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**BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR**

Rejoinder in Service Appeal No. 898 /2023

Ghulam Sarwar Assistant Director, Directorate of E&SE Khyber
Pakhtunkhwa Peshawar.

(Appellant)

VERSUS

1. Chief Secretary Govt of Khyber Pakhtunkhwa Peshawar.
2. Secretary E&SE Govt of Khyber Pakhtunkhwa Peshawar.
3. Director E&SE Govt of Khyber Pakhtunkhwa Peshawar.

(Respondents)

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Dated 28.01.2024

Ghulam Sarwar
Applicant

*11-06-2024
Peshawar
D.B*

(1)

BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Diry No. 11507

Dated 1-03-24

Rejoinder in Service Appeal No. 898/2023

Ghulam Sarwar Assistant Director, Directorate of E&SE Khyber
Pakhtunkhwa Peshawar.

(Appellant)

VERSUS

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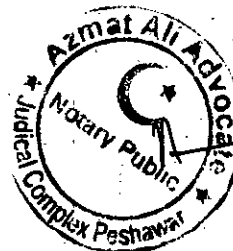
(Respondents)

AFFIDAVIT

I, Ghulam Sarwar do hereby affirm and declare on
oath that the contents of this appeal is true and
correct to the best of my knowledge and belief
nothing has been concealed from this Hon'ble
Service Tribunal.

DEPONENT 

ATTESTED



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BEFORE HON,ABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.898/2023

Ghulam Sarwar Asstt; Director(Admn), posted and worked as Deputy Director (Admn & Finance) DCTE, Khyber Pakhtunkhwa, Abbottabad.

APPELLANT

V/S

1. Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar.
2. Secretary, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.

RESPONDENTS

REJPONDER ON BEHALF OF APPELLANT IN SERVICE APPEAL NO.898/2023

Respectfully Sheweth.

Re-joinder on behalf of appellant in response to Para-wise comments filed by the respondents are submitted as under: -

PRELIMINARY OBJECTION

Objection No.01 to 12 having no legal force and contradictory to the rules, policy and law. The Resp; just added these points to counterblast legal proceedings of the appellant

ON FACT

- Para-01. That, the reply of Resp: Deptt; up to the extent of service record of appellant is correct, however, as for as induction from higher scale post of Senior Scale Stenographer (BPS-12) to a lower scale post of junior clerk (BPS-5) is highly imaginary, without legal footing, mis-leading and against the facts of the case as there is no question of induction of appellant against the post of Junior Clerk, hence such request through previous appeal No.4980/2021 was prayed therein.
- Para-02. No comments, as the Resp: Deptt; has admitted step by step promotion of appellant to the post of B&AO on 11/01/1988.
- Para-03. No comments, as the Resp: Deptt; has admitted the facts of Para-2
- Para-04. Resp Deptt; admitted the award of Selection Grade BPS-17 vide notification dated 30/10/1993, remaining reply of Resp: regarding availability and adjustment of appellant against the post of Dy: Director B-18 is too imaginary as the same have neither prayed for has any concerned with the instant case of appellant.
- Para-05. Resp: Deptt; have also admitted the award of Move over from BS 16 to 17 & BPS-17 to 18, all documentary evidences are already available with Service Appeal as Annex: D&E with cogent justification.
- Para-06. That, plea of the appellant in Par-6 regarding criteria of promotion against vacant post of Assistant Directors (Finance) & (Admn) BS-17, out of Budget & Accounts Officers through promotion on the basis of Seniority-Cum-Fitness is admitted by the Respondent Deptt: however, question of availability and adjustment of the appellant against the post of Dy: Director B-18 is imaginary as the same was neither claimed nor was the subject matter of appeal through Para-6 of instant appeal.

- Para-07. That, the respondent Department un-lawfully adjusted the junior Supdttts;/Officers against the post of Assistant Director which was reserved for promotion on the basis of seniority- cum-fitness, thus the appellant was deprived from his due right of promotion in violation of law and rules just to favour blue eyed juniors. Moreover, the appellant submitted his lawful claim of promotion on 01/07/2015 while in service and not after his retirement i.e 05/03/2016. Copies of un-lawful orders of Junior Supdttts: and request of the appellant are already attached as Annex: **G&H**.
- Para-08. That, the post of AD was lying vacant and the appellant was due for promotion on 08/01/1997, but respondent Deptt; failed to process the promotion case of appellant malafidly, while junior Supdttts; /Officers were un-lawfully assigned the duty of AD who remained occupied the said post till 29/08/2014
- Para-09. That, the contention of Resp: Deptt: regarding submission of departmental appeal against impugned notification dated 28/08/2014 is incorrect, as the same Deptl: appeal was the part of proceeding in Service Appeal No. 1067/2015 which was remitted to the Deptt: by the Khyber Pakhtunkhwa Service Tribunal vide order dated 22/03/2021 and was properly contested by the Resp Deptt; through written reply etc.
- Para-10. That, dismissal of departmental appeal was made in a highly capricious manner without considering the question of facts and law as required hence instant Service Appeal.
- Para-11. That, rejection of departmental appeal of the appellant by the Resp: Deptt; is without applying judicial mind, law, rules & policy in vogue in a very harsh manner just to victimize/penalize the appellant due to un-explained reasons /revenge.
- Para-12. That, the departmental appeal was again rejected by respondent not on merit but on the basis of pick and choose, like and dislike without cogent arguments. Hence the appeal of the appellant may graciously be accepted on the following grounds:

ON GROUNDS

- Para-A That, rejection notification dated 28/03/2023 was issued in violation of law, rule, policy and against the recommendations of Resp: No.02 submitted vide letter No. 4393 dated 30/09/2019 and No.2695 dated 25/02/2020, copies already submitted with appeal as **Annex: U&V**.
- Para-B As submitted in Para-A above
- Para-C. Reply of Resp: in Para-C is baseless and against the factual position as the post of AD (Admn) & Finance relates to the Provincial cadre and the case of the appellant also relates to the Provincial level post.
- Para-D. Contention adopted by Resp: in reply to Para-D is incorrect as the promotion process given in Service Rule 1978 are also continued in Service Rules 2013 while these post were reserved for promotion but Resp: Deptt: un-lawfully adjusted junior officers against these posts instead of regular promotion of the appellant.

- Para-E. Reply of Resp Deptt; is imaginary, without legal force and concealment of fundamental facts of the case as there is no question of promotion against the post of B&AO against which the appellant is already serving since 1988. It is further added that no promotion was made after the retirement of Mr. Fazal-e-Khaliq AD(Admn) B-17 who was also promoted under Service Rules 1978.
- Para-F. In-correct and mis-leading, the post of AD remained on the strength of Directorate of E&SED and bifurcation story of different Directorates is baseless as the promotion cases of ministerial cadres' posts were entirely ever run by one Directorate and were never entrusted to different Directorates.
- Para-G. That, the appellant has never been treated as per law rules & policy. The stance of Resp; Deptt: is against the facts and ground realities, appellant was highly discriminated being senior most B&AO by ignoring his regular promotion instead, junior officer was allowed to act against the senior post just to deprive the appellant from his due right of promotion.
- Para-H. That, the appellant has never been treated as per law rules & policy, it is an established law duly endorsed by the Apex Court that the person who fulfill the criteria for promotion could not be refused and deprived on the availability of post reserved for promotion.
- Para-I. As above in reply of Para-H above.
- Para-J. Reply of the respondent is against the spirit of judgement of hon,able Service Tribunal dated 15/08/2006, the same judgement was further entertained by the Apex Court in its judgement dated 05/03/2010.
- Para-K. Judgement under reference will be argued at the time of final hearing including presentation of other relevant references/record.
- Para-L. That, the Resp; Deptt; has already allowed promotions to its employees with retrospective effect as indicated in Para-L of original appeal. However, on availability of vacancy, it is established and primary responsibility of the competent authority to process the promotion cases of the officers/official due for promotion without any delay or waiting for request from the incumbent due for promotion.
- Para-M. Reply of the Resp; Deptt; is imaginary, without footing and against the ground realities as the appellant was awarded Selection Grade & Move over from BS-16 to BS-17 & BS 17 to BS-18 w.e.f 01/12/1993 & 01/12/1998 respectively under the rule by the competent forum/authority after completion of due process of promotion.
- Para-N. That, it is universal truth that no one should be penalized for the lapses committed by the authority in exercising of his lawful powers. Promotion process was not initiated Inspite of availability of post thus the authority remained in deep slumber just to extend un-lawful relief to blue eyed junior officers.
- Para-O. That, direction of hon,able Tribunal in Appeal No.612/2008 is very much clear in both question of law and fact and is applicable on every such nature cases including the instant one. The cases of the appellant were not placed before DPC and even there was no question of deferment.

PRAYER

It is most humbly prayed that on acceptance of the instance service appeal, the respondent may kindly be directed for antedating the promotion of the appellant w.e.f 08/01/1997 instead of 29/08/2014 with cost & all back benefits in favour of appellant.

Dated 01 /01/2024

Through

Appellant

Mehboob Ali Khan Dagai
Advocate, High Court, Peshawar