

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, AT CAMP COURT
SWAT**

Service Appeal No.7117/2021

**BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MRS. RASHIDA BANO ... MEMBER (J)**

**Mr. Muhammad Ashraf S/o Muhammad Akram Jan R/o Lelonai,
Tehsil Alpuri, District, Shangla. Presently posted as Senior Clerk
(BPS-14 Own Pay Scale).**

.... (Appellant)

VERSUS

1. Secretary, Elementary & Secondary Education, Khyber Pakhtunkhwa,
Peshawar
2. The Director, Elementary & Secondary Education, Department,
Peshawar.
3. District Education Officer (Male), Shangla.
4. District Education Officer (Female), Shangla.

... (Respondents)

Mr. Shahid Mehmood Khan ... For appellant
Advocate

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....23.07.2021
Date of Hearing.....03.09.2024
Date of Decision.....03.09.2024

JUDGMENT

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

**“On acceptance of this appeal, order Endst. No.1769-74/F.N/A-
23/Appeal against M. Ashraf Shangla, dated 24.02.2021 of the**

respondent No.2 may kindly be set aside and to give effect to order dated 15.02.2021.”

2. Brief facts of the case are that appellant was appointed as Class-IV in the respondent department. He was promoted to the post of Junior Clerk (BPS-11) on 20.05.2004. The respondent No.2 issued tentative seniority list of 498 employees on 06.01.2021 and was duly sent to respondent No.3, asked to check seniority list and file the objections, if any, but no objection was filed by respondent No.3 and appellant was placed at Sr. No.478. That on 15.02.2021, another order alongwith seniority list was issued by respondent No.2 in respect of 498 employees and the appellant was placed at Serial No.311 and he was duly promoted to BPS-14 as Senior Clerk as most of the employees who were included in seniority list dated 06.01.2021 were either retired or some of them were died. It is important to mention here that some private respondents who were either aggrieved or not filed a departmental appeal to wrong forum and after a lapse of more than 30 days, which is statutory period of filing departmental appeal, which was duly entertained by respondents. In pursuance of order dated 15.02.2021 the appellant services were placed at GHSS Olandar, District Shangla against already occupied post of Senior Clerk (BPS-14), the appellant got NOC and thereafter approached to DEO (Male) respondent No.3, he sent a letter to respondent No.2 to adjust the appellant at DEO (Female) Office. On 24.02.2021, respondent No.3 withdrew the order dated 15.02.2021; that on 19.04.2021, the appellant was adjusted against the vacant post of Senior Clerk in his own pay and scale; 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 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).
6. Perusal of record reveals that appellant through instant appeal requested for setting aside of order dated 24.02.2021 vide which promotion order of the appellant from Junior Clerk to Senior Clerk dated 15.02.2021 was withdrawn by respondent No.2. Record reveals that appellant was appointed by the then DCO vide order dated 11.07.1996 as Naib Qasid, who was promoted vide order dated 20.05.2004 by District Coordination Officer being Chairman of District Selection Board (DSB), Shangla to the post of Junior Clerk BPS-5 from in-service officials, who was serving in Education department and was posted there being head of District as during those days DCO was overall incharge of all the departments at the district level. After that name of the appellant was properly reflected in the seniority list maintained by education department that is why, he was promoted by the respondent vide order dated 15.02.2021 on the basis of seniority cum fitness.
7. Respondent in their reply/comments had taken the plea that appellant appointment order was withdrawn, because he was not employee of the

Education Department, but this fact is not mentioned in the withdrawn order dated 24.02.2021, besides earlier, during days of appointment and promotion of appellant District Co-ordination officer was overall in-charge of all the departments of district and he was used to appoint and promote all the officials employed in different departments at the district level including Education Department, which is evident from promotion/appointment order dated 20.05.2004, where all the appointees/promotees were posted in different schools and offices of Education Department including appellant.

8. When representative of respondent was asked to produce even a single order of posting of appellant outside Education Department right from his promotion/appointment as Junior Clerk, but he failed to produce the same, which means that appellant is employee of Education Department and he was rightly promoted on the basis of seniority cum fitness vide order dated 15.02.2021. Therefore, in the circumstance, withdrawal of promotion order of appellant vide order dated 24.02.2021 is not in accordance with the rules and is without any justification.

9. For what has been discussed above, we are unison to accept the appeal in hand. Cost shall follow the events. Consign.

10. Pronounced in camp court at Swat and given under our hands and seal of the Tribunal on this 03th day of September, 2024.

(KALIM ARSHAD KHAN)
CHAIRMAN

(RASHIDA BANO)
Member (J)

ORDER

03.09.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, learned District Attorney alongwith Syed Hussain Shah, ADEO, for respondents present.
2. For what has been discussed above, we are unison to accept the appeal in hand. Cost shall follow the events. Consign.
3. *Pronounced in camp court at Swat and given under our hands and seal of the Tribunal on this 03th day of September, 2024.*

(KALIM ARSHAD KHAN)
CHAIRMAN

(RASHIDA BANO)
Member (J)

*M.Khan