

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
AT CAMP COURT SWAT**

BEFORE: **KALIM ARSHAD KHAN ...CHAIRMAN**
SALAH UD DIN ...MEMBER (Judicial)

Service Appeal No.8816/2020

Date of presentation of appeal.....17.07.2020
Dates of Hearing.....04.03.2024
Date of Decision.....04.03.2024

Iftikhar Ahmad son of Aziz Ur Rehman, Presently serving as CT in Govt. Shaheed Adil Shahzad High School No.1 Thana, District Malakand.....(*Appellant*)

Versus

1. **Government of Khyber Pakhtunkhwa** through Secretary Education at Peshawar.
2. **Director** Elementary & Secondary Education, Khyber Pakhtunkhwa at Peshawar.
3. **District Education Officer** Malakand at Batkhela.....(*Respondents*)

Present:

Syed Abdul Haq, Advocate.....For appellant.

Mr. Muhammad Jan, District Attorney.....For respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 18.02.2020, WHEREBY THE APPLICATION REGARDING PROMOTION TO THE POST OF SST (BPS-16) WAS REJECTED, AND THE SENIORITY OF APPELLANT WAS NOT CONSIDERED FOR PROMOTION TO THE POST IBID.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: According to the memorandum and grounds of appeal, the appellant was initially appointed as PST Techer vide order dated 04.04.1988, having qualification of MSc and B.Ed; that after getting B.Ed degree in 1993 and became eligible for the post of SET, as his other colleagues



were appointed in the year 1996; that the appellant being aggrieved, filed writ petition No. 1181-P of 2009, before the Peshawar, High Court, Peshawar which was allowed vide judgment dated 24.06.2010, directed the respondents to appoint the appellant to the post of SET from the date when his other colleagues were appointed; that the respondents filed CPLA before the Supreme Court of Pakistan against the judgment of the Peshawar High Court, which was allowed and the judgment of the Peshawar High Court was set aside vide judgment dated 20.01.2014; that thereafter, the respondents started making deduction from salary of the appellant with effect from 04.03.2011; that the appellant assailed deduction order before the Peshawar High Court Mingora Bench, Swat in writ petition No. 57-M/2015, which was allowed vide judgment dated 17.02.2016, wherein the respondents were directed not to recover any amount from the appellant in respect of his salary or any other back benefits already received by him in compliance with the judgment dated 24.06.2010 rendered in writ petition No. 1181/2009; that the appellant was at the verge of retirement, but the respondents intentionally, every time were ignoring his promotion, so the appellant filed representation for promotion on the basis of seniority before the respondent No.2, which was rejected vide letter bearing No. 1094 dated 18.02.2020, hence, the instant service appeal on 17.07.2020.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant.

3. We have heard learned counsel for the appellant and learned District Attorney for the respondents.

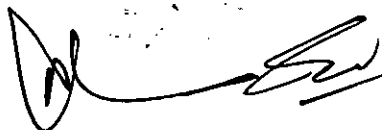


4. The Learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned District Attorney controverted the same by supporting the impugned order(s).
5. Through this appeal the appellant has prayed for setting aside the order dated 18.02.2020, whereby his application, seeking promotion to the post of SST on the basis of seniority, was rejected. It was further prayed that on setting aside the above order, the application, of the appellant dated 15.12.2019, seeking promotion, might be accepted as prayed for.
6. He claims that he is senior to other colleagues, who were promoted at different points of time to the post of SST (BPS-16) while he was not.
7. The official respondents have, though, said nothing in the reply and while admitting the fact during the course of arguments that the appellant was senior to some colleagues, who were promoted at different points of time and further produced copy of the amended service rules, notified vide notification dated 24.07.2014, and referred to Serial No.1B, column No.3, item No.1 (b) and column No.5, item No.1-A. Column No.5-1(a), which reads as under:

"Seventy Five percent by promotion, on the basis of seniority-cum-fitness, from the district concerned in the following manner

(a) Forty percent from amongst the Senior Certified Teachers (BPS-16), with at least five years service as Senior Certified Teacher and Certified Teacher and having qualification mentioned in the column No.3:

Provided that if no suitable candidate is available from amongst Senior Certified Teacher for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst Certified Teachers, with at least



five years service as such and having qualification mentioned in the column No.3."

8. The highlighted and underlined portion i.e. (a) reproduced above, of the relevant rules requires that out of seventy five percent seats to be filled by in promotion, forty five percent were to be filled from amongst the Senior Certified Teacher (BPS-16) with at least five years service as SCT and CT and having qualification mentioned in column-3. The relevant portion concerning the appellant in column-3 is part (b) which shows that the SCTs having Physics, Maths: "A" or "B" or Statistics were to be considered for promotion against their quota. The appellant was required to have group with two subjects i.e. Physics (mandatory) with any of Maths "A" or "B" or Statistics whereas, admittedly the appellant does not have Physics as a subject in his Bachelor Degree so his qualification is not making the requisite group, therefore, under the Rules, he was not eligible to be considered for promotion to the post of SST (BPS-16). This being so, there is nothing in this appeal and it is thus dismissed. Costs shall follow the events. Consign.

9. *Pronounced in open Court at Swat and given under our hands and the seal of the Tribunal on this 4th day of March, 2024.*



KALIM ARSHAD KHAN
Chairman
Camp Court Swat





SALAH UD DIN
Member (Judicial)
Camp Court Swat

ORDER

4th Mar, 2024

1. Appellant alongwith his counsel present. Mr. Muhammad Jan, District Attorney for the respondents present.
2. Vide our detailed judgement of today placed on file. This being so, there is nothing in this appeal and it is thus dismissed. Costs shall follow the event. Consign.
3. *Pronounced in open court at camp court Swat and given under our hands and seal of the Tribunal on this 4th day of March, 2024.*


(Salah Ud Din)
Member(Judicial)


(Kalim Arshad Khan)
Chairman
Camp Court Swat

Adnan Shah, P.A