

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

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

Service Appeal No. 502/2024

Date of presentation of Appeal.....03.04.2024
Date of Hearing.....10.10.2024
Date of Decision.....10.10.2024

Safdar Ali Shah, SST (Bio Chemistry) (BPS-16), GHS Ghoriwala Bannu.Appellant

Versus

1. Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
2. The Director Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (M), Bannu.
4. Jan Baz Khan S/o Nawaz Khan, SST Bio Chemistry (BPS-16) GHS Toor Kakki Bannu.....(Respondents)

Present:

Mr. Noor Muhammad Khattak, Advocate.....For appellant
Mr. Asif Masood Ali Shah, Deputy District Attorney.....For official respondents
Mr. Inayat Ullah Khan, AdvocateFor private respondent.

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL):The appellant, Safdar Ali Shah, was initially appointed as an Arabic Teacher (BPS-15) on an adhoc basis in 2014 and regularized in 2018 following the Regularization of Services Act, 2017. After regularization, a seniority list was prepared and the appellant was placed at serial No. 83 based on merit assigned by the Departmental Selection Committee. The appellant was promoted to SST Biochemistry (BPS-16) in 2020. Private respondent No. 4 (Jan Baz Khan), contested the seniority list dated 26.10.2019 before this Tribunal through Service Appeal No. 887/2020

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and besides other the appellant Safdar Ali Shah was also impleaded therein as respondent. And this Tribunal ruled in favor of private respondent No. 4 (Jan Baz Khan) vide judgment dated 31.05.2023. Following the decision of this Tribunal, the department issued a notification dated 23.02.2024 by withdrawing the promotion Notification of the appellant dated 07.02.2020 and he was demoted back to the position of Arabic Teacher (BPS-15). Feeling aggrieved, the appellant preferred departmental appeal, however the same was rejected on 01.04.2024. The appellant has now approached this Tribunal through filing of instant appeal for redressal of his grievance.

2. The respondents were summoned. Official respondents contested the appeal by way of filing written reply/comments, while private respondent No. 4 placed reliance on the written reply/comments submitted by official respondents vide order dated 24.07.2024.

3. The learned counsel for the appellant contended that the appellant demotion order dated 23.02.2024 was based on retrospective implementation without proper notice, hearing, or opportunity to present a defense violates the principles of natural justice. He next contended that the demotion order dated 23.02.2024 of the appellant infringes upon Articles 4 & 25 of the Constitution of Islamic Republic of Pakistan, which guarantee the right to be treated in accordance with the law and equality before the law, suggesting discrimination and arbitrary action against the appellant. He further contended that the original seniority list, based on merit, was legitimate and adhered to the Departmental Selection Committee's rules and the Rule-17 (i) (a) and APT Rules of 1989, thereby making any change based on age rationale questionable.


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He next argued that the impugned order dated 23.02.2024 was passed in contravention with the principle of locus poenitentiae, denying the appellant the right to hold on to legitimately acquired promotion to SST (BPS-16). He further argued that impugned order dated 23.02.2024 was passed with retrospective effect, undermining established employment benefits and logistical planning already in place. In the last, he argued that the appeal in hand may be accepted as prayed for.

4. On the other hand, learned Deputy District Attorney for official respondents assisted by learned counsel for private respondent No. 4 contended that the demotion order dated 23.02.2024 was necessary in compliance with the tribunal's decision dated 31.05.2023 to revise the seniority list and it was implemented based on age, in accordance with the Regularization Act of 2017. He next contended that the action of the respondents respects all relevant laws, including the General Clauses Act, 1897, ensuring legal and constitutional validity, specifically noting compliance with Article 38(e) of the Constitution, which provides resources to individuals based on need. He further contended that the demotion order dated 23.02.2024 was not discriminatory but a lawful rectification fulfilling the tribunal's decision, ensuring appropriate seniority placement for promotions. In the last, he argued that the appeal in hand being merit less may be dismissed with cost.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

6. The perusal of the case file show that private respondent No. 4 (Jan Baz Khan) filed Service Appeal No. 887/2020 before this Tribunal,


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which was decided vide judgment dated 31.05.2023. The concluding para No. 09 of the said judgment is reproduced as below:-

"9. In view of the above discussion, the impugned seniority list dated 26.10.2019 stands set-aside to the extent of those Arabic Teachers, who were appointed on contract basis on 22.05.2014 and whose services were regularized vide Notification bearing Endorsement No. 1833-61/AE-1/Estab: dated 21.03.2018 and it is directed that their inter-se seniority shall be determined age-wise on the basis of ibid Notification dated 21.03.2018 as well as Sub-Section-2 of Section-4 of Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017 by placing the name of the appellant at correct position in the seniority list of the concerned Arabic Teachers with all consequential benefits. The appeal in hand stands allowed in the said terms. Needless to mention that this judgment shall have no bearing upon those Arabic Teachers, whose appointments have been made through any order/judgment of court or Tribunal. Parties are left to bear their own costs. File be consigned to the record room."

The decision was underpinned by the Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017, specifically focusing on Sub-Section-2 of Section-4, which emphasizes seniority determination based on age post-regularization. The Tribunal directed that the seniority of the concerned Arabic Teachers should be re-evaluated and determined age-wise as per the March 21, 2018, notification. Jan Baz Khan (private respondent No. 4) was to have his name correctly positioned in the seniority list, ensuring he received all consequential benefits due to this restructuring. Following the Tribunal's ruling, the Department adhered to the directives by issuing a Notification on February 23, 2024, which effectively annulled a previous promotion

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Notification concerning appellant, dated February 7, 2020. This action was in compliance with the Tribunal's directive to properly align seniority and associated rights. After a comprehensive evaluation of the notifications and resultant adjustments, the court finds the Notification dated February 23, 2024, legally sound and free from procedural inaccuracies.

7. As regard the contention of learned counsel for the appellant that the seniority should be determined according to Rule-17 (i) (a) of the Khyber Pakhtunkhwa Government Servants APT Rules of 1989. The Tribunal, in its judgment dated May 31, 2023, in Service Appeal No. 887/2020, clarified that for Arabic Teachers appointed on a contract basis on May 22, 2014 and subsequently regularized through the Notification dated March 21, 2018, seniority should be determined based on age. This decision adheres to both the specific Notification and Sub-Section-2 of Section-4 of the Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017. The appellant's reliance on Rule-17 (i) (a) of the APT Rules of 1989 is found to be misplaced in this context. The rule traditionally governs seniority but does not apply here due to the specific provisions set forth in the aforementioned 2017 Act and Notification, which directly address the situation of these teachers. The Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017, being a special law, takes precedence over the more general APT Rules of 1989. The special provisions explicitly outlined in the 2017 Act were designed to address the peculiarities of service

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regularization for contractual employees and their seniority, thus providing a tailored framework that overrides general rules where applicable. Given the specificity and the special status of the 2017 Act, the appellant's contention that seniority should be determined according to the APT Rules of 1989 cannot be supported. The argument fails to account for the specialized legislative measures enacted to address and streamline the regularization process, ensuring that seniority aligns with this framework. Therefore, the appellant's position is legally untenable. In conclusion, the Tribunal's decision affirms that the determination of seniority will proceed based on age, as facilitated by the 2017 Act and related Notification, overriding the general provisions of the APT Rules of 1989.

8. Consequently, the appeal in hand stands dismissed being meritless. Parties are left to bear their own costs. File be consigned to the record room.

9. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 10th day of October, 2024.*


AURANGZEB KHATTAK
Member (Judicial)


RASHIDA BANO
Member (Judicial)

ORDER

10th Oct, 2024

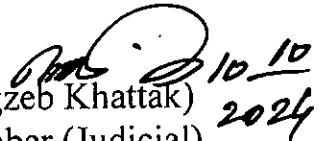
1. Appellant alongwith his counsel present. Mr. Muhammad Tariq, PST alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for official respondents and private respondent No. 4 alongwith his counsel Mr. Inayat Ullah Khan, Advocate, are present. Arguments heard and record perused.

2. Vide our judgment of today placed on file, the appeal in hand stands dismissed being meritless. Parties are left to bear their own costs. File be consigned to the record room.

3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 10th day of October, 2024.*



(Rashida Bano)
Member (Judicial)

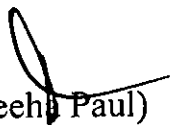



(Aurangzeb Khattak)
Member (Judicial)

04th Oct, 2024

Appellant alongwith his counsel present. Mr. Asif Masood Ali Shah, Deputy District Attorney for official respondents present and private respondent No. 4 alongwith his counsel present. Arguments heard.

During perusal of the case file, it was found that the matter directly and substantially in issue in the instant appeal has already been decided by this Tribunal on 31.05.2023 in Service Appeal No. 887/2020 titled "*Jan Baz Khan Versus Education Department*". Notice is given to the appellant as to why the appeal should not be dismissed being not maintainable under rule-23 of Khyber Pakhtunkhwa Service Tribunal Rules, 1974. To come up for arguments on the maintainability of the appeal on 10/10/2024 before the D.B. Parcha Peshi given to the parties.


(Fareeh Paul)
Member (Executive)


(Aurangzeb Khattak)
Member (Judicial)