

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 6334/2020

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

**Mr. Fazal Khaliq, Senior Clerk, DPO Office Chitral R/o Kuju, P/O
Chitral, Tehsil & District Chitral.**

.... (Appellants)

VERSUS

1. Inspector General of Police, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Additional Inspector General of Police, Khyber Pakhtunkhwa Civil Secretariat, Peshawar.
3. The District Police Officer (DPO) Chitral.

.... (Respondents)

Syed Ghufran Ullah Shah
Advocate

... For appellant

Mr. Naseer ud Din Shah,
Assistant Advocate General

... For respondents

Date of Institution.....28.02.2020
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/notification be set aside and respondents be directed to make promotions according to the seniority list and the appellant may kindly be given his due right and the respondents may kindly be directed to



issue orders of promotion of the appellant and may also kindly be awarded with all back benefits. Any other remedy which deems fit appropriate may also be granted in favor of the appellant or in alternate the appellant be given pensionary benefits of BPS-18 at the time of his retirement for the purpose of his pension and other attached benefits.

2. Brief facts of the case are that the appellant was appointed as a Junior Clerk in BPS-5 on 5.11.1989, at the District Police Officer's office in Chitral. He faced prosecution under FIR No. 42 dated 02.02.2005, for offenses under Sections 419, 420, 204, and 217 of the Pakistan Penal Code, resulting in a penalty of reduction to time scale Junior Clerk BPS-5 on 08.10.2005. After being acquitted by a competent court, he filed Service Appeal No. 939/2008, which was decided in his favor on 25.02.2009. Although an amended order on 25.07.2009 was issued, his seniority and promotion order from 31.05. 2008, were not restored until the seniority list was issued on 09.04.2014. The appellant later filed Service Appeal No. 1102/2014 and was promoted to Senior Clerk (BPS-15) on 13.07.2015, but this promotion was withdrawn. He subsequently filed Service Appeal No. 750/2016, which was withdrawn on 22.10.2019, due to a defect in prayer of appeal. On 30.10.2019, he submitted a departmental representation, but it was unsuccessful, leading to the current 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. Perusal of the record reveals that the appellant, through the instant appeal, seeks threefold relief from this Tribunal. First, he requests the setting aside of the initial impugned order dated 8.10.2005, whereby he was awarded a major punishment of reduction to the time scale of Junior Clerk BPS-5. This order was challenged by the appellant in Service Appeal No. 939/2008, which was decided on 25.02.2009, as reproduced below;

"The only question which need consideration in this case is that the major penalty granted to the appellant is reduction to time scale Junior Clerk (BPS-5). Rule 4 of the N.W.F.P Government Servant (Efficiency & Discipline) Rules, 1973, provide the major penalty "reduction to a lower post, grade or time scale, or to a lower stage in a time scale. The appellant has not been posted to a lower post. He has been appointed as time scale Junior Clerk. In fact h could be reduced to a lower time scale or to the next lower stage in a time scale. There is nothing on record to show that there was any lower time scale for the



Junior Clerk and there was not only one time scale for him. He could be reduced to a lower stage in the same time scale. The respondents, therefore, have to correct the impugned order to this extent from the date of its issue.

Finding no merit in the present appeal, we dismiss the same but leave the parties to bear their own costs”

7. Secondly, the appellant seeks an interpretation of the aforementioned paragraph of the judgment of this Tribunal issued in the order dated 25.07.2009, wherein the order dated 08.10.2005, was amended/corrected by reducing the appellant to a lower stage of his existing pay from the date of issuance of the order dated 08.10.2005. This amendment, in our view, is correct and in accordance with the judgment.

8. Thirdly, the appellant seeks the ante-dation of his promotion order from 13.07.2015, to 31.05.2008, along with all back benefits. It is an admitted position on record that when the appellant was promoted on 31.05.2008, he had been awarded a punishment of reduction to a lower scale, which had not been set aside at that time. Consequently, upon discovering the appellant's punishment related to his pay scale, his promotion order was withdrawn on 04.06.2008. It is pertinent to mention that the appellant's original punishment was neither set aside nor modified by this Tribunal, and the respondents were directed to correct or modify it, which they subsequently did. Given that the punishment remained intact, the withdrawal of the promotion was justified.


9. The appellant was later promoted in 2015 as Senior Clerk and seeks back benefits from 31.05.2008, along with ante-dation. There was an issue of

fitness on 31.05.2008; legally speaking, the appellant should have been superseded due to the award of punishment. However, he was inadvertently promoted and the order was later on withdrawⁿ and the appellant's turn for promotion came on 13.07.2015, he was promoted accordingly.

10. The question of seniority for Senior Clerk BPS-15 is contingent upon the date of promotion, which in this case is 13.07.2015, and his seniority will be fixed accordingly. The appeal in hand being devoid of merits is liable to be dismissed and the same is dismissed accordingly. Costs shall follow the event. Consign.

11. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 26th 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, for the respondents 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 26th day of September, 2024.*


(AURANGZEB KHATTAK)
Member (J)


(RASHIDA BANO)
Member (J)

*M.KHAN