

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

BEFORE: **AURANGZEB KHATTAK** ... **MEMBER (Judicial)**
 RASHIDA BANO ... **MEMBER (Judicial)**

Service Appeal No. 4052/2020

Date of presentation of Appeal.....04.05.2020
Date of Hearing.....23.09.2024
Date of Decision.....23.09.2024

Israr Ahmad S/o Iqbal Ahmad (Late) Field Assistant (BPS-6),
Agriculture Research Institute, D.I.Khan.....**Appellant**

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Agriculture Khyber Pakhtunkhwa Peshawar.
2. Director General Agriculture (Research), Agriculture University, Khyber Pakhtunkhwa Peshawar.
3. Director, Agriculture Research Institute (ARI) Ratta Kulachi, District Dera Ismail Khan.....(**Respondents**)

Present:

Mr. Zia-ur-Rehman Kazi, Advocate.....For appellant
Mr. Muhammad Jan, District Attorney.....For respondents
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JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): The facts of the case, as alleged by the appellant in her memorandum of appeal, are that the appellant was appointed as Field Assistant (BPS-6) on January 14, 2012, under the deceased employee's son quota following his father's death on June 2, 2009. He had asserted that he lacked the qualifications for the Field Assistant post and therefore made a request to the Authority for his appointment as Junior Clerk instead of as Field Assistant. However, by order dated November 13, 2014, he was adjusted to the post of Junior Clerk but without a permanent

appointment. Despite filing numerous applications for his permanent adjustment or reappointment as Junior Clerk, his requests remained unaddressed. In 2019, the appellant filed Writ Petition No. 433-D/2019 before the Peshawar High Court, D.I. Khan Bench, seeking adjustment or appointment as Junior Clerk. This petition was disposed of vide order dated February 18, 2020, which directed respondent No. 2 to decide the application of the appellant as soon as possible. However, the departmental appeal of the appellant was rejected on March 18, 2020, leading him to file the instant appeal.

2. The respondents were summoned and contested the appeal by filing their respective written replies and comments.

3. The learned counsel for the appellant contended that the appellant was eligible for permanent adjustment as a Junior Clerk based on his qualifications, which did not align with the technical demands of the Field Assistant Post. He next contended that the provisions of Proviso (III), Rule 10(4) of the Khyber Pakhtunkhwa (APT) Rules, 1989, asserted that the respondents' failure to permanently adjust the appellant as Junior Clerk was in violation of statutory requirements. He further contended that due to the continued failure to regularly appoint the appellant as Junior Clerk, he had been deprived of opportunities for career advancement and had faced stagnation in his professional life. He also contended that no estoppel against a statute had been asserted, meaning that even if the appellant initially accepted the Field Assistant post, it should not preclude his rightful claim for adjustment once a suitable post became available. Finally, he argued that the appeal in hand may be accepted as prayed for.


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4. On the other hand, the learned District Attorney for the respondents opposed the contentions of the learned counsel for the appellant and contended that the father of the appellant had served as an Assistant Agronomist (BPS-17) and had passed away during service on June 2, 2009. He next contended that the appellant had been appointed under the deceased employee's son quota, specifically for the post of Field Assistant (BPS-6), which was vacant and higher in grade at the time of appointment of the appellant. He further argued that the appellant accepted the post of Field Assistant, submitted his arrival report and started his duties, demonstrating voluntary acceptance of the role and its responsibilities, thus, the appellant is bound to the conditions associated with the post he accepted. He next argued that there was no written commitment or verbal assurance from the department regarding a future appointment as Junior Clerk. He further argued that the appellant was adjusted to the post of Junior Clerk for work-related reasons and that this temporary measure did not confer upon him any legal right to permanent reappointment. He also argued that the Peshawar High Court, D.I. Khan Bench, did not grant any substantial relief to the appellant regarding his permanent adjustment as Junior Clerk; instead, it remanded the matter back to the department for appropriate examination, which they complied with. He next added that the department had evaluated the case of the appellant in compliance with the Peshawar High Court's directives, concluding that the appellant had been properly appointed as Field Assistant (BPS-06). He further added that the regulations did not allow for permanent adjustments or change of cadre to a higher post without following the

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appropriate procedural requirements and that no provision existed within the existing rules that would permit a permanent change to the Junior Clerk position. In the last, he argued that the appeal in hand being meritless is liable to be dismissed.

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

6. The perusal of the case file reveals that on January 14, 2012, the appellant was appointed as a Field Assistant (BPS-6) at Barani Agriculture Research Station, Kohat, in accordance with the deceased employee's son quota. At the time of his appointment, the post of Field Assistant (BPS-6) was vacant and was higher in grade at that time. The appellant was later on transferred to the Agriculture Research Institute, D.I. Khan, on November 1, 2013. During this time, the appellant expressed concerns regarding the technical nature of the Field Assistant post and requested to be reassigned as a Junior Clerk instead, citing his qualifications. The appellant was adjusted to the post of Junior Clerk as of November 13, 2014. In 2019, the appellant filed Writ Petition No. 433-D/2019 in the Peshawar High Court, D.I. Khan Bench, for his permanent adjustment or appointment as Junior Clerk, which was disposed of with the direction to decide the application of the appellant that had already been submitted as early as possible; however, it culminated in an impugned letter/order dated March 18, 2020. The appellant in this appeal took the specific plea that, according to the provisions of Proviso (III) of Rule 10(4) of the Khyber Pakhtunkhwa (APT) Rules, 1989, the respondents were required to permanently adjust or appoint him to the post of Junior Clerk. The provision of


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Proviso (III) of Rule 10(4) of the Khyber Pakhtunkhwa (APT) Rules, 1989, are reproduced as follows:"

"Appointment by Initial Recruitment :-(1)
(4)Where a civil servant dies or is rendered incapacitated/invalidated permanently during service then notwithstanding the procedure provided for in sub-rule (2), the appointing authority may appoint one of the children of such civil servant, or if the child has not attained the age prescribed for appointment in Government Service, the widow/wife of such civil servant, to a post in any of the Basic Pay Scales 1-10:

Proviso (III), Provided also that the appointment under this sub rule is subject to availability of a vacancy and if more than one vacancies in different pay scales are available at a time, and the child or the widow/wife, as the case may be, possesses the qualifications making him or her eligible for appointment in more than one post, he /she shall ordinarily be appointed to the post carrying higher pay scale."

7. The provisions under discussion, allow appointment of a family member of a deceased or incapacitated civil servant to a government position within Basic Pay Scales (BPS) 1-10. Specifically, it was noted that if a civil servant dies or becomes permanently incapacitated while in service, the appointing authority has the discretion to appoint one of the civil servant's children. It is established that when multiple positions are available across different pay scales, the eligible family member would typically be appointed to the position with the highest pay scale that matched their qualifications. Proviso (III) of Rule 10(4) of the Khyber Pakhtunkhwa (APT) Rules, 1989, outlined specific conditions related to the appointment process within a governmental framework. This provision specifically addressed appointments for designated beneficiaries, such as the child or widow of a qualifying individual and


was contingent upon the availability of vacancies. It was determined that appointments under this rule could only be made if a vacancy is available. Moreover, if the candidate is eligible for more than one post, the norm is to appoint the individual to the post with the higher pay scale. In the instant appeal, at the time of the appointment of the appellant, a higher vacancy of Field Assistant (BPS-06) was available in the department. Therefore, the appellant was rightly appointed as a Field Assistant (BPS-06) under the deceased employee quota. The appellant accepted this appointment by submitting his arrival report for the post. It was also observed that there was no record in the file indicating that the position of Junior Clerk (BPS-07) was vacant in the department at the time when the appellant was appointed as Field Assistant (BPS-06). According to the established rules, since the appellant was appointed to the highest available pay scale (BPS-06) within the department at the time, this appointment was considered correct and in compliance with policy. We found substantial merit in the position taken by the respondents regarding the process followed in the appointment of the appellant. Furthermore, the evidence presented did not substantiate any claim that the appellant had been unfairly deprived of a more favorable position, as the applicable rules had been adhered to during the appointment process. We underscored the importance of procedural integrity in such appointments, emphasizing that the appointment of the appellant was executed in a manner consistent with the established guidelines. In conclusion, the appointment of the appellant as Field Assistant (BPS-06) was rightly made.


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Service Appeal No.4052/2020 titled "Israr Ahmad versus Government of Khyber Pakhtunkhwa through Secretary Agriculture Khyber Pakhtunkhwa Peshawar and others", decided on 23.09.2024 by Division Bench comprising of Mr. Aurangzeb Khattak, Member Judicial and Ms. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

8. Consequently, the appeal in hand is hereby dismissed. The appointment of the appellant as Field Assistant (BPS-06) is upheld as valid and no further relief is warranted. 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 23rd day of September, 2024.*


AURANGZEB KHATTAK
Member (Judicial)

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2024.


RASHIDA BANO
Member (Judicial)

Naeem Amin


ORDER

23rd Sept, 2024

1. Learned counsel for the appellant present. Mr. Abdur Rehman, Senior Research Officer alongwith Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, the appeal in hand is hereby dismissed. The appointment of the appellant as Field Assistant (BPS-06) is upheld as valid and no further relief is warranted. 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 23^d day of September, 2024.*



(Rashida Bano)
Member (Judicial)



(Aurangzeb Khattak) 23/09
Member (Judicial) 2024.