

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO. 421/2022

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 4789

Dated 7/4/2023

Mr. Shafiq Khan, SCT (BPS-16),
GHS Darra Adam Khel, Kohat.

APPELLANT

VERSUS

1. The secretary (E&SE) department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Director (E&SE) Khyber Pakhtunkhwa, Peshawar.
3. The Additional Director (Merged Districts) Khyber Pakhtunkhwa, Peshawar.
4. The District Education Officer (Male), Kohat.
5. Mr. Aftab Khan SST (BPS-16), GHS Darra Adam Khel, Kohat.

RESPONDENTS

.....

REJOINDER ON BEHALF OF APPELLANT

.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

(i-viii) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

1. Admitted correct by the respondents as the service record of the appellant is present with the concerned department.
2. Admitted correct by the respondents as the service record of the appellant is present with the concerned department.

3. Admitted correct by the respondents as the service record of the appellant is present with the concerned department.
4. Admitted correct by the respondents as the service record of the appellant is present with the concerned department.
5. Incorrect and misconceived. As the department admitted that one post of SST in Physics/Maths group was vacant in Sub Division Darra Adam Khel which should be filled by promotion quota and as per rule post of SST (BPS-16) can be filled through 75% promotion quota on the basis of seniority-cum-fitness from concerned District and 75% was further bifurcate in the manner that 40% from amongst SCT with at least five years service as SCT and CT having qualification of Second Class Bachelor Degree which shows that one vacant post of SST(BPS-16) will go to the 40% promotion of SCT and the appellant is on the top of seniority list and is eligible for promotion to the available vacant post SST (BPS-16) in Physics/Maths group. Furthermore if the DPC was held on 24.08.2020 (record of which is not attached with the comments/reply of the department) and if no official was eligible for promotion to the post of SST (BPS-16) in Physics/Maths group and all the post are filled through initial recruitment, but the appellant has not claim his promotion in that DPC in the instant appeal, but when the appellant has completed his Physics degree on 16.11.2020 and the vacant post of SST in Physics/Maths group was available in the year 2021, the department should held DPC to observe the promotion quota in order not deprive the appellant from promotion to the post of SST in Physics/Maths group by observing the promotion quota and as per superior courts judgment promotion quota should be first filled in before filling in quota of direct recruitment, but the respondent department filled that available vacant post of SST (BPS-16) in Physics/Maths group trough initial recruitment which is clear violation of Law and rules and superior court judgments.
6. Incorrect. As replied in para 5 of the facts above.
7. Not replied according to para 7 of the facts of the appeal. Moreover, para 7 of the facts of the appeal is correct.
8. In this para the respondent department admitted the stance of the appellant that one post of SST in Physics/Maths was available and that post was filled through initial quota despite the fact that the appellant is eligible for promotion to the post of SST (BPS-16) in Physics/Maths group and was on the top of the seniority list.
9. Incorrect. As replied in para 8 of the facts above.
10. Correct to the extent that the appellant has filed COC petition and also filed departmental appeal against the promotion notification dated


24.06.2022 and against notification dated 05.07.2022 which was rejected on 13.09.2022 for no ground.

11. Incorrect. The respondent department has not followed the rules and policy and made initial recruitment on promotion quota which is violation of superior courts judgments.

GROUND:

- A) Incorrect. the appellant was not treated in accordance with law and rules and has deprived the appellant from his legal right of promotion to the post of SST (BPS-16) in Physics/Maths group by the illegal act of the respondents by doing initial recruitment on promotion quota.
- B) Incorrect. As replied in para 6 of the facts.
- C) Incorrect. As replied in para 5 of the facts.
- D) Incorrect. As replied in para 8 of the facts.
- E) Incorrect. As replied in para 5 of the facts.
- F) Incorrect. As replied in the facts.
- G) Incorrect. The appellant was not treated in accordance with law and rules and has deprived the appellant from his legal right of promotion to the post of SST (BPS-16) in Physics/Maths group by the illegal act of the respondents by doing initial recruitment on promotion quota.
- H) Incorrect. The act of the respondents is illegal by doing initial recruitment on promotion quota and against the law.
- I) Incorrect. The appellant was not treated in accordance with law and rules and has deprived the appellant from his legal right of promotion to the post of SST (BPS-16) in Physics/Maths group by the illegal act of the respondents by doing initial recruitment on promotion quota.
- J) Legal.

It is, therefore, most humbly prayed that the appeal of appellant may kindly be accepted as prayed for.

THROUGH: **APPELLANT**

(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT.

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.




DEPONENT