

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1235/2014

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

Murtaza Khan, Stenographer, GATTTC Gulbahar Peshawar.
.... (Appellant)

VERSUS

1. The Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Secretary Establishment Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Director Elementary & Secondary Education Department Peshawar.
4. The Director Curriculum & Teacher Education, Abbottabad.

.... (Respondents)

Mr. Muhammad Asif Yousafzai
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....15.10.2014
Date of Hearing.....02.11.2023
Date of Decision.....02.11.2023

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 order dated 28.05.2014 may be set aside and the respondents may be directed to consider the appellant for promotion to superintendent cadre from his due date by maintain joint seniority list of Office Assistant and Stenographers for the purpose of promotion to the post of Superintendent in light of respondent No.2 letter dated 27.06.2011 and

10.07.2012 Rules of 1978 and Supreme Court's Judgment reported as 2012 PLC (CS) 1285 with all back benefits."

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was appointed as stenographer BPS-12 in the respondent department. That the Finance Department vide circular letter dated 03.22.1993 re-designated the post of Setnotypist/Junior Scale Stenographer grade-II and junior scale stenographer as Stenographer (BPS-12) w.e.f 01.07.1983. on the basis of the then prevalent service rules of 1978 the aforementioned posts of stenographers were shown separate and while making promotion to the post of Superintendent they were placed at the bottom of seniority list of Assistants Stenographers. It merits to mention here that the stenographer had longer length of service than the Assistants. As such they were deprived of their due right of promotion for considerable time. Feeling aggrieved, appellant filed departmental appeal on 17.06.2014 which was not responded, 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 been treated in accordance with law and rules. He further argued that appellant had rendered twenty six years of service but was yet to be promoted to the next higher scale. Attitude of the respondents was also discriminatory, as in some other departments of the Provincial Government joint seniority list of Office Assistants and Stenographers from the date of regular appointment being maintained. That the post of Superintendent was required to be filled from amongst Office Assistant, Head Clerk/Stenographer on the basis of



joint seniority list, so it was incumbent upon the respondents to prepare joint seniority list of Office Assistants and Stenographers from the date of their regular appointment.

5. Conversely, learned District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that in the service appeal no. 824/2004 was filed by the appellant accepted by this tribunal vide judgment dated 20.05.2006, However, the august Supreme Court of Pakistan remanded back the judgment of the Tribunal to decide the case afresh on merit. Finally his service appeal was dismissed by this Tribunal. As his appeal has already been dismissed by this Tribunal so through the instant appeal he has again agitated the matter through same prayer which is against the spirit of service tribunal and principle of resjudicata. The issue of his seniority and promotion was examined in the light of prevalent law, rules, and policy and finally regretted under sub rule 2 of rule 3 of Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion and Transfer) policy 1989, it is the prerogative of the respondents to lay down method of appointment, qualification and other conditions in consultation with Establishment and Finance Department.

6. Perusal of record reveals that appellant now seek his proforma promotion as he was retired on 01.10.2022. Appellant was appointed as stenographer BPS 12 in respondent/department and since then is performing his duties having long standing service consisting upon three decades at his credit. Appellant filed service appeal bearing No. 754/2013 and during pendency of service appeal respondent through impugned order dated 28.05.2014 wrongly promoted appellant as Senior Scale Stenographer BPS-16 despite knowing it that appellant is in BPS-16 since 2011.



Appellant filed departmental appeal challenging the validity of impugned order dated 28.05.2014. Appellant main contention is that he was wrongly promoted as stenographer BPS-16 with malafide vide impugned order dated 28.05.2014 because in accordance with Service Rules of 1978's and Finance Department letter dated 27.06.2011, he was infact in BPS-16 since 2011. It is pertinent to mention here that the main coer of the appellant is that Finance Department vide circular dated 03.11.1983 had re-designated the post of stenotypist and junior scale stenographer grade-1 as stenographers and placed in BPS-12 with effect from 01.07.1983 and in light of rules and letter of Establishment Department dated 27.06.2011, in accordance with which respondents were directed to prepare and maintain joint seniority list of the Assistant and Stenographer, which they did not do so and appellant being stenographer is entitled to be promoted in BPS-17. Appellant in previous round of litigation also seek this relief of preparing a joint seniority list in the light of Rules of 1978 and letter dated 27.06.2011 which was refused to him alongwith others. Therefore Rule 23 hit the instant appeal being matter decided.

7. Moreover, letter dated 27.06.2011 is in respect of Higher Education Department not to Elementary and Secondary Education Department. Appellant was retired on 01.10.2022. Learned District Attorney stated that who later on assumed charge of the post of Senior Scale Stenographer and actualized his promotion in BPS-16 which he challenged on the basis of joint seniority list in light of Rules of 1978 and letter dated 27.06.2011 and termed it wrong and with malafide intention. Therefore when confronted, appellant conceal it. So far assuming charge on actualizing promotion in BPS-16, now appellant is estopped to challenge it.



8. As a sequel to above discussion, the appeal in hand is dismissed 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 2nd day of November, 2023.*



(MUHAMMAD AKBAR KHAN)
Member (E)


Kaleemullah




(RASHIDA BANO)
Member (J)

ORDER
02.11.2023

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney alongwith Behramand Khan, Assistant Director for the respondents present.
2. Vide our detailed judgement of today placed on file, the appeal in hand is dismissed being devoid of merits. Costs shall follow the event. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 2nd day of November, 2023.*


(Muhammad Akbar Khan)
Member (E)


(Rashida Bano)
Member (J)