

ORDER

31.05.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, learned Deputy District for the respondents present.
2. Vide our detailed judgment of today placed on file, it is held that departmental appeal as well as service appeal of the appellant was barred by time, therefore, the appeal in hand is dismissed being not competent. Parties are left to bear their own costs. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 31st day of May, 2024.*


(FARNEHA PAUL)
Member (E)


(RASHIDABANO)
Member (J)

reported as 1987 SCMR 8 has held that when an appeal is required to be dismissed on the ground of limitation, its merits need not to be discussed.

10. Consequently, it is held that as the departmental appeals as well as service appeals of the appellants were barred by time, therefore, the instant appeal as well as connected service appeals stands dismissed being not competent. Parties are left to bear their own costs. File be consigned to the record room.

11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 31st day of May, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDABANO)
Member (J)

including the appellants were upgraded to (BPS-12) from (BPS-7) and cadres of SPSTs and PSHTs were created. So, notification challenged by the appellants is not a promotion notification rather it was an up-gradation notification and appellants are beneficiaries of it.

8. The appellants through instant appeals challenged promotion notification dated 23.05.2015 whereby 102 PSTs were promoted to the post of SPST (BPS-14). Perusal of notification dated 01.02.2018 reveals that 66 PST were promoted to the post of SPST. Appellants under the Appeal Rules, 1986 and Section of 4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974 was required to challenge both the promotion notifications dated 23.05.2015 and 01.02.2018 within 30 days of its passing by filing of departmental appeals to the departmental appellate authority which they filed on 13.09.2018 after lapse of three years and four months from the promotion order dated 23.05.2015 and seven months and twelve days from the promotion order dated 01.02.2018 which is hopelessly barred by time. August Supreme Court of Pakistan in its judgment reported as 2011 SCMR 08 has held that question of limitation cannot be considered a technicality simplicitor as it has bearing on merit of the case.

9. It is well settled that law favors the diligent and not the indolent. The appellant remained indolent and did not agitate the matter before the departmental authority and the Service Tribunal within the period prescribed under the relevant law. This Tribunal can enter into merits of the case only, when the appeal is within time. Supreme Court of Pakistan in its judgment



appellants as well as the learned Deputy District Attorney and perused the case file with connected documents in detail.

5. Learned counsel for appellants argued that appellants have not been treated in accordance with law and rules. He further argued that act and omission of the respondents is illegal, un-constitutional, without jurisdiction, without lawful authority against facts and material on record; that appellants were discriminated and juniors to them were promoted which is against the norms of natural justice and law. He requested that instant appeal might be accepted.

6. Conversely, learned Deputy District Attorney contended that appellants have been treated in accordance with law and rules. He further contended that promotions are carried out under the criteria of seniority cum-fitness and in accordance with law/rules and the appellants have not been discriminated. Appellants have been promoted to the post of PSH (BPS-15) on their own turn in accordance with their seniority position vide order dated 22.09.2021. He further contended that departmental appeal of the appellants are time barred, hence the instant service appeal is incompetent. He requested that instant appeal might be dismissed.

7. Perusal of record reveals that appellants were inducted in Education Department as PST/PTC in (BPS-7) vide order dated 30.06.2006. The post of PST was upgraded to (BPS-12) vide notification dated 11.07.2012. Although in the heading of appeals, appellants challenged notification bearing No. 18/E&SE/2012 dated 11.07.2012 by terming it promotion notification, but in fact it is up-gradation notification, in accordance with which all the PSTs

“On acceptance of this service appeal, the impugned order /notification be set aside and respondents be directed to make promotion according to the seniority list and the appellant may kindly be given her due right and the respondents may kindly be directed to issue orders of promotion of the appellant and may also kindly be awarded with all back benefits. Any other remedy which deems fit appropriate may also be granted in favor of the appellant.”

2. Through this single judgment, we intend to dispose of the instant service appeal as well as connected service appeals which are mentioned below, as in all these appeals common questions of law and facts are involved:

1. S.A No. 53/2017, Mst. Waheeda Vs. Education Deptt:

2.S.A No. 54/2017, Mst. Sabeeha Khanum Vs. Education Deptt:

3. Brief facts of the case, as given in the memoranda of appeals, are that appellants were appointed as Primary School Teachers (PST) in Education Department in the year 2006. That in the year 2012, District Education Officer, (Female) issued promotion order/notification dated 11.07.2012 wherein junior to the appellants were promoted. That in the year 2015 and 2018 again junior to them were promoted and appellants were ignored. Feeling aggrieved, they filed departmental appeals, which was not responded, hence the instant service appeals.

4. Respondents were put on notice, who submitted written replies/comments on the appeals. We have heard the learned counsel for the



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.52/2019

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

**Mst. Rohi Bibi W/O Khalid Khan R/O Mohallah Batakzai, Kheshgi Bala,
Tehsil & District Nowshera.**

... (Appellant)

VERSUS

1. District Education Officer (Female) Nowshera.
2. The SDEO (F) Nowshera.
3. District Account Officer Nowshera.
4. The Secretary, Elementary & Secondary Education Department, Peshawar.
5. The Director, Elementary & Secondary Education Department, Peshawar.
6. The Government of Khyber Pakhtunkhwa through its Chief Secretary.

... (Respondents)

Mr. Naseer Uddin Shah
Advocate ... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney ... For respondents

Date of Institution.....11.11.2018
Date of Hearing.....31.05.2024
Date of Decision.....31.05.2024

CONSOLIDATED 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:

