the above development, let this matter be sent back to the respondents for reconsideration of the prayer of the appellant in accordance with law. Consign.

9. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 16th day of June, 2023.

KALIM ARSHAD KHAN
Chairman

RASHIDA BANO
Member (Judicial)

Mutazem Shah

6. Perusal of record reveals that the respondents had issued notification dated 28.02.2013, whereby, 276 Primary School Teachers (BPS-12) were promoted to the post of Senior Primary School Teacher (BPS-14) and the appellant was ignored from promotion but the appellant had not filed any departmental appeal/representation. The very reason of the appellant being mum over depriving from promotion was her lack of qualification as she had not passed Intermediate Examination, which was mandatory. Later on, the respondents issued Notification dated 23.05.2015, vide which the appellant was promoted to the post of SPST (BPS-14) and on the same day, another Notification bearing Enst. No.989-95/DEO(F)/Estt.(Pry)Pro:PSHT/Dated Nsr the 23/05/2015 was issued vide which SPSTs were promoted to PSHT but the appellant was not considered for promotion in the notification and the same has been impugned by the appellant in this appeal. The claim of the appellant faces two bars i.e. when she was a PST (BPS-12) and her colleagues were getting promotion in the year 2013, she being matriculate, lost her seniority at that time because the criteria for promotion was Intermediate, while the second hurdle in her promotion to PSHT (BPS-15) on 23.05.2015 was being on probation because she had been promoted to SPST (BPS-14) on the same very day i.e. 23.05.2015. The representative of the respondents present before the Court stated that the respondents would re-consider the case of the appellant if it is remitted to the respondents and in case her case was otherwise fit, she would be granted relief in accordance with law and rules. In view of

submitted that there was no condition of probation in the Notification of 2012, wherein, the PSHTs were categorized into BPS-12, BPS-14 and BPS-15. Further submitted that even from 23.05.2015, junior colleagues of the appellant were promoted to BPS-15 which was evident from the promotion order. He concluded that the appellant had not been treated in acc0rdance with láw, therefore, requested for acceptance of the instant service appeal.

5. As against that learned Additional Advocate General argued that at the time of appointment of the appellant, the requisite qualification was Matriculation with PTC but after issuance of Notification dated 13.12.2012, the requisite qualification for the post of PTC was Intermediate with PTC Certificate and before issuance of promotion Notification dated 23.05.2015, other notifications were also issued vide which PSTs (BP-12) SPSTs (BPS-14) and PSHTs (BPS-15) but the appellant was superseded as she was not eligible being matriculate and the requisite qualification for promotion to SPST (BPS-14) was Intermediate. Further submitted that due to lack of qualification at the time of promotions in the year 2013, she was deferred and became junior to her colleagues at that time and later on in the year 2015, the appellant by promoting her qualification by passing Intermediate Examination had become eligible and accordingly, had promoted to SPST-14 vide order dated 23.05.2015. He concluded that appellant was promoted to SPST (BPS-14) vide order dated 23.05.2015, therefore, being on probation for one year, could not be promoted on the same very day.

framed. According to the notification, Primary School Teachers in BPS-12 were to be promoted to BPS-14 as Senior Primary School Teacher on the basis of seniority cum fitness from amongst the PTC teachers with at least five years service as such and similarly the post of Primary School Head Teacher (PSHT BPS-15) was to be filed in by promotion on the basis of seniority cum fitness with at least 10 years service and having qualification for Primary School Teacher. The appellant was promoted as Senior Primary School Teacher (BPS-14) vide order dated 23.05.2015. On the same day, junior colleagues of the appellant were granted promotion as PSHT (BPS-15) and the appellant was ignored. Feeling aggrieved, she filed departmental appeal, which was rejected vide order dated 26.08.2015, hence, the instant service appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned, they 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.

3. We have heard learned counsel for the appellant and learned Additional Advocate General for the respondents.

4. Learned counsel for the appellant argued that the impugned order, dated 26.08.2015, was against the law, facts, norms of justice and material on record, hence, liable to be set aside as the appellant had been deprived from right of promotion as Primary School Head Teacher in an arbitrary manner, which was not permissible in law. He

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
RASHIDA BANO ... MEMBER (Judicial)

Service Appeal No.1080/2015

Date of presentation of Appeal.....29.09.2015
Date of Hearing.....16.06.2023
Date of Decision.....16.06.2023

Mst. Kalsoom, SPST, Government Girls Primary School, Risalpur Cantt.....***Appellant***

Versus

1. **The Secretary to Government of Khyber Pakhtunkhwa, Education Department,** Civil Secretariat, Khyber Pakhtunkhwa.
2. **The Director Elementary & Secondary Education**, Khyber Pakhtunkhwa Peshawar.
3. **The District Education Officer (Female),** Nowshera.
4. **The Appellate Committee,** through District Education Officer (Female), Nowshera.....***Respondents***

Present:

Mr. Muhammad Asif Yousafzai, Advocate.....For appellant
Mr. Fazal Shah Mohmand, Additional Advocate General .....For respondents

---

APPEAL UNDER SECTION-4 OF THE Khyber PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 26.08.2015 COMMUNICATED TO THE APPELLALNT ON 15.09.2015 WHEREBY THE APPEAL OF THE APPELLANT FOR CONSIDERATION OF PROMOTION TO THE POST OF PSHT HAS BEEN REJECTED FOR NO GOOD GROUNDS.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Brief facts of the case, as detailed in the memo and grounds of appeal, are that the appellant was appointed as PTC on 05.02.1987 and was performing her duty. That Notification dated 13th November 2012 was issued whereby the method of recruitment, qualification and other conditions were