

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 743/2021

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. The Assistant Secretary (Admin) Assembly, Khyber Pakhtunkhwa, Peshawar. Khyber Provincial
6. The Departmental Promotion Committee No.1, through its chairman/Speaker, Provincial Assembly, Khyber Pakhtunkhwa, Peshawar. Assembly,
7. Miss. Naveela Asim, Director Library & Research, Provincial Peshawar.
... (Respondents)

Mr. Khalid Rehman,
Advocate ... For Appellant

Mr. Bilal Ahmad Kakazai,
Advocate ... For Private Respondent

Mr. Ali Azeem Afridi,
Advocate ... For respondent No.3 & 4

Mr. Muhammad Jan
District Attorney ... For official Respondent

Date of Institution..... 21.09.2021
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:



“By accepting this appeal, the impugned order dated 07.05.2021 passed by respondent No.3, whereby one Miss. Naveela Asim (respondent No.7) was promoted to the post of Director Library & Research (BPS-19) and order dated Nil of the departmental appellate authority, whereby they did not pass any order over the representations of the appellant within statutory period of 90 days, may please be set aside and consequently the appellant, being the sole, eligible “Librarian” in terms of his qualification and experience may please be promoted to the post of Director Library & Research (BPS-19).”

2. Brief facts of the case are that appellant was inducted as Assistant Librarian (BPS-17) in the Khyber Pakhtunkhwa Provincial Assembly Secretariat vide order dated 29.01.2010. Vide notification dated 29.08.2011 the nomenclature of the post of appellant was changed as Librarian with the same scale and since then the appellant has been performing 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 Library & Research(BPS-19) is to be filled through promotion on the basis of seniority from Librarians (only) with seven-year service as such or twelve-year service as Librarian in BPS-17. Vide the impugned notification dated 07.05.2021 private respondent No. 7, who was as Senior Research Officer promoted as Director Library & Research BPS-19. Feeling aggrieved, appellant filed departmental appeal, which was not responded, hence, the present 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 the appellant has not been treated in accordance with law and rules. He further argued that as per service rules the post of Director Library and Research is to be filled from amongst the Librarians on the basis of seniority but in utter disregard of the rules Senior Research Officer has been promoted by the respondent which is violation of rules and thus the impugned order is prima facie illegal, unlawful and ineffective upon the rights of the appellant. He further argued that impugned notification is against the statute/rules, therefore, the same needs to be declared as illegal and unlawful. Lastly he submitted that appellant is eligible for promotion in terms of qualification and experience, therefore, respondent be directed to promote the appellant in accordance rules on the subject. He requested that instant appeal might be accepted.

5. Respondent No. 7 submitted written arguments wherein it is mentioned that this Tribunal lack jurisdiction to entertain appeal in hand because it pertains to promotion/selection for a particular position by the competent forum and appellant has been declared not fit for promotion under the rules by the competent authority. It also mentioned in the written arguments that appellant challenged fitness of a civil servant i.e respondent No.7 therefore, this Tribunal has got no jurisdiction to entertain the appeal in hand. It is also mentioned in the arguments that appeal in hand cannot be decided in isolation from appeal No. 1370/2023 wherein the service rules have been challenged by the respondent No.7. She relied upon 2023 PLC (CS) 1131 Peshawar High Court, Peshawar, 2021 PLC (CS) 1383 Supreme Court, 2022 SCMR 797 Supreme Court of Pakistan, CP Nos. 2347 to 2360 of 2022 Supreme Court of Pakistan dated 24.11.2022.

6. Learned District Attorney assisted by learned counsel for respondents No. 3 and 4 argued that appellant has been treated in accordance with law and



rules. They further contended that appellant was eligible for the said post therefore he was considered by the Departmental Promotion Committee. Once the case was referred to the DPC then it was for the DPC to determine that who is the most suitable candidate to be promoted who after detailed discussion and deliberation without any influence unanimously recommended Respondent No's.7 promotion on various grounds the detail of which has been mentioned in the minutes. The said Notification has been issued by the competent authority keeping in view the length of service. ACRs and experience, of the officers mentioned in the panel. Respondent No-7 had not only completed 07-year service as Senior Research Officer (BPS-19) but had also earned good ACRs with good service record and above all 28 years of service, while on the other hand the Appellant was appointed in the year 2010 who was not only the most junior employee amongst the research officers but also lacked the prescribed length of service for promotion i.e.12-year service as Librarian.

7. Perusal of record reveals that appellant was appointed as Assistant Librarian (BPS-17) in Provincial Assembly Secretariat vide order dated 29.01.2010. Nomenclature of the post of the Assistant Librarian was changed as Librarian within same scale vide notification dated 29.08.2011 and appellant had been serving as Librarian since then. Post of the Librarian was one step upgraded from BPS-17 to BPS-18 vide notification dated 22.04.2016. The post of Director Library & Research BPS 19 will have to be filled through promotion on the basis of seniority from amongst Librarian with 07-years service as such or 12-year service as librarian in BPS-17 and above. In accordance with recruitment order 2007/Service Rules notified in the official gazette vide notification dated 29.09.2007. The post of Director Library & Research became vacant and respondent No 3 to 6, in violation of rules and

policy, vide impugned notification dated 07.05.2021, promoted respondent No.7 as Director Library & Research, who was serving as Research Officer and not as a Librarian by ignoring the appellant. Appellant challenged the promotion order of respondent No. 7 dated 07.05.2021.

8. Khyber Pakhtunkhwa Provincial Assembly Secretariat (Recruitment) Rules, 1974 are relevant for resolving the controversy. Rule 4 of the said Rules deals with composition of the secretariat. It says that the secretariat shall consist of such permanent and temporary posts as are respectively specified in Schedule I and Schedule II and such other temporary posts as the Speaker may, from time to time, by order, sanction.

2. The Speaker may from time to time amend schedule 1, so as to increase or reduce the number of posts specified therein or to add there to any new category of post or posts.

Part III of the KP Provincial Assembly Secretariat Recruitment Rules, 1974 deals with the method of recruitment rule 5 of which says;

(1) Recruitment to a post or class of posts may be made by one or more of the following methods, namely.

- (a) By promotion of a person employed in the secretariat.
- (b) By transfer on deputation of a person serving outside the secretariat in connection with affairs of the federation or the province and
- (c) by direct recruitment

(2) The speaker may, from time to time by general or special order

(a) Specify the method or methods by which recruitment to a post or class of a post shall be made and

(b) The percentage of vacancies to be filled by each method

(3) where a percentage has been fixed under sub rule (2) for departmental promotion and direct recruitment, promotion against the post reserved for departmental promotion shall be made first and posts reserved for direct recruitment shall be filled later.

9. Speaker, the authority. in accordance with above mentioned rule 5(2)

issued Provincial Assembly Secretariat Recruitment Order 2007 on



25.09.2007 wherein method of recruitment and minimum qualification for the post of Director Library and Research (BPS-19) is provided by promotion on the basis of seniority from Librarians with 7 year service as such or 12-year service as Librarian in BPS-17 and above.

10. As per serial No. 9 of the said schedule post of Director Library and Research BPS-19 will have to be filled by promotion in accordance with Rules 6(2) on the basis of seniority from librarians with 7-year service as such or 12-year service as librarian in BPS-17 and above. Appellant is Librarian serving in BPS-18 who was appointed as Assistant librarian in BPS-17 having degree of master in Library Science. In the recruitment rules/order 2007 post of Librarian BPS-18 is channelized for promotion to the post of Director Library & Research BPS 19 and no other post including the post of Senior Research Officer BPS-18 was channelized for promotion to the post of Director Library and Research. Speaker the authority under Rule 4 of Recruitment Rules, 1974 mentioned above had exclusive Powers to sanction permanent and temporary post as are specified in Schedule I and Schedule II. Speaker the authority specified those posts in schedule vide recruitment order dated 25.09.2007 which will have promotion ladder/channel and post of the Librarian is also one amongst such posts as it was channelized for promotion to Director Library and research.

11. It is pertinent to mention here that DPC in the minutes of meeting held that appellant being the existing librarian in BPS 18 is the officer from the relevant cadre who can only be promoted to the post of Director Library & Research but due to lack of prescribed length of service for promotion being junior most employee cannot be promoted and respondent No. 7 was promoted from the other cadres being senior most. The proper course to be adopted by the DPC is promotion of the appellant on acting charge basis and



not promotion from the other cadre having no channel for promotion to the post of Director Library & Research as promotion to the post of Director Library & Research could not be made from any other cadre even if there was no suitable officer available from the relevant cadre. The reason is that the officers from the other cadres are not the eligible persons for the post of Director Library & Research. So far question of junior most is concerned as both appellant and respondent No. 7 belong to different cadres and no joint seniority list was maintained then to term the appellant junior most is unwarranted.

12. Although respondent No. 7 being Senior Research Officer was promoted to the post of Director Library & Research on the ground that she was the senior most officer having unblemished long tenure of 28 years of service at her credit but perusal of recruitment order 2007 reveals that name of the post of Senior Research Officer is not mentioned in it and similarly is not channelized for promotion to the post of Director Library and Research, therefore, her promotion to the post of director library and research is not in accordance with Rules and policy on the subject, hence, cannot be sustainable. No doubt respondents No 7 is senior most officer but her post is isolated one having no ladder for promotion therefore, in our humble view respondent/the authority will look into her rights as Speaker the authority has powers under Rule 4 of Recruitment Rules 1974 to re-designate, upgrade even create post as he had done so in appeal No 1303/2023. Although post of senior Research officer is now upgraded and re-designated as Additional Director (Research and Library) vide notification dated 28.04.2022 but one Mr. Aziz ur Rehman, the then Senior Research officer was promoted vide order dated 12.10.2022 to the said upgraded and re-designated post of Additional Director Research & Library (BPS-19) whose promotion is not challenged before this Tribunal in

the instant appeal, therefore, it would be unjustified to disturb him by infringing his rights, hence, Speaker the authority shall take steps to protect the rights of respondent No 7 on her coming back to her cadre so that she might not become junior to her juniors keeping in view long 28 years unblemished service and nature of the post having no promotion ladder. Even otherwise when the appellant will go back to her cadre, where her post as Senior Research Officer has admittedly been upgraded to BPS-19 and re-designated as Additional Director (BPS-19) during the pendency of this appeal, so her genuine rights for placement in regular Grade-19 i.e. in the re-designated and upgraded post of Additional Director (BPS-19) are required to be protected for the sole reason that she was wrongly promoted to the post of Director Research & Library (BPS-19) by the Authority (when she was not eligible for that) so she should not suffer for her wrong promotion to the post of Director. On coming back to her cadre her seniority among her cadre should not adversely affect and she is to be dealt with and placed in a manner that she should not lose anything in her own cadre.


13. Now come towards the contention of the respondent No.7 that Tribunal has got no jurisdiction to entertain the appeal in hand. Perusal of the all the case law relied upon by respondent No. 7 in support of her contention reveals that question in all these verdicts of superior courts was the determination of fitness for promotion of the officer/official and not eligibility for promotion. Matter in issue before us is about determination of eligibility of the parties for promotion, therefore, in our humble view this Tribunal has the jurisdiction to entertain and decide the instant service appeal.

14. As a sequel to above discussion, we are unanimous to accept the appeal by setting aside impugned notification dated 07.05.2021 with direction to respondent to consider appellant for promotion to the said post. However, the



rights of the private respondent No.7 shall also be taken care of in view of the observations made in the preceding paragraphs. Costs shall follow the event. Consign.

15. *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)

*Kaleemullah