

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 875/2023

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

Mr. Sardar Mahmood, (SCT GHS Machi Mardan) S/o Fazal Mahmood R/o Village Ali Post Office, Rustam Tehsil & District Mardan.

.... (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary (E&SE), Civil Secretariat, Peshawar.
2. The Secretary Elementary and Secondary Education Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Director Elementary & Secondary Education, Khyber Pakhtunkhwa, at Directorate of E&SED Hashtnagri Chowk, Near Qila Bala Hisar, Peshawar.
4. District Education Officer (Male) Mardan.
5. Bakht Zada S/o Hazrat Jan presently posted at GMS Husai Umar Abad, Tehsil and District Mardan.

.... (Respondents)

Mr. Amjad Ali
Advocate

... For appellant

Mr. Naseer ud Din Shah,
Assistant Advocate General

... For respondents

Date of Institution.....19.04.2023
Date of Hearing.....24.09.2024
Date of Decision.....24.09.2024

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, I may please be considered for promotin to the post of SST (BPS-16) form Senior Certified Taeacher (BPS-16) by modifying impugned notification dated

01.12.2022 on the basis of qualification such as B.Com and M.Com and B.Ed with English subject, M.Ed with English subject and CT with English subject w.e.f. 01.12.2022 when junior to the appellant were promoted with all back benefits.

(2) Amended rules of 24th July 2014 at serial No. 1B (Secondary School Teacher BPS-16) in column No. 3 at line 1(c) i.e. Humanities and other equivalent groups at degree level with English as compulsory subject may please be declared as ultravires to the extent of insertion of English as compulsory subject at degree level as the Bachelor of Education (B.Ed) and Master of Education (M.Ed) are also degree level and higher level studies which include English as compulsory subject and further restricting the general group of humanity with interpreting of English as compulsory subject as B.A level than degree level word used in the rules and is also against rule 1(a) & 1(b) as the said post of Chemistry, botany, zoology & Physics, Maths or Statistics have not been visited with curtailment of the same through English as compulsory subject at degree level and therefore

OR IN ALTERNATIVE

It is prayed in alternative that appellant may please be provided a line of promotion from SCT (BPS-16) to higher post in his own grade and cadre on the basis of seniority cum fitness in consonance with Khyber Pakhtunkhwa, Civil Servants Appointment, Promotion and Transfer Rules, 1989.”



2. Brief facts of the case are that the appellant is currently serving as a Senior Computer Teacher (SCT) in the respondent department, where he has been serving the department for more than 25 years consistently and met the expectations of his superiors. He is qualified up to Bachelor of Commerce (Hons), Master of Commerce alongwith Certificate of Teaching from Education Department NWFP, Bachelor of Education (B.Ed) and Master of Education (M.Ed). According to the seniority list prepared by District Education Officer (Male), Mardan, the appellant was ranked at Serial No. 75 of the final seniority list. Despite this, juniors to the appellant were promoted to Senior School Teacher (SST) (General) through an order dated 01.12.2022, while the appellant was unjustly deprived of promotion. After receiving the impugned promotion order favoring his junior colleagues, the appellant filed a departmental appeal on 05.01.2023, which went unanswered even after lapse of 90 days, leading to 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 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 is serving in the respondent/department as SCT, wherein his promotion to the post of SST (G) was denied on the ground "not having English as compulsory subject during bachelor degree" because appellant had done B.Com in which English was not taught as compulsory subject. He also challenged vires of the rules dated 24.07.2014, vide which condition of English as compulsory subject during bachelor degree was imposed upon for promotion to the post of SST (G). The relevant rule is reproduced here;

"I. At least Second Class Bachelor Degree's from a recognized University on need basis form the following groups with two subject

(a) (Chemistry, Botany or Zoology), Or

(b) (Physics, Maths "A" or "B" or Statistics) Or

(c) (Humanities and other equivalent groups at degree level with English as compulsory subject; and

(d) Bachelor of Education or Master of Education (industrial Art or Business Education) or M.A Education or equivalent qualifications from a recognized University."

So, as per amended rules of 2014 English as compulsory subject in humanities group is condition pre requisite for promotion.

7. It is admitted fact on record that appellant and many others like appellants were appointed in respondent/department having qualification of B.Com instead of simple B.A having English as compulsory subject. Appellant is serving the department for last more than 25 years and is deprived from further prospect of promotion, which is injustice with all of

such like employees who give their valuable time to the department. We think that like other employees, he also be given opportunity of expectation of further promotion, if further promotion was not given to him, it will create unrest and disappointment which is not good for student to whom now appellant is teaching.

8. Therefore, we remit the matter to the authority for placing before Standing Service Rules Committee to look into the matter either to consider him within the existing criteria by making some way or to give cushion period to all those employees of appellant category who passed B.Com degree to improve their qualification by appearing in B.A exam to pass the English compulsory at Bachelor level for meeting the condition laid down in the rules. The whole process shall be completed within 90 days from the receipt of copy of this judgment. The appeal is disposed of accordingly. Costs shall follow the event. Consign.

9. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 24th day of September, 2024.*

(AURANGZEB KHATTAK)

Member (J)

*M.KHAN



(RASHIDA BANO)

Member (J)

24/9
2024

ORDER

24.09.2024 1. Learned counsel for the appellant present. Mr. Naseer ud Din

Shah, learned Assistant Advocate alongwith Mr. Jamil Litigation Assistant, for respondents present.

2. Vide our detailed judgment of today placed on file, we remit the matter to the authority for placing before Standing Service Rules Committee to look into the matter either to consider him within the existing criteria by making some way or to give cushion period to all those employees of appellant category who passed B.Com degree to improve their qualification by appearing in B.A exam to pass the English compulsory at Bachelor level for meeting the condition laid down in the rules. The whole process shall be completed within 90 days from the receipt of copy of this judgment. The appeal is disposed of accordingly. 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 24th day of September, 2024.*


(AURANGZEB KHATTAK)

Member (J)


(RASHIDA BANO)

Member (J)

*M.KHAN