

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

**Service Appeal No. 1263/2015**

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)  
MISS FAREEHA PAUL ... MEMBER(E)

Ghulam Sarwar, Assistant Director (Admn) working as Deputy Director  
(Admn) DCIE Khyber Pakhtunkhwa, Abbottabad.

.....(Appellant)

Versus

1. The Chief Secretary to Government of Khyber Pakhtunkhwa.
2. The Secretary to Government of Khyber Pakhtunkhwa, E&SE Department.
3. The Director Elementary & Secondary Education, Khyber Pakhtunkhwa,  
Peshawar. ....(Respondents)

Mr. Mehboob Ali Khan,  
Advocate

... For appellant

Mr. Asif Masood Ali Shah,  
Deputy District Attorney

... For respondents

Date of Institution..... 11.11.2015

Date of Hearing..... 13.05.2024

Date of Decision..... 13.05.2024

**JUDGEMENT**

**FAREEHA PAUL, MEMBER (E):** Through this single judgment, we intend to dispose of instant service appeal as well as connected service appeal No. 1264/2015, titled “Sherullah Khan Versus the Chief Secretary to Government of Khyber Pakhtunkhwa and others”, as in both the appeals, common questions of law and facts are involved.

2. The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the following prayer:-

*“It is very humbly prayed that on acceptance of the instant appeal, the respondents may be directed to promote the*



*appellant from the post of Assistant Director (Admn) B- 17 to the vacant post of Deputy Director BPS- 18 regular from the date of vacation of post with all back benefits.*

*Any other consequential relief which this Honourable Court/Tribunal deems fit and proper under the circumstances of the case may also be granted."*

3. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was promoted from the post of Budget & Accounts Officer (BPS- 16) to the post of Assistant Director (Admn) BPS- 17 on 29.08.2014 and was working against the post of Deputy Director (Admn) BPS- 18. Two posts of Deputy Director (BPS- 18), regular, for ministerial cadre in Elementary & Secondary Education Department were lying vacant which, as per Service Rules, were to be filled in by promotion from Assistant Directors, BPS- 17. The appellant, being at serial no. 1 of the seniority list, was competent under the rules to be promoted to the post of Deputy Director BPS- 18 regular, therefore, on 13.08.2015, he submitted an application before the respondents but till the expiry of the stipulated period of ninety days, the respondents failed to pass any order on the said application; 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 appellant, after presenting the case in detail, argued that as per Promotion Policy, half of the service in BS- 16 and one fourth in Basic Scale lower than 16, if any, should be counted as service in

Basic Scale- 17 for promotion to the post of Basic Scale -18. He further argued that as per the criteria laid down in the Promotion Policy, appellant was entitled to be promoted from the post of Assistant Director (Admn) BPS- 17 to the post of Deputy Director BPS- 18 and the same fact was also supported by the working papers already worked out by the department. He argued that ignoring the promotion of the appellant from the post of Assistant Director (Admn) BPS- 17 to the post of Deputy Director BPS-18 was clear violation of law on the subject. He requested that the appeal might be accepted as prayed for.

6. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that there were no vacant posts of Deputy Director (BPS- 18), regular, available for the ministerial staff of the respondent department upon which the appellant could be adjusted, hence stance of the appellant was incorrect. He further argued that the appellant got retired from service on attaining the age of superannuation and was not entitled for grant of promotion against the post of Deputy Director (Admn) BPS- 18. He requested that the appeal might be dismissed.

7. The instant service appeal has been preferred before us by the appellant for directing the respondents to promote him from the post of Assistant Director (Admn) BS- 17 to the vacant post of Deputy Director BS- 18 from the date the post of Deputy Director fell vacant. Arguments and record presented before us transpire that the appellant was an Assistant Director (BS- 17) in the respondent department and working on the post of Deputy Director in his own pay and scale. He was promoted from the post of Budget and Accounts Officer



to the post of Assistant Director on 29.08.2014 and on 31.10.2014, he was transferred on the post of Deputy Director in his own pay and scale with the condition that he would give an undertaking/affidavit on legal paper/stamp paper to the Director Elementary and Secondary Education Peshawar to the effect that he would not claim seniority and graded pay of the higher post of Deputy Director. Here it is important to note that as per rules, he was in the probation period after he was promoted as Assistant Director on 29.08.2014, which means that he was not yet confirmed as Assistant Director (BS- 17) and hence could not claim any benefit of the higher post of Deputy Director (BS- 18) on which he was posted.


8. Learned counsel for the appellant referred to promotion policy's provision no. 1(b)(i) and according to him, the appellant was eligible for promotion as Deputy Director (BS- 18) under the said provision. Here we refer to the service rules of 2013 of the respondent department according to which the post of Deputy Director was to be filled by promotion on the basis of seniority-cum-fitness from amongst the Assistant Directors with at least five years service as such. A simple perusal of the rules makes it clear that an officer would become eligible for promotion to the post of Deputy Director when he completes five years service as Assistant Director. Same length of service is given in the promotion policy of the provincial government in its provision no. 1(a) and it is clearly written in the policy that no proposal for promotion should be entertained unless the condition of prescribed length of service is fulfilled.



9. In case of the appellant, record presented before us is clear that he was promoted as Assistant Director on 29.08.2014 and as stated by his learned counsel, he got retired on superannuation on 05.03.2016, meaning thereby that he had not yet completed the prescribed length of service to make him eligible for further promotion to the post of Deputy Director.

10. In view of the above discussion, the appeal in hand as well as the connected service appeal, are dismissed being groundless. Cost shall follow the event. Consign.

11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 13<sup>th</sup> day of May, 2024.*

  
(FAREEHIA PAUL)  
Member (I)

  
(RASHIDA BANO)  
Member(J)


*\*FazleSubhan P.S\**

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13<sup>th</sup> May, 2024 01. Mr. Mehboob Ali Khan, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 05 pages, the appeal in hand is dismissed being groundless. Cost shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 13<sup>th</sup> day of May, 2024.*

  
(FAREEHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member(J)

\*Fazal Subhan PS\*