

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No. 832/2022**

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

Falak Naz Khan S/o Qadir Khan, Laboratory Attendant, GHS No.03,  
Bannu. .... (Appellant)

**VERSUS**

1. District Education Officer (M), Elementary & Secondary Education Department, Bannu.
2. Director, Elementary & Secondary Education Department, GT Road Hashtnagri, Peshawar City.
3. Secretary, Elementary & Secondary Education Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
4. Taj Murad, Junior Clerk, Office of DEO (M), Bannu.
5. Hameed Ullah Khan, Junior Clerk, GHSS Abdul Hameed Noor JaniKhel, Bannu.

.... (Respondents)

Mr. Arbab Saiful Kamal  
Advocate ... For appellant

Mr. Asif Masood Ali Shah  
Deputy District Attorney ... For respondents

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Date of Institution.....17.05.2022  
Date of Hearing.....30.01.2024  
Date of Decision.....30.01.2024

**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, most humbly prayed that on acceptance of the appeal, order dated 14.03.2020 of R.No.01 promoting R.No.4& 05 to the post of Junior Clerk be set-aside and appellant be promoted to the post of junior clerk with effect from 14.03.2020 with all service benefits.”



2. Through this judgment, we intend to dispose of instant service appeal as well as service appeal No.833/2022 titled "Afsar Ali Shah Vs Education Department" as in both the appeals common questions of law and facts are involved.

3. Brief facts of the case, as given in the memoranda of appeals, are that appellants are the Class-IV employees of the Education Department who were appointed on 10.02.1996 & 01.12.1993 respectively and having high qualification and quality service record at their credit. That on 31.02.2020 final seniority list of Class-IV employees for promotion to the post of Junior Clerk was issued wherein name of the appellants were rightly mentioned at Sr. No.11 & 15 while name of private respondents No.4 at serial No.58 and R. No.5 at serial No.105 respectively. Thereafter, on 14.03.2020 respondents issue promotion order wherein juniors to the appellants were promoted to post of Junior Clerks and appellants were ignored. Appellants filed departmental appeals, which were not responded. Then appellants filed writ petition No.525-B/2020 before Hon'ble Peshawar High Court, Bannu Bench, which was decided on 20.04.2022 with direction to approach Service Tribunal, hence the present service appeal.

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

5. Learned counsel for the appellants argued that appellants had 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 promotion orders of private respondents issued against the law and rules hence liable to be set aside. He submitted that extraordinary favoritism was show in promotion of private respondents because the matter was not dealt with in accordance with law. Lastly, he submitted that no limitation runs against the matter of promotion, seniority and financial matter, hence instant appeal might be accepted.

6. Conversely, learned Deputy District Attorney contended that appellants had been treated in accordance with law rules. He further contended that it was the responsibility of the appellants to submit application for correction in the tentative seniority list within time, but they failed to so. He further contended that respondent No.1 informed all Class-IV employees for typing test in which appellants had failed and private respondents passed the test, hence they were promoted. Lastly he submitted that appeals of the appellants are time barred, hence dismissed with costs.

7. Perusal of record reveals that appellants were appointed on 10.02.1996 & 01.12.1993 as chowkidar Class IV in the respondent/department and are serving with full devotion. Appellants done their F.A in the year 2005, Government of Khyber Pakhtunkhwa issued policy/rules for recruitment and promotion of employees if respondent/department on 8 July, 2014 which was amended on 18.07.2019. Method of appointment to the post of junior Clerk BPS-

11 was given in the following manner;



- (a) Forty per cent by promotion, on the basis of seniority-cum-fitness, from amongst Daftaris, Gestetner Operators, Qasids and Naib Qasids including holders of other equivalent posts in the Secretariat with two years of service as such. Who have passed FA/F.Sc examination or its equivalent qualification from a recognized Board; and*
- (b) sixty per cent by initial recruitment.*

*Note: For the purpose of promotion, there shall be maintained a common seniority list of Daftaries, Gestetner Operators, Qasids, Naib Qasids etc. with reference to the dates of their acquiring the FA/F.Sc qualification:*

Respondent No.4 & 5 were appointed on 24.04.1998 and 30.08.2009 respectively but they were rightly placed at Serial No.58 & 105, junior to the appellant in seniority list of Class-IV employees by placing appellant at Sr. No.11 & 15 respectively. Respondent/department vide order dated 14.03.2020 promoted respondent No.4 & 5 despite being juniors to the appellants. Appellants approached worthy High Court wherein direction was given to approach this tribunal.

8. Main contention of the appellants is the requirement of typing test having 30 words per minute is not meant for Class-IV employees and only condition for them is having qualification of F.A/F.Sc and seniority cum-fitness.

9. Appellants in this respect referred to letter dated 6.01.2021 bearing No. E&AD(152)2021/APCA by administration department to Secretary to Government of Khyber Pakhtunkhwa Elementary & Secondary Education Department with subject of "Application for Class-IV promotion and the condition of typing test, wherein it is mentioned that no condition of typing test exists for promotion of

Class-IV employees. Therefore, instruction contained in the letter dated 26.11.2018 of Regulation Wing Establishment Department may be followed in its letter and spirit while making promotion of Class-IV.

10. Perusal of letter dated 26.11.2018 reveals that the amended Service Rules for ministerial staff of Elementary & Secondary Education Department vide Notification No.SO(PE)4-10SSRC/Ministerial Staff:2013 dated 2<sup>nd</sup> August 2017 are silent with regard to the condition of typing skill/knowledge. As such the condition of typing skill/knowledge is not applicable for Class-IV seeking promotion to the post of Junior Clerk (BS-11) against 33% reserved quota. The posts are to be filled strictly in accordance with the method of appointment, qualification and other conditions applicable to a post as laid down in the relevant Service Rules frame under Rule-3 (2) of Khyber Pakhtunkhwa Civil Servants (Appointments Promotion & Transfer) Rules, 1989.

Respondents themselves by following instruction contained in letter dated 06.01.2021 and 26.11.2018 promoted vide order dated 4.12.2023,

“Amin ullah Khan S/O Khair Muhammad Khan, Chowkidar  
 Anwarullah Khan S/O Amanullah Khan, Chowkidar  
 Mashal Khan S/O Asaf Khan, Chowkidar  
 Sanaullah S/O Ghulam Rasool, Naib Qasid  
 Nasir Ali Khan S/O Mir Azad Khan, Chowkidar  
 Abdul Samad Khan S/O Abdul Qayum Khan, Chowkidar  
 Umer Ayaz S/O Muhammad Ayaz, Naib Qasid  
 Wali Khan S/O Gul Mir Khan, Chowkidar  
 Rahim Bad Shah S/O Rehman Shah, Lab: Attendant  
 Ghafar Ali Khan S/O Zerdad Khan, Lab: Attendant  
 Muhammad Ishaq S/O Sultan Shah, Chowkidar”

and provide cushion period of six months for improving their typing skill and speed vide promotion/appointment notification by mentioning;


“3. They will be bound to obtain certificate the effect that they will have achieved the type/computer knowledge within six months from the date of issuance of promotion order.”


In this appointment order there is no mention of typing speed of 30 words per minute and factum of acquiring knowledge of typing is mentioned.

11. We are of the view that appellants are not treated fairly like appointees of order dated 04.12.2023. Therefore, they being seniors also deserved the same treatment under law, otherwise too in notification dated 18.7.2019 cushion period for acquiring educational qualification was given to Class-IV employees what to say about the typing speed of 30 words per minutes.

12. For what has been discussed above we are unison to direct the respondents to consider appellants in quota reserved for promotion of Class-IV employees for the posts of Junior Clerk on the basis of their seniority like other employees from date when they were considered for it for the first time. Costs shall follow the event. Consign.

13. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 30<sup>th</sup> day of January, 2024.*

  
(MUHAMMAD AKBAR KHAN)  
Member (E)


  
(RASHIDA BANO)  
Member (J)


ORDER  
30.01.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney for the respondents present. Arguments heard and record perused.

2. Vide our detailed judgment of today separately placed on file, we are unison to direct the respondents to consider appellants in quota reserved for promotion of Class-IV employees for the posts of Junior Clerk on the basis of their seniority like other employees from date when they were considered for it for the first time. Costs shall follow the event. Consign.

3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 30<sup>th</sup> day of January, 2024.*

  
(Muhammad Akbar Khan)  
Member (E)

  
(Rashida Bano)  
Member (J)

\*M.Khan