

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1062/2023

BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN
MISS FAREEHA PAUL ... MEMBER(E)

Irfan Ali BPS- 18, District Education Officer (Male) Swabi.
.....(Appellant)

Versus

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

Mr. Muhammad Asif Yousafzai,
Advocate

... For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney.

... For respondents

Date of Institution.....	09.05.2023
Date of Hearing.....	07.06.2024
Date of Decision.....	07.06.2024

JUDGEMENT

FAREEHIA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 for directing the respondents to consider the appellant for regular promotion in BPS- 19 being eligible, qualified and senior and against not deciding his departmental appeal within the statutory period of ninety days. It has been prayed that the respondents might be directed to consider the appellant for regular promotion to BPS- 19 as per law and



rules from his due date with all back and consequential benefits, alongwith any other remedy which the Tribunal deemed appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant initially joined the Technical Education Department as Instructor English (BPS- 17) vide order dated 28.05.2009. Later on, vide order dated 14.12.2010, he was transferred as Assistant Director to the office of Director Technical Education FATA, Peshawar. In the year 2013, some posts of Management Cadre of Education Department were advertised and, after competing for the same through Public Service Commission, he was appointed as SDEO vide order dated 02.12.2013. He was accordingly relieved w.e.f 30.01.2014 vide order dated 17.01.2014 and was directed to report for the new assignment as SDEO. Vide notification dated 22.10.2019, the appellant was promoted to BPS- 18 and was working as DIO on OPS basis in BPS- 19. As per requirement of the Rules notified on 27.03.2019, the post of the District Education Officer/Additional Director BPS- 19 was to be filled in by promotion on the basis of seniority cum fitness from amongst the Deputy District Education Officer and Deputy Director, with at least seven years in BPS- 18 or 12 years service in BPS- 17 and above, provided if no suitable officer was available for promotion, then by transfer. The appellant was at serial no. 25 in the seniority list of BPS- 18 and also had more than 13/14 years service and, being eligible, was entitled to be considered for promotion to BPS- 19 on regular basis against the available post. The department filled the available BPS- 19 post on OPS basis instead of regular appointment despite the availability of BPS- 18



officer eligible for promotion, therefore, the appellant filed appeal/representation for his claim on 23.01.2023 but in vain; hence the instant service appeal.

3. Respondents were put on notice who submitted written reply/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.

4. Learned counsel for the appellant, after presenting the case in detail, argued that it was clearly provided in Section 9 of Civil Servant Act, 1973 read with rule 7(3) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 that the eligible officers/officials should be considered for regular promotion but in the instant case the respondents did not fulfill the legal obligations and used to fill BS- 19 post on OPS basis, instead of regular promotion. He argued that regular post in BPS- 19 was available for the appellant and as per rules and criteria, he was entitled to be considered for regular promotion, instead of posting him on OPS. He referred to the verdict of the Apex Court that filling of higher post on OPS basis was illegal and against the spirit of law and good governance. In support of his arguments learned counsel for the appellant relied on 2023 SCMR-686, 2015 PLC(CS) 51 and 2018 SCMR 1411. He requested that the appeal might be accepted as prayed for.

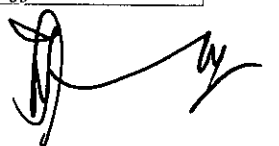
5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the competent authority,



on the recommendation of Provincial Selection Board in its meeting held on 31.07.2021, promoted the appellant and others from acting charge basis (BPS- 18) to regular basis through notification dated 21.10.2021. Appellant was not eligible for further promotion as per Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 and notification dated 27.03.2019. He argued that according to the said notification neither seven years service in BPS- 18 of the appellant nor twelve years of service in BPS- 17 was complete, therefore, the present appeal was not maintainable. He requested that the appeal might be dismissed.

6. The appellant has prayed for regular promotion to BS- 19 as per law and rules from his due date with all back and consequential benefits. Perusal of record shows that appellant was appointed as Sub-Divisional Education Officer (BS-17) in the Khyber Pakhtunkhwa Elementary & Secondary Education Department in December 2013. Prior to that he was Instructor (BS-17) in the Technical Education Department of the Provincial Government. He was promoted to BS- 18 on 12.08.2021 on regular basis. The service rules of Elementary and Secondary Education Department dated 27.03.2019 produced before us provide for the promotion to BS- 19 as follows:-

Nomenclature of the post	Method of Recruitment
<i>District Education Officer/ Additional Director (BPS-19) (Male and Female)</i>	<i>“By promotion on the basis of seniority-cum-fitness, from amongst the Deputy District Education Officers and Deputy Directors (Male and Female) with at least seven years service in BPS- 18 or twelve year service in BPS- 17 and above and such officer shall</i>




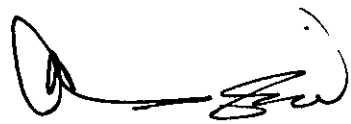
	<p><i>undergo six weeks post promotion training on the following modules, namely:</i></p> <ul style="list-style-type: none"> <i>i. Financial Management;</i> <i>ii. IIR Management; and</i> <i>iii. Information Technology;</i> <p><i>Provided that if no suitable officer is available for promotion then by transfer of BPS-19 officer."</i></p>
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7. The above mentioned rule as well as the promotion policy are extremely clear that for promotion to BS- 19, the required length of service is twelve years in BPS- 17 and above. As the appellant was appointed in the Elementary & Secondary Education Department in December 2013, his mandatory twelve years service would complete in December 2025, therefore, he is not eligible for promotion till such time he completes the requirement under the rules.

8. In view of the above discussion the appeal is dismissed being groundless. Cost shall follow the event. Consign.

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


(FARINSHA PAUL)
Member (E)



(KALIM ARSHAD KHAN)
Chairman

SA 1062/2023

07th June, 2024 01. Mr. Muhammad Asif Yousafzai, 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 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 07th day of June, 2024.*


(FARNIA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
Chairman

Fazal Subhan PS