

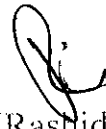
SA 29/2019

06.05.2024 01. Counsel for the appellant present. . Mr. Muhammad Jan, District Attorney alongwith Mian Asif Ali Shah, ADFO (Litigation) for the respondents present.

02. During the course of arguments, it was noted working papers and minutes of DPC meeting are not available on file. Representative of the respondents is directed to produce the same on the next date positively. Absolute last chance is given for to the parties for arguments, failing which no further adjournment will be granted and the case will be decided without the arguments. To come up for arguments on 03.06.2024 before the D.B at camp court, Swat. PP given to the parties.



(Fareeha Paul)  
Member(E)  
Camp Court, Swat.




(Rashida Bano)  
Member(E)  
Camp Court Swat


\*Fazle Subhan, P.S\*

**SCANNED**  
**KPST**  
**Peshawar**

03.06.2024 1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney alongwith Mian Asif Ali Shah, ADEO for the respondents present.

2. Record mentioned vide previous order sheet not submitted. Representative of respondent sought further time for submission of the same. Last chance is given. To come up for record and arguments on 06.06.2024 before D.B at Camp Court, Swat. Parcha Peshi given to the parties.

  
(Muhammad Akbar Khan)  
Member (E)  
Camp Court, Swat

  
(Rashida Bano)  
Member (J)  
Camp Court, Swat


Kaleemullah


**ORDER**

06.06.2024 1. Learned counsel for the appellant present. Mr. Umair Azam, Additional Advocate General for the respondents present.

2. Vide our detailed judgment of today placed on file, the appeal in hand is dismissed being in competent. Cost shall follow the event. Consign.

3. *Pronounced in camp court at Swat and given our hands and seal of the Tribunal on this 6<sup>th</sup> day of June, 2024.*

  
(MUHAMMAD AKBAR KHAN)  
Member (E)  
Camp Court Swat

  
(RASHIDA BANO)  
Member (J)  
Camp Court Swat

*“A civil servant aggrieved by an order passed or penalty imposed by the competent authority relating to the terms and conditions of his service may, within thirty days from the date of communication of the order to him, prefer an appeal to the appellate authority”.*

*Explanation*


*(2) “where the order of the competent authority affects more than one civil servant, every affected civil servant shall prefer the appeal separately”*

So, every civil servant has to file separate departmental appeal which is a condition pre-requisite as per Section 4 Khyber Pakhtunkhwa Service Tribunal Act 1974 for filing appeal before this Tribunal.

9. Perusal of departmental /representation annexed by the appellant at page 41 of the appeal reveals that the appellant filed departmental appeal in collective capacity alongwith other teachers of District Shangla, in accordance with Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, each and every aggrieved civil servant will have to file separate application to the departmental authority for redressal of his grievance and if department refuses, then he could come to this Tribunal for the said relief.

10. In view of above discussion, the appeal in hand is dismissed being incompetent. Cost shall follow the event. Consign.

11. *Pronounced in camp court at Swat and given our hands and seal of the Tribunal on this 6<sup>th</sup> day of June, 2024.*

  
(MUHAMMAD AKBAR KHAN)  
Member (E)  
Camp Court Swat

  
(RASHIDA BANO)  
Member (J)  
Camp Court Swat

rules vide notification dated 13.08.2018. As per prevailing rules and old rules criteria for promotion to the post of SPST was seniority-cum-fitness. Appellant is required to established his seniority first but he was not at the top of seniority list and was at serial No. 151 of the Seniority list, while vide notification dated 13.08.2018 only 55 PSTs were promoted to the post SPSTs. The process for their promotion was initiated under old rules of year 2012 which is evident from correspondence among DEO (M) Shangla and SDEOs as working paper was prepared as a result of letter of DEO (M) Shangla 20.09.2017 in year 2017 before notification of new rules. In the working paper name of the appellant was not included as he was junior in the seniority therefore, his contention that he was deferred due to framing of new rules is not supported by documents. When respondent department initiated process of promotion on the basis of old rules then not consider them at eleventh hours is unjustified and against the principle of natural justice, therefore, those PSTs who have F.A qualification was rightly promoted as process for their promotion was initiated much before notification of new rules. Now after notification of new rules, appellant could not claim his promotion on the same analogy by keeping himself at par with them as he was not considered for promotion being junior to those who were promoted on the basis of old rules.


8. Appellant filed instant appeal under section 4 of service Tribunal Act, 1974 in accordance with which filing of departmental appeal is mandatory to approach this Tribunal. Right of appeal was provided to a civil servant under Rule 3 of Khyber Pakhtunkhwa appeal rules 1986, which read as:



facts and norms of natural justice and materials on the record, hence not tenable and is liable to be modified. He further argued that respondents acted in arbitrary and malafide manner by not promoting the appellant to the post of SPST (BPS-14) according to the notification dated 13.11.2012.

6. Conversely, learned Assistant Advocate General contended that appellant has treated in accordance with law and rules. He further contended that notification dated 30.01.2018 was issued in accordance with law, rules and liable to be maintained. He further contended that appellant is neither on the top of seniority list nor deferred for being not eligible to be promoted to the post of SPST. Furthermore, it is correct that criteria for initial appointment and qualification for the post PST has been amended to BA instead of FA.

7. Perusal of record reveals record reveals that appellant through instant appeal seeks his promotion to SPST BPS-14 according to old rules of the respondent department notified on 13.11.2012 wherein qualification for initial appointment as PST and promotion to SPST was FA and not BA like the new rules notified by the department on 30.1.2018. Appellant contended that he was at the top of seniority list and his promotion was deferred due to process of framing of new rules, which was notified on 30.01.2018. When new rules were notified, qualification was enhanced from FA to BA for promotion to the post of SPST and for initial appointment to the post of PST and he was deprived from his right of promotion due to enhancement of qualification. He also alleged that some of his colleagues were promoted to the post of SPST on the basis of old



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

2. Brief facts leading to the filing of the instant appeal are that the appellant was appointed as Primary School Teacher (BPS-7) now (BPS-12) in respondent department vide order dated 28.10.2008 and was placed at serial No. 176 of the seniority list maintained for PSTs of District Shangla; that respondent department vide notification dated 13.11.2012 laid down the method of recruitment, qualification, and other conditions specified for various categories of the teaching staff wherein at Serial No. 20 of the appendix for the post of SPST (BPS-14) the method of recruitment was mentioned; that on the basis ibid notification colleagues of the appellant having FA and relevant qualification were given promotion to the post of SPST and PSHT but promotion of the appellant was deferred on the reason of new service structure have been introduced by the respondent department vide impugned notification dated 30.01.2018 wherein the qualification for the post of SPST was introduced as BA and FA was excluded from the impugned notification. Feeling aggrieved, he filed departmental appeal 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 on the appeal. We have heard learned counsel for the appellants and learned Additional Advocate General for the respondents.

5. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and rules. He further argued that impugned notification dated 31.01.2018 is ultra vires, against the law,



**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR AT**  
**CAMP COURT SWAT**

Service Appeal No:29/2019

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)  
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

Mr. Fazal e Subhan, Primary School Teacher (BPS-12) Government  
Primary School Koo District Shangla.

.... (Appellant)

**VERSUS**

1. The Secretary Elementary & Secondary Education (E&SE) Department, Government of Khyber Pakhtunkhwa, Peshawar.
2. The Government of Khyber Pakhtunkhwa through Secretary Establishment, Civil Secretariat Peshawar.
3. The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
4. The Director, Elementary & Secondary Education (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
5. District Education Officer, Shangla.

.... (Respondents)

Umar Farooq Mohmand  
Advocate

... For appellant

Mr. Umair Azam  
Additional Advocate General

... For respondents

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Date of Institution..... 01.01.2019  
Date of Hearing..... 06.06.2024  
Date of Decision..... 06.06.2024

**JUDGMENT**

**RASHIDA BANO, MEMBER (J):** The instant service appeals have been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of the instant appeal, the impugned notification dated 30.01.2018 communicated on 17.08. 2018 may kindly be modified/amended and the respondents may be directed to promote the appellant to the post of SPST (BPS-14) according to the notification dated 13.11.2012 with all back benefits. Any other

