

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No.1271/2023**

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

**Umar Dad, SST (General) (BPS-16), GMS Chari Shabi Khel, District Dir Lower, Kohistan.**

... (Appellant)

**VERSUS**

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Civil Secretariat, Peshawar.
2. The Director, Elementary & Secondary Education, Civil Secretariat, Peshawar.
3. The District Education Officer, District Lower, Kohistan.

... (Respondents)

Mr. Noor Muhammad Khattak  
Advocate

... For appellant

Mr. Asif Masood Ali Shah  
Deputy District Attorney

... For respondents

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Date of Institution.....08.05.2023  
Date of Hearing.....15.03.2024  
Date of Decision.....15.03.2024

**JUDGMENT**

**RASHIDA BANO, MEMBER (J):** The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

**“That on acceptance of this appeal the impugned orders dated 26.12.2022 and 02.02.2023 may very kindly be set aside and the promotion order dated 16.11.2017 of the appellant as SST (G) (BPS-16) may kindly be restored with all back benefits**



**including seniority. Any other remedy which this August Tribunal deems fit that may also be granted in favor of the appellant.”**

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was initially appointed as PTC vide order dated 02.03.1986. During service appellant got his B.A degree in the year 1991. Vide notification dated 28.10.2014 colleagues being junior to the him were promoted to the post of SST (General) and appellant was ignored on the basis of having third division in B.A. Appellant preferred departmental appeal followed by writ petition No.559-A/2016 before the Peshawar High Court, Abbottabad Bench which was accepted vide judgment 13.02.2017 and in compliance of judgment respondents promote the appellant with immediate effect i.e. 16.11.2017 instead of 28.10.2014. Feeling aggrieved, he filed departmental appeal, which was not responded within stipulate period, filed service appeal No. 654/2022 before this Tribunal but during pendency of this appeal, respondents withdrew the promotion order of the appellant vide impugned orders dated 26.12.2022 and 02.02.2023. Feeling aggrieved, he filed departmental appeal, which was not responded, hence the instant service appeal.

3. Respondents were put on notice, who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Deputy District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for appellant argued that the impugned orders dated 26.12.2022 and 02.02.2023 whereby promotion order of the appellant was withdrawn and the appellant had been posted as PSHT (BPS-15) are against

the law, facts, norms of natural justice. He further argued that the impugned orders to the extent of requirement of third class B.A degree is in violation of rights of the appellant guaranteed under Article 4, 25 and 38 (e) of the Constitution of Islamic Republic of Pakistan, 1973. He further argued that appellant was though having 3<sup>rd</sup> Division B.A Degree, however he has, later on obtained M.A Degree, therefore, he cannot be denied promotion to the post of SST (BPS-16) on the pretext that he had passed B.A in 3<sup>rd</sup> Division. He submitted that the impugned orders is in derogation of Section-8 & 9 of the Civil Servant Act, 1973 read with rule 7 and 17 of the (Appointment, Promotion & Transfer) Rules, 1989, therefore, not tenable and liable to be set aside.

5. Conversely, learned Deputy District Attorney contended that Second Division B.A Degree from a recognized university is first requirement for promotion to the post of SST (BPS-16), while the appellant has obtained B.A degree in 3<sup>rd</sup> Division, therefore, he is not at all eligible for promotion to the post SST (BPS-16). He further contended that that passing B.A examination in 2<sup>nd</sup> Division was introduced through notification dated 24.07.2014 for the purpose of enhancing quality education, therefore, the appellant could not claim **that the same**. He further argued that judgments dated 04.06.2015, 08.12.2015 and 05.04.2016 rendered by the Worthy Peshawar High Court, Peshawar are of no benefit to the appellant in view of order dated 06.04.2022 passed by the Apex Court in Civil Appeal No.2039/2019 and Civil Petitions No.91, 92 of 2016 whereby judgment dated 13.02.2017 passed by Worthy



Peshawar High Court granting similar relief to petitioners in W.P No. 559-A/2016, has been set aside.

6. Perusal of record reveals that appellant was appointed as PTC vide order dated 02.03.1986. He did his Bachelor of Arts in 3<sup>rd</sup> division in the year 1991 during his service and became hopeful for his promotion to SST (BPS-16) because in seniority, he was at the top but he was ignored on the ground of having his Bachelor of Arts degree in 3<sup>rd</sup> division and junior to him was promoted vide order dated 28.10.2012.

7. Respondent department notified service rules whereby at serial No.1B, 20 percent quota for the post of appellant was allocated, but qualification for SST (BPS-16) was B.A in 2<sup>nd</sup> division due to which appellant was ignored which was challenged by the appellant alongwith the others in writ No.559-A/2016 before worthy Peshawar High Court, Peshawar, writ of the appellant was accepted by Peshawar High Court, Peshawar vide order dated 13.02.2017 by keeping reliance upon writ petition No.1041/2015. Respondents in compliance of judgment of worthy Peshawar High Court promoted appellant to SST BPS-16 vide order dated 16.11.2017 with immediate effect. Appellant challenged immediate effect in service appeal No.654/2022 which was also pending adjudication in the tribunal.

8. Respondent filed C.P No.2039/2019 in apex court of the country against decision given in writ petition No.559-P/2016, said C.P No.2039/2019 along with three others were decided on 06.04.2022 in favour of respondents by setting aside judgment of Peshawar High Court, Peshawar. Respondents in



light of order of apex court dated 06.04.2022 withdrew promotion and the appellant on 26.12.2022 & 02.02.2023, the appellant was adjusted as PHST.

9. Learned Counsel for the appellant argued that apex court set aside judgment rendered in his favour on the ground that matter of qualification does not fall within the definition of fitness and is one of eligibility which falls within terms and conditions of service and not merit. We agree with the learned counsel that apex court held that matter of qualification falls within eligibility not fitness. That is why, we assume jurisdiction and heard this appeal. Now, the only question with regards to condition of second class B.A degree mentioned in the rules, varies of the rules of 2014 notified on 24<sup>th</sup> July 2014 to extent of 2<sup>nd</sup> class Bachelor Degree from a recognized university has been challenged by some other colleagues of the appellant in Service Appeals No.8647/2020, 8650/2020, 8651/2020, 8652/2020, 8653/2020, 8654/2020, 8655/2020, 8656/2020 and 8657/2020, in this tribunal which was decided vide order dated 14.09.2022 wherein it is held that

***“We have observed that the requirement of 2nd Division/Class Bachelor Degree for promotion to the post of Secondary School Teacher (BPS-16) is not person specific and would be applicable for promotion as well as initial recruitment to the post of SST (BPS-16)”***

While going through the contents of the appeal, we have observed that no allegation of any mala-fide has been raised by the appellant.

10. It is a settled proposition that the Government is entitled to make service rules in the interest of expediency of service and to remove anomaly in service rules, which in the absence of demonstrable mala-fide could not be

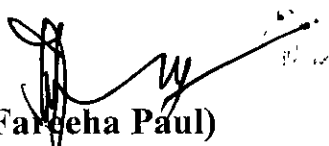
assailed. August Supreme Court of Pakistan in its judgment reported as 2004 SCMR 1427 has graciously held as below:-

*"The government is always empowered to change the promotion policy and the domain of the government to prescribe the qualification for a particular post through amendment in the relevant rules, is not challengeable. This is also a settled law that notwithstanding fulfillment of the required qualification and other conditions containing the rules, the promotion cannot be claimed as a vested right."*

11. So, far as contention of learned counsel that appellant did his master in Islamiyat in first division and he on the basis of it is entitled for promotion, in our view as per column No.3 of 1B of Service Rules, 2014 second class Bachelor of Education or Master of Education or equivalent qualification both are necessary for promotion because 1<sup>st</sup> one is academic, while 2<sup>nd</sup> one is professional qualification. Moreover word and is used in between both serial No.1 & 11 which means both supplement each other and will be taken together as whole for the purpose of promotion or initial recruitment. So, these arguments had no force in it.

12. For what has been discussed, we are unison to dismiss appeal. Cost shall follow the costs. Consign.

13. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 15<sup>th</sup> day of March, 2024.*


  
(Farzeha Paul)  
Member (E)

  
(Rashida Bano)  
Member (J)


**ORDER**

15.03.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney for the respondents present.
2. Vide our detailed judgment of today placed on file, we are unison to dismiss the appeal. Cost shall follow the costs. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 15<sup>th</sup> day of March, 2024.*



(Faraha Paul)  
Member (E)



(Rashida Bano)  
Member (J)

\*M.Khan