

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No.1294/2019**

**BEFORE: MR. AURANGZEB KHATTAK ... MEMBER (J)**  
**MRS. RASHIDA BANO ... MEMBER (J)**

**Mst. Naseem Akhtar D/O Ghulam Siddique R/O Ghallani Town Near  
Wensam College, D.I.Khan.**

**... (Appellant)**

**VERSUS**

1. Government of Khyber Pakhtunkhwa through Secretary Finance Department, Civil Secretariat, Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Civil Secretariat, Peshawar.
3. Director, Elementary & Secondary Education Department, Peshawar.
4. District Education Officer D.I.Khan.
5. District Account Officer, D.I.Khan.

**... (Respondents)**

Mr. Mohsin Ali Advocate  
Advocate

... For Appellant

Muhammad Jan  
District Attorney

... For Respondents

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Date of Institution.....08.10.2019

Date of Hearing.....30.07.2024

Date of Decision.....30.07.2024

**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:



**“On acceptance of this appeal, this Hon’ble Tribunal may be please to declared the act of the respondents while they started the recovery from the appellant on the basis of alleged audit para.”**

2. Perusal of the record reveals that the appellant was appointed as an S.V. (untrained) Teacher (BPS-09) on fixed pay, as per the order dated 24.06.1996, and her service was later regularized along with others. She was promoted to the position of Senior C.T. (BPS-16) by order dated 12.05.2017, with effect from 20.02.2013, upon the recommendation of the DPC and in pursuance of notification (Regular Wing) No. FS/SO/EDU)SSD/UP-GRADATION/2882-94 dated 22.06.2016, which was duly endorsed by the Directorate of Education FATA on 08.08.2016. Following her promotion to the post of Senior C.T. (BPS-16) effective from 20.02.2013, the appellant received all back benefits from that date. Upon reaching the age of superannuation, she retired from service on 11.12.2017. During an audit, the audit party discovered that the promotion had been granted with retrospective effect, which led them to conduct a para audit, resulting in deductions from the appellant's pension.

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. A perusal of the record reveals that the appellant was appointed as an S.V. (untrained) Teacher (BPS-09) on fixed pay, as per the order dated 24.06.1996, and her service was later regularized along with others. She was promoted to the position of Senior C.T. (BPS-16) by order dated 12.05.2017, with effect from 20.02.2013, upon the recommendation of the DPC and in pursuance of notification (Regular Wing) No. FS/SO/EDU)SSD/UP-GRADATION/2882-94 dated 22.06.2016, which was duly endorsed by the Directorate of Education FATA on 08.08.2016. Following her promotion to the post of Senior C.T. (BPS-16) effective from 20.02.2013, the appellant received all back benefits from that date. Upon reaching the age of superannuation, she retired from service on 11.12.2017. During an audit, the audit party discovered that the promotion had been granted with retrospective effect, which led them to conduct a para audit, resulting in deductions from the appellant's pension.

7. The audit party raised the objection that promotions should always take effect immediately. In this regard, it is pertinent to note that respondent No. 4 indicated that the appellant, along with others, was promoted due to the upgradation of various categories of teachers working in FATA. This was done as an incentive for higher pay scales, effective from 01.07.2012, as stated in the notification dated 08.08.2016. Sanction was accorded by the Finance Department and the competent authority in accordance with the Elementary and Secondary Education Department Khyber Pakhtunkhwa

Notification dated 11.07.2012. According to this, one-third of the total posts (985) were upgraded to (BPS-16) and re-designated as Senior C.T. As per the formula, a total of 13 posts of female C.Ts were upgraded, of which one-third falls under the promotion quota, amounting to 4. This is evidenced by the minutes of the DPC dated 07.03.2017, which recommended the appellant and others for promotions to Senior CT (BPS-16) with effect from 20.02.2013, as they were eligible and the senior-most C.Ts in BPS-15. The promotions of the appellant and three others were given retrospective effect because the main upgradation notification dated 08.08.2016 stated that posts were upgraded from 01.07.2012. Legally, the posts of Senior C.Ts were allocated by the Finance Department, and the appellant fulfilled the criteria for promotion, including the required length of service and seniority, which is why the respondent promoted the appellant with retrospective effect.

8. The appellant was rightly promoted with effect from 20.02.2013, in accordance with the policy and notification dated 02.08.2016; thus, this was in compliance with the rules. Therefore, the recovery of benefits obtained or received by the appellant, and any deductions from her, are unjustified, especially when the respondent department still acknowledges her retrospective promotion order and deems it legal and valid. This implies that it remains in effect and intact.

9. The appellant has rightfully received benefits from 20.02.2013 based on a valid order. If she had revised it based on an incorrect order, those benefits could not be recovered from her, as she received them in good faith.



Our view is further supported by the Supreme Court in the judgment reported in PLD 1992 SC 207, which is stated as follows:

*“(c) --Principle of---Locus poenitentiae is the power of receding till a decisive step is taken but it is not a principle of law that order once passed becomes irrevocable and past and closed transaction.*

*Locus poenitentiae is the power of receding till a decisive step is taken. But it is not a principle of law that order once passed becomes irrevocable and it is past and closed transaction. If the order is illegal then perpetual rights cannot be gained on the basis of an illegal order. In the present case the appellants when came to know that on the basis of incorrect letter, the respondent was granted Grade-11, they withdrew the said letter. The principle of locus poenitentiase would not apply in this case. However, as the respondent had received the amount on the bona fide belief, the appellant is not entitled to recover the amount drawn by the respondent during this period when the letter remained in the field.*

*(d) Principle of--- Recovery of amount paid on a on basis of incorrect order and the recipient had received same bona fide belief that he was entitled to it---Payer was not entitled to recover the amount from the payee during the period when incorrect order remained in field and principle of locus poenitentiae would be applicable to the case.*



10. For what has been discussed above, we are unison to accept the service appeal in hand as prayed for. Costs shall follow the event. Consign.

*11. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 30<sup>th</sup> day of July, 2024.*

  
(AURANGZEB KHATTAK)  
MEMBER (J)

  
(RASHIDA BANO)  
MEMBER (J)

\*M.Khan

**ORDER**

30.07.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney alongwith Mr. Kamran, ADEO, for the respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to accept the service appeal in hand as prayed for. Costs shall follow the event. Consign.

*11. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 30<sup>th</sup> day of July, 2024.*

  
(AURANGZEB KHATTAK)  
MEMBER (J)

  
(RASHIDA BANO)  
MEMBER (J)

\*M.Khan