

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

BEFORE: **KALIM ARSHAD KHAN** ... CHAIRMAN  
**MUHAMMAD AKBAR KHAN** ... MEMBER (Executive)

*Service Appeal No.178/2022*

Date of presentation of Appeal.....09.02.2022  
Date of Hearing.....24.10.2024  
Date of Decision.....24.10.2024

**Noor Saeed**, Superintendent (BPS-17) office of the Deputy Commissioner, Kurram.....(*Appellant*)

Versus

1. **The Government of Khyber Pakhtunkhwa**, through Chief Secretary, Civil Secretariat, Peshawar.
2. **Senior Member Board of Revenue** Khyber Pakhtunkhwa, Peshawar.
3. **Deputy Commissioner**, Hangu.
4. **Ihsan Ullah**, Tehsildar, Deputy Commissioner Office, Tank  
.....(*Respondents*)

Present:

Mr. Fazal Shah Mohmand, Advocate.....For the appellant  
Mr. Naseer Ud Din Shah, Assistant Advocate General.....For respondents

**SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 FOR REVIEWING THE RECOMMENDATIONS OF DEPARTMENTAL PROMOTION COMMITTEE AND AGAINST THE NOTIFICATION DATED 12.10.2021 WHEREBY THE APPELLANT HAS NOT BEEN PROMOTED AS TEHSILDAR AND FOR WHICH DEPARTMENTAL APPEAL OF THE APPELLANT DATED 18.10.2021 HAS NOT BEEN RESPONDED SO FAR DESPITE LAPSE OF MORE THAN THE STATUTORY PERIOD OF NINETY DAYS.**

**JUDGMENT**

**KALIM ARSHAD KHAN, CHAIRMAN**: Appellant's case as reflected from the record, in brief is that he was appointed as Assistant on 28.02.2004;

that he was placed at Serial No.12 of the joint seniority list dated 31.12.2020 of Assistants and Senior Scale Stenographers, prepared for the purpose of promotion as Tehsildar; that upon retirement of some officials, he was at Serial No.4 at the time of holding of Departmental Promotion Committee meeting; that his ACRs were requisitioned and his name was placed before the DPC; that he submitted his ACRs alongwith his willingness certificate for promotion to the post of Tehsildar and not the Superintendent; that meeting of DPC was held on 09.09.2011, wherein, the appellant was promoted to the post of Superintendent (BPS-17); that he informed, through application, respondent No.2 that he had been promoted against his willingness for the post of Superintendent (BPS-17), which application alongwith the application of his colleague, to the Commissioner Kohat for comments, vide letter dated 15.09.2021; that appellant alongwith Mr. Azmat Ullah were interviewed by respondent No.2 regarding their willingness and the appellant again submitted his willingness certificate for the post of Tehsildar; that after issuance of the impugned Notification dated 12.10.2021, the appellant was promoted to the post of Superintendent and not as Tehsildar; that feeling aggrieved, he filed departmental appeal on 18.10.2021, but the same was not responded, hence, the instant service appeal.

2. 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.

3. We have heard learned counsel for the appellant and learned Assistant Advocate General for respondents.
4. 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).
5. Record shows that appellant was appointed as an Assistant on February 28, 2004, and was subsequently ranked at Serial No.12 in the seniority list of Assistants and Senior Scale Stenographers dated December 31, 2020, which was crucial for promotion to the position of Tehsildar. Upon retirement of certain officials, he moved up to the 4th position prior to the Departmental Promotion Committee (DPC) meeting. His Annual Confidential Reports (ACRs) were requisitioned, and he expressed his willingness for promotion to Tehsildar, not Superintendent. Despite this, during the DPC meeting held on September 9, 2011, he was promoted to Superintendent (BPS-17) against his explicit preference. Following this promotion, he submitted an application to respondent No. 2, reiterating his unwillingness for promotion to the post of Superintendent and seeking clarification. He also had an interview with respondent No. 2, during which he again confirmed his desire for the Tehsildar position. However, despite these efforts, the notification issued on October 12, 2021, confirmed his promotion as Superintendent rather than Tehsildar. Feeling aggrieved by this outcome, the appellant filed a departmental appeal on October 18, 2021, but received no response, leading to the filing of the current service appeal.



6. Claim of the appellant is that he had given willingness on 03.09.2021 for promotion to the post of Tehsildar as his first and second priority, while Mr. Azmat Ullah, junior to the appellant had also given first priority for promotion as Tehsildar and second as Superintendent, but the department had promoted Mr. Azmat Ullah, as Tehsildar, while the appellant (Noor Saeed) as Superintendent vide impugned order dated 12.10.2021. The department had filed reply and in the reply, (as Annexed), very categorically stated in para-04 on facts that the appellant had given his willingness for promotion as Superintendent on 23.08.2021. The said letter of 23.08.2021 of willingness was not disclosed in the appeal by the appellant.

7. The appellant has thus no case only on this score alone. Besides, there is nothing provided in the rules as to why willingness brought in place and in case the promotion order is made against the willingness, that would create any right for a civil servant to challenge in service appeal, as none of the terms & conditions of service seems to have been violated. Last but no the least, no choice for posting or promotion could be made as of right.

8. In view of above, we do not see any merits in this case, which is dismissed with costs. Consign.

9. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 24<sup>th</sup> day of October, 2024.*



**KALIM ARSHAD KHAN**  
Chairman

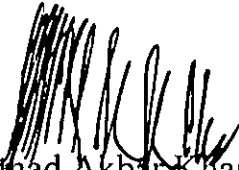



**MUHAMMAD AKBAR KHAN**  
Member (Executive)

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**

Service Appeal No.178/2022

Noor Saeed versus Government of Khyber Pakhtunkhwa

S.No. of Order & Date of proceeding	Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary
<p>Order-15 24<sup>th</sup> October, 2024.</p>	<p>Present:</p> <ol style="list-style-type: none"><li>1. Mr. Fazal Shah Mohmand, Advocate on behalf of appellant.</li><li>2. Mr. Naseer Ud Din Shah, Assistant Advocate General for the respondents.</li></ol> <p><b><u>Kalim Arshad Khan, Chairman:</u></b> Vide our detailed judgment of today, placed on file, we do not see any merits in this case, which is dismissed with costs. Consign.</p> <p>2. <i>Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 24<sup>th</sup> day of October, 2024</i></p> <div style="display: flex; justify-content: space-around; align-items: center;"><div style="text-align: center;"><p>(Muhammad Akbar Khan) Member (E)</p></div><div style="text-align: center;"><p>(Kalim Arshad Khan) Chairman</p></div></div> <p><small>*Mutozem Shah*</small></p>

**MEMO OF COSTS**  
**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

**Service Appeal No.178/2022**

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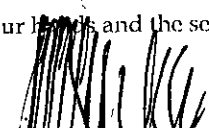
**PRESENT**


1. Mr. Fazal Shah Mohmand, Advocate, for the Appellant
2. Mr. Naseer Ud Din Shah, Assistant Advocate General for respondents

Appellants	Amount	Respondent	Amount
1. Stamp for memorandum of appeal	Rs. Nil	1. Stamp for memorandum of appeal	Rs. Nil
2. Stamp for power	Rs. Nil	2. Stamp for power	Rs. Nil
3. Pleader's fee	Rs. Nil	4. Pleader's fee	Rs. Nil
4. Security Fee	Rs. 100/-	4. Security Fee	Rs. Nil
5. Process Fee	Rs. Nil	5. Process Fee	Rs. Nil
6. Costs	Rs. Nil	6. Costs	Rs. Nil
<b>Total</b>	<b>Rs. 100/-</b>	<b>Total</b>	<b>Rs. Nil</b>

Note: Counsel Fee is not allowed as the required certificate has not been furnished.

Given under our hands and the seal of this Court, this 24<sup>th</sup> day of October 2024.

  
Muhammad Akbar Khan  
Member (Executive)

  
Kalim Arshad Khan  
Chairman