

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 549/2022

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

Noor Shahi Din S/O Noor Ul Abrar R/O Village Shogram P/O Rashun,  
Tehsil Mulkhow Torkhow, District Chitral Upper currently serving at  
Government High School, Rashun Chitral Upper. .... (*Appellant*)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Secretary Education, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. Director of Education (Male), Government of Khyber Pakhtunkhwa, Peshawar.
4. Director, Elementary & Secondary Education Department (Establishment), Khyber Pakhtunkhwa, Peshawar.
5. District Education Officer (Male), Booni District Chitral Upper.  
.... (*Respondents*)

Mr. Hidayat ur Rehman  
Advocate ... For appellant

Mr. Muhammad Jan  
District Attorney ... For respondents

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Date of Institution.....14.04.2022  
Date of Hearing.....11.12.2023  
Date of Decision.....11.12.2023

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:

**“It is, therefore, humbly prayed that, on acceptance  
of the instant appeal may be pleased to;**



1. **Declare the impugned order and deferring the appellant from the list of promotion by the respondents as illegal, unlawful, without lawful authority and void-ab-initio and to be set-aside.**
2. **Direct the respondents to promote the appellant from STT to SST (G) as per the first promotion list will all back benefits from the year 2021.**
3. **Any other relief may also be kindly be granted in the circumstances of the appellant's case."**

2. Through this single judgment we intends to dispose of the instant service appeal as well as connected Service Appeals bearing No. 550/2022 titled "Hidayat Ullah Vs. The Government Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar and four others".

3. Brief facts of the case, as given in the memorandum of appeal, are that appellant was appointed as Arabic Teacher BPS-09 in the respondent department vide order dated 05.01.2004 and was promoted to the post of Senior Arabic Teacher BPS-16 vide order dated 18.04.2014. Appellant prefer appeal to the District Education Officer (M), Chitral Upper for his promotion upon which promotion committee was constituted wherein he was recommend for promotion to the post of SST General but his promotion case was deferred without any reason. Appellant again approach respondent for his promotion on 24.11.2021 who again recommended appellant for promotion to the post of SST General, but again he was deferred without any reason. Feeling aggrieved, he filed departmental appeal, which was not responded, hence, hence the instant service appeal.

4. 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 for the respondents and perused the case file with connected documents in detail.

5. Learned counsel for the appellant argued that the appellant has not been treated in accordance with law and rules and respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973. He further argued that deferment of the appellant from his due right of promotion is against the law, facts and against the rules and regulation, without lawful authority thus liable to be set aside. He further argued that deferment of appellant from his due promotion, which was based on seniority-cum-fitness is against the policy given by Higher Education Commission in the year 2011 and 2017 and against the verdicts of apex court. He contended that on the same criteria, respondents promoted other teachers who belongs to other districts and appellant was discriminated.

6. Conversely, learned Deputy District Attorney argued that appellant has been treated in accordance with law and rules. He further argued that the appellant was recommended by the respondents and his documents were forwarded for promotion from Senior Arabic Teacher to Secondary School Teacher (General) BPS-16 and at the time of Departmental Promotion Committee, it was sought out by the respondents that there were total eleven vacant posts of Secondary School Teacher (General) in Chitral Upper, no share was available in 4% share for promotion from SAT to SST (G), that's why the appellant was not considered for promotion, while eligible teachers of other cadres were promotion.

7. Perusal of record reveals that appellant done his Shahadat-ul-Alia Fil Uloom-ul-Islamia Wal Arabia (Bachelor of Arts) and Shahadat-Ul-Alamia Fil Uloom ul Islamia wal Arabia from Wifaqul Madaris Arabia Pakistan (Master in Arts). Appellant also done his MA (Arabic) Bachelor of Education and Shahadat Ul Alamia Degree. That appellant on the basis of above mention qualification was appointed by Executive District Officer Establishment &




Secondary Education District Chitral Vide order dated 06.06.2007 as Theology Teacher (BPS-14) and now working as Senior Theology Teacher (BPS-16) in Government High School (Male) Rashan Chitral.

8. Appellant filed application to the DEO (Male) Chitral for his promotion upon which promotion committee was constituted by respondent wherein promotion case of the appellant was consider after perusal of entire record of the appellant, recommended the appellant for the post of SST (General) but promotion committee deferred promotion of the appellant without any plausible reason. Appellant again approach respondent for his promotion on 24.11.2021 who again recommended appellant for promotion to the post of SST General, but respondent No.3 is reluctant to promote appellant. Appellant seek his promotion to the post of SST General in BPS-16 regular from SAT in accordance with appendix to the notification dated 29.10.2021, wherein 4% quota is reserved for promotion to the post of SST (G). The relevant quota details are as under;

*“Secondary School Teacher BPS-16, total eleven seats are vacant out of which 25% will be reserved for initial recruitment i.e. 2.75 while remaining 75% i.e. 8.25 seats will be distributed among different cadres including cadre of the appellant.”*


9. Respondents in this written reply admitted that appellant was recommended for promotion by the departmental promotion committee but as no seat falls in the share of SAT cadre, therefore, he was not promoted. It is admitted fact that their share was kept intact in previous year, which became double this time. Respondent treat the appellant discriminately as all other categories/cadre share were observed/respected and teacher from it were promoted but Senior Arabic Teachers were ignored. Now appellant is promoted on vide order dated 20.03.2023. Appellant seek ante-dation of



promotion which was denied by the respondents, therefore, it will be in the fitness of things that let respondent themselves decide the matter in fitness of antedating of appellant promotion because respondents/authority twice recommend appellant for promotion.

10 For what has been discussed above, we send the case of the appellants to the respondent department to decide the question of ante-dation of the appellant having regard to percentage of their share by treating them at par with other district employees promotion with percentage of like appellants. Costs shall follow the event. Consign.

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

  
(MUHAMMAD AKBAR KHAN)  
Member (E)

  
(RASHIDA BANO)  
Member (J)


**ORDER**


11.12.2023

1. Learned counsel for the appellan present. Mr. Muhammad Jan learned District Attorney for the respondents present.

2. Vide our detailed judgment of today placed on file, we send the case of the appellants to the respondent department to decide the question of ante-dation of the appellant having regard to percentage of their share by treating them at par with other district employees promotion with percentage of like appellants. 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 11<sup>th</sup> day of December, 2023.*

  
(Muhammad Akbar Khan)  
Member (E)

  
(Rashida Bano)  
Member (J)