

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.476/2019

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

Mr. Gul Yar Khan, Subject Specialist (BPS-18), GHSS Fateh Pur Swat.
... (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber, Peshawar.
2. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
4. The Secretary E&SE Department, Khyber Pakhtunkhwa, Peshawar.
5. Mr. Muhammad Amin, Subject Specialist (BPS-19).
... (Respondents)

Noor Muhammad Khattak
Advocate ... For appellant

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

Date of Institution.....22.03.2019
Date of Hearing.....20.06.2024
Date of Decision.....20.06.2024

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:

“That on acceptance of this appeal the impugned notification dated 16.04.2015 may very kindly be modified/rectified and the respondents may kindly be




directed to grant/allow ante dated promotion to the appellant to the post of Subject Specialist w.e.f. 14.03.1998 with all back benefits including seniority. Any other remedy which this Tribunal deems fit that may also be awarded in favor of the appellant.”

2. Brief facts of the case are that the appellant was appointed as Subject Specialist (BPS-17) in respondent department vide order dated 11.12.1989 and since his appointment he was performing his duty upto the entire satisfaction of superiors. During service colleagues of the appellant filed service appeal bearing No. 970/2008 for the grant of seniority w.e.f. the date of first appointment which was allowed vide order dated 21.10.2008. In compliance of judgment, respondents accordingly assigned seniority from the date of initial appointments. Appellant being similarly placed employee of the department filed service appeal bearing No. 3147/2010 which was allowed in favour of the appellant. Respondents implement the vide notification dated 04.04.2014 by assigning seniority to the appellant w.e.f 11.12.1989. Thereafter he was further promoted to the post of BPS-18 vide notification 16.04.2015 with immediate effect rather with retrospective effect i.e 14.03.1998. Feeling aggrieved, appellant 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 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



7. Now appellant through instant appeal want to ante-date his promotion order to BPS-18 dated 16.04.2015 with 14.03.1998. when his colleagues were promoted on the ground of similarly placed employee. So, appellant seek antedation of his promotion on the principle of similarly placed person, in such a situation it is the department/authority who can determined that whether appellant case is at par with the case of those who were promoted with effect from 14.03.1998, or not, therefore, it will be in the fitness of things and interest of justice to let the authority himself determine the suitability of the case of the appellant for ante-dation of his promotion with those mentioned in the appeal and promoted with effect from 14.03.1999, whether case of both are similar in each direction and in true sense or not. If case of the appellant is similar to those then to grant him ante dated promotion like all those i.e. promotees of 14.03.1998 and if not then differentiate it.

8. For what has been discussed above, we are unison to remand the case for deciding departmental appeal by keeping the case of appellant at juxta position with the case of those whose promotion was antedated to 14.03.1998 within period of 90 days after receipt of this judgment. 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 20th day of June, 2024.*



(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

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 record reveals that appellant was initially appointed as Subject Specialist (BPS-17) in the respondent department on 11.12.1989. During service colleagues of the appellant knocked the door of this Tribunal in Service Appeal No.970/2008 for the grant of seniority w.e.f. the date of first appointment. The said appeals of the colleagues were allowed through consolidated judgment dated 21.10.2008. The judgment of the Tribunal was implemented by the respondents and accordingly the colleagues of the appellant were assigned seniority from the date of initial appointments. The colleagues of the appellant were promoted to the post of Subject Specialist (BPS-18) with immediate effect instead from the date when similarly placed employees of the respondent department were promoted i.e. w.e.f. 14.03.1998. The colleagues of the appellant had agitated the said issue on departmental level and finally through notification dated 06.09.2011 the said promotions were ante dated to the colleagues of the appellant w.e.f. 14.03.1998. The colleagues of the appellant were further promoted to the post of BPS-19 vide notification dated 21.04.2014. The appellant being similar placed person/employee of the respondent department knocked the door of this august Tribunal in appeal No.3147/2010, accordingly the same was allowed through judgment dated 29.11.2012. The respondents implemented judgment vide notification dated 04.04.2014 by assigning seniority to the appellant w.e.f. 11.12.1989.




ORDER


20.06.2024

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, we are unison to remand the case for deciding departmental appeal by keeping the case of appellant at juxtaposition with the cases of those whose promotion was antedated to 14.03.1998 within a period of 90 days after receipt of this judgment. 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 20th day of June, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)