

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No.654/2022**

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

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

**VERSUS**

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Civil Secretariat, Peshawar.
2. Director Elementary & Secondary Education, Civil Secretariat, Peshawar.
3. District Education Officer, District Lower Kohistan.
4. Mr. Khan Bahader, SST (G) (BPS-16) c/o District Education Office, 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.....28.04.2022  
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:



**“On acceptance of this appeal, the impugned notification dated 16.11.2017 may very kindly be modified/rectified to the extent that the appellant may please be promoted w.e.f 28.10.2014 i.e w.e.f when he was eligible for promotion as well as his junior colleagues was promoted to the subject post with all back benefits including seniority. Any other remedy which this 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 he was ignored on the basis of having third division in B.A. Appellant preferred departmental appeal followed by writ petition 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, 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 notification dated 16.11.2017 whereby the appellant was promoted to the post of SST (G) BPS-16 with immediate effect and not from the date 28.10.2014 when his

junior colleagues/private respondent No. 4 were promoted is against the law, facts and norms of natural justice. He further argued that appellant has not been treated in accordance with law and rules and respondents violated article 4, 25 and 38 (e) of the Constitution of Islamic Republic of Pakistan, 1973. He further argued that the impugned order was issued in derogation of Section-8 & 9 of the Civil Servant Act, 1973 read with rule 7 and 17 of the APT Rules, 1989, therefore, not tenable and liable to be modified.

5. Conversely, learned Deputy District Attorney contended that appellant has been treated in accordance with law/rules and the impugned notification dated 16.11.2017 passed by the respondents is legal and liable to be maintained. He further argued that no departmental appeal has been filed by the appellant against the unification dated 28.10.2014, hence got finality under the law. He submitted that the judgment dated 13.02.2017 has been implemented by the department vide notification dated 16.11.2017, whereby the appellant has been promoted as SST on the basis of seniority cum fitness. He requested that instant appeal might be accepted as prayed for.

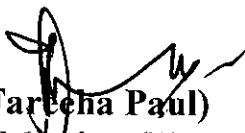
6. Perusal of record reveals that appellant through instant appeal seek ante-dation of his promotion notification from 28/10/2014 to 16/11/2017 from the date when he was eligible and ignored by promoting junior to him i.e respondent No.4. Respondent department notified service rules whereby at serial No.1B, 20 percent quota for the post of appellant has been 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 others in writ



No.559-A/2016 before worthy Peshawar High Court, Peshawar. Writ petition of the appellant was accepted 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. Respondent department challenged judgment delivered in favor of appellant in writ petition No.559-P/2016 in apex court in C.P No.2039/2019 which was accepted by setting aside judgment passed by Peshawar High Court. As a consequence of which order/notification of promotion of the appellant of which he through instant appeal seeks ante-dation was withdrawn vide order dated 26/12/2022. Appellant challenged, said withdrawal of promotion in service appeal No. 1271/2023 which was also fixed for today and dismissed, therefore, instant appeal become infructuous as when notification is no more in field, then there arises no question of its ante-dation.

7. For what has been discussed above, the appeal in hand is dismissed being infructuous. Cost shall follow the event. Consign.

8. *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.*

  
(Farzana Paul)  
Member (E)

  
(Rashida Bano)  
Member (J)