

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1379/2022

**BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MRS. RASHIDA BANO ... MEMBER (J)**

Date of presentation of appeal21.09.2022
Dates of Hearing.....11.07.2024
Date of Decision.....11.07.2024

Shah Saeed s/o Muhammad Saeed, Ex-Chief Instructor (BPS-18), House V-4, Civil Colony, Kohat road, Peshawar.....(*Appellant*)

Through legal heirs.

1. Meher Pari (widow)
2. Bilal Mehmood (son)
3. Wisal Mehmood (son)
4. Talal Mehmood (son)
5. Hifsa Mehmood(daughter)
6. Daniyal Mehmood (son)

Versus

1. **Government** of Khyber Pakhtunkhwa through Chief Secretary Peshawar.
2. **Secretary**, Industries, Commerce and Technical Education Department, Peshawar.
3. **MD.** TEVTA (Technical Education & Vocational Training Authority), Khyber Pakhtunkhwa, House No. 5-7771 Old Bara Road, University Town, Peshawar.

Present:

Mr. Muhammad Zafar Tahirkheli, Advocate.....For appellant.

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

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SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST THE IMPUGNED ORDER DATED 27.05.2022, WHEREIN THE APPELLANT WAS OMITTED TO BE CONSIDERED FOR PROMOTION TO THE POST OF PRINCIPAL (BPS-19) WITH RETROSPECTIVE EFFECT FROM THE DATE OF AVAILABILITY OF VACANCY IN THE YEAR 2020 AND THE APPELLANT'S DEPARTMENTAL APPEAL DATED 20.06.2022 WAS NOT DECIDED WITHIN THE STATUTORY PERIOD OF LIMITATION.
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JUDGMENT

RASHIDA BANO, MEMBER (JUDICIAL): Brief facts gathered from the memo and grounds of appeals are that the appellant was appointed as Instructor (BPS-14) in the year 1983; that he was promoted to BPS-16 on 14.12.1993, to BPS-17 on 30.04.2008 and to BPS-18 on 30.07.2020; that in view of the final seniority list of Principal/Vice Principal, GTVS (Male) (BPS-18) in the Khyber Pakhtunkhwa Technical Education and vocational Training Authority, as stood on 10.06.2021, the appellant was placed at serial No. 12 of the said list; that the appellant retired from service on attaining the age of superannuation on 12.08.2021; that before attaining the age of retirement, 18 number of posts of Principal BPS-19 existed in Technical Education and Manpower Department, according to the Budget Estimates for the year 2020-2021 as detailed in the Budget Copy for the relevant period; that since regular substantive vacancies existed in the regular budget since 2020, therefore, the appellant required to be considered for promotion to BPS-19 on anyone of such available post but was however, denied the benefit due to inaction of the department; that the department promoted various officials to the post of Principal (BPS-19) vide impugned order dated 27.05.2022, but the appellant was ignored for his proforma promotion against the vacancy, which existed during his service period; that the appellant filed departmental appeal on 20.06.2022, which was not responded within the statutory period of ninety days, the instant service appeals.

3. 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.

4. We have heard learned counsel for the appellants and learned Deputy District Attorney for the respondents.

5. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy District Attorney controverted the same by supporting the impugned order(s).

6. Perusal of the record reveals that appellant through instant appeal seeks proforma promotion from due date of availability of the post. Main contention of the appellant is that 18 numbers of posts of Principal (BPS- 19) were available which were sanctioned in December 2020 and also reflected in budget book for the year 2021-22. Appellant was at serial No.12 of the seniority list of Chief Instructors BPS-18 as stood on 10.06.2021 and was on service, who had retired on 30.11.2021, upon attaining the age of superannuation. Had the respondent department convened the meeting of PSB within time after preparation and finalization of which was delayed by the respondent which is evident from letter dated 10.06.2022 addressed to Section Officer III Industries Commerce and Technical Education Peshawar by Deputy Director Establishment, the appellant, who was otherwise eligible and in promotion zone could have been promoted during existence of his service but inaction at the part of respondent deprived the appellant. Appellant was considered by the PSB which was conducted after his retirement on 6.4.2022


7. Mr. Rehmatullah was promoted to the post of principal BPS-19 had seniority list was prepared at time and meeting of PSB was convened well on time than appellant was promoted which is his legitimate expectation being a civil servant from which he was deprived in such a situation appellant being

retired civil servant was required to be considered for proper promotion
reliance is placed on 1995 SCMR 650 and 2022 SCMR 1546.

8. For what has been discussed above, we are unison to accept the appeal
in hand as prayed for. Cost shall follow the event. Consign.

9. *Pronounced in open Court at Peshawar and given under our
hands and the seal of the Tribunal on this 11th day of July, 2024.*


(KALIM ARSHAD KHAN)
CHAIRMAN


(RASHIDA BANO)
Member (J)

ORDER

11.07.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney for the respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to accept the appeal in hand as prayed for. Cost 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 11th day of July, 2024.*



(KALIM ARSHAD KHAN)
CHAIRMAN



(RASHIDA BANO)
Member (J)