

KHYBER PAKHTUNKHAWA SERVICE TRIBUNAL PESHAWAR

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

Service Appeal No. 12440/2020

Muhammad Ayaz, Deputy Secretary Social Welfare Department,
Peshawar.....Appellant

Service Appeal No. 12441/2020

Said Rasool, Deputy Secretary, Home & Tribal Affairs Department,
Peshawar.....Appellant

Service Appeal No. 12442/2020

Muhammad Jehan, Ex-Deputy Secretary Staff Training Institute, Establishment
Department, Peshawar.....Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. Government of Khyber Pakhtunkhwa, Administrative Department, Civil Secretariat, Peshawar.
3. Secretary to Government of Khyber Pakhtunkhwa, Finance Department, Civil Secretariat, Peshawar.
4. Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar.

.... (Respondents)

Mr. Hamad Hussain
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

Date of Institutions.....20.08.2020
Date of Hearing.....26.09.2024
Date of Decision.....26.09.2024

CONSOLIDATED JUDGMENT

RASHIDA BANO, MEMBER (J): These 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 appeals, the impugned order dated 28.07.2020 may kindly be set aside and the appellants be granted regular promotion with effect from 20.01.2010 with all back benefits. Any others remedy which this august tribunal deems appropriate may also be awarded in favour of the appellants.”

2. Brief facts of the case, as given in the memoranda of appeals, are that appellants, Muhammad Ayaz and Said Rasool are Provincial Management Services Officers promoted to different scales, currently working in BPS-18 on regular basis whereas Muhammad Jehan is now retired from service by attaining the age of superannuation. The appellants had rendered services more than five years as Private Secretaries before their promotion to BPS-18, as corroborated by the promotion order dated 11.01.2005. The appellants alongwith other colleagues had approached the Hon'ble Peshawar High Court, Peshawar by filing writ petition No. 2707-P/2012 which was disposed of vide order dated 22.11.2012. Thereafter, respondents turned down the then representation vide order dated 29.01.2013. That other colleagues/juniors to the appellants had filed service appeals before this Tribunal, which were accepted and regular promotion were granted to them w.e.f 25.03.2010. The appellants again filed writ petition bearing No. 1374-P/2019 and the same was dismissed in limine, with direction to approach proper forum, if they are so advised. Then appellants filed departmental appeals, which were turned down vide order dated 28.07.2020, therefore, the appellants filed the instant service appeals.


3. Respondents were put on notice, who submitted their reply on the appeals. We have heard the learned counsel for the appellants as well as the learned District Attorney for the respondents and perused the case file with connected documents in detail.

4. The learned counsel for the appellants argued that appellants have not been treated in accordance with law and rules and respondents violated Article 2-A, 9, 25 and 38 of the Constitution of Islamic Republic of Pakistan, 1973. He

further argued that the impugned order passed by the respondents is illegal, against the law and without lawful authority, hence liable to be set aside. He submitted that all the proceedings conducted by the respondents are unlawful and against the provision of Khyber Pakhtunkhwa Government Servant (E&D) Rules, 1973, hence liable to be struck down. He submitted that appellants were discriminated by promoting juniors to them, despite the fact that appellants were placed senior in the seniority list. He requested that service appeals might be accepted as prayed for.


5. Conversely, the learned District Attorney contended that the appellants have been treated in accordance with law and rules. He further contended that appellants have got no vested right for his ante-dated promotion w.e.f 25.01.2010 as under the rules promotion is always with immediate effect and there were no posts of PMS BPS-17 falling in the promotion share quota of Superintendents/Private Secretaries. He further contended that in December 2009, 18 posts of PMS were available in the promotion share quota of appellant and appellants were placed at 53 as he was appointed as PMS on acting charge basis. Similarly in May 2011, 11 posts were available in the promotion share quota of the appellants and they were placed at sr. No. 30, and were not considered for regular promotion. They were regularly promoted upon the availability of post on 21.12.2011. He submitted that departmental appeals of the appellants are barred by time, therefore, he requested that instant appeals might be dismissed.

6. Perusal of record reveals that appellants were serving as private Secretaries /Superintendent when they were recommended for acting charge promotion on 15.12.2009 to the post of PMS (BPS-17) under rule 9(3) of APT Rules 1989. Appellants contended that they fulfilled criteria for promotion on the basis of seniority cum fitness besides having required length of 5 years of service as private secretary /superintendent were required to be promoted regularly and not on acting charge basis.



7. The appellants sought relief on the ground that similar nature service appeals filed by his colleagues Fazal Hussain and others have already been allowed by this Tribunal vide judgment dated 11.01.2012. Copy of the aforementioned judgment is available on the record, which would show that service appeals No. 1398/2010, 1400/2010, 1401/2010 & 1403/2010 were allowed through consolidated judgment dated 11.01.2012 passed by this Tribunal and the appellants therein namely Fazal Hussain, Hidayatullah Khan, Muhammad Nasir Khan & Syed Kazim Hussain Shah were granted ante-dated promotion as PMS Officers (BPS-17) w.e.f. 25.03.2010 ie the date on which they were promoted on acting charge basis. However, through the very same consolidated judgment dated 11.01.2012, the same relief was not granted to one Habibullah Arif and his service appeal bearing No. 1404/2010 was declined on the ground that only 11 posts were available and he was at serial No. 12 of the eligible candidates. The aforementioned Habibullah Arif was regularly promoted vide Notification dated 21.12.2011, while the appellant has been regularly promoted later on vide impugned Notification dated 04.10.2012. Admittedly Habibullah Arif was senior to the appellant and his service appeal seeking regular promotion w.e.f 25.03.2010 has been turned down by this Tribunal vide the above mention judgment dated 11.01.2012, therefore, the appellants cannot claim any relief by placing reliance on the said judgment.

8. One of the plea of learned counsel for the appellants is that as the appellants were promoted as PMS Officers (BPS-17) on acting charge basis vide Notification dated 25.01.2010, which confirms the fact that vacant post for filling through promotion was available at that time, hence the appellants are entitled for regular promotion from 25.01.2010. The said plea of learned counsel for the appellants is having no force for the reason that in view of rule 9 (6) of Khyber Pakhtunkhwa Civil Servants (Appointment Promotion & Transfer) Rules, 1989, the promotion of the appellants on acting charge basis on 25.01.2010 could not confer any vested right upon him to claim regular promotion from the date of



appointment on acting charge basis. Even otherwise too the minutes of meeting of PSB held on 29.12.2009 would show that only 11 posts of PMS Officers (BPS-17) were lying vacant in promotion quota, while 28 posts were lying vacant for filling through initial recruitment. According to the Notification dated 25.03.2010, issued regarding promotion of the appellants as well as others as PMS Officers (BPS-17), the appellants have been placed at serial No. 4, 11 and 27 of the list, while only 11 posts of PMS Officers (BPS-17) were available in promotion quota. While going through the minutes, we have observed that the appellant as well as certain other Tehsildars (BPS-16) were promoted as PMS Officers (BPS-17) on acting charge basis in excess of the promotion quota by invoking the provision of rule 9 (3) of Khyber Pakhtunkhwa Civil Servants (Appointment Promotion & Transfer) Rules, 1989. We are of the humble view that the appellants are unable to make out a case of ante-dation of their promotion w.e.f. 25.03.2010, because for regular promotion of appellants there must be clear vacancy falling in their share at the time of their acting charge promotion on 25.01.2010 which admittedly not available.

9. For what has been discussed above, we are unison to dismiss the instant service appeal as well as connected service appeals having no force in it. Costs shall follow the event. Consign.


10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 26th day of September, 2024.*



(AURANGZEB KHATTAK)
Member (J)


(RASHIDA BANO)
Member (J)

ORDER

- 26.09.2024 1. Learned counsel for the appellant present. Mr. Muhammad Jan,
District Attorney for the respondents present.
2. Vide our detailed judgment of today placed on file, we are unison
to dismiss the appeal having no force in it. Cost shall follow the event.
Consign.
3. *Pronounced in open court in Peshawar and given under our hands
and seal of the Tribunal on this 26th day of September, 2024.*


(AURANGZEB KHATTAK)
Member (J)


(RASHIDA BANO)
Member (J)