

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 831/2022

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

Waheed Ullah S/o Mir Jehandad Khan, Chowkidar, GHSS Mamash Khel,
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. HameedUllah Khan, Junior Clerk, GHSS Abdul Hameed Noor JaniKhel, Bannu.

.... (Respondents)

Mr. Saadullah Khan Marwat
Advocate

... For appellant

Mr. AsifMasood Ali Shah
District Attorney

... For respondents

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 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. Brief facts of the case as given in the memoranda of appeal is that appellant is the Class-IV employee of the education department who was appointed on 15.06.2005 having high qualification and quality service record at his 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 appellant was rightly mentioned at Sr. No.126 while name of private respondent No.4 at serial No.105 respectively. Thereafter, on 14.03.2020 respondents issue promotion order wherein junior to the appellant were promoted to post of Junior Clerks and appellant was ignored. Appellant filed departmental appeal, which was not responded. Then appellant 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.

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

4. Learned counsel for the appellant argued that appellant 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 order of private respondent issued

against the law and rules hence liable to be set aside. He submitted that extraordinary favoritism was shown in promotion of private respondent 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.

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

6. Perusal of record reveals that appellant was appointed on 15.06.2005 as chowkidar class IV in the respondent/department and is serving with full devotion. Appellant done his F.A in the year 2005, Government of Khyber Pakhtunkhwa issued policy/rules for recruitment and promotion of employees of 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, NaibQasids etc. with reference to the dates of their acquiring the FA/F.Sc qualification:

Respondent No.4 was appointed on 30.08.2009 but he was rightly placed at Serial No.105, junior to the appellant in seniority list of Class-IV employees by placing appellant at serial No.126. Respondent/department vide order dated 14.03.2020 promoted respondent No.4 despite being junior to the appellant. Appellant approached worthy High Court wherein direction was given to approach this tribunal.

7. Main contention of the appellant 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.

8. Appellant 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.

9. 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 2nd 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.

Respondent themselves by following instruction contained in letter dated 06.01.2021 and 26.11.2018 promoted vide order dated 04.12.2023,

“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.

10. We are of the view that appellant is not treated fairly like appointees of order dated 04.12.2023. Therefore, he being senior 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.

11. For what has been discussed above, we are unison to direct the respondents to consider the appellant in quota reserved for promotion of Class-IV employees for the post 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.

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


(Muhammad Akbar Khan)
Member (E)


(Rashida Bano)
Member (J)

*M.Khan