KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
AURANGZEB KHATTAK ... MEMBER (Judicial)

Service Appeal No. 7125/2021

Date of presentation of Appeal.....19.07.2021
Date of Hearing.....23.07.2024
Date of Decision.....23.07.2024

Miss. Hafsa Nishan Abbasi, SST (Bio/Chem) (BPS-16), GGHS, Bakote, Abbottabad. .....***Appellant***

Versus

1. The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
2. The Director (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (Female), District Abbottabad.

.....***(Respondents)***

Present:
Mr. Noor Muhammad Khattak, Advocate.....For appellant
Mr. Muhammad Jan, District Attorney .....For respondents

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JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: According to the facts gathered from the record are that the appellant Mst. Hafsa Nishan Abbasi, this instant appeal challenged the order dated 09-02-2021, whereby she was promoted to SST (Bio/Chem) (BPS-16) from Qaria (BPS-12) rather than Senior Qaria (BPS-15). Feeling aggrieved from the order dated 09-02-2021 to the extent of granting her promotion to the post of SST (Bio/Chem) (BPS-16) from Qaria (BPS-12) instead of Senior Qaria (BPS-15), she filed departmental appeal on 15-03-2021, which was not responded, hence, the appellant filed the instant service appeal for redressal of her grievance.

2. On receipt of the appeal and its admission to regular hearing, the respondents were summoned. Respondents put appearance through their respective representative and contested the appeal by way of filing para-wise reply, raising therein numerous legal as well as factual objections.

3. Learned counsel for the appellant contended that the appellant was initially appointed as Qaria (BPS-12) on 31-12-2012 and started her duties from 01-03-2013 and thereafter, she was promoted to Senior Qaria (BPS-15) on 18-05-2018 due to her exemplary service and qualifications. He next contended that the appellant, having the required qualifications and fulfilling the necessary criteria, applied for the post of SST (Bio/Chem) (BPS-16) and her name was recommended for promotion after two inquiries. He further contended that despite being eligible and recommended, the earlier promotion order dated 18.05.2018 of the appellant to the post of Senior Qaria (BPS-15) had been withdrawn through an impugned order dated 03-02-2021, which is against the law and rules on the subject. He next argued that the appellant was promoted to the SST (Bio/Chem) (BPS-16) position from the post of Qaria (BPS-12) on 09-02-2021, disregarding her earlier promotion to Senior Qaria (BPS-15). He further argued that the impugned orders violated Articles 4, 25, and 38(e) of the Constitution of the Islamic Republic of Pakistan 1973, hence liable to be modified by promoting the appellant to the post of SST (Bio/Chem) with effect from 02.03.2020 instead of 09.02.2021.

4. On the other hand, learned District Attorney for the respondents contended that appellant was initially promoted from the post of Qaria (BPS-12) to Senior Qaria (BPS-15) based on a procedural error, and further inquiries substantiated this point. He next contended that two inquiries were conducted in the mater and both the inquiries concluded that the appellant was initially wrongfully promoted, and corrective measures were implemented by the orders in question. He further contended that the appellant had already been promoted to SST (Bio/Chem) (BPS-16) based on her educational qualifications and the prevailing rules, therefore, the appeal in hand is liable to be dismissed with cost.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

6. Perusal of the record would show that the promotion order dated 18.05.2018 of the appellant from Qaria (BPS-12) to Senior Qaria (BPS-15) was found to be procedurally flawed, as confirmed by two departmental inquiries. The withdrawal of the promotion by the order dated 03-02-2021 was a corrective measure, in line with the findings of the inquiries. The appellant was subsequently promoted to SST (Bio/Chem) (BPS-16) directly from Qaria (BPS-12). This decision was based on her educational qualifications and relevant rules, ensuring no undue advantage was given due to the earlier procedural error. The Civil Servants Act, 1973 and the K.P (A.P.T) Rules, 1989, were duly followed in addressing the initial error and facilitating the subsequent promotion. The procedural due diligence was performed by the

respondents, eliminating any basis for claims of malafide or arbitrary action. The arguments of learned counsel for the appellant regarding violations of Articles 4, 25, and 38(e) lacked substantive evidence. The corrective actions and final promotion were executed as per statutory requirements and departmental procedures. The appellant's promotion to SST (Bio/Chem) (BPS-16) aligns with her qualifications and rectifies any unintended anomalies resulting from the earlier flawed promotion. Furthermore, Service Appeal No. 7124/2021 of the appellant regarding financial loss had already been dismissed, therefore, any financial disadvantage claimed does not hold merit.

7. In view of the aforementioned findings, the appeal in hand is hereby dismissed. The impugned orders dated 03-02-2021 and 09-02-2021 are upheld. Costs shall follow the event. Consign.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 23 day of July, 2024.*

KALIM ARSHAD KHAN
Chairman

AURANGZEB KHATTAK
Member (Judicial)

Naeem Amin

ORDER

23rd July, 2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney alongwith Mr. Zahid Gul, ADEO for the respondents present. Arguments heard and record perused.

2. Vide our judgment of today placed on file, the appeal in hand is hereby dismissed. The impugned orders dated 03-02-2021 and 09-02-2021 are upheld. Costs shall follow the event. Consign.

3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 23 day of July, 2024.*

(Aurangzeb Khattak)
Member (Judicial)

(Kalim Arshad Khan)
Chairman

Naeem Amin