

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 861/2013

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Mst. Farzana Bano D/O Ghulam Hussain (S.E.T) Headmistress, GMS, New Jehangir Pura, Wazir Bagh Road, Peshawar.

.... (Appellant)

VERSUS

1. Secretary to the Government of Khyber Pakhtunkhwa Elementary and Secondary Education, Civil Secretariat, Peshawar.
2. Deputy Directress (Establishment) Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar.
3. Director, Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar.
4. District Education Officer (Female) G.T.Road Peshawar.

.... (Respondents)

Mr. Noor Muhammad Khattak
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....06.05.2013
Date of Hearing.....18.10.2023
Date of Decision.....18.10.2023

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“That on acceptance of this service appeal the impugned orders dated 26.02.2013 and 05.04.2013 be set aside and the appellant may kindly be allowed promotion as the

Headmistress on regular basis w.e.f 26.02.2013 with all back benefits.”

2. Brief facts of the case, as given in the memorandum of appeal, are that, appellant was appointed as Primary School Teacher vide order dated 11.03.1978. Later on she was promoted as SST vide order dated 25.03.1996. Other colleagues of the appellant were upgraded in BPS-17 w.e.f 01.10.2007 and appellant was ignored. Appellant filed application to competent authority on 26.06.2012 and 14.12.2012 which was not responded. Respondent department issued impugned order dated 26.02.2013 whereby 99 SETs were regularly promoted as Headmistresses but appellant has been deprived of her promotion. Feeling aggrieved she filed department appeal on 11.03.2013, which was rejected vide order dated 05.04.2013; hence the instant service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that the appellant has not been treated in accordance with law and rules. He further argued that impugned orders dated 26.02.2013 and 05.04.2013 are unlawful, void, arbitrary and illegal. He further argued that one teacher appearing at Sr. No. 1 (Naz Parveen) of impugned order and the appellant both were selected and appointed as SET on the same date i.e 25.03.1996. Therefore, awarding her and discharging the appellant is the worst example of discrimination.

5. Learned District Attorney on the other hand contended that the appellant was treated in accordance with law and rules on the subject. He further contended that Mst. Nazparveen is senior to the appellant in the light


of judgment dated 14.05.2004 passed by this Tribunal vide which she has been granted graded pay w.e.f 02.04.1990 against the SET post.

6. Perusal of record reveals that appellant through instant appeal seeks her seniority and antedated promotion with effect from 26.02.2013, the date when juniors to her were promoted. Record transpired that appellant initially joined respondent department as untrained PST on 11.03.1978 but during service appellant was selected and appointed as SET BPS-16 vide notification No. 81-130/1464/SET/Apptt:FATA dated 25.03.1996. On the same day one Mst. Naz Parveen was also selected and appointed as SET BPS-16 vide notification No. 260-270/A-167/SET/Apptt:Female dated 25.03.1996. Appellant and other SETs alongwith Naz Parveen was upgraded in BSP-17 w.e.f 01.10.2007 vide orders dated 26.01.2018 and 14.10.2010. Appellant submitted application to respondent for grant of promotion as Headmistress in BPS-17 on regular basis but of no avail. Respondents vide impugned notification dated 26.02.2013 promoted 99 SETs including Naz Parveen by ignoring appellant who is senior to her. Therefore, appellant filed departmental appeal to respondent on 26.02.2013 which has been rejected vide order dated 11.03.2013. Appellant alleged that she is senior to Mst. Naz Parveen as she was appointed though on same date but through earlier selection process as endorsement number of appellant's appointment notification as SET is earlier in series while that of Naz Parveen is later in series. Perusal of notification of appellant reveals that she was selected and appointed from FATA female quota while Naz Parveen was selected and appointed on female general quota. Therefore, two different notifications of even date were issued by the authority having regard to nature of quota. So question of selection and appointment on the basis of earlier selection process is not logical and does not hold the field. Moreover, giving endorsement

number earlier in series in no way means appellant was selected and appointed in earlier selection process and in absence of any other corroborating proof or evidence which appellant failed to produce. Mst Naz Parveen as per appellate authority's impugned order and respondents contention was appointed on 02.11.1990 and given seniority on the basis of this Tribunal's order dated 14.05.2004. Now on record, seniority of Mst. Naz Parveen is reckoned on the basis of this Tribunal's order from 02.04.1990, while appellant was appointed as SET on 25.03.1996. Mst. Naz Parveen was promoted because her date of appointment on record is 02.04.1990, which is earlier than the date of appointment of appellant. It will be discrimination with appellant if other appointee of 25.03.1996 from FATA as well as from general female cadre was promoted apart from Mst. Naz Parveen, who had this Tribunal's order in her favour with respect to seniority.

8. As a sequel to above discussion, the appeal in hand is dismissed being devoid of merits. Costs shall follow the events. Consign.

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


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)