

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 4831/2021

BEFORE: SALAH-UD-DIN KHAN --- MEMBER (J)
MUHAMMAD AKBAR KHAN--- MEMBER(E)

Mr. Muhammad Jamil, Certified Teacher (BPS-15), Govt. High School
Dabb, District Karak..... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa, Secretary Elementary &
Secondary Education Department, Civil Secretariat Peshawar and
others..... (Respondents)

Present:

NOOR MUHAMMAD KHATTAK,
Advocate, --- For Appellant.

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

ABDUL NASIR KHATTAK,
Advocate --- For private respondents No. 08 to 12 & 14

Date of Institution ... 05.04.2021
Date of hearing ... 23.10.2023
Date of Decision ... 23.10.2023

CONSOLIDATED JUDGMENT.

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant
service appeal has been instituted with the prayer “that on acceptance of
this appeal the impugned order dated 08.12.2020 may very kindly be set
aside and the appellant may kindly be promoted to the post of SCT
(BPS-16) w.e.f the date junior colleagues has been given promotion.

Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.”

02. Our this single judgment shall dispose of the instant service appeal as well as connected service appeals bearing No. 4828/2021 titled “Asad Faraz versus Government of Khyber Pakhtunkhwa, Secretary Elementary & Secondary Education Department, Civil Secretariat Peshawar and others”, service appeal bearing No. 4829/2021 titled “Naqib Ullah versus Government of Khyber Pakhtunkhwa, Secretary Elementary & Secondary Education Department, Civil Secretariat Peshawar and others”, service appeal bearing No. 4832/2021 titled “Amjad Rehman versus Government of Khyber Pakhtunkhwa, Secretary Elementary & Secondary Education Department, Civil Secretariat Peshawar and others”, service appeal bearing No. 4833/2021 titled “Muhammad Farooq versus Government of Khyber Pakhtunkhwa, Secretary Elementary & Secondary Education Department, Civil Secretariat Peshawar and others”, service appeal bearing No. 4834/2021 titled “Muhammad Shoaib Anwar versus Government of Khyber Pakhtunkhwa, Secretary Elementary & Secondary Education Department, Civil Secretariat Peshawar and others” and service appeal bearing No. 4835/2021 titled “Muhammad Tayyab versus Government of Khyber Pakhtunkhwa, Secretary Elementary & Secondary Education Department, Civil Secretariat Peshawar and others as common question of law and facts are involved therein.

03. Brief facts of the instant case, as per memorandum of service appeal, are that the appellants were appointed as Certified Teacher vide order dated 14.03.2015 on adhoc/contract basis; that in light of the Khyber Pakhtunkhwa Employees of the Elementary & Secondary, Department (Appointment and Regularization of Services) Act, 2018, the services of the appellants were regularized vide Notification dated 19.03.2018; that respondent No. 2 issued a Notification dated 05.08.2020 whereby a pre-Departmental Promotion Committee was constituted for scrutinizing the documents which was to be convened on various dates till the meeting of Departmental Selection Committee which was tentatively fixed for 11.09.2020; that the date of Departmental Selection Committee was postponed to 19.10.2020 vide letter dated 12.10.2020 just to accommodate their blue eyed persons (private respondents No. 4 to 15) who at the time of earlier scheduled meeting of DPC dated 11.09.2020 the private respondents No. 4 to 15 were not eligible according to the promotion criteria of 5 years service; that the respondents without conducting pre-DSC for the scrutiny of documents, conducted meeting of Departmental Selection Committee on 19.10.2020 and recommended private respondents to the post of SCT (BS-16) vide Notification dated 08.12.2020 by ignoring the appellants being eligible and issued the posting order dated 30.12.2020 of private respondents. Feeling aggrieved, the appellants filed departmental appeals which were not responded within the statutory period, hence preferred the instant service appeal.

04. On admission of the appeal, the respondents were issued notices to submit reply/Parawise comments. They submitted reply/Parawise comment denying and rebutting assertions made in the service appeal. We have heard arguments of the learned counsel for the appellant, learned counsel for private respondents No. 08 to 12 & 14 as well as learned District Attorney and gone through the record with their assistance.

05. Learned counsel for the appellants contended that the impugned order dated 08.12.2020 is against the law, fact and norms of natural justice hence not tenable; that all the requirements required for promotion to the post of SCT (BS-16) are available with the appellant but even then the respondent department did not promote the appellants to the post of SCT (BS-16) and delayed the Departmental Promotion Committee meeting just to accommodate their blue eyed persons in the shape of private respondents; that the appellants have a sufficient experience since the date of appointment and are fully entitled for promotion to the post of SCT (BS-16); that the appellants have not been treated by the respondents in accordance with law and rules and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan; that inaction and action of the respondents by not promoting the appellants to the post of SCT (BPS-16) is against Section-9 of the Civil Servants Act, 1973 read with Rule-7 of the (Appointment, Promotion & Transfer) Rules, 1989.

06. Learned District Attorney controverted the plea and stance taken by the learned counsel for appellants. He contended although the appellants have the requisite qualifications but as per Regularization Notification dated 19.03.2018, the appellants were junior to private respondents and not entitled to be promoted to the post of SCT (BS-16); that the appellants have been treated in accordance with law and rules.

07. Learned counsel for private respondents No. 10 to 12 & 14 relied upon the arguments advanced by learned District Attorney.

08. Scrutiny of record reveals that the appellants were initially appointed on contract basis as CT vide order dated 14.03.2015. Subsequently their services were regularized under the Khyber Pakhtunkhwa Employees of the Elementary & Secondary Education (Appointment and regularization of Services) Act, 2018 vide Notification dated 19.03.2018. Serial No. 7 of terms and conditions of regularization of the appellants contained in the notification *ibid* states that *"their regularization shall not effect the promotion quota of the existing holders of posts in respective service cadre. They shall rank Junior to all civil Servants belonging to the same service or cadre, as the case may be, who are in Service on regular basis on the Govt. of the Khyber Pakhtunkhwa employees on the Elementary and Secondary Education (Appointment in regularization of Services) Act, 2018 (Khyber Pakhtunkhwa Act No. 1 2018) and shall also rank Junior to such other persons, if any, who in pursuance of the recommendations of the Khyber Pakhtunkhwa Public Service Commission made before the commencement of the Act are to be*

appointed to the respective Service or cadre irrespective of their actual date of appointment.” As such they were placed junior to the private respondents in the seniority list issued by the respondent department. At the time of initiation of process of promotion from CT to SCT (BS-16) the length of services of the private respondents were less than 05 years (21 days short of 05 years total length of service required for promotion to the post of SCT as per Service Rules). The contention of appellants that postponement of the DPC earlier scheduled on 11.09.2020 and its rescheduling on 19.10.2020 has deprived the appellants from their promotion to the next higher scale does not hold good. Even if we suppose the DPC meeting had been held on 11.09.2020 the appellants would not have been considered for promotion rather it was the legal right of the private respondents being senior to be considered for appointment on acting charge basis under Rule-9 (1) of the Khyber Pakhtunkhwa Government Servants (Appointment Promotion & Transfer) Rules, 1989 which provides as under;

Appointment on Acting Charge or current Charge Basis.---

(1) Where the appointing authority considers it to be in the public interest to fill a post reserved under the rules for departmental promotion and the most senior civil servant belonging to the cadre or service concerned, who is otherwise eligible for promotion, does not possess the specified length of service, the authority may appoint him to that post on acting charge basis


Provide that no such appointment shall be made, if the prescribed length of service is short by more than {three years}


09. As regard constitution of scrutiny committee and tentative schedule of DPC meeting on 11.09.2020 and its rescheduling to

19.10.2020, it is observed that it was not specific to the appellant and District Karak only but it covered the entire province of Khyber Pakhtunkhwa. The reasons for this postponement put forward by the respondent department was COVID-19 which was at its peak at that period of time.

10. In view of the above discussion, we dismiss the instant appeal as well connected service appeal being devoid of legal merits. Costs shall follow the event. Consign.

11. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 23rd day of October, 2023.*


(SALAH-UD-DIN)
MEMBER (J)


(MUHAMMAD AKBAR KHAN)
MEMBER (E)

ORDER

23.10.2023

01 Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for official respondents present. Learned counsel for private respondents present. Arguments heard and record perused.

02. Vide our detailed judgment of today separately placed on file consisting of (07) pages, we dismiss the instant appeal being devoid of legal merits. Costs shall follow the event. Consign.

03. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 23rd day of October, 2023.*



(SALAH-UD-DIN)
MEMBER (J)



(MUHAMMAD AKBAR KHAN)
MEMBER (E)