



ORDER

22.07.2024 1 Learned counsel for the appellant present. Mr. Muhammad Jan,
learned District Attorney for respondents present.

2. Vide our detailed judgment of today placed on file, we are unison
to accept the appeal with direction to the respondents to consider the
appellant for promotion when his juniors were promoted as IPE. Costs
shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our
hands and seal of the Tribunal this 22th day of July, 2024.*


(FAREEHA PAUL)
Member (E)
Camp Court Abbottabad



(RASHIDA BANO)
Member (J)
Camp Court Abbottabad


*M.Khan

PETs. Appellant was promoted to as SPET vide order dated 27.02.2013 and had required length of service more than three years. SPET is eligible for promotion to the post of IPE under rules of 2018.

10. For what has been discussed above, we are unison to accept the appeal with direction to consider appellant for promotion when his juniors were promoted as IPE. Costs shall follow the event. Consign.

11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 22th day of July, 2024.*


(FAREEHA PAUL)
Member (E)
Camp Court Abbottabad


(RASHIDA BANO)
Member (J)
Camp Court Abbottabad

*M.Khan

8. Requirement for appointment to the PETs and SPETs are provided in the rules notified on 13.11.2012, in accordance with which qualification for appointment of PETs (BPS-15) is;

“Column No.3(i)---Bachelor Degree from a recognized University with one year junior Diploma in Physical Education course or Army equivalency or other equivalent qualification. Column No.5 (a) Eighty percent by initial recruitment or

(b) Twenty percent by promotion, on the basis of seniority-cum-fitness, from amongst the Primary School Teacher with at least five years of service and having qualification prescribed for initial recruitment of physical Education Teacher:

Provided that if no suitable candidate is available for promotion then on the basis of seniority-cum-fitness from amongst Senior Primary School Teachers with at least five years of service having qualification prescribed for initial recruitment of Physical Education Teacher.”

While as per column No.9; post of SPETs is required to be filled from amongst PETs on the basis of seniority-cum-fitness having at least five year service;

“By promotion, on the basis of seniority-cum-fitness, from amongst Certified Teachers (Industrial Arts), with at least five years of service as such and having qualification as prescribed for initial recruitment of Certified Teacher (Industrial Arts).


9. As per above rules condition of having B.Ed qualification is not required for initial appointment to the post of PETs and SPETs even if same is required for PETs initial appointment then too, it is also not required for promotion to the post of IPE which is a proper channel/ladder provided to

IPE is provided in the rules notified vide notification dated 26.04.2018 which read as;

“Column 3(i)---At least Second Class Master’s Degree in Physical Education, with Bachelor of Education (B.Ed) or equivalent qualification from a recognized university.

Column 5(a)--- Seventy percent by promotion, on the basis of seniority-cum-fitness, from amongst Senior Physical Teacher BPS-16 with at least five years of service as Senior Physical Education Teacher (SPETs) and Physical Education Teacher (PETs) provided that if no suitable person is available form amongst Senior Physical Education Teacher (SPETs) for promotion then the post shall be filled by promotion on the basis of seniority-cum-fitness form amongst the Physical Education Teacher (PETs) with at least five years service as such having qualification in column 3.”

So, in accordance with this Column No.5 method of recruitment both SPET (BPS-16) having three year service as SPET and PET is eligible for promotion as no condition of B.Ed is there in the rules for SPET (BPS-16) proviso wherein condition/requirement of B.Ed is provided is in respect of PET (BPS-15), which read as if no suitable SPET is available” the condition is only for PET, who was given chance to jumped and promoted to (BPS-17) from (BPS-15). No doubt condition/requirement of B.Ed is condition pre-requisite for fresh appointees but not for SPETs who served for three years as such. So, this plea of the respondent/department is not correct and they misinterpret the rules sub clause (a) of Column No.5 i.e. applying condition of B.Ed to the SPETs.



6. Perusal of record reveals that appellant is working as Senior Physical Education Teacher (SPET) Male (BPS-16), posted at GHSS Jabbori, Mansehra. The Government of Khyber Pakhtunkhwa Elementary & Secondary Education (E&SE) Department in consultation with the Establishment and the Finance Department under notification dated 26.04.2018 amended the previous notification dated 13.11.2012 through which the respondents directed that the promotion to the post of Instructor Physical Education (IPE) BPS-17 will be made from 70% by promotion on the basis of Seniority-Cum-Fitness from amongst the SPETs (BPS-16) with at least 05 years of service as SPET and if no suitable person is available from amongst Senior Physical Education Teacher (SPETs) for promotion then the post shall be filled by promotion on the basis of seniority-cum-fitness from amongst the PETs with at least five years service as such having qualification in column No.3 (qualification of Bachelor of Education). Respondents held meeting of the Departmental Promotion Committee on 11.06.2020 and excluded the name of the appellant from the list of SPETs for promotion to the post of Instructor Physical Education (IPE) BPS-17 due to lack of degree of Bachelor of Education which is illegal and against the rules because the appellant belongs to SPET Cadre for which no such qualification is required for promotion to the post of IPE (BPS-17).

7. Appellant was denied promotion to the post of instructor Physical Education (IPE) BPS-17 on the basis of not having B.Ed Degree which is condition pre-requisite for promotion to it. Promotion criteria to the post of

Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.”

2. Brief facts of the case as given in the memorandum of appeal is that the appellant is working as Senior Physical Education Teacher (SPET) BPS-16 in Education Department quite efficiently and upto the entire satisfaction of his superiors. The Government of Khyber Pakhtunkhwa through notification dated 13.11.2012 advertised that 70% the post of Instructor Physical Education (BPS-17) would be filled 70% by promotion on the basis of seniority-cum-fitness from amongst the SPETs (BPS-16) with at least 05 years of service as SPET and if no suitable person is available from amongst SPET for promotion then the post shall be filled by promotion on the basis of seniority cum-fitness from amongst the PETs with at least five years service. Respondents vide notification 20.10.2022 promoted juniors to the appellant to the post of IPE (BPS-17) and appellant was ignored. Feeling aggrieved, he filed departmental appeal 12.11.2020, which was not responded, hence the instant service appeal.

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 appellant and learned 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 District Attorney controverted the same by supporting the impugned order(s).



BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL AT CAMP COURT
ABBOTTABAD.

Service Appeal No. 2812/2021

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

Mr. Muhammad Arif, Senior Physical Education Teacher (SPET), BPS-16,
GHSS Jabbori, Mansehra, Khyber Pakhtunkhwa.

... (Appellant)

VERSUS

1. The Chief Secretary, Khyber Pakhtunkhwa Peshawar and 13 others.

... (Respondents)

Syed Noman Ali Bukhrai
Advocate

For appellant

Muhammad Jan
District Attorney

For respondents

Date of Institution.....15.02.2021

Date of Hearing22.07.2024

Date of Decision22.07.2024

JUDGMENT

RASHIDA BANO, MEMBER (J): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the following prayer:

“That on acceptance of this appeal, the respondents may kindly be directed to consider the appellant for promotion to the post of Instructor Physical Education (IPE) BPS-17 from his due date with all back and consequential benefits.

