07.09.2021 Through this application, it has been pointed out that the applicant on receiving attested copy of the decision in appeal No.5964/2021, came to know about wrong mentioning of the year with date of tentative seniority list in the short order as well as in the main judgment at Page#.4, Paragraph #.4 and Page#.6, Paragraph#.5. The judgment dated 14.07.2021 was passed for disposal of two appeals, one bearing No.3521/2021 and the other No.5964/2021. This application has been submitted by the applicant who was appellant in Appeal No.5964/2021. Files in both the appeals mentioned before have been requisitioned and the record has been perused. It is a matter of fact that in both the appeals, tentative seniority list dated 20.02.2020 and 31.10.2020 were challenged. However, due to typographical mistake, the year with the said dates were written as 2021 instead of 2020 in Paragraphe#.4 & 5 of the judgment and the short order. As the same is a clerical error and this Tribunal having jurisdiction of a Civil Court within meaning of Subsection-(2) of Section-7 of Khyber Pakhtunkhwa Service Tribunal Act, 1974 and by virtue of the applicability of the Civil Procedure Code under the same provision, has got the jurisdiction for correction of such mistake/error under Section-152 of the C.P.C 1908. Therefore, it is directed that necessary correction be made in the judgment and in the short order where applicable. This application stands disposed of and the same alongwith this order be placed on file of appeal No.5964/2021 in original and copy be placed on file of Appeal No.3521/2021.

(Rozina Rehman)
Member (J)

Chairman

FORMOF ORDERSHEET

Court of_____

Misc. application No. 165 /2021.

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	03/09/2021	The Misc. application in service appeal no. 5964/2021 submitted by Mr. Muhammad Arif Khan Advocate, may be entered in the relevant Register and put up to the Court for proper order please. REGISTRAR
2-		This Misc. application be put up before D. Bench on_____ CHAIRMAN

BEFORE THE HON'BLE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR.

Application No. 165 /2021
In Service Appeal No.5964/2021

Qaiser Alam, Chief of Section, P&D Department, Presently Posted as Chief Planning Officer Health Department.

(Applicant)

Versus

The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and others.

(Respondents)

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2.	Affidavit		3
3	Attested copy of judgment dated 14.07.2021		
5	Wakalatnama		

Applicant

Through

Muhammad Arif Khan,
Advocate,

BEFORE THE HON'BLE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR

Application No. 165 /2021
In Service Appeal No.5964/2021

Qaiser Alam, Chief of Section, P&D Department, Presently Posted as Chief Planning Officer Health Department.

(Applicant)

Put up to the court with relevant appeal.
6/9/2021

Versus

The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and others.

(Respondents)

Ready

Application for correction in judgment dated 14.07.2021 in above referred appeal

PRAYER:

Place before the same DB on 7/9/2021

That by accepting this application the applicant is prayed for:

Correction of date of tentative seniority lists issued in February, 2020 and October 2020 which was inadvertently written in the short order as well as in the main judgment as "*February 2021 and October 2021*".

Respected Sheweth:

06/9/2021

A. **That** the applicant filed the above referred appeal No. 5964/2021 in this honorable tribunal.

B. **That** the subject appeal was fixed for hearing on 14.07.2021 and after hearing the arguments this honorable tribunal decided the same on the same date. (Attested copy is attached herewith).

C. **That** when the applicant received attested copy of the decision in the subject appeal, the same reveals the date of tentative seniority list issued in February 2020 and October 2020 as **"2021"** in the short

order as well as in the main order at **page No. 4, paragraph No.4 and page No. 6 paragraph No. 5.**

D. That the date of tentative seniority lists mentioned in the judgment is typographical mistake and the same needs correction.

It is, therefore, humbly requested that the date of tentative seniority list mentioned in the judgment and short order as February 2021 and October 2021 may be corrected as "**2020**".

Applicant

Through

Muhammad Arif Khan,
Advocate,

Dated: 03/09/**2021**

BEFORE THE HON'BLE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR.

Application No. _____/2021
In Service Appeal No.5964/2021

Qaiser Alam, Chief of Section, P&D Department, Presently Posted as Chief Planning Officer Health Department.

(Applicant)

Versus

The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and others.

(Respondents)

Affidavit

I, Muhammad Arif Khan, Advocate Peshawar as per instruction of my client/ applicant, hereby affirmed that the contents of the accompanying application are correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Deponent

ATTESTED

MALIK M.A.L.I.K
Notary Public
Peshawar

BEFORE THE HON'BLE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal No 5964 of 2021

Qaiser Alam, Chief of Section, P&D Department, Presently Posted as Chief Planning Officer Health Department.

(Appellant)

Versus

1. **The Government of Khyber Pakhtunkhwa** through Chief Secretary, Civil Secretariat, Peshawar.
2. **The Additional Chief Secretary,** P&D Department, Civil Secretariat, Peshawar.
3. **The Secretary,** Govt. of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar
4. **The Deputy Secretary,** Planning & Development Department Peshawar
5. **Mr. Sher Gul, Senior Chief P&D Department.**
6. **Mr. Adil Saeed Safi, Deputy Secretary, Prime Minister Secretariat, Islamabad**
7. **Mr. Javed Khan, Chief Coordination, P&D Department Peshawar.**

(Respondents)

Filed to-day
Registrar
1/6/2021

APPEAL U/S 4 OF SERVICE TRIBUNAL ACT, 1974

re-submitted to -day
and filed.
Registrar
14/6/2021

PRAYER IN APPEAL:

That by accepting this appeal the appellant is prayed for:.

The promotion orders of respondent No. 5 to BPS-20 without completing mandatory requirements of undergoing Senior Management Course (SMC) and respondent No. 6 to BPS-19 without undergoing Mid Carrier Management Course (MCMC) under notification issued on 26-9-2017, may be declared as null and void as planning cadre was already established at that time and individual department having no rights to process promotion cases of the

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Service Appeal No. 5964/2021

S.No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	14.07.2021	Present: Ali Gohar Durrani, Advocate ... For Appellant Muhammad Adeel Butt, Additional Advocate General ... For respondents Vide our detailed judgment of today of this Tribunal placed on file on file of No.3521/2021 titled Shah Fazil Vs. Government of Khyber Pakhtunkhwa, the official respondents are directed to decide the objections of appellant and any other objection if filed against the tentative seniority lists issued in February, 2021 and October, 2021. As the seniority disputes between the appellant and the private respondents seems to be outcome of regularization of said respondents, therefore, official respondents are expected not to overlook the law on the subject, while deciding the objections about tentative seniority lists. It is further directed that official respondents shall not process the case for promotions until a final seniority list is issued. No order as to costs. File be consigned to the record room. ANNOUNCED. 14.07.2021

Date of Presentation of Application 29-7-21
Number of Words 800
Copying Fee 10.00
Urgent 4.00
Total 14.00
Name of Copyist
Date of Completion of Copy 29-7-21
Date of Delivery of Copy 29-7-21

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

(Rozina Rehman)
Member (J)

(Ahmad Sultan Tareen)
Chairman

Sr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 3521/2021

Date of Institution : 11.03.2021
Date of Decision : 14.07.2021

Mr. Shah Fazil S/O Sardar Hussain, Senior Planning Officer, Higher Education Department, Khyber Pakhtunkhwa, Peshawar.

(Appellant)

Versus

The Government of Khyber Pakhtunkhwa, through Secretary Establishment Civil Secretariat Peshawar.

(Respondents)

14.07.2021

JUDGMENT

AHMAD SULTAN TAREEN, CHAIRMAN: The appellant was part of the Planning Service Cadre of the Government of Khyber Pakhtunkhwa who after getting the appointment in BPS-17 in the said cadre on 25.02.2008 was further promoted to BPS-18 on 22.07.2019 as Senior Planning Officer. In the mean time, the Government of Khyber Pakhtunkhwa Planning Service Rules 2018 were promulgated providing to regulate the Planning Service cadre.

and the service structure. The ibid rules were published in through Notification No. SO(E)P&D/6-1/SR/PPD/2018 dated 22.02.2018. subsequently, the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2018 was passed and after receiving assent of the Governor in the March, 2018 was promulgated. The said Act resulted in regularization of services of employees working against project post under the P&D Department of Government of Khyber Pakhtunkhwa. The department issued a tentative seniority list, wherein, the appellant already holding the post in regular service of the Planning cadre and those other officers whose services were regularized on the strength of Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2018, were dealt with by the department in the common seniority list. In the tentative seniority list, so issued on 20.02.2020, the appellant was shown at Serial No.23 which according to him is not a proper place and he filed representation against the said seniority list on 04.03.2020. Subsequently, the respondents issued another seniority list on 23.10.2020 and the appellant who was initially shown at serial No.23 of the tentative seniority list dated 20.02.2020 for employees in BPS-18, was suddenly sent to Serial No.55 of the subsequent seniority list. The appellant also filed representation against the subsequent seniority list on 17.11.2020 but no response was given from the department. He believes that his seniority was disturbed due to encadrement of the outsiders. (May be he is referring to the project employees subsequently,

The appellant concluded factual part of his appeal with the submission in respect of the illegality committed by issuance of the tentative seniority list dated 23.10.2020 and encadrement of employees notified vide Notification dated 19.01.2020 by including them in the Provincial Planning Service Cadre. The appellant has approached this Tribunal for the solicited relief described under the prayer part of his memorandum of appeal at its end.

02. As far as the appeal No.5964 of 2021 is concerned, although nature of incumbency of the appellant is different from that of incumbency of the appellant of the above titled appeal; but the underlying issue hinges upon the common question of fact and law relating to the seniority list which was issued after incadrement of the project employees regularized under the law mentioned supra. Therefore, there seems no useful purpose to provide factual account of appeal No.5964/2021 here for the sake of brevity and the same shall stand disposed of in terms of this judgment.

03. As both the above mentioned appeals had not yet passed the stage of preliminary hearing and when they came up before S.B for such hearing, it was deemed appropriate to send the same to D.B for final hearing and disposal in limine having regard to necessity of first and second proviso to Sub Section (1) of Section 5 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. The learned A.A.G present before us, was noticed for hearing as to final disposal of the appeal. He was confronted with the position

that the seniority list challenged in both the appeals are still tentative awaiting the disposal of objections filed against them by the appellants and may be by other aggrieved officers also. He in view of the said point was asked to get clarification from the department as to whether the final seniority list in pursuance of the impugned seniority list has been issued or not

04. Learned A.A.G after getting instructions from Mr. Arshad khan Litigation Officer of the P&D Department, made a statement at the bar that the objections as filed by the appellant against the tentative seniority list impugned in the present appeals still remain undecided. Further stated that the department has prepared Working Paper for submission to P.S.B in respect of the respondents for consideration of their promotion case from BPS-19 to 20, on the basis of final seniority list issued on 31.01.2018. Needless to say that Sub Section-5 of Section-8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 requires that seniority list prepared under Sub Section (1) shall be revised and notified in the official gazette at least once in a calendar year preferably in the month of January. The information given to the learned A.A.G by the Department and transmitted to us as noted above, is seemingly contrary to law as discussed before. Moreover, once the Department has issued a tentative seniority list in February, 2021 and October, 2021 followed by objections filed against it, the competent authority is legally obliged to settle those objections in accordance with law and then issue a final seniority list. The

pursuit of the department to send a case for promotion to P.S.B, on old list, already in process of replacement seems not a fair exercise on the part of department. Therefore, without touching the merits of the case, we are inclined to decide the appeal in limine. It necessitates to observe that notice to private respondents is not necessary for the reason that we are not going to pass any order on merits of the tentative seniority list impugned before us. Rather we while keeping the same intact, will require the official respondents to finalize the seniority list after hearing and disposal of objections filed against it. Thus, the final decision affecting rights of parties rests with the competent authority among official respondents. If such decision aggrieves any party in this appeal, they would be at liberty to challenge the same under due course of law. Before coming to operative part of this order, we find it useful for every party to reproduce herein below Section-6 of the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2018.

" ***6. Seniority.---(1)*** *Except the employees mentioned in the proviso to Section-4 of this Act, whose services are to be regulated by their respective laws and rules, all other employees whose services are regularized under this Act or in the process of attaining service on regular basis on the commencement of this Act, and shall also rank junior to such other persons, if any, who, in pursuance of*

the recommendation of the Commission or Departmental Selection Committee, as the case may be, made before the commencement of this Act, are to be appointed to the respective service or cadre, irrespective of their actual date of appointment.

(2) *The seniority inter-se of the employees, whose services are regularized under this Act within the same service or cadre, shall be determined on the basis of their continuous officiation in such service or cadre:*

Provided that if the date of continuous officiation in the case of two or more employees is the same, the employee older in age shall rank senior to the younger one."

05. We, while deciding this appeal in limine, direct the official respondents to decide the objections of appellant and any other objection if filed against the tentative seniority lists issued in February, 2021 and October, 2021. As the seniority disputes between the appellants and the private respondents seem to be outcome of regularization of said respondents, therefore, official respondents are expected not to overlook the law on the subject, while deciding the objections about tentative seniority lists. It is further directed that official respondents shall not process the case for promotions until a final seniority list is issued. No order

as to costs. File be consigned to the record room.

Announced:
14.07.2021

(Rozina Rehman)
Member(J)

(Ahmad Sultan Tareen)
Chairman

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 29-7-21
Number of Words 2800
Copying Fee 30.00
Urgent 4.00
Total 34.00
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Date of Complection of Copy 29-7-21
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بعدالت

مورخہ ____ ضمیر عالم ____ بنام ____ صدیقہ گل دلبر ____ بنام

مقدمہ ____

دعویٰ ____

جرم ____

BC. No. 10772

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی وجواب دہی وکل کاروائی متعلقہ آں مقام ____ کیلئے ____

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارعرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرایں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برامدگی اور منسوخی نیز دائر کرنے اپیل نگرانی ونظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ منظور وقبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہرجانہ التوائے مقدمہ کے سبب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھدیا کہ سند رہے۔

المرقوم 03 ماہ ستمبر 2021

العبد ____ گواہ ____ العبد ____

بمقام ____ کے لئے منظور ہے۔

Attested

Amjad Ali