


two years earlier than the appellant otherwise there are no benefits of restoration of his seniority after prolonged litigation. At the time of consideration of promotion of Senior Clerks in the year 2012 the appellant was eligible for promotion in terms of seniority. Nothing is on record to show that there was any fault on the part of the appellant i.e. pendency of inquiry, missing of ACRs, flaws in the ACRs etc at the time of consideration of promotion of Junior Clerks to the post of Senior Clerks in the year 2012 except the dispute of seniority which stands settled by the Tribunal.

07. In view of above discussion we accept the appeal in hand and direct the respondents to place before the relevant forum the case of the appellant for promotion to the post of Senior Clerk alongwith his junior colleagues who were promoted on 24.03.2012. Since the appellant has retired from service attaining the age of superannuation on 01.04.2020, therefore, case for his proforma promotion shall be processed by the respondents. Costs shall follow the event. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 07th day of March, 2024.*


(RASHIDA BANO)
Member (J)


(MUHAMMAD AKBAR KHAN)
Member (E)

Kamran

05. As against that, learned Deputy District Attorney argued that the appellant was not entitled for promotion as he had been transferred from Directorate of Colleges to Directorate of Schools. He submitted that promotions are always given with immediate effect and not antedated. Further submitted that the appellant had been transferred from Directorate of Colleges on his own choice, therefore, he was not entitled to antedated promotion. Lastly, he submitted that the appellant had already been promoted to the post of Senior Clerk, therefore, he requested for dismissal of the instant service appeal.

06. The case in hand is basically second round of litigation in the Tribunal. In the earlier round the appellant challenged his seniority for the year 2012 and the promotion order dated 24.03.2012 whereunder certain junior officials were promoted. The Tribunal vide judgment dated 06.10.2015 in the service appeal No. 806/2012 of the appellant accepted the prayer of the appellant relating to the fundamental issue of seniority of the appellant vis-a-vis his juniors. During pendency of the appeal the appellant was also promoted to the post of Senior Clerk vide order dated 28.05.2014 with immediate effect. The respondent department during pendency of execution petition of the appellant revised the seniority list of the Senior Clerks issued in the year 2019 and placed his name above his juniors who were promoted on 24.03.2012. We hold that the Tribunal had decided the seniority of the appellant as Junior Clerk and as such he remained senior to his junior colleagues who got promotion in the year 2012. When his status of seniority in the lower post stood settled then he was required to be considered for promotion alongwith his junior colleagues who got promotion



03. 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 for the respondents and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the order dated 06.02.2020 28.05.2014 are against the law, rules, facts and norms of justice; that the appellant was at serial No. 3, while Sartaj Ali, Said Anwar and Muhammad Daud Sr. No. 4, 5 & 6 respectively, but despite that they were promoted to the post of Senior Clerk on 24.03.2012 while the appellant was promoted to the post of Senior Clerk on 28.05.2014, therefore, the order dated 28.05.2014 is required to be antedated with effect from 24.03.2012, when his junior were promoted to the post of Senior Clerk; that the appellant was senior to his colleagues namely Sartaj Ali, Said Anwar and Muhammad Daud, but was placed junior to them; that the appellant was appointed in the year 1986 while Sartaj Ali, Said Anwar and Muhammad Daud were appointed in the year 1987 but despite being juniors to the appellant they were promoted on 24.03.2012 and the appellant was promoted after two years on 28.05.2014 which is violation of law and rules; that the appellant was entitled for antedated promotion which was not given to him, therefore, he was deprived of his legal rights; that appellant had not been treated in accordance with law and rules, therefore, he requested for acceptance of the instant service appeal.



Senior Clerk” by modifying the promotion order dated 28.05.2014 to the extent of the appellant with all back and consequential service benefits. Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favor of appellant.”

02. Brief facts of the case are that appellant was appointed as Junior Clerk in the Education Department on 27.11.1986; that he was placed in the seniority list of Junior Clerks above the names of his junior colleagues i.e. Sartaj, Said Anwar and Muhammad Daud. That in the seniority list dated 14.03.2012, his name was placed at Serial No.90 while juniors to him were placed at Serial No.2, 3 & 4 and accordingly, they were promoted to the post of Senior Clerk vide order dated 24.03.2012. Therefore, he filed service appeal No.806/2012 and this Tribunal vide order dated 06.10.2015 set aside the said promotion order and directed the competent authority to issue revised seniority list as per law and rules. It is pertinent to mention that he had been promoted to the post of Senior Clerk vide order dated 28.05.2014 but with immediate effect, and not from 24.03.2012. That the appellant filed execution petition for implementation of judgment dated 16.05.2015 and during the pendency of the said petition, tentative seniority list was issued, wherein, name of the appellant was placed above the names of Sartaj Ali, Said Anwar and Muhammad Daud, however, he was not given antedated promotion i.e. from 24.03.2012. Feeling aggrieved, the appellant filed departmental appeal on 11.10.2019 against the order dated 28.05.2014, which was rejected vide order dated 06.03.2020, hence, preferred the instant service appeal on 21.04.2020.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 5893/2020

BEFORE: RASHIDA BANO --- MEMBER (J)
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Syed Muhammad Jan, Senior Clerk, GHS No. 1
Charsadda.....(*Appellant*)

VERSUS

1. The Secretary (E&SE) Khyber Pakhtunkhwa, Peshawar.
2. The Director (E&SE) Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (Male) Charsadda.....(*Respondents*)

Present:-

TAIMUR ALI KHAN,
Advocate --- For Appellant

ASIF MASOOD ALI SHAH,
Deputy District Attorney --- For respondents.

Date of Institution.....21.04.2020
Date of Hearing..... 07.03.2024
Date of Decision..... 07.03.2024

JUDGMENT.

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

“That on acceptance of this appeal, the rejection order dated 06.03.2020 may kindly be set aside and the appellant may kindly be considered for promotion to the post of Senior Clerk by antedating his promotion with effect from 24.03.2012, “the date on which the his juniors were promoted to the post of



ORDER


07.03.2024 1. Learned counsel for the appellant present.

Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

2. Vide our detailed judgment of today separately placed on file, we accept the appeal in hand and direct the respondents to place before the relevant forum the case of the appellant for promotion to the post of Senior Clerk alongwith his junior colleagues who were promoted on 24.03.2012. Since the appellant has retired from service attaining the age of superannuation on 01.04.2020, therefore, case for his proforma promotion shall be processed by the respondents. 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 07th day of March, 2024.*


(RASHIDA BANO)
Member (J)


(MUHAMMAD AKBAR KHAN)
Member (E)

Kamran