

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR

Service Appeal No. 551/2022

BEFORE: MR. SALAH-UD-DIN, ... MEMBER (J)  
MISS FAREEHA PAUL ... MEMBER (E)

Mrs. Rahat Yasmeen W/O Umar Badshah R/O Nursery Chowk Peshawar  
University, Mohallah Lalazar Colony, Peshawar..... (*Appellant*)

Versus

1. Govt. of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
  2. Secretary Industries, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
  3. Secretary Finance, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
  4. Secretary Establishment, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
  5. Director Establishment, Technical Education & Vocational Training Authority Khyber Pakhtunkhwa, University Town, Peshawar.
  6. Deputy Director, Technical Education & Vocational Training Authority Khyber Pakhtunkhwa, University Town, Peshawar.
- ..... (*Respondents*)

Mr. Waseem Uddin Khattak,  
Advocate

... For appellant

Mr. Asad Ali Khan,  
Assistant Advocate General alongwith  
Mr. Ali Gohar Durrani , Legal Advisor.

... For the respondents

Date of Institution..... 14.04.2022  
Date of Hearing..... 07.02.2024  
Date of Decision..... 07.02.2024

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the following:



*“a. the action/inaction of the respondents by way of depriving the appellant from her due right of promotion from the date when she became eligible and a vacant post of BPS-20 was available.*

*b. Against the order No.KP-TEVTA/Estt/11-65/807C dated 16.03.2022, whereby representation/application/appeal regarding promotion from BS-19 to BS-20 against the vacant post/sanctioned post on regular basis is regretted on the pretext that “relevant service rules have not yet been finalized/approved.”*

It has been prayed that on acceptance of the appeal, the appellant might be promoted from BS-19 to BS-20 from the date when she became eligible against a vacant budgetary post alongwith all consequential and back benefits.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was initially appointed as Junior Trade Instructor (BPS-10) in Technical Education Department on 30.10.1980. She was promoted to the post of Trade Instructor (BPS-11) on 06.01.1982. She was promoted to the post of Principal (BPS-17) vide order dated 31.05.1992 and posted at Government Vocational Institute (Women), Swat. She was promoted to BPS-18 and posted as Principal at Government Technical and Vocational Centre (Women), Hayatabad, Peshawar. She was promoted to BPS-19 and posted at Khyber Pakhtunkhwa Technical Education and Vocational Training Authority (KP-TEVTA). She was transferred back to Government Technical and Vocational Centre (Women) Hayatabad, Peshawar in her own pay and scale on 03.12.2021 against the vacant post of Principal (BPS-20). She remained at the top of the seniority list of BPS-19 and due to her length of service was eligible for the next higher grade i.e. BPS-20, therefore, she applied to the competent authority for her appointment on the post of Principal BPS-20, but the same was refused



on the pretext that relevant Service Rules for promotion from BPS-19 to 20 of Vocational Cadre were not yet finalized and approved. She retired from service on attaining the age of superannuation w.e.f. 01.04.2022. She being aggrieved of the action/inaction of the respondents, filed the instant service appeal.

3. Respondents were put on notice. They submitted their joint parawise comments on the appeal. We heard the learned counsel for the appellant as well as learned Assistant Advocate General for the respondents alongwith the Legal Advisor and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that the appellant was eligible and qualified having the required experience and there was a vacant post of BPS-20 available, therefore, she had every right to be promoted to BPS-20. He further argued that four-tire formula in favour of teaching staff of Technical and Education Training Authority, Khyber Pakhtunkhwa was approved on 31.01.2020, which provided a vacant budgetary post, hence the appellant was required to be promoted. She had also successfully completed 03 months mandatory Management Training Course required for promotion. He further argued that under the General Promotion Policy, she was entitled to be promoted. He requested that the appeal might be accepted.

5. Learned Assistant Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was transferred upon her own request and posted against the vacant post of BPS-20 at GTVC, Hayatabad Peshawar in her own pay and scale for the purpose of pay in the backdrop of the fact that she was at the verge of retirement. According to him,



the said posting/transfer did not confer upon her any vested right of promotion to BPS-20. The learned AAG informed that as it was a newly created post, the relevant service rules pertaining to the post of BS- 20 were not framed. Moreover she had just been promoted to BS-19 and was on probation till her retirement as per her promotion order. The learned AAG argued that she could not be considered for any further promotion at that time. He requested that the appeal might be dismissed.


6. Arguments and record presented before us shows that the appellant was appointed as Junior Trade Instructor (BS-10) in the Technical Education Department in 1980. Over the years, she was promoted and was appointed as Principal in BS-19 on 9<sup>th</sup> August 2021, and as a rule was kept under probation, which is normally one year, but in her case, keeping in view her date of superannuation which was 31.03.2022, she was kept on probation till her retirement. Consequent upon her promotion, she was transferred and posted as Principal in Government Technical and Vocational Centre (Women) Abbottabad vide a notification of the Government of Khyber Pakhtunkhwa, Industries, Commerce and Technical Education Department dated 1<sup>st</sup> September, 2021. Later on vide an order dated 03.12.2021, she was transferred as Principal, BS- 19, Government Technical and Vocational Centre (Women) Hayatabad, Peshawar, in her own pay and scale, as that post was in BS-20. The transfer order was issued on her own request and owing to the fact that she was near retirement from service. Through this service appeal, the appellant has requested for promotion to the post of BS-20 on the ground that the post was vacant and that she was eligible for the said promotion.




7. From the record presented before us, it transpires that there was one post of BS-20, created vide a notification dated 30.01.2020. It is an undisputed fact that wherever a post is created, service rules are required to determine the eligibility and method of recruitment for the said post. As it was a newly created post, necessary procedure had to be followed for getting the service rules approved from the provincial government, which was not completed till the retirement of the appellant. The contention of learned counsel for the appellant that she was eligible for the said promotion in the light of promotion policy of the provincial government, is not enough as the promotion policy cannot be considered in isolation. For promotion to a specific post, service rules for that post are a mandatory requirement. Moreover, the appellant got promoted to BS-19 in August 2021 and was under probation till her retirement, which was at an earlier date as against one year, which is a normal tenure of probation. The appellant being under probation till her retirement means that she was not even confirmed in BS-19, then how could she claim promotion to BS-20?

8. In view of the above discussion, the service appeal in hand is dismissed, being groundless. Cost shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 07<sup>st</sup> day of February, 2024.*

  
(FAREEHA PAUL)  
Member (E)

  
(SALAH-UD-DIN)  
Member (J)


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07<sup>th</sup> Feb. 2024 01. Mr. Waseem-ud-Din Khattak, Advocate for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General alongwith Mr. Ali Gohar Durrani, Legal Advisor for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 05 pages, the appeal in hand is dismissed being groundless. Cost shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 07<sup>th</sup> day of*

*February, 2024.*

  
(FARZEHA PAUL)  
Member (E)

  
(SALAH-UD-DIN)  
Member (J)

\*Fazal Subhan PS\*