

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 15899/2020

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

**Mr. Zarwali Khan S/o Qambar Khan R/o Ali Zai Kagawala, P.O
Badaber, Peshawar presently serving as Deputy Superintendent of
Police Khyber Pakhtunkhwa.**

..... (Appellants)

VERSUS

1. The Inspector General of Police, Khyber Pakhtunkhwa.
 2. Additional Inspector General of Police, Khyber Pakhtunkhwa,
(Establishment).
 3. Additional Inspector General of Police, Khyber Pakhtunkhwa,
(Investigation).
 4. The Government of Khyber Pakhtunkhwa, through its Chief Secretary.
- (Respondents)**

Mr. Niaz Wali Khan
Advocate' ... For appellant

Mr. Naseer ud Din Shah,
Assistant Advocate General ... For respondents

Date of Institution.....14.12.2020
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 commenced his career as a Constable in 1979 and subsequently advanced to the position of Head Constable in 1986 after successfully completing the lower course. Following his completion of the intermediate course at PTC Hangu, he was promoted to Assistant Sub Inspector and later ascended to the rank of Sub Inspector in 2006. In the same year, he passed the upper course and was elevated to the position of Inspector in 2008. When he was promoted to Deputy Superintendent of Police (DSP) in 2014, he was assigned to the Counter Terrorism Department. Despite being eligible for promotion according to the seniority list, the JCC deferred his promotion due to age considerations. Since his promotion to DSP in 2014, the appellant has diligently performed his duties in various capacities, which he argues entitles him to pensionary benefits equivalent to BPS-18 upon his retirement in January 2021. He contends that his juniors were promoted to Superintendent of Police (SP) in different districts, a right he believes should also extend to him. Feeling aggrieved by the rejection of his departmental appeal, 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 was appointed as a Constable in 1979 and subsequently achieved the rank of Head Constable in 1986, after successfully completing the lower course. After finishing the Intermediate Course at PTC Hangu, he was promoted to Assistant Sub Inspector and later elevated to Sub Inspector in 2006. That same year, he completed the Upper Course and was further promoted to Inspector in 2008. He was further promoted to Deputy Superintendent of Police (DSP) in 2014 and assigned to the Counter Terrorism Department.

7. The records further reveals that the appellant through instant service appeal seeks his promotion to the rank of Superintendent of Police BPS-18 or in alternate pensionary benefits of BPS-18 as appellant retired on January 2021. Appellant was promoted to the post of DSP vide order dated




06.12.2014 and working as such till his retirement up to January 2021. Appellant at the time of his retirement was at serial No.76 of the seniority list of Deputy Superintendent of Police, while promotion to the post of Superintendent of Police under the rules is on the basis of seniority cum fitness. At the time of retirement of the appellant or even now some of his seniors in the seniority list of DSPs are not promoted, then how the appellant can be promoted out of turn against the rules.

8. Appellant alleged that he was not recommended for junior command course, which was mandatory for said courses as his age exceed 58 years and in accordance with rules 19.48(3), but if his turn in seniority comes for promotion then he would be considered for promotion because Rule 19.48(3) says as under;

“Deputy Superintendent Police shall be nominated for Junior Command Course strictly in accordance with their order of seniority of seniority. There shall be no exemption from Junior Command Course on any ground whatsoever except where he has attained the age of 58 years, in which case he shall be eligible for promotion in accordance with rules if otherwise eligible.”

Thus, if appellant was otherwise at eligible seniority position, he will definitely be promoted as above referred rules.

9. When appellant was Deputy Superintendent of Police at the time of his retirement then he is not entitled for pensionary benefits of BPS-18, because he retired in BPS-17 and will be given pensionary benefits of the BPS-17 in

 which he got retire.

10. For what has been discussed above, we are unison to dismiss the instant service appeal being devoid of merits and the same is dismissed accordingly. Cost shall follow the event. Consign.

11. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 26rd 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 Suleman S.I (Legal) for respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to dismiss the instant service appeal being devoid of merits and the same is dismissed accordingly. Cost 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