

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1548/2013

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

Niaz Ahmad S/O Zoor Zaman, Lecturer (Mech) (BPS- 17), Government Polytechnic Institute Wari, Dir Upper.(Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa ,Civil Secretariat Peshawar.
2. Secretary, Industries, Commerce & Technical Education Manpower Training, Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
3. Director General, Technical Education, Manpower Training, Khyber Pakhtunkhwa, Peshawar.(Respondents)

Mr. Manzoor Qadir,
Advocate

... For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney.

... For respondents

Date of Institution..... 26.11.2013

Date of Hearing..... 06.06.2024

Date of Decision..... 06.06.2024

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 for allowing antedation in promotion to the post of Lecturer (Mech) BPS-17 w.e.f. 27.02.2008 with all consequential benefits and arrears, for grant of which, the departmental appeal dated 29.07.2013 was not replied. It has been prayed that on acceptance of the appeal, the appellant might be allowed antedated promotion to Lecturer BPS- 17 w.e.f. 27.02.2008 with all arrears and consequential benefits.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was initially appointed as Junior Instructor (BPS-14) vide notification dated 24.07.1997. During the course of his service, he improved his qualification and acquired B-Tech (Honours) Degree in 2008. After the merger of the Directorate of Technical Education and Directorate of Manpower & Training, into Directorate of Technical Education & Manpower Training, a controversy regarding seniority and promotions of the employees arose. An appeal No. 1011/Ncem/2006 was filed before the Khyber Pakhtunkhwa Service Tribunal which was accepted on 23.06.2009 and all promotions made after the merger on the basis of separate seniority lists were declared null and void and the department was directed to finalize the Rules/Regulations, draw the seniority list and promote all those from the date when their promotions were due and vacancies were available. The department implemented the judgment of the Service Tribunal, rules were framed and promotions were made, however, the appellant was ignored despite his seniority, eligibility and fitness. In the meantime the promotion cases of the appellant and others were processed, however one Ishtiaq Ahmad Instructor (Electrical) filed service appeal No. 652/2011 staying the process of promotion. A provisional seniority list of Junior Instructor (Mech) BPS- 14 (Degree holder) was issued by the Technical Education and Manpower Training Department Khyber Pakhtunkhwa as on 31.12.2011 in which name of the incumbent, with academic qualification, was at serial no. 1 in BPS- 14. Mr. Muhammad Tauqir Hashmi and Mr. Taimur Shah, who were junior to him, were promoted



on 04.05.2011 while the promotion case of the appellant was sent to Secretariat for DPC on 05.05.2011, however due to stay order of the Tribunal his promotion case was stopped. The said appeal was dismissed vide judgment and order dated 13.03.2012 by the Service Tribunal. Thereafter, the appellant was promoted as Lecturer (Mech) BPS- 17 vide order dated 14.12.2012 but with immediate effect instead of the date when the post of Lecturer was vacant. Feeling aggrieved, he submitted department appeal dated 29.07.2013, which was not replied despite the lapse of ninety days; 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 and Legal Advisor 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 the appellant was the senior most as per seniority list and vacancies were also available since 2008, but his promotion was delayed by the respondent department. He argued that the Tribunal vide judgment dated 23.06.2009, had directed the department to draw seniority list and promote all those from the date when their promotion was due and vacancies were available. The appellant was fit and eligible for promotion since 27.02.2008 but he was deprived of his legal right of promotion from the said date without any fault on his behalf. 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 judgment of the Service Tribunal in service appeal No. 1011/2006 was fully implemented by the department and fresh service rules were finalized, notified and issued accordingly. Thereafter, promotion cases were processed on the basis of newly framed service rules. He further argued that the promotion case of the appellant, alongwith his other colleagues, was processed in his own cadre and he was promoted with immediate effect. He requested that the appeal might be dismissed.


6. Through this service appeal, appellant has prayed for ante-date promotion to the post of Lecturer (Mech) BS- 17 w.c.f. 27.02.2008. From the arguments and record presented before us, it transpires that with the merger of Directorate of Technical Education and Directorate of Manpower and Training into Directorate of Technical Education and Manpower Training, service rules were accordingly amended. The entire process of restructuring that started in 2002, as stated by learned counsel for KP TEVTA, completed in 2010 and that was the year when service rules were also finalized. A notification dated 03.12.2010 is annexed with the service appeal. The argument presented by learned counsel for the appellant that certain promotions were made in 2008 and therefore he, being eligible at that time, was also to be promoted did not hold ground as all the promotion orders after 2002 were declared illegal and void ab-initio by this Tribunal in its judgment dated 23.06.2009.



7. Coming to the prayer of the appellant in the appeal before us, when the department was undergoing restructuring and the service rules were finalized in December 2010, how could he claim promotion in 2008 when no service rules were in place? Services of a civil servant are governed under a set of service rules notified by his parent department. By the time, service rules of 2010 were notified, one Ishtiaq Ahmad filed a service appeal against a notification dated 03.12.2011 and status-quo was granted by this Tribunal. As stated by the respondents in their reply and also by the learned counsel for K.P TEVTA during arguments, appellant was promoted in 2012, the moment when service appeal No. 652/2011 of Ishtiaq Ahmad was decided and dismissed by this Tribunal.

8. In view of the above discussion, the service 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 06th day of June, 2024.*


(FAREEHA PAUL)
Member (E)



(KALIM ARSHAD KHAN)
Chairman

SA 1548/2013

06th June, 2024 01. Mr. Manzoor Qadar, 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
service 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 06th day of June,
2024.*


(FARIDHA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
Chairman

Fazal Subhan PS