

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR CAMP COURT ABBOTTABAD.

Appeal No. 371/2023

Aqeel KhanAppellant

VERSUS

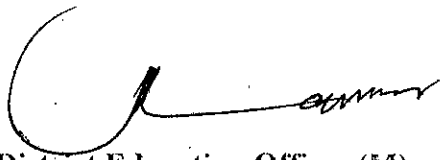
Govt: of Khyber Pakhtunkhwa & OthersRespondents

Joint Parawise Comments on behalf of Respondents No. 01 to 03

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Dated: 27/05/2023


District Education Officer (M)
Abbottabad.
(Respondent No.2)

1

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR CAMP COURT ABBOTTABAD.

Appeal No. 371/2023

Aqeel KhanAppellant

VERSUS

Govt: of Khyber Pakhtunkhwa & Others.....Respondents

Joint Parawise Comments on behalf of Respondents No. 01 to 03

RESPECTFULLY SHEWETH:-

Comments on behalf of respondents are submitted as under:-

Preliminary Objections:-

1. That the appellant has no cause of action to file the instant service appeal.
2. That the instant appeal is not maintainable in its present form.
3. That the appellant has no locus standi to file instant appeal.
4. That on 07-08-2017 appellant was promoted from PET (BPS-15) to SPET (BPS-16) vide promotion Endst; No. 8608-14 dated 07-08-2017 on the same seniority list and he did not raise any objections upon the said seniority list as well as he did not challenge the promotion order dated 07-08-2017 hence, the principle of **Estoppel** is applicable in the instant case as appellant cannot agitate it at belated stage.
5. That as per reported judgment **1982 PLC (CS) 784** untrained period cannot be counted in seniority. Hence, in view of the judgment of Apex court instant service appeal is liable to be dismissed on this score alone.
6. That the instant service appeal is hopelessly **time barred** as appellant cannot challenge the seniority list at this belated stage.
7. That the appellant has filed the present appeal just to pressurize the respondents.

8. That the instant service appeal is not maintainable in its present form as there is no final order.
9. That the appellant has not come to this Honorable Tribunal with clean hands. Hence, not entitled for any relief.
10. That the appellant was appointed as Physical Education Teacher (Untrained) vide appointment order Endst; No. 566-73 dated 30-10-1995 whereas he acquired mandatory professional training of Physical Education Teacher on 25-04-2000. As per APT Rules 1989 Seniority shall be reckoned from the date of regular appointment i.e. 25-04-2000.
11. That the appellant is estopped to sue due to his own conduct.
12. That the instant appeal is not maintainable due to non-joinder and mis-joinder of necessary parties.
13. That the instant appeal is against the Rules and Policy of the Government.
14. That the appellant has suppressed the material facts from this Honorable Tribunal, hence, not entitled for any relief and appeal is liable to be dismissed without any further proceeding.

Factual objections:-

1. In reply to Para No. 1 of the instant service appeal it is submitted that appellant was appointed as PET on 02-11-1995 as untrained.
2. That the Para No. 2 of the instant service appeal relates to record.
3. That the Para No. 3 of the instant service appeal relates to record.
4. That the Para No. 04 of the instant service appeal as composed is incorrect hence, denied and not admitted. Appellant was appointed as PET (untrained) on 02-11-1995 and final seniority list of PET was prepared in the year 2012 and appellant was promoted from PET to SPET on 07-08-2017 on said final seniority as appellant passed mandatory PET training course on 25-04-2000 but appellant badly failed to challenge the final seniority list prepared in the year 2012 as well as promotion order dated 07-08-2017 hence, the principle of **Estoppel** is applicable in the instant case as appellant cannot agitate it at belated stage. (Copy of Final

Seniority list of PET & Detail Marks Certificate of appellant is annexed herewith as Annexure "A" & "B" respectively)

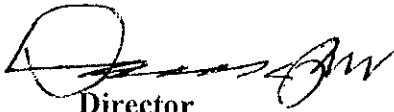
5. That the Para No. 5 of the instant service appeal as composed is incorrect hence, denied. Departmental appeal as well as service appeal are hopelessly time barred as final seniority list was prepared in the year 2012 and appellant was promoted from PET to SPET (BPS-16) on 07-08-2017 on the same seniority list. Hence, instant appeal is liable to be dismissed on this score alone.

Grounds:-

- a. That the ground a, as composed is incorrect hence, denied and not admitted. Seniority list was prepared in accordance with law rules and policy. Furthermore, as per judgment of this Honorable Tribunal the identical Service Appeal No. 1253/2016 dated 14-09-2022 has already been dismissed. Hence, instant Service Appeal is liable to be dismissed on the principle of consistency. (Copy of judgment in Service Appeal No. 1253/2016 dated 14-09-2022 is annexed herewith as Annexure "C")
- b. That the ground b, as composed is incorrect hence, denied and not admitted.
- c. That the ground c, as composed is incorrect hence, denied and not admitted. Furthermore, as per reported judgment 1982 PLC (CS) 784 untrained period cannot be counted in seniority. Hence, in view of the judgment of Apex court instant service appeal is liable to be dismissed on this score alone.
- d. That the ground d, as composed is incorrect hence, denied and not admitted. Comprehensive reply has already been given in preceding Paras.

- e. That the ground e, as composed is incorrect hence, denied and not admitted. Furthermore, as per 1993 SCMR 1119 seniority in a particular grade is reckoned from date of regular appointment i.e from the date of passing of professional examination (JDP).
- f. That the ground e, as composed is incorrect hence, denied and not admitted.
- g. That answering respondents seek leave of this Honorable Tribunal to raise additional grounds/ points during the course of arguments.

Under the circumstances it is humbly requested that in the light of above referred facts Service Appeal in hand may please be dismissed with cost.



Director
Elementary & Secondary Education
Khyber Pakhtunkhwa
(Respondents No. 01 & 03)



District Education Officer (M)
Abbottabad
(Respondent No. 2)

**Before the Honorable Khyber Pakhtunkhwa Service Tribunal
Peshawar Camp Court Abbottabad.**

Appeal No. 371/2023

Aqeel KhanAppellant

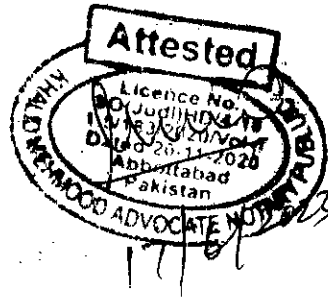
VERSUS

Govt: of Khyber Pakhtunkhwa & Others.....Respondents

JOIN PARAWISE COMMENTS ON BEHALF OF RESPONDENTS

AFFIDAVIT

I, Mr. Muhammad Tanveer, District Education Officer (M) Abbottabad, do hereby affirm and declare on oath that contents of forgoing comments are correct and true according to the best of my knowledge and belief and nothing has been suppressed from this Honorable Tribunal.



[Handwritten signature]

DEPONENT

OFFICE OF THE EXECUTIVE DISTRICT OFFICER (ES&E) ABBOTTABAD
 FINAL SENIORITY LIST OF PET MALE DISTRICT ABBOTTABAD CORRECTED UPTO 31/10/2012

07

Annexure "B"

S.No	School name	Name of Teacher	Father's Name	Date of Birth	D/O Ist Apptt: in Edu: Deptt:	D/O Apptt: In Present Post as PET	Date of passing JDPE	DATE OF SENIORITY PASSING PET/DO.APP WHICH IS LATER	Acad: Qual:	Date of passing B.A Exam	Date of Passing B.Ed Exam	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13
1	GHS Jhangi	Muhammad Ramzan	Azad Khan	04-Apr-56	09/03/75	09/03/75	09/07/1975	09/07/1975	SSC			X
2	GHSS Nawanshehr	Jehangir Khan	M Akram Khan	22-Feb-58	25/4/1978	25/4/1978	20/8/1978	20/8/1978	FA			X
3	GHS Konthiall	M. Parvaiz	Aziz Khan	12-Feb-55	22/10/1978	22/10/78	20/8/1978	22/10/1978	SSC			X
4	GHS Sumanlar Katha	Muhammad Ramzan	Muhammad Yaqub	11-Jul-56	28/4/1979	28/04/79	20/8/1978	28/4/1979	SSC			X
5	GMS Toheed abad	Fazul Ur Rehman	Abbas Khan	06-Jun-55	15/9/1974	18/11/79	08/01/1979	18/11/79	SSC			X
6	GHS No.3 A/Abad	Khalid Latif	Qalandar Khan	02-Mar-59	10/08/1980	08/10/80	10/08/1980	10/08/1980	BA			X
7	GMS Manjia	Nazer Ahmed	Khan Muhammad	09-Jun-53	10/03/1981	03/10/81	08/12/1982	08/12/1982	SSC		X	Ex-Serviceman
8	GHS No 1 Ravelian	Khan Nawaz	Yousaf Khan	14-Aug-56	10/12/1982	12/10/82	10/12/1982	10/12/1982	MA			Ex_serviceman
9	GHS Pawa	All Asghar	Muhammad Akbar	31-Jan-53	14/10/1982	14/10/82	14/10/1982	14/10/1982	FA		X	Ex-Serviceman
10	GHS Majuhian	Saeed Ur Rehman	Muhamad Rehan	16-Oct-56	16/10/1982	16/10/82	21/5/1985	21/5/1985	SSC		X	Ex-Serviceman
11	GHS Sarhan	Muhammad Ashraf	M Suleman	10-Dec-59	03/01/1984	01/03/84	21/5/1985	21/5/1985	FA			X
12	GMS Banda Dilazak	Muhammad Javed	Fazal Ur Rehmani	10/02/1965	31/3/1984	31/03/1984	21/5/1985	21/5/1985	SSC			X
13	GCMHS No. 2 Abbottabad	Tariq Khan	Khani Zaman	20-Jan-61	08/05/1985	08/05/1985	08/07/1986	08/07/1986	BA			YES
14	GMS Rankote	Muhammad Suleman	Kala Khan	25-Dec-63	20/8/1985	20/8/1985	08/07/1986	08/07/1986	BA	19/2/1989		YES
15	GMS Ghumawan	Munir Gul	Qalandar Khan	05-Mar-65	08/12/1985	08/12/85	08/07/1986	08/07/1986	BA	12/05/1987	08/12/2002	YES
16	GHS Pind Kargu Khan	Saif Ur Rehman	Kala Khan	07/08/961	23/8/1982	06/12/86	21/5/1985	06/12/86	FA			X
17	GHS Sherwan	Masood Ahmed	Sher Ahmed	20-Apr-61	18/5/1987	18/05/87	31/1/1988	31/1/1988	FA			X
18	GHS Nareela	Nazar Muhammad	Muhammad Yaqub	15-Mar-60	21/3/1983	15/12/86	25/5/1988	25/5/1988	BA			YES
19	GMS Thathi Ahmad Khan	Sabir Sultan	Sher Zaman	22-Feb-61	12/08/1986	08/12/86	14/11/1990	14/11/1990	BA	25/4/1989	28/2/1996	YES
20	GHS Namli Maira	Zulfiqar Ali	Shah Zaman	08-Apr-65	29/5/88	29/05/88	14/11/1990	14/11/1990	MA			YES

1	2	3	4	5	6	7	8	9	10	11	12	13
				Birth	Apptt: in Edu: Deptt:	Apptt: in Present Post as PET	DATE OF PASSING JDPE	DATE OF SENORITY PASSING PET/DO.APP WHICH IS LATER	Acad: Qual:	Date of passing B.A Exam	Date of Passing B.Ed Exam	Remarks
44	GHS Mirpur	Abdul Nasir Khan	Abdul Qayyum Khan	09-Sep-71	29/12/94	29/12/94	13/5/97	13/5/97	BA	17/5/99		YES
45	GHS Kakul	S.M.Azam	S.Dadan Khan	05-Apr-71	01/02/1995	02/01/95	13/5/1997	13/5/1997	BA	17/3/1994		YES
46	GHS No.1 Havelian	Khurram Shezad	Faridoon Khan	01-Jan-74	28/10/1995	28/10/1995	13/05/1997	13/05/1997	BA			YES
47	GMS Saihad	Amanat Khan	Suleman Khan	06-May-68	04/11/1995	04/11/1995	13/05/1997	13/05/1997	BA	26/3/1992		YES
48	GHS Muslim Abad	Niaz Ahmed	Muhammad Ishaq	10-Mar-71	27/02/1996	27/02/1996	13/05/1997	13/05/1997	BA	02/07/2011		YES
49	GMS KASALA	Mustajab	Bala Khan	04-Jul-70	26/6/97	26/06/97	21/8/96	26/06/97	BA	02/02/2012		YES
50	GMS Bandi Matrach	Amir Sharif	M Sharif	05-Jun-74	07/01/1997	01/07/97	13/05/1997	01/07/97	MA	28/12/1998		YES
51	GHS BAGAN	Gohar Nazir	Gohar Rehman	01-Aug-60	27/10/1981	23/07/1997	25/11/1996	23/07/1997	BA		X	only SDPE
52	GMS Tori Sharif	S. Amjad Shah	Pir M Zaman Shah	01-Apr-70	11/08/1994	11/08/94	27/2/1998	27/2/1998	MA	17/7/1993	22/12/2000	YES
53	GMS Sangrar	Khalid Khan	Ghulam Rabbani	21-Mar-75	03/05/1998	05/03/98	08/12/1996	05/03/98	BA	25/9/2001		YES
54	GMS Mallah	Muhammad Zia	Muhammad Fareed	17-Sep-67	24/12/1989	06/03/98	25/5/1998	06/03/98	BA	26/3/1992		YES
55	GMS Bandi Attai Khan	M Nazir	Sher Ahmed	11-Feb-64	13/05/1992	13/05/1992	11/05/1999	11/05/1999	BA			YES
56	GHS Bhuraj	Muhammad Arshad	Aziz Ur Rehman	03-Dec-56	13/11/1994	13/11/94	05/11/1999	11/05/1999	BA	23/08/1996	16/10/2001	YES
57	GMS NOWSHERA	Musaddiq Hussain Shah	Sarwar Shah	18-Apr-72	01/03/1995	03/01/95	05/11/1999	05/11/1999	BA	15/8/2011		YES
58	GHS No.4 A/Abad	Maqbool Hussain Shah	Munwar Shah	15-Apr-72	20/2/1995	20/02/95	05/11/1999	05/11/1999	MA	31/5/1994	02/03/2000	YES
59	GMS DEEDAL	Shafqat	Ali Mardan	04-Apr-73	20/6/1995	20/6/1995	05/11/1999	05/11/1999	BA	23/8/2010		YES
60	GHS No.2 Havelian	Nawaz Malik	Malik Aurangzeb	13-Apr-72	18/9/95	18/9/95	05/11/1999	05/11/1999	M.Sc BA			YES
61	GHS No.1 Havelian	M. Irshad	M Sarwar	05-Aug-74	05/10/95	05/10/95	05/11/1999	05/11/1999	BA			YES
62	GCMHS No. 2 Abbottabad	Faridoon Khan	Muhammad Iqbal	08-Mar-71	04/11/95	04/11/95	05/11/1999	05/11/1999	BA			YES
63	GHS No.2 Havelian	Mushtaq Ahmed	Suleman	05-May-72	17/04/96	17/04/96	05/11/1999	05/11/1999	BA			YES
64	GMS Maira R.Khan	Muhammad Hanif	Ghulam Yousaf	10-Feb-73	01/01/1995	11/05/99	05/11/1999	05/11/1999	BA	13/3/2008		YES
65	GHS SHEIKUL BANDI	M Saeed	Sher Muhammad	20-Mar-69	03/01/2000	1/3/2000	27/2/1998	1/3/2000	BA	17/3/1994	17/2/2004	YES

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	2	3	4	5	6	7	8	9	10	11	12	13
				Birh	Appt: in Edu: Dept:	D/O Appt: in Present Post as PET	Date of passing JDPE	DATE OF SENIORITY PASSING PET/DO:APP WHICH IS LATER	Acct: Qual:	Date of passing S.A Exam	Date of Passing B.Ed Exam	Remarks
66	GMS Seri Khan Kalan	Majm Ul Saqib	Munsif Khan	10-Feb-79	03/01/2000	03/01/2000	05/11/1999	03/01/2000	BA	24/4/2004		YES
67	GMS NOORMANG	Sohail Malik	Abdul Razaq	14-May-79	03/01/2000	03/01/00	27/2/1998	1/3/2000	BA	25/9/2001		YES
68	GHS SATORA	MASOOD UR REHMAN	M.URFAN	10-Oct-68	21/04/93	21/04/93	24/04/2000	24/04/2000	BA	02/05/2005		YES
69	GHS Nawen sher	Shahzada Imran	Muhammad Ilyas	01-Apr-65	01/01/1991	01/01/91	25/4/2000	25/4/2000	FA			X
70	GMS TARHANA	Naveed	Abdul Rehman	03-Jan-71	20/11/1994	20/11/1994	25/4/2000	25/4/2000	MA	17/3/1994		YES
71	GMS Sial Kote	Zahid Gul	Rustam Khan	04-Dec-74	11/01/1995	11/01/95	25/4/2000	25/4/2000	B.A	03/07/1996		YES
72	GMS Salol.Bandi	Aurangzeb	Mir Hussain	03-Oct-73	13/2/1995	13/02/95	25/4/2000	25/4/2000	BA	09/02/2008		YES
73	GHS Tarnawai	Sajid Hussain	Ghulam Hussain	28-Feb-70	01/06/95	01/06/95	25/4/2000	25/4/2000	BA			YES
74	GMS TORA K KALAN	Rashid-Khan	Anwar Dad Khan	12-Jan-72	12/09/95	12/09/95	25/4/2000	25/4/2000	FA			X
75	GHS Banda Pir Khan	Ishfaq Ahmed	Razaur Rehman	15-Oct-71	08/10/95	08/10/95	25/4/2000	25/4/2000	FA			X
76	GHS Harno (Azizabad)	Aqeel Khan	Mohabat Khan	09-Dec-72	02/11/95	02/11/95	25/4/2000	25/4/2000	MA	27/1/2000		YES
77	GHS BANDA LAMBA	Arshad Khan	Aziz Khan	03-Mar-67	18/11/1995	18/11/95	25/4/2000	25/4/2000	BCOM	03/04/1990		YES
78	GHS NO 2 ATD	Riasat Khan	Asif Khan	15-May-73	18/12/1995	18/12/1995	25/4/2000	25/4/2000	BA			YES
79	GHS Jhangli	Shahzad	Ghulam Sarwer	05-Dec-72	19/12/1995	19/12/95	25/4/2000	25/4/2000	BA	24/8/2007		YES
80	GMS Kaiyala	Aamir Khan	Mirdad Khan	20-Aug-72	12/06/1995	16/1/1996	25/4/2000	25/4/2000	BA	02/08/1996	25/1/2007	YES
81	GHS Ghari Noor Pur	Mazhar Ur Rehman	M.Hafeez Khan	01-Jan-75	16/8/93	16/04/96	25/4/2000	25/4/2000	BA	31/10/2000		YES
82	GMS Chunali	Nafees Gul	M Aslam Khan	04-Jan-75	06/10/1996	13/11/1996	25/4/2000	25/4/2000	BA	22/10/2010		YES
83	GMS Tharyati	Habib Gul	Muhammad Saleem	21-Apr-68	12/12/1995	04/01/97	25/4/2000	25/4/2000	BA	16/2/89	17/2/2004	YES
84	GHS PHAL KOTE	Shafiq Ur Rehman	Aziz Ur Rehman	07-May-71	15/04/96	15/04/96	31/3/2002	31/3/2002	BA			YES
85	GMS Ghoreeni	Saifullah Khan	Humayun Khan	24-Mar-75	17/04/1996	17/04/1996	31/3/2002	31/3/2002	BA	17/05/1999		YES
86	GHSS Nawanshehr	M Atique Lon	Fateh Mehmmmod	15-May-74	06/10/1996	10/06/96	31/3/2002	31/3/2002	BA	28/12/1998		YES
87	GMS Keri Sarafali	Inyat Ur Rehman	Fazal Ur Rehman	01-May-73	04/01/1996	01/08/96	31/3/2002	31/3/2002	BA	28/3/2002		YES

9

1	2	3	4	5	6	7	8	9	10	11	12	13
	Teacher			Date of Birth	D/O Ist Apptt: in Edu: Deptt:	D/O Apptt: In Present Post as PET	Date of passing JDPE	DATE OF SENORITY PASSING PET/DO APP WHICH IS LATER	Acad: Qual:	Date of passing B.A Exam	Date of Passing B.Ed Exam	Remarks
153	GHSS BOI	M Ishtiaq	M Safer	25-Feb-82	30/4/2012	30/4/2012	28/12/2006	30/4/2012	BA			
154	GMS TODO MAIRA	Amjad Khan	Saeed Khan	28-Feb-84	30/4/2012	30/4/2012	15/11/2008	30/4/2012	EA	2007		
155	GHS Phallah	Niaz Ali	Gul Khatab	16-Apr-84	03/01/2011	30/4/2012	15/12/2007	30/4/2012	BA	2006		
156	GMS SAMWALLA	Qazi Tahir Murtaza	Ghulam Murtaza	12-May-84	05/04/2012	05/04/2012	15/12/2007	05/04/2012	BA	02/03/2009		
157	GHS BODLA	Tanveer Khan	Muneer Hussain	1-Mar-84	05/05/2012	05/05/2012	12/04/2010	05/05/2012	BA			

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ENDS# _____ /SLIST(_____) DATED _____ /2012

- Copy forwarded for information to me:
1. PS Director E&SE, Khyber Pakhtunkhwa Peshawar
 2. All the principals / Headmasters, GHSS/GHS/GMS in District Abbottabad
 3. All the teachers concerned
 4. Certified that this list of PET Seniority is undisputed.

Shafiq Ul Rehman
Dealing Assistant

Muhammad Ayaz
Superintendent (Estt.) Male

S. Mahmood Ul Hassan Shah
ADEO (Estt.) Male

DEPUTY DISTRICT EDUCATION OFFICER
MALE ABBOTTABAD

DISTRICT EDUCATION OFFICER
MALE ABBOTTABAD

ANNEXURE B

GS&PD. NWFP 1273 Dir. of Edu. 3000 F.—19-2-94—(43)

DETAIL MARKS CERTIFICATE.



PHYSICAL EDUCATION TRAINING EXAMINATION, 1999.

Roll No. 188 Name Adeel Khan
 Son/Daughter of Mr. Muhammad Khan

Serial No.	Subject	Max. Marks	Marks Obtained	
			In figures	In words
1.	Prl. Organisation and Admn.	100	70	
2.	Se. of Movement ..	100	53	
3.	Theory of Games ..	100	44	
4.	Olym. and recreative games	100	55	
5.	Anomety and physiology ..	100	43	
6.	Health Education ..	100	61	
7.	Teaching of Education Gymn.	60	20	
8.	Teaching of Athletics ..	60	24	
9.	Teaching of Major games ..	60	21	
10.	Skill in Education Gyms.	40	21	
11.	Skill in apparatus works and marching.	40	17	
12.	Skill in Athletics ..	40	14	
13.	Skill in games ..	40	14	
14.	Girls Guide, First Aid nursing, Civil Defence.	25	23	
15.	Scouting ..	10	08	
16.	Civil Defence ..	10	09	
17.	First Aid ..	10	/	
18.	Mountery ..	10	/	
19.	Fock Dance ..	20	/	
20.	Phy. effency test ..	25	/	
	Total ..	1050	493	

FAILED/PASSED DIVISION ... Passed ...
Four hundred & Ninety-three

Prepared by [Signature] R.D.D. on

Checked by [Signature] 25/4/2000

N.B.—(i) Pass percentage 33% & Aggregate 40%.

(ii) Marks in circle not to be counted.

(iii) Grace marks not to be counted.

(iv) A candidate may be considered unsuccessful in the subject, comprising of theory and practical if he fails THEORY of the

[Signature] 25/4/2000

[Signature] 25/4/2000
 Registrar

Departmental Examinations,
 Education Department, Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 1253/2016

12

BEFORE: SALAH UDDIN --- MEMBER(J)
MIAN MUHAMMAD --- MEMBER(I-)

Sabir Ahmad, SPST Government Primary School No. 1, Topi,
District Swabi..... (Appellant)

VERSUS

1. Province of Khyber Pakhtunkhwa through Secretary to Government of Khyber Pakhtunkhwa, Elementary & Secondary Education Civil Secretariat Peshawar.
2. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar
3. District Education Officer, (Male) Elementary and Secondary Education, District Swabi.

..... (Respondents)

Present:

ASAD ZEB,
Advocate

--- For Appellant.

MUHAMMAD JAN,
District Attorney

--- For respondents.

Date of Institution.....19.06.2020

Date of Hearing.....14.09.2022

Date of Decision.....14.09.2022

JUDGEMENT.

MIAN MUHAMMAD, MEMBER(E):- The appellant has invoked jurisdiction of the Service Tribunal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the prayer that "on acceptance of the instant appeal the respondents may kindly be directed to give due seniority to the appellant since the date of appointment in service i.e. 16.01.1990 instead of 07.09.1993 alongwith all consequential benefits".

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02. Fact facts, as per memorandum of appeal, are that the appellant was appointed as Primary School Teacher (untrained) in the respondent department on 09.01.1989 on temporary basis. Services of the appellant were subsequently regularized on 16.01.1990. During his service the appellant acquired professional educational qualification i.e. M.A. M.Sc (PS), B.ed and PTC. The respondent department circulated tentative revised seniority list of PSIs (2016) wherein the appellant's seniority was reckoned from the date of acquiring PTC i.e. 07.09.1993 though also allegedly given graded pay from the date of appointment but he was not given seniority from the date of his appointment. He therefore, preferred departmental appeal on 18.08.2016 which was not responded within the stipulated period of 90 days, whereafter he filed the instant service appeal in the service Tribunal on 16.12.2016.

03. On admission of the service appeal in preliminary hearing on 23.02.2017, the respondents were put on notice to submit written defense through reply/para-wise comments. Reply/Parawise comments were submitted on 26.04.2017. We have heard learned counsel for the appellant as well as learned District Attorney for the respondents in Divisional Bench and gone through the record thoroughly with their valuable assistance today.

04. Learned counsel for the appellant argued that the respondent department has wrongly considered the seniority of appellant from the date of his acquiring professional qualification i.e. PTC w.e.f. 07.09.1993 and not from the date of regularization of his service w.e.f. 16.01.1990. The appellant was granted graded pay from the date of his

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appointment, therefore, his seniority is also required to be reckoned from the date of his appointment. He argued that inaction on part of the respondent department to give seniority to the appellant from the date of his appointment i.e. 16.01.1990, is against the provision of Article 4 of the Constitution of Islamic Republic of Pakistan. He further argued that he may be granted seniority from the date of his appointment in service i.e. 16.01.1990 instead of acquiring profession qualification w.e.f. 07.09.1993 with all consequential back benefits, while concluding his arguments.

05. Learned District Attorney on the other hand, contended that due to lack of prescribed professional qualification for the post of PTC, the first appointment of appellant as untrained PTC was purely temporary and upon acquiring the prescribed qualification on 07.09.1993 he became eligible for the post of PTC. His seniority was therefore, correctly reckoned from the date of 07.09.1993. He further argued that the appellant has not arrayed any private person as respondent who now stands senior to the appellant in the impugned seniority list. He contended that regular appointment means an appointment of a duly qualified person in the prescribed manner in accordance with law and rules; the standard which is lacking in the case of appellant. Moreover, after passing the PTC course i.e. 07.09.1993 the appellant was accordingly regularized in service and he was given his due position in seniority list after his regular appointment. He relied on Service Tribunal judgement of 13.06.2016 delivered in service appeal No. 11/2015 of Sanaulah Jan SPS I (BS-14) versus Secretary Elementary & Secondary Education and others.

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The service appeal in hand being devoid of any merit may be dismissed, he concluded.

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06. It is evident from the record and which is not disputed that the appellant was initially appointed as PTC (untrained) (now PST) on temporary/adhoc basis on fixed pay on 09.01.1989 and his services were later on, regularized on 16.01.1990. It was during service that the appellant acquired the required qualification for the post of PST on 07.09.1993 and as such his seniority was shown in column 16 (Date of taken over charge) against PST post from the date of passing PTC examination, in the tentative revised seniority list of PSTs (2016). The Service Tribunal in its judgement dated 13.06.2016 delivered in service appeal No. 11/2015 titled Sanaullah Jan SPST (BS-14) Versus Secretary Elementary & Secondary Education Khyber Pakhtunkhwa laid down the following principle:-

“Ordinarily on a post for which a certain special training/ examination is must so such appointment without such course/examination cannot be treated as a regular examination. The admitted position in this case is that the appellant was initially appointed as untrained teacher. He was appointed against a fixed pay. There is no legislation or notification from the respondents side specifying in particular that appointment of the PTC Teacher (appellant) will be regular appointment from the date of their first appointment. The Tribunal is afraid to subscribe the view of the learned counsel for the appellant that in the light of the referred notifications the appellant became regular servant from the date of their first appointment. A regular appointment means an appointment of a duly qualified person in the prescribed manner in accordance with the law and rules which standard is evidently lacking

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in case of the appellant After passing the PTC Course on 24.12.1993 it seems that the appellant was accordingly regularized in service, therefore, he was given his due position in the seniority list after his regular appointment which step is in accordance with the law and rules on the subject."

07. Similarly, Section 8 (4) of the Khyber Pakhtunkhwa Civil Servants Act, 1973 is relevant to be quoted here which lays down the principle for determining seniority of a civil servant in the following:

"Seniority in a post, service or cadre to which a Civil Servant is promoted shall take effect from the date of regular appointment to that post."

08. In view of the foregoing discussion, It can be concluded that as the appellant was appointed as regular PST with effect from the date of passing the basic required qualification for the post of PTC on 07.09.1993 he has therefore rightly been placed in the tentative revised seniority list (2016) from such date. We, therefore, find that the appellant has been treated in accordance with law and relevant rules. The service appeal being devoid of merit, is dismissed. Parties are left to bear their own costs. File be consigned to record room.

09. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 14th day of September, 2022.*