BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

In Service Appeal No: 785 / 2022

Yasir Samood *VS* Govt. of Khyber Pakhtunkhwa etc.

WRITTEN REPLY ON BEHALF OF ADDED / IMPLEADED RESPONDENTS

Respectfully Sheweth,

Reply, on behalf of Added / Impleaded Respondents, is as under:

PRELIMINARY OBJECTIONS:

A. That, Appellant has got no cause of action or locus standi against the Answering Respondent.

B. That, the Appeal of the Appellant is not maintainable in its present form.

C. That, the Appellant has been estopped by his own conduct to file the instant Appeal.

D. That, Appellant has not come to the Court with clean hands and has suppressed material facts from this Honourable Tribunal.

E. That, Appellant has not questioned vires of the Rules before this Honorable Tribunal and seeks remedy of promotion against the allotted quota of Answering Respondents hence the Appeal of the Appellant is not maintainable on this score alone.

F. That, Appellant has suppressed the factum from this Honorable Tribunal that the promotion quota allotted to their category / cadre has already been exhausted.

G. That, as per Rules, Joint Seniority List is maintained only for those cadres of Civil Servants for whom separate quota is not allotted moreover direction of issuance of joint Seniority List is always mentioned in the Rules where it is expedient / necessary to mention.

H. That, if, for couple of moments, it is presumed that Joint Seniority List is allowed as per the prayer of the Appellant, even than the promotion will be done as per allotted quota / share hence instant Appeal is meritless and fruitless for the Appellant.

I. That, the Service Appeal is hopelessly time barred, as the rules for promotion were notified in the year 2012 which were never challenged by the Appellant or any of his colleague, followed by amendment in the said Rules in recent past i.e. during the pendency of instant Appeal.

FACTS:

1. Para 1 pertains to record, hence needs no Reply from the Answering Respondents.

2. Para 2 pertains to Official Respondents, hence needs no Reply from the Answering Respondents.

3. Para 3 pertains to Official Respondents, hence needs no Reply from the Answering Respondents.

4. In response to Para 4 of the Appeal, it is submitted that in the Rules of 1982, the concept of Joint Seniority List was allowed, for the purpose of promotion to the post of Assistant Director Labour, Assistant Director Weighs & Measure & Assistant Director Planning the Statistics (Labour Wing), due to the fact that all the above mentioned cadres were allotted collective quota of 50%, and as per law the promotion was given to the incumbents according to seniority position. In Column 6 of the Rules of 1982 no specific quota was allotted to any

specific cadre hence separate Seniority List could not be maintained as per Rules of 1982. However nowadays the scenario is changed and separate quota of 30% each is allocated to the post of Inspector Weights & Measure as well as Labour Officers / Labour Officers Female / Social Mobilizers.

5. Para 5 needs no comments as per above clarifications, however it is added that in the Rules of 2012, the Statistical Officer and Research and Statistical Officer were also included in the quota reserved for promotion of Labour Wing however in the year 2020 the Labour Officers Female and Social Mobilizers came in front and Statistical Officer and Research and Statistical Officer were given another channel of promotion.

6. Incorrect & misleading one, hence denied. As per Rules, the post of Labour Officer is filled-in by promotion from amongst the holders of the post of Assistant Labour Officers. Assistant Labour Officer is promoted from amongst the holders of post of Inspector Labour. The hierarchy mention in the instant Para is supported by the Rules while on the other hand the post of Inspector Weight & Measure is initial / direct recruitment post. The numbers mentioned in the Para in response are incorrect moreover, the number of posts of Labour Officers, Labour Officers (Female) & Social Mobilizers are almost equal (22) to the post occupied by the Appellant, as per new rules.

7. Correct to the extent of dismissal / withdrawal of Appeal No. 6747 / 2020 by the Appellant however it is added that the Rules which have been challenged by the Appellant in the instant Service Appeal were notified on 15.09.2020 by the Competent Authority. It was incumbent upon the Appellant to have challenged the vires of the said Rules within the prescribed limitation before the Competent Forum. The individual communication before the Tribunal regarding the promulgation of Rules on behalf of any one does not mean that a cause of action for the Appellant has arisen. It is added that no condonation of delay was applied for the period between the date of Gazette Notification and Departmental Appeal.

8. Incorrect. As per information of the Answering Respondents, no Departmental Appeal has been filed by the Appellant before

8. approaching this Honorable Forum, hence instant Appeal is not maintainable.

9. Para 9 needs no reply.

GROUNDS:

A. Incorrect. As per rules, issuance of joint Seniority List is not permissible. For sake of arguments, if the submission of the Appellant has been considered as workable by this Honorable Tribunal even than the allotted quota should be exhausted as per the contents mentioned in the Rules and the Appellant would not find any fruit from the Appeal.

B. Incorrect. The cadre of Appellant has already been accommodated and their quota of promotion is exhausted more than the allotted quota. It is important to mention here that the Appellant and his colleagues, in order to get the promotion in excess of their allotted quota, has filed the instant Appeal under malafide intention.

C. Incorrect. No malafide has been done by any authority while issuing the Seniority List or Service Rules of 2012. The Appellant should have brought his grievance before this Honorable Tribunal in the year 2012 if he was aggrieved from the promulgation of Rules of 2012. Even instant Appeal has not been filed in the prescribed limitations.

D. Incorrect hence denied. As per allotted quota promotion of the Appellant as well as Answering Respondents are just and the same cannot be amalgamated with Appellant's Quota, in any manner.

E. Incorrect. As per the contents of preceding Para(s).

F. Incorrect & misleading one hence denied. Article 38 of the Constitution of Islamic Republic of Pakistan, 1973 does not contain any reference regarding the joint or separate Seniority List.

G. Incorrect. The attached judgment has no relevance with the facts and circumstances of instant case.

H. Incorrect and misleading one hence denied. Labour Officers and Inspectors Weights & Measures are distinct cadres having different job descriptions and nature of duties moreover both the cadres originates from different channel of recruitment and promotion.

I. The Grounds and Facts not specifically agitated could not be allowed to be argued later on.

It is, therefore, requested that Appeal be dismissed with cost.

Added Respondents

Through

BILAL AHMAD KAKAIZAI
(Advocate, Peshawar)

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AFFIDAVIT

I, Altaf Hussain, Labour Officer, Presently Posted as Assistant Director, OPS, Nowshera, Applicant, do hereby on oath affirm and declare that the contents of the Reply are true and correct to the best of my knowledge and belief and nothing has been kept secret from this Honourable Tribunal.

Deponent

Identified by:

BILAL AHMAD KAKAIZAI
(Advocate, Peshawar)

ATTESTED

12 JAN 2023