

Service Appeal No.2441/2023 titled "Syed Alam Shah versus Secretary to Government of Khyber Pakhtunkhwa Home & Tribal Affairs Department, Peshawar and another", and Service Appeal No. 2442/2023 titled "Muhammad Arshad versus Secretary to Government of Khyber Pakhtunkhwa Home & Tribal Affairs Department, Peshawar and another" declared on 30.10.2024 by Division Bench comprising of Mr. Kalim Arshad Khan Chairman, and Mrs. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp court, Abbottabad.

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**  
**RASHIDA BANO** ... **MEMBER(Judicial)**

***Service Appeal No.2441/2023***

Date of presentation of Appeal.....21.11.2023  
Date of Hearing.....30.10.2024  
Date of Decision.....30.10.2024

**Syed Alam Shah, S/O Sikandar Shah, Assistant, Office of the District Public Prosecutor, Mansehra.....(Appellant)**

Versus

1. **Secretary to Government of Khyber Pakhtunkhwa Home & Tribal Affairs Department, Peshawar.**
2. **Director General, Khyber Pakhtunkhwa, Peshawar....(Respondents)**

***Service Appeal No.2442/2023***

Date of presentation of Appeal.....21.11.2023  
Date of Hearing.....30.10.2024  
Date of Decision.....30.10.2024

**Muhammad Arshad S/O Muhammad Hassan, Assistant, Office of the District Public Prosecutor, Battagram.....(Appellant)**

Versus

1. **Secretary to Government of Khyber Pakhtunkhwa Home & Tribal Affairs Department, Peshawar.**
2. **Director General, Khyber Pakhtunkhwa, Peshawar....(Respondents)**

Present:

Mr. Sardar Muhammad Azeem, Advocate.....For the appellants  
Mr. Asif Masood Ali Shah, Deputy District Attorney .....For respondents

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**APPEALS UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 08.08.2023 AND FINAL SENIORITY LIST OF ASSISTANT YEARS 2023 IN WHICH REGULAR SERVICE OF THE APPELLANTS AGAINST THE POST OF ASSISTANT BPS-16 HAS BEEN ILLEGALLY CONVERTED INTO ACTING CHARGE BASIS WHICH IS AGAINST LAW AND RULES AND LIABLE TO BE SET ASIDE.**

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## **CONSOLIDATED JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** Through this single judgment, the above two appeals, are jointly taken up, as both are similar in nature and almost with the same contentions, therefore, can be conveniently decided together.

02. Appellants' cases in brief, as per averments of appeals are that they were promoted as Assistants (BPS-16) on regular basis vide order dated 11.02.2019; that after lapse of sufficient time, vide impugned promotion order dated 08.08.2023, the appellants were promoted to the post of Assistant (BPS-16) on regular/acting charge basis; that the order dated 08.08.2023 was challenged by the appellants through departmental appeals but the same were not responded, hence, the instant service appeals.

03. On receipt of the appeals and their admission to full hearing, the respondents were summoned who put appearance and contested the appeals by filing replies. The defense setup was a total denial of the claim of the appellants.

04. We have heard learned counsel for the appellants and learned Deputy District Attorney for respondents.

05. The learned counsel for the appellants reiterated the facts and grounds detailed in the memo and grounds of the appeals while the learned Deputy District Attorney District Attorney controverted the same by supporting the impugned order(s).

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06. The appellants were promoted to the post of Assistant (BPS-16) on a regular basis through an order dated 11.02.2019. Appellants' subsequent promotion order was issued on 08.08.2023, which stated that they were promoted to the same post (Assistant, BPS-16) on a regular/acting charge basis, creating ambiguity about the nature of their promotion. Feeling aggrieved by the change in the terms of their promotion, the appellants filed departmental appeals challenging the order dated 08.08.2023. Despite filing these appeals, no response was forthcoming from the respondents, prompting the appellants to approach the Tribunal with the present service appeals.

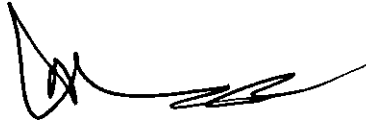
07. In the year 2019, the appellants were promoted on regular basis to the post of Assistant (BPS-16) and it is very strange to note that their case was placed before the DPC held in the year 2023 considering the appellants as Senior Clerks. Recommendations for their appointment on acting charge basis was made in the year 2023 without withdrawal of earlier order of promotion by any authority and without issuing any notice etc. Convening a second DPC and proceedings of the DPC, considering the appellants as Senior Clerks, is totally incomprehensible which has not been explained by the respondents anywhere nor during the course of arguments.

08. Therefore, the subsequent order is without any cogent reason, order of the competent/appellate authority regarding

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earlier promotion order is still in the field, therefore, the impugned order, because of its unjustified, is not sustainable and is set aside. Costs shall follow the event. Copy of this judgment be placed on file of connected case. Consign.

09. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 30<sup>th</sup> day of October, 2024.*



**KALIM ARSHAD KHAN**  
Chairman



**RASHIDA BANO**  
Member (Judicial)

*\*Mutazem Shah\**


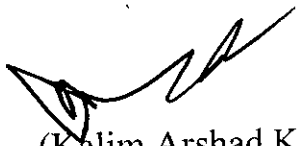
**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**

Service Appeal No.244 of 2022

Syed Alam Shah

versus

Government of Khyber Pakhtunkhwa

S.No. of Order & Date of proceeding	<b>Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary</b>
Order-07 30 <sup>th</sup> October, 2024.	<p><b><u>Kalim Arshad Khan, Chairman</u></b></p> <p>Present:</p> <ol style="list-style-type: none"><li>1. Mr. Sardar Muhammad Irshad, Advocate, on behalf of appellant.</li><li>2. Mr. Asif Masood Ali Shah, Deputy District Attorney on behalf of respondents.</li></ol> <p>Vide our detailed judgment of today, placed on file, the impugned order, because it is unjustified, is not sustainable and is set aside. Costs shall follow the event. Copy of this judgment be placed on file of connected case. Consign.</p> <p>2. <i>Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 30<sup>th</sup> day of October, 2024</i></p> <p style="text-align: center;"> (Rashida Bano) Member (J)</p> <p style="text-align: center;"> (Kalim Arshad Khan) Chairman</p> <p><small>*Muazem Shah*</small></p>

**MEMO OF COSTS**  
**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

**Service Appeal No.2441/2023**

Date of presentation of Appeal                    21.10.2023  
Date of hearing    30.10.2024  
Date of Decision                                        30.10.2024

Syed Alam Shah, S/O Sikandar Shah, Assistant, Office of the District Public Prosecutor,  
Manshra.....(*Appellant*)

*Versus*

1. Secretary to Government of Khyber Pakhtunkhwa Home & Tribal Affairs Department,  
Peshawar.
2. Director General, Khyber Pakhtunkhwa, Peshawar....(*Respondents*)  
.....(*Respondents*)

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SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974.


**PRESENT**

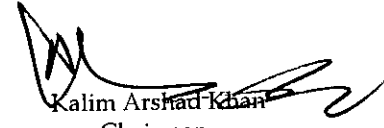
1. Mr. Sardar Muhammad Irshad, Advocate, for the Appellant
2. Mr. Asif Masood Ali Shah, Deputy District Attorney, for respondents

Appellants	Amount	Respondent	Amount
1. Stamp for memorandum of appeal	Rs. Nil	1. Stamp for memorandum of appeal	Rs. Nil
2. Stamp for power	Rs. Nil	2. Stamp for power	Rs. Nil
3. Pleader's fee	Rs. Nil	4. Pleader's fee	Rs. Nil
4. Security Fee	Rs. 100/-	4. Security Fee	Rs. Nil
5. Process Fee	Rs. Nil	5. Process Fee	Rs. Nil
6. Costs	Rs. Nil	6. Costs	Rs. Nil
<b>Total</b>	<b>Rs. 100/-</b>	<b>Total</b>	<b>Rs. Nil</b>

Note: Counsel Fee is not allowed as the required certificate has not been furnished.

Given under our hands and the seal of this Court, this 30<sup>th</sup> day of October, 2024.

  
Rashida Bano  
Member (Judicial)

  
Kalim Arshad Khan  
Chairman