KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
AT CAMP COURT SWAT.

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
SALAH UD DIN ... MEMBER (Judicial)

Service Appeal No.6622/2021

Mst. Nabila Begum Daughter of Ghulam Muhammad, Resident of Odegram Tehsil Balambat District Dir Lower. (posted as D.M) in GGMS Rehanpur Now upgraded to GGHS Rehanpur.
.....***Appellant***)

Versus

1. **Govt of Khyber Pakhtunkhwa** through Secretary Elementary and Secondary Education Civil Secretariat Peshawar.
2. **Director** Elementary and Secondary Education Govt: of Khyber Pakhtunkhwa, at Peshawar.
3. **District Education Officer (Female)** District Dir Lower at Timergara.
4. **Mst. Gul Naz Begum** Daughter of Amir Azam Khan resident of Karzina Tehsil Balambat (posted as D.M) at GGMS Malakabad.
5. **Mst. Rabia Sultan** Daughter of Jehan Bacha resident of Karzina malakand (Posted as D.M) at GGMS Khema Tehsil Balambat.
.....(***Respondents***)

Present:

Syed Abdul Haq,
Advocate.....For appellant.

Mr. Muhammad Riaz Khan Paindakhel,
Assistant Advocate General.....For respondents.

Date of Institution.....28.05.2021
Dates of Hearing.....07.11.2022
Date of Decision.....07.11.2022

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ILLEGAL, UNLAWFUL ACTION WHEREIN THE APPELLANT WAS DROPPED FROM PROMOTION TO THE POST OF SDM (BPS-16) VIDE IMPUGNED PROMOTION ORDER DATED 13.01.2021.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: The appellant was appointed as Drawing Mistress vide office order dated 17.12.2012 and assumed the charge of such post on 01.03.2013; that the private respondents, who were appointed on 20.06.2013; that the official respondents issued a tentative seniority list of Female Drawing Mistresses wherein the appellant was not listed, although the private respondents, being junior to the appellant, were placed at serial No.3 and 4 of the said tentative seniority list and the appellant challenged the same; that, private respondents filed service appeal bearing No.68/2014 and 71/2014 before this Tribunal wherein this Tribunal held/directed the respondent department to prepare their seniority list according to the rules; that the appellant filed an application before respondent No.3 for correction /enlisting her name in the seniority list in question, which was not responded, however, in the meanwhile respondent No.3 issued promotion order bearing No. 12397-13429 dated 13.01.2021; that thereafter the appellant filed an appeal before respondent No.2 on 28.01.2021, which was also not responded compelling the appellant to file this 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 defence 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 the 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 AAG controverted the same by supporting the impugned order(s).

5. Having heard the learned counsel for the appellant and learned District Attorney for the respondents, it appears to us that the appellant has challenged order dated 13.01.2021 considering the same to be a promotion order, whereas the order dated 13.01.2021 is a posting/adjustment order, made in consequence of a promotion notification, which was issued on 04.01.2021 by the Director Elementary and Secondary Education Khyber Pakhtunkhwa. It seems that the appellant has mistakenly filed departmental representation against the same order dated 13.01.2021 bearing No. 12397-13429 considering that to be a promotion order. This is an inherent and formal defect in the departmental representation as well as this appeal and despite repeated pointation by the Tribunal, during the course of arguments that the order impugned in the departmental as well as this service appeal was of 13.01.2021, which pertained to postings/adjustments, whereas in the said order there was a reference to a notification issued by the Director Elementary and Secondary Education, Khyber Pakhtunkhwa bearing Endst: No. 8757-62/A-17/DPC/2020/KPK dated 04.01.2021, vide which the promotions might have been made, the learned counsel for the appellant was adamant and was still insisting on the misconceived urge that the appellant was right in challenging the order dated 13.01.2021 and that that was actually a promotion order, which actually is not, as we found.

6. Be that as it may the appellant rests her claim of promotion on the allegation that she had been placed senior to private respondents No. 4 and 5 in all the seniority lists, maintained prior to the issuance of seniority list dated 15.08.2020 and the last one relegated the appellant in seniority and for the purpose she had also

submitted an application for review on 24.09.2020. When asked about any decision of the departmental authority on the application of the appellant regarding correction of seniority list, the learned counsel for the appellant submitted that no decision was taken on the application of the appellant by the departmental authority. He also submitted that the appellant had not further challenged the same in appeal before this Tribunal. When admittedly the private respondents were placed senior to the appellant in the seniority list on the basis of which their promotion was made then without getting the seniority corrected, as per the claim of the appellant, she would be precluded even from challenging the actual promotion order dated 04.01.2021, which as aforesaid, the appellant, has instead mistakenly challenged the posting order dated 13.01.2021. The appellant has also willfully left and ignored her claim of seniority as she has admittedly not further pursued her cause of seniority after making an application on 24.09.2020 and she is just after the promotion of the private respondents.

7. The upshot of the above discussion is that this appeal fails being groundless and is accordingly dismissed. Costs shall follow the event. Consign.

8. ***Pronounced in open Court at Swat and given under our hands and the seal of the Tribunal on this 07th day of November, 2022.***

KALIM ARSHAD KHAN
Chairman
Camp Court Swat

SALAH UD DIN
Member (Judicial)
Camp Court Swat

ORDER

07th Nov, 2022

1. Learned counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General alongwith Mr. Muhammad Usman, ADEO for respondents present.

2. Vide our detailed judgement of today placed on file (containing 04pages), this appeal fails being groundless and is accordingly dismissed. Costs shall follow the event. Consign.

3. *Pronounced in open court at Swat and given under our hands and seal of the Tribunal on this 07th day of November, 2022.*

(Kalim Arshad Khan)
Chairman
Camp Court Swat

(Salah Ud Din)
Member(Judicial)
Camp Court Swat