

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No: 232/2022

Mst. Hussan Basri, SIP BPS-18 GGSS Landi Arbab
District Peshawar.....Appellant.

Khyber Pakhtunkhwa
Service Tribunal

VERSUS

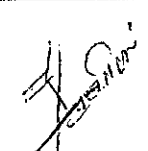
Case No. 3303

Dated 31-1-2023

Director, E&SE Khyber Pakhtunkhwa & others.....Respondents

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Assistant Director (Lit: II)
E&SE Department, Khyber
Pakhtunkhwa, Peshawar.

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JOINT PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENTS No: 1-2.

Respectfully Sheweth:-

The Respondents No. 1-2 submit as under:-

PRELIMINARY OBJECTIONS.

- 1 That the Appellant has got no cause of action/locus standi.
- 2 That the Appellant is not an aggrieved person within the meaning of Article-212 of the Constitution of Islamic Republic of Pakistan 1973.
- 3 That the instant Service Appeal is badly time barred under relevant provision of law of limitation Act 1908.
- 4 That the Appellant has concealed material facts from this Honorable Tribunal in the instant Service Appeal.
- 5 That the Appellant has not come to this Honorable Tribunal with clean hands.
- 6 That the Appellant is not entitled for the relief he has sought from this Honorable Tribunal.
- 7 That the instant Service Appeal is against the prevailing law & rules.
- 8 That this Honorable Court has got no Jurisdiction to entertain the present appeal.
- 9 That the impugned final Seniority list dated 02-3-2021 of the Department is in accordance with the mandatory provisions of Rules-17 of APT Rules 1989 read with section-8 of Civil Servants Act 1973 and liable to be maintained in favor of the Respondents No. 1-2 in the interest of justice.

10 That the appellant has correctly being placed at seniority No. 47 in the final seniority list as stood on 02-03-2021.

ON FACTS.

1. **That** Para-1 needs no comments being pertains to the appointment of the appellant against the PET (F) post vide order/Notification dated 17-11-1994 and a copy of the said order is **Annexure-A** for ready reference.
2. **That** Para-2 needs no comments being pertains to the record of the Gomal University D.I.Khan regarding his MSc degree in Session-2005-2006 under Registration No. 09-CPER-2003 Roll No. 251 with result declaration dated 6-05-2006 but in spite of this the appellant has not made the aforesaid University as a Respondent in the instant case on mala fide and a copy whereof is attached as **Annexure-B** for ready reference.
3. **That** Para-3 is correct that vide order & Notification dated 12-12-2006, the appellant has promoted to the post of DPE in BPS-16 on regular basis by the DPC and a copy of the said order is **Annexure-C** for ready reference.
4. **That** Para-4 is correct that the policy of one time upgradation in the upper scale was allowed by the Respondent No.1 to the appellant in BPS-17 (Personal) and a copy of the said Notification dated 13-11-2007 is **Annexure-D** for ready reference.
5. **That** Para-5 is correct that as per final Seniority list dated 31-3-2009 pertaining to the DPE cadre in BPS-17, the appellant was placed at S. No. 69 and a copy of the said seniority is **Annexure-E** for ready reference.
6. **That** Para-6 is incorrect, hence, denied formal rules & structure were there which were updated and amended from time to time by the Department according to the needs & demands of the Department in the interest of public interest.
7. **That** Para-7 is also incorrect & denied on the grounds that the seniority list dated 01-01-2017 of the Department is in accordance with the aforesaid Rules, wherein, the appellant has correctly been placed as per her service record in the custody of the Department, hence, the plea of the appellant is illegal & liable to be rejected and a copy of the said Seniority list **Annexure-F**.
8. That para-8 is incorrect & denied on the grounds that no Departmental appeal against the seniority list dated 01-1-2017 has been filed by the appellant to the appellate authority till date, therefore, got finality under the law & limitation Act 1908 against the appellant.

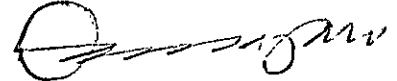
9. *That* Para-9 is incorrect vide order & Notification dated 23-5-2018 attached as (**Annexure-G**) at around 60 (F) Instructure Physical Education in BPS-17 were promoted to the post of SIP in BPS-18 by the Department under the existing rules & policy.
10. *That* Para-10 is correct to the extent of Tentative Seniority list of SIP in BPS-18 which was later on circulated for the information of all concerned for necessary correction through Departmental appeal. Therefore, no vested right of placing the appellant at a Seniority list number of her choice is accrued to the appellant. Hence, the claim of the appellant is illegal & liable to be rejected.
11. *That* Para-11 is correct that vide Notification dated 2-3-2021, the Department has Notified final Seniority list relating to the SIP, in BPS-18 (F) cadre by the Department under the above mentioned provision of law & rules, wherein, the appellant has correctly been placed at Seniority list No. 47 as per her service record in the custody of the Department since 1994. Therefore, the plea of the appellant is illegal & liable to be rejected and a copy of the said seniority list dated 02-3-2021 is **Annexure-H**.
12. That Para-12 is incorrect, no departmental has been filed by the appellant against the said final seniority list dated 02-3-2021 to the appellate authority till date, hence, got finality under the law. Therefore, the appeal in hand is liable to be rejected on the following grounds inter alia:-

GROUND:-

- a. **Incorrect & not admitted**, The plea of the appellant is illegal in view of the forgoing submission in the instant reply on behalf of the Respondent No. 1-2, as he has been treated as per law rules & policy by the Department.
- b. **Incorrect & not admitted**, hence, needs no further comments as already replies in the foregoing paras by the Department as the seniority list dated 02-3-2021 is legal & liable to be maintained.
- c. **Incorrect & not admitted**, the seniority list dated 02-3-2021 legally competent liable to be maintained as the act of the Department with regard to the seniority list dated 02-3-2021 is the result of due process of law & rules.
- d. **Incorrect & not admitted**, the plea of the appellant is without any legal grounds and justification, hence, liable to be rejected in favor of the Department.
- e. **Incorrect & not admitted**, the statement of the appellant is against the facts, hence, liable to be rejected.

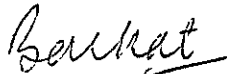
- f. **Incorrect & not admitted**, as detail reply to this ground has been given in the forgoing paras by the Department.
- g. **Incorrect & not admitted**, the act of the respondent Department is within legal parameters and liable to be maintained.
- h. **Incorrect & not admitted**, hence, needs no further comment as already replies above by the Department. That the act of the Respondent with regard to the seniority list dated 02-3-2021 is legal.
- i. **Incorrect & not admitted**, the stand of the appellant without any legal proof and justification, hence, liable to be dismissed.
- j. **Incorrect & not admitted**, the competent authority is entitled to frame rules & regularization for the employees in that interest just to avoid the aspect of stagnancy & disparity among the employees including the appellant. Therefore, the appeal in hand is liable to be rejected with the additional submission that the Honorable Bench is requested to allow the Respondent Department for the submission of additional grounds case law & record at the time of arguments on the date fixed please.

Therefore, it is most humbly requested that this Honorable Tribunal may very graciously be pleased to dismiss the instant Service Appeal in favor of the Department in the interest of justice please.
Dated. ___/___/2022.



DIRECTOR

E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondent No: 1)



SECRETARY

E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondent No: 2)

AFFIDAVIT

I, Dr. Hayat Khan Assistant Director (Litigation-II) E&SE Department Khyber Pakhtunkhwa, do hereby solemnly affirm & declare on oath that the contents of the instant para wise Comments are true & correct to the best of my knowledge & belief.



Deponent