

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 13900/2020

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MRS. RASHIDA BANO ... MEMBER (J)

**Mr. Fazal Mukhtaj (Rtd:) Assistant BPS-16 RITE, Elementary &
Secondary Education Department, District Charsadda.**

.... (Appellant)

VERSUS

1. The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa.
2. The Director, Elementary & Secondary Education Department, Khyber Pakhtunkhwa.
3. The District Education Officer (Male), District Charsadda.

.... (Respondents)

Mr. Shazullah Yousafzai
Advocate

... For appellant

Mr. Naseer ud Din Shah,
Assistant Advocate General

... For respondents

Date of Institution.....23.10.2020
Date of Hearing.....01.10.2024
Date of Decision.....01.10.2024

JUDGMENT

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, the appellate order daed 22.07.2020 may graciously be set aside and the appellant may kindly be allowed pro-forma promotion to the post of assistant (BPS-16) w.e.f. 16.04.2011 instead of 12.10.2015 with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.”



2. Brief facts of the case are that the appellant was appointed as a Junior Clerk on 14.05.1979 and promoted to Senior Clerk on 01.03.1990. He was transferred to GHSS Ghalanai on 12.12.2003 and later re-transferred to District Charsadda on 14.08.2005. Despite his promotion, the appellant was overlooked for a subsequent promotion to Assistant, which was granted to his colleagues on 16.04.2011. In response, he filed Service Appeal No. 1761/2011, which the Service Tribunal treated as a departmental representation, directing the respondents to resolve the matter within sixty days as per the judgment dated 31.08.2015.

The appellant was eventually promoted to Assistant (BPS-16) on 12.10.2015, but this promotion was effective immediately rather than retroactively to 16.04.2011. The respondents did not implement the Tribunal's judgment, and the appellant retired on 29.08.2018, subsequently filing an implementation petition. During this process, the respondents issued an appellate order on 22.07.2020, communicated to the appellant on 24.09.2020, which dismissed the departmental appeal without providing any reasons. Hence, 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 the record reveals that the appellant was serving in respondent department at GEC (F) Charsadda, when due to closure of GEC (F) Charsadda service of the appellant was placed at the disposal of DEO (M) Charsadda, who further placed/adjusted the appellant at GHS Ghalanai Mohmand Agency. Appellant is employee of the respondent department, who was adjusted at Ghalani due to closure of GEC (F) Charsadda, which means that seniority of the appellant will remain with the respondent/department. Later on, he was again transferred to District Charsadda upon his own request.

7. Respondent department enlisted appellant in the seniority list upon his retransfer from Mohmand Agency to District Charsadda. Respondents alleged that the appellant was transferred to Ghalani upon his own request but no such request, even transfer/adjustment order of the appellant was produced by the respondents despite being asked by the Tribunal several times.

8. In such a situation, we are left with no option but to remit the matter back to the department for deciding it keeping in view all the relevant record, seniority list, reason of transfer and adjustment keeping in view the initial appointing authority of the appellant and of counsel in accordance with law and rules within 90 days. 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 01st day of October, 2024.*


(KALIM ARSHAD KHAN)
CHAIRMAN


(RASHIDA BANO)
Member (J)

ORDER


01.10.2024

1. Learned counsel for the appellant present. Mr. Naseer ud Din Shah, learned Assistant Advocate for respondents present.

2. Vide our detailed judgment of today placed on file, we are left with no option but to remit the matter back to the department for deciding it keeping in view all the relevant record, seniority list, reason of transfer and adjustment keeping in view the initial appointing authority of the appellant and of counsel in accordance with law and rules within 90 days. Costs shall follow the events. Consign.

3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 01st day of October, 2024.*


(KALIM ARSHAD KHAN)
CHAIRMAN


(RASHIDA BANO)
Member (J)

*M.KHAN