

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2018/2023

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

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Javid Younis S/O Ikhtian Gul R/o Karak, presently residing at House  
No. 640, Street No. 31, Phase-I, Hayatabad,  
Peshawar.....Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Home, Civil Secretariat, Peshawar.
2. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
3. AIG Establishment, Khyber Pakhtunkhwa, Central Police Officer, Peshawar.
4. Chief Capital City Police, Malik Saad Police Lines, Peshawar.

.... (Respondents)

Malik Usman Rahim Khattak  
Advocate ... For appellant

Naseer Uddin Shah  
Assistant Advocate General ... For respondents

Date of Institutions.....03.10.2023  
Date of Hearing.....24.09.2024  
Date of Decision.....24.09.2024

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 the instant service appeal, the respondents may kindly be;



- i. Directed to consider the appellant for promotion from Inspector to DSP (BPS-17) on regular charge basis and to grant two advance increments due/admissible to the appellant from the date of promotion on 26.06.2003.
- ii. The appellant may kindly be considered as promoted to the rank of SP (BPS-18) from the due date with all back benefits.
- iii. Any other remedy which deems fit by this Tribunal may also be granted in favour of the appellant.”

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was appointed as Assistant Sub-Inspector on 22.03.1974. He was promoted to the rank of Sub-Inspector in the year 1981 then promoted as Inspector in the year 1989. He was then promoted to the rank of Deputy Superintendent of Police on 26.03.2003 on acting charge basis. The petitioner was appointed as SP Security (BPS-18) in own pay & scale vide order dated 10.06.2009. Lastly, he attained the age of superannuation on 03.06.2010 and was retired from service vide order dated 17.02.2010. He filed departmental appeal and in the meanwhile, he filed writ petition before Worthy Peshawar High Court, Peshawar which was transmitted as service appeal vide order dated 26.09.2023. Hence the instant 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.



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 appellant through instant appeal seeks his regular promotion to the post of Deputy Superintendent of Police BPS-17 with two increments w.e.f 26.06.2003, when he was given acting charge promotion as DSP with further request to consider him for promotion to the rank of Superintendent of Police (BPS-18) from due date with all back benefits. It is admitted fact that appellant was retired from service on 03.06.2010 upon attaining age of superannuation. Appellant was given acting charge promotion to DSP BPS-17 vide order dated 26.06.2003 alongwith 11 others. According to the said order dated 26.06.2003 the above promotion will not confer on them any right of regular appointment or seniority as DSP of Police, and their services are placed at the disposal of Inspector General of Police, NWFP, for further posting.

7. It is also noteworthy that the promotion in the Police Department will always be not on the basis of seniority, rather it is department upon completion of some mandatory training/courses. Acting charge promotion will always be given due to some deficiency at the part of civil servant, whether it may be drift in length of service or lack of some mandatory trainings/courses. It will always be on the basis of seniority

cum fitness. Appellant was required to establish that he had completed all the required trainings and had required length of service at his credit and despite being senior he was ignored but even then, appellant had not annexed any seniority list with the appeal from which factum of seniority could be determined. There was some deficiency on the part of the appellant, that is why, he was not regularly promoted to the post of DSP (BPS-17) till his retirement. If he was eligible then he must approach the legal forum for redressal of his grievance during his service within stipulated period given under the law.

8. At present, appeal of the appellant also faces the issue of limitation as he was retired from service on 03.06.2010 and filed writ petition on 07.06.2023 in Hon'ble Peshawar High Court, Peshawar which was sent to this Tribunal as service appeal with direction to decide it in accordance with law. Appellant was required to file departmental appeal within 30 days from the date of his retirement in accordance with Section 4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974, which is reproduced below:

*“Any civil servant aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him, prefer an appeal of the appeal having jurisdiction in the matter.”*

9. Appellant filed departmental appeal on 19.11.2022 after his retirement which is after deep slumber of long delay of 12 years. Then he was required to file service appeal within next 30 days after waiting



for statutory period of 90 days under Section 4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974 but he filed it on 07.06.2023 which is barred by time.

10. For what has been discussed above, we are unison to dismiss the appeal being not maintainable 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 24<sup>th</sup> day of September, 2024.*


  
**AURANGZEB KHATTAK**  
Member (Judicial)

  
**RASHIDA BANO**  
Member (Judicial)

**ORDER**

24.09.2024

1. Learned counsel for the appellant present. Mr. Naseer Uddin Shah, Assistant Advocate General alongwith Suleman Khan, S.I for the respondents present.
2. Vide our detailed judgment of today placed on file, we are unison to dismiss the appeal being not maintainable 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 24<sup>th</sup> day of September, 2024.*

  
**AURANGZEB KHATTAK**  
Member (Judicial)

  
**RASHIDA BANO**  
Member (Judicial)