

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

**Service Appeal No. 7486/2021**

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

Hamidullah S/O Sher Wali Khan R/O Tehsil & District Chitral, presently working as SDM in BPS- 16 at GMS Moughlasht, District Chitral.  
.....(Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar.
2. Secretary, Elementary & Secondary Education Department, Government of Khyber Pakhtunkhwa, Peshawar.
3. Director, Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar.
4. District Education Officer, Chitral Lower.
5. Secretary Finance, Government of Khyber Pakhtunkhwa, Civil Secretariat Peshawar.

.....(Respondents)

S. Ghufanullah Shah,  
Advocate

... For appellant

Mr. Muhammad Jan,  
District Attorney

... For respondents

Date of Institution.....	25.08.2021
Date of Hearing.....	30.05.2024
Date of Decision.....	30.05.2024

**CONOLIDATED JUDGEMENT**

**FAREEHA PAUL, MEMBER (E):** Through this single judgment, we intend to dispose of instant service appeal as well as the following connected service appeals as in all the appeals, common questions of law and facts are involved:-

1. Service Appeal No. 7485/2021, Muhammad Ali,
2. Service Appeal No. 7487/2021 Noor ud Din,



3. Service Appeal No. 7488/2021 Muhammad Jehangir Khan,
4. Service Appeal No. 7489/2021, Nabi ud Din and
5. Service Appeal No. 7490/2021, Ramzan Shah

Vs. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar and others.

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

**“On acceptance of the subject appeal respondents may kindly be directed to count service of the appellant as Drawing Master from first day of his appointment i.e. 18.08.1989, instead of date of acquiring training i.e 25.05.1996, for all service purposes including seniority and promotion; resultantly to modify/correct the impugned seniority list dated 20.03.2016 with effect to promote the appellant as Secondary School Teacher (PS- 16) against the specified quota on his term, with all subsequent benefits. Any other relief which deems just and proper may also be granted to the appellant keeping in view facts and circumstances of the case.”**

3. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Drawing Master BPS- 09 on 18.09.1989. At the time of his appointment, he was untrained because at the relevant time it was in practice to appoint teachers on general education degrees/certificate and later on to train them. The appellant was trained on 25.05.1996. Vide notification of Finance Department dated 30.03.2009, all the annual increments were granted to the appellant, hence treated as trained teacher from day of his first



appointment. Although the appellant was upgraded in the same cadre of post (DM) and was working in BPS- 16 (Senior Drawing Master) but was never promoted to the next cadre throughout his career due to variation in government policies from time to time. According to applicable policy/notification issued by the Elementary & Secondary Education, Government of Khyber Pakhtunkhwa, dated 24.07.2014, 04% posts of Senior English Teachers (BPS- 16) were to be filled on the basis of seniority-cum-fitness from amongst the Senior Drawing Masters with at least five years service and having qualification of at least second class Bachelor degree in the relevant subject alongwith B.Ed. Appellant, being qualified according to the subject notification, was to be appointed as Senior English Teacher (BPS- 16) against 04% reserved quota having Bachelor Degree alongwith the required B.Ed/M.Ed training, being senior on the basis of his first day of appointment as D.M. Respondents prepared the seniority list whereby the service of the appellant was counted from the date of acquiring training, instead of his first appointment, and incumbents juniors to him were recommended for promotion to Senior English Teacher (BPS- 16). He approached the respondents through different applications/representation to count his service from the date of his first appointment and to recommend for promotion to the subject post but in vain. The appellant challenged the impugned seniority criteria before the Hon'ble Peshawar High Court in Writ Petition No. 3310-P/20-17, wherein he was directed to approach the Service Tribunal; hence the instant service appeal.

4. Respondents were put on notice. Official respondents submitted written reply/comments on the appeal. Private respondents No. 7 to 12 were not



present despite proper notice, hence they were proceeded against ex-parte vide order dated 15.12.2022. We heard the learned counsel for the appellant as well as the learned 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 the impugned seniority list and criteria for determination of seniority by respondents was against rule 17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. Appellant was appointed as untrained Drawing Master in the year 1989 and there was no distinction between trained and untrained teachers, but in the impugned seniority list, untrained service was not counted towards seniority, which was illegal and void. He requested that the appeal might be accepted as prayed for.

6. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was appointed as untrained D.M and got trained after 06 years and 08 months which caused him junior from subsequent appointees/private respondents. As per notification dated 30.09.2009, benefit of only annual increments was allowed to untrained teachers from the date of their regular appointment, however seniority was not granted from that date. He requested that the appeal might be dismissed.

7. Perusal of record shows that the appellant was appointed as Drawing Master in 1989. His appointment was on fixed pay and purely on temporary basis. The learned counsel for the appellant stated that he was an untrained teacher and got the required training in the year 1996. The final seniority list of Drawing Masters as on 20.03.2016 annexed with the service appeal shows the



appellant at serial no. 34. When asked, the learned counsel for the appellant confirmed that all the details mentioned against the name of the appellant were correct, with the only apprehension that the date of appointment to present post in column no. 13 was actually the date on which he acquired the required training. The appointment order dated 18.09.1989 read with the seniority list as on 20.03.2016 made it clear that the appellant entered into government service on 18.09.1989 as an untrained Drawing Master on fixed pay which could not be considered as a regular appointment. However, when he got the required training, his services were regularized from 25.05.1996 and his name was placed at the appropriate position in the seniority list, based on the date of acquiring the training. Before that, his appointment could not be termed as regular as a regular appointment meant an appointment of a duly qualified person in the prescribed manner in accordance with the law and rules, and such standard was lacking in case of the appellant when he first entered into government service in 1989. It was only after acquiring the required qualification that he was given his due position in the seniority list. Section 8(4) of the Khyber Pakhtunkhwa Civil Servants Act 1973 was relevant to be quoted here which laid down the principle of determining the seniority of a civil servant as follows:-

*“8-(4)- Seniority in a post, service, or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post.”*


8. In view of the above discussion, it can safely be concluded that the appellant was appointed as regular Drawing Master with effect from the date of



acquiring the required qualification for that post on 25.05.1996 and was rightly placed in the seniority list based on that date. As far as his promotion is concerned, as stated by the respondent department in their reply, he would be promoted on his own turn in the light of rules and policy of the government.

9. The appeal in hand and all the connected service appeals are dismissed, being devoid of merit. Cost shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 30<sup>th</sup> day of May, 2024.*

  
(FARZEEN PAUL)  
Member (I)

  
(RASHIDA BANO)  
Member(J)


*\*FazleSubhan P.S\**

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30<sup>th</sup> May, 2024 01. Syed Ghufanullah Shah, Advocate for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, the service appeal is dismissed, being devoid of merit. Costs shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 30<sup>th</sup> day of May, 2024.*

  
(FARZEEN PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member(J)

*\*Fazal Subhan PS\**