

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 2227/2021

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

Mr. Muhammad Shakoore, Senior Subject Specialist (BPS-18) GHSS Ghani Dheri, District Malakand. (Appellant)

Versus

1. **The Chief Secretary, Khyber Pakhtunkhwa, Peshawar.**
2. **The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.**
3. **The Director Education Department, Khyber Pakhtunkhwa, Peshawar. (Respondents)**


Mr. Kamran Khan,
Advocate. ... For appellant

Mr. Fazal Shah Mohmand,
Addl. Advocate General. ... For respondents

Date of Institution.....27.01.2021
Date of Hearing.....24.05.2023
Date of Decision..... 24.05.2023

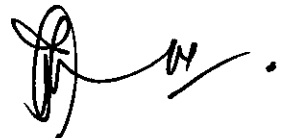
JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the notification dated 22.10.2018, whereby the appellant was granted promotion to the post of Senior Subject Specialist (BS-18) with immediate effect instead of 16.04.2015, when his other colleagues were promoted and against not taking any action on his departmental appeal within the statutory period of ninety days. It has been prayed that on



acceptance of the appeal, the impugned notification dated 22.10.2018 might be modified/rectified to the extent of the appellant by granting him ante-date promotion to the post of Senior Subject Specialist (BPS-18) from the date when his other colleagues were promoted i.e. 16.04.2015 with all back benefits including seniority alongwith any other remedy, which the Tribunal deemed fit.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Subject Specialist (BPS-17) on the recommendation of the Khyber Pakhtunkhwa Public Service Commission. He was awarded major penalty of removal from service vide order dated 03.06.2013 by the respondents. After exhausting departmental remedy, he filed Service Appeal No. 1307/2013 before the Service Tribunal which was allowed in his favour by reinstating him with all back benefits vide judgment dated 10.11.2015. Against the said judgment, the respondents filed a CPLA before the Apex Court which was dismissed vide judgment dated 20.06.2016. In the meanwhile, other colleagues of the appellant, including his juniors, were promoted to the post of Senior Subject Specialist (BS-18) vide notification dated 16.04.2015. Later on, in pursuance of the judgments of the Tribunal as well as august Supreme Court of Pakistan, the appellant was reinstated into service w.e.f. 03.06.2013 with all back benefits vide order dated 24.08.2016. Subsequently, vide notification dated 22.10.2018, he was promoted to the post of Senior Subject Specialist (BPS-18) but with immediate effect instead of 16.04.2015 when his other colleagues were



promoted. Feeling aggrieved, he preferred departmental appeal to the appellate authority which was not responded; hence the present appeal.

3. Respondents were put on notice. They did not submit their written reply/comments, despite several directions of this Tribunal, hence their right for submission of written reply/comments was struck off vide order dated 02.12.2022. We have heard the learned counsel for the appellant as well as the learned Additional Advocate General for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that the impugned notification dated 22.10.2018 was against law, facts, and norms of natural justice and material on record, hence liable to be rectified/modified. He further argued that the appellant was reinstated in service with effect from 03.06.2013 with all back benefits and under Section 8 of Civil Servants Act, 1973 read with Rule 7 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, he was entitled for ante-dating his promotion w.e.f. 16.04.2015, the date when his juniors were promoted. He requested that the appeal might be accepted as prayed for.

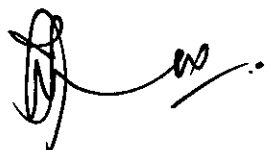
5. Learned Additional Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was removed from service on 03.06.2013 and on his reinstatement into service, his case was considered by the Provincial Selection Board for promotion to the post of Senior Subject Specialist (BPS-18) and vide notification dated



22.10.2018, he was rightly promoted to post of Senior Subject Specialist with immediate effect. He requested that the appeal might be dismissed.

6. From the arguments and record presented before us, it is found that the appellant, while serving as Subject Specialist (BS-17) was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and was awarded major penalty of removal from service on June 3, 2013. Vide judgment of this Tribunal dated 10.11.2015, he was reinstated into service with all back benefits. The CPLA filed by the respondents against that judgment was dismissed by the august Supreme Court of Pakistan vide its judgment dated 20.06.2016, and the appellant was reinstated vide order dated 24.08.2016, from the date of his removal i.e. 03.06.2013. During that period, the colleagues of the appellant were promoted to the position of Senior Subject Specialist (BS-18) vide order dated 16.04.2015. The appellant was also promoted to SSS (BS-18) vide order dated 22.10.2018. Now, through the instant service appeal, he has prayed for ante-date promotion, when his colleagues were promoted on 16.04.2015.

7. There is no second opinion that the appellant was reinstated into service by this Tribunal, with all back benefits, which includes seniority also; but for the purpose of promotion, seniority is not the sole criteria to be factored in. After going through the history of the case it is abundantly clear that he was out of service on 16.04.2015, when his colleagues were promoted. After getting a judgment in his favour, he was reinstated into service on 24.08.2016, which means that he had to earn a Performance



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Evaluation Report to make him eligible for further promotion. It was after fulfillment of that requirement when his case was placed before the Provincial Selection Board for consideration, under the rules. Moreover, ante-date promotion of a civil servant is not covered under the rules.

8. In view of the above discussion, the appeal is dismissed. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 24th day of May, 2023.*


(FAREEHA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
Chairman

Fazle Subhan PS