

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

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

Service Appeal No. 13417/2020

Date of presentation of Appeal.....02.11.2020
Date of Hearing.....16.09.2024
Date of Decision.....16.09.2024

**Yasir Khan Tehsil Revenue Accountant (TRA) Tehsil Havelian,
District Abbottabad.Appellant**

Versus

1. Senior Member Board of Revenue KPK, Peshawar.
 2. Commissioner Hazara Division, Abbottabad.
 3. Deputy Commissioner, District Abbottabad.
-(**Respondents**)

Present:

Mr. Muhammad Arshad Khan Tanoli, Advocate.....For appellant
Mr. Asif Masood Ali Shah, Deputy District AttorneyFor respondents

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): The instant appeal has been filed by the appellant under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the following prayers-

"On acceptance of the instant Service Appeal, impugned order dated 10.09.2020 of respondent No. 1 may graciously be ordered to be set-aside and respondents may be directed to consider the petitioner as Tehsil Revenue Accountant (TRA) Tehsil Havelian District Abbottabad and thereafter promote the appellant as District Revenue Accountant any other relief which this Hon'ble Tribunal deem appropriate in the circumstances of the case may also be granted to the appellant."

2. The appellant, Yasir Khan, was initially appointed as a Patwari (BPS-09) vide order dated December 4, 2010 and was adjusted on the

same day as a Tehsil Revenue Accountant (TRA) on own pay scale basis in Tehsil Havelian, District Abbottabad. As per appellant, throughout his tenure, the seniority list of Tehsil Revenue Accountants TRAs was issued periodically. However, issues arose when the respondents, allegedly altered the seniority list and showed the position of Muhammad Haneef, another TRA, as senior to the appellant in the seniority list dated November 16, 2015. In response to this, the appellant filed Service Appeal No. 343/2019 before this Tribunal, seeking rectification of the seniority list, which was disposed of on June 21, 2019 with the directions to the respondents to issue final seniority list of the TRAs in accordance with law/rules within a period of sixty days. However, the respondents allegedly failed to comply with this order, prompting the appellant to lodge Execution Petition No. 389/2019, which remains pending before the Tribunal. During the pendency of the Execution Petition, the respondents enquired about the issue and as per report of AAC Abbottabad dated 29.04.2019 and AC dated 16.07.2020 the appellant was allegedly declared entitled for the relief. In the meanwhile, the respondents transferred the appellant from the post of Tehsil Revenue Accountant TRA to the post of Patwari vide order dated November 6, 2019. Following the transfer order dated November 6, 2019, the appellant submitted an application/appeal on July 6, 2020 with the respondent No.1, however, on September 10, 2020, the respondent No. 1 issued the impugned order vide which his application/appeal for adjustment as Tehsil Revenue Accountant was dismissed. The appellant has now filed the instant service appeal for redressal of his grievance.

AMS
16/09/2024

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

4. The learned counsel for the appellant contended that the appellant has been functioning as a TRA since his appointment. He next contended that the documentation, in the form of pay slips and service records, supposedly reflects his continuous service in this capacity, therefore, the respondents have unreasonably shifted his seniority and rights from TRA to Patwari. He further contended that the respondents have acted with malafide intention to disrupt the rightful seniority of the appellant, primarily by placing Muhammad Hanif above him in the seniority list, which is indicative of bias and unfair treatment. He also contended that the inquiry reports from the Additional Assistant Commissioner-I, which confirm the status of the appellant as a senior TRA and acknowledge that the appellant has not received the benefits associated with the post of Patwari. He next argued that despite being designated as a Patwari, the appellant has effectively performed the duties and responsibilities of a TRA. He further argued that the appellant has not received the allowances and benefits corresponding to the post of Patwari during his service, citing this as an example of the incorrect application of his official classification. He also argued that the appellant is eligible for promotion to the vacant position of District Revenue Accountant (DRA) as per the relevant laws, which state that only TRA personnel can be promoted to DRA. He further added that Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat addressed a similar issue in Writ Petition No. 1007-M/2018, where it granted relief to an employee of the Police Department, therefore, the appellant is also entitled for the said treatment. In the last, he argued that

16/09/2024

he is entitled to recognition in the seniority list of TRA based on his length of service and role specifics, irrespective of his nominal designation as Patwari.

5. Conversely, learned Deputy District Attorney for the respondents contended that the appellant was appointed as a Patwari in BPS-09 and was only temporarily assigned the duty of Tehsil Revenue Accountant (TRA) while retaining his original pay scale, therefore, his classification did not formally change to Tehsil Revenue Accountant (TRA). He next contended that no official seniority list exists for TRAs in the district, maintaining that the appellant should not claim seniority since he was always a Patwari without a proper promotion to Tehsil Revenue Accountant (TRA). He further contended that the adjustment of the appellant as Tehsil Revenue Accountant (TRA) was a temporary management arrangement, which did not alter his designation or create rights to claim seniority as Tehsil Revenue Accountant (TRA). He next argued that as per rules Patwaris cannot be included in the seniority list of TRAs, therefore, the appellant is not entitled for any seniority in Tehsil Revenue Accountant (TRA) cadre. He further argued that prior to the Tribunal's direction to issue a seniority list, respondents were not precluded from carrying out their administrative duties in compliance with existing rules. Lastly, he argued that the appeal at hand is liable to be dismissed as it is meritless.

6. We have heard the arguments of learned counsel for the parties and have perused the record.

7. The record shows that the appellant was initially appointed as a Patwari (BPS-09) vide order dated December 4, 2010 and was adjusted on


16/09/2024.

the same day as a Tehsil Revenue Accountant (TRA) on own pay scale basis in Tehsil Havelian, District Abbottabad. So it is evident from the record that the appellant was appointed as Patwari and not a Tehsil Revenue Accountant (TRA), however, he was temporarily assigned the duties of Tehsil Revenue Accountant (TRA). He might have performed the duties of Tehsil Revenue Accountant (TRA) temporarily but his cadre was not changed. He was working there on his own pay scale (OPS). The same is case of the Muhammad Hanif Patwari, who has not been impleaded as respondent. Both have done duties of Tehsil Revenue Accountant (TRA). Under the governing rules for promotion, the position of District Revenue Accountant is to be filled exclusively through seniority-cum-fitness among regular Tehsil Accountants (BS-07) with a minimum of three years of service. The records show that the appellant is a Patwari (BPS-09), casting doubt on his eligibility for promotion to the District Revenue Accountant post under the existing rules and regulations. The appellant's primary concern is the alleged manipulation of the seniority list, positioning Muhammad Haneef as senior. This Tribunal's order dated June 21, 2019, direct the respondents for issuing a final seniority list of TRAs in accordance with law/rules within sixty days. But as stated earlier the appellant and Muhammad Hanif both are Patwaris in BPS-09 and have worked as TRA temporarily in their own pay scales. So both of them have been included in the seniority list of Patwaris at serial No. 48 and 04 respectively. According to the seniority list annexed with the comments/reply of the respondents, Patwari Muhammad Hanif was appointed in the year 2001 while the appellant was appointed in the year 2010. The post of Patwari is in BPS-09 while that of the TRA is in


16/09/2024

BPS-07. So the respondent No. 1, while deciding the appeal of the appellant has rightly held that the request of the appellant for the post of TRA (BPS-07) is not covered by the rules. The appellant's request for consideration of promotion to District Revenue Accountant is fundamentally flawed when viewed against the existing rules. Specifically, the rules dictate that promotions should derive from officials holding the requisite status of Tehsil Accountant (BS-07) and only those serving in that capacity are eligible for such advancement. The significant point herein is that the appellant has occupied the post of Patwari (BPS-09) while serving in a temporary role that is categorized as Tehsil Accountant (BS-07). It is essential to note that promotional channels in public service are constructed based on rules and regulations. Therefore, the appellant's position does not substantiate a credible claim for promotion under the established framework. It cannot be overlooked that any adjustment pertaining to the appellant directly conflicts with the regulatory stipulations governing promotions. The regulations are explicit in their criteria and must be strictly adhered to, ensuring that any elevation within public service is both meritorious and compliant with the established hierarchy. However, the claim of the appellant for promotion to the post of District Revenue Accountant cannot be granted as it stands contrary to the stipulated rules concerning eligibility for promotion and the professional hierarchy.

8. One of the contentions of the learned counsel for the appellant is that the Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat, addressed a similar matter in Writ Petition No. 1007-M/2018. Therefore, the appellant is also entitled to the same treatment. The concluding para of the

16/09/2024

Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat is reproduced as below:-

"7. Perusal of record reveals that the admitted position is that similarly placed employees have already been extended the benefit of absorption in IT cadre of the Police Department as Computer Operators in BPS-16. So much so that persons who were junior to the petitioners have also been absorbed as Computer Operator BPS-16 in the IT cadre of the Police Department. The petitioners have therefore made out a clear case of discrimination which is not allowed by the doctrine of equal treatment enshrined in Article 25 of the Constitution of Islamic Republic of Pakistan, 1973. Reliance in this respect is placed on the case of I.A. Sharwani and others vs Government of Pakistan through Secretary, Finance Division, Islamabad and others reported as 1991 SCMR 1041.

8. The only reason mentioned in the comments. was that sanctioned posts were not available in the Police Department, therefore the petitioners could not be absorbed as Computer Operators BPS-16 at the time of absorption of other similarly placed police officials. It is now clarified that four vacancies are available with respondent No. 6. Petitioners are four in number and no reason could be advanced as to why they should not be absorbed on the said posts as Computer Operators in BPS-16.

9. Resultantly, the petition in hand is allowed to the effect that respondents are directed to absorb the petitioners on the posts of Computer Operators in BPS-16 in the concerned cadre of the respondents department."


9. The circumstances surrounding in Writ Petition No. 1007-M/2018 highlight issues related to employee absorption and advancement within a department. Initially, the petitioners were appointed as Police Constables but were later assigned the role of Key Punch Operators (KPO). They filed the writ petition because certain officials, who were also performing as KPOs, were absorbed into upgraded Computer Operator positions in BPS-16. This absorption was due to the establishment of an IT cadre, which brought about new sanctioned posts. The petitioners felt aggrieved



16/09/2024

as they were not absorbed into these upgraded positions, largely because there were no sanctioned posts available for them within the Police Department. This reflects a systemic issue regarding the availability of positions and formal advancement structures. In this appeal, the appellant was originally appointed as a Patwari (BPS-09) but was adjusted to the role of Tehsil Revenue Accountant (TRA) in BPS-07 on Own Pay Scale (OPS). The appellant is seeking recognition in the seniority list of TRAs based on his service length and responsibilities, which are distinct from his official Patwari designation. Thus, the facts and circumstances of the appeal are different from those in Writ Petition No. 1007-M/2018.

10. As a sequel to the above, the appeal in hand stand dismissed being meritless. Parties are left to bear their own costs. File be consigned to the record room.

11. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 16th day of September, 2024.*


AURANGZEB KHATTAK
Member (Judicial) 16/09/2024.


FAREHA PAUL
Member (Executive)

13th Sept, 2024

Appellant in person present. Mr. Muhammad Rasheed, Superintendent alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Appellant seeks adjournment on the ground that his counsel is not available today. Adjourned. To come up for arguments on 16/09/2024 before the D.B. Parcha Peshi given to the parties.



(Muhammad Akbar Khan)
Member (Executive)



(Aurangzeb Khattak)
Member (Judicial)

Naeem Amin

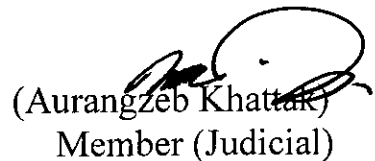
ORDER

16th Sept, 2024

1. Appellant alongwith his counsel present. Mr. Ghulam Shabir, Assistant Secretary (Litigation) 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 stand dismissed being meritless. 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 16th day of September, 2024.*



(Fareeha Paul)
Member (Executive)



(Aurangzeb Khattak)
Member (Judicial)

Naeem Amin