

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1303/2023

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

Niaz Gul S/o Awal Gul, Librarian (BPS-18), Provincial Assembly, Khyber Pakhtunkhwa,
Peshawar ... (Appellant)

VERSUS

1. The Chief Secretary to Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
 2. The Governor, Khyber Pakhtunkhwa, Governor House, Peshawar.
 3. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa, Peshawar.
 4. The Speaker, Provincial Pakhtunkhwa, Peshawar. Assembly,
 5. Mr. Aziz Ur Rehman, Senior Research Officer, Provincial Assembly, Khyber Pakhtunkhwa, Peshawar.
 6. Ms. Safia Sultana, Research Officer, Provincial Assembly, Khyber Pakhtunkhwa, Peshawar.
 7. Mr. Abid Faheem, Research Officer, Provincial Assembly, Khyber Pakhtunkhwa, Peshawar.
 8. Qazi Bashir Ahmad, Supervisor General Administration, Provincial Assembly, Khyber Pakhtunkhwa, Peshawar.
- ... (Respondents)

Mr. Hasan Nasir
Advocate

... For Appellant

Mr. Ali Azeem Afridi,
Advocate

... For respondent No.3

Mr. Muhammad Jan
District Attorney

... For official respondents

Date of Institution..... 26.05.2023
Date of Hearing.....15.12.2023
Date of Decision.....15.12.2023

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 the instant appeal, the order date 12.10.2022 may kindly be set aside be declared unlawful, illegal and unconstitutional.”



2. Brief facts of the case are that appellant was inducted as Assistant Librarian (BPS-17) in the Provincial Assembly Secretariat vide order dated 29.01.2010. Vide notification dated 29.08.2011 the nomenclature of the post of appellant changed as Librarian with the same scale and since then the appellant is serving his duty as Librarian. Thereafter, vide notification dated 22.04.2016, the post of Librarian was one step upgraded from BPS-17 to BPS-18. As per service rules, the post of Director Research and Library (BPS-19) is to be filled through promotion on the basis of seniority from Librarians with seven year service as such or twelve year service as Librarian in BPS-17. Vide notification dated 12.10.2022 respondent No.4 promoted Private respondent No. 5 to 7 to the post of Additional Director, Deputy Director and Assistant Director Library and Research by re-designating and upgrading post of research cadre in the cadre of appellant i.e Librarian. Feeling aggrieved, appellant filed departmental appeal, which was not responded, hence, the present service appeal.

3. Respondents were put on notice who relied upon their written reply submitted in Service Appeal No. 7436/2021. However they submitted their written argument alongwith relevant rules. 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 the appellant has not been treated in accordance with law and rules. He further argued that impugned order is illegal, unlawful and not based upon the rules, hence, not tenable in the eyes of law. He further argued that the said rules were subjudice before the court and the respondents again issued order dated 12.10.2022 illegally having no plausible justification. He further argued that post of Librarian is technical

 post and needs degree of Library and Information Science but respondents

ignored this fact and issued the impugned notification in a hasty manner to favor private respondents, which is liable to be set aside.

5. The learned District Attorney assisted learned counsel for respondent No. 3 argued that appellant has been treated in accordance with law and rules. They argued that by impugned re-designation and up-gradation rights of the appellant is not infringed as post which are redesigned and upgraded or isolated and neglected post having no promotion channel/ladder while cadre of the appellant is channelized for promotion in accordance with recruitment order 2007. The further argued that no amendment in recruitment order 2007 was made therefore right of the appellant was protected. Learned counsel for respondent No.3 also argued that the matter of up-gradation cannot be challenged before this Tribunal in service appeal which can only be challenge in writ petition. Therefore, they requested for dismissal of instant service appeal.

6. Appellant in the instant appeal challenged notification/order dated 12.10.2022 wherein post of senior research officer BPS-19, (personal) Senior Research officer BPS-18, Research officer BPS-18 (personal) and supervisor general administration BPS-17 (personal) were re-designated and upgraded within the provincial Assembly Secretariat into Additional Director Research & library BPS-19, Deputy Director Research & library BPS-18, Assistant Director Library & Research BPS-17 and research officer BPS 17. As stated above the Rule of the Khyber Pakhtunkhwa Provincial Assembly Secretariat Recruitment Rules 1974 empowers, speaker the authority to amend schedules, increase or reduce post, and add new categories of posts as deemed necessary and proper. So speaker can also re-designate and upgrade posts under Recruitment Rules 1974 subject to adopt procedure provided in both the proviso of Rule 4 which is consultation with Finance Committee.



7. In the instant case of re-designation and up gradation of above mention four posts the authority had consulted with Finance Committee which is evident from the minutes of the Finance Committee held on 11th April 2022 wherein approval agenda item No. 1 is given which read as;

Restricting and strengthening of various cadres of provincial assembly secretariat through up-gradation, re-designation and creation of posts on need basis.

The Secretary Provincial Assembly the committee that after enhancement of strength of the Assembly's Members from 124 to 145, it demands on one side the restructuring of existing staff and on the other side creation of new posts in different sections of the Assembly's Sectt. Is also a dire need of the Sectt. to fulfill the requirements. Moreover, these cases have already been discussed in Parity Committee and forwarded for consideration of the Finance Department.


8. After detailed discussion the Committee approved proposed restructuring of various designation alongwith up-gradation of different cadre/posts from S.No.1 to S.No 8 mentioned in the enclosed Annexure-A however, regarding the Creation of new posts mentioned vide No. 9 the committee approved the same after new amendments on the basis of rationalization. Proper notification approval of re designation and up-gradation of above mentioned posts was issued on 28.04.2022 having Endorsement No 1113-17, 1119-23, 11125-29 and 1133.


9. It also merits mention here that said re-designation and up-gradation of the post did not affect the appellant ladder of promotion on the ground that these posts were re-designated and up-graded without amending existing recruitment order 2007, which provide ladder and channel for promotion of the appellant's cadre. These re-designated and up-

graded posts are isolated position having no structural promotional hierarchy that's why same were up-gradated to give Financial benefits to their incumbents. So these posts are incomparable to the appellant's cadre as it stand as distinct entities existing in isolation without predefined promotional hierarchy and without any amendment in recruitment order 2007. Therefore in peculiar circumstance when these re-designation and up-graduation does not affect appellant's promotion ladder, and infringed his rights then appellant have no cause of action to challenge it especially when no malafide was explained on the part of the respondents. It is also important to note that matter of up-graduation and re-designation and only be challenged in writ petition.

10. As a sequel to above discussion, we find no merits in this appeal, hence, dismissed. Costs shall follow the events. Consign.


11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 15th day of December, 2023.*



(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

ORDER
15.12.2023

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney alongwith Mohsin Younas, Assistant Law Officer for the official respondents present. Mr. Ali Azeem Afridi, Advocate on behalf of respondent No.3 present.
2. Vide our detailed judgement of today placed on file, we find not merits in this appeal, hence, dismissed. Costs shall follow the events. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 15th day of December, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

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