

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 485/2020

BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN
MISS FAREEHA PAUL ... MEMBER(E)

Akhtar Hussain, Senior Clerk (BPS- 14), Directorate of Social Welfare,
Special Education & Women Empowerment, Jamrud Road, Peshawar.
.....(Appellant)

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary,
Civil Secretariat, Peshawar.
2. The Secretary Finance Department, Khyber Pakhtunkhwa, Civil
Secretariat Peshawar.
3. The Secretary Establishment Department, Khyber Pakhtunkhwa
Peshawar.
4. The Secretary Social Welfare, Special Education & Women
Empowerment Department, Civil Secretariat Peshawar.
5. The Director Social Welfare, Directorate of Social Welfare, Special
Education & Women Empowerment, Jamrud Road, Peshawar.
6. Lal Rahim Instructor (BPS-14), Dar-ul-Kafala, Peshawar and 04
others.....(Respondents)

Mr. Noor Muhammad Khattak, ... For appellant.
Advocate

Mr. Muhammad Jan, ... For respondents
District Attorney.

Mr. Fazal Shah Mohmand, ... For private respondents
Advocate. No. 6 to 10.

Date of Institution.....	21.01.2020
Date of Hearing.....	15.07.2024
Date of Decision.....	15.07.2024

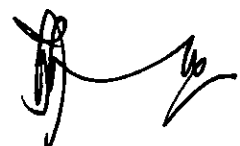
JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been
instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal
Act, 1974 against the Service Rules notified on 25.09.2019, whereby the



promotion quota reserved for the cadre of Senior Clerk to the post of Assistant (BPS-16) was reduced from 75% to 35% and against no action taken on the departmental appeal of appellant within the statutory period of ninety days. It has been prayed that on acceptance of the appeal, the impugned service rules might be declared as illegal and void to the extent of serial No. 14 column No. 5(a) & (b) and the respondents might be directed to restore the promotion quota of Senior Clerk to the post of Assistant (BPS- 16) from 35% to 75%, alongwith any other remedy which the Tribunal deemed appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was initially appointed as Junior Clerk (BPS- 07), now BPS- 11, vide order dated 14.08.1990. During the service, he was promoted to the post of Senior Clerk on the basis of seniority-cum-fitness. Under the old rules notified on 21.09.2006, there was 75% promotion quota for Senior Clerks for promotion to the post of Assistant (BPS- 16). According to the seniority list dated 16.01.2019 of Senior Clerks, the appellant stood at serial no. 16 and was quite hopeful for his promotion to the post of Assistant (BPS- 14) but vide impugned Service Rules notified on 25.09.2019, the respondents reduced the said quota from 75% to 35%, in violation of law and rules. According to the Establishment Department's Service Rules notified on 06.12.2012, 75% quota had been allocated for the promotion of the Senior Clerks to the post of Assistant (BPS- 16) but the respondents, without taking into consideration the service rules of the Establishment Department, issued the impugned service rules. Feeling aggrieved, the appellant filed



departmental appeal which was not replied within the statutory period; hence the instant service appeal.

3. Respondents were put on notice who submitted written reply/comments on the appeal. We heard the learned counsel for the appellant, learned District Attorney for the official respondents as well as learned counsel for the private 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 impugned service rules dated 25.09.2019 were against the law, facts, norms of natural justice and material on record, hence not tenable and liable to be set aside to the extent of serial no. 14 column no. 5. He argued that inspite of eligibility and seniority, the appellant was ignored by the respondents for promotion and the impugned service rules dated 25.09.2019 were based on malafide intention. He further argued that in the light of Section 9 of the Civil Servants Act, 1973 read with rule 7 of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the appellant was fully entitled for the promotion to the next higher scale but he had been discriminated. He further argued that reducing the promotion quota of Senior Clerk from 75% to 35% was violative of law and rules and was liable to be set aside. He requested that the appeal might be accepted as prayed for.

5. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the post of Instructor BPS-14 was given 40% quota in the rules for promotion against the post of



Assistant BPS- 16 in pursuance of the judgment of the Hon'ble Peshawar High Court, Mingora Bench, dated 13.07.2016 in Writ Petition No. 554-M/2014. He argued that the Service Rules were examined by proper forum i.e. Standing Service Rules Committee, which also included representative of the Establishment Department and hence the appellant was trying to mislead the Service Tribunal by stating that the Establishment Department was not consulted when the service rules of 2019 were notified. He argued that service rules were amended in order to provide equitable career progression opportunities on the basis of parity. According to him the service rules were made and notified in order to open the path way of promotion for the blocked cadres, without ignoring eligibility and seniority of the appellant. He requested that the appeal might be dismissed.

6. Learned counsel for the private respondents adopted the arguments of the learned District Attorney and requested that the appeal might be dismissed.

7. Through the instant service appeal, the appellant has impugned the service rules notified on 25.09.2019 to the extent of serial No. 14, column No. 5(a) and (b). Arguments and record presented before us show that the appellant was appointed as Junior Clerk in the respondent department and was promoted to the post of Senior Clerk under the rules notified on 21.09.2006. Under those rules, 75% quota was reserved for promotion of Senior Clerks to the post of Assistant but in 2019, the rules were amended as a result of judgment of the Honourable Peshawar High



Court, Mingora Bench, in order to accommodate Instructor all Trades (BS- 14), which was a closed cadre. An avenue for their promotion was provided by the provincial government by giving them 40% quota in promotion to the post of Assistant (BS- 16). That amendment resultantly, reduced the promotion quota of 75%, reserved for Senior Clerks and Accountants, to 35%. Learned counsel for the appellant referred to Rule 7 of the Khyber Pakhtunkhwa (Appointment, Promotion and Transfer) Rules 1989 by stating that he was fully entitled for promotion to the higher scale.


8. A simple perusal of the rules notified on 21.09.2006 clearly showed that the Instructor all Trades had no promotion prospect after BS- 14 and it was surely the responsibility of the provincial government to properly accommodate them and give them a fair opportunity of career progression. The same fact was brought before the Peshawar High Court, Mingora Bench and there, the government made a commitment to amend the rules and provide promotion prospects to the closed cadre of Instructor all Trades, and hence the rules were amended. It was completely and purely the domain of the provincial government to make and amend the service rules, allocate quotas, alter the qualification and so on. Keeping in view the trichotomy of powers as enshrined in the Constitution of Pakistan, where the legislature was vested with the function of amending law, whereas the executive enforced it and the judiciary had the power to interpret the laws, we do not want to interfere in the domain of the executive/provincial government especially when no malafide on the part of the government was shown. In our view



neither promotion nor the criteria or quotas set for promotion could be categorized as a right of any civil servant and hence any alteration or amendment in that criteria or quota could not be termed as any violation of fundamental rights. In our view reducing or enhancing any quota was a policy matter and the provincial government was fully empowered to do so.

9. In view of the above discussion, the appeal in hand is 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 on this 15rd day of July, 2024.*


(FARZEHA PAUL)
Member (E)



(KALIM ARSHAD KHAN)
Chairman

SA 485/2020

15th July, 2024 01. Mr. Noor Muhammad Khattak, Advocate for the appellant present. Mr. Muhammad Jan, District Attorney for the official respondents and Mr. Fazal Shah Mohmand, Advocate for the private respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, the appeal in hand 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 15th day of July, 2024.*


(FAREEHA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
Chairman

Fazal Subhan PS