

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 7358/2021

BEFORE: MR. SALAH UD DIN ... MEMBER (Judicial)
MRS. RASHIDA BANO ... MEMBER (Judicial)

Muhammad Muneeb S/O Khan Zada (Chowkidar/Class-IV)
Government Girls Primary School No. 02, Saleh Khan Tehsil Pabbi,
District Nowshera.

.... (Appellant)

VERSUS

1. Director, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
2. District Education Officer, (Female) District Nowshera.
3. District Monitoring Officer, Nowshera.
4. Deputy Commissioner, District Nowshera.
5. Muhammad Farooq S/O Saraf Khan (Junior Clerk) GGHSS Rashakai.
6. Tufail . (Junior Clerk) GGHSS ASC Nowshera.
7. Noor Muhammad (Junior Clerk) GGHSS Azakhel Payan District Nowshera.
8. Gul Muhammad (Junior Clerk) GGHSS Dagai Qadeem.
9. Fazl-E-Ahad (Junior Clerk) GGHSS Dhery Katkhikhel, District Nowshera
10. Sarafaraz Khan (Junior Clerk) GGHSS Nowshera Cantt.
11. Hayat Ullah (Junior Clerk) GGHSS District Nowshera.
12. Munjamil Khan (Junior Clerk) GGHSS Nodh District Nowshera.
13. Rattan Kumar (Junior Clerk) GGHSS Marhati Banda District Nowshera.
14. Muhammad Ismail (Junior Clerk) GGHSS Kotli Kalan District Nowshera.
15. Luqman Gul (Junior Clerk) GGHSS Mandari District Nowshera.
16. Muhammad Arif (Junior Clerk) GGHSS Jalozei Nowshera.

.... (Respondents)

Mr. Zia Ur Rehman Tajik
Advocate

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For appellant

Mr. Noman Ali Bukhari
Advocate

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For private respondents

Mr. Asad Ali Khan
Assistant Advocate General

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For official respondents

Date of Institution.....30.08.2021
Date of Hearing.....13.07.2023
Date of Decision.....13.07.2023

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of instant appeal the impugned order dated 23.08.2021 may kindly be set aside and official respondents may be directed to promote the appellant to the post of Junior Clerk (BPS-11) under 33% quota of class-IV employees”.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Class-IV in the respondent department vide order dated 24.06.1999. He was performing his duties up to the entire satisfaction of his superiors. On 21.01.2021 respondent No. 2 (District Education Officer, Female, Nowshera) issued seniority list of class-IV employees in which appellant was placed at Sr. No. 4. On 07.06.2021 respondent No.2 issued promotion orders of class-IV employees through which juniors to appellant were promoted and appellant was ignored. Feeling aggrieved, he filed departmental appeal on 28.06.2021 which was dismissed on 23.08.2021, hence the instant service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the

appellant as well as the learned Assistant Advocate General and perused the case file with connected documents in detail.

4. Learned counsel for the appellant submitted that the appellant has not been treated in accordance with law and rules. He contended that the impugned promotion orders of the respondent is unlawful, against the law and principle of natural justice hence, liable to be set aside. He further contended that despite being senior most class-IV employee of the district Nowshera and placed at Sr. No. 4 at seniority list of 2021 but was ignored and deprived from promotion, which is violation of seniority rules. He, therefore, requested for acceptance of instant service appeal.

5. Conversely, learned Assistant Advocate General assisted by learned counsel for private respondents argued that the appellant has been treated in accordance with law and rules. He further contended that appellant was appointed on 24.06.1999, while private respondents were appointed in 1987, 1993, 1994 and 1995 as evident from record, so claim of the appellant is baseless and promotion order of the private respondents were according to law/rules.

6. Perusal of record reveal that appellant has impugned promotion of private respondent No. 5 to 16 issued by respondent No. 2 vide notification dated 03.06.2021 by alleging that he is senior to private respondent No. 5 to 16. He relied upon a seniority certificate issued by Sub-Divisional Education Officer (Female) Pabbi Nowshera annexure "B" in accordance with which, appellant was at serial No. 04 of seniority list of the class-IV employees issued by DEO (F) Nowshera dated 21-01-2021. Respondent on the other



hand denied the fact of appellant's seniority and have mentioned in written reply that they are senior to appellant and were rightly promoted by competent authority from Class-IV employees category.

7. In accordance with final seniority list corrected upto 30.04.2021, the position of appellant and private respondents No. 5 to 16 alongwith their date of regular appointment and qualification is given as under:

Name	Appellant	Sr. No. in Seniority list	Date of Appointment	Qualification
Muhammad Muneeb	Appellant	204	24.06.1999	FA

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Name	Respondent No.	Sr. No. in Seniority list	Date of Appointment	Qualification
Muhammad Farooq	5	6	08.10.1987	SSC
Tufail	6	52	05.08.1991	SSC
Noor Rehman mentioned in appeal as Noor Muhammad	7	61	02.01.1993	SSC, PTC
Gul Muhammad	8	78	10.03.1993	SSC
Fazle Ahad	9	68	17.04.1993	SSC
Sarfaraz Khan	10	73	16.06.1993	SSC
Hayat Ullah	11	74	20.06.1993	SSC
Munjamil Khan	12	88	16.06.1994	SSC
Rattan Kumar	13	83	01.09.1994	SSC
Muhammad Ismail	14	90	16.08.1994	SSC
Luqman Gul	15	105	24.04.1995	FA
Muhammad Arif	16	100	01.12.1995	SSC

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8. So from the above referred material, it is clear that all the promotees i.e private respondents No. 5 to 16 were appointed during the period from 08.10.1987 to 01.12.1995, while appellant was appointed on 24.06.1999. For determination of seniority of civil servant, his date of appointment is crucial point/factor in accordance with Rule 8(4) of the Khyber Pakhtunkhwa Civil Servants Act, 1973 which in the case of promotees i.e respondent No. 5 to 16 are much earlier appointed than appellant. Last promotees was appointed on 01-12-1995 and appellant date of appointment is 24-06-1999 and there is gap of 3 years 6 months and 23 days, in between appointments of appellant and promotees, then how an official appointed with such a gap will be placed senior to one, who was appointed almost 3 and half years before his appointment. So all the promotees were senior to the appellant having regard to the date of their regular appointment and appellant is not senior to them.

9. Now come towards arguments of learned counsel for the appellant that appellant have Bachelor of Arts Degree and have a higher qualification as compared to the promotees, who are matriculate and that qualification for appointment as Junior Clerk is F.A/F.Sc and not SSC. In accordance with notification No. SOE.IV(E&AD)/1-35/2014 dated 18th July 2019 criteria for appointment of junior clerk is determined and wherein academic qualification for Junior Clerk was mentioned FA/FSc with second division but second proviso to said amendment says "The condition of FA/F.SC or its equivalent qualification from a recognized Board, as laid down at clause (a) shall not apply for a period of four years from the date of commencement of this Notification to the existing matriculate incumbents of the post of Daftaris,

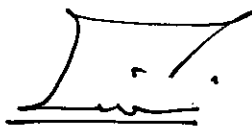


Generator Operators, Qasids and Naib Qasids including holders of other equivalent posts for promotion to the post of Junior Clerk (BS-11)". Impugned promotion order was issued on 07-06-2021 and period of 4 years mentioned in the notification will be completed on 18th July, 2023. So, qualification for promotion from class IV to Junior Clerk was SSC/Matric and was not FA/FSC at the time of promotion in accordance with the above referred notification. Therefore, this arguments has no force in it.

10. Now come toward seniority certificate annexed by appellant with his appeal in accordance with which appellant was certified to be at serial No 04 of seniority list. Same was issued by Sub-Divisional Education Officer (Female) Pabbi Nowshera and not by DEO (F) Nowshera, who gives her certificate that appellant is at serial No. 204 of the seniority list. Moreover, in existence of Seniority list duly maintained certificate issued by SDEO have no legal effect and cannot be relied upon for the purpose of determining seniority of official whose name is mentioned in seniority list being duly maintained by the authority.

11. For what has been discussed above, the appeal in hand is dismissed. Costs shall follow the event. Consign.

12. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 13th day of July, 2023.*


(SALAH UD DIN)
Member (J)


(RASHIDA BANO)
Member (J)