

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

**Service Appeal No. 648/2022**

BEFORE: MR. KALIM ARSHAD KHAN .... CHAIRMAN  
MRS. RASHIDA BANO ... MEMBER (J)

Mr. Muhammad Ishfaq, Assistant (BPS-16), Office of the District Attorney  
at Service Tribunal, Peshawar.

... (Appellant)

**VERSUS**

1. The Government of Khyber Pakhtunkhwa through Chief Secretary  
Civil Secretariat, Peshawar.
2. The Secretary Establishment Department, Civil Secretariat, Peshawar.
3. The Secretary Law, Parliamentary Affairs & Human Rights  
Department, Civil Secretariat, Peshawar.
4. The Director General of Law and Parliamentary Affairs & Human  
Rights Department, Civil Secretariat, Peshawar.

... (Respondents)

Mr. Noor Muhammad Khattak  
Advocate

... For appellant

Mr. Asif Masood Ali Shah  
Deputy District Attorney

... For respondents

Date of Institution.....28.04.2022

Date of Hearing.....01.04.2024

Date of Decision.....01.04.2024

**JUDGEMENT**

**RASHIDA BANO, MEMBER (J):** The service appeal in hand has been  
instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act,  
1974 with the following prayer:

**“That on acceptance of this appeal, the impugned order  
dated 10.12.2020 may very kindly be modified/rectified to  
the extent that appellant may very kindly be promoted to  
the post Assistant BPS-16 w.e.f the date when the post of**



**Assistant BPS-16 was sanctioned/created i.e w.e.f 30.01.2013 with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.”**

2. Through this single judgment, we intend to dispose of the instant service appeal as well as connected service appeals which are mentioned below as in all these appeals common question of law and facts are involved:

1. Service Appeal No.649/2022
2. Service Appeal No.650/2022
3. Service Appeal No.651/2022
4. Service Appeal No.652/2022
5. Service Appeal No.653/2022

3. Brief facts of the case are that appellants were serving in the Law & Parliamentary Affairs Department. That on promotion of 19 Office Assistants to the post of Superintendent, those 19 posts were lying vacant for promotion. That promotion quota, 75% was reserved for seniority-cum-fitness amongst Senior Clerks while 25% quota was reserved for initial recruitments. The respondent department advertised 08 posts of Assistants for initial recruitment against 75% quota. Feeling aggrieved, the appellant filed Writ Petition before the Peshawar High Court which was decided in their favor and the appellants were given promotion to the post of Assistant (BPS-16) vide order dated 10.12.2020 but with immediate effect and not from the date of their eligibility i.e. 30.01.2013. Feeling aggrieved, they filed departmental appeal, which was not responded, hence, the instant service appeal.

4. Respondents were put on notice who submitted their joint parawise comments on the appeal. We heard the learned counsel for

the appellant as well as learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

5. Learned counsel for the appellants argued that the impugned order was against law, facts and norms of natural justice; that the appellant had not been treated in accordance with law and rules; that the respondents had acted arbitrarily and malafidely; that the appellant were eligible from the date of sanction of posts, however the said right was not given to them; that the appellants had been discriminated and the respondents had violated the principle of natural justice. Lastly, he submitted that under Section-9 of the Civil Servants Act, 1973 read with Rule-7 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 the appellant were fully eligible to be promoted from the date of creation of posts i.e. 2013. Therefore, he requested for acceptance of the instant service appeal.

6. Conversely, learned Deputy District Attorney argued that promotion was always with immediate effect under the promotion policy of the Provincial Government. He submitted that no discrimination had been done against the appellants nor any provision of the constitution had been violated. Further, submitted that the appellants had no solid ground and proof in support of their claim. Therefore, he requested for dismissal of the instant service appeal.

7. Perusal of record reveals that appellants are serving in respondent department. That earlier on strengthening of Law, Parliamentary Affairs & Human Rights Department and its lower



formations, 28 posts of Office Assistants were sanctioned/created by the Finance Department in the Office of Government Pleader(renamed/redesigned as District Attorneys) in various department of the Khyber Pakhtunkhwa. Nineteen (19) posts of Office Assistants BPS-16 fell vacant due to promotion of 19 Office Assistants to the post of Superintendents in various offices of District Attorneys in Khyber Pakhtunkhwa. It is pertinent to mention here that the Senior Clerks including the appellants who were entitled for promotion on theses vacant posts of Office Assistants were not considered rather 19 out of 28 posts of Office Assistants were abolished and only 09 posts were left behind.

8. Perusal of rules/notification notified on 26.04.2017 reveals that 75% posts of Assistants will have to be filled by promotion on the basis of seniority-cum-fitness from amongst the Senior Clerks with at least five year of experience as Junior Clerk and Senior Clerk and 25% will have to be filled by initial recruitment, but respondents are intending to infringe upon 75% quota reserved for promotion, because instead of filling vacant posts of Office Assistants by promotion they abolished 19 posts out of total 28 posts while remaining 9 posts were advertised for fresh recruitments.

When it is clearly mentioned in the rules that share of promotion quota is 75% then respondent, are not competent to alter the statutory rules by means of any administrative instruction, 75% quota of promotion will have to be filled first and therefore, direct recruitment shall be made to extent of 25% quota reserved for the same.



9. It is the respondent department who willfully delayed process of promotion of the appellants despite availability of posts, service rules and more importantly eligibility of the appellants in which there was no fault of the appellant. Therefore, in these circumstance, it will be in fitness of the things that let the due right be given to its real claimants/officials. Hence appellants are entitled to be considered for promotion from date of filling of vacancy, i.e. 29.01.2013, when Office Assistants were promoted to the posts of Superintendents vide notification order dated 29.01.2013 and not from immediate effect as is done by the respondent which is evident from promotion order of the appellant dated 10.12.2020.

10. For what has been discussed above, we are unison to accept instant appeal in hand as well as connected service appeals as prayed for. Costs shall follow the event. Consign.

11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 1<sup>th</sup> day of April, 2024.*



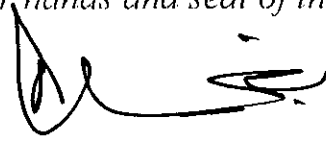
**(KALIM ARSHAD KHAN)**  
**Chairman**



**(RASHIDA BANO)**  
**Member (J)**

**ORDER**  
01.04.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney for the respondents present.
2. Vide our detailed judgment of today placed on file, we are unison to accept instant appeal in hand as well as connected service appeals as prayed for. Costs shall follow the event. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 1<sup>th</sup> day of April, 2024.*



**(KALIM ARSHAD KHAN)**  
Chairman



**(RASHIDA BANO)**  
Member (J)