

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.4811/2021

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

Muhammad Kashif Ali DM, Government Middle School No.2
D.I.Khan.

.... (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary E&SE, Khyber Pakhtunkhwa, Peshawar.
2. The Director of (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
3. The Deputy Director (Establishment) of (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
4. The District Education Officer (Male) Elementary & Secondary Education Department, D.I.Khan.
5. Sub District Education Officer (Male), D.I.Khan.
6. Account Officer Kachehri Road D.I.Khan.

.... (Respondents)

Mr. Adnan Zaib
Advocate

... For appellant

Mr. Naseer ud Din Shah,
Assistant Advocate General

... For respondents

Date of Institution.....12.04.2021
Date of Hearing.....26.09.2024
Date of Decision.....26.09.2024

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:

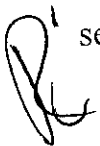
“On acceptance of this appeal, honorable court may pleased to declare that the office order dated 16.11.2020 being void, illegal, without lawful authority and of no legal effect, office order dated



18.12.2020 issued on the basis of ibid order is also void, illegal, without lawful authority and appellant may pleased be reinstated at the post of SST, BPS-16 with all back benefits.”

2. Brief facts of the case are that the appellant was appointed as a Drawing Master in District Tank on 14.05.2014 and was subsequently promoted to the position of SST (Biology/Chemistry) in BPS-16 on a regular basis, as per the notification dated 07.02.2020, which placed him at the disposal of respondent No.3 for further adjustment against the post of SST. Another Drawing Master Muhammad Arif filed an appeal before respondent No.1, challenging the aforementioned notification. This appeal was decided with the consideration that he would be evaluated for the SST position before the next Departmental Promotion Committee (DPC), subject to his seniority and fitness. The appellant was then adjusted as SST at Government High School Rang Pur Shumali, as indicated in the notification dated 29.07.2020. However, respondent No.3 issued an office order dated 16.11.2020, withdrawing the adjustment order dated 29.07.2020. This withdrawal was based on the finalization of the seniority process for NTS employees, which resulted in the appellant being declared junior to others. Furthermore, respondent No.1 also rescinded the promotion notification dated 07.02.2020 through an order dated 18.12.2020. Feeling aggrieved by the order dated 16.11.2020, the appellant filed a departmental appeal before respondent No.1. However, no response was received, prompting the filing of the instant

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. We have heard learned counsel for the appellant and learned Assistant Advocate General for the respondent.

4. We have heard learned counsel for the appellant and learned Assistant Advocate General 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 Assistant Advocate General controverted the same by supporting the impugned order(s).

6. The perusal of record reveals that the appellant was appointed as a Drawing Master in District Tank on 14.05.2014 and later promoted to SST (Biology/Chemistry) in BPS-16 on 07.02.2020, with placement at the disposal of respondent No.3 for further adjustment. Muhammad Arif appealed to respondent No.1 against this notification, which was resolved by considering him for the SST position before the next Departmental Promotion Committee (DPC), contingent on his seniority and fitness. Subsequently, he was adjusted as SST at Government High School Rang Pur Shumali on 29.07.2020. However, on 16.11.2020, respondent No.3 withdrew this adjustment due to the finalization of seniority for NTS employees, declaring the appellant junior to others. Additionally, respondent No.1 rescinded the promotion notification


 on 18.12.2020.


7. The appellant was promoted on the basis of incorrect seniority list, which was subsequently rectified following an inquiry conducted by the department. It is undisputed that Muhammad Arif joined the service at D.I. Khan on 01.06.2006, whereas the appellant, Kashif, was appointed on 14.05.2014, a date significantly later than that of Muhammad Arif. Consequently, the appellant is junior to Muhammad Arif, and the promotion to the position of SST (Biology/Chemistry) is contingent upon the principles of seniority cum fitness. Therefore, based on this principle, Muhammad Arif is senior and entitled to consideration in the Departmental Promotion Committee (DPC) on the basis of which respondent/department issued promotion notification dated 07.02.2020, wherein appellant was promoted instead of Muhammad Arif.

8. Furthermore, the appellant challenged the withdrawal of his adjustment order dated 16.11.2016 but did not contest the withdrawal of his promotion order dated 18.01.2020. This failure to challenge the primary order renders his appeal ineffective, as the main issue remains unchanged/unaddressed.

9. For what has been discussed above, we are unison to dismiss the instant service appeal as devoid of merits being not maintainable in the eyes of law and the same is dismissed accordingly. Cost shall follow the event. Consign.

10. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 26th day of September, 2024.*


(AURANGZEB KHATTAK)
Member (J)


(RASHIDA BANO)
Member (J)

ORDER

26.09.2024 1. Learned counsel for the appellant present. Mr. Naseer ud Din

Shah, learned Assistant Advocate General, for respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to dismiss the instant service appeal as devoid of merits being not maintainable in the eyes of law and the same is dismissed accordingly. Cost shall follow the event. Consign.

10. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 26th day of September, 2024.


(AURANGZEB KHATTAK)
Member (J)


(RASHIDA BANO)
Member (J)

*M.KHAN