

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR

BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN
MUHAMMAD AKBAR KHAN ... MEMBER (E)

Service Appeal No. 16409/2020

Date of presentation of Appeal.....23.12.2020
Date of Hearing.....13.06.2024
Date of Decision.....13.06.2024

Jehan Muhammad DEO Elementary and Secondary Education
Batkhela.....(Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
3. Director Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.....(Respondents)

L. NAWAB ALI NOOR,
Advocate

--- For appellant.

MUHAMMAD JAN,
District Attorney

--- For respondents

JUDGMENT

MUHAMMAD AKBAR KHAN, MEMBER (E):-The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

"On acceptance of this appeal the order dated 20.12.2020 of no response of the respondent No. 1 may please be set aside and appellant may kindly be promoted to BPS-20 from due date alongwith all benefit."

02. Brief facts of the case are that appellant was serving in BPS-19; that vide letter dated 06.10.2020 from respondent No. 2, addressed to the Director Education respondent No. 3 direction were given to process his promotion case to BPS-20 working paper were requisitioned for promotion to BPS-20; that his case was not processed, and in the meanwhile he retired from service 03.01.2021; that the appellant filed departmental appeal on 20.09.2020 for promotion to BPS-20 but the same was not responded, hence, the instant service appeal.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant, learned District Attorney for the respondents and have gone through the record with their valuable assistance.

04. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned District Attorney, controverted the same by supporting the comments submitted by the respondents.

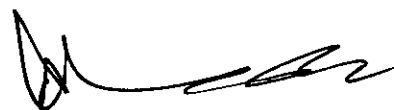
05. At the very outset, learned District Attorney raised the objection on the maintainability of the instant case stating that the appellant has come to the Tribunal without impugning any original or appellate order, as there is no order on file which could show that the appellant was aggrieved of. He referred to Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. Section-4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 is reproduced as below:-

Appeal to Tribunals.--- *Any civil servant aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him.*

06. The above mentioned Section of law clearly determines the fate of the case of the appellant as his case does not fall within the ambit of Section-4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 as he has come to this Tribunal without impugning any order, whether original or appellate. Besides, the appellant's claim that he was at the top of the seniority list and was therefore, eligible to be promoted to BPS-20 is not correct. The appellant has annexed final seniority list wherein his name stands at Serial No.10.

07. In view of foregoing findings the appeal in hand is dismissed being not maintainable. Costs shall follow the event. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 13th day of June, 2024.*



(KALIM ARSHAD KHAN)
CHAIRMAN



(MUHAMMAD AKBAR KHAN)
MEMBER (E)

ORDER
13.06.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, learned District Attorney for the respondents present. Arguments heard and record perused.
2. Vide our detailed judgment of today, separately placed on file, the appeal in hand is dismissed being not maintainable. Costs shall follow the event. Consign.
3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 13th day of June, 2024.*



(KALIM ARSHAD KHAN)
CHAIRMAN



(MUHAMMAD AKBAR KHAN)
MEMBER (E)