

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,PESHAWAR**  
**AT CAMP COURT, ABBOTTABAD**

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**  
**FAREEHA PAUL** ... **MEMBER(Executive)**

*Service Appeal No.586/2024*

Date of presentation of Appeal.....05.04.2024  
Date of Hearing.....23.09.2024  
Date of Decision.....23.09.2024

**Abdul Jalil, SST (Physics/Maths) BPS-15, GHS Bartooni, District Torghar.....(Appellant)**

Versus

1. **The Secretary** Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. **The Director,** Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. **The District Education Officer (Male) Torghar...(Respondents)**

Present:

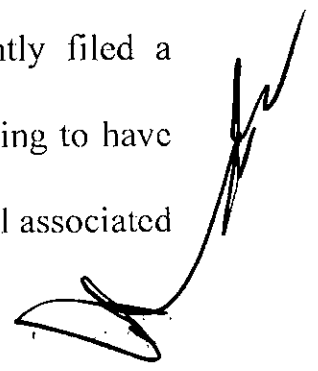
Mr. Muhammad Arshad Khan Tanoli, Advocate.....For the appellant  
Mr. Asif Masood Ali Shah, Deputy District Attorney ....For respondents

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**SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE NOTIFICATION DATED 08.12.2023, WHEREBY THE APPELLANT WAS PROMOTED TO THE POST OF SST (BPS-16) IN PHYSICS/MATHS GROUP UNDER 40% QUOTA OF SCT/CT WITH IMMEDIATE EFFECT INSTEAD OF 22.04.2021 I.E. THE DATE ON WHICH THE POST OF SST (BPS-16) IN PHYSICS/MATHS GROUP WAS VACANT/AVAILABLE UNDER 40% PROMOTION QUOTA AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.**

**JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** Facts of the case of the appellant, gathered from memorandum and grounds of appeal are that the appellant, was qualified with MA and M.Ed

degrees, was appointed as a CT teacher in the Physics/Maths group on April 9, 2016, with his service regularized from May 29, 2019; that according to a departmental notification issued on July 24, 2014, the post of SST (BPS-16) was to be filled through a 75% promotion quota based on seniority and fitness. This included a 40% quota for Senior Certified Teachers (SCT) with at least five years of service and specific qualifications; that in 2020 and 2021, the department appointed four individuals to the SST (BPS-16) position in the Physics/Maths group allegedly without utilizing the promotion quota, prompting the appellant to file a departmental appeal in July 2022 for promotion based on a vacant post that arose when one of the newly appointed teachers was reassigned. Despite being eligible, the appellant was not promoted, leading him to escalate the matter to the Peshawar High Court; that on September 21, 2023, the Hon'ble Peshawar High Court directed the department to consider his case in the upcoming Departmental Promotion Committee (DPC); that following the DPC's recommendation, the appellant was promoted on December 8, 2023, but the promotion was made effective immediately rather than from the earlier available date of April 22, 2021; that feeling aggrieved, he consequently filed a departmental appeal on December 26, 2023, seeking to have his promotion backdated to April 22, 2021, with all associated



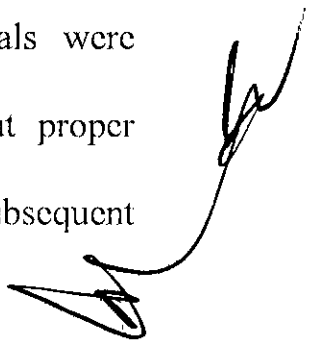
benefits, but the same was not responded, hence, the instant service appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned, who 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.

3. We have heard learned counsel for the appellant and learned Deputy District Attorney for the respondents.

4. 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).

5. After reviewing the facts presented, it is evident that the appellant, holding MA and M.Ed degrees, was appointed as a CT teacher in the Physics/Maths group on April 9, 2016, with regularization of service from May 29, 2019. According to the departmental notification dated July 24, 2014, the promotion to the post of SST (BPS-16) should have followed a defined quota system, allocating 75% of the posts for promotion based on seniority and fitness, with 40% specifically reserved for Senior Certified Teachers (SCT) meeting certain criteria. Despite this, in 2020 and 2021, four individuals were appointed to the SST (BPS-16) positions without proper adherence to the promotion quota. The appellant's subsequent

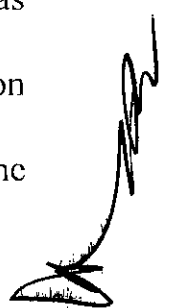


departmental appeal in July 2022 for promotion to the vacant post, created by the reassignment of one of these newly appointed teachers, was not addressed favorably. Following a direction from the Peshawar High Court on September 21, 2023, the Departmental Promotion Committee (DPC) did eventually recommend the appellant for promotion, but the effective date was set as December 8, 2023, instead of the earlier date of April 22, 2021, when allegedly the vacancy arose. The appellant's subsequent appeal on December 26, 2023, seeking redress for this oversight was allegedly not adequately addressed by the department, necessitating this service appeal.

6. Before filing this appeal the appellant had filed Writ Petition No.296-A/2023 before the Hon'ble Peshawar High Court, Abbottabad Bench, the prayer of which is as under:

*"ON ACCEPTANCE OF THIS WRIT PETITION, RESPONDENTS MAY GRACIOUSLY BE DIRECTED TO ISSUE PROMOTION ORDER OF THE PETITIONER AGAINST THE VACANT POST OF SST (BPS-16) (PHYSICS/ MATHS GROUP) W.E.F 22.04.2021 WITH ALL BACK BENEFITS. ANY OTHER RELIEF WHICH THIS HONOURABLE COURT DEEMS FIT AND PROPER IN THE CIRCUMSTANCES OF THE CASE, MAY ALSO BE GRANTED TO THE PETITIONER"*

7. Not only the appeal but the entire body of the appeal as well as the writ petition are verbatim copy. The writ petition was decided by the Hon'ble Peshawar High Court in the following manner:



*"In view of the above, this writ petition is disposed of with direction to respondents to consider the case of the petitioner in the coming Departmental Promotion Committee for the post of SST (BPS-16)."*

8. The relief prayed in this appeal was taken up before the Peshawar High Court in the above manner, which has been admittedly granted to the appellant. Therefore, this appeal is barred under Rule-23 of the Khyber Pakhtunkhwa Service Tribunal Rules, 1974. The said Rule is reproduced as under:

*"23. No entertainment of appeal in certain cases:-The Tribunal not shall entertain any appeal in which the matter directly and substantially in issue has already been finally decided by a Court or a Tribunal of competent jurisdiction."*

9. In view of the above, instant service appeal is dismissed with costs. Consign.

10. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 23<sup>rd</sup> day of September, 2024.*



**KALIM ARSHAD KHAN**  
Chairman




**FAREEHA PAUL**  
Member (Executive)

18.07.2024

SCANNED  
KPST  
IPeshawar

1. Learned counsel for the appellant present. Mr. Arshad Azam, Assistant Advocate General alongwith Mr. Muhammad Imran, Assistant and Mr. Munir Akbar, ADEO for the respondents present.
2. Reply/comments on behalf of respondents submitted through office which are placed on file. Copy of the same handed over to learned counsel for the appellant. The case pertains to camp court Abbottabad, therefore, let it be fixed for arguments on 23.09.2024 before the D.B at camp court Abbottabad. P.P given to the parties.

  
(Muhammad Akbar Khan)  
Member (E)

\*Kamranullah\*

S.A #.586/2024

**ORDER**

23<sup>rd</sup> Sep. 2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for respondents present.
2. Vide our detailed judgment of today placed on file, instant service appeal is dismissed with costs. Copy of the judgment be placed on file of this appeal. Consign.
3. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 23<sup>rd</sup> day of September, 2024.*

  
(Faroocha Paul)  
Member (E)

Camp Court, Abbottabad

  
(Kalim Arshad Khan)  
Chairman

Camp Court, Abbottabad

\*Mutazem Shah\*