

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.7557/2021

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

**Mst. Noor Shad Begum, W/o Ahmad Nawaz; PST, GGPS, Karak Sar,
Karak City.**

... (Appellant)

VERSUS

1. The Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Secretary Education, E&SE Department, Khyber Pakhtunkhwa, Peshawar.
3. The Director Education, E&SE Department, Khyber Pakhtunkhwa, Peshawar.
4. The Deputy Director (Estt:), Merged Areas, Education Directorate; Peshawar.
5. The District Education Officer (F), District North Waziristan, Miranshah.
6. The District Education Officer (F), District Karak.

... (Respondents)

Mr. Ashraf Ali Khattak
Advocate

... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

... For respondents

Date of Institution.....03.09.2021

Date of Hearing.....19.09.2024

Date of Decision.....19.09.2024

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 instant service appeal; this honorable Tribunal may graciously be pleased to:



- i. **Declare impugned order of promotion dated 27.12.2018 to the extent of Serial No.43 (appellant) passed by the respondent No.5; wherein she promoted the appellant to the post of PSHT (BPS-15) with immediate effect as illegal, unlawful and without lawful authority; and whereas appellant was entitle to be promoted to the post of PSHT with effect from the date of 1st Notification dated 11.07.2012.**
- ii. **Direct the respondents to promote the appellant to the post of SPST (BPS-14) and PSHT (BPS-15) with effect from the dated of 1st Notification dated 01.07.2012 with all back benefits, so as to bring the appellant at par with her others colleagues and junior to her, who have been promoted as such with effect from 11.07.2012.**
- iii. **Any other relief not asked for but deemed appropriate under the circumstances the case may also be graciously granted.”**

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Primary School Teacher (BPS-07) vide order dated 19.05.2004 and posted at GGPS Jahangir Kot Spulga, District North Waziristan. The service of the appellant was regularized vide order dated 01.11.2005 with effect from 1st appointment i.e. 19.05.2004 in light of the judgment of the Hon'ble Peshawar High Court and Supreme Court of Pakistan. Later on, vide order dated 19.11.2015, the post of the appellant was upgraded from BPS-07 to BPS-09 with effect from 01.10.2007. She was further upgraded from BPS-09 to BPS-12 with effect from 01.07.2012 in pursuance of the Notification dated 22.06.2016 and DE FATA dated 08.08.2016 vide AEO NWA No.1138-43 dated 11.11.2016. Appellant was further promoted to the post of PSHT (BPS-15) and was placed at serial No.43 of the notification dated

27.12.2018. The colleagues and junior to the appellant have been promoted to BPS-14 and BPS-15 vide notification dated 05.12.2016 with effect from 01.07.2012. Feeling aggrieved, she preferred departmental appeal on 10.07.2021, which was not responded, hence 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. Perusal of record reveals that appellant was appointed as Primary School Teacher (BPS-07) vide order dated 19.05.2004. Her service was regularized vide order dated 01.11.2005 from the date of her first appointment. The post of the appellant was upgraded from BPS-7 to BPS-9 and was further from BPS-09 to BPS-12. Appellant was promoted to the post of PSHT (BPS-15) vide notification dated 27.12.2018.

7. Appellant was required to challenge her promotion notification within 30 days from the date of its issuance in accordance with Section 4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974 by filing of departmental appeal. The same is reproduced below:




“4. Appeal to Tribunals.--- Any civil servant aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him [or within six months of the establishment of the appropriate Tribunal, whichever is later,] prefer an appeal of the Tribunal having jurisdiction in the matter.”

8. This case has to face the issue of limitation for the reason that he has filed departmental appeal at a belated stage i.e. beyond the period provided for filing departmental appeal before the appellate authority. The appellant had filed departmental appeal on 10.07.2021 after a considerable delay of 3 years, six months and 13 days which is hopelessly barred by time. Therefore, the appeal in hand is not competent in view of the judgment of the Supreme Court of Pakistan in 2007 SCMR 513 titled “Muhammad Aslam Vs. WAPDA and others”, wherein, the Apex Court has held that:

“If departmental appeal was not filed within the statutory period, appeal before Service Tribunal would not be competent. Civil Servant was non-suited for non-filing of appeal within time, therefore, Supreme Court declined to interfere with the judgment passed by Service Tribunal. Leave to appeal was refused.”

9. For what has been discussed above, when departmental appeal of the appellant is time barred, service appeal would be incompetent being non-maintainable, hence dismissed. Costs shall follow the event. Consign.

10. ***Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 19th day of September, 2024.***


(KALIM ARSHAD KHAN)
Member (J)


(RASHIDA BANO)
Member (J)

12th July, 2024

Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Learned counsel for the appellant submitted an application for acquiring necessary documents from respondents No. 3 & 5. Copy of the same handed over to learned Deputy District Attorney, who sought time for perusal of the same. To come up for reply/arguments on the said application as well as arguments on main appeal on 19.09.2024 before the D.B. Parcha Peshi given to the parties.

SCANNED
TEST
Peshawar



(Muhammad Akbar Khan)
Member (Executive)



(Aurangzeb Khattak)
Member (Judicial)

Naeem Amin

ORDER

19.09.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.
2. Vide our detailed judgment of today placed on file, the appeal in hand is dismissed. 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 19th day of September, 2024.*

(KALIM ARSHID KHAN)
Chairman

(RASHIDA BANO)
Member (J)