

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

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

Service Appeal No. 109/2023

**Mansab Ali S/O Yousaf Ali R/O Village Kirman P.O & Tehsil
Parachinar Upper District Kuram.....Appellant**

Service Appeal No. 110/2023

**Ashiq Hussain S/O Nisar Ali R/O Zeeran Hssan Zai Sehra Parachinar
Tehsil Upper District Kuram.....Appellant**

Service Appeal No. 111/2023

**Israr Hussain S/O Lal Hussain R/O Village Shelozan P.O & Tehsil
Parachinar Upper District Kuram.....Appellant**

Service Appeal No. 112/2023

**Gohar Ali S/O Manzar Ali R/O Village Burki P.O & Tehsil
Parachinar Upper District Kuram.....Appellant**

Service Appeal No. 113/2023

**Muhammad Ibrahim S/O Mashallah R/O Village Shalozan P.O &
Tehsil Parachinar Upper District Kuram.....Appellant**

Service Appeal No. 114/2023

**Muhammad Khan S/O Hasan Khan R/O GHS Bughdi P.O &
Tehsil Parachinar Upper District Kuram.....Appellant**

Service Appeal No. 115/2023

**Muhammad S/O Rehan Ali R/O Village Kunj Alizai P.O & Tehsil
Parachinar Upper District Kuram.....Appellant**

Service Appeal No. 116/2023

**Dildar Hussain S/O Ghulam Hussain R/O Village Zeran Yousaf
Khel P.O & Tehsil Parachinar Upper District Kuram.....Appellant**

Service Appeal No. 118/2023

**Majeed Hussain S/O Hussain Afzal R/O Village Shelozan P.O &
Tehsil Parachinar Upper District Kuram.....Appellant**

Service Appeal No. 119/2023

Rashid Ali S/O Ali Madad R/O Village Maikai Malana P.O & Tehsil Parachinar Upper District Kuram.....Appellant

Service Appeal No. 120/2023

Irshad Hussain S/O Shabir Hussain R/O Village Shalozan P.O & Tehsil Parachinar Upper District Kuram.....Appellant

Service Appeal No. 121/2023

Syed Ahmad Raza S/O Sayed Muhammad Raza R/O Shaheed Abad College Colony P.O & Tehsil Parachinar Upper District Kuram.....Appellant

Service Appeal No. 122/2023

Muzahir Ali S/O Sarwar Ali R/O Village Pekar Alizai P.O & Tehsil Parachinar Upper District Kuram.....Appellant

Service Appeal No. 123/2023

Sardar Hussain S/O Muhammad Sarwar R/O GHS Zeran P.O & Tehsil Parachinar Upper District Kuram.....Appellant

Service Appeal No. 1380/2022

Akmal Hassan, SST (G) R/O Qaum Mani Khel Tappa Terai Kalaya P.O Kalaya Tehsil Lower District Aurakzai.....Appellant

Service Appeal No. 1473/2022

Alim Khan S/O Faiz Ullah Khan, SST (G) P.O Parachinar Zaerran Mula Bagh Tehsil Upper Kuram District Kuram.....Appellant

Service Appeal No. 1474/2022

Amjid Hussain S/O Gul Ali R/O Zerran Zorr Kalay Meer Kalay Barotha Colony Para Chinar Tehsil Upper Kurram District Kurram.Appellant

Service Appeal No. 1475/2022

Aman Ullah Jan S/O Mir Abdullah Jan R/O Imamia Colony Para Chinar Tehsil Upper Kurram District Kurram.....Appellant

Service Appeal No. 1817/2022

Ashiq Hussain S/O Muhammad Nazir R/O Kirman Yousaf Khel Tehsil Upper District Kurram.....Appellant

Service Appeal No. 1818/2022

**Arbab Hussain S/O Ali Amir R/O College Colony P.O & Tehsil
 Parachinar DistrictAppellant**

Service Appeal No. 7581/2021

**Mst. Gulzar Tabbasum SST General (BSP-16) GGMS Khuram
 China District Mohmand Government of Khyber Pakhtunkhwa,
 Education Department.....Appellant**

Service Appeal No. 7582/2021

**Mst. Kausar Parveen SST General, Presently at ASDEO (Female)
 Ghallani District Mohmand.....Appellant**

VERSUS

1. **Government of Khyber Pakhtunkhwa through Secretary
 Elementary & Secondary Education, Civil Secretariat, Peshawar.**
2. **Director Secretary Elementary & Secondary Education
 Department, Peshawar.**
3. **Director Education FATA, FATA Secretariat Khyber
 Pakhtunkhwa, Warsak Road, Peshawar.**
4. **Agency Education Officer, Education Office Ghallanai, District
 Mohmand.**

.... Respondents

Abdur Rehman Mohmand
 Advocate

... For appellant

Asif Masood Ali Shah
 Deputy District Attorney

... For respondents

 Date of Institution.....11.01.2023
 Date of Hearing.....10.07.2024
 Date of Decision.....10.07.2024



CONSOLIDATED JUDGMENT

RASHIDA BANO, MEMBER (J): This consolidated judgment is directed to dispose of all the twenty-two service appeals captioned above, as common questions of law and facts are involved in all the appeals.

2. These appeals have been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

On acceptance of these appeals,

A. An appropriate direction may please be issued and the promotion order of the appellants may kindly be ordered from the date of Notification i.e 24th July, 2014 like other employees of the other districts.

B. That appellants may kindly be compensate with all back benefits from the date of notification i.e 24th July, 2014 till the disposal of this Service Appeal.

C. And any other relief not specifically prayed and to which the appellant is found entitled may also be granted.

3. Brief facts of the case are that the appellants are Secondary School Teachers (SST) in BPS-16, have filed these appeals due to dissatisfaction with the respondents failure to address the issue of their delayed promotions. They argue that their promotions were unjustifiably postponed, negatively impacting their seniority and causing ongoing financial loss. According to the appellants, although they were promoted on 11.10.2017, they should have received their promotions in 2014, as their peers in established districts did.




Aggrieved by this delay, the appellants submitted departmental appeals, which were not responded, hence these service appeals.

4. Respondents were put on notice who submitted written replies/comments on the appeals. We have heard the learned counsel for the appellants as well as the learned Deputy District Attorney and perused the case files with connected documents in detail.

5. Learned counsel for the appellants have contended that the appellants have not been treated in accordance with law and their rights secured under law and constitution have been violated; that the respondents delayed promotions of the appellants for no good reason, which adversely affecting appellants financial rights as protected by the constitution and the appellants be treated at par like other employees of other districts who were promoted from 24.07.2014; that the delay occurred due to lethargic attitude of respondents, otherwise the appellants were equally fit for promotion like their counterparts working in other districts; that the appellants were discriminated which is highly deplorable, being unlawful and contrary to the norms of natural justice; He further added that the appellant be treated at par like other employees of other districts who were promoted in 2014 in pursuance of notification dated 24-07-2014 and shall equally be dealt with in accordance with law and rules.

6. Learned Deputy District Attorney appeared on behalf of respondents has contended that appellants have been treated in accordance with law and rules and no discrimination was made. He

 further contended that as per promotion policy, promotions are always

made with immediate effect and not with retrospective effect; that promotion is neither a vested right nor it can be claimed with a retrospective effect. Reliance was placed on 2005 SCMR 1742. Learned Deputy District Attorney further contended that notification dated 24.07.2014 is not applicable upon the appellants in accordance with which, the criteria for promotion to the upper scales of the teaching cadre/staff working in the Khyber Pakhtunkhwa was framed and notified excluding the teaching cadre/staff of Ex-FATA which fall within the administrative authority of Federal Government and was merged into Khyber Pakhtunkhwa through 18th Amendment. Lastly, he requested that instant appeal might be dismissed.

7. Perusal of record reveals that similarly placed employees Afzal Shah alongwith others filed appeals for ante-dation of their promotion which was accepted by this Tribunal vide order dated 14.07.2021 against which respondents filed CPLA bearing No. 46 to 87/P-2022 in Supreme Court of Pakistan, which was accepted by holding that appellants were employees of Ex-FATA which was under the administrative control of Federal Government and not of provincial government, therefore, laws applicable on the settle employees was not extended and applicable to Ex-FATA employees read as;

"In this view of the matter, the impugned judgment of the learned Khyber Pakhtunkhwa Service Tribunal proceeds on a factual misunderstanding that the respondents were earlier employees of the Provincial Government and thereafter deputed to FATA are not bound by the Provincial policies and have been duly promoted in 2016 under the

policy of the Federal Government. The claim of the respondent employees seeking promotion since 2014 on the basis of the Provincial policy is misconceived and not maintainable. In view of the foregoing reasons, the impugned judgment(s) are set aside and the titled appeals are allowed."


8. So, in this situation, present appellants who are also the employees of Ex-FATA are not entitled for the desired relief of ante-dation of promotion on the principle of similarly placed employees with the employees of the settled areas of Khyber Pakhtunkhwa working under administrative control of provincial government being employees of Ex-FATA.

9. It is admitted position on record that appellants were employees of Ex-FATA, wherein upgradation policy was introduced vide amendments in the rules which were adopted vide notification dated 08.08.2016 and after that date meeting of Departmental Promotion Committee was held and accordingly appellants were promoted vide order dated 11.10.2017. It is pertinent to mention here that retrospective effect was not given by the Directorate of FATA and merged areas in the adaptation notification to upgraded posts and subsequent rules, therefore, ante-dated promotion could not be given to the appellants. So far as District Hangu is concerned employees of which were promoted vide order dated 31.10.2014. Said District falls in the settled area and was under the administrative control of provincial government, wherein amendment in the rules were made in the year 2014 and upgradation

policy was introduced in the year 2012. So, case of the appellants is not at par with those belongs to District Hangu.

10. In view of the above discussion, we dismiss all the twenty-two appeals having no force in it. Costs shall follow the event. Consign.


11. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 10th day of July, 2024.*



(AURANGZEB KHATTAQ)
Member (Judicial)


(RASHIDA BANO)
Member (Judicial)

ORDER
10.07.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney for the respondents present.
2. Vide our detailed judgment of today placed on file, we dismiss the appeal having no force in it. Costs shall follow the event. Consign.
3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 10th day of July, 2024.*


(AURANGZEB KHATTAK)
Member (Judicial)


(RASHIDA BANO)
Member (Judicial)