KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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

Service Appeal No.1251/2022

Date of presentation of appeal.....18.08.2022
Dates of Hearing.....09.10.2024
Date of Decision.....09.10.2024

Sajjad Khan son of Rambel Khan, Tube Well Operator, Government Postgraduate College, Nowshera.....***(Appellant)***

Versus

1. **Secretary to Government of Khyber Pakhtunkhwa** Higher Education Department, Peshawar.
2. **Director Higher Education,** Khyber Pakhtunkhwa, Peshawar.
3. **Principal** Government Postgraduate College, Nowshera.
4. **Hafsa** Junior Clerk, Government Girls Degree College, Pabbi, Nowshera.....(***Respondents***)

Present:
Mss. Naila Jan, Advocate.....For the appellant
Mr. Muhammad Jan, District Attorney.....For respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST OFFICE PROMOTION ORDER DATED 24.05.2022 WHEREBY RESPONDENT NO.4 BEING JUNIOR TO THE APPELLANT WAS PROMOTED AS SENIOR CLERK AND ORDER DATED 30.05.2022 WHEREBY THE APPELLANT HAS BEEN PROMOTED WITH IMMEDIATE EFFECT INSTEAD OF 28.03.2019 AND FINAL ORDER/APPELLATE ORDER DATED 18.07.2022 IN UTTER VIOLATION OF JUDGMENT OF THE HONORABLE TRIBUNAL IN SERVICE APPEAL NO.1044/2019 AND KHYBER PAKHTUNKHWA CIVIL SERVANTS PROMOTION POLICY 2009.

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Appellant's case in brief, as per averments of appeal, is that he, with matric qualification, was appointed as Tube-Well Operator (BPS-04) on 05.10.2000; that he served in the said capacity for 18 years and was allegedly eligible for promotion against 33% quota reserved for Class-IV employees, to the post of Junior Clerk (BPS-11); that being of the view that he was to be promoted to the post Junior Clerk (BPS-11) but vide order dated 28.03.2019 private respondent No.4 was promoted and the appellant was left on the pretext of deficiency in his ACRs; that he filed Service Appeal No.1044/2019 and this Tribunal vide its judgment dated 10.01.2022, accepted the said service appeal of the appellant; that vide order dated 24.05.2022, private respondent No.4 was further promoted to the post of Senior Clerk and the appellant was promoted in pursuance of the judgment of this Tribunal, on 30.05.2022 with immediate effect and not from the back date; that feeling aggrieved, he filed departmental appeal but the same was rejected on 18.07.2022, hence, the instant service appeal.

02. 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.

03. We have heard learned counsel for the appellant and learned District Attorney for the respondents.

04. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned District Attorney controverted the same by supporting the impugned order(s).

05. In summary, the appellant was appointed as a Tube-Well Operator (BPS-04) on October 5, 2000, holding a matriculation qualification, and served in this role for 18 years. He asserts his eligibility for promotion to Junior Clerk (BPS-11) under the 33% quota for Class-IV employees. However, he was passed over for promotion in favor of private respondent No. 4 due to alleged deficiencies in his Annual Confidential Reports (ACRs). After filing Service Appeal No. 1044/2019, this Tribunal ruled in his favor on January 10, 2022. Despite this, when private respondent No. 4 was promoted to Senior Clerk on May 24, 2022, the appellant was only promoted to Junior Clerk on May 30, 2022, without retroactive effect. Following the rejection of his departmental appeal on July 18, 2022, the appellant has pursued the current service appeal, seeking a more favorable resolution regarding the timing of his promotion.

06. Representative of the respondents had made commitment before the Tribunal on 10.01.2022, when the earlier appeal was decided, that the appellant would be promoted in the next DPC upon availability of his PERs and service book. These two

documents were in the custody of the respondents, therefore, they ought to have promoted the appellant from the back date and not with immediate effect as no deficiency was on the part of the appellant, rather the respondents were the custodians of the service record of the appellant.

07. In view of the above, the appeal in hand is allowed with direction to promote the appellant from the date of his deferment i.e. 28.03.2019. Costs shall follow the event. Consign.

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

KALIM ARSHAD KHAN
Chairman

FAREEHA PAUL
Member (Executive)

Mutazem Shah

S.A #.1251/2022

ORDER

9th Oct. 2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for respondents present. Heard.

2. Vide our detailed order of today, the appeal in hand is allowed with direction to promote the appellant from the date of his deferment i.e. 28.03.2019. Costs shall follow the event. Consign.

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

(Farzana Paul)
Member (E)

(Kalim Arshad Khan)
Chairman

Mutazem Shah