

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. 11138/2020

**BEFORE: MR. AURANGZEB KHATTAK ... MEMBER (J)**  
**MRS. RASHIDA BANO ... MEMBER (J)**

**Mr. Wakeel Khan, IHC No.309, Police Line, Mardan, R/o Baghicha  
Dhery, District Mardan.**

..... (*Appellants*)

**VERSUS**

1. The Inspector General of Police, Khyber Pakhtunkhwa, Central Police Office, Peshawar.
2. The Additional Inspector General of Police, Khyber Pakhtunkhwa (Establishment), Central Police Office, Peshawar.
3. The Regional Police Officer, Mardan Rangion-1, District Mardan.

.... (*Respondents*)

Muhammad Maaz Madani  
Advocate`

... For appellant

Mr. Naseer ud Din Shah,  
Assistant Advocate General

... For respondents

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Date of Institution.....21.09.2020  
Date of Hearing.....26.09.2024  
Date of Decision.....26.09.2024

**JUDGMENT**

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

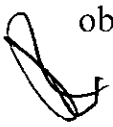
“On acceptance of this appeal, the impugned order dated 02.01.2020 whereby the appellant has not been confirmed in the rank of ASI (Officiation) and reverted to his substantive rank of IHC and against the appellate order dated 29.07.2020 whereby the



**departmental appeal 24.03.2020 of the appellant has been rejected on no good grounds.”**

2. Brief facts of the case are that the appellant is the employee of the respondent department, was promoted to the rank of Assistant Sub-Inspector (ASI) on an adhoc basis following a departmental promotion committee (DPC) meeting held on 09.12.2016, as per a circular issued on 07.12.2016. Subsequently, the appellant was assigned to the Directorate of Anti-Corruption Establishment, Khyber Pakhtunkhwa, on a deputation basis. On 14.05.2019, the respondent department requested a No Departmental Enquiry Certificate for the adhoc promoted ASIs, with a reminder sent on 29.05.2019. After receiving the necessary information, the DPC was constituted to promote the adhoc ASIs to officiating ASIs, and the appellant was approved for promotion on 24.09.2019, contingent upon his repatriation from the Anti-Corruption Establishment. The appellant was repatriated on 25.10.2019, with the condition that his promotion would depend on the provision of Annual Confidential Reports (ACRs) for 2016 and completion of the Elite Tactical Course. Although the appellant had completed the requisite course in 2013, he received an impugned order on 02.11.2020, reverting him and a colleague, Mr. Maqsood Ali, to their previous rank without adequate justification. The appellant's departmental appeal against this order was declined on 26.02.2020, while Mr. Maqsood Ali's appeal was accepted, hence the present 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.



We have heard learned counsel for the appellant and learned Assistant Advocate General for the respondent.

4. We have heard learned counsel for the appellant and learned Assistant Advocate General 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 Assistant Advocate General controverted the same by supporting the impugned order(s).

6. The perusal of records reveals that the appellant is the employee of the respondent department, was promoted to the rank of Assistant Sub-Inspector (ASI) on an Ad-hoc Basis following a Departmental Promotion Committee (DPC) meeting held on 09.12.2016, as per a circular issued on 07.12.2016. Subsequently, the appellant was assigned to the Directorate of Anti-Corruption Establishment, Khyber Pakhtunkhwa, on a deputation basis. On 14.05.2019, the respondent department requested a No Departmental Enquiry Certificate for the ad-hoc promoted ASIs, with a reminder sent on 29.05.2019. After receiving the necessary information, the DPC was constituted to promote the ad-hoc ASIs to officiating ASIs, and the appellant was approved for promotion on 24.09.2019, contingent upon his repatriation from the Anti-Corruption Establishment. The appellant was repatriated on 25.10.2019, with the condition that his promotion would depend on the provision of Annual Confidential Reports (ACRs) for 2016 and completion of the Elite Tactical Course. Although the appellant had completed the requisite course in 2013, he received an impugned order on 02.11.2020, reverting him and a colleague, Mr. Maqsood Ali, to their previous rank without adequate justification.



7. Appellant through instant service appeal request to set aside order dated 02.01.2020 vide which he was not confirmed to the rank of ASI (officiating) and reverted to his substantive rank of IHC and appellate order dated 24.03.2020, whereby his departmental appeal was regretted by the appellate authority. Record reveals that appellant was recommended for officiating promotion to the post of ASI subject to completion of Elite Tactical Course as well as ACR for the year 2016 and 2017 by 10.10.2019 with the condition that if appellant failed to submit ACR within stipulated period his name will be de-notified, by DPC in meeting held on 17.09.2019.

8. Appellant was on deputation in Anti-Corruption Establishment, who was repatriated vide order dated 25.10.2019 for actualizing his promotion. Appellant was recommended for Elite Tactical Course but said course was already completed by the appellant, therefore, he produced certificate of the same. Appellant was de-notified from list "D" and he was reverted to his substantive rank of IHC vide order dated 02.01.2020 along with one other Maqsood Ali, who too was on deputation to ATC Establishment. Appellant and Maqsood both filed separate departmental representation, appellant representation was rejected vide impugned order dated 26.02.2020, while that of Maqsood was accepted vide order dated 20.02.2020, which in our view is discrimination.

9. It is not out of place to mention here that appellant was on deputation to Anti-Corruption Establishment and writing of his ACR is the job of his reporting officer and countersigning officer under whom appellant was performing his duties at Anti-Corruption Establishment and not the job of the appellant, at the most he can put his request with requisite information to his Ex high ups which he had done.




10. Appellant submitted his ACR but in mid of December 2019 as per appellate impugned order which means that appellant discharged his burden, otherwise submitting and production of ACR is not the job of the appellant rather respondents were required to ask for his ACR from the Anti-Corruption Establishment officially, which is a proper way and procedure. Appellant cannot be penalized for the acts or omission of others because writing of ACR was out of control of the appellant and was dependent upon some high authority of Anti-Corruption Establishment. Thus it is held that impugned orders are against the settled norms of justice and rules. Therefore, cannot be sustainable in the eyes of law.

11. For what has been discussed above, we are unison to set aside impugned orders by accepting instant service appeal as prayed for. Costs shall follow the event. Consign.

*12. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 26<sup>th</sup> day of September, 2024.*

  
(AURANGZEB KHATTAK)  
Member (J)

  
(RASHIDA BANO)  
Member (J)

\*M.KHAN

**ORDER**

26.09.2024

1. Learned counsel for the appellant present. Mr. Naseer ud Din Shah, learned Assistant Advocate General, alongwith Atta ur Rehman Inspector for the respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to set aside impugned orders by accepting instant service appeal as prayed for. Costs shall follow the event. Consign.

3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 26<sup>rd</sup> day of September, 2024.*

  
(AURANGZEB KHATTAK)

Member (J)

  
(RASHIDA BANO)

Member (J)


\*M.KHAN


ORDER  
23.09.2024

Petitioner alongwith his counsel Mr. Maaz Madni, Advocate. Mr. Atta-ur-Rehman, DSP (Legal) alongwith Mr. Muhammad Jan, District Attorney for the respondents present. Arguments on application for restoration of Service Appeal No. 11138/2020 heard.

Application in hand is submitted on 24.07.2024 for restoration of Service Appeal No. 11138/2020, which was dismissed in default on July 12, 2024. The restoration application is within the stipulated timeframe. Considering the law's emphasis on merit-based adjudication over technicalities, this application is allowed. Consequently, Service Appeal No. 11138/2020 is restored to its original status, conditional upon payment of Rs. 1,000/- as costs. To come up for cost of Rs. 1000/- as well as arguments on 26/09/2024 before the D.B. Parcha Peshi given to the parties.

ANNOUNCED  
23.09.2024

  
(Rashida Bano)  
Member (Judicial)

  
(Aurangzeb Khattak)  
Member (Judicial)

SCANNED  
KFST  
Rashid