

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

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

*Service Appeal No.1153/2022*

Date of presentation of Appeal.....25.07.2022  
Date of Hearing.....26.09.2024  
Date of Decision.....26.09.2024

**Muhammad Assad** son of Jehanzeb R/O Attershisha Mansehra presently serving as Ward Boy/Ward Orderly in KATH Mansehra .....(*Appellant*)

Versus

1. **The Government of Khyber Pakhtunkhwa** through Secretary Health Department, Peshawar.
2. **Director General Health Services**, Khyber Pakhtunkhwa, Peshawar.
3. **Medical Superintendent**, King Abdullah Teaching Hospital (KATH) Mansehra.
4. **Hashim Waheed** son of Muhammad Waheed resident of Village Suffaidda Tehsil and District Mansehra.....(*Respondents*)

Present:

Mr. Muhammad Awais Ajiz, Advocate.....For the appellant  
Mr. Asif Masood Ali Shah, Deputy District Attorney.....For official respondents  
Mr. Abdul Saboor Khan, Advocate.....For private respondent

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**APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ACT OF RESPONDENT NO.3 WHEREBY RESPONDENT NO.4 IS PROMOTED VIDE IMPUGNED DISPATCH NO. 1817 DATED 07.03.2022 FROM CLASS-IV TO JUNIOR CLERK BPS-11 AND IN THIS RESPECT ALL OTHER CORRESPONDENTS AND PROMOTION ORDERS ARE WRONG, ILLEGAL, VIDE IMPUGNED DISPATCH PERVERSE, ARBITRARY, RULES, AGAINST THE FANCIFUL, AGAINST THE LAW AND FUNDAMENTAL RIGHT OF THE APPELLANT, WITHOUT OBSERVING PROMOTION LAW AND RULES, WITHOUT LAWFUL AUTHORITY AND OF HAVING NO LEGAL EFFECT UPON THE RIGHTS OF THE APPELLANT HENCE LIABLE TO BE CANCELLED/ STRUCK DOWN.**

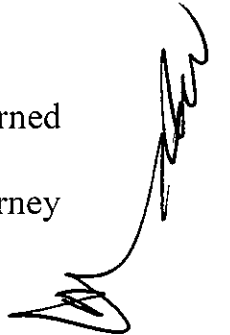
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**JUDGMENT**

**KALIM ARSHAD KHAN, CHAIRMAN:** Appellant's case in brief, as per memo and grounds of appeal, is that he was appointed as Ward Boy in the respondent department, on 31.12.2012; that the private respondent No.4 was appointed as Ward Attendant on 12.10.2021; that for promotion to the post of Junior Clerk, Class-IV employees were called for typing test/interview, vide letter dated 22.02.2022; that after the said test/interview, private respondent No.4 was promoted to the post of Junior Clerk while the appellant was not; that the appellant filed departmental appeal but the same was not responded within the statutory period of ninety days, 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, learned counsel for private respondent and learned Deputy District Attorney for official respondents.

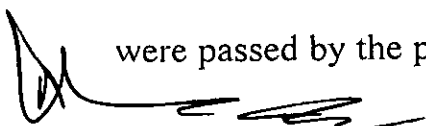
4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy District Attorney, assisted by learned counsel for



private respondent No.4, controverted the same by supporting the impugned order(s).

5. Upon perusal of the appellant's case, it is clear that he has been employed as a Ward Boy in the respondent department since 31.12.2012. In contrast, the private respondent No. 4 was appointed as a Ward Attendant much later, on 12.10.2021. Following a call for promotion to the post of Junior Clerk vide order dated 07.03.2022. However, the promotion was awarded to the private respondent No. 4, leaving the appellant without promotion despite his longer tenure. The appellant subsequently filed a departmental appeal regarding this decision, which remains unanswered beyond the statutory timeframe of ninety days.

6. The matter in hand presents a scenario where the appellant, who has served as Ward Orderly in the respondent department has objected the promotion order dated 07.03.2022. Despite being senior to the private respondent, the appellant was not given promotion vide order dated 07.03.2022, which favored the private respondent. The appellant filed departmental appeal to contest his non-promotion, but that appeal was not addressed by the department. This lack of response to the departmental appeals further solidifies the appellants' grievances, prompting him to seek resolution through the current service appeal. The official respondents, in their reply, contend that the appellant has not been granted promotion on the ground that he had no skill/experience over typing test and the said test/interviews were passed by the private respondent. It is pertinent to mention that



there is no mandate of typing tests for promotion of a Class-IV to the post of Junior Clerk, in the rules, rather the said test is conducted for initial recruitment. The eligibility criteria for initial appointee has been mandated for promotee, is unjust and the said point had also not been countered by the respondents, as they have no justification in this regard.

7. In view of the above, the impugned order dated 23.04.2021 is set aside with the direction to the official respondents that Departmental Promotion Committee be held again and all the employees shall be considered for promotion in accordance with their seniority and fitness. Costs shall follow the event. Consign.

8. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 26<sup>th</sup> day of September, 2024.*



**KALIM ARSHAD KHAN**  
Chairman



**FAREEHA PAUL**  
Member (Executive)