BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 829/2017

BEFORE: MR. SALAH-UD-DIN ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Khalq-UR-Rehman, PST (BPS-12), GPS Kohi Barnol No. 1, Tehsil and District Mardan. ..... (*Appellant*)

Versus

1. The Secretary (E&SE) , Khyber Pakhtunkhwa, Peshawar.
2. The Director (E&SE) , Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (Male), District Mardan.

..... (Respondents)

Syeda Uzma,
Advocate ... For appellants

Mr. Muhammad Jan,
District Attorney ... For respondents

Date of Institution..... 02.08.2017
Date of Hearing..... 18.09.2023
Date of Decision..... 18.09.2023

JUDGEMENT

FAREEHA PAUL, MEMBER (E): Through this single judgment, we intend to dispose of instant appeal as well as connected Service Appeal No. 830/2017 titled "Sher Zamin Khan Versus The Secretary (E&SE), Khyber Pakhtunkhwa, Peshawar and others" as in both the appeals common questions of law and facts are involved.

2. The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the notification dated 25.04.2017, whereby the appellant was ignored from promotion to the post of Drawing Master (BPS-15) and against not taking action on his departmental appeal within the statutory period of 90 days. It has been prayed

that on acceptance of the appeal, the impugned notification dated 25.04.2017 might be modified/rectified to the extent of promotion of the appellant to the post of Drawing Master (BPS-15) w.e.f. 25.04.2017 and the respondents might be directed to promote the appellant to the post of Drawing Master (BPS-15) w.e.f. 25.04.2017 with all back and consequential benefits, alongwith any other remedy which the Tribunal deemed fit and appropriate.

3. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as PST (BPS-12) in the Education Department vide order dated 23.12.2006. During service he got diploma in Drawing Master from Sarhad University. According to the rules, 20% quota was reserved for promotion to the post of Drawing Master (BPS-15) from PST (BPS-12) who had qualification of Bachelor Degree with one year Drawing Master Course Certificate. The respondent department circulated seniority list of Drawing Master (BPS-15) in the year 2017 wherein name of the appellant was enlisted at S.No. 6. There were 34 posts of D.M lying vacant in the respondent department and as per laid down criteria, 20% quota was reserved for the promotion of PSTs to the post of D.M. Impugned promotion order dated 25.04.2017 was issued by the respondent department wherein four colleagues of the appellant were promoted to the post of DM (BPS-15) while he was ignored, inspite of being qualified and also having posts of DM available to be filled through promotion. Feeling aggrieved, he preferred departmental appeal but no action was taken within the statutory period of ninety days; hence the instant service appeal.

4. Respondents were put on notice. They submitted their joint written reply/comments on the appeal. We heard the learned counsel for the appellant as well as the learned District Attorney for the respondents and perused the case file with connected documents in detail.

5. Learned counsel for the appellant, after presenting the case in detail, argued that the impugned order was illegal, unlawful and against the facts. He argued that not considering the appellant for promotion to the post of DM was a clear violation of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. He further argued that inspite of having vacant post of DM, the appellant was ignored without any reason. He requested that the appeal might be accepted as prayed for.

6. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that promotion to the post of Drawing Master was considered from amongst the Primary School Teachers with at least five years' service and having requisite professional qualification prescribed for initial recruitment of Drawing Master. He further argued that as per 20% quota, four posts were reserved for promotion and the remaining 16 posts of Drawing Masters were advertised and recruitments were made accordingly. He requested that the appeal might be dismissed.

7. From the arguments and record presented before us, it appears that the appellant was appointed as Primary School Teacher in the respondent department and is currently in BS-12. For promotion to the post of Drawing Master (BS-15), 20% quota was reserved. The plea of the appellant is that he was qualified for promotion and that seats were available but he was left out

and only four employees were promoted to the post of DM (BS- 15). When asked to present the total number of posts and number of posts in 20% quota on which the appellant is seeking promotion, his learned counsel could not provide the required information. On the other hand learned District Attorney clarified that there were twenty posts of DM, out of which sixteen posts were to be filled by initial recruitment and four by promotion. He referred to appointment order dated 09.05.2017, attached with the comments of the respondents, vide which appointment of sixteen Drawing Masters (BPS-15) was made on the recommendation of the Departmental Selection Committee. Prior to that, the meeting of Departmental Promotion Committee had already been held on 06.04.2017 in which promotion to the post of Drawing Master (BS-15) of four employees had been recommended based on the number of vacant posts, which was four.

8. In view of the above discussion, it is evident that there were four vacant posts to be filled by promotion and the top four candidates were promoted. The appellant did not come in the ambit of promotion at that time because of lack of availability of posts and hence was not considered. The appeal is, therefore, devoid of merit and hence dismissed. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 18th of September, 2023.*

(FAREEHA PAUL)
Member (E)

(SALAH-UD-DIN)
Member (J)

Fazle Subhan, P.S

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18th Sept. 2023 01. Syeda Uzma, Advocate for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

2. Vide our detailed judgment consisting of 04 pages, the appeal in hand is devoid of merit and hence dismissed. Costs shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 18th of September, 2023.*

(FAREEHA PAUL)
Member (E)

(SALAH-UD-DIN)
Member (J)

Fazle Subhan, P.S