

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

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

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Service Appeal No. 694/2020

Dr. Eid Badshah S/O Abdul Munir, Director, Litigation Excise and  
Taxation Department, Shami Road, Peshawar.....*Appellant*

Date of Institutions.....31.12.2020  
Date of Hearing.....08.10.2024  
Date of Decision.....08.10.2024

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Service Appeal No. 15356/2020

Salah-ud-Din S/O Badshah Zarin Director Revenue, Excise and  
Taxation Department, Auqaf Complex, Shami Road, Peshawar.  
.....*Appellant*

Date of Institutions.....02.12.2020  
Date of Hearing.....08.10.2024  
Date of Decision.....08.10.2024

VERSUS

1. Secretary, Government of Khyber Pakhtunkhwa, Excise &  
Taxation Department, Pakhtunkhwa, Peshawar.
2. Secretary, Government of Khyber Pakhtunkhwa Establishment  
Department, Civil Secretariat, Peshawar.
3. Chief Secretary, Government of Khyber Pakhtunkhwa, Civil  
Secretariat, Peshawar.
4. Standing Service Rules Committee through Respondent No. 2.

.... (*Respondents*)

Arbab Saif Ul Kamal  
Advocate

... For appellant

Mr. Asif Masood Ali Shah  
Deputy District Attorney

... For respondents



**CONSOLIDATED JUDGMENT**

**RASHIDA BANO, MEMBER (J):** These service appeals have been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

**“On acceptance of these amended appeals, Notifications No. SO (Admin) ET & NC / 1-41/ 2018 dated 16.02.2018 of Respondent No. 1 be set aside/modified to the extent of the post of Directors BPS-19 and Director General BPS-20 and appellants be given chance for promotion to the said posts, which such other relief as may be deemed proper and just in circumstances of the case.”**

2. Through this single judgment we intend to dispose of the instant service appeal as well as connected service appeal captioned above, as in both the appeals common question of law and facts are involved.

3. Brief facts of the case, as given in the memoranda of appeals are that upon the recommendation of the Khyber Pakhtunkhwa Public Service Commission the appellants were appointed as an Excise and Taxation Officers (BPS-17) in the year 2005, and were promoted to Deputy Director (BPS-18) in the year 2010 and later elevated to Director (BPS-19). On 14-06-2002, the Khyber Pakhtunkhwa Excise and Taxation Department introduced Service Rules, 2002, which were published on 07-04-2005, regulating the services of department employees. According to these rules, the post of Director General (DG) was to be filled through promotion based on seniority-cum-fitness from among Deputy Directors with five years of service or 15



years combined service as an Excise and Taxation Officer and Deputy Director, with a provision for filling the post through transfer if no suitable Deputy Director is available. The rules were amended on 30-03-2010, revising the eligibility for the DG post to include promotion or transfer from Deputy Directors with five years of service or 15 years of service in BPS-17 and above. On 19-09-2018, the department issued another notification, superseding the previous rules from 2002 and 2010. The amended rules eliminated the promotion of Deputy Directors to the DG post, which was now exclusively to be filled by transfer from officers of All Pakistan Unified Group (APUG), Pakistan Administrative Service (PAS), or Provincial Civil Services (PCS), among others. This revision effectively blocked Deputy Directors from future promotions to DG (BPS-20). Additional posts, such as Director (Administration) and Director (Revenue), were also created under BPS-19. The appellants, being adversely affected by these 2018 rules, filed a representation on 03-08-2020, which remains pending. The appellants cases were heard on 12-06-2024 before the Tribunal, which directed the appellants to array the SSRC (Statutory Service Rules Committee), the authority responsible for framing the disputed rules, as a party. Consequently, the appellants have now filed this amended appeal.

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



5. We have heard learned counsel for the appellants and learned Deputy District Attorney for the respondents.

6. The learned counsel for the appellants reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy District Attorney controverted the same by supporting the impugned orders.

7. The perusal of the record reveals that the appellants were appointed as Excise and Taxation Officers (BPS-17) in the year 2005. They were promoted to Deputy Director (BPS-18) in 2010 and later to Director (BPS-19). The dispute arises from amendments to the service rules affecting promotion to the post of Director General (DG) in the Excise and Taxation Department. Under the 2002-rules, published on 07-04-2005, Deputy Directors with five years of service, or officers with 15 years of service as Excise and Taxation Officer or Deputy Director who had passed the departmental examination, were eligible for promotion to DG (BPS-20). In 2010, the rules were amended, slightly revising the criteria for promotion. However, a notification issued on 19-09-2018 superseded the previous rules, making the DG post accessible only through transfers from APUG, PAS, PCS, or PMS officers, effectively excluding Deputy Directors from promotion.

8. Perusal of the minutes of the meeting conducted for deliberation upon proposed amendments reveals that the approval given to the new amendments in 2018 did not propose any changes to the method of recruitment for the post of Director General. Whereas



in the old rules, the method of recruitment for the post DG has been given as under:

*"By promotion from amongst the members of the Service holding the posts of Director Excise and Taxation (BPS-19), having at least five years of service as such, or 17 years of service in BPS-17 and above, and having completed the Senior Management Course successfully, on a seniority-cum-fitness basis."*


9. Similarly, the relevant portion of the minutes are reproduced below:

Sr.	Nomenclature	Qualification		Method of recruitment		SSRC Decision
		Existing	Proposed	Existing	Proposed	
1	Director General (BS-20)	-	-	-	-	-
2	Director Administration (BS-19)	-	-	-	-	-
3	Director Revenue (BS-19)			By promotion, on the basis of seniority-cum-fitness, from amongst the deputy Directors, with at least 7 years service as such;	By promotion, on the basis of seniority-cum-fitness, from amongst the Excise and Taxation Officers having 12 years service in BS-17 and BS-18;	The proposed method of recruitment was approved by the SSRC

The minutes show that in approval for any change to fill the post of Director General was either proposed or recommended or decided by the SSRC, therefore, its inclusion in the impugned notification dated

19.02.2018 is not only provided in the minutes of SSRC but also against the provision of Rule 3(2) of the (Appointment, Promotion & Transfer) Rules, 1989. So, any amendments made in the impugned notification changing the method of recruitment of the posts without decision taken in this respect are not sustainable, therefore, set aside to the extent of serial No. 1 & 2 of the above table i.e Director General and Director Administration. Needless to say that government is at liberty to amend the Service Rules in accordance with their needs but according to law having regard to the principle of natural justice and fair trial. Costs shall the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 8<sup>th</sup> day of September, 2024.*


  
(AURANGZEB KHATTAK)  
Member (Judicial)


Kalecmullah

  
(RASHIDA BANO)  
Member (Judicial)

ORDER

- 08.10.2024 1. Learned counsel for the appellant present. Mr. Asif Masood Ali,  
District Attorney for the respondents present.
2. Vide our detailed judgment of today placed on file, it is held that any amendments made in the impugned notification changing the method of recruitment of the posts without decision taken in this respect are not sustainable, therefore, set aside to the extent of serial No. 1 & 2 of the above table i.e Director General and Director Administration. Needless to say that government is at liberty to amend the Service Rules in accordance with their needs but according to law having regard to the principle of natural justice and fair trial. Costs shall the event. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 8<sup>th</sup> day of September, 2024.*

  
(AURANGZEB KHATTAK)  
Member (J)

  
(RASHIDA BANO)  
Member (J)