

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

**Service Appeal No. 6726/2021**

BEFORE: **MR. SALAH-UD-DIN** ... **MEMBER (J)**  
**MISS FAREEHA PAUL** ... **MEMBER (E)**

Mr. Riazullah S/O Abdul Qadir, Naib Qasid (BPS-04), District Office,  
Social Welfare Department, Peshawar..... (*Appellant*)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary, Social Welfare,  
Special Education & Women Empowerment Department, Civil  
Secretariat, Peshawar.
2. The Director, Social Welfare, Special Education & Women  
Empowerment Department, Peshawar.
3. The District Officer, Social Welfare Department, District Charsadda.  
..... (*Respondents*)

Mr. Muhammad Mahaz Madni,  
Advocate ... For appellant

Mr. Asad Ali Khan,  
Assistant Advocate General ... For respondents

Date of Institution..... 05.07.2021  
Date of Hearing..... 08.06.2023  
Date of Decision..... 08.06.2023

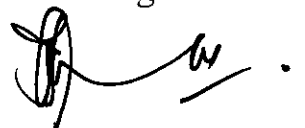
**JUDGEMENT**

**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 inaction of the respondents by not promoting the appellant to the post of Junior Clerk (BPS-11) in the light of promotion quota reserved for Class-IV employees and against not taking any action on his departmental appeal dated 16.03.2021 within the statutory period of ninety days. It has been prayed that on acceptance of this appeal the



inaction of the respondents by not considering the appellant for promotion to the post of Junior Clerk (BPS-11) in light of the quota reserved for Class-IV employees might be declared illegal and the respondents be directed to consider him for promotion to the post of Junior Clerk (BPS-11) from the date when his colleagues and juniors were given promotion with all back alongwith consequential benefits and any other remedy, which the Tribunal deemed fit and appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Naib Qasid (BPS-01) now (BPS-04) in the respondent Department on 16.06.2007. He assumed the charge of the post on 18.06.2007 and was placed at S.No. 16 in the seniority list as circulated on 04.09.2019. The appellant improved his educational qualification by acquiring SSC from the Board of Intermediate & Secondary Education, Peshawar in the year 2008, whereas HSSC was in progress. In the year 2017, the respondent No. 2 issued letter dated 13.12.2017 wherein PIRs for five years i.e. 2013-2017 alongwith willingness/non-willingness was asked for promotion of Class-IV employees to the post of Junior Clerk (BPS-11) which was submitted to respondent No. 2 by respondent No. 3 vide letter dated 21.12.2017 alongwith willingness signed by the appellant. The appellant came to know through reliable source that respondents had issued promotion order dated 30.07.2020, whereby various categories of employees including colleagues and juniors of the appellant were given promotion to the post of Junior Clerk (BPS-11) by ignoring the appellant despite having sufficient length



of service. Feeling aggrieved, he filed departmental appeal on 16.03.2021 which was forwarded to respondent No. 2 vide letter dated 25.03.2021 and remained unresponded within the statutory period; hence the instant appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We heard the learned counsel for the appellant as well as the learned Assistant 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, contended that the appellant was not treated in accordance with law and rules. He further contended that the appellant had acquired the requisite qualification, with at least 14 years experience, and according to the notification dated 18.07.2019 issued by the Establishment Department of Khyber Pakhtunkhwa, he was fully entitled for promotion to the post of Junior Clerk (BPS-11) but vide order dated 30.07.2020, his colleagues/junior colleagues were promoted in the light of Section 9 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 read with Section-7 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 while the appellant was ignored. He requested that the appeal might be accepted.

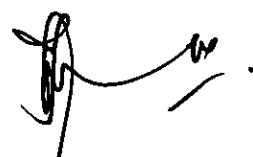
5. Learned Assistant Advocate General, while rebutting the arguments of learned counsel for the appellant, contended that since the upgradation of post of Junior Clerk from BPS-07 to BPS-11, service rules were revised and only those class-IV employees were declared fit for promotion to the post of



Junior Clerk (BPS-11) who availed a minimum of FA/F.Sc qualification. He further contended that pursuant to the amendment in Service Rules vide notification dated 25.09.2019, seniority lists were amended on the basis of date of acquisition of the prescribed qualification i.e. FA/F.Sc. Since the appellant did not have the prescribed qualification hence the respondents only issued promotion orders of those employees who had the requisite qualification of FA/F.Sc. He requested that the appeal might be dismissed.

6. After hearing the arguments and going through the record presented before us it is clear that the appellant was appointed as Naib Qasid in the respondent department in 2007. During the course of his service, he improved his qualification and acquired the Secondary School Certificate in 2008. The respondent department, after upgradation of the post of Junior Clerk from BS-7 to BS-11, amended the Service Rules and prescribed the minimum qualification for promotion as FA/F.Sc. from a recognized board, with two years service for that post; 30% quota was reserved for Daftari, Naib Qasid, Chowkidar, Sweeper, Mali, Security Guard etc. and a joint seniority list of all the posts was maintained. After amendment in the rules, seniority list was revised and certain promotions were made based on that revised seniority list. The appellant felt aggrieved of those promotions and filed a departmental appeal which was not responded and hence he approached this Tribunal.


7. From the details presented before us there is no doubt that the appellant at the relevant time had the length of service required for

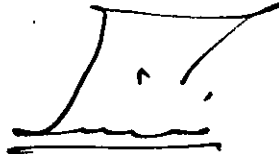


promotion but he lacked the minimum qualification of FA/F.Sc from a recognized university required as per Service Rules notified on 25.09.2019.

8. In view of the foregoing, the appeal in hand 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 08<sup>th</sup> day of June, 2023.*

  
(FAREEHHA PAUL)  
Member (I)

  
(SALAH-UD-DIN)  
Member (J)

*\*Fazle Subhan. P.S\**