

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1042/2019

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

Younas Khan, SPST (BPS-14), GPS, Pahari Katti Khel, District Nowshera. (Appellant)

Versus

1. The Secretary Elementary and Secondary Education Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
2. The Director, Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (M), Nowshera.
4. Mr. Asif Khan, SST (BPS-16), GHS Band Sheikh Ismail, Nowshera.
5. Mr. Riaz Muhammad, SST (BPS-16) GHS Marhati Banda, Nowshera. (Respondents)

Mr. Taimur Ali Khan

Advocate

... For appellant

Mr. Asif Masood Ali Shah

Deputy District Attorney

... For respondents

Date of Institution..... 29.07.2019

Date of Hearing..... 13.10.2023

Date of Decision..... 13.10.2023

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 08.06.2018, whereby the private respondents No. 4 & 5, being junior to the appellant, were promoted to the post of Secondary School Teacher (BPS-16) and against not taking action on the departmental appeal of the appellant within the statutory period of ninety days. It has been prayed that on acceptance of the appeal, the order dated 08.06.2018 might be set aside and the respondent department be directed to consider the appellant for promotion to the post of Secondary School



Teacher (BPS-16) from the date when his juniors were promoted along with any other remedy, which the Tribunal deemed fit and appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed on 30.06.1997 in the respondent department, while the private respondents No. 4 & 5 were appointed on 30.06.1997 and 24.04.1998, respectively. The appellant was at S. No. 1049, while the private respondents No.4 & 5 were at S. No. 1050 and 1092 respectively. Different quotas were fixed by the respondent department for promotion to the post of Secondary School Teacher (BPS-16) in which 20% quota was also assigned for Primary School Teacher. The respondent department issued the notification dated 08.06.2018, wherein private respondent No.4 & 5 were promoted to the post of Secondary School Teacher (BPS-16), while the appellant, however senior to them, was deprived from his legal right of promotion to the post of Secondary School Teacher (BPS-16). Feeling aggrieved, he filed departmental appeal on 06.04.2019 against the impugned promotion order, which was not responded within the statutory period of ninety days; hence the instant service appeal.

3. Respondents were put on notice. Official respondents No. 1 to 3 submitted their reply/comments on the appeal while private respondents No. 4 & 5 did not submit their reply/parawise comments despite repeated notices issued to them, hence they were proceeded ex-parte vide order sheet dated 29.08.2022. We heard the learned counsel for the appellant as well as the learned Deputy District Attorney for the official respondents and perused the case file with connected documents in detail.



4. Learned counsel for the appellant, after presenting the case in detail, argued that the appellant was senior to the private respondent No.4 & 5, but despite that they were promoted in violation of law and rules. The appellant having good service record was eligible, but ignored, which was violation of norms of justice and fair play. The learned counsel argued that depriving him from his legal right of promotion to the post of Secondary School Teacher (BPS-16) would, also affect his future promotion. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant has been duly dropped from the seniority list of promotion due to the non-submission of his file and necessary documents before the DPC, which was a mandatory condition to scrutinize the eligibility of any employee. He further argued that the appellant has been promoted to SST after filing departmental appeal and providing the necessary documents. He requested that the appeal might be dismissed.

6. Arguments and record presented before us transpire that the appellant was appointed in the respondent department, alongwith private respondent No.4, on 30.06.1997. Private Respondents No. 5 was appointed on 24.04.1998. Based on their appointment, they were placed in the seniority list at Serial No. 1049, 1050 and 1092, respectively. 20% quota was reserved for promotion of PST to Secondary School Teacher (BS-16). Private respondents were promoted to the post of SST (BS-16) vide order dated 08.06.2018 but the appellant was left out, although he was senior to



them as per seniority list and the same promotion order has been impugned before us.

7. Record presented before us shows that a working paper was prepared for promotion of SPST and PSHT to SST (Maths & Physics BS-16). Name of the appellant was in it at Sr. No. 5 whereas private respondents were at Sr. No. 6 & 7 of the penal of officers considered for promotion. The Departmental Promotion Committee, interalia, recommended the promotion of respondent No. 4 & 5 but left the appellant without any reason/grounds. Here the stance taken by the official respondents in their reply, and reiterated by the learned DDA, is worth to mention where it is stated, "The appellant has been dropped from seniority list of promotion due to non-submission of his file and necessary documents before the DPC". When we look at the working paper, there is a certificate given at its end by the District Education Officer (Male) Nowshera and at Serial No. (f) it is stated that their ACRs and synopsis are free from adverse remarks, which means that ACRs of the entire penal, including the appellant, were complete. Had it not been complete, it would have been mentioned by the DEO in his remarks/certificate. However, a point noted in the working paper shows that in the General remarks column, against the name of the appellant, it is mentioned, "not included in court case". Upon that, it was elaborated that the promotions issued vide impugned order were made on the directions of the Hon'ble Peshawar High Court in a Writ Petition No. 1495-P/2017 in which, among others, respondent No. 4 & 5 were also petitioners. Relevant Paras of the judgment dated 09.01.2018 are reproduced below:-



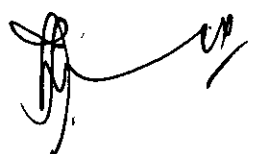
“4. It is manifest from the comments that the respondents have not denied the quota of promotion @ 75% however the petitioners were considered and denied to be considered for promotion on the ground of lacking the requisite qualification and not fulfilling the criteria, hence the department has not committed any illegality or irregularity.

5. The contention of learned counsel for petitioners that the petitioners have improved their qualification, therefore, they be considered for promotion w.e.f the date wherefrom their other colleagues have been considered, is unpersuasive for the reasons that such a writ cannot be issued under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, as Article 212 of the Constitution of 1973 debars this Court to interfere in the matter pertaining to terms and conditions of a civil servant.

6. For the reasons given hereinabove, the instant petition is disposed of accordingly. However, the petitioners would be at liberty to approach the proper forum, if so advised at the relevant time.”

8. Through the above mentioned judgment, the Hon’ble Peshawar High Court never issued any directions for promotion of the petitioners and it was wrongly construed by the respondent department that any such direction was issued. It is, therefore, abundantly clear that the respondent department misinterpreted the judgment of the Hon’ble PHC and in doing so, violated the right of the appellant by promoting his junior colleagues and leaving him for no fault or sound reason.

9. In view of the above the appeal in hand is allowed as prayed for. The respondents are directed to promote the appellant w.e.f 08.06.2018, when



his junior colleagues were promoted with all back benefits. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 13th day of October 2023.*



(FAREEHA PAUL)

Member (E)

Fazle Subhan, P.S



(SALAH-UD-DIN)

Member (J)


S.A 1042/2019

13th Oct. 2023 01. Mr. Taimur Ali Khan, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, the appeal in hand is allowed as prayed for. The respondents are directed to promote the appellant with effect from 8.06.2018, when his junior colleagues were promoted with all back benefits. Costs shall follow the event. Consign.

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


(FARZEHA PAUL)
Member (E)

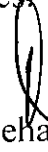

(SALAH-UD-DIN)
Member (J)

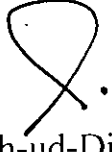
Fazle Subhan, P.S

12.10.2023

Learned counsel for the appellant present. Mr. Ihsan-ul-Haq, ADEO and Mr. Masood Khan, ADEO alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Partial arguments heard. To come up for remaining arguments on 13.10.2023 before the D.B. Parcha Peshi given to the parties


(Fareeha Paul)
Member (E)


(Salah-ud-Din)
Member (J)

Naeem Amin