KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

BEFORE: **AURANGZEB KHATTAK ... MEMBER (Judicial)**
FAREEHA PAUL ... MEMBER (Executive)

Service Appeal No. 14444/2020

Date of presentation of Appeal.....18.11.2020
Date of Hearing.....30.09.2024
Date of Decision.....30.09.2024

Ahmad Saeed Son of Muhammad Khan Caste Pathan Kattakhel, R/o Wanda Meherdal Tehsil Paharpur, District Dera Ismail Khan. Presently serving as Operator Cum Chowkidar Water Supply scheme Wanda Mirdal Tehsil Paharpur District Dera Ismail Khan.
.....***Appellant***

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Public Health Engineering Department Peshawar.
2. Chief Engineer (South) Public Health Engineering Department, Khyber Pakhtunkhwa, Peshawar.
3. Superintendent Engineer Public Health Engineering Department Circle D.I.Khan.
4. Executive Engineer Public Health Engineering Department Dera Ismail Khan.....(***Respondents***)

Present:

Mr. Ahmad Saeed, Appellant.....*Pro-se*
Mr. Asif Masood Ali Shah, Deputy District Attorney.....For respondents

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JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): The facts of the case, as alleged by the appellant in his memorandum of appeal, are that he was appointed as an Operator-Cum-Chowkidar on 07/10/2016. He claims to be eligible for promotion to the post of Work Superintendent (BPS-09). Therefore, he filed departmental appeal on 14/08/2020, which was not responded within the statutory period of 90 days, hence he approached this Tribunal for redressal of his grievance.

2. The respondents were summoned, who contested the appeal by way of filing their respective written reply/comments.

3. Today, the appellant submitted written arguments, stating that he, being senior and eligible for the post of Work Superintendent (BPS-09), claims entitlement to promotion based on his qualifications and service. He next stated that the respondents' inaction in promoting him is alleged to be contrary to the service rules and principles of service law. He further stated that his colleague, namely Ghulam Khan, was promoted to the post of Work Superintendent (BPS-09) based on experience, while he was not, indicating that he has been discriminated. Lastly, he stated that the appeal in hand may be accepted as prayed for.

4. On the other hand, the learned Deputy District Attorney for the respondents contended that, according to the Public Health Department Notification No. SO(Estt)/PHED/1-9/2015-16 dated 01-03-2016, the post of Work Superintendent is filled by promoting Mechanics and Electricians, hence, the appellant, being an Operator-Cum-Chowkidar, is not entitled to the Work Superintendent post. He next contended that the appellant, currently in BPS-03, is not eligible for promotion to a BPS-09 post. He further argued that the method of recruitment mandates that the post of Work Superintendent must be filled from the senior-most electricians and mechanics, rather than from the appellant's current position or grade. Lastly, he argued that the appeal in hand may be dismissed with costs, as it is meritless.

5. Arguments hard and case file perused.

6. The perusal of the record reveals that the appellant, appointed as an Operator-Cum-Chowkidar on October 7, 2016, seeks promotion to the

post of Work Superintendent (BPS-09), claiming eligibility based on qualifications and alleged discrimination. In contrast, the respondents argue that the rules specify that promotions to the Work Superintendent post must be made from the posts of Mechanics and Electricians, with a minimum of five years of service. The Notification dated March 1, 2016, outlines the criteria and pathway for promotion to the post of Work Superintendent. According to this Notification, candidates eligible for promotion must meet the following criteria:-

> *"By promotion on the basis of seniority-cum-fitness, from amongst the Mechanics and Electricians, with five years service as such and have Secondary School Certificate;*
>
> *Provided that for the purpose of promotion, a joint seniority list of the Mechanics and Electricians, shall be maintained."*

7. Upon careful examination, it is evident that the post of Operator-Cum-Chowkidar does not fall within the promotion pathway for Work Superintendent as defined by the aforementioned Notification. Therefore, the appellant does not satisfy the prerequisites for promotion under the established rules. Additionally, the appellant has not provided any seniority list or documentary evidence demonstrating his standing in terms of seniority or fitness for the post of Work Superintendent. Without such documentation, the appellant's claim lacks substantiation, further undermining his eligibility for promotion. As regard the contention of the appellant that his colleague, Ghulam Khan, was promoted on the basis of experience, while he was not. Upon perusal of record, it becomes evident that Ghulam Khan's circumstances are markedly different. Ghulam Khan was serving as a Tube Well Operator since September 29, 1986 and his promotion to Work Superintendent was endorsed by the District Selection/Promotion Committee. At the

time of Ghulam Khan's promotion, he had 29 years of service, a significant contrast to the appellant's approximately 4 years of service. Furthermore, the allegation of discrimination raised by the appellant fails, as another employee, Gulzari Khan, previously challenged Ghulam Khan's promotion in the court of the Commissioner of Kohat Division and the court validated Ghulam Khan's promotion. Thus, any claims of discrimination by the appellant are unfounded, given the validated legitimacy of Ghulam Khan's promotion and the differing circumstances. Based on the detailed examination of the service rules, the appellant is not eligible for promotion to the post of Work Superintendent under the prevailing rules. The appellant has not sufficiently demonstrated seniority or fitness for the post of Work Superintendent, nor has there been any discrimination at play, as established by rules and significant differences in service duration and role designation compared to Ghulam Khan. Therefore, the appellant's request for promotion is denied

8. Consequently, the appeal in hand stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

9. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 30th day of September, 2024.*

AURANGZEB KHATTAK
Member (Judicial)

30-09-2024

FAREEHA PAUL
Member (Executive)

Naeem Amin

25th Sept, 2024

Appellant in person present. Mr. Muhammad Jan, District Attorney for the respondents present.

Appellant seeks adjournment on the ground that his counsel has not turned up from D.I.Khan. Adjourned. To come up for arguments on 30/09/2024 before the D.B. Parcha Peshi given to the parties.

(Rashida Bano)
Member (Judicial)

(Aurangzeb Khattak)
Member (Judicial)

Naeem Amin

ORDER

30th Sept, 2024

1. Appellant in person present. Mr. Kamran Shahid, Assistant Social Organizer alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

2. Vide our judgment of today placed on file, the appeal in hand stands 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 30th day of September, 2024.*

(Fareeha Paul)
Member (Executive)

(Aurangzeb Khattak)
Member (Judicial)
30-09-2024.

Naeem Amin

13th Sept, 2024

None present on behalf of the appellant. Mr. Irfan, Superintendent alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

File be put up for appearance of the appellant/counsel on 19/09/2024 before the D.B. Parcha Peshi given to the parties.

(Muhammad Akbar Khan)
Member (Executive)

(Aurangzeb Khattak)
Member (Judicial)

Naeem Amin

19th Sept, 2024

Appellant informed Telephonically for 25-9-24.

None present on behalf of the appellant. Mr. Irfan Anjum, Superintendent alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

File be put up for appearance of appellant/counsel on 25/09/2024 before the D.B.

(Fareeha Paul)
Member (Executive)

(Aurangzeb Khattak)
Member (Judicial)

Naeem Amin

13.08.2024 This case was fixed for 19.08.2024 for arguments, as the appeal pertains to the year 2020 and it is old one, therefore, the appeal file was requisitioned, and office is directed to accelerate and fix it for arguments on 11-9-24 at Peshawar before the D.B. Parties be informed accordingly.

Counsel for the appellant was informed Telephonically on 13-8-24 2:20 on 03459785920

SCANNED KPST Peshawar

(Rashida Bano)
Member (J)

11.09.2024 01. None present on behalf of the appellant. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

02. File be put for appearance of the appellant/his learned counsel on 13.09.2024 before the D.B. Peshi given to the learned DDA.

(Fareeha Paul)
Member (E)

(Aurangzeb Khattak)
Member (J)

Fazle Subhan, P.S

Due to cancellation of tour case is adjourned to 20-5-2024.

20.05.2024

01. Counsel for the appellant present. .Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. No representative of the respondents is available.

02. Learned AAG requested for time to contact the respondents for production of record as directed on 19.01.2024. Learned counsel for the appellant also requested for time to submit rejoinder. Granted. He may submit rejoinder within a fortnight and absolute last chance is given for arguments. To come up for record and arguments on 19.08.2024 before the D.B at camp court, D.I.Khan. PP given to the parties.

(Fareeha Paul)
Member(E)
Camp Court, D.I.Khan

(Rashida Bano)
Member(J)
Camp Court D.I.Khan.

Fazle Subhan, P.S