

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

Service appeal No 1062/2022

Nighat Jahan

(appellant)

VERSUS

Secretary E&SE & others

(respondents)

INDEX

S.No.	Description of documents	Annexure	Pages
1.	Reply		1-8
2.	Reply to application with affidavit		9-11

Dated 11.08.2023

Respondent No. 5

Through


Abdullah Qazi

Advocate High Court Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No.1062/2022

Petition No. 6986

Dated 11/08/23

Nighat Jehan. **APPELLANT**

VERSUS

Secretary E&SE, & others. **RESPONDENTS**

REPLY BY AND ON BEHALF OF
RESPONDENT NO.5

Respectfully Sheweth:

Preliminary Objections:

- a. That the appellant has got no cause of action to file the present appeal.
- b. That the appellant cannot be said to be an aggrieved person from the bare reading of the orders impugned by the appellant in titled appeal.
- c. That the appellant has estopped by her own conduct to file the appeal in hand.
- d. That the appeal of the appellant is not maintainable in the present form.
- e. That the appellant has not come to this court with clean hands, thus the appeal is liable to be dismissed on this score alone.

- f. That appeal of the appellant is barred by law.
- g. That the appeal in hand is liable to be dismissed for non-joinder and mis-joinder of necessary parties.
- h. That the appeal is hopelessly time barred.

ON FACTS:

1. That Para No.1 of the appeal pertains to record, therefore, the official respondents are in better position to comment the same.
1. That Para No.1 of the appeal is incorrect, wrong and baseless, as stated. Appellant has got no cause of action to file the instant appeal and is estopped by her own conduct as the appellant has failed/waived off her right to challenge the previous lists/orders regarding the promotion of answering respondent (respondent No.5) from Drawing Master (DM) BPS-15 to Senior Drawing Master (SDM) BPS-16, bearing Endst. No.4007-17/File No.2/Promotion services DM-16 dated 21.02.2012, passed by respondent No.2, thus the appellant has got no cause of action to challenge the subsequent promotions of the answering respondent.

2. That Para No.2 of the appeal is legal, but has been quoted/interpreted malafidely, having no nexus with the appeal in hand.
3. That Para No.3 of the appeal is wrong, incorrect and baseless, as stated. The promotion of answering respondent from Drawing Master (DM) BPS-15 to Senior Drawing Master (SDM) BPS-16 was according to law and after fulfilling all the formalities that's why it has not been challenged at that time, the same has now been a past and closed transaction and that cannot be impugned at such a belated stage, therefore, the para is denied. It is further stated that the then promotion of answering respondent is not impugned in the instant appeal.
4. That in response to Para No.4 of the appeal, it is submitted that Para No.4 negates the contents of Para No.3 of the appeal, the promotion orders of the answering respondent was according to the law and rules, which has been passed in the year 2012 and that cannot be questioned at such a belated stage, as law does not permit the questioning of orders passed more than a decade ago.

5. That in response to Para No.5 of the appeal, it is stated that the appellant is questioning the promotion of answering respondent from Drawing Master (DM) BPS-15 to Senior Drawing Master (SDM) BPS-16, which law does not permit to be questioned/impugned at such a belated stage, the para is based on malafide and the appellant is trying to make a base for a baseless and barred by law/hopelessly time barred and not maintainable/tenable appeal. Hence the para is denied.
6. That Para No.6 of the appeal is incorrect, wrong and baseless, as stated. The answering respondent has been placed at Sr.No.6, on the basis of her service record, correctly. Hence the para is denied. The appellant has got no cause of action to impugn the orders of promotion of answering respondent, which has not yet been challenged and cannot be challenged at such a belated stage and which has passed in accordance with law.
7. That Para No.7 of the appeal is does not relate to the answering respondent, directly. Hence the para is denied.

8. That Para No.8 of the appeal is incorrect, wrong and baseless, as stated. The promotion of the answering respondent is based on her prior service record and on her previous promotion orders passed in the year 2012. The impugned order bearing Notification No.5360-761 dated 11.01.2021 has been passed correctly, therefore, cannot be questioned. Hence the para is denied and the appeal of the appellant is liable to be dismissed, on this score alone.

9. That Para No.9 of the appeal is incorrect, wrong and baseless as stated. The appellant is not an aggrieved person and the appellant has got no cause of action/ locus standi to challenge the orders bearing No.650-83 dated 11.01.2022 and No.5360-76 dated 11.01.2021, thus the appeal is liable to be dismissed, on the following grounds, inter alia;
 - A. That Para "A" of the appeal is incorrect, wrong and baseless, as stated. The promotion orders of the answering respondent has been passed on the previous records and promotion orders passed according to law and which has not been challenged by the appellant, thus the orders of promotion of the

answering respondent are not liable to be challenged at a belated stage, hence the appeal is liable to be dismissed/rejected.

- B. That Para "B" is incorrect, wrong and baseless, as stated. All legal procedures have been adopted in the matter of promotion of the answering respondent. The appellant has tried to interpret the principle of law *audi alteram partem* in a novice way. When there is no appeal against promotion orders of the answering respondent, the question of *audi alteram partem/personal hearing* does not arise. Therefore, on this score alone the appeal is liable to be dismissed.
- C. That Para "C" is incorrect, wrong and baseless as stated. The appellant has not been discriminated in any way, law favours vigilant and not the indolent. In absence of any appeal against the promotion orders of the answering respondent, the question of legitimate expectancy of the appellant does not arise, the present appeal of the appellant is meritless and is not maintainable.

10. That Para No.10 of the appeal is incorrect, wrong and baseless, as stated. Appellant has got no cause of action to file the instant appeal and is estopped by her own conduct as the appellant has failed/waived off her right to challenge the previous lists/orders regarding the promotion of answering respondent (respondent No.5) from Drawing Master (DM) BPS-15 to Senior Drawing Master (SDM) BPS-16, bearing Endst. No.4007-17/File No.2/Promotion services DM-16 dated 21.02.2012, passed by respondent No.2, thus the appellant has got no cause of action to challenge the subsequent promotions of the answering respondent.


11. That Para No.11 of the appeal is legal, but has been quoted/interpreted malafidely, having no nexus with the appeal in hand.

D: That in response to Para "D", it is submitted that the answering respondent would seek permission of this Hon'ble Tribunal to advance other grounds at the time of hearing.

In view of the above, it is humbly prayed that the appeal of the appellant may please be dismissed with costs.

Shezib Bibi
Respondent No.5

Through


ABDULLAH QAZI
Advocate,
High Court Peshawar

Dated: 10.08.2023

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No.1062/2022

Nighat Jehan. **APPELLANT**

VERSUS

Secretary E&SE, & others. **RESPONDENTS**

REPLY BY AND ON BEHALF OF
RESPONDENT NO.5 TO THE APPLICATION FOR
CONDONATION OF DELAY

Respectfully Sheweth:

Preliminary Objections:

- a. That the applicant/appellant has got no cause of action to file the present application.
- b. That the applicant/appellant cannot be said to be an aggrieved person from the bare reading of the orders impugned by the appellant in titled appeal.
- c. That the applicant/appellant has estopped by her own conduct to file the application in hand.
- d. That the application of the applicant/appellant is not maintainable in the present form.
- e. That the applicant/appellant has not come to this court with clean hands, thus the application is liable to be dismissed on this score alone.

ON FACTS:

1. Para No.1 needs no comments.
2. That in response to Para No.2, it is submitted that the applicant is not an aggrieved person/ and cannot be said to be an aggrieved person, the applicant cannot challenge an order from which he has got no grievance. The promotion of the answering respondent was according to law and rules pertaining to the matter.
3. That Para No.3 of the application is incorrect, wrong and baseless. The applicant is trying to make a base for a baseless case. The applicant was well aware of the whole case/promotion of the answering respondent. When there is no departmental appeal, the service appeal, if any, cannot be entertained.
4. That Para No.4 of the application is incorrect, wrong and baseless. The appeal of the applicant/appellant is hopelessly time barred as the applicant was well aware of the orders of promotion of the answering respondent and which has been passed according to law and has not been challenged. Hence the applicant/appellant has got no cause of action against the answering respondent.

5. That Para No.5 of the application is incorrect, wrong and baseless. The applicant is not an aggrieved person. The appeal is hopelessly time barred, hence the application is not maintainable.
6. The answering respondent would like to seek the permission of this Hon'ble Tribunal to raise further points and place rulings on the subject.

It is, therefore, most humbly prayed that the application for condonation of delay may please be dismissed.

Through

Shazie bibi
Respondent No.5

[Signature]
ABDULLAH QAZI
Advocate,
High Court Peshawar

Dated: 10.08.2023

AFFIDAVIT

It is stated on oath that the contents of the **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble

Tribunal. *It is further affirmed that the Answer/Deposition has not been examined ex parte.*

Shazie bibi
DEPONENT

