

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

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

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**Service Appeal No. 5738/2021**

**Hayat Khan No.(883), Reader DSP/Headquarters,  
Nowshera.....Appellant**

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**Service Appeal No. 5739/2021**

**Badshah Khan Taj Muhammad S/O Sheikh Muhammad, PST  
GPS Karkana, District Mohmand.....Appellant**

**VERSUS**

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Secretary Finance, Government of Khyber Pakhtunkhwa at Civil Secretariat, Peshawar.
3. The Deputy Inspector General of Police, Khyber Pakhtunkhwa, Mardan Region-I, Mardan.
4. District Police Officer (DPO), Nowshera.
5. Regional Police Officer (RPO), Mardan.
6. Talwar Ali Shah NO.696 Police Line Nowshera.
7. Faiz Muhammad FC No.600, Police Line, Nowshera.

**.... (Respondents)**

Asad Ullah Yousafzai  
Advocate ... For appellants

Mr. Muhammad Jan  
District Attorney ... For respondents

Date of Institutions.....23.04.2021  
Date of Hearing.....26.09.2024  
Date of Decision.....26.09.2024



**CONSOLIDATED JUDGMENT**

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

**“On acceptance of these appeals, the impugned order NO.1512-19/EC, dated Nowshera, the 11.02.2021 issued by respondent No.4 and order No.1589/ES dated Mardan Region the 24.03.2021, passed by respondent No.5 may very graciously be set aside, declare as null void and in-effective upon the fundamental rights of the appellants and consequently the appellants be promoted as C-II Head Constables being Senior and fit as compare to respondent No.6 and 7 alongwith all back benefits arises from the day on which the appellants became eligible for promotion. Any other relief which deems just and proper way also be granted to the appellants keeping in view facts and circumstance of the case.”**

2. Brief facts of the case, as given in the memoranda of appeals, are that appellants joined the police department as Constable (BPS-5) on 23.09.1987 and 01.12.1988 respectively. Appellants alleged that respondents vide impugned order dated 11.02.2021 promoted juniors to them while they were ignored. Feeling aggrieved, they filed departmental appeals, which were filed, hence the present service appeals.


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 District Attorney for the respondent.

4. Learned counsel for the appellants argued that appellants have not been treated in accordance with law and rules and respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973. He further argued that the impugned order passed by the respondents by promoting juniors to the appellants is against the law, facts norms of justice, hence liable to be set aside. He submitted that the impugned promotion order of private respondents is squarely falls in out of turn promotion which has been declared by august Supreme Court of Pakistan. Reliance is placed on 2010 PLC (C.S) 924.

5. Learned District Attorney contended that the appellants have been treated according to law and rules. He further contended that promotion order was passed by the competent authority in accordance with law/rules and seniority. He further argued that appellants have not been ignored, rather they will be promoted on their own turn. The appellants names were brought on seniority list of C-II Constables on 31.03.2010..... while names of private respondent No. 6 and 7 were brought on seniority list of C-II Constables on 28.01.2000 and 19.03.2022 respectively, so private respondents stood senior to the appellants.



6. The Perusal of record reveals that appellants joined the Police Department as Constable (BPS-5) on 23.09.1987 and 01.12.1988 respectively. The appellants through instant service appeals seek their promotion to the rank of C-II Head Constable on the basis of seniority cum fitness and challenged promotion order of private respondents No.6 and 7 dated 03.02.2021, by alleging that both the private respondents are junior to them. Main contention of the appellants is that both the respondents were not eligible to be brought on C-II list, which is exclusively meant for over age constables, who during their service were not recommended and passed for A1 & B1 course in time. Learned counsel for the appellants referred to standing order No.14/2014 in accordance with which upper age limit for A1 & B1 exam was determined as 37 years and 40 years respectively. This standing order No.14/2014 was issued on 17.10.2014, which means that after 17.10.2014 upper age limit will be 37 and 40 years for both the A1 & B1 exams respectively.

7. It is contention of appellants that respondent No.6 was less than 30 years as his date of birth is 20.08.1993, while appellant Badsha Khan is 30.03.1970 and Hayat Khan is 23.09.1967, but his name was brought on C-II list and subsequently, he was promoted vide impugned notification.


8. When learned counsel for the appellants was asked by the Tribunal to show rules regarding upper age limit before year 2000, the time when private respondents were brought on C-II list, he was

unable to show it, while learning District Attorney stated that before standing order 14/2014, no such rules were in existence in respect of upper age limit.

9. It is also pertinent to mention here that appellant Badshah Khan was enlisted on list C-II in year 2007 and Hayat Khan in year 2010, while respondent No.6 & 7 names were brought on C-II list in year 1996. So, promotion will be from date of enlistment on C-II list and not from the date of initial appointment like other civil servant. When name of the private respondents were brought on C-II list appellants had not challenged it or even after inclusion of their names in C-II list in year 2007 & 2010 respectively and now deep slumber. They agitate the matter, which debar them as they acquired the same and they are estopped by their own conduct. Appellant Badshah Khan is at serial No.38 and Hayat Khan at serial No.67 of the C-II list, so they will be promoted upon their own turn on the basis of seniority cum fitness.

10. For what has been discussed above, we are unison to dismiss both the appeals being devoid of merits and the same are dismissed accordingly. Costs shall follow the event. Consign.

**11. *Pronounced in open court in 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)

**ORDER**

- 26.09.2024 1. Learned counsel for the appellant present. Mr. Naseer ud Din Shah, learned Assistant Advocate General for official respondents and private respondent No.6 and 7 in person present.
2. Vide our detailed judgment of today placed on file, it is held that the instant service appeal being devoid of merits is liable to be dismissed and the same is dismissed accordingly. 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>th</sup> day of September, 2024.*

  
(AURANGZEB KHATTAK)  
Member (J)

  
(RASHIDA BANO)  
Member (J)

\*M.KHAN