

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Service Appeal No.268/2023

Sher Ali _____ **Appellant/Petitioner**

Vs

Registrar, Peshawar High Court & Others _____ **Respondents**

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Dated: ___03.2023

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Service Appeal No.268/2023

Sher Ali _____ Appellant/Petitioner

Vs

Registrar, Peshawar High Court & Others _____ Respondents

**PARA WISE COMMENTS FOR AND ON BEHALF OF
RESPONDENT NO.1, 2 & 3**

RESPECTFULLY SHEWETH:

Para-wise comments are submitted as under:

Preliminary Objections:

1. The appellant has got no cause of action.
2. The appellant is estopped to sue.
3. That the service appeal is time barred.
4. The service appeal is not maintainable. The fact of the matter is that the post of B&A Assistant was sanctioned by the Hon'ble Peshawar High Court, Peshawar vide office order No.1992-96/B&A dated Peshawar the 30.03.2010 in the establishment of District & Sessions Judge, Swabi besides other posts (**Annexure "A"**). In consequence thereof, the post of B&A Assistant alongwith other posts were advertised vide this office order dated 04.10.2010. After fulfillment of the codal formalities, the petitioner was accordingly appointed as B&A Assistant vide this office order dated 14.03.2013 (**Annexure "B"**). Initially the petitioner submitted an objection petition

regarding his seniority in the year 2016 (**Annexure “C”**) which was accordingly decided vide this office order dated 02.05.2017 on the recommendations of Management Committee dated 14.04.2017 (**Annexure “D”**). The relevant para is reproduced as under for ready reference:

“Mr. Riaz Muhammad will since be deemed to be selected in earlier selectin (10.02.2013) and that too against vacant sanctioned post and Mr. Sher Ali later in point of time. Therefore, Mr. Sher Ali Budget & Accountant Assistant being appointed later on 14.03.2013 is to be placed below him in the Seniority List”.

In the year 2019, the petitioner again submitted an application for correction and re-setting of seniority list (**Annexure “E”**) with the request for placing his name in the joint seniority list in the ladder of promotion to the Post of Superintendent with the plea that the said post may be filled through promotion from the holders of posts of Assistant/Reader, Assistant/COC, Assistant/Accountants, Assistant/Civil Nazir. The said application was discussed in the meeting dated 28.05.2019 of the Management Committee of Judicial Complex Swabi wherein it was unanimously decided to refer the matter for guidance to the Hon’ble Peshawar High Court, Peshawar. Copy of the minutes of the meeting is **Annexure “F”**. Thus, the request for guidance regarding seniority of B&A Assistant etc was sent to the Registrar Peshawar High Court, Peshawar vide this office letter No. 2269/(F-59)/D&SJ dated 19.06.2019 (**Annexure “G”**), followed by reminder No. 530/(F-59)/D&SJ dated 24.01.2022 (**Annexure “H”**). The Worthy Registrar, submitted a reply vide letter No.

SDJ/PHC/REG/88(21)/7183 dated 12.11.2022 to this office. The relevant portion of directions contained in the said letter is reproduced below;

“to proceed further in light of the verdict of Hon’ble The Peshawar High Court, Peshawar in Writ Petition No. 1688-P-2022 dated 28.09.2022.” (Annexure “I”).

It is pertinent to mention here that the Hon’ble Peshawar High Court, Peshawar has already dismissed the writ petition filed by the appellant herein vide order dated 28.09.2022 (Annexure “J”). The relevant portion of the order *ibid* is reproduced below;

“At the very outset, the Worthy AAG produced copy of the final seniority list issued on 21.01.2022, which is placed on record, as such, without dilating upon the issue as to whether the tentative seniority list can be challenged before the Court or not. We deem it appropriate to dismiss this petition, however, the petitioner would be at liberty to raise his voice against the final seniority list, if aggrieved, before the proper forum”.

PARA-WISE COMMENTS

1. Para No. 1 is correct hence, needs no comments.
2. Para No.2 is correct hence, needs no comments.
3. Para No.3 is correct hence, needs no comment.
4. Para No.4 is correct hence, needs no comment.
5. Para No.5 is correct hence, needs no comment.

6. In respect of Para No.6, it is submitted that a representation was filed by respondent No.4 and the same was forwarded to Hon'ble Peshawar High Court, Peshawar through letter No.775/D&SJ dated 21.04.2014 for guidance. In response to letter No.775/D&SJ dated 21.04.2014, the competent authority was pleased to refer the representation of respondent No. 4, for reconsideration. Rest of the Para is incorrect.
7. In respect of Para No. 7, it is submitted that the then Departmental Promotion Committee District Swabi vide letter Endst: No. 929-32/(F-53) DSJ dated 20.05.2014 recommended respondent No. 4 to the post of Assistant/Reader BPS-14 by appointment through transfer. Resultantly, his appointment order bearing No. 944 (53)(F-1)/DSJ dated 20.05.2014, was issued. The other stance taken in the said Para is incorrect hence, denied.
8. In respect of Para No.8, it is stated that the matter was discussed in a meeting of Management Committee, Judicial Complex Swabi. The relevant portion of the minutes of the meeting dated 28.03.2017 is reproduced as below:

“The record would show that he was ignored to be promoted to the post of Assistant (BPS-16) by the DPC. He had filed a departmental appeal/representation. Vide Order dated 28.04.2024, Hon'ble Peshawar High Court, Peshawar was pleased to send the case back to DPC for reconsideration. DPC, after considering him for such promotion, had ordered his promotion to such post (BPS-16) vide Order dated 20.05.2014.”

He was shown therein as promoted to such post with immediate effect. The same date was accordingly recorded in his Service Book.

He wants his date of appointment/promotion by transfer to be recorded as 10.02.2013 in Service Book Record on the grounds that after being ignored by DPC, his representation was sent to Hon'ble Peshawar High Court, Peshawar to DPC for reconsideration and as a result of reconsideration, he was promoted. There was no legal bar or hitch in allowing him anti-date appointment/promotion by transfer: Provided nobody was adversely affected thereby. The power to grant anti-date promotion was exclusively resting with the Competent Authority (D&SJ, Swabi)."

Thereafter, the then Hon'ble District & Sessions Swabi being Competent Authority granted him anti-date promotion w.e.f. 10.02.2013 from the date of refusal by the first DPC and he was deemed to have been selected in earlier selection i.e. 10.02.2013 vide Order dated 02.05.2017.

The relevant portion of the said order is reproduced as follows:

"Mr. Riaz Muhammad will since be deemed to be selected in earlier selection (10.02.2013) and that too against vacant sanctioned post, and Mr. Sher Ali later in point of time. Therefore, Mr. Sher Ali Budget & Accounts Assistant being appointed later on 14.03.2013 is to be placed below him in the seniority list."

9. In respect of Para No.09, it is submitted that in the year 2016, 2019, 2020 and 2022 separate seniority lists of Assistant/Readers and Assistant/ Accountant were issued and the petitioner has raised objected the seniority lists on 16.06.2016, 22.01.2019 and

25.11.2020. Accordingly, the then Hon'ble District & Sessions Judge, Swabi vide letter No.2269/(F-59) D&SJ dated 19.06.2019 followed by letter No. 530/(F-59)/D&SJ Dated 24.01.2022 sought guidance regarding seniority of B&A Assistant and Assistant-Reader/Assistant-Clerk of Court/Civil Nazir from the worthy Registrar Peshawar High Court Peshawar. Accordingly, vide letter No. SDJ/PHC/REG/88(21)/7183 dated 12.11.2022, the reply was received and detail of the same has been fully mentioned in the preliminary objections.

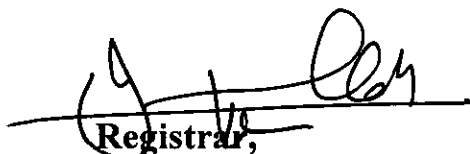
10. It is correct that final common seniority list was issued vide Endst; No 201-202/ F 59/D&SJ dated: 07-01-2022, wherein the name of the appellant was not included for reasons that the post of Budget & Accounts Assistant is a separate cadre and need separate seniority list, which has already been issued and maintained. Rest of the Para regarding the allegation of manipulation against the appellant is incorrect.
11. Para No. 11 to the extent of submission of Departmental Appeal dated 04.10.2022 is correct. Rest of the Para is incorrect, hence denied.
12. Para No. 12, needs no comments.

Grounds:

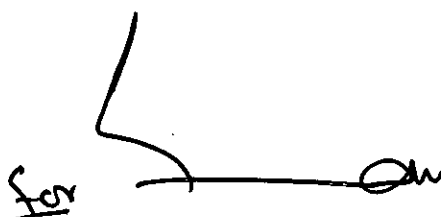
In respect of grounds of appeal as mentioned in Para No. A to J, detailed reply has already be submitted above. The matter has been decided by

respondent No. 2 & 3 in accordance with law. No illegality or irregularity whatsoever has been committed.

In view of the above, it is humbly prayed that the service appeal may kindly be dismissed.



Registrar,
Peshawar High Court, Peshawar
(Respondent No. 1)



for
District & Sessions Judge, Swabi/
Chairman Departmental Promotion
Committee/ Departmental Selection
Committee
(Respondents No. 2 & 3)

Dated: __.03.2023

(09)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Service Appeal No.268/2023

Sher Ali _____ Appellant/Petitioner

Vs

Registrar, Peshawar High Court & Others _____ Respondents

Application for restraining the respondents from passing promotion order to the Post of Superintendent, BPS-17 in the District Judiciary, Swabi on the strength of impugned Seniority list dated 21.01.2022 till the disposal of the instant appeal.

Respectfully Sheweth:

Reply to the said application on behalf of the respondents No.1 to 3 is as under:

1. Para No.1 is correct.
2. Para No. 2 needs no reply.
3. Para No. 3 is incorrect; hence denied. The appellant has got no case in his favor and the service appeal is liable to be dismissed.
4. Para No. 4 is incorrect.
5. Para No. 5 is incorrect as grant of relief to the appellant at this stage will amount to disposal of the main service appeal.

It is therefore, requested that the application in hand be dismissed.

**Registrar,
Peshawar High Court, Peshawar
(Respondent No.1)**



**District & Sessions Judge, Swabi/
Chairman Departmental Promotion
Committee /Departmental Selection
Committee
(Respondents No. 2 & 3)**

(10)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.268/2023

Sher Ali _____ Appellant/Petitioner

Vs

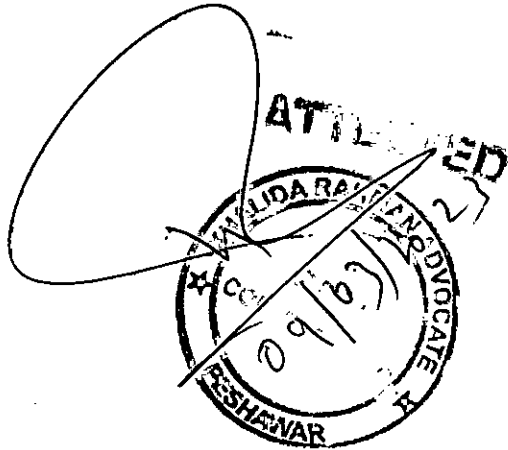
Registrar, Peshawar High Court & Others _____ Respondents

AFFIDAVIT

I, Muhammad Irfan Khan, Senior Civil Judge (Admn) Swabi, do hereby solemnly affirm and declare upon oath that the contents of the attached reply /comments are true and correct as per the office record and nothing has been concealed or withheld there from.



(Muhammad Irfan Khan)
Senior Civil Judge (Admn) Swabi/
Representative of Respondents No. 1 to 3
(Deponent)



Stamp: 10/11/2010

(Sign. Muhammad Nafees) (Chief Justice)

4. The Budget Officer-II, Finance Department, Govt of NWFP, Peshawar.
3. The Director (ADM), Finance Department, Govt of NWFP, Peshawar.
2. The Accountant General, NWFP, Peshawar.
1. The District and Sessions Judge, Swabi.

Copy forwarded for information and necessary action to:
 Code No. 1998-2000
 1998-2000

(Muhammad Nafees)
 Budget Officer-II
 Finance Department,
 Peshawar.

Copy forwarded for information and necessary action to the District
 Accounts Officer, Swabi.
 Code No. 1998-2000
 1998-2000
 (Sign. Muhammad Nafees) (Chief Justice)

By Order of the Chief Justice

The expenditure incurred shall be debited to the functional charges in
 NC230150111 (5-1 Public Order and Safety Affairs, 0311-Law
 Courts, 031101-Courts / Justice - Sessions Courts, Swabi) under DDO SWABI.
 during the next financial year 2010-11. The expenditure may be incurred subject to
 observance of all other formalities and entitlement under the Rules.

Amount	Name of Post	BPS	No of post
137000	A011-2 - Pay of Staff		
60000	Budget & Accounts Assistant	14	01
11000		05	01
30000	Pesh Imam	01	01
202000	Total		03
41000	A-12-Total Regular Allowances		
35000	A01202 - House Rent Allowance		
18000	A01203 - (Conveyance Allowance		
36000	A01217 - Medical Allowance		
36000	A01241 - Utility Allowance		
36000	A01244 - Adhoc Relief Allowance(200%)		
2000	A01248 - Judicial Allowance		
3000	A012-2-Total Other Allowances		
341000	A01274 - Medical Charges		
	Grand Total		

In pursuance of the Government of NWFP Finance Department,
 Peshawar, letter No. NC-11/F/107-14249-10 PIC dated 03/11/2010, the Hon'ble
 Chief Justice, Peshawar High Court, Peshawar is pleased to accord sanction to the
 creation of three (03) posts of various categories in the office of District and Sessions
 Judge, Swabi a total cost not exceeding Rs.0.341 million with effect from
 01/11/2010. Kindly in temporary basis, as per details given below:

Special Stipulation, the 18th March 2010

ORDER

PESHAWAR HIGH COURT, PESHAWAR

ANNEXURE "A" 2
 (Signature)
 11/11/2010

(11)

(12)

Annex - 11

OFFICE OF THE DISTRICT & SESSIONS JUDGE, SWABI

ORDER

Annex "B"

(7)

Dated: 14-03-2013

On the recommendations of the Departmental Selection Committee, the Competent Authority is pleased to order the appointment on temporary basis of the following candidate as Assistant/Accountant (BPS-14) with effect from the date of assumption of charge of the post subject to medical fitness and antecedents verification:-

S.#	Name of Candidate	Father's Name
1	Mr. Sher Ali	Shams-ul-Qamar

2. His appointment to the service shall be subject to the following terms and conditions:-
 - i. He will be governed by the N.W.F.P Civil Servants act, 1973 and N.W.F.P Government servant (Appointment, Promotion & Transfer) Rules, 1989.
 - ii. He will be allowed the minimum pay of BPS-14 plus other allowances as admissible under the rules.
 - iii. He shall be governed by such rules and instructions relating to leave, T.A, and Medical Attendance as may be prescribed from time to time.
 - iv. He shall be on probation initially for a period of one year extendable up-to two years.
 - v. He will be eligible for continuance and eventual confirmation in the post on satisfactory completion of his probationary period.
 - vi. His service shall be liable to be dispensed with at any time without notice and assigning any reason before the expiry of the period of her probation/ extended period of probation, if, his work or conduct during this period is not found satisfactory. In the event of termination from service, fourteen days notice or in lieu thereof fourteen days pay will be paid by the Government. In case of resignation, he will give one month notice to the Competent Authority or in lieu thereof one month pay shall be forfeited to the Government. The

(12)

resignation shall, however, be subject to the acceptance by the Competent Authority.

- vii. He will be governed by the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 and the N.W.F.P. Government Servants Conduct Rules, 1987 and any other instructions which may be issued by the Competent Authority from time to time.
3. If the above terms and conditions of appointment are acceptable to him, he should report for duty to the undersigned immediately. The offer of appointment shall be deemed to have been cancelled if he fails to report for duty to the undersigned within one month from the date of issue of this order.
4. He shall join duty at his own expenses.


TARIQ YOUSOF
District & Sessions Judge, Swabi

No. 694-95 /D&SJ Dated Swabi the 14 / 03 /2013

(F53)

Copy forward for information & compliance to:-

1. The Registrar Peshawar High Court, Peshawar
2. The Medical Superintendent DHQ Hospital, Swabi
3. The District Accounts Officer, Swabi
4. Official concerned by name
5. Office


District & Sessions Judge,
Swabi

(14)

Distt. J. "C" 3)

#

To:

The Honorable
District & Sessions Judge
Swabi

Subject: **REQUEST FOR CORRECTION IN SENIORITY LIST.**

Respected Sir,

With due respect, it is, humbly submitted that I have been serving as Budget & Accounts Assistant in sessions division since 14.03.2013 on regular basis. I have received a copy of the seniority list issued by office of the learned Superintendent Sessions Division, Swabi on 17.05.2016 with directions to submit any sort of grievance if any, on consequent of seniority list; therefore I submit the following grievances:

1. That my seniority has been maintained separately from the category of assistants and other staff members, whereas for the promotion to the post of Superintendent a Combined seniority list must be made amongst all the categories (as given in ESTA Code) who are eligible for the promotion to post of superintendent and as well be subject to the date of their appointment/present posting.
2. That according to seniority rules my name may be placed on serial No.5 at the category of Assistants, however in the seniority list issued by the office of Superintendent is not correct and against the canon of justice on the following ground:
3. That I have joined the post of Budget & Accounts Assistant w.e.f. 14.03.2013 and it is correct that serial No.1 to 4 in the category of assistants are senior to me, whereas afterward all other Assistants are junior to me, according to Seniority rules & as well in "ESTA CODE" (Establishment Code Khyber Pakhtunkhwa 2011), due to their appointments/Transfer after me.
4. That my current position as shown in the subject seniority list will definitely affect my further promotion to the post of Superintendent which is made on seniority basis from the post of assistants discretely.
5. It is further honorably submitted that Assistants have already been availed their quota of promotions to the post of Superintendent.

In view of the above, it is humbly requested, that my seniority in the seniority list may be considered and my name may be placed at the due/right place, and quarter concerned may kindly be directed to omit the said error and issue a correct revise seniority list, so that my promotion in future may not be affected & I may not feel, feeling disparity in future, please. I shall be very grateful to you for this kindness.

Yours Obediently,



PS-14

Seniority
Rules
Supdt.
No. 5

ANNEX 2 D

(15)

ANNEX 2 D

72

MINUTES of decisions taken by District & Sessions Judge/Competent Authority in relation to various pending matters
Dated 14.04.2017

The Agenda of the Previous Meeting of Management Committee was perused to note down follow up action and decisions to be taken by Competent Authority:

Agenda-wise decision-making:

- 1) Funds of 6 cabins and giving 50% thereof to District Bar Association, Swabi in the light of directive of Hon'ble Peshawar High Court, Peshawar

Action already taken (Office Order issued)

- 2) Audit of funds of cabins and super-store including cafeteria since date of establishment thereof;

Action already taken. (Letter communicated to worthy Peshawar High Court)

- 3) Despite very clear indications regarding rent reflected in Rent Deed, executed with tenants of the Cabins & Super Store and 10% annual increase thereof since 2008, rent has not been increased so far. Let the B&A Assistant submit his report along with old deeds as to why rent has not been increased and why case of annual increment in rent of cabins and superstore has not been put up to the C.A. His report must reach the chairman M.C within 03 days. The office is directed to issue office order regarding increase in rent to be effective from 1st of April, 2017. The B&A Assistant shall henceforth maintain a separate file of each cabin, superstore and cafeteria and in case of default of payment of rent as well as utility bills, he shall issue notice to the tenants with prior permission of the C.A. The same shall be got checked from C.A.

14/04/2017

(16)

(13)

- 4) Consideration of application filed by Nazir Ahmad/Mall-
Khadim for enhancement of his monthly wages;

Directives have already been issued to Accounts Branch of this establishment for payment of salary of the applicant for the month of March, 2017, subject to Audit verification referred to worthy Peshawar High Court, Peshawar vide Letter No. 2074(F-155) dated 08.04.2017)

- 5) Request of In-Charge, Sessions Record Room for extra-space to streamlining the keeping of records;

The Management Committee (MC) has, it is brought into notice, today inspected the site The M.C shall submit its inspection note before CA for consideration and approval.

- 6) Re-fixation/revision of rates of 'photo copies' at Copiers' Shops situated within the premises of Judicial Complex, Swabi;

Approved as suggested.

- 7) Matters relating to examination of 'petition-writers' to fill up the existing vacancies;

The existing strength of Petition Writers is as under:

DISTRICT COURTS SWABI

	Sanctioned Strength of Petition Writers Grade-I	Sanctioned Strength of Petition Writers Grade-II
Sanctioned Strength	16	30
Working Strength	01	06
Vacant Seats	15	24

Uae/SLK
MPC
15/04/17

Ahmed/Mali-cum.

(17)

#

111

SUB DIVISION, LAHOR

	Sanctioned Strength of Petition Writers Grade-I	Sanctioned Strength of Petition Writers Grade-II
Sanctioned Strength	16	30
Working Strength	0	08
Vacant Seats	16	22

The vacancies of the Petition Writers are going to be filled in. The examination will be conducted as per Petition Writers Rules, after grant of sanction by the worthy Peshawar High Court, Peshawar, in the month of June 2017. As and when the sanction is obtained, dates will be announced for obtaining applications, scrutiny thereof, and examination. Office is directed to communicate a letter to the worthy Peshawar High Court, Peshawar for grant of sanction.

Rate List for Petition-Writers:

Office is directed to collect the rate lists from Mardan, Charsadda, Nowshera and Peshawar Districts through District Courts and to submit in the light thereof a proper rate list within 7 days to M.C for consideration.

- 8) Date of birth of Mr. Rukhsar Ahmad as entered in Service book at the time of appointment as 03.04.1983 cannot be changed as he did not seek its correction within two years of joining service. B&A Assistant is directed to maintain a register of all the employees/officials in the light of discussed format of Register within 01 month mentioning therein, name, parentage, date of

[Handwritten signature]
21/11/17

(18)

15

appointment/promotion/change of cadre etc, date of birth and date of retirement to facilitate pension cases well in time before retirement of every employee.

- 9) So far the case of Mr. Riaz Muhammad Assistant PBS-16 and Mr. Sher Ali Budget & Accountants Assistant BPS-15 is concerned, the rules provide that a combined seniority list is maintained for the promotion to the post of Superintendent BPS-17 on the basis of seniority-cum-fitness, from amongst holders of the posts of Assistant /Reader, Assistant Clerk of court, Assistant /Assistant clerk of court, Assistant /Accountant and Assistant /Civil Nazir with a period of five years service.

JK

ORDER:-

Mr. Sher Ali Budget and Accounts Assistant joined service by initial recruitment on 14-03-2013 whereas, Mr. Riaz Muhammad was initially appointed as Junior Clerk on 23-11-2001, whereafter he was appointed as Key Punch Operator (BPS-14) in the year 2003.

He submitted an application to the Departmental Promotion Committee on 10-02-2013 for appointment as Assistant /Reader through appointment by transfer, as a post had fallen vacant due to retirement of Assistant /Reader. His request was not considered by the Committee, hence, he filed a Representation/Departmental Appeal. Hon'ble High Court, Peshawar allowed his appeal and sent the matter back to the Committee for reconsideration. The Departmental Promotion, in meeting held on 20.5.2014 considered him and allowed his request for appointment by transfer with the following observations

"The members of the Committee unanimously agreed to fill the post of Assistant /Reader through appointment by transfer as

Coel
15/11/14
17

irth and date
time before

(19)

(16)

per Rule 7(1) (2) & (3) of Part-II of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) 1989".

The Department Promotion Committee is competent to make appoint by transfer.

Therefore, in view of the performance and record of Mr. Riaz Muhammad, he was appointed as Assistant /Reader by transfer.

Rules 17 (2) of the N.W.F-P Civil Servants (Appointment, Promotion & Transfer) Rules 1989 provides:-

"Seniority in various cadres of civil servants appointed by initial recruitment vis-à-vis those appointed otherwise shall be determined with reference to the dates of their regular appointment to a post in that cadre; provided that if two dates are the same, the person appointed otherwise shall rank senior to the person appointed by initial recruitment".

Rule 7 (1) (a) of the Rules (ibid) provides:-

"in case of a person appointed by initial recruitment, in accordance with the order of merit assigned by the Commission or as the case may be , the DPC; provided that persons selected for appointment to a post in an earlier selection shall rank senior to the person selected in a later selection"

In the present case, when Mr. Riaz Muhammad Assistant was refused to be considered on 10.2.2013, a vacancy was available. Hence, he approached the Authority (Hon'ble High Court) through Departmental Representation/Appeal. It was allowed and matter sent back to DPC for reconsideration.

2/1/2013

(20)

(17)

The Committee considered him and found him eligible for appointment through transfer. Therefore, for availability of the vacancy on the date as aforesaid (10.2.2013), he was qualified; hence, his seniority is to be considered from the date as mentioned in his representation (date of refusal by DPC), i.e., 10-02-2013. Mr. Riaz Muhammad will since be deemed to be selected in earlier selection (10.2.2013) and that too against vacant sanctioned post, and Mr. Sher Ali later in point of time. Therefore, Mr. Sher Ali Budget & Accounts Assistant being appointed later on 14-03-2013 is to be placed below him in the Seniority List. Reliance is also placed on Rule 7 (1) (a) of the Rules (ibid) as underlined in italic hereinbefore, and case law reported as '*Khalid Mehmood v. C.S, Punjab & others*' in 2013 PLC (C.S) Supreme Court of Pakistan p. 786. Order Accordingly.

Seniority List:

List, as approved, be issued and circulated forthwith:

02/5/2017
MUHAMMAD ADIL KHAN
District and Sessions Judge
Swabi
(Competent Authority)

To:

The Honorable
District & Sessions Judge
Swabi

Subject: **REQUEST FOR CORRECTION/RESETTING OF SENIORITY LIST.**

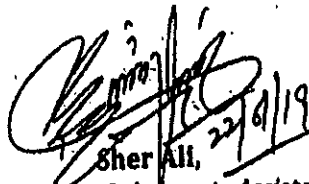
Respected Sir,

With due respect, it is, humbly submitted that I have been serving as Budget & Accounts Assistant since 14.03.2013 on regular basis. I have received the seniority list issued by Superintendent Sessions Court, Swabi on 22.01.2019 with directions to submit any sort of grievance if any, on consequent of seniority list; therefore I submit the following grievances:

1. That my seniority list has been maintained separately from the Assistants and other staff members.
2. That as per Judicial Esta code the post of superintendent will be filled by promotion amongst the post Assistant / Reader , Assistant / Clecrk of Court , Assistant/ Accountant , Assistant / Civil Nazir (copy attached).
3. That the seniority list has been prepared on the basis of date of appointment to present of all the employees of this establishment.
4. That the S.No 04 in list of Readers Mr. Riaz Muhammad placed, but he has been appointed by transfer to the same post i.e Assistant on 20.05.2014 vide office order bearing No.944 (53) (F-1)/D&S] dated 20.05.2014, with immediate effect (mentioned in that order).
5. As I have joined the post of Budget & Accounts Assistant on 14.03.2013, so as such my name may be place on S.No: 04 in the list of Assistants.
6. That my current position as shown in the said issued seniority list will definitely affect my further promotion to the post of superintendent which is made on seniority basis from the post of assistants and other staff members.

In view of the above, it is humbly requested, that my seniority as Budget & Accounts Assistant in the seniority list may be considered and combined to the list of Assistant and my name may be placed at the due/right place, so that my promotion in future is not affected.

Yours Obediently,


Sher Ali,
Budget & Accounts Assistant,
Sessions Division Swabi

Date 22/01/ 2019

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MINUTES OF MEETING OF THE MANAGEMENT COMMITTEE
JUDICIAL COMPLEX, SWABI

Meeting of the Management Committee, Judicial Complex, Swabi, was held on 23.05.2019 in the Chamber of worthy District & Sessions Judge, Swabi. It was presided over by Rozina Rehman, worthy District & Sessions Judge, Swabi (Chairperson). The following members participated in the meeting.

1. Mr. Usman Bashir Khan,
Addl; District & Sessions Judge-IV, Swabi (Member)
2. Mr. Tufail Ahmad,
Addl; District & Sessions Judge-I, Swabi (Member)
3. Mr. Ijaz-ul-Haq Awan,
Addl; District & Sessions Judge-II, Swabi (Member)

The following agenda items were tabled for discussion:

1. Application of Mr. Shahnaras for allotment of Cabin
2. Record Note of Visit of Director P&D to District Swabi and Chota Lahor on 7th August, 2018 with reference to letter No. 28/(F)SCJ-Admn dated: 03.01.2019.
3. Seniority of Para-legal staff.

The meeting formally commenced with recitation of few verses from the Holy Quran by Mr. Ihsan-ul-Haq, Senior Civil Judge (Admn), Swabi, followed by welcome note from the Chairperson to the participants. The forum had extensive deliberations on each item of Agenda. The result of item-wise disposal of Agenda is as follows:

1. **APPLICATION OF MR. SHAHNARAS FOR ALLOTMENT OF CABIN.**

The learned Senior Civil Judge (Admn), Swabi apprised the forum that the petitioner Mr. Shahnaras moved an application for allotment of cabin inside Judicial Complex, Shahnansoor which was marked to the Management Committee. The learned Senior Civil Judge (Admn) further informed the forum that the petitioner has sought allotment of the cabin which was already allotted to one Said Bahadur by the competent authority and the superstructure of the cabin in question was constructed by the said allottee. The said superstructure has now been purchased by the petitioner from Said Bahadur through a private agreement deed available on record.

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The learned Senior Civil Judge (Admn) further explained to the Committee that the cabin in question currently is lying vacant and since 23.10.2014 no rent has been collected in respect of the ibid cabin by the office as the same was stopped upon the application of Said Bahadur by the competent authority.

In view of the above detailed backdrop, the Committee unanimously decided to cancel the allotment of the cabin in question in the name of Said Bahadur and to allot the same to the petitioner Mr. Shahnaras for a period upto 10.02.2020 at monthly Rent of Rs:2500/- with 10% increase per annum. The Committee further decided that the ibid monthly rent would be revised after completion of ibid period.

2. RECORD NOTE OF VISIT OF DIRECTOR P&D TO DISTRICT SWABI AND CHOTA LAHOR ON 7TH AUGUST, 2018 WITH REFERENCE TO LETTER NO. 28/FJSCJ-ADMN DATED: 03.01.2019:

The forum inquired from the learned Senior Civil Judge (Admn) about the brief history of the Judicial Complex Shahmansoor with respect to construction of boundary wall. The Senior Civil Judge (Admn) apprised the forum that construction work of Judicial Complex Shahmansoor was started in the year 2002 which was completed in the year 2004/2005; the District Judiciary Swabi was formally shifted from old District Judiciary Building Swabi to the newly constructed Judicial Complex Shahmansoor on 30.07.2008 and at that very time, the height of the boundary wall of the Judicial Complex, Shahmansoor was 6-feet along with 2 feet steel fence. In the year 2010, terrorists attacked Police Lines Swabi and Judicial Complex Shahmansoor. In the wake of this attack, upon the directives of the august Peshawar High Court, Peshawar, the height of the boundary wall of Judicial Complex Shahmansoor and boundary wall around the premises of District Government building was raised upto 8 feet with further wire fencing. Thereafter, in the year 2016, in order to separate Judicial Complex Shahmansoor from District Government building, a letter was submitted to the august Peshawar High Court, Peshawar for construction of wall in between the two sites, which was approved by the august Peshawar High Court, Peshawar. Meanwhile a delegation of District Bar Swabi paid visit to the office of Hon'ble the

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Chief Justice Peshawar High Court, Peshawar on 20.07.2018 in respect of inclusion of parking area in the boundary wall. The Director P&D Peshawar High Court, Peshawar upon the directives of Hon'ble the Chief Justice Peshawar High Court, Peshawar visited the Judicial Complex Shahmansoor and submitted his record note communicated to the office of Hon'ble District & Sessions Judge, Swabi vide letter No. A(a)25-A(P&D)/11-Swabi-73 dated: Peshawar the 10th August, 2018 regarding the subject work with the following crux;

"The direction of his lordship Hon'ble the Chief Justice was to check viability of the car parking site proposed by the delegation of Swabi District Bar Association. The site was visited accordingly in the company of all participants. The proposed parking lot is spanned over an area of 15-20 Kanals and is in the vicinity of Judicial Complex. As per revenue record the land is owned by District Administration, however, presently it is used as car parking for the Judicial Complex. The land can be acquired through intra-departmental transfer. For the purpose formal approval will have to be obtained from the Chief Executive of the province. In this perspective, the District & Sessions Judge Swabi was requested to provide relevant revenue papers and drawings for proceedings in the case for transfer."

Decision:

District & Sessions Judge Swabi to provide revenue papers and drawings for processing of the case to the Chief Executive for transfer of land.

The learned Senior Civil Judge (Admn) further informed the forum that pursuant to the decision of Record Note *ibid*, the requisite revenue record/drawings of the Judicial Complex Shahmansoor were submitted to the worthy Peshawar High Court, Peshawar vide letter bearing

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No.3370/(F62-PC1)/D&SJ dated: 28.09.2018. The parking area shown by the Director P&D Peshawar High Court, Peshawar in his record note regarding his visit to Judicial Complex, Shahmansoor as 15 to 20 Kanals whereas the area shown in the revenue papers was 26-Kanals & 17-Marlas, however, the area is less than the above mentioned where the lawyers do park their vehicles. The budget for the construction of the subject project was approved and the construction work was about to start, in the meanwhile, upon the directives of the learned District & Sessions Judge, Swabi, a letter No. 28/(F-PC-1)SCJ-Admn dated: Swabi 03.01.2019 was communicated to the Director P&D Peshawar High Court, Peshawar through worthy Registrar Peshawar High Court, Peshawar whereby request was made to expedite the transfer of land with the concerned authorities or any other guidance; in response thereto, the worthy Peshawar High Court, Peshawar vide letter No. A(a)25-A(P&D)/11-Swabi-76 dated: Peshawar the 31.01.2019 directed with the following crux:

"I am directed to convey you that the competent authority has given "Go-ahead" on the construction of boundary wall of the Judicial Complex. The proposal pertaining to inclusion of parking area shall be undertaken within the approved cost of PC-1".

The Chairperson informed the forum that on 16.05.2019, she made telephonic contact with worthy Registrar, Peshawar High Court, Peshawar regarding the clarification of the word "Go-ahead" mentioned in the letter referred above. The worthy Registrar Peshawar High Court, Peshawar conveyed that guidance in this regard would be communicated after perusal of the relevant record. Chairperson further informed that on 18.05.2019, the Director P&D Peshawar High Court, Peshawar made telephonic contact and informed that the matter of boundary wall has already been brought into the kind notice of his lordship, Hon'ble the Chief Justice Peshawar High Court, Peshawar and stated that only the area, where the legal fraternity/lawyers used to Park their vehicles be included in the boundary wall within the approved cost of PC-1.

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The forum in light of the telephonic conversation with the worthy Registrar Peshawar High Court, Peshawar and Director P&D Peshawar High Court, Peshawar unanimously agreed to include the parking area wherein the legal fraternity/lawyers used to park their vehicles in the under construction boundary wall project.

3. Seniority of Para-Legal Staff:

Following matters were dealt with by the Committee in its meeting:

Seniority of Mr. Sher Ali Budget & Account Assistant and Mr.

Riaz Muhammad Assistant:

The forum was apprised by the Superintendent being facilitator that Mr. Riaz Muhammad was initially appointed as Junior Clerk in BPS-5 on 27.11.2001. In the year, 2003, he applied for appointment as Computer Operator in BPS-10 against the vacant post and was appointed as Computer Operator in BPS-10 after observing legal formalities, which slot was then upgraded to BPS-12 and then to BPS-14. On 10.02.2013, he again applied for the vacant slot of Assistant BPS-14 by way of appointment by transfer. In the year 2014, the post of Assistant was upgraded to BPS-16. The competent authority has ordered his appointment by way of transfer in pursuance to meeting of DPC dated: 20.05.2014 with immediate effect after his departmental appeal was remanded by august Peshawar High Court, Peshawar vide letter No.8028/Admin, dated: 28.04.2014. He was placed at Serial No.5 at the seniority list. The competent authority vide order dated: 02.05.2017 had given him ante date appointment/promotion by transfer w.e.f 10.02.2013 while allowing his application.

The forum was further apprised that Mr. Sher Ali B&A was appointed on 14.03.2013 as Budget & Account Assistant in BPS-14. The post of B&A Assistant was upgraded to BPS-15 on 27.07.2015 and then to BPS-16 on 23.11.2018. Mr. Sher Ali, B&A Assistant in his objection application over the circulated seniority list dated: 21.01.2019 contended therein to be placed in the combined seniority list of Assistants and Readers at serial No.4 above Mr. Riaz Muhammad Assistant/Reader having been appointed on 14.03.2013.

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It is further contended by the said objector that he was appointed in BPS-14 whereas Mr. Riaz Muhammad has got BPS-14 on appointment by transfer as it was ordered on 20.05.2014 to the post of Assistant with immediate effect, while his appointment in BPS-14 was made, prior to Mr. Riaz Muhammad, therefore, having got upgradation to BPS16 on 23.11.2018, he claims seniority. Record shows that the then competent authority has given ante date appointment/promotion by transfer to Mr. Riaz Muhammad, vide order dated: 02.05.2017 w.e.f 10.02.2013, therefore, the Committee after due deliberation and going through the rules, which do not provide any clear picture, regarding the matter in issue, unanimously agreed that guidance in the matter be sought from august Peshawar High Court, Peshawar.


The meeting concluded with a vote of thanks to and from the Chairperson.

Drafted by:


Ihsan ul Haq
 Senior Civil Judge (Admn)
 Swabi/Secretary


Mr. Usman Bashir Khan
 AD&SJ-VI, Swabi/
 Member


Mr. Tufail Ahmad
 AD&SJ-I, Swabi/
 Member


Mr. Ijaz-ul-Haq Awan
 AD&SJ-II Swabi/
 Member



Rozha Rehman
 District & Sessions Judge Swabi/
 Chairperson

No/1025-1079 /SCJ-Admn

Dated Swabi the 28/05/2019

Copy forwarded to:-

1. The worthy Registrar, Peshawar High Court, Peshawar.
2. All the participants
3. Office Copy


Ihsan ul Haq
 Senior Civil Judge (Admn)
 Swabi/Secretary

Annex. G

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The District Judiciary Swabi

Phone # 0938-280372
Fax # 0938-280117

dsjswabi@yahoo.com
dsjswabi@gmail.com

No. 2269 / (F-59) D&S]

Dated Swabi: 19/6/2019

To:

The worthy Registrar,
Peshawar High Court,
Peshawar.

Subject:

GUIDANCE REGARDING SENIORITY OF BUDGET &
ACCOUNTS ASSISTANT AND ASSISTANT-READER/
ASSISTANT-CLERK OF COURT/CIVIL NAZIR.

Respected Sir,

Your kind attention is invited to the subject matter and to submit that tentative seniority list of paralegal staff of District Judiciary, Swabi for the year 2019 was issued and circulated. Certain objections upon the said seniority list were raised and resolved by the Management Committee. Amongst the said objections, Mr. Sher Ali, the Budget & Accounts Assistant of this establishment also submitted objection upon the seniority list, alleging therein that his name has not been included in the joint seniority list with Assistants/Readers/COC/Civil Nazir as required under the rules and his name was separately mentioned under the category "B&A Assistant". He also objected the ibid seniority list to the extent that his name has been placed below Mr. Riaz Muhammad Assistant/Reader on the ground mentioned in his objection application. (Copy of objection application is annexed herewith as Annexure-A). The same was referred to the Management Committee of this establishment for consideration.

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The Management Committee sought reply of Mr. Riaz Muhammad Assistant/Reader in the matter in question who submitted the same (Copy is annexed as Annexure-B).

The Management Committee after due deliberation and consultation over the matter of inter-se seniority of Mr. Sher Ali Budget & Accounts Assistant and Mr. Riaz Muhammad, Assistant/Reader recommended that the matter may be referred to the august Peshawar High Court, Peshawar for guidance (The minutes of meeting of the Management Committee is annexed as Annexure-C while seniority list is Annexure-D).

It is pertinent to mention here that prior to the instant objection application, similar objections were raised by the objector (Mr. Sher Ali, B&A Assistant) before the then Competent Authority, which was dealt with by the then Management Committee. The relevant extracts of the Minutes of the meeting of Management Committee dated 28/03/2017 are annexed as Annexure-E whereas order of the Competent Authority (District & Sessions Judge, Swabi) as Annexure-F.


The law/rule does not answer the query, therefore, it is requested that guidelines to this office may kindly be issued on the following so that the issue may be resolved once for all.

- 1) Whether the Budget & Accounts Assistant can be included in the joint seniority list of Assistants/Readers, Assistant/Clerk of Court and Civil Nazir for the purpose of promotion to the post of Superintendent.

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2) Whether the Budget & Accounts Assistant is senior to Muhammad Riaz Assistant/Reader as per objection of Budget & Accounts Assistant.


Rozina Rehman,
District & Sessions Judge,
Swabi.

The District Judiciary
Swabi



Phone # 0925-280572
Fax# 0925-280128
Email: dsjswabi1@gmail.com

No. 530 /F-59/D&SJ Dated 24/01/2022

To
The Worthy Registrar,
Peshawar High Court,
Peshawar.

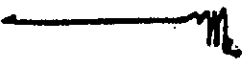
Subject: **GUIDANCE REGARDING SENIORITY OF BUDGET & ACCOUNTS ASSISTANT AND ASSISTANT/READER/ASSISTANT/CLERK OF COURT/CIVIL NAZIR.**

Dear Sir,

Kindly refer to this office letter No.2269/ (F-59)/D&SJ dated 19.06.2019 on the subject noted above and to state that guidance in the matter has not been received so far (copy of letter enclosed for ready reference).
You are therefore requested to guide this office in the matter, please.

Encl: A.A

Yours faithfully,

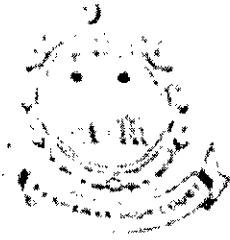

Muhammad Rauf Khan
District & Session Judge,
Swabi

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The
PESHAWAR HIGH COURT
Peshawar

All communications should be addressed to the Registrar Peshawar High Court, Peshawar and not to an official by name.



Exch: 9210149-58

Off: 9210135

Fax: 9210170

www.peshawarhighcourt.gov.pk
info@peshawarhighcourt.gov.pk
phpsc@pshc.gov.pk

No. SDJ/PHC/REG/88(21)/ 7183

Dated Peshawar, the 12-11-2022

To,

The District & Sessions Judge,
Swabi.

SUBJECT: GUIDANCE REGARDING SENIORITY OF BUDGET & ACCOUNTS ASSISTANT AND ASSISTANT READER/ASSISTANT-CLERK OF COURT/CIVIL NAZIR

Dear Sir,

Reference letter No.2269/(F-59)D&S dated 19.06.2019 on the subject cited above. The final seniority list dated 21.01.2022 was issued by your office. You are informed to proceed further in light of the verdict of Hon'ble the Peshawar High Court in Writ Petition No.1688-P-2022 dated 28.09.2022.

SCJ(A)

Pl discuss in the light of service record of the official concerned

Sincerely Yours,


(INAMULLAH KHAN)
REGISTRAR

18/11

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PESHAWAR HIGH COURT, PESHAWAR
ORDER SHEET



Date of Order of Proceedings	Order of other Proceedings with Signature of Judge.
1	2
28.09.2022	<p>WP No.1688-P-2022 Motion disposed of 28.09.2022</p> <p>Present: Mr. Amjad Ali, Advocate, for the petitioner. Mr. Arshad Ahmad, AAG for official respondents. M/S Shalber Khan and Tajdar Faisal, Advocates for respondents.</p> <p>****</p> <p>ROOH-UL-AMIN KHAN, J.: Through the instant Constitutional petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner seeks the following relief:-</p> <p>"On acceptance of this writ petition it is humbly prayed that -</p> <p>(a) Direct the respondents No.1 and 2 to issue a revised seniority list in which the petitioner may include in the combined seniority list before respondent No.4 to 8.</p> <p>(b) Direct the respondents No.1 and 2 to consider the petitioner for promotion of the Superintendent in light of Judicial Esta Code.</p> <p>(c) Direct the respondents No.1 and 2 the petitioner may equally treat as the respondents No.1 and 2 treated similar posted (B & A Assistant) employees in different Districts Judiciary.</p> <p>2. At the very outset, the Worthy AAG produced copy of the final seniority list issued on 21.01.2022, which is placed on record. As such, without dilating upon the issue as to whether the Tentative Seniority List can be challenged before the Court or not. We</p>

Rooh-ul-Amin Khan

ATTESTED
EXAMINER
Peshawar High Court

deem it appropriate to dismiss this petition, however, the petitioner would be at liberty to raise his voice against the final seniority list, if aggrieved, before the proper forum.

Asad Sami
SENIOR PUISNE JUDGE

[Signature]
JUDGE

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[Signature]
30 SEP 2022

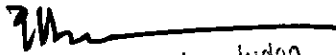
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Date of Presentation of Application..... 29.8.22
No of Pages..... 8
Copying Fee.....
Fees..... 32
Date of Preparation..... 30.8.22
Date of Delivery of Copy..... 30.8.22
Received By..... *[Signature]*

F-185

AUTHORITY LETTER

Muhammad Irfan Khan the learned Senior Civil Judge (Admn) Swabi is hereby authorized/nominated to attend the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar in connection with service appeals No.268/2023 titled Mr. Sher Ali... vs... PHC etc fixed for 09/03/2023.


District & Sessions Judge,
Swabi