

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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

Service Appeal No. 1651/2022

Date of Presentation of Appeal.....19.12.2022
Date of Hearing.....08.11.2024
Date of Decision.....08.11.2024

Mst. Rozina Akhtar, SCT (BPS-16), GGHS Marghuz,
District Swabi.....(*Appellant*).

Versus

1. The Secretary, (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
2. The Director, (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (F), District Swabi.....(*Respondents*)

Present:

Mr. Mir Zaman Safi, Advocate.....For the appellants
Mr. Naseer ud Din Shah, Assistant Advocate General...For respondents

“APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDERD DATED 13.12.2017, WHEREBY THE APPELLANT HAS BEEN PROMOTED TO THE POST OF SCT (BPS-16) WITH IMMEDIATE EFFECT RATHER THAN RETROSPECTIVE EFFECT I.E. 26.04.2016 AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS”



JUDGMENT

RASHIDA BANO MEMBER (J): Brief facts of the case, as per contents of the appeal are that, the appellant was initially inducted into the Respondent department as a CT (BPS-09, now BPS-15) on 06-08-1995. During her service, she was transferred from Bajaur Agency to GGMS Nabi, District Swabi, on 18-04-2003, while serving as CT (BPS-15), many of her colleagues, including juniors, were promoted to SCT (BPS-16) on 26-04-2016, and subsequently adjusted to various schools as per the adjustment order dated 28-04-2016. However, the appellant was unjustly overlooked for this promotion without any valid reason. She was later promoted to SCT (BPS-16) on 13-12-2017, but this promotion was not made retrospective to 26-04-2016, the date her colleagues were promoted. Following her promotion, the Appellant was adjusted at GGHSS Marghuz, Swabi, on 25-01-2018, where she resumed her duties with enthusiasm. Despite repeatedly requesting the Respondent department for a retrospective promotion effective from 26-04-2016, her requests were denied. Consequently, feeling aggrieved by the impugned order dated 13-12-2017, the appellant filed a departmental appeal, but has yet to receive a response. Thus, she has no option but to file the present 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 claims of the appellant.

03. We have heard learned counsel for the appellant and learned Assistant Advocate General 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 Assistant Advocate General controverted the same by supporting the impugned order(s).

05. The perusal of record reveals that appellant through instant service appeal want to antedate her promotion order dated 13.12.2017 to 26.04.2016, whereby she was promoted as SCT (BPS-16) with immediate effect. The Appellant was inducted into the Respondent department as a CT (BPS-09, now BPS-15) on 06-08-1995 and was transferred to GGMS Nabi, District Swabi, on 18-04-2003. While serving as CT (BPS-15), many of her colleagues, including juniors, were promoted to SCT (BPS-16) on 26-04-2016, but the Appellant was unjustly overlooked for this promotion. She was eventually promoted to SCT (BPS-16) on 13-12-2017, yet this promotion was not made retrospective to the date her colleagues were promoted.

06. The Appellant contends that she was transferred to District Swabi in 2003, and her seniority should be retained from that year. She asserts her eligibility for promotion during the


Departmental Promotion Committee (DPC) meeting held on 26-04-2016, as several junior CTs, specifically Mst. Hashmat Sultan (appointed on 31-03-2004), Mst. Radifa Bibi, and Rifat Begum (both appointed on 01-04-2004), were promoted at that time.

07. Furthermore, it is pertinent to note that the respondent department failed to maintain an accurate seniority list, which led to the list being set aside in the connected Service Appeal No. 1864/2022.

08. In light of these circumstances, respondent department are directed to consider appellant for promotion, if, she falls in better seniority position than last appointee of order dated 26.04.2016. Costs shall follow the event. Consign.

09. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 08th day of November, 2024.*


KALIM ARSHAD KHAN
CHAIRMAN


RASHIDA BANO
Member (Judicial)

M.Khan

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.1651/2022

Date of presentation of Appeal 19.12.2022
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Mst. Rozina Akhtar, SCT (BPS-16), GGHS Marghuz, District Swabi. ... (Appellant)

Versus

1. The Secretary, (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
2. The Director, (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (F), District Swabi. ... (Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 13.12.2017, WHEREBY THE APPELLANT HAS BEEN PROMOTED TO THE POST OF SCT (BPS-16) WITH IMMEDIATE EFFECT RATHER THAN RETROSPECTIVE EFFECT I.E. 26.04.2016 AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

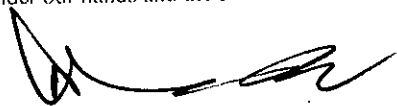
PRESENT

1. Mr. Mir Zaman Safi, 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 8th day of November, 2024.



(KALIM ARSHAD KHAN)
CHAIRMAN



(RASHIDA BANO)
Member (J)



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1651/2022

Mst. Rozina Akhtar

Versus

Govt. of Khyber Pakhtunkhwa

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
<p>Order-17 8th November, 2024.</p>	<p>Present:</p> <ol style="list-style-type: none">1. Mr. Mir Zaman Safi, Advocate, for appellant present.2. Mr. Naseer ud Din Shah, Assistant Advocate General, for the respondents present.3. Vide our detailed judgment of today placed on file, the respondent department are directed to consider appellant for promotion, if, she falls in better seniority position than last appointee of order dated 26.04.2016. Costs shall follow the event. Consign.4. <i>Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 8th day of November, 2024.</i> <p style="text-align: center;"> (KALIM ARSHAD KHAN) CHAIRMAN</p> <p style="text-align: center;"> (RASHIDA BANO) MEMBER (J)</p> <p>*M.KHAN*</p>