Service Appeal No.573/2022 titled "Rahim Ullah versus Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar and others", and Service Appeal 574/2022 titled "Shams ur Rehman versus Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar and others" declared on 04.11.2024 by Division Bench comprising of Mr. Aurangzeb Khattak, Member Judicial, and Mrs. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar..

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: **RASHIDA BANO** ... **MEMBER (J)**
MUHAMMAD AKBAR KHAN ... **MEMBER (E)**

Service Appeal No. 573/2022

Date of presentation of Appeal.....11.04.2022
Date of Hearing.....04.11.2024
Date of Decision.....04.11.2024

Mr. Rahim Ullah, CT (BPS-15), GHS Ladha, South Waziristan Tribal District.....***(Appellant)***

Service Appeal No. 574/2022

Date of presentation of Appeal.....11.04.2022
Date of Hearing.....04.11.2024
Date of Decision.....04.11.2024

Shams ur Rehman, CT (BPS-15), GMS Ahmad Gul Kalai, South Waziristan Tribal District.....***(Appellant)***

Versus

1. The Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. The Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. The Additional Director (Establishment) Merged Area, Khyber Pakhtunkhwa, Peshawar
4. The Deputy Director (Establishment) Merged Area, Khyber Pakhtunkhwa, Peshawar
5. The District Education Officer (Male) South Waziristan at Tank.....(***Respondents***).

Present:

Mr. Afrasiyab Khan Wazir, Advocate.....For the appellants
Mr. Naseer ud Din Shah, Assistant Advocate General ..For respondents

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CONSOLIDATED JUDGMENT

RASHIDA BANO MEMBER JUDICIAL: Through this single judgment, both the appeals are jointly taken up, as all are similar in nature and almost with the same contentions, therefore, can be conveniently decided together.

02. All connected service appeals have been instituted under Section-4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

> **"ON ACCEPTANCE OF THESE APPEALS, THE IMPUGNED ORDER DATED 03.12.2021 WHEREBY APPELLANTS HAVE BEEN IGNORED FOR PROMOTION TO THE POST OF SST (BPS-16) (BIO/CHEMISTRY) AS PER THEIR 75% SHARE OF PROMOTION IN VACANT POST WITH HIS COLLEAGUE WITH ALL BACK BENEFITS INCLUDING SENIORITY. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT THAT MAY ALSO BE AWARDED IN FAVOR OF THE APPELLANTS."**

03. Brief facts of the case, as per contents of the appeals, are that the appellants, who are employees of the Education Department, were appointed as Certified Teachers (BPS-15) in accordance with the judgment of the Peshawar High Court D.I. Khan Bench dated 18.05.2019. On 07.10.2019, they submitted a representation to the respondent department, requesting reconsideration of their appointment date to align with that of their colleagues, who were appointed with retrospective effect as per the aforementioned judgment, along with all back benefits and seniority. In response, the respondent department corresponded via letters dated 22.12.2019 and 27.01.2020, regarding the granting of seniority and back benefits. Subsequently, the appellants were granted seniority through an order dated 08.02.2020. Following this, the respondent department issued an order on 25.06.2021, directing the display of seniority lists for all district cadres in preparation for the departmental promotion committee, which was to consider promotions to the posts of Senior Teacher (BPS-16) and SST (BPS-16), among others. The respondent department then prepared a final working paper for the promotion committee, which included the appellants for the post of SST (BPS-16) (Bio-Chem). The working papers indicated that there were nine seats available for promotion, with a promotion share of 75%,

translating to seven seats for promotion and two seats advertised for initial recruitment. However, the respondents covertly allocated and advertised ten seats for initial recruitment through ETEA, out of a total of seventeen seats, despite the service rules stipulating that promotions for the post of SST (BPS-16) should be based on seniority cum fitness. To conceal their malafide intentions, the respondents issued the impugned order dated 03.12.2021, denying the appellants their rightful share in the promotion, while their colleagues were promoted to the post of SST (BPS-16) (Bio-Chem). Aggrieved by the impugned order, the appellants filed a departmental appeal on 20.12.2021, which was accepted through orders dated 02.02.2022 and 12.02.2022; however, no action was taken on these orders. Consequently, the appellants have filed the present service appeals.

04. On receipt of the appeals and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeals by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claims of the appellants.

05. We have heard learned counsel for the appellants and learned Assistant Advocate General for the respondents.

06. 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).

07. The perusal of record reveals that appellants impugned to us order dated 03.12.2021, whereby appellants have been ignored from the post of SST (BPS-16) (Bio/Chem) by observing 75% share of promotion in vacant post with his colleagues. Admittedly, appellants appointed as CT (BPS-15) vide order dated 18.05.2019, who filed departmental appeals for grant of back benefits, which was not responded. Appellants again requested/filed application on 07.10.2019, appellants along with three others filed application for grant of back benefits and seniority. The said application was sent to Director Education by District Education Officer vide letter dated 27.12.2019, which was replied vide letter 27.01.2020, wherein District Education Officer was directed to grant seniority to appellants, as a result of which District Education Officer, South Waziristan granted seniority to appellants alongwith three others vide order dated 08.02.2020 w.e.f. 29.06.2016 without back benefits.

08. After which seniority list was updated, the appellants were shown in seniority at their position and seniority to appellants were given from 29.06.2016, working paper for promotion was prepared, wherein four posts of SST BPS-16 (Bio/Chem) were shown vacant falling in to promotion quota. Appellants were not

promoted by DPC, they contended that their junior Mr. Muhammad Shoaib appointed on 29.06.2016 was promoted vide order dated 21.04.2022. Therefore, they are also entitled to be promoted as vacant posts were available in their quota.

09. Perusal of rules reveals that post of SST BPS-16 (Bio/Chem) were required to be filled from amongst CT BPS-15, on the basis of seniority cum fitness having at least 5 years service as such. Admittedly, appellants were appointed on 18.05.2020 and seniority given to them w.e.f. 29.06.2016 is only for the purpose of seniority and is not meant for promotion, because for promotion, they will have to actually serve for 5 years as CT BPS-15 and after serving for 5 years as C.T, they will be eligible for promotion. So, appellants were rightly not considered by the DPC having dearth in his service length which is condition pre requiste for promotion to the post SST BPS-16 (Bio/Chem).

10. Respondent rightly recruited the official by way of direction impugned order through induction in accordance with rule, wherein it is clearly mentioned that if no suitable employee of official is available, then post will be filled through direct recruitment.

11. For what has been discussed above, we are unison to dismiss the instant service appeal as well as connected service

appeal being devoid of merits and the same are dismissed accordingly. Costs shall follow the event. Consign.

12. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 04th day of November, 2024.

RASHIDA BANO
Member (Judicial)

MUHAMMAD AKBAR KHAN
Member (Executive)

M.Khan

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 573/2022

Rahim Ullah **Versus** Education Department

S.No. of Order & Date of proceeding	**Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary**
Order-19 04th November, 2024.	Present: 1. Afrasiab Khan Wazir, Advocate, for appellant present. 2. Mr. Naseer Uddin Shah, Assistant Advocate General, for the respondents present. 3. Vide our detailed judgment of today placed on file, we are unison to dismiss the instant service appeal being devoid of merits and the same is dismissed accordingly. Costs shall follow the event. Consign. 4. ***Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 4th day of November, 2024.*** (MUHAMMAD AKBAR KHAN) Member (E) (RASHIDA BANO) Member (J) *M.KHAN*

MEMO OF COSTS
KHYBER PAKHTUNKHKWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.573/2022

Date of presentation of Appeal	11.04.2022
Date of hearing	04.11.2024
Date of Decision	04.11.2024

Mr. Rahim Ullah, CT (BPS-15), GHS Ladha, South Waziristan Tribal District.
... (Appellant)

Versus

1. The Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. The Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. The Additional Director (Establishment) Merged Area, Khyber Pakhtunkhwa, Peshawar
4. The Deputy Director (Establishment) Merged Area, Khyber Pakhtunkhwa, Peshawar
5. The District Education Officer (Male) South Waziristan at Tank.

... (Respondents)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 03.12.2021, WHEREBY APPELLANT HAS BEEN IGNORED FOR PROMOTION TO THE POST OF SST (BPS-16) (BIO-CHEM) AS PER THEIR 75% SHARE OF PROMOTION IN VACANT POST WITH HIS COLLEAGUE AND AGAINST INACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

PRESENT

1. Mr. Afrasiyab Khan Wazir, Advocate for the appellant
2. Mr. Naseer ud Din Shah, Assistant Advocate General for the 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
Total	**Rs. 100**	**Total**	**Rs. Nil**

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 4th day of November, 2024.

(MUHAMMAD AKBAR KHAN)
Member (E)

(RASHIDA BANO)
Member (J)