

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

**Service Appeal No. 638/2017**

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

Samina Bibi, wife of Muhammad Rafique, GGHS No.1 Tank.

.....(Appellant)

Versus

1. Director Elementary and Secondary Education, Peshawar.
  2. District Education Officer (Female) Elementary and Secondary Education Tank.
  3. Sub-District Education Officer (Female) Tank.
  4. Accounts Officer Kechary Road, Tank.
  5. Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Department, Peshawar.
  6. Ghazala Gulfam SST, GGHS Aslam Khan Korona, District Tank.
- .....(Respondents)

Mr. Muhammad Anwar Awan,  
Advocate

... For appellant

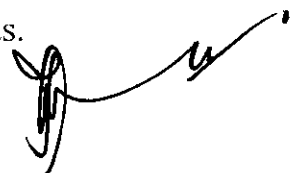
Mr. Asif Masood Ali Shah,  
Deputy District Attorney

... For respondents

Date of Institution.....	01.06.2017
Date of Hearing.....	14.06.2024
Date of Decision.....	14.06.2024

**JUDGEMENT**

**FAREEHA PAUL, MEMBER (E):** The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against notification dated 02.02.2017, whereby the appellant was reverted. It has been prayed that on acceptance of the appeal, declare the notification dated 02.02.2017 and adjustment order dated 13.02.2017 as void, illegal, without lawful authority and of no legal effect and appellant be reinstated at the post of SST (BPS- 16) with all back benefits.



2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was serving as Senior Qaria in Government Girls High School, Gara Shahbaz, District Tank. In 2016, one post of SST (B-16) became vacant. The basic qualification for promotion to SST was Second Class Bachelor Degree with Mater in Education or Bachelor in Education. For the purpose of filling the vacant post, working paper for the meeting of Departmental Promotion Committee was prepared by the respondent No. 3 and appellant was shown a single senior and eligible candidate for the said post. Mrs. Ghazal Ghulfam, Senior Qaria GGHS No. 1 Tank, private respondent no. 6, was shown ineligible for promotion to the post of SST (BPS- 16) in the working paper as her B.Ed was incomplete. Consequent upon the recommendations of the DPC and in pursuance of the Government of Khyber Pakhtunkhwa Elementary and Secondary Education notification dated 24.07.2014, the appellant was promoted from the post of Senior Qaria to SST (BPS- 16) through notification dated 27.05.2016. The appellant was adjusted by respondent No. 3 in June 2016 at GGHS Gul Imam against vacant post and she also assumed the charge on 17.06.2016. She was further transferred to GGHS Gara Shahbaz as SST (General) where she assumed the charge on 21.06.2016. She was informed by the respondent No. 3 about withdrawal of her promotion order and reversion to her earlier post and that private respondent No. 6 had been promoted in her place. The respondent No. 3 issued her adjustment order dated 13.02.2017. Feeling aggrieved, she filed departmental appeal on 06.03.2017 which was not responded; hence the instant service appeal.



3. Respondents were put on notice who submitted written reply. We heard the learned counsel for the appellant as well as learned Deputy District Attorney for the official 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 senior from private respondent No. 6, but she was malafidely shown senior from the appellant. He stated that the appellant completed her B.Ed in 2013 whereas the private respondent No. 6 did the same in 2016, hence she was promoted vide order dated 27.05.2016. He further argued that the appellant was promoted on the recommendations of Departmental Promotion Committee, she assumed the charge of the post of SST and started performing her duties with entire satisfaction of her superiors and valuable rights were accrued to her which could not be snatched from her without observing the legal formalities but in the instant case the appellant was not provided any opportunity of hearing and no proper enquiry was conducted. 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 respondent No. 6 was shown ineligible for promotion to the post of SST despite the fact that she was eligible for promotion. He argued that on acceptance of her appeal, respondent No. 6 was considered for promotion and after satisfaction/recommendation of the Departmental Promotion Committee, she was promoted to the post of SST, but when the competent authority came to



know that they had erroneously promoted the appellant by ignoring the private respondent no. 6, who was eligible for promotion, the appellant was reverted, which was according to law. He requested that the appeal might be dismissed.

6. Arguments and record presented before us show that the appellant, in a meeting of Departmental Promotion Committee, was recommended for promotion to the post of SST General (BS- 16). Notification of her promotion was issued on 27.05.2016, according to which she was on probation for a period of one year, extendable for another one year. It was noted that the service rules dated 24.07.2014 under which she was promoted clearly mentioned promotion on the basis of seniority-cum-fitness to the post of Secondary School Teacher (BS- 16) for which three percent quota was reserved from amongst the Senior Qaris (BS- 16), with at least five years service as Senior Qari and Qari and having qualification as follows:-

S. no	Nomenclature of post	Minimum qualification for initial Recruitment	Method of recruitment
(1)	(2)	(3)	(4)
"IB.	Secondary School Teacher(BPS-16)	I. At least second class Bachelor Degree from a recognized University on need basis from the following groups with two subjects: (a) Chemistry, Botany or Zoology, Or (b) Physics, Maths "A" or "B" or Statistics Or (c) Humanities and other equivalent groups at degree level with English as compulsory subject; and II. Bachelor of Education or Master of Education (Industrial Art or Business Education) or M.A Education or equivalent qualifications from a recognized University.	1. Seventy five percent by promotion, on the basis of seniority cum fitness from the district concerned in the following manner. (a)..... (b)..... (c)..... (d)..... (e). three percent from amongst the senior Qaris (BS-16) with at least five years service as Senior Qari and Qari and having qualification mentioned in column 3: provided that if ..... (f).....



There was only one post for promotion under the above mentioned quota at that time and based on the seniority list presented before the DPC, one Ghazal Gulfam, private respondent No. 6 was senior to the appellant, but she was not considered for promotion as she did not hold the degree of B.Ed at that time, and hence the appellant was promoted. The private respondent cleared her B.Ed, her result was declared on 14.01.2016 and she got the degree on 07.10.2016 and hence became eligible for promotion. She preferred an appeal before the competent authority, upon which they realized that they had acted against the rules which clearly mentioned seniority-cum-fitness and based on that principle, they had to keep a post vacant for her. As there was one post and on that the appellant had been promoted by error, they cancelled her promotion order and instead promoted the private respondent No. 6.


7. After going through the details of the case, it is clear that the rules called for promotion on the basis of seniority-cum-fitness. Based on that principle, the private respondent No. 6 was senior to the appellant. If she did not fulfill the criteria of qualification and was in the process of getting the required qualification of B.Ed, the department was bound to keep a post vacant for her for promotion at a later stage, as and when she obtained the required qualification. The department made an error, which was rectified and promotion order of the appellant was rightly cancelled and respondent No. 6 was promoted. One must also not forget that the appellant was on probation for one year, extendable to another year. Her promotion notification, which was erroneously issued, was cancelled




within the probation period and hence there seems no malafide or violation of rules by the respondent department.

8. In view of the above discussion, the service appeal is dismissed, being devoid of merit. Cost shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 14<sup>th</sup> day of June, 2024.*

  
(FARMILIA PAUL)  
Member (E).

\*Fazle Subhan PS\*


  
(RASHIDA BANO)  
Member(J)

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14<sup>th</sup> June, 2024 01. Mr. Muhammad Anwar Awan, 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 06 pages, the service appeal is dismissed, being devoid of merit. 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 14<sup>th</sup> day of June, 2024.*

  
(FAREEHA PAUL)  
Member (F)

  
(RASHIDA BANO)  
Member(J)

*\*Fazal Subhan PS\**