of which order dated 29th May, 2006 was issued. They are further directed to produce service rules of the department that are currently in place. To come up for record as mentioned above and arguments on 24.07.2024 before the D.B at Camp Court, Abbottabad. Parcha Peshi given to the parties.

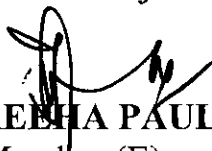

(Fareeha Paul)
Member (Executive)
Camp Court, Abbottabad



(Aurangzeb Khattak)
Member (Judicial)
Camp Court, Abbottabad

Naeem Amin

Order Sheet

- 24.07.2024
1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.
 2. Vide our detailed judgment of today placed on file, we are unison to dismiss the service appeal in hand having no force in it. Costs shall follow the event. Consign.
 3. *Pronounced in camp court at Abbottabad and given under our hands and seal of the Tribunal on this 24th day of July, 2024.*


(FAREEHA PAUL)
Member (E)
Camp Court, Abbottabad


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

*M.Khan