

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.**

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

*Service Appeal No.487/2014*

Date of presentation of appeal .....13.02.2014  
Dates of Hearing.....05.05.2023  
Date of Decision.....05.05.2023

**Mumtaz Khan, SST, Government High School Tatar Khel, District Karak.....(Appellant)**

Versus

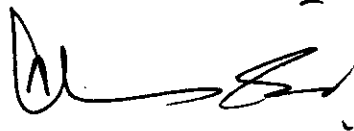
1. **The Secretary Education (E&SE) Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.**
2. **The Director Education (E&SE) Government of Khyber Pakhtunkhwa, Dabgari Gardan, Peshawar.**
3. **District Education Officer (E&SE) District Karak.**  
.....(**Respondent**)

Present:

Mr. Noor Muhammad Khattak, Advocate.....For appellant.

Mr. Asif Masood Ali Shah,  
Deputy District Attorney.....For respondents.

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**SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION DATED 07.11.2013 TO THE EXTENT OF APPELLANT ONLY, WHEREIN THE NAME OF THE APPELLANT IS MISSING AND AGAINST WHICH APPELLANT FILED DEPARTMENTAL APPEAL FOR BRINGING HIS NAME IN THE SET GENERAL SENIORITY LIST AS PER NOTIFICATION NO. 2206-2229/F. NO.A-83/SE/3-16/APPEAL DATED 25.09.2009 WHICH IS STILL PENDING WITHOUT DISPOSAL.**

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## **JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** Brief facts as narrated in the memo and grounds of appeal are that the appellant was serving as SET (Technical); that the Government of Khyber Pakhtunkhwa, vide notification dated 25.09.2009, declared that SETs (Technical and Commerce) might be included in the SETs (General) seniority list under certain specific terms and conditions as mentioned and explained in the cited notification; that the notification was not circulated as per requirement of rules and policy , therefore, the appellant did not opt for joining the SET (General ) seniority list at earlier stage; that the appellant, after completion of required formalities, at once applied for the same and submitted departmental representation wherein he requested for inclusion of his name in the SETs (General) seniority list and thereupon include his name in the panel of candidates, who were to be promoted to the post of Headmaster(BPS-17) (regular); that no specific seniority list of SET (General) had been issued except from the impugned notification, wherein the names of all those SET (Tech) had been included, who had applied for inclusion of their names in the SET (General) as per notification dated 25.09.2009; that the departmental representation had not been responded within the statutory period of ninety days, hence, the instant service appeal.

2. On receipt of the appeal and admission to full hearing, the respondents were summoned, who, on putting appearance, 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 Deputy District Attorney for the respondents.

4. Learned counsel for the appellant argued that the appellant had not been treated in accordance with law, rules and rules by the respondents as such violated Article-4 of the Constitution of Pakistan 1973. The appellant opted that his name might be included in the seniority list of SETs (G) under the relevant notification and be considered him in the process of promotion for which he was otherwise eligible and qualified but he was ignored with malafide intention.

5. On the other hand learned Deputy District Attorney controverted the contention of learned counsel for the appellant and argued that the notification was issued by the Directorate of Elementary and Secondary Education Peshawar dated 25.09.2009, which was circulated to all concerned in the province but the appellant intentionally did not opt for including his name in the SETs(G) seniority list within time. He further submitted that the appellant has been treated in accordance with law and rules .

6. Through this appeal, the appellant has prayed that respondents might be directed to include the name of the appellant in the notification No. 2206-

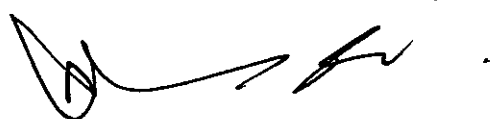


2229/F. No.A-83/SE/3-16/appeal dated 25.09.2009 by considering him in the list of SETs (General) and thereupon promote him to the post of Head Master (BS-17) as per his eligibility and as per rules and law governing the subject matter with all back benefits. We did not find any notification of 25.09.2009 on the file rather it is a letter issued by the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa to all the Executive District Officers (E&SE) in the province with following contents:-

"I am directed to state that the appeals of the SETS (Tech) for including their names in the SET General Seniority list, were decided by the government of NWFP vide letter No.SO(PE)09-4/SET-Tech:/Gen/Court cases dated 31.07.2009 that as the 80% promotion quota reserved for Headquarter (B-17) is applicable for SETs in the light of Service Rules notified vide notification No. SOC(S&LD/1-28/2003/Vol:-II dated 09.04.2004, therefore, the SETs (Tech:)/SETs (Commerce) may be included in the seniority list of SETs (General/Science) with the condition that this inclusion with only be for the purpose of promotion to the posts of Headmaster (B-17) in the light of the Service Rules for the posts of Headmaster duly notified vide No.& date cited above and these SETs (Technical and Commerce) will not claim any other benefits, which will accrue of their inclusion in the seniority list that would affect the SETs (General/Science). I am further direct to ask you to obtain a written undertaking from all the SETs (Tech:)/SETs (Commerce) (on judicial stamp paper) regarding the condition mentioned in the above decision that:-

"I am agreed for including my name in the General seniority list of SETs and I will not claim any other benefits which will accrue of my inclusion in the general seniority list. This condition will be reflected in the revised seniority list of all SETs. I will also not make further litigation".

Note:- They may be informed that this inclusion in the seniority list will be compulsory and any teacher who does not furnish the relevant undertaking mentioned above will be kept on static list and he/she will not claim any service benefits which his other colleagues will enjoy. Compliance report in this regard should be assured within one-month time.



7. Admittedly the appellant had not given any option after issuance of the above letter till 09.12.2013 and for the first time an application was made by the appellant which is found placed on the file as Annexure-B, wherein he requested that his name might be included in the seniority list and corrigendum might be issued. We find that none of the two sides did produce any of the seniority list which could be said to be prepared in violation of any of the right of the appellant. In the absence of any supporting document the Tribunal cannot reach the just conclusion. In the reply the respondents have taken the stance that letter dated 25.09.2009 was circulated throughout the province but the appellant had not intentionally opted for joining his name in the SET (G) seniority list. The appellant could not point out anything wrong to have been meted out to his any of right, therefore, this appeal is misconceived and is dismissed. Costs shall follow the event. Consign.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 5<sup>th</sup> day of May, 2023.*



**KALIM ARSHAD KHAN**

Chairman



**SALAH UD DIN**

Member (Judicial)

*\*Adnan Shah, PA\**