

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
CAMP COURT, SWAT.**

Service Appeal No. 7395/2021

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

Naseema Bibi D/O Noor Alam Khan, currently posted at Government Primary School, Harchina, District Chitral.(Appellant)

Versus

1. Secretary to the Government of Khyber Pakhtunkhwa, Elementary and Secondary Education Department, Peshawar.
2. Director, Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Female) Upper Chitral.....(Respondents)

Mr. Muhammad Javed Khan,
Advocate ... For appellant

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

Date of Institution.....	01.09.2021
Date of Hearing.....	07.11.2023
Date of Decision.....	07.11.2023

JUDGMENT:


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 18.08.2020 regarding the arbitrary and illegal withdrawal of notification of promotion to BPS-15. It has been prayed as follows:-

- i. Direct the respondents to restore the appellant to her rightful grade, i.e BPS- 15 as per the Promotion Order Office Endst. No. 21023-27 dated 26.12.2012.
- ii. Direct the respondents to provide the appellant all back benefits since her promotion in 2012.



- iii. Direct the respondents to adjust her seniority as per her promotion into BPS- 15 from 2012.
- iv. Direct the respondents to cover the legal costs associated with the instant service appeal.
- v. Any other relief deemed appropriate in the circumstances may also very graciously be granted.”

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was a school teacher, serving at the Government Primary School, Harchina, District Chitral. She joined the Elementary and Secondary Education Department on 02.12.1995 on a Primary School Teacher post. She was upgraded from PST BPS-09 to BPS-12 vide order dated 10.11.2008. Vide order dated 07.12.2010, her services were placed at the disposal of the Federal Directorate of Education Islamabad on deputation basis. On 01.01.2011, she was posted at Federal Government Girls Bain Nala by the Federal Directorate of Education. On 26.12.2012, she was promoted to BPS-15 vide order 26.12.2012 and her pay was fixed. She served with the Federal Directorate of Education till 06.03.2020 as the Khyber Pakhtunkhwa Elementary and Secondary Education Department issued her NOCs for continuing duties on deputation during that period. On 06.03.2020, she was transferred to her parent department and took over charge in District Chitral on 01.04.2020. Vide order dated 07.08.2020, she was adjusted against the vacant post in Government Girls Primary School Ragh Rech, while on 18.08.2020, she was adjusted against the vacant post in Government Girls Primary School Reshun Gole. Later, she was transferred to the Government Girls Primary School, Harchin, District Upper Chitral. On 18.08.2020, the District Education Officer (Female) Upper Chitral, without disclosing the reason,

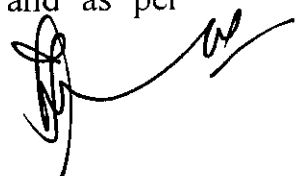


withdrew the promotion order, to BS- 15, of the appellant. Feeling aggrieved, she filed her departmental appeal on 23.02.2021 to the Director Elementary and Secondary Education, however her grievance was not redressed; hence the present appeal.

3. Respondents were put on notice who submitted their 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.

4. Learned counsel for the appellant, after presenting the case in detail, argued that promotion order of the appellant to BPS- 15 was withdrawn without showing any reason, violating her fundamental rights enshrined in the Constitution of Islamic Republic of Pakistan. He further argued that the appellant was not treated in accordance with law and she was not given an opportunity of hearing before passing the impugned order. He further argued that other colleagues of the appellant had already been promoted to BS-16, while she was pushed back to BPS-12. He requested that the appeal might be accepted as prayed for.

5. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was promoted from the post of PST (BPS-12) to PSHT (BPS-15) on the basis of seniority-cum-fitness, however she did not take over the charge of her post within time and remained on deputation for further four years and therefore, she was demoted back to BPS-12 on 18.08.2020. He further argued that the appellant was on deputation for a period of three years and as per



deputation policy, the period of deputation was extended for another two years w.e.f. 20.01.2014 to 19.01.2016. After expiry of the deputation period of five years, she was bound to return and join her parent department but she failed to do so and remained absent w.e.f. 19.01.2016 till her re-adjustment on 07.08.2020. He further argued that she was required to join her parent department after expiry of deputation period on 19.01.2016 but she did not return back and requested through the Federal Directorate of Education for further extension which was rejected by the provincial government vide letter dated 03.09.2019, as there was no provision to further extend her deputation period as per deputation policy of the Government of Khyber Pakhtunkhwa. He requested that the appeal might be dismissed.

6. The appellant is an employee of the Elementary & Secondary Education Department of the Government of Khyber Pakhtunkhwa. While serving as Primary School Teacher (BPS-12), she got herself transferred, on deputation, to the Federal Directorate of Education in 2010, for a period of three years, which, on completion, was extended to another two years, making it a total of five years deputation, ending on 19.01.2016. During that period, through an order dated 26.12.2012, the appellant, alongwith other female Primary School Head Teachers, got upgraded and promoted to BS-15, with effect from 01.07.2012. As per Promotion Policy of the provincial government, the appellant had to actualize her promotion. Provision no. IV-d of the policy is reproduced as follows:-



IV. Promotion of officers who are on deputation, long leave, foreign training.

- d) *The civil servants on deputation to Federal government, Provincial government, autonomous/ semi-autonomous organization shall be considered for promotion and informed to actualize their promotion within their cadres. They shall have to stay and not be allowed to go back immediately after promotion. Such stay shall be not less than a minimum of two years. If he/she declines his/her actual promotion will take place only when he/she returns to his/her parent cadre. His/her seniority in the higher post shall, however, stand protected.”*

7. Record presented before us shows that instead of reporting back to actualize her promotion, the appellant preferred to stay in Islamabad and after expiry of three years, she requested for extension in deputation, which was allowed for a further period of two years. After expiry of five years deputation, she was under obligation to report back to her parent department in 2016, but instead of that, she stayed in Islamabad and made another request for extension of deputation, which was regretted vide letter dated 03.09.2019, being not covered under the rules and she was directed to report back. When she failed to actualize her promotion in time, her promotion order was withdrawn vide order dated 18.08.2020, impugned before us.


8. On an observation raised by the learned counsel for the appellant that she was not informed about her promotion and its actualization by the respondent department as required under the promotion policy, attention was invited to the departmental appeal dated 23.02.2021 of the appellant,




attached with her service appeal, in which she herself, in the very first paragraph, had stated that she was promoted to PSHT (BS-15) vide order No. 21023-27 and the SDEO (Female) Mastuj District Chitral fixed her pay after getting her approval.

9. In the light of above discussion, there is no doubt that the appellant did not report back to her parent department to actualize her promotion and preferred to not only stay on deputation but extended it and then overstayed for five years. The respondent department, therefore, rightly withdrew her promotion order and this act of the department is in line with the Promotion Policy of the provincial government . The appeal is, therefore, dismissed being groundless. Cost shall follow the event. Consign.

10. *Pronounced in open court at Camp Court, Swat and given under our hands and seal of the Tribunal this 07th day of November, 2023.*


(FAREEHA PAUL)
Member (E)
Camp Court, Swat.



(SALAH-UD-DIN)
Member(J)
Camp Court, Swat.


S.A 7395/2021

07th Nov. 2023 01. Mr. Muhammad Javed Khan, Advocate for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, the appeal is dismissed being groundless. Costs shall follow the event. Consign.

03. *Pronounced in open court at Camp Court, Swat and given under our hands and seal of the Tribunal on this 07th day of November, 2023.*


(FAREEHA PAUL)
Member (E)
Camp Court, Swat


(SALAH-UD-DIN)
Member (J)
Camp Court, Swat

Fazle Subhan, P.S