

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 3239/2021

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)  
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

Fazal Mehmood S/O Sultan Mehmood, SPET, GHS Samandar Garhi, District  
Nowshera..

.... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Elementary &  
Secondary Education, Civil Secretariat, Peshawar and 18 others.

.... (Respondents)

Mr. Akhunzada Ahmad Saeed  
Advocate

... For appellant

Mr. Muhammad Jan  
District Attorney

... For respondents

Date of Institution.....17.02.2021

Date of Hearing.....31.10.2023

Date of Decision.....31.10.2023

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:

**“On acceptance of this appeal, the impugned seniority list  
may please be set aside and the same may please be corrected,  
rectified by placing the appellant senior to respondent No. 4 to  
19.”**

2. Brief facts of the case, as given in the memorandum of appeal,  
are that appellant was appointed as Physical Education Teacher (PET) on 20.10.1993  
and was performing duty with zeal and zest. He was promoted as Senior Physical  
Education Teacher (SPET) vide notification dated 21.02.2013. Thereafter seniority  
list was issued, wherein juniors to the appellant were shown senior. Feeling  
aggrieved, appellant filed departmental appeal on 20.10.2020, which was not  
responded to; 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 appellant has not been treated in accordance with law and rules. He further argued that the appellant was senior most and was illegally ignored from his due right of promotion and juniors to appellant were promoted which is unlawful and violative upon the rights of the appellant. He further that respondent No.3 by exceeding his authority as maintenance of seniority list of appellant is the domain of respondent No.2 and the impugned order of respondent No.3 by exceeding his authority is void ab-initio, illegal, unlawful and without lawful authority and is liable to be set aside.

5. Conversely, learned District Attorney contended that the appellant has been treated in accordance with law and rules. He argued that appellant was initially appointed as un-train Physical Education Teacher on 20.10.1995. Then he was appointed as Certified Teacher vide order dated 01.11.1995 with a service break. Later on, he was terminated from his CT post on 09.01.1998. He further argued that appellant was regularized vide order dated 25.04.2000 upon completion of professional training and seniority will be reckoned from the date of his regular appointment. He further argued that no junior PET is placed senior than the appellant and as maintenance of seniority is the competency of DEO in this regard to find out the true and actual position of the appellant in seniority list an enquiry was also initiated in whose findings the appellant has been placed at his right position according to his regularization in the PET/SPET seniority.

6. Perusal of record reveals that appellant before promotion, filed application for placing him in his due place in seniority list which was accepted by respondent and appellant was placed at Serial No. 13-A of the seniority list. After promotion respondent issued seniority list in which again seniority of the appellant was

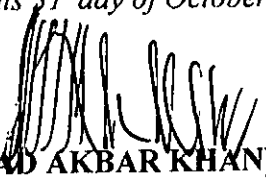
disturbed. Appellant alleged that he is senior to respondents No 4 to 19 as he was appointed earlier than them, therefore, he be placed at his corrected seniority position in seniority list before respondent No. 4 to 19.

7. Admitted position on record is that that appellant was appointed as untrain PET on fixed pay which is evident from his appointment order dated 20.10.1993. In accordance with Rule-17 of the Civil Servant (Appointment, Promotion and Transfer) Rules, 1989, seniority of a civil servant shall be determined from the date of regular appointment. Regular appointment in case of appellant is the date and day on which appellant acquired prescribe qualification i.e. professional training which was acquired by the appellant on 25.04.2000. So appellant seniority will be determined from 25.04.2000. Private respondent No. 4 date of regular appointment is 29.01.1996, private respondent No. 5 to 15 is 28.02.2013, respondent No. 16 is 11.05.1999, respondent No.17 and 18 is 13.12.1999 and respondent No. 19 is 25.04.2000 respectively. Although date of first appointment of private respondents are later then appellant but their date of regular appointment are earlier than appellant and seniority will be determine<sup>d</sup> from the date of regular appointment not on the basis of appointment on fixed/adhoc pay. Moreover, date of regular appointment of appellant and private respondent No.19 is same but respondent no.19 is older in age, that's why he placed senior to appellant. Appellant in his appeal mentioned that his seniority was settled/corrected and he was placed at serial No. 13-A of the seniority list but perusal of promotion order dated 21.02.2013 reveals that in fact serial No.13-A is given to the appellant in it and not in seniority list because no seniority list is affixed by the appellant wherein his name was mentioned at serial No. 13-A of it. When asked by the Tribunal to show seniority list, learned counsel for the appellant show his inability. So it is held that seniority of the appellant was rightly determined in accordance with Rule 17 of the Civil Servant (Appointment, Promotion and Transfer) Rules, 1989.




8. For what has been discussed above, we dismissed the appeal in hand being devoid of merits. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 31<sup>st</sup> day of October, 2023.*

  
(MUHAMMAD AKBAR KHAN)  
Member (E)

Kaleemullah

  
(RASHIDA BANO)  
Member (J)