

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**  
**CAMP COURT ABBOTTABAD**

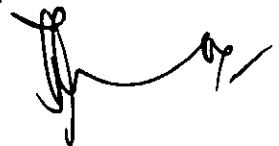
Service Appeal No. 749/2019

BEFORE: MR. KALIM ARSHAD KHAN .... CHAIRMAN  
MISS. FAREEHA PAUL ... MEMBER(E)

Ejaz Ahmad, Assistant Office of District Food Controller, Manshra  
.... (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa, through Secretary Food, Khyber Pakhtunkhwa, Peshawar.
2. Director Food, Khyber Pakhtunkhwa, Peshawar.
3. Divisional Assistant Director Food Hazara Division, Abbottabad.
4. District Food Controller, Manshra.
5. Abdul Wali Khan, Assistant, Khyber Pakhtunkhwa, Peshawar.
6. Bashir Ahmad, Assistant, Khyber Pakhtunkhwa, Manshra.
7. Shehreyar Khan, Assistant, Khyber Pakhtunkhwa, Mardan.
8. Syed Zakir Shah, Assistant, Khyber Pakhtunkhwa, M. Agency.
9. Asif Khan, Assistant, Khyber Pakhtunkhwa, FR Kohat.
10. Naseer Ahmed, Assistant, Khyber Pakhtunkhwa, Dir Lower.
11. Hazrat ullah, Assistant, Khyber Pakhtunkhwa, Peshawar.
12. Zaheer Abbas, Assistant, Khyber Pakhtunkhwa, Karak.
13. Muhammad Ayaz, Assistant, Khyber Pakhtunkhwa, M. Agency.
14. Zahir Ali, Assistant, Khyber Pakhtunkhwa, Peshawar.
15. Syed Faridoon, Assistant, Khyber Pakhtunkhwa, Charsadda.
16. Muhammad Ibrahim, Assistant, Khyber Pakhtunkhwa, Charsadda.
17. Arshad Farooq, Assistant, Khyber Pakhtunkhwa, Abbottabad.
18. Gohar Ali, Assistant, Khyber Pakhtunkhwa, Mardan.
19. Muhammad Iqbal, Assistant, Khyber Pakhtunkhwa, M. Agency.
20. Furrukh Sair, Assistant, Khyber Pakhtunkhwa, Peshawar.



21. Amjad Hussain Shah, Assistant, Khyber Pakhtunkhwa, Manshra.
22. Shakeel Ur Rehman, Assistant, Khyber Pakhtunkhwa, Charsadda.
23. Muhammad Rashid, Assistant, Khyber Pakhtunkhwa, Peshawar.
24. Gul Nawaz, Assistant, Khyber Pakhtunkhwa, Lakki Marwat.
25. Sajjad Ali, Assistant, Khyber Pakhtunkhwa, Swat.
26. Abdul Ghafar, Assistant, Khyber Pakhtunkhwa, Newshehra.
27. Akhtar Zaman, Assistant, Khyber Pakhtunkhwa, Lakkir Marwat.
28. Fahmid, Assistant, Khyber Pakhtunkhwa, Charsadda.
29. Rashid Mehmood Malik, Assistant, Khyber Pakhtunkhwa, Manshra.
30. Khursheed Ahmed, Assistant, Khyber Pakhtunkhwa, Charsadda.
31. Haneef Khan, Assistant, Khyber Pakhtunkhwa, Mardan.
32. Amir Nawaz, Assistant, Khyber Pakhtunkhwa, S.W Agency.

.... (Respondents)

Mr. Muhammad Arshad Khan Tanoli  
Advocate

...

For appellant

Mr. Kabir Ullah Khattak  
Addl. Advocate General

...

For respondents

Date of Institution.....19.06.2019  
Date of Hearing.....22.09.2022  
Date of Decision.....22.09.2022

### JUDGEMENT

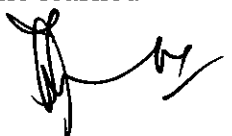
**FAREEHA PAUL MEMBER (E):** The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, against the impugned seniority list dated 16.04.2019 wherein name of the appellant is appearing at serial no. 36. The appeal is with the prayer that the impugned seniority list may be ordered to be revised and name of the appellant may be placed at serial no. 8 of the



seniority list of Assistants after taking into account the turn of the appellant for promotion to Senior Clerk in 2004 with all back benefits.

2. Brief facts of the case, as per memorandum of appeal, are that the appellant was appointed in Food Department as Junior Clerk in the year 1993. He was promoted to the post of Senior Clerk vide order dated 07.07.2000 on the basis of seniority-cum-fitness and posted at DFC office Kohistan. The appellant did not assume the charge of the post of Senior Clerk and forewent the promotion due to dependent parents, having ailments and other unavoidable domestic problems. Thereafter, Respondent No. 2 (Director Food Khyber Pakhtunkhwa) asked the appellant to give undertaking to the effect that in case of foregoing promotion to Senior Clerk he would have no objection to be placed at the bottom of the seniority list of Junior Clerks vide letter dated 18.07.2000. Availing that, the appellant submitted undertaking which read, "I have no objection if my seniority will be fixed at the bottom of the seniority list", vide application dated 27.07.2000. Thereafter, Respondent No. 2, instead of issuing withdrawal of promotion order of the appellant, issued reversion letter dated 14.09.2000. The appellant started shuttling from one office to another for redressal of his grievances and submitted representations to the department. Ultimately, in pursuance of a representation, the respondents placed the name of the appellant at the top of seniority list of Senior Clerks vide seniority list dated 08.10.2017. On the basis of that seniority list he was promoted from the post of Senior Clerk to the post of Office Assistant vide order dated 31.05.2018 and his name was placed at serial No. 36 of the seniority list of the Office Assistants, which was issued on 16.04.2019. The appellant filed Departmental Appeal against that on 09.05.2019 with the request to place him at serial No. 8, which was rejected on 21.05.2019; hence, the instant service appeal.

3. Respondents were put on notice who submitted written replies/ comments on the appeal. We have heard the learned counsel for the appellant as well as the learned



Additional Advocate General and perused the case file with connected documents in detail.

4. Learned counsel for the appellant presented his case and contended that he had foregone his promotion in the year 2000 and after lapse of four years he was to be promoted in the year 2004 but contrary to the rules he was promoted to the post of Senior Clerk in 2013. He argued that had the appellant been promoted to the post of Senior Clerk in 2004 he would have been placed at serial No. 8 instead of serial No. 36 in the seniority list dated 16.04.2019 which had been impugned by him. He further contended that <sup>it</sup> was an accepted principle of law that once an employee forwent his promotion, his seniority was to remain intact in his cadre. According to him, when Respondent No. 2 obtained an undertaking for fixing his seniority at the bottom of seniority list of Junior Clerks, he transgressed his authority and obtained it from the appellant as a result of coercion and undue pressure, hence, the letters dated 18.07.2000 and 14.09.2000, being illegal, were to be set aside. He invited the attention to a writ petition filed before the Hon'ble Peshawar High Court, Abbottabad Bench. which was decided on 07.04.2015 and contended that the respondent did not give any heed to that. The hon'ble court in that judgement had treated the petition as representation with the directions to Respondent No.2 to consider the case of petitioner on merit and strictly in accordance with law through a speaking order within a period of 15 days.

5. The learned Additional Advocate General contended that in the light of Appointment, Promotion & Transfer Rules 1989, and as per advice of the Establishment Department, the appellant was placed at the top of the revised seniority list of the Senior Clerks as that stood on 31.10.2013. His case for promotion to the post of Assistant was also placed before the Departmental Promotion Committee, which recommended him for promotion to the post of Office Assistant and he was posted in the office of DFC Manshra vide order dated 31.05.2018. On

the question of placing the name of the appellant at the bottom of seniority list of Junior Clerks the learned Additional Advocate General informed that on promotion as Senior Clerk and posting at the office of DFC Kohistan, the appellant submitted an application to the Director Food Khyber Pakhtunkhwa, with the request that he would have no objection if his seniority slid down in the seniority list of junior clerks and it was on the receipt of that application that the Director properly informed the appellant that in case he was not willing for promotion, he would be placed at the bottom of the seniority list of junior clerks. In response to that the appellant informed that he did not want to avail promotion and subsequent posting to Kohistan and it was on his own request that he was reverted on the post of Junior Clerk.

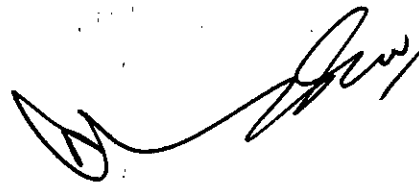
6. In the light of record and arguments presented before us, it is clear that the appellant was promoted from the post of Junior Clerk to the post of Senior Clerk and subsequently posted in the office of DFC Kohistan vide order dated 07.07.2000. Record further indicates that the appellant requested to forego his promotion because of domestic issues and he himself submitted no objection if his seniority was fixed at the bottom of the seniority list of Junior Clerks. He raised no objection at the time when the Director Food issued order dated 14.09.2000 wherein it was clearly mentioned that seniority of the official was fixed at the bottom of junior clerks on his own option and that he would not claim seniority as right in future. Later on he was promoted to the post of Senior Clerk and was placed at top of seniority list. Based on that seniority of the Senior Clerks dated 08.10.2017, he was promoted as Office Assistant vide promotion order dated 31.05.2018. The contention of the appellant that he should be at serial No. 8 instead of serial No. 36 is not comprehensible. Record indicates that all the Assistants from serial No. 1 to 35, have been appointed on that position from the year 2011 to 2017; four of them have been appointed by initial recruitment whereas the rest of them had been



appointed by promotion. The appellant has been placed at serial no. 36 after being promoted in 2018. The point of the appellant has no strong ground as to why he should be placed at serial No. 8 and not at serial No. 36. He was unable to cite any law or rule under which the desired relief could be extended to him. It is understandable that he was placed at serial no.36 of the seniority list dated 16.04.2019 as he was promoted on 31.05.2018 alongwith seven others who were appointed at later stage than the appellant. Rule 17 of the APT Rules, 1989 is the relevant provision for determining the seniority under which the case of the appellant is not covered.

7. In view of above discussion, the appeal in hand is dismissed. Parties are left to bear their own costs.

8. *Pronounced in open court in Abbotabad and given under our hands and seal of the Tribunal on this 22<sup>nd</sup> day of September, 2022.*



**(KALIM ARSHAD KHAN)**  
Chairman



**(FAREEHA PAUL)**  
Member (E)