

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**  
**AT CAMP COURT SWAT**

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

*Service Appeal No.1138/2019*

Date of presentation of Appeal.....12.09.2019  
Date of Hearing.....05.12.2023  
Date of Decision.....05.12.2023

Mr. Rahat Ullah, SST (G) (BPS-16), GMS Bandan, District Dir Upper  
.....*Appellant*

Versus

1. The Government of Khyber Pakhtunkhwa through Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar
2. The Director (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (Male), District Dir Upper.
4. Mr. Badshah Amin, SST (G) BPS-16, GHS Jelar, Dir Upper  
.....(*Respondents*)

**Present:**

KAMRAN KHAN,  
Advocate ----- For appellant

MUHAMMAD JAN,  
District Attorney ----- For official respondents No. 1 to 3.

ASAD ULLAH KHAN YOUSAFZAI,  
Advocate ----- For private respondent No. 4  
-----

**JUDGMENT**

**MUHAMMAD AKBAR KHAN, MEMBER (E):-** The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

*“That on acceptance of this appeal the impugned orders dated 29.07.2019 and 22.02.2019 may very kindly be set*

*aside and the appellant may be placed against the post of SST (G) w.e.f 29.07.2019 with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.”*

02. Brief facts of the case are that the appellant was initially appointed as PST on the recommendation of Departmental Promotion Committee vide order dated 28.02.1993. He was promoted to the post of PSHT (BPS-15) and served against the post of PSHT till February, 2019. He was further promoted to the post of SST (G) BPS-16 vide Notification dated 22.02.2019 and was adjusted at GMS Bandan, District Dir Upper vide order dated 01.03.2019. That on 29.07.2019 the promotion order dated 01.03.2019 was withdrawn with the remarks that he was junior to the private respondent No. 4 and his services were placed at the disposal of DEO (M) Dir upper against the post of PSHT. Feeling aggrieved from the impugned order dated 29.07.2019 the appellant filed departmental appeal which was rejected vide order dated 11.09.2019, hence preferred the instant service appeal on 12.09.2019.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned District Attorney for the respondents and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned punishment orders dated 29.07.2019 and 11.09.2019 are against the law,

facts, norms of natural justice hence not tenable and liable to be set aside; that the appellant has not been treated in accordance with law and rules and as such the respondents violated Article-4 and 25 of the Constitution of Islamic Republic of Pakistan 1973; that the respondents discriminated the appellant amongst his colleagues to withdraw his promotion order dated 22.02.2019 vide impugned order dated 29.07.2019 which is not tenable and liable to be set aside; that the appellant has served the departmental for a long period with unblemished service record and having seniority cum fitness therefore, the appellant have the right to be promoted to the post of SST (BPS-16); that the action of respondent department by reverting the appellant from the post of SST (BPS-16) and promoting the private respondent No. 4 against the post of SST (BPS-16) is against the Article 38(e) of the Constitution of Islamic Republic of Pakistan.

05. Learned District Attorney on the other hand contended that the appellant was promoted from PSHT to SST (G) as private respondent No. 4 failed to submit his ACRs and other relevant documents with the specified period of time; that private respondent No. 4 filed departmental appeal to respondent No. 2 which was accepted and he was promoted to the post of SST (G) BPS-16 in place of the appellant; that the impugned orders dated 29.07.2019 and 11.09.2019 are according to law, justice and policy; that the appellant has been treated in accordance with law and no violation of Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973; that action of the respondents by reverting the appellant and promoting the private respondent No. 4 is according to law, policy, rules as he was senior

to the appellant. Therefore, he requested for dismissal of the instant service appeal.


06. Learned counsel for private respondent No. 4 relied on the arguments advanced by learned District Attorney for official respondents No. 1 to 3.


07. It is admitted fact that the appellant as per seniority list stood at No. 294 and the respondent No.4 at 293 and as such the appellant was one step junior to the respondent No.4. The minutes of DPC meeting held on 18.01.2019 reveal that at the time of holding of DPC meeting 10 posts of SST (General) were available for promotion of PSHT, SPST and PST to the post of SST (General). The DPC considered 10 eligible candidates including the appellant and recommended them for promotion to the post of SST (General) on regular basis. The recommended teachers stood at No.42, 249,260, 263, 269, 270, 279, 289, 292, and 294 (the appellant). There is no mention in the minutes of DPC as to why the teachers in between seniority No.1 to 294 were not considered. On the basis of recommendations of the DPC promotion of 10 teachers including the appellant was notified vide notification dated 22.02.2019. Consequently the appellant was posted as SST (General) GMS Bandan, Dir upper vide DEO (M) Dir upper order dated 01.03.2019 where he submitted arrival report, actualized promotion and continued performing duties as SST (General) till his reversion order dated 29.07.2019. The reason for reversion of the appellant as stated in the impugned order is that he was junior to the respondent No.4. In the reply/comments the respondents have taken the stance that respondent No.4 submitted representation against promotion of the appellant. The respondent

No.4 was ignored due to shortage of ACRs, and other documents which he made available after six months of making of DPC. We observe that at the time of holding DPC meeting the case of the appellant was mature/complete in every respect and the DPC found him eligible and recommended him for promotion which was duly notified and actualized. In the scenario reverting the appellant to his previous position tentamounts to major punishment without justifiable reasons and observance of legal procedure. The impugned order of respondent No. 2 dated 29.07.2019 is misleading which draws authority from the recommendation of DPC. In fact the DPC in its meeting on 18.01.2019 found the appellant eligible and recommended him for promotion. There is no mention, what-so-ever, of the respondent No.4 in the minutes of DPC meeting. No DPC meeting was subsequently held to consider and recommend the respondent No.4 for promotion or for that matter reversion of the appellant.

08. For what has been dismissed above, we accept the appeal in hand as prayed for and set aside the orders dated 29.07.2019 and 31.07.2019 issued by respondent No.2 and 3 respectively. Costs shall follow the event. Consign.

09. *Pronounced in open Court at camp court Swat and given under our hands and the seal of the Tribunal on this 05<sup>th</sup> day of December, 2023.*

  
**RASHIDA BANO**  
 Member (J)  
 Camp Court Swat

  
**MUHAMMAD AKBAR KHAN**  
 Member (J)  
 Camp Court Swat

ORDER

05.12.2023

01. Learned counsel for the appellant present. Mr. Muhammad Jan, learned District Attorney for official respondents No. 1 to 3 present. Learned counsel for private respondent No. 4 also present. Arguments heard and record perused.

02. Vide our detailed judgment of today separately placed on file, consisting of (05) pages, we accept the appeal in hand as prayed for and set aside the orders dated 29.07.2019 and 31.07.2019 issued by respondent No.2 and 3 respectively. Costs shall follow the event. Consign.

03. *Pronounced in open court at camp court Swat and given under our hands and the seal of the Tribunal on this 05<sup>th</sup> day of December, 2023.*



**RASHIDA BANO**  
Member (J)  
Camp Court Swat



**MUHAMMAD AKBAR KHAN**  
Member (J)  
Camp Court Swat