

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Before **KALIM ARSHAD KHAN** ... **CHAIRMAN**
Larger **AURANGZEB KHATTAK** ... **MEMBER (Judicial)**
Bench: **RASHIDA BANO** ... **MEMBER (Judicial)**
MUHAMMAD AKBAR KHAN ... **MEMBER (Executive)**
FAREEHA PAUL ... **MEMBER (Executive)**

Service Appeal No.1794/2019

Date of presentation of Appeal.....16.12.2019
Date of Hearing.....18.07.2024
Date of Decision.....18.07.2024

Wali Khan, Drawing Master, Government High School Loi Shalman District Khyber.....(**Appellant**)

Versus

1. **Director** Elementary & Secondary Education, Government of Khyber Pakhtunkhwa, Peshawar.
2. **District Education Officer (Male)** District Khyber.
3. **Secretary to Government of Khyber Pakhtunkhwa**, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.....(**Respondents**)

Present:

Mr. Fazal Shah Mohmand, Advocate.....For the appellant
Mr. Muhammad Jan, District Attorney.....For respondents
Mr. Ali Gohar Durrani Advocate.....Amicus Curie

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APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE SENIORITY LIST OF DRAWING MASERS (MALE) OF DISTRICT KHYBER ISSUED ON 30.04.2019 WHEREBY THE APPELLANT HAS ILLEGALLY BEEN PLACED AT SERIAL NO.33 INSTEAD OF SERIAL NO.4 AND AGAINST WHICH DEPARTMENTAL APPEAL OF THE APPELLANT DATED 26.08.2019 HAS NOT BEEN RESPONDED SO FAR DESPITE THE LAPSE OF MORE THAN THE STATUTORY PERIOD OF NINETY DAYS.



JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Brief facts of the case, as enumerated in the memo and grounds of appeal are that appellant was appointed as untrained Drawing Master on 23.01.1991 and passed the relevant training for the subject post on 25.04.2000; that the appellant was awarded BPS-15 w.e.f 01.12.2007 instead of 01.10.2005 as per his option and was allowed the increments of untrained period w.e.f 01.12.1991 in consequent to letter dated 12.05.2009; that vide Notification dated 06.03.2017, junior colleagues of the appellant were promoted as Senior Drawing Master (BPS-16) and the appellant was not given the said promotion; that seniority list dated 30.04.2019 was issued wherein, the appellant was placed at Serial No.33 instead of Serial No.4; that feeling aggrieved, he filed departmental appeal on 26.08.2016 but the same was not responded, hence, the instant service appeal.

02. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

03. In the instant case, arguments were heard on 12.07.2024 but the learned District Attorney had submitted copies of earlier judgments passed in Service Appeal No.309/2013 titled "Inayat Said Vs. Education Department", Service Appeal No.1253/2016 titled "Shabir Ahmad Vs. Education Department" and Service Appeal No. 610/2022



titled "Muhammad Yaqoob Vs. Education Department", wherein, it was decided that seniority should be reckoned from the date of acquiring qualification prescribed for initial recruitment, whereas, Rule-17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 may not be requiring like that, therefore, the matter was directed to be placed before the larger Bench already constituted in the case of "Muslim Khan Vs. Government of Khyber Pakhtunkhwa" for today i.e. 18.07.2024. The learned counsel for appellant and learned District Attorney assisted the Tribunal on the above point. Mr. Ali Gohar Durrani, Advocate also assisted the Tribunal as amicus curie.

04. We have heard learned counsel for the appellant and learned District Attorney for the respondents.

05. 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 impugned order(s). Learned Amicus Curie provided valuable assistance.

06. The appellant has preferred the instant service appeal for seeking modification in the seniority list issued on 30.04.2019 to the extent that appellant be assigned seniority from the date of continuous regular appointment instead of passing the professional examination by placing him at Serial No.4 instead of Serial No.33.

07. From the record, it is evident that the issue involved in this case is determination of seniority w.e.f the date of regularization. Mr.



Service Appeal No.1794-2019 filed "Wali Khan versus Director Elementary & Secondary Education, Government of Khyber Pakhtunkhwa, Peshawar and others", decided on 18.07.2024 by the Larger Bench comprising of Mr. Kalim Arshad Khan, Chairman, Mr. Aurangzeb Khattak, Member (Judicial), Mrs. Rashida Bano, Member (Judicial), Mr. Muhammad Akbar Khan, Member (Executive) and Ms. Fareeha Paul, Member (Executive), Khyber Pakhtunkhwa Service Tribunal, Peshawar.

Muhammad Iqbal, Additional Director Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar, present in the court, was asked to produce any regularization order of the appellant and/or any document or Act of the Assembly regarding regularization and settlement of seniority of such civil servants. But he could not even refer to any instrument. Therefore, in the absence of any regularization order/Act or instrument, there is no way with the Tribunal but to remit the matter to the respondents to decide and determine the seniority of the appellant after ascertaining about terms for fixation of seniority, if any, contained in such instrument, regularizing the services of the appellant, particularly, his seniority. The exercise shall be conducted and completed within 60 days of the receipt of this judgment. Costs shall follow the event. Consign.

08. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 18th day of July, 2024.*



KALIM ARSHAD KHAN

Chairman



RASHIDA BANO
Member (Judicial)



AURANGZEB KHATTAK
Member (Judicial)



FAREEHA PAUL
Member (Executive)



MUHAMMAD AKBAR KHAN
Member (Executive)

Mutazem Shah