

Service Appeal No. 1255/2022 titled "Shahida Parveen Versuis Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar and others" decided on 16.05.2023 by the Division Bench comprising Mr. Kalim Arshad Khan, Chairman and Miss Fareeha Paul, Member (Executive), Khyber Pakhtunkhwa Service Tribunal, Peshawar. Camp Court, D.I.Khan.

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
CAMP COURT, D.I.KHAN.**

Service Appeal No. 1255/2022

**BEFORE: MR. KALIM ARSHAD KHAN, CHAIRMAN
MISS FAREEHA PAUL, MEMBER (E)**

**Shahida Parveen, Daughter of Mir Badshah Khan, Deputy District
Education Officer (Female) District Tank.....(Appellant).**

Versus

1. **Government of Khyber Pakhtunkhwa** through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. **Secretary to Government of Khyber P:akhtunkhwa**, Elementary & Secondary Education Department, P:eshawar.
3. **Secretary to Government of Khyber Pakhtunkhwa**, Establishment Department, Peshawar.
4. **Provincial Selection Board through its Chairman**, Establishment Department, Peshawar.
5. **Director**, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
6. **Mst. Rukhsana Rahim Management Cadre (BS-19) and 20 others.**
.....(Respondents).

Mr. AHMAD ALLI, AdvocateFor appellant.

Mr. Fazal Shah Mohmand
Addl. Advocate General,.....For respondents No. 1 to 5.

Date of Institution.....04.08.2022

Dates of Hearing..... 16.05.2023

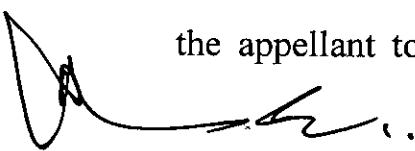
Date of Decision.....16.05.2023

JUDGEMENT

KALIM ARSHAD KHAN CHAIRMAN. The instant appeal has been filed by appellant Mst. Shahida Parveen, under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the notification No. SO(PSB)ED/1-4/2022/P-223(2), dated 30.06.2022 (received by her on

08.07.2022) whereby the right of her promotion to BS-18 w.e.f. 25.07.2019 instead of 17.08.2021 and then her right of promotion to BPS-19 by restoring her seniority as was prior to 25.07.2019, was regretted.

2. Brief facts of the case, gathered from the memorandum and grounds of appeal, are that the appellant and private respondents No. 6 to 25 were appointed as Deputy District Officer, Management Cadre, in BPS-17 on the recommendations of the Public Service Commission, vide notification dated 21.02.2012. Her name was placed at S. No. 5 in the said notification. Vide notification dated 27.05.2019, private respondents No. 6 to 25, junior to the appellant, were promoted while she was deferred due to pendency of an inquiry and shortage of PERs. After removal of both the hurdles i.e shortage of PERs and pending inquiry, the appellant was promoted to BS-18 vide notification dated 17.08.2021 with immediate effect. She preferred an application dated 24.11.2021 for proforma promotion to BS-18 and BS-19 with all back benefits and prayed therein for the restoration of her seniority and award of BS-18 w.e.f. 27.05.2019. The application dated 24.11.2021 of the appellant was communicated to the Director E&SE and vide letter dated 07.01.2022, the Secretary, E&SE was apprised about the service detail of the appellant. Vide letter dated 28.02.2022, the Director E&SE was again asked to provide further details of the service career of appellant and also submit specific recommendations. In turn, the Deputy Director (F) E&SE vide letter dated 18.03.2022 communicated the case of the appellant to the Secretary E&SE with the request to place the same



before the PSB for the purpose of proforma promotion to BS-18 and BPS-19 with all back benefits which was accordingly transmitted to the Establishment department for the purpose vide letter dated 01.06.2022. In the meanwhile respondents/PSB awarded promotion to the private respondents No. 8 to 15 vide notification dated 20.04.2022 and it was asked to the appellant that her case would be fixed in the next meeting of PSB. However, the next meeting of PSB was held on 06.07.2022 and in the said meeting too her case was not included. Upon her hectic efforts, she came to know that her promotion case was regretted by the Establishment Department vide notification dated 30.06.2022. Feeling aggrieved, she filed the instant service appeal.

3. On receipt of the appeal, vide order dated 26.09.2022, pre-admission notices were issued to the respondents but despite providing opportunities, they did not submit their reply/comments, hence they were placed ex-parte and their right to file replies stands struck off, vide order dated 16.01.2023.

4. We have heard the learned counsel for the appellant and learned Addl. Advocate General for the official respondents and perused the record.

5. Learned counsel for the appellant referred to Para- V (a) and (b) of the Khyber Pakhtunkhwa Civil Servants Promotion Policy, 2009 which is reproduced below:-

"V. Deferment of Promotion.

(a) Promotion of a civil servant will be deferred, in addition to reasons given in para-IV, if

- (i) *His inter-se-seniority is disputed/sub-judice.*
 - (ii) *Disciplinary or departmental proceedings are pending against him.*
 - (iii) *The PER dossier is incomplete or any other document/information required by the PSB/DPC for determining his suitability for promotion is not available for reasons beyond his control.*
- (b) *The civil servant whose promotion has been deferred will be considered for promotion as soon as the reasons for deferment cease to exist. The cases falling under any of the above three categories do not warrant proforma promotion but the civil servant will be considered for promotion after determining his correct seniority over the erstwhile juniors."*

6. The case of the appellant is that she was deferred from promotion to the post in BS-18 and then BS-19. The reason was some disciplinary and departmental proceedings against her. According to sub-para (b) of Para-V reproduced above, proforma promotion could not be claimed and granted to any of the three categories as enumerated in Para-V (a). Since admittedly, there were disciplinary proceedings pending against the appellant and her PER dossiers were also incomplete, therefore, she could not claim proforma promotion as prayed in her appeal in view of the provisions of the Government Policy. When confronted with the situation, learned for the appellant very frankly and fairly did not controvert the situation, however, it was prayed that the appellant would be entitled for placing her at the right place in the seniority list whenever she is regularly promoted to the next higher scale because she was deferred and not superseded. This contention

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was not opposed by learned AAG, which has also been provided in Rule 17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989.

7. With the above observations, we dispose of this appeal. Costs shall follow the events. Consign.

8. *Pronounced in open court at Camp Court, D.I.Khan and given under our hands and seal of the Tribunal this 16th day of May, 2022.*



(FAREEHA PAUL)
Member (E)
Camp Court, D.I.Khan



(KALIM ARSHAD KHAN)
Chairman
Camp Court, D.I.Khan.

Fazle Subhan, P.S