

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR, AT CAMP COURT, ABBOTTABAD

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
SALAH-UD-DIN ... MEMBER (Judicial)

Service Appeal No.999/2019

Date of presentation of Appeal.....31.07.2019
Date of Hearing.....26.09.2023
Date of Decision.....26.09.2023

Gohar Nazir S/O Gohar Rehman (S.P.E.T) Government High School Bagan, Tehsil & District Abbottabad.....Appellant

Versus

1. **The Government of Khyber Pakhtunkhwa** through Secretary Elementary & Secondary Education Department Peshawar.
2. **Director** Elementary & Secondary Education Department Peshawar.
3. **District Education Officer (Male)** (Elementary & Secondary Education) Abbottabad.....(**Respondents**)

Present:

Mr. Abdur Rauf Chohan, AdvocateFor the appellant
Mr. Asif Masood Ali Shah, Deputy District Attorney....For respondents

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APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 FOR PROMOTION OF APPELLANT AS A "D.P.E" BPS-17 WHICH IS NOT BEING GRANTED BY THE RESPONDENTS BUT THE APPELLANT IS ELIGIBLE FOR SAID PROMOTION IN THE LIGHT OF NOTIFICATION NO.FD(PRC)5-1/93 DATED 09.06.1994, WHICH IS ILLEGAL, UNLAWFUL AND WITHOUT LAWFUL JUSTIFICATION.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Facts as narrated in the memo and grounds of appeal, are that the appellant was appointed as PST (BPS-06)



on 27.10.1981 and presently serving as SPT (BPS-16) at Government High School Bagan, Abbottabad; that on 25.06.1997, the appellant was appointed on higher post of P.E.T (BPS-14) and adjusted at GHSS Battal, District Mansehra on 22.07.1997; that on 13.06.1998, the appellant was promoted from BPS-14 to BPS-15 in the light of Notification dated 20.07.1987; that the Government of Khyber Pakhtunkhwa Elementary & Secondary Education Department issued Notification vide which all the P.E.Ts were granted BPS-15; that on 11.07.2012, Government of Khyber Pakhtunkhwa issued a promotion notification for Teaching Cadres under 1/3 Policy dated 11.07.20125 under which, most of the P.E.Ts were promoted to S.P.T (BPS-16) vide order dated 26.02.2013 and many P.E.T teachers were promoted to BPS-16 who were junior to the appellant; that in the light of Policy dated 11.07.2012, the appellant was promoted to the post of S.P.T (BPS-16) vide order dated 31.05.2013; that in the Notification dated 09.06.1994 issued by the Provincial Government, it was clearly mentioned that the Selection Grade of the promoted employees, shall be BPS-17, but the appellant has not been granted Selection Grade of BPS-17; that on 02.01.2018, most of the P.E.Ts/S.P.E.Ts were promoted as DPEs in BPS-17 who were junior to the appellant. Feeling aggrieved, the appellant filed departmental appeal on 02.04.2019, which was not responded, hence, the instant service appeal.

02. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the

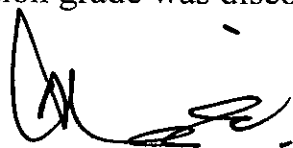


appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

03. We have heard learned counsel for the appellant and learned Deputy District Attorney for the respondents.

04. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy District Attorney controverted the same by supporting the impugned order(s).

05. The claim as set forth by the appellant is not only vague, ambiguous but also seems to be misconceived. Appellant claims that he was entitled for promotion as Director Physical Education in BPS-17 w.e.f 22.07.1997 in the light of Notification dated 09.06.1994. We have perused the said Notification, which is a corrigendum in the scheme of BPS-17 in SDPE but the appellant could not clarify as to how he was entitled for the desired relief on the strength of the above notification. In the departmental appeal made on 02.04.2019, he had requested the departmental authorities for grant of Selection Grade in BPS-17 in the light of Notification dated 24.08.1983. The official respondents contended that as per Government of Pakistan Finance Division (Regulation Wing) Office Memorandum No.F.1(5) Imp/2001 dated 04.09.2001, selection grade was discontinued w.e.f date of issuance of office memorandum.



06. Be that as it may, the appellant orally argued that as per Serial No.1-A of Notification dated 24.07.2014, the post of Director Physical Education (BPS-17) was to be filled in, in the following manner.

"(a). Fifty percent by promotion, on the basis of seniority-cum-fitness, from amongst Senior Physical Education Teachers (BPS-16), with at least five years service as Senior Physical Education Teacher and Physical Education Teacher and having qualification mentioned in column No.3:

Provided that if no suitable person is available from amongst Senior Physical Education Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst the Physical Education Teachers, with at least five years service as such and having qualification mentioned in column No.3:

Note: If no suitable candidate is available in the relevant cadres of the above teachers, the post falling in their promotion quota shall be filled by initial recruitment."

Without giving any details regarding any violation of the said rule, the appellant claimed to be promoted to Grade-17. The representative of the respondents produced final seniority list of Senior Physical Education Teachers (Male) BPS-16 Elementary & Secondary Education Khyber Pakhtunkhwa, as stood on 02.11.2017 and stated at the bar that officer at Serial No.407 namely Murad Shah was the last person promoted in the year



2018 and thereafter, no promotion was made, whereas, name of the appellant figured at Serial No.691 on the said seniority list produced by the departmental representative. The appellant did not convert the statement of departmental representative that there was no promotion made after promoting the officer at Serial No.407 namely Murad Shah. The appellant has also admitted at the bar that he was junior to the said Murad Shah. This being so, the appellant has no case and we are constrained to dismiss this appeal with costs. Consign.

07. Pronounced in open Court at Camp Court, Abbottabad and given under our hands and the seal of the Tribunal on this 26th day of September, 2023.



KALIM ARSHAD KHAN
Chairman



SALAH-UD-DIN
Member (Judicial)

Mutazem Shah

S.A #.999/2019

ORDER

26th Sept. 2023

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney alongwith Mr. Sohail Ahmad Zeb, Litigation Officer for the respondents present.
2. Vide our detailed judgment of today placed on file, instant service appeal is dismissed with costs. Consign.
3. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 26th day of September, 2023.*



(Salah-Ud-Din)
Member (J)



(Kalim Arshad Khan)
Chairman
Camp Court, Abbottabad

Mutazem Shah