



GOVERNMENT OF KHYBER PAKHTUNKHWA
ADMINISTRATION DEPARTMENT

No.E&A(AD)/02(591)/2008,
Dated Peshawar the 24.02.2023

MINUTES OF THE MEETING HELD ON 23.02.2023 AT 10.30 A.M

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 4001
Dated 2/3/2023

put up to the court with relevant S.O.
1/3/23
Read du

Considering the Judgment of Khyber Pakhtunkhwa Service Tribunal, Peshawar (dated:02.02.2022) in the Execution Petition No.326/2021 in Service Appeal No.1184/2019 – Syed Musadiq Shah vs Govt. of Khyber Pakhtunkhwa, a meeting was held on 23.02.2023 at 10.00A.M under the Chairmanship of Secretary to Govt. of Khyber Pakhtunkhwa, Administration Department, Civil Secretariat, Peshawar in his office to discuss the matter considering the already proposed service structure of household staff of Administration Department.

The following officers attended the meeting :-

- i. Ms.Tillat Fahad, Additional Secretary-I, Administration Department.
- ii. Mr.Usman Zaman, Deputy Secretary (Admn), Administration Department.
- iii. Mr.Badri Zaman, Section Officer (O&M), Establishment Department.
- iv. Mr.Azhar Khan, Section Officer (Lit-I), Establishment Department.
- v. Mr.Laeq Ahmad, Section Officer (Admn), Administration Department.

The meeting started with the recitation of Holy Quran. All the participants were welcomed and the Section Officer (Admn), Administration Department apprised the Chair about proceedings so far in the instant case. The following decision of Khyber Pakhtunkhwa Service Tribunal Judgment (dated:02.02.2022) was repeated for clarification before proceeding further :-

"Coming to the crucial point of seniority list circulated by the Administration Department including names of the petitioner and respondent no.4 for the purpose of compliance with the judgment dated:29.03.2019 passed in Service Appeal No.597/2016, it is observed that issuance of said list in the given manner is fruitless as far as satisfaction of the said judgment is concerned. For proper satisfaction of said judgment of Tribunal, respondents are directed to treat the post held by petitioner at par with the Junior Clerks in Khyber Pakhtunkhwa Civil Secretariat for which the reasons have already gone herein above. The Execution Petition stands disposed of accordingly with liberty to the petitioner to seek its restoration, if this order not complied within due course. File be consigned to record room".

It was further briefed that in context to the above decision, a meeting on service structure for household staff of Administration Department along with execution petition of Junior Clerk was held on 04.07.2022 at 10.00 AM under the Chairmanship of Special Secretary (Establishment), Establishment Department while the following decision was made :-

"After threadbare deliberation upon the inclusion of the said Junior Clerk in seniority list maintained by Establishment Department and proposed draft service structure prepared for the petition, it was agreed that inclusion of household junior clerk in the seniority of Establishment Department is not tenable, as the petitioner was appointed by Administration Department for a specific entity. Thus, Administration Department may again take up the draft service structure with Regulation Wing for its approval so as to provide career progression to Household Junior Clerk and also submit implementation report in the Tribunal with the reiteration that proper service structure have been finalized and the petitioner will soon be promoted to the post of Senior Clerk (BPS-14) after creation of post by the Finance Department".

The Chair showed serious concern on the Officers of Establishment & Regulation Wings, Establishment Department for not attending the meetings scheduled in the matter on 21.11.2022, 21.12.2022 & instant meeting) since the matter involved deliberation considering all the aspects relating to Judicial, Regulation & Establishment Wings of Establishment Department), moreover, it was further elaborated that the decision taken in the meeting held on 04.07.2022 in the Establishment Department may not satisfy the of Khyber Pakhtunkhwa Service Tribunal, Peshawar Judgment (dated:02.02.2022) in the Execution Petition No.326/2021 in Service Appeal No.1184/2019 – Syed Musadiq Shah vs Govt. of Khyber Pakhtunkhwa.

Chairman
Ad Hoc
Tribunal

(12)

After threadbare discussion, it was decided that the Establishment Department may opt for objection petition in the instant matter as the decision taken by the Establishment Department in the meeting dated:04.07.2022 may not satisfy the Judgment of the Khyber Pakhtunkhwa Service Tribunal (dated:02.02.2022).

Meeting ended with the vote of thanks by the Chair.

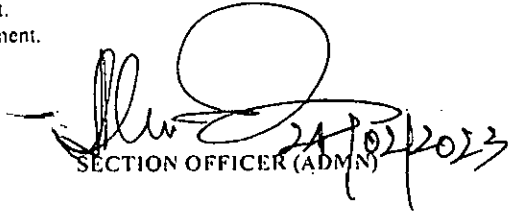
Encl: List of Participants, Tribunal Judgment, Minutes of meeting.

Secretary to
Government of Khyber Pakhtunkhwa
Administration Department

ENDST OF EVEN NO. & DATE

Copy forwarded to :-

1. The Chairman, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
2. The Special Secretary (Reg), Establishment Department.
3. The Special Secretary (Estt), Establishment Department.
4. The Additional Secretary (Judicial), Establishment
5. The Additional Secretary (Estt), Establishment Department.
6. The Additional Secretary (Reg-II), Establishment Department.
7. The Deputy Secretary (Policy), Establishment Department.
8. The Section Officer (O&M), Establishment Department.
9. The Section Officer (Litigation-I), Establishment Department with reference to the letter No.SO(Lit-I)E&AD/3-3195/2019, dated:17.02.2023.
10. The Section Officer (Litigation-II), Establishment Department
11. P.S to the Secretary, Establishment Department.
12. P.S to the Secretary, Administration Department.
13. P.A to Additional Secretary-I, Administration Department.
14. P.A to Deputy Secretary (Admn), Administration Department.

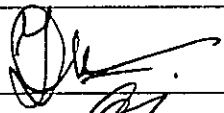
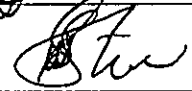

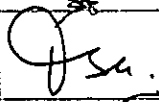


SECTION OFFICER (ADMIN)

ATTENDANCE SHEET FOR MEETING REGARDING EXECUTION PETITION NO. 326/2021 IN
SERVICE APPEAL NO. 1184/2019-SYED MUSADIQ SHAH VS GOVERNMENT OF KHYBER

PAKHTUNKHWA

Dated: 23-02-2023

at 10:00 AM

Sr#	Name of Officer /Official	Designation	Department	Signature
1				
2	Tinet Fahad.	ASI (Admin)	Admn Deptt	
3	Badri Zaman	SO (OEM)	EXAD	
4	M. AZHAR KHAN	SO (L-1)	do	
5	Usman Zaman	DSL(A)	Admin	
6	Laeq, Ahmad	SO(Admin)	Admin Deptt:	
7				
8				
9				
10				

382

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Execution Petition No. 326/2021

Date of Decision : 02.02.2022.

Syed Musadiq Shah, Junior Clerk, Estate Office, Administration
Department.

VERSUS

The Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat
Peshawar and three others.

ORDER

Learned counsel for the petitioner present. Mr. Mukarram Khan, Section Officer alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present..

2. Arguments have been heard and record has been perused.
3. The petitioner is pursuing his case for placement of his name in an appropriate seniority with the submissions that he was appointed as Junior Clerk (BS-7) against an existing vacancy in erstwhile Frontier House (Pakhtunkhwa House) Islamabad by the Administration Department vide order dated 11.08.2008 bearing No. E&A(A.D)4(2)/2007. He joined the service in pursuance of the aforementioned appointment order. He during the course of his service, preferred Service Appeal No. 597/2016 on 07.06.2016 against the respondents including the Chief Secretary Khyber Pakhtunkhwa, Secretary Establishment Department and Secretary Administration Department of Khyber Pakhtunkhwa for enlistment of his name in the seniority list of Junior Clerks by the respondents. The said appeal was decided on 29.03.2019 vide judgment of the similar date with the observations in the operative part that the

appellant is a civil servant and is entitled to a place in the seniority list to be drawn by the concerned department in accordance with law and rules and the appeal was allowed to that extent. It was additionally directed that the respondent No. 3 shall cause the preparation of requisite seniority list of appellant and others within a period of ninety days, if not already done so; and that the appellant shall be at liberty to pursue the legal remedy for his grievance arising out of the entries in the seniority list through appropriate proceedings. The Secretary, Administration Department was respondent No. 3 and said department prepared the seniority list on 15.05.2019 in which the name of two Junior Clerks including the present petitioner were placed as Junior Clerk of Household Staff. The said seniority list was communicated to the petitioner by the Administration Department vide letter No. E&A(AD)2(591)2008 dated 28.06.2019. After exhausting the departmental remedy, the petitioner filed Service Appeal No. 1184/2019 before the Tribunal to challenge the said seniority list:

4. The respondents were served with notices of the appeal and they filed their para-wise comments. They admitted in reply of para-1 of the facts that the appellant was appointed by Administration Wing of Establishment & Administration Department as Junior Clerk on 11.08.2008 in Pakhtunkhwa House [erstwhile Frontier House] Islamabad. They added to clarify that as per Khyber Pakhtunkhwa Rules of Business, 1985, Establishment & Administration Department is a single Administrative Department of Civil Secretariat, Peshawar but operationally it comprises of two wings/parts i.e. Administration Wing & Establishment Wing, each wing is separately headed by an Administrative Secretary. It was further added that due to their distinct operational setup,

35

Administration Wing and Establishment Wing are sometimes also referred to/called as "Administration Department" and "Establishment Department" respectively. In reply to para-3 of the said appeal, it was asserted by respondents that seniority list of Junior Clerks referred to by the appellant has been circulated by the Establishment Wing of E&A Department but the appellant is a Household employee of the Administrative Wing of the E&A. Hence, he has got no right over that seniority. In reply to para-4 of the facts, the respondents stated that request of the appellant for inclusion of his name in the seniority list was processed and regretted being not covered under the rules, with advice to Administration Wing of E&A Department to find out a way for further career progression of the Household Staff. The respondents also admitted the judgment dated 29.03.2019 at credit of the appellant with clarification that the Tribunal had allowed earlier appeal of the appellant to the extent that he being civil servant is entitled to a place in seniority to be caused by respondent No. 3 i.e. Secretary Administration and not Secretary Establishment. The needful in this regard has already been done by Administration Wing of E&A Department.

Quoted

5. Apropos to the foregoing facts, it is pertinent to point out that the subsequent Service Appeal No. 1184/2019 preferred by the appellant was converted into Execution Petition as evident from the order dated 21.10.2021 on file. So, this order is meant to decide the question whether seniority list dated 15.05.2029 as issued by the Administration Department including name of the petitioner and that of respondent No. 4 stands to satisfy the judgment dated 29.03.2019 in Service Appeal No. 597/2016 in its letter and spirit. Respective factual stance of each party has been noted herein

above in this order. Accordingly, it is assertion of the respondents that direction in the judgment dated 29.03.2019 passed in Service Appeal No. 597/2016 was for the concerned department which in case of the petitioner is the Administration Department, who by issuing the seniority list comprising the petitioner and respondent No. 4 has complied with the judgment dated 29.03.2019. On the other hand, the petitioner submits that instead of causing the seniority as asserted by the respondents, the name of the petitioner should have been included in the seniority list of Establishment Department like other similarly placed officials as evident from the minutes dated 08.05.2018 and subsequent precedents.

P. Durrani

6. It is noteworthy that there is no dispute as to the appointment of petitioner as Junior Clerk having been made by the Administration Department in Pakhtunkhwa House vide order dated 11.08.2008 bearing No. E&A(A.D)4(2)/2007 of even date. The denial of respondents to treat the petitioner at par with junior clerks of the Secretariat Departments can be better spelt out from their added view in reply to para-2 of the appeal now converted into execution petition. They thereby explained that the petitioner had already been treated under Sub Section (2) of Section 8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 which postulates that seniority of Civil Servant shall be reckoned in relation to other Civil Servants belonging to the same service or cadre while the petitioner was appointed as Household Employee under Rule 10 (2) of the Khyber Pakhtunkhwa Government Servants (Appointment, Promotion & Transfer) Rules, 1989 against post of junior clerk exclusively for a particular entity i.e. Houses, without observing some parts of the criteria required for filling the post of junior clerk such as zonal quota and advertisement in two newspapers etc. With

the given explanation, the respondents asserted that seniority of the petitioner will be maintained along with other employees of the Houses in Administration Wing of E&A Department being their parent entity but not in Establishment part of E&A Department. The said explanation and assertion of the respondents underpins two points: One that the petitioner by virtue of his appointment holds the post of junior clerk exclusively meant for Houses under control of Administration Department which does not make part of the service/cadre of junior clerks holding such post in Departments of Provincial Civil Secretariat; and second, that appointment of the petitioner as junior clerk in Pakhtunkhwa House was made with exceptions provided under Rule 10 (2) cited above. In order to settle the point whether the post held by the petitioner as Junior Clerk is a separate cadre or otherwise it makes part of the cadre of junior clerks of a Secretariat Department, the admitted control of the Houses by Administration Department is workable as determinative factor. The Khyber Pakhtunkhwa Province Government Rules of Business, 1985 define the "Department" as a self-contained administrative unit in the Secretariat responsible for the conduct of business of Government in a distinct and specified sphere, and declared as such by the Government. Attached Department means a Department mentioned in column 3 of Schedule-I which in fact is the attached Department of a Secretariat Department. Needless to say that according to list of the secretariat departments given in 1st schedule of the said Rules of Business, Establishment & Administration Department is a combined unit with specified common business. So, plea of the respondents as to individuality of the Administration Department distinct from the Establishment Department is not acceptable in light of the

(Signature)

Government Rules of Business. The Houses have not been specifically dealt with for the purpose of responsibility of the Establishment & Administration Department. Rather the Estate Office is enumerated among the business of said department. It is an open secret that management of the Houses rests with the Estate Office directly under control of E&A Department in the Khyber Pakhtunkhwa Civil Secretariat. Thus, all posts in the Estate Office or in the Houses make part of the service of the Khyber Pakhtunkhwa Civil Secretariat. The post of junior clerk in the Estate Office or in the Houses is held as a cadre post for the purposes of notification dated 6th December, 2012 bearing No. SOE.IV(E&AD)/1-35/2012 of the Government of Khyber Pakhtunkhwa Establishment & Administration Department (Establishment Wing). Coming to the second point as to exceptions in appointment of petitioner, suffice it to say that they relate to the method of recruitment and cannot be pressed into service to exclude the petitioner from cadre of junior clerk when his holding of the said post with status as civil servant is admitted by the respondents.

Handwritten signature/initials

7. Coming to the crucial point of the seniority list circulated by the Administration Department including names of the petitioner and respondent No. 4 for the purpose of compliance with the judgment dated 29.03.2019 passed in Service Appeal No. 597/2016, it is observed that issuance of said list in the given manner is fruitless as far as satisfaction of said judgment is concerned. For proper satisfaction of said judgment of the Tribunal, respondents are directed to treat the post held by petitioner at par with the junior clerks in Khyber Pakhtunkhwa Civil Secretariat for which the reasons have already gone herein above. The Execution

Petition stands disposed of accordingly with liberty to the petitioner to seek its restoration, if this order is not complied with in due course. File be consigned to the record room.

ANNOUNCED
02.02.2022

[Handwritten signature]
Secretary
District Court
Muzaffargarh

[Handwritten signature]
(AHMAD SULTAN TAREEN)
CHAIRMAN

14/06/2022
3200
22-0
14-0
26-0
[Handwritten signature]
14-06-2022
14-06-2022

434

Subject: MINUTES OF THE MEETING REGARDING SERVICE STRUCTURE FOR HOUSEHOLD STAFF OF ADMINISTRATION DEPARTMENT

A meeting was held on 04.07.2022 at 10:00 AM under the Chairmanship of Special Secretary (Establishment), Establishment Department to discuss the subject execution, petition and minutes of the meeting held 08.06.2022 forwarded by Administration Department regarding draft Service Structure prepared for household staff including Junior Clerks.

The following attended the meeting:-

Sr.	Name	Designation	Department
1	Mr. Saeedullah	Addl: Secretary (Regulation-II)	Establishment
2	Mr. Hikmatullah	Addl: Secretary (Establishment)	Establishment
3	Muhammad Irfan Usman	Deputy Secretary (Establishment)	Establishment
4	Muhammad Anwar Khan Barvi,	Deputy Secretary (Judicial)	Establishment
5	Muhammad Usman Ali,	Section Officer (Opinion-I)	Law
6	Mr. Laeeq Ahmad,	Section Officer (Admin)	Administration
7	Mr. Siraj Muhammad	Section Officer (E-IV)	Establishment

The Chair after welcoming remarks, asked representative of Establishment Department to brief the participants. The representative informed the forum that two Junior Clerks have been appointed by Administration Department in 2008 under the proviso of Rule 10 (2) of (APT) Rules, 1989. The said Junior Clerk requested for inclusion of his name in the seniority list of Junior Clerks maintained by Establishment Department. His request was regretted being not covered under the rules. Being aggrieved, he filed service appeal in the Service Tribunal.

Now, the Tribunal vide judgment dated 02.02.2022 passed in Execution Petition No. 326/21 directed that "for proper satisfaction of said judgment of the Tribunal, respondents are directed to treat the post held by the petitioner at par with the Junior Clerks in Khyber Pakhtunkhwa, Civil Secretariat for which the reasons have already gone here in above."

After threadbare deliberation upon the inclusion of the said Junior Clerk in the seniority list maintained by Establishment Department and proposed draft Service Structure prepared for the petitioner, it was agreed that inclusion of household Junior

435

Clerk in the seniority of Establishment Department is not tenable, as the petitioner was appointed by Administration Department for a specific entity. Thus, Administration Department may again take up the draft Service Structure with Regulation wing for its approval so as to provide career progression to Household Junior Clerk and also submit implementation report in the Tribunal with the reiteration that proper Service Structure have been finalized and the petitioner will soon be promoted to the post of Senior Clerk (BS-14) after creation of posts by Finance Department.

The Meeting ended with a vote of thanks from and to the Chair.

.....