

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

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

Service Appeal No. 7607/2021

Date of presentation of Appeal.....06.10.2021
Date of Hearing.....24.09.2024
Date of Decision.....24.09.2024

Azmat Ali Khan, Tehsildar (BPS-16), Under Training at Revenue Department, Peshawar.**Appellant**

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
 2. Senior Member, Board of Revenue, Khyber Pakhtunkhwa Peshawar.
 3. The Secretary Establishment & Administration at Civil Secretariat, Khyber Pakhtunkhwa, Peshawar.
 4. The Secretary Law & Justice, Khyber Pakhtunkhwa, Peshawar.
 5. The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
-(**Respondents**)

Present:

Mr. Waleed Adnan, Advocate,For appellant
Mr. Muhammad Jan, District Attorney.....For respondents

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): The facts of the case, as narrated by the appellant in his memorandum of appeal, are that he joined government service on December 31, 2003, initially in BPS-11 and later reached BPS-16. He was hopeful for a promotion to the post of Tehsildar based on service rules from 2008 and amended in 2011 but new service rules were framed in 2016 affecting his promotions. The 2016 service rules allocated specific promotion quotas: 20% for direct recruitment,

60% for revenue staff promotions, 16% for Assistants/Senior Scale Stenographers and 4% for Assistants and Senior Scale Stenographers of the Board of Revenue. The bifurcation of the seniority list for Assistants/Senior Scale Stenographers was perceived as unjust, impacting those in various offices and violating their fundamental rights. The bifurcated seniority reduced the quota for Assistants of attached offices to 16% and limited that for the Board of Revenue to 4%, causing further disparities. Since 2013, very few promotions occurred among the large number of Assistants in attached offices compared to those in the Board of Revenue. In 2019, further changes were made to the reserved quota, causing additional grievances for him and leading to more appeals. He also challenged the impugned service rules dated 25.01.2019, he filed Writ Petition No. 3945-P/2018, however the same was dismissed on the ground of maintainability. Where-after, he filed Service Appeal No. 1304/2018 before this Tribunal, however during the pendency of the said service appeal, he was promoted to the post of Tehsildar on May 7, 2021, therefore, he withdrew the said appeal. He filed departmental appeal against the order dated May 7, 2021 to the extent of promoting him from 2013. Following no response to departmental appeal, he filed the instant appeal before this Tribunal seeking resolution.

2. The respondents were summoned, who contested the appeal by way of filing their respective written reply/comments.

*Amir
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3. The learned counsel for the appellant contended that prior to the new service rules of 2016, the appellant and his peers had a legitimate expectation for promotion to the post of Tehsildar based on the existing rules applicable at the time of their induction and tenure, therefore, the impugned service rules dated 25.01.2016 and 07.05.2021 are illegal and against principles of justice, thus requiring modification. He next contended that the bifurcation of the seniority list into separate categories for Assistants/Senior Scale Stenographers of the Board of Revenue and those of attached offices has been characterized as discriminatory and unjust, violating the fundamental rights of the employees working under the same cadre and administrative structure. He further contended that the inequity surrounding the promotion percentages established by the amendments. With approximately 600 Assistants in attached offices competing for a reduced percentage of promotions, the appellant contended that the allocation fails to reflect the workforce's composition and experience. He also contended that the change in promotion eligibility criteria for Tehsildar from the previous Naib Tehsildar post, wherein opportunities for promotion were increased, was deemed insufficient compensation for the perceived injustice within the bifurcation of seniority. He next argued that despite his eventual promotion, his initial grievance against the rules is still valid, asserting that he was forced to file appeals due to a lack of responsiveness and proper recourse from the

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administrative bodies. In the last, he argued that his promotion order to the post of Tehsildar (BPS-16) dated 07.05.2021 may be given effect from 2013 with all back benefits.

4. On the other hand, the learned District Attorney for the respondents contended that that the amendments in the rules were made in good faith and within the administrative discretion of the Department to facilitate career progression and promote equitable policies among all Revenue staff. He next contended that the reformative changes included provisions that arguably benefitted both Board of Revenue staff and field Ministerial staff, ensuring they enjoyed equal promotional opportunities. He further contended that the revised rules and associated percentages were designed to rectify prior discrimination against Assistants/Senior Scale Stenographers in subordinate offices—facilitating their eligibility for higher roles. He further argued that the Competent Authority conducted an exhaustive review of the existing rules before implementing the changes, focusing on creating a more balanced approach to promotions among diverse staff structures. He also argued that the appellant's receipt of the promotional benefits from the new rules contradicted his claims of being aggrieved by the same, making his appeal meritless. In the last, he argued that the appeal in hand may be dismissed with cost.

5. We have heard the arguments of learned counsel for the appellant as well as learned District Attorney for the respondents and have perused the record.

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6. The record of case file shows that the appellant has filed the instant appeal seeking setting-aside of the impugned Notification dated January 25, 2016 and to secure promotion to the post of Tehsildar (BPS-16) effective from 2013, along with all back benefits. The case evaluates both the claims of the appellant and the regulations defined by the 2016 service rules, specifically regarding promotion quotas. The 2016 service rules clearly delineate the promotion quotas as follows: 20% for direct recruitment, 60% for revenue staff promotions, 16% for Assistants/Senior Scale Stenographers and 4% for Assistants and Senior Scale Stenographers of the Board of Revenue. These distribution percentages reflect a thoughtful administrative policy aimed at addressing systemic issues within promotion processes. The appellant's arguments predominantly echo a broad discontent with the adjustments made to promotional policies rather than articulating a specific grievance tied directly to his situation. The appeal lacks substantial evidence illustrating a direct injury resulting from these rule changes, thereby undermining the claim's specificity and force. It is crucial to note that while employees hold certain expectations based upon prior service rules, these expectations are not impervious to administrative revisions. Administrators hold the prerogative to initiate reforms intended to ameliorate inequalities within promotion frameworks. The appellant's expectations stemming from pre-existing rules must be balanced against the justified administrative discretion to

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adapt and rectify existing structures. The appellant has already received his promotion to the post of Tehsildar (BPS-16) as per the order dated December 7, 2017. This promotion not only signifies the appellant's success in the context of the newly instituted service rules but also demonstrates that he has obtained tangible benefits from these rules. The significance of this promotion is critical; it calls into question the appellant's assertions of systemic injustice, as it indicates recognition and advancement rather than systemic exclusion. The foundational principle of deference to the considered judgment of administrative authorities in matters where there is no evidence of arbitrary or capricious decision-making. The promotion quotas established by the administrative body were guided by clear intentions for reform and there is no indication that the application of these quotas was executed unjustly or without regard for established procedures. After a thorough examination of record and arguments presented, the appellant's successful navigation of the promotion process and the logical rationale upheld by the recent reforms, the court finds no basis to overturn the established policies or allow for a retroactive alteration of the promotion effective date. The appellant has not furnished any documentary evidence in the shape of vacant vacancies falling in promotion quota of the appellant, his seniority position as well as his eligibility at that time, which could show that he was entitled for promotion to the post of Tehsildar (BPS-16) in the year 2013,

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prior to new Service Rules, 2016. The failure to provide such documentary evidence, the appellant cannot claim his entitlement for promotion to the post of Tehsildar (BPS-16) with effect from 2013.

7. Consequently, the appeal in hand stands dismissed being lacking of merit. Parties are left to bear their own costs. File be consigned to the record room.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 24th day of September, 2024.*


AURANGZEB KHATTAK
Member (Judicial)


*24/09
2024*


RASHIDA BANO
Member (Judicial)

7607/21

19th Feb. 2024 01. Appellant present in person. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Ghulam Shabbir Shah, Assistant Secretary for the respondents present.

02. Former requested for adjournment due to engagement of learned counsel for the appellant in the Hon'ble Peshawar High Court, Peshawar. Last opportunity is granted. To come up for arguments 10.06.2024 before the D.B. P.P given to the parties.



(Fareeha Paul)
Member (E)



(Kalim Arshad Khan)
Chairman

Fazle Subhan, P.S

10th June. 2024 1. Junior to counsel for the appellant and Mr. Asif Masood Ali Shah, Deputy District for the respondents present.

2. Lawyers are on strike, case is adjourned. To come up for arguments on 16.09.2024 before D.B. P.P given to the parties.


(Muhammad Akbar Khan)
Member (E)


(Kalim Arshad Khan)
Chairman

**Mutazem Shah **

16.09.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney for the respondents present.

2. Learned counsel for the appellant requested for adjournment in order to further prepare the brief. Last chance is given. To come up for arguments on 24.09.2024 before D.B. P.P given to the parties.

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Peshawar



(Rashida Bano)
Member (J)



(Kalim Arshad Khan)
Chairman

Kaleemullah

ORDER

24th Sept, 2024


1. Learned counsel for the appellant present. 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 stands dismissed being lacking of merit. 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 24th day of September, 2024.*



(Rashida Bano)
Member (Judicial)



(Aurangzeb Khattak)
Member (Judicial) 24/09/2024