

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.2281/2023

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

Mr. Gul Rehman Son of Baaz Muhammad Khan R/o Otetai Tehsil Timergara, District Dir Lower, serving as SST (Science) BPS-17 (Personal), Government High School, Bajawar Talash, District Dir Lower.

... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa, through Secretary Education at Peshawar and 22 others.

... (Respondents)

Syed Abdul Haq
Advocate

...

For appellant

Asif Masood Ali Shah
Deputy District Attorney

...

For respondents

Date of Institution.....09.06.2020
Date of Hearing.....12.09.2024
Date of Decision.....12.09.2024

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, the impugned order/notification/Promotion order dated 12.02.2020 be set aside to the extent of private respondents & the appellant be considered for promotion to the post of S.S w.e.f. 12.02.2020.”

2. The brief facts of the case, as articulated in the memorandum of appeal, indicate that the appellant was initially appointed as a Senior Science Teacher (SST) in BPS-16 on a contract basis via order dated 25.11.2008. Subsequently, the competent authority regularized the services of the appellant, along with other colleagues, on 01.01.2009 under the Regularization of Services Act, 2009, with the appellant being listed at Serial No. 600 in the notification. Respondent No. 4 issued a tentative seniority list for SST (Science) and SST (General), wherein the appellant was placed at Serial No. 2414, while private respondents No. 5 and 6 were positioned at Serial No. 2518 and 2580, respectively. However, the aforementioned private respondents were promoted based on their "older in age" status under the mandate of the Regularization of Services Act, 2009. In the same promotion order dated 12.02.2020, the junior-most colleagues/respondents, i.e., No. 7 to 23, who are younger in age, were also promoted based on another impugned seniority list. The appellant, feeling aggrieved, filed a departmental appeal, which went unanswered, thereby leading to the present 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 Deputy 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. A perusal of the record reveals that the appellant was initially appointed as SST (Science) in BPS-16 on a contract basis via order dated 25.11.2008. Subsequently, the competent authority regularized the services of the appellant along with other colleagues on 01.01.2009 under the Regularization of Services Act, 2009.

7. The prayer in the instant service appeal is to set aside the promotion notification dated 12.02.2020 concerning private respondents No. 5 to 23, with a further request to consider the appellant for promotion to the post of SST with effect from 12.02.2020. Private respondents No. 5 to 23, as per the seniority list for the year 2019, were shown to be senior to the appellant, having been promoted based on their eligibility, requisite length of service, and qualifications.

8. If the appellant had grievances regarding the seniority of private respondents No. 5 to 23, he should have sought correction by approaching the competent authority. In the event of failure, he could have filed a service appeal for the correction of inter-se seniority, which is not his prayer in the instant appeal. The private respondents were promoted on the basis of seniority-cum-fitness, which is consistent with the current seniority list.



9. For what has been discussed above, we are in unison to dismiss the instant service appeal. Costs shall follow the event. The case is hereby consigned.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 12th day of September 2024.*



KALIM ARSHAD KHAN
CHAIRMAN




(RASHIDA BANO)
MEMBER (J)


*M.Khan

5th Sept, 2024

1. Appellant in person present. Mr. Uzair Azam, Additional Advocate General for the official respondents present.

2. Appellant seeks adjournment on the ground that his counsel is not available today. Case pertains to the year 2020, therefore, adjourned but on payment of cost of Rs. 5000/- to be paid by the appellant. To come up for arguments on 12.09.2024 before D.B at principal seat Peshawar. P.P given to the parties.


(Rashida Bano)
Member(J)


(Kalim Arshad Khan)
Chairman
Camp Court Swat

Adnan Shah, P.A

ORDER

12.09.2024 1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Tauseeq Ahmed, Litigation, for the respondents present.

2. Vide our detailed judgment of today placed on file, we are in unison to dismiss the instant service appeal. Costs shall follow the event. The case is hereby consigned.

3. ***Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 12th day of September 2024.***


KALIM ARSHAD KHAN
CHAIRMAN


(RASHIDA BANO)
MEMBER (J)

*M.Khan