
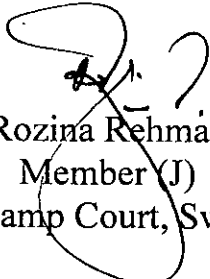


post of Junior Clerk made by the then DEO (Female) Dir Upper was illegal and out of turn. His case was referred to the Appellate Committee Meeting, wherein, pro & contra evidence of the case was thoroughly perused. The meeting was held on 11.04.2022 under the Chairmanship of Director Elementary & Secondary Education Khyber Pakhtunkhwa for disposal of the departmental appeal of the appellant in compliance of the judgment passed by the Hon'ble Peshawar High Court in writ petition. As he was not entitled to promotion on the basis of seniority-cum-fitness, therefore, it was recommended that the order of his promotion to Junior Clerk may be withdrawn and accordingly, vide impugned order dated 20.05.2022, his promotion order dated 29.02.2020 was withdrawn in the interest of public service. From the record, it is evident that his salary against the post of Junior Clerk was not released. The seniority list does not favor the appellant. The DEO (Female) Dir Upper was also proceeded against departmentally on different grounds including the out of turn promotion of Class-IV employees.

7. Keeping in view the peculiar facts and circumstances of the case, we do not find any viable reason to interfere in the impugned order. Resultantly, this appeal having no substance is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.
09.03.2023


(Fareeha Paul)
Member (E)
Camp Court, Swat


(Rozina Rehman)
Member (J)
Camp Court, Swat

claimed his alleged promotion. He submitted that during hearing of the departmental appeal, it was held that the promotion of the appellant was out of turn and against the settled principles of seniority-cum-fitness and without fulfillment of codal formalities and thus the promotion order dated 29.02.2020 was withdrawn.

6. After hearing the learned counsel for the parties and going through the record of the case with their assistance and after perusing the precedent cases cited before us, we are of the opinion that the appellant Azmat Khan was appointed as Daftari in the Elementary & Secondary Education vide order dated 30.06.2015 issued by the then DEO (Female) Dir Upper and as a result of the aforementioned appointment order, he was placed at Serial No.188 in the seniority list of Daftaris/Chowkidars in the District Dir Upper as stood on 31.12.2018. He was promoted to the post of Junior Clerk vide order dated 29.02.2020 under 33 % reserved quota, however, his salary against the post of Junior Clerk was not released on the ground of his illegal and out of turn promotion to the post of Junior Clerk (BPS-11). Feeling aggrieved, he filed Writ Petition No.420-M/2021 before the Peshawar High Court, Mingora Bench (Dar-ul-Qaza) Swat for release of his salary which was decided vide order dated 16.11.2021 by the august Court by converting the petition into the departmental appeal with the directions to respondent No.2/Director Elementary & Secondary Education Khyber Pakhtunkhwa to decide the same within a period of one month in accordance with law and rules. Two inquiries were conducted into the matter through Mr. Aftab Alam Principal GHS Shamsi Khan Dir Lower dated 25.02.2020 and 03.06.2020. The inquiry reports dated 30.04.2020 and 13.07.2020 reveal that the promotion of appellant from Daftari to the

gone through the record and the proceedings of the case in minute particulars.

4. Shamsul Hadi Advocate learned counsel appearing on behalf of the appellant contended that the impugned order dated 20.05.2022 is illegal and unlawful which was passed without any lawful authority. He contended that the appellant was promoted to the post of Junior Clerk (BPS-11) according to relevant rules as earlier he was performing his duty against the post of Daftari. That he was promoted but without any opportunity of hearing, the promotion order of the appellant was withdrawn which is illegal. It was further argued that the appellant was performing his duties against the post of Junior Clerk without any complaint and that his promotion order was withdrawn through one-sided inquiry recommendation which clearly shows the malafide of the respondent and lastly, he submitted that appellant alongwith three others were recommended to the post of Junior Clerk by the Departmental Promotion Committee but only the promotion order of the appellant was withdrawn while the promotion order of others were kept intact, which act of the respondents was against law and rules and the same was passed in violation of Articles-4, 10(A) & 25 of the Constitution of Islamic Republic of Pakistan, 1973.

5. Conversely, learned District Attorney submitted that the matter came into the knowledge of the Director Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar who initiated fact finding inquiry and the Inquiry Officer Principal GHS Shamsi Khan Dir Lower submitted his findings report. That in the initial inquiry, the appellant did not appear before the Inquiry Officer because at that time, he had not

2. Brief facts of the case are that appellant was appointed as Daftari Class-IV (BPS-02) on 30.06.2015. Being eligible for the post of Junior Clerk (BPS-11), appellant was promoted to the post of Junior Clerk (BPS-11) according to 33% reserved quota vide order dated 29.02.2020 after due process and recommendation of the Departmental Selection Committee, hence, he took charge of his post on 02.03.2020. Despite promotion order, his salaries to the post of Junior Clerk were not released by the respondents without any reason. He, therefore, approached Peshawar High Court, Mingora Bench (Dar-ul-Qaza) Swat through writ petition for release of his salaries where the same was treated as departmental appeal and respondent No.2 was directed to decide the same within a period of one month according to law and rules. The departmental appeal was accepted by respondent No.2 through order dated 12.04.2022. That instead of implementing the order of appellate authority regarding the release of salaries of the appellant, the respondent No.1 initiated inquiry into the matter and in this regard, proper departmental inquiry committee was constituted where the promotion of the appellant was kept intact. He, therefore, continued his service against the post of Junior Clerk but to his utter surprise, another committee was constituted to inquire into the matter which recommended the withdrawal of promotion order of the appellant. The respondent No.2 without giving any show cause notice or proper opportunity of hearing, withdrew the promotion order of the appellant alongwith impugned reversion order, hence, the present service appeal.

3. We have heard Shamsul Hadi Advocate for appellant and Muhammad Jan learned District Attorney for the respondents and have

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR
AT CAMP COURT, SWAT

Service Appeal No.902/2022

Date of Institution ... 10.06.2022
Date of Decision ... 09.03.2023

Azmat Khan (Junior Clerk BPS-11) presently posted at Government Girls Higher Secondary School Dir Upper R/O Dir Town, Tehsil Dir District Dir Upper.

... (Appellant)

VERSUS

1. District Education Officer (Female) District Dir Upper.
2. Director Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.

... (Respondents)

Shamsul Hadi
Advocate

... For appellant

Muhammad Jan
District Attorney

... For respondents

Mrs. Rozina Rehman
Miss Fareeha Paul

... Member (J)
... Member (E)

JUDGMENT

Rozina Rehman, Member (J): The appellant has invoked the jurisdiction of this Tribunal through above titled appeal with the prayer as copied below:

“On acceptance of this service appeal the impugned order issued by respondent No.2/appellate authority dated 20.05.2022 may kindly be declared illegal, void ab initio, corum non judice hence the impugned order dated 20.05.2022, may kindly be set aside and promotion order dated 29.02.200 of the appellant to the post of Junior Clerk (BPS-11) may kindly be restored alongwith all back benefits.”

