

**BEFORE THE KKKHYBER
PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

Service Appeal: 502/2022

Sher Bahadar..... Appellant

VERSUS

Government of KP & Others Respondents

WRITTEN REPLY ON BEHALF OF
RESPONDENT NO. 7

Respectfully Sheweth:

Preliminary Objections:

1. That the appellant has got no cause of action to file the instant appeal.
2. That the appellant has not come to this Hon'ble Tribunal with clean hands.
3. That with due respects this Hon'ble Tribunal lacks jurisdiction to entertain the instant appeal.
4. That the petition is bad in law and facts.
5. That the appellant concealed the material facts from this Hon'ble Tribunal.
6. That the answering Respondent has already assumed charge of the duty but the appellant making hindrance for performing in lawful duty, hence, this is based on wrong facts and liable to be dismissed.
7. That the appellant is estopped by his own conduct.
8. That the promotion order has been issued by worthy / competent authority of the department and against that order no appeal has been made to the high ups, the appeal of the appellant is premature and liable to be dismissed on this score only.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 2783

Dated 6/1/23

9. That the replying respondent is qualified and eligible for promotion that's why he has been promoted as per law and rules.
10. That all the necessary parties has not been arrayed as parties to the lis, hence the appeal is merit less and liable to be dismissed.

ON FACTS:-

1. Para No.1 of appeal not related to answering respondent, hence, needs no reply, however the replying respondent also passed the Patwar course in the year 2003.
2. Para No.2 subject to proof, however the name of the appellant was entered in the register later on while the replying respondent was enlisted in the register prior and that's why the appellant was not considered for promotion. The answering respondents has rightly been considered and promoted as per Para 3.6 of Land Record Manual. The appellant has no right to challenge the seniority. The answering respondent objected / challenged seniority and filed a departmental appeal which followed by WP No.2048-P/2021 which was disposed of and directions were issued to official respondents, to issue seniority of patwaris of district Charsadda as per law, the Director Land Records, Khyber Pakhtunkhwa vide Letter dated" 10.11.2021 issued direction to Deputy Commissioner Charsadda to issue the seniority as per Para 3.6 of Land Record Manual, which has acted upon but till date neither the appellant nor any other person challenged the Judgment of Worthy Peshawar High Court, Peshawar nor other proceedings of the department, hence, the appeal of the appellant is based on self engineered stories, which needs to be dismissed with heavy costs.
(Copies attached)

3. Para No.3 of the appellant is wrong, incorrect and based on false statement, hence, expressly denied. Prior to 2016 amendment there was no test / interview but the appointment would be made on basis of enlistment of name in the register and there was no merit. The person who approached earlier he would be considered first, that's why the answering respondent is senior to appellant and in this respect the seniority list was issued in 2006 but that was not challenged by the appellant at that time, hence, now he is estopped to filed this appeal.
4. Para No.4 needs no comments, however the answering respondents are also qualified and eligible and his probation was also terminated after completing the probation period.
5. Para No.5 of the appeal is correct to this extent that in 2006 the seniority list was issued as per law but the allegation of the appellant is baseless and have no nexus to reality and based on mala fide intention, hence, the appeal is not maintainable in its present form.
6. Para No.6 of the appeal is framed with the intention to misguide and mislead this Hon'ble Tribunal because that the appellant is junior and the answering respondent is on better position and qualified for promotion that's why he has been rightly promoted. The appellant wrongly, illegally with mala fide intention maneuvered the real facts, because for Patwaris there is a settle rule of appointment and seniority as per Para 3.6 of Land Record Manual, that's why all the seniority list on the basis of age were ractified / corrected as per law and the presently seniority list has been issued as per law and policy of the land, the appeal is based on

hypothesis and presumption which have no value in the eyes of law and liable to be dismissed. The seniority list and promotion Order of answering respondents is lawful and issued in the best Public interest. Further it is submitted that the appellant vociferated in appeal is fake, forged and factious allegations which have no nexus with reality and even the promotion order of the replying respondent has not been challenged.

7. Paras No.7, 8 & 9 of appeal are replied conjointly, which relates to earlier litigation of the replying respondent which needs no comments; however seniority list has been rightly issued after considering the legal position of the incumbents. The matter was elaborately and meticulously scanned in the light of Para-3.6 of Land Record Manual and the seniority of the patwris were issued accordingly as per law (letter of DLR is attached). That's why the departmental appeal of the appellant was rightly dismissed by the competent authority, the appeal of the appellant is not maintainable and liable to be dismissed on this score only.
8. Para No.9 of the appeal is wrong, incorrect and based on mala fide intention of the appellant, hence, expressly denied. The answering respondents are qualified and eligible for promotion that's why they are promoted as per law and the appellant has no cause of action to file the instant appeal.

GROUND:-

- A. Ground A & B are denied. The seniority list of 2006 has rightly been issued but till date no one challenged that seniority and later on the incorrect seniority list were objected / challenged which was rectified / corrected, the

Orders of official respondents have been passed under the law and the rules and the allegations leveled in Ground-B are false and baseless, the issue of merit has been categorically explained in the judgment / order of Worthy Commissioner dated: 16.03.2022.

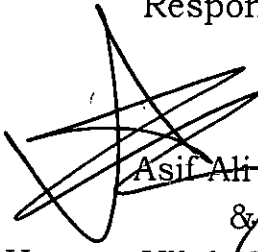
- B. Ground-C not related to answering respondent, hence, needs no comments.
- C. Ground-D is wrong, incorrect and baseless hence, expressly denied.
- D. Ground-E is wrong, incorrect and baseless hence, expressly denied, the answering respondents are well qualified and eligible for promotion, hence, the competent authority rightly issued the seniority list as per law and rules.
- E. Grounds F & G are denied. The appellant is obliged under the civil servants Act, 1973 to accept every legal order of the competent authority as and when required. More so the appellant is not eligible on any score for seniority.
- F. Ground H is denied. The stance taken in this para is self denying for the reason that in the law established in Para-3.6 of land record manual no where it shows any order of merit but the enlistment in register is the proper criteria prior to 2016 amendment and appellant was rightly placed on 15th position as per his enlistment in register. The replying respondent is senior and eligible with all respects; hence the appeal is merits rejection / dismissal.
- G. Ground F is incorrect, hence denied. The appellant is not eligible for the post as submitted earlier and the answering respondents have rightly been placed on the top of seniority list and promoted and posted

in accordance with the law being eligible for the said post.

H. Ground-J needs no comments, however the appellant has no cause to file the instant appeal.

**IT IS. THEREFORE, MOST HUMBLY
PRAYED THAT THE APPEAL BEING
WITHOUT ANY SUBSTANCE MAY KINDLY
BE DISMISSED WITH COSTS.**

Dated:06.01.2023

Respondent No. 7
Through

Asif Ali Shah
&
Haseen Ullah Gamaryani
Advocates