BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

In Service Appeal No: 1253 / 2022

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

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Respondents No 4 to 7

Through

BILAL AHMAD KAKAIZAI
(Advocate, Supreme Court of Pakistan)
213, Sunehri Masjid Road, Near HBL
Nothia Branch, Peshawar Cantt.
0300-9020098

(2)

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

In Service Appeal No: 1253 / 2022

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WRITTEN REPLY ON BEHALF OF RESPONDENTS NO 04 TO 07.

Respectfully Sheweth,

Reply, on behalf of Respondents No 04 to 07, 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 Rules in titled Appeal 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, Appellant earlier attempted to hamper the process of promotion of the answering Respondents however did not succeed and his Appeal was dismissed.

I. That, titled Appeal is hit by the principal of res-judicata & res-subjudice.

FACTS:

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

2. Para 2 pertains to Rules of the Department hence needs no further clarification from the Answering Respondents.

3. Correct to the extent of allocation of quota to both the groups however it is added that as per Rules separate quota of 30% is allocated for Inspectors Weights and Measures and 30% for other Cadres of Labour Wing for which separate Seniority Lists are maintained as per rules. It merits mentioning here that the 30% quota of the Appellant's Cadre is already exhausted hence he wants to amalgamate both the wings of Labour Directorate in order to get an out of turn promotion by using this Honorable Forum. It is also noteworthy to mention here that the Appellant's previous Appeal for combining the Seniority List of both the Wings was dismissed as withdrawn by this Honorable Tribunal and another attempt of challenging the vires of Rules is pending while instant Appeal is third attempt before this Honorable Tribunal, copy of previous Order of this Honorable Tribunal is attached as ***Annexure WS / A***.

4. Incorrect hence denied. As per record the Service Appeal No. 785 / 2022 is pending. It is added that as per the contents of attached Seniority Lists of both the Groups i.e. Inspectors Weights and Measures and Labour Wing, 18 positions for both the Groups are mentioned hence the submission of the Appellant regarding the lesser

prospects of promotion, being Inspector W & M, than the Labour Wing is a propaganda statement.

5. In response to Para 5, it is submitted that as per knowledge and information of the Answering Respondents no such Application was ever filed by the Appellant before this Department, however it is added that no Interim Order was granted to the Appellant from the Tribunal, hence the Promotion Order of Private Respondents was issued by the Competent Authority. It is added that later on the Service Appeal of the Appellant was dismissed by this Honorable Tribunal.

6. Para 6 needs no further reply or clarification keeping in view the contents of above Para(s).

7. In response to Para 7 of the Appeal, it is submitted that the Appellant can pray for his consideration for promotion along with or ahead of Answering Respondents however an Appeal for cancellation of Promotion Order of other incumbents is neither legally possible nor admissible in the eyes of law.

8. Needs no Reply.

GROUNDS:

A. Incorrect, hence denied. The Impugned Promotion Notification was issued according to law by the Competent Authority keeping in view the prevailing Rules for promotion hence same is legal, lawful and effective.

B. Para B of the Appeal needs no reply as the mentioned Appeal No. 785 / 2022 has its own merits.

C. Para C needs no further reply or clarification keeping in view the contents of above Para(s).

D. The version mentioned in the Para in response is not in accordance with law hence denied. It would not be the date of Appointments, earlier or later, which could be considered in two separate Seniority Lists rather it would be the position of the Appellant in his cadre which is necessary for consideration of his name for the promotion. The quota allotted to the Inspectors W & M is filled and exhausted as in the

Impugned Promotion Notification, the incumbents from the Appellants Cadre have also been promoted who are malafidely not arrayed in the panel of Respondents because by impleading the said incumbents of his own cadre, the case of the Appellant is not maintainable.

E. Para E of the Appeal needs no reply keeping in view reply to Para B of the Grounds.

F. In response to Para F, it is submitted that as per knowledge and information of the Answering Respondents no such Application was ever filed by the Appellant however it is added that no Interim Order was granted to the Appellant from the Tribunal hence the Promotion Order of the Private Respondents was issued by the Competent Authority.

G. Incorrect hence denied. As per the Appellate / Rejection Order as issued by the Official Respondents, it was mentioned that no Service Appeal was pending at the time of convening of the meeting of the Departmental Promotion Committee / Board nor any Interim Order or Status-Quo Order was in filed moreover the recommendation of the DPC was on merit and in accordance with prevailing Service Rules.

H. The Grounds not specifically agitated could not be allowed to be argued by the Appellant.

Respondents No 4 to 7

Through

BILAL AHMAD KAKAIZAI
(Advocate, Supreme Court of Pakistan)
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0300-9020098

(6)

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AFFIDAVIT

I, Altaf Hussain, Assistant Director Labour, Nowshera, Answering Respondent No. 4, 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

NOTARY PUBLIC Abdur Rashid Adv Peshawar KPK. Pak

12 JAN 2023

W/S-A (7)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Khyber Pakhtunkhwa Service Tribunal
Diary No. 9397
Dated 31/8/2020

APPEAL NO. 1096 /2020

RAMIZ MURAD, Inspector Weights & Measures (BPS-16), Directorate of Labour, Khyber Pakhtunkhwa, District PESHAWAR-II

..... **APPELLANT**

VERSUS

1- Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2- The Secretary, Labour Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3- The Secretary (Establishment), Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
4- The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
5- The Director (Labour), Directorate of Labour, 3rd Floor FC Trust Building, Sunehri Masjid Road, Peshawar City.

..... **RESPONDENTS**

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF THE RESPONDENTS REGARDING NON PREPARATION/FRAMING OF JOINT SENIORITY LIST OF INSPECTOR WEIGHT & MEASURES (BPS-16) AND LABOUR OFFICER (BPS-16) FOR PROMOTION TO THE POST OF ASSISTANT DIRECTOR LABOUR/ASSISTANT DIRECTOR RESEARCH, PLANNING & STATISTICS/ASSISTANT CONTROLLER WEIGHTS & MEASURES (BPS-17) AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL DATED 02-05-2020 OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

Certified to be ture copy
EXAMINER
Khyber Pakhtunkhwa Service Tribunal, Peshawar

Filedto-day
Registrar
31/8/2020

PRAYER:

That on acceptance of this appeal the respondents by kindly be directed to frame/prepare joint/combine seniority list of Inspector Weight & Measure (BPS-16) & Labour Officer (BPS-16) for the purpose of promotion to the post of Assistant Director Labour/Assistant Director Research, planning & Statistics/Assistant Controller Weights & Measures (BPS-17). That the respondents may further please be directed to considered the appellant for promotion to the above mentioned post of (BPS-17) on the basis of joint seniority list. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

Re-submitted to-day and filed.
Registrar
1/9/20

(8)

12.01.2022

Counsel for the appellant, Asif Masood Ali Shah, DDA alongwith Jamil Ahmad Qureshi, DDA for the official respondents and counsel for private respondents No. 6 to 9 present.

Learned counsel for the appellant has submitted an application seeking withdrawal of the appeal with permissio0nj to file fresh appeal.

Arguments on application have been heard and record perused.

The reason given in the application maintains that the appellant filed instant service appeal for promotion as well as preparing/framing the joint seniority on the basis of notification dated 31.12.2012. The respondent department has issued another notification dated 05.10.2021 during pendency of appeal which framed rules in violation of rights of the appellant. The copy of the notification dated 05.10.2021 was not annexed with the application but on direction, the same has been produced and placed on file. The said notification is meant to make certain amendment in appendix relating to method of recruitment and has been issued in exercise of powers conferred by sub rule (2) of Rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 by the department in consultation with the Establishment Department and the Finance Department. If the appellant is advised to challenge the said notification subject to his locus-standi and other legal requirements, he may do so on an independent legal advice but permission for filing of fresh appeal in continuation of the present appeal is not workable as interest of private respondents is also involved. Therefore, this appeal is dismissed as withdrawn. However, this order shall not be treated as impediment, if the appellant is advised to challenge the notification dated 05.10.2021 in case he is able to make out a case for fresh cause of action in accordance with the law. File be consigned to the record room.

(Atiq-ur-Rehman Wazir)
Member(E)

Chairman

ANNOUNCED
12.01.2022

Certified to be ture copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 13-01-22
Number of Words 850
Copying Fee 16/-
Urgent
Total 16/-
Name of Copyist
Date of Completion of Copy 17-1-22
Date of Delivery of Copy 17-1-22