

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.**

Service Appeal No. 1123/2016

Date of Institution ... 27.10.2016

Date of Decision... 01.06.2023

Zaheer-ud-Din S/O Izat Khan, Senior Physical Education Teacher,  
Government H.S School, Daraka Aziz Khan, Lakki Marwat.

... (Appellant)

**VERSUS**

Secretary, Government of Khyber Pakhtunkhwa, Elementary & Secondary  
Education, Peshawar and 27 others.

... (Respondents)

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MR. ARBAB SAIF-UL-KAMAL,  
Advocate

--- For appellant.

MR. ASIF MASOOD ALI SHAH,  
Deputy District Attorney

--- For official respondents.

MR. SALAH-UD-DIN  
MR. MUHAMMAD AKBAR KHAN

--- MEMBER (JUDICIAL)  
--- MEMBER (EXECUTIVE)

**JUDGMENT:**

SALAH-UD-DIN, MEMBER:- The appellant has filed the instant appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against office Notification No. SO(PE)2-6/OPC dated 30.05.2016 of respondent No. 1, whereby Respondents No. 3 to 28, being most juniors to appellant were promoted from the post of Senior Physical Education Teacher (SPET) BS-16 to the post of Director Physical Education (DPE) BS-17 on regular basis and appellant, being senior in the seniority list was ignored for no legal reason.

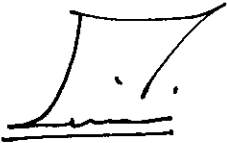
2. Precise facts raised by the appellant in his appeal are that he was appointed as Physical Education Teacher (BPS-09) on

18.02.1993 and was then promoted to the post of Senior Physical Education Teacher (BPS-16) on 21.02.2013. The appellant had passed Senior Diploma in Physical Education examination and was also having at his credit the degree of Master of Health & Physical Education. Vide Government of NWFP Finance Department Notification dated 01.10.2007, the post of Director Physical Education Teacher (BPS-16) was up-graded to BPS-17 and M.Sc at least 2<sup>nd</sup> Division in Health and Physical Education was prescribed as educational qualification for the same. The department initiated process for promotion to the post of Director Physical Education (BPS-17) on 03.12.2014 and seniority list of Senior Physical Education Teachers (BPS-16) was circulated wherein the name of the appellant was placed at serial No. 372. Most of the teachers were having 3<sup>rd</sup> division in M.Sc, therefore, keeping in view the problem of the teachers, Government of NWFP Finance Department (Regulation Wing) issued Notification dated 09.10.2007 whereby the condition of 02<sup>nd</sup> Division was waived off by treating M.Sc as Master Degree in Physical Education. However, vide Notification dated 24.07.2014 issued by Secretary to Government of Khyber Pakhtunkhwa Elementary & Secondary Education, at least 2<sup>nd</sup> class Master Degree in Physical Education was prescribed as educational qualification for promotion to the post of Director Physical Education. Vide Notification dated 30.05.2016, 86 senior Physical Education Teachers (BPS-16) were promoted to the post of Director Physical Education (BPS-17) on regular basis. The



appellant submitted departmental representation on 29.06.2016 requesting therein that he may also be promoted to the post of Director Physical Education (BPS-17) but in vain, hence the instant appeal.

3. On admission of the appeal for regular hearing, notices were issued to the respondents. Official respondents No. 1 & 2 as well as private respondents No. 4 to 6 contested the appeal by way of filing of replies, wherein they refuted the assertion raised by the appellant in his appeal. Rest of private respondents were proceeded ex-parte vide orders dated 04.01.2018 & 19.01.2018.



4. Learned counsel for the appellant has addressed his arguments supporting the grounds agitated by the appellant in his appeal. On the other hand, learned Deputy District Attorney for official respondents No. 1 & 2 has controverted the arguments of learned counsel for the appellant and has supported the comments submitted by official respondents.

5. Arguments have already been heard and record perused.

6. A perusal of the record would show that the appellant is seeking promotion to the post of Director Physical Education (BPS-17) with effect from 30.05.2016 with all consequential benefits as well as modification in Notification dated 24.07.2014 to the effect that the requirement of at least 2<sup>nd</sup> Class Master Degree in Physical Education may be deleted. While going through the appeal in hand as well as the departmental appeal filed by the appellant, he has passed Master in Health and Physical

Education in 3<sup>rd</sup> Division from the University of Sindh. According to the rules notified vide Notification dated 24<sup>th</sup> July 2014, at least 2<sup>nd</sup> Class Master Degree in Physical Education from a recognized University has been prescribed as educational qualification for promotion to the post of Director Physical Education (BPS-17). The appellant has admittedly passed Master of Health and Physical Education examination in 3<sup>rd</sup> Division, therefore, he was lacking the prescribed educational qualification for the post of Director Physical Education.


7. The requirement of 2<sup>nd</sup> Class Master Degree in Physical Education for promotion to the post of Director Physical Education (BPS-17) is not person specific and would be applicable across the board for promotion to the post of Director Physical Education (BPS-17). While going through the contents of the appeal, we have observed that no allegation of any mala-fide has been raised by the appellant. It is a settled proposition that the Government is entitled to make service rules in the interest of expediency of service and to remove anomaly in service rules, which in the absence of demonstrable mala-fide could not be assailed. August Supreme Court of Pakistan in its judgment reported as 2004 SCMR 1427 has graciously held as below:-


*“The government is always empowered to change the promotion policy and the domain of the government to prescribe the qualification for a particular post through amendment in the relevant rules, is not challengeable. This is also a settled law that notwithstanding fulfillment of*

*the required qualification and other conditions containing the rules, the promotion cannot be claimed as a vested right."*

8. In view of the above discussion, the appeal in hand being devoid of merit stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
01.06.2023

  
(MUHAMMAD AKBAR KHAN)  
MEMBER (EXECUTIVE)

  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)