

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**
RASHIDA BANO ... **MEMBER (J)**

Service Appeal No. 351/2023

Date of presentation of Appeal.....20.02.2023
Date of Hearing.....08.11.2024
Date of Decision.....08.11.2024

Muhammad Rafique Assistant Director (BPS-17) Mine & Minerals Department, Khyber Pakhtunkhwa, Peshawar
.....(*Appellant*).

Versus

1. The Government of Khyber Pakhtunkhwa, through Chief Secretary, at Civil Secretariat, Peshawar.
 2. The Secretary Mines & Minerals Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
 3. The Director General, Mines & Minerals Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
 4. The Secretary Finance, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
 5. Mr. Muhammad Farooq, Chief Draftsman, Mines & Minerals Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.....(*Respondents*)
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Present:

Mr. Amanullah Marwat, Advocate.....For the appellants
Mr. Naseer ud Din Shah, Assistant Advocate General...For respondents

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 DATED 13.12.2022 & 20.01.2023 MAY PLEASE BE SET ASIDE AND APPELLANT MAY PLEASE BE CONSIDERED FOR PROMOTION AGAINST THE POST OF

**DEPUTY DIRECTOR (SURVEY & DRAWING)
BPS-18 WITH ALL CONSEQUENTIAL
BENEFITS FROM THE DATE OF
ENTITLEMENT."**

02. Brief facts of the case, as per contents of the appeal, are that the appellant was appointed as "Surveyor (BPS-11)" in the Mines & Minerals department on 15.10.1986, and has since performed his duties with diligence and to the satisfaction of his superiors, receiving no complaints. Due to his commendable service, he was promoted from BPS-11 to BPS-16 (Survey & Drawing Officer) on 04.12.2013, and later to the post of BPS-17 as Assistant Director (Survey & Drawing) on 18.05.2022. In contrast, respondent No.5, who was appointed on 04.02.1991, was promoted to Chief Draftsman (BPS-17) within the same office. On 31.05.2022, a tentative seniority list was issued by respondent No.3, placing the appellant junior to respondent No.5, which was communicated to the appellant on 16.06.2022. The appellant filed a departmental appeal on 14.07.2022, but the final seniority list is still pending. Following this, on 13.12.2022, respondent No.2 promoted respondent No.5 to Deputy Director (Survey & Drawing) (BPS-18) without issuing a final seniority list. The appellant, feeling aggrieved by this promotion and the subsequent rejection of his appeal on 20.01.2023, filed the instant service appeal.

03. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance



and contested the appeals by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claims of the appellant.

04. We have heard learned counsel for the appellant and learned Assistant Advocate General for the respondents.

05. 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).

06. The perusal of record reveals that appellant through instant service appeal seeks correction of seniority list issued on 31.05.2022, by claiming that he was initially appointed on 01.11.1986, while private respondent was appointed on 04.02.1991. He further contended that private respondent was promoted as Chief Draftsman on 01.11.2013, by wrongly showing it as post of BPS-17, while in fact post of Chief Draftsman, in accordance with Budget Book, is of BPS-16. He, therefore, contended that he was promoted earlier to the post of Assistant Director S&D BS-17 vide order dated 18.05.2022, than private respondent. Therefore, he is senior to private respondent and respondents wrongly placed the private respondent senior to him in the impugned seniority list by placing him at Serial No.1.

07. It is admitted fact on record that appellant was promoted to the post of Assistant Director S&D BPS-17 vide order dated




18.05.2022, while as per promotion order of Private Respondent, he was appointed by promotion in BPS-17 on 01.11.2013. Contention of the appellant is that post of the Chief Draftsman is of BPS-16 is rebutted by the respondent by issuing corrigendum dated 03.01.2023, similarly, perusal of the very promotion order dated 01.11.2013 reveals that it was issued in BPS-17. Private respondent also produced promotion order of one Mr. Syed Hamid Shah, who was promoted as Chief Draftsman in BPS-17. So, post of Chief Draftsman to which private respondent was promoted in the year 2013, was in BPS-17 and not in BPS-16.

08. For what has been discussed above, it is held that private respondent was promoted to BPS-17 earlier than appellant and he was rightly placed on the top of seniority list senior to the appellant, hence, the instant appeal is devoid of merits and the same is dismissed accordingly. Costs shall follow the event. Consign.

09. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 08th day of November, 2024.*


KALIM ARSHAD KHAN
CHAIRMAN


RASHIDA BANO
Member (Judicial)

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.351/2023

Date of presentation of Appeal 20.02.2023
Date of hearing 08.11.2024
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Muhammad Rafique Assistant Director (BPS-17) Mine & Minerals Department, Khyber Pakhtunkhwa, Peshawar

... (Appellant)

Versus

1. The Government of Khyber Pakhtunkhwa, through Chief Secretary, at Civil Secretariat, Peshawar.
2. The Secretary Mines & Minerals Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Director General, Mines & Minerals Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
4. The Secretary Finance, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
5. Mr. Muhammad Farooq, Chief Draftsman, Mines & Minerals Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

... (Respondents)

**APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT, 1974, THE IMPUGNED ORDER DATED
13.12.2022, PASSED BY RESPONDENT NO.2, WHEREBY
DEPARTMENTAL APPEAL FILED BY APPELLANT WAS
REGRETTED/REJECTED VIDE IMPUGNED ORDER DATED 20.01.2023.**

PRESENT

1. Mr. Aman Ullah Marwat, Advocate for the appellant
2. Mr. Naseer ud Din Shah, Assistant Advocate General for the 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
Total	Rs. 100	Total	Rs. Nil

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 8th day of November, 2024.


(KALIM ARSHAD KHAN)
CHAIRMAN


(RASHIDA BANO)
Member (J)



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 351/2023

Muhammad Rafiq

Versus

Govt. 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
Order-16 8 th November, 2024.	<p>Present:</p> <ol style="list-style-type: none">1. Mr. Aman Ullah Marwat, Advocate, for appellant present.2. Mr. Naseer ud Din Shah, Assistant Advocate General, for the respondents present.3. Vide our detailed judgment of today placed on file, it is held that private respondent was promoted to BPS-17 earlier than appellant and he was rightly placed on the top of seniority list senior to the appellant, hence, the instant appeal is devoid of merits and the same is dismissed accordingly. Costs shall follow the event. Consign.4. <i>Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 8th day of November, 2024.</i> <p> (KALIM ARSHAD KHAN) CHAIRMAN</p> <p> (RASHIDA BANO) MEMBER (J)</p> <p>*M.KHAN*</p>