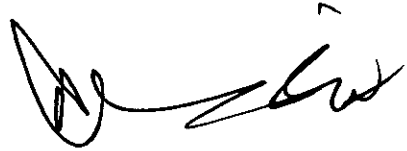


ORDER

03.05.2024 1. Learned counsel for the appellant present. Mr. Muhammad Jan, learned District Attorney for the respondents present. Arguments heard and record perused.

2. Vide our detailed judgment of today separately placed on file, we allow the appeal in hand. The promotion of the appellant shall be considered to have been actualized with effect from the date of his promotion i.e. 25.04.2014 and he shall stand eligible for all consequential monetary and service benefits including promotion to next high pay scale. 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 03rd day of May, 2024.*



(KALIM ARSHAD KHAN)
CHAIRMAN



(MUHAMMAD AKBAR KHAN)
MEMBER (E)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR

BEFORE: **KALIM ARSHAD KHAN** ... CHAIRMAN
MUHAMMAD AKBAR KHAN ... MEMBER (E)

Service Appeal No. 503/2017

Date of presentation of Appeal.....08.05.2017
Date of Hearing.....03.05.2024
Date of Decision.....03.05.2024

Ziar Gul Subject Specialist Economics GHSS Abdul Khel District
LakkiMarwat.....(Appellant)

VERSUS

1. The Govt. of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa Peshawar.
2. Secretary Elementary & Secondary Education to Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. Director General, Education (Male), G.T Road, Khyber Pakhtunkhwa, Peshawar.....(Respondents)

ZARTAJ ANWAR,
Advocate

For appellant.

MUHAMMAD JAN,
District Attorney

For respondents

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;

"On acceptance of this appeal the appellant may kindly be considered for promotion to BPS-19 as fit and eligible for the post and if any delay that on the part of respondents, the appellant may also awarded all the arrears and back benefits as from dated of promotion

vide order dated 25.04.2014 as his colleague/juniors were promoted to BPS-16 or any other remedy deem proper may also be allowed.”

02. Brief facts of the case are that the appellant was serving in the Education Department and was promoted to the post of Subject Specialist on 31.08.2000; that for promotion to BS-18, PER/ACRs were requisitioned; that the appellant allegedly submitted his ACRs from 2000 to 2012; that he was again directed to produce ACRs and explanation in this regard was also called from him; that vide Notification dated 20.08.2015, he was promoted to BPS-18 but the same was allegedly kept hide from the appellant; that for promotion to BPS-19, he was asked for submission of ACRs from 2014 to 2016, and upon his visit, the appellant came to know regarding his promotion Notification dated 20.08.2015 which was received to him on 29.12.2016; that due to the said reason, he was denied his promotion to BS-19 due to non-submission of ACRs; that feeling aggrieved, he filed departmental appeal but in vain, hence this appeal

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, learned District Attorney for the respondents and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended the appellant has not been treated in accordance with law his rights secured and granted under the

law are badly violated; that at the relevant time the appellant was not timely conveyed his promotion order and the same order was concealed/keep hid from the appellant which is illegal, unlawful, against the law; that the appellant was promoted to the BS-18 vide order dated 25.04.2014 but astonishingly the appellant promotion was withheld for not providing the PERs for the year 2012 which was handed over by the appellant to the concerned DEO as is evident from the office letter dated 28.04.2014; that when the promotion case was under processes the appellant was called to submit the ACRs for the year 2014 to 2016 the appellant inquired of the same from the concerned office regarding his promotion order to BS-18 which was handed over to him on 29.12.2016; that similarly placed employees have been given promotion while the appellant has been denied which is highly discriminatory and also against the law.

05. On the other hand, learned District Attorney contended that the appellant has been treated as per law, rules & prescribed criteria/policy and no rules violated by the respondents; that the appellant has been conveyed through the DEO Lakki Marwat regarding the promotion Notification dated 25.04.2014; that the appellant failed to submit his PERs/ACRs to the DEO Lakki Marwat for onward submission of the same to the competent authority/PSB for the year 2012 despite repeated Notice & reminders; that due to negligent attitude on part of the appellant in submission of his PERs/ACRs he was called in person by the DEO Lakki Marwat for doing the needful as per procedure; that late handing over of his promotion order from BS-17 to BS-18 on the alleged date i.e. 29.12.2016 was mainly based on malafide intentions just avoid his case of being time barred; that the case of the appellant is not at

par with his colleagues, hence has not been considered for the grant of promotion in BPS-16 post in the respondent department.

06. Scrutiny of record reveals that the appellant was posted/serving in a school situated at far flung area of District Lakki Marwat. In the year 2014 the respondent department, after consideration/recommendation of Provincial Selection Board, issued consolidated notification of promotion of 353 officers of Teaching cadre from BS-17 to BS-18 on regular basis vide notification dated 25.04.2014. The name of the appellant appeared at serial No. 233 of the said Notification. The said Notification does not contain any condition for making available any missing ACR/PER in respect of the appellant. However, in the posting proposal the promotion of the appellant was shown as withheld for want of ACR for the year 2012. A copy letter from DEO Lakki Marwat available on record reveals that ACR in respect of the appellant was forwarded to the Director Elementary & Secondary Education (Respondent No. 3) on 28.04.2014. This fact stands admitted in the explanation called from the appellant vide communication from Section Officer (School/Male). The PER for the year 2012 was received in the office of Secretary Elementary & Secondary Education (respondent No. 2) on 22.09.2014. However, the dealing hands in the office of respondent No. 2, instead of notifying the posting/adjustment of the appellant, kept on calling explanation from him for delay in submission of PERs for the year 2012. Posting order of the appellant was ultimately issued by the respondent No. 2 vide Notification dated 20.08.2015. Strangely the same was received by the appellant by hand upon his personal visit to the office of respondent No. 2 on 29.12.2016. These facts, based on documentary evidence on record, reveal no fault, whatsoever, on the

part of the appellant but speaks volume about lethargy and malafide on part of dealing hands who create hurdles rather than facilitating the teacher serving in far flung schools.

07. Foregoing findings in view we allow the appeal in hand. The promotion of the appellant shall be considered to has been actualized with effect from the date of his promotion i.e. 25.04.2014 and he shall stand eligible for all consequential monetary and service benefits including promotion to next high pay scale. 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 03rd day of May, 2024.*



(KALIM ARSHAD KHAN)
CHAIRMAN



(MUHAMMAD AKBAR KHAN)
MEMBER (E)