

**ORDER**

11.06.20241      Learned counsel for the appellant present. Mr. Muhammad Jan, learned District Attorney for official respondents No.1 & 2 and Mr. Arbab Saif ul Kamal for private respondent No.3 present.

2.      For what has been discussed above, we are unison to dismiss the service appeal in hand due to lack of jurisdiction, however, appellant may approach proper forum for the desired relief subject to all legal formalities. Costs shall follow the event. Consign.

3.      *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 11<sup>th</sup> day of June, 2024.*

  
(FAREEHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

\*M.Khan

5. Conversely, learned counsel for the private respondent assisted by learned District Attorney contended that the appellant has been treated in accordance with law and rules and no way violating Article 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973. He further contended that the appellant was not considered fit for promotion by the then departmental selection committee being non-punctual having non-professional attitude toward duty. He further contended that appellant had not filed any departmental, hence the instant service appeal is not maintainable. He requested that instant appeal might be dismissed.

6. Perusal of record reveals that appellant was appointed as Junior Clerk in the respondent Department vide office order dated 26.04.2016. Under the rules notified on 11.12.2014 the promotion of the appellant was due to the post of Assistant (BPS-16) being at Serial No.2 of the seniority list. Appellant was quite hopeful for his promotion to the post of Assistant (BPS-16), but unfortunately appellant was ignored by the department and the private respondent who was junior to the appellant was promoted to the post of Assistant (BPS-16) by the respondents. It is pertinent to mention that when the appellant came to know that private respondent was promoted in place of appellant, he applied for attested copy of the promotion order of the private respondent but the respondent failed to deliver the same.

7. Appellant in the instant appeal challenged promotion notification of respondent No.3 which was issued upon recommendation of DPC meeting of which was held on 28.01.2021 at 11.00 AM, wherein departmental promotion committee in para 5 has categorically mentioned that "Mr. Saad Ilyas Junior Clerk at Serial No.3 is not fit for promotion being non punctual having non-professional



attitude towards duty as his salary was also stopped due to willful absence and always try to put political influence on the competent authority So, appellant was found unfit for promotion by DPC and this Tribunal jurisdiction lacks to entertain appeals involving the fitness of civil servant for promotion in accordance with Section-4 (b)(i) which read as;


***“No appeal shall lie to a Tribunal against an order or decision of a departmental authority determining.***

***(i) fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher post or grade”***

8. For what has been discussed above, we are unison to dismiss the appeal in hand due to lack of jurisdiction, however, appellant may approach proper forum for the desired relief subject to all legal formalities. Costs shall follow the event.

Consign.

9. ***Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 11<sup>th</sup> day of June, 2024.***

  
**(FAREEHA PAUL)**  
Member (E)

  
**(RASHIDA BANO)**  
Member (J)

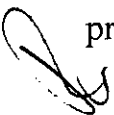
\*M.Khan

**“That on acceptance of this appeal the promotion of the private respondent No.3 to the post of Assistant (BPS-16) may kindly be set aside and the respondents may kindly be directed to consider the appellant for promotion to the post of Assistant (BPS-16) with all back benefits including seniority. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.”**

2. Brief facts leading to filing of the instant appeal are that appellant was appointed as Junior Clerk in the respondent department vide order dated 26.04.2016; that under the rules notified on 11.12.2014 the promotion of the appellant was due to the post of Assistant BPS-16 being at serial No.2 of the seniority list. Respondent promote junior to the appellant and he was ignored. Feeling aggrieved, he filed departmental appeal which was not responded to, hence the present service appeal.

3. Respondents were put on notice who submitted written reply/comments on the appeal. We have heard learned counsel for the appellants and Mr. Muhammad Jan, District Attorney for the respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Learned counsel for the appellant argued that the impugned promotion of respondent No.3 is against the law, facts, norms of natural justice and material on record, hence not tenable and liable to be set aside. He further argued that appellant has not been treated in accordance with law and rules and respondents violated Articles 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973. He further argued that the impugned promotion of the private respondent is also the violation of section 8 & 9 of the civil servant Act, 1973 read with rule 7 of the (Appointment, Promotion & Transfer) Rules, 1989. He submitted that appellant is entitled for his promotion to the post of Assistant in light of the prevailing Rules.



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No.7664/2021**

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

**Mr. Saad Ilyas, Junior Clerk (BPS-11), Directorate General Law  
and Human Rights, Peshawar.**

*... (Appellant)*

**VERSUS**

1. The Secretary Law, Parliamentary Affairs & Human Rights Department,  
Khyber Pakhtunkhwa Peshawar.
2. The Director General Law & Human Rights Department, Khyber  
Pakhtunkhwa, Peshawar.
3. Mr. Labeed Ullah Rukh, Assistant (BPS-16), Directorate of Law &  
Human Rights Department, Peshawar.

*... (Respondents)*

Mr. Noor Muhammad Khattak  
Advocate ... For appellant  
Mr. Arbab Saif ul Kamal ... For private respondent No.3  
  
Mr. Muhammad Jan  
District Attorney ... For respondents

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Date of Institution.....21.09.2021  
Date of Hearing.....11.06.2024  
Date of Decision.....11.06.2024

**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:

