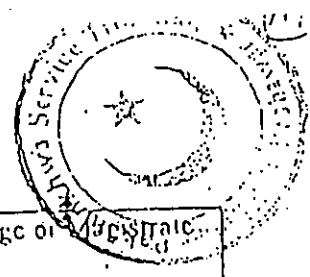


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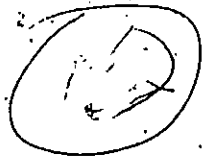


S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
	19.10.2015	<p align="center"><b>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.</b></p> <p align="center">APPEAL NO.S04/2012</p> <p align="center">(Maqsood-ur-Rehman -vs- Govt. of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and others).</p> <p align="center"><b>JUDGMENT</b></p> <p align="center"><b>ABDUL LATIF, MEMBER:</b></p> <p>Appellant with advise Mr. Muhammad Imran, Agriculture Supdt alongwith Mr. Ziaullah, Government Pleader for official respondents and counsel for private respondents No.10,13 and 14 (Mr. Ghulam Nabi, Advocate) present.</p> <p>2. The instant appeal has been filed by the appellant under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act-1974 for issuing appropriate directions to respondents No. 1 to 5 to assign/award separate designation to the Statistical Investigator (BPS-16) upgraded to (BPS-17) from the designation already assigned to statistical Officers (BPS-17) Supervisory directly selected through Public Service Commission in BPS-17 or promoted to BPS-17 from the post of Statistical Investigator (BPS-16) in the Department. Appellant prayed that on acceptance of the instant appeal, appropriate directions be issued to the respondents No. 1 to 5 to assign/award separate designation to the Statistical</p>

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Investigators (BPS-16) upgraded to BPS-17 from the designation already assigned to Statistical Officers (BPS-17) from the designation already assigned to Statistical Officers (BPS-17) Supervisory directly selected through Public Service Commission in BPS-17 or promoted to BPS-17 from the post of Statistical Investigator (BPS-16) in the Departments.

3. Brief facts giving rise to the instant appeal are that the appellant was appointed as Assistant Statistical Officer (BPS-17) on the recommendation of the Khyber Pakhtunkhwa Public Service Commission vide order dated 01.05.1987. That initially the rules for recruitment, appointment of the employees of the Agriculture Department were promulgated in the year 1981 however, subsequently an amendment notification dated 05.09.1989 under which the categories of Officers in Crop Reporting Services of the Agriculture Department. According to the Rules ibid, Assistant Statistical Officer (BPS-17) was to be promoted to the post of Statistician (BPS-18) and Statistical Investigator (BPS-16) to the post of Assistant Statistical Officer (BPS-17). That vide Notifications dated 27.06.1997 the department upgraded and re-designated both the categories of officers w.e.f 01.07.1997 as Assistant Statistical Officer (BPS-17) upgraded to Statistical Officer BPS-17-Rs.150/- Supervisory and Statistical Investigator (BPS-16) up-graded to Assistant Statistical Officer (BPS-17). It is important to mention here that the Seniority lists of both the categories have been separately maintained by the Department till date. The last approved seniority list of Statistical Officer

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(Supervisory) confirms that presently the appellant is the senior-most Supervisory Officer in the Department. That in the year 2008, some of the Statistical Investigators (BPS-16) filed service appeals in the Service Tribunal for up-gradation of their posts to BPS-17 from their dates of appointments instead of 01.07.1997 in the light of the Finance Department notification dated 02.03.1973 which was accepted vide judgment dated 26.03.2009. That due to the misinterpretation of the judgment and non-awarding separate exclusive designation to the upgraded Non-Supervisory Statistical Officer (BPS-17), an anomaly of seniority of both the categories i.e Supervisory and Non-Supervisory Statistical Officers has been created by the Department, which has adversely affected the rights of the appellant and other similar officers, therefore, appellant preferred a departmental appeal on 07.04.2012 to the competent authority which was not responded, hence the instant appeal.

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4. Counsel for the appellant argued that respondents have treated appellant in accordance with law, rules and policy on the subject and acted in violation of Article-4 of the Constitution of the Islamic Republic of Pakistan, 1973 and unlawfully amalgamated the category of Statistical Officers (BPS-17) with special pay of Rs. 150/- and the category of Statistical Officers since up-graded from Statistical Investigator (BPS-16) pursuant of the Khyber Pakhtunkhwa Service Tribunal judgment in Appeal No. 752/2008. He further argued that while allowing similar up-gradation to BPS-16 Officers in other attached Departments of the Agriculture Department a different designation was allowed to the up-graded Officers and their seniority was never integrated with

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the supervisory Officer in the Department as is evident from notification dated 02.03.1978 and from the comparison as noted below:-

S.#	Department	Designation of District Officer, BPS 17+Rs.150/- (Supervisory)	Designation of Up-Graded Tehsil Officer from BPS-16 to BPS-17
1.	Agriculture Extension	Extra Assistant Director Agri. Officer, APPO & AHO	Agriculture Officer
2.	Livestock	Assistant Director	Veterinary Officer
3.	Soil Conservation	Soil Conservation Officer	Assistant Soil Conservation Officer
4.	Crop Reporting Service	Statistical Officer	Assistant Statistical Officer

He further submitted that a different yardstick only with respect to Crop Reporting Services (CRS) was violation of... argued that the Director General Agriculture dated 02.07.2010 to the Secretary Agriculture had pointed out the anomaly and had proposed for maintaining separate seniority list for two category Officers. Similarly the departmental committee constituted on the directive of the Government also recommended that Supervisory and non-supervisory were two different category and their seniority could not be unified. He further argued that neither Supervisory Statistical Officers were party before the Service Tribunal nor were they heard or provided opportunity of defense therefore the judgment was not binding on them, be that as it may, the cited judgment had never touched the question of seniority between the two rival categories of Officers. He further contended that the judgment was only with regard to the financial

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benefits and therefore the same could not be stretched to encroach upon the seniority rights of the Supervisory Statistical Officers. He further argued that Sec-8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 provides that seniority in various cadres of civil servant appointed by initial recruitment viz-a-viz those appointed otherwise shall be determined with reference to the dates of their regular appointment to a post in that cadre provided if the two dates are the same, the person appointed otherwise shall rank senior to the person appointed by initial recruitment. That due to the impugned re-designation the Supervisory Statistical Officers (BPS-17) have become juniors to the erstwhile Statistical Investigators (BPS-16) who were previously their subordinates, which has resulted into serious miscarriage of justice and resentment.

5. The learned counsel for private respondents argued that the prayer made by the appellant requesting the Service Tribunal for passing appropriate direction to the government was not in conformity with the law as the Service Tribunal had no such jurisdiction to make any directions to the government. He further argued that notification dated 06.06.2011 clearly spelt out various categories of Officers borne on the Establishment of Crop Reporting Services (CRS) of the Agriculture Department and the appellant failed to challenge the said notification which had since attained finality. He further argued that up-gradation of 18 Officers was notified in the year 2010 but the appellant then remained silent hence the present appeal was badly barred by time. He further contended that tentative seniority list of Statistical

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Officer (BPS-17) was circulated on 09.12.2011 against which no objection was raised by the appellant. He also argued that notification pertaining to three categories where appellant was merged with private respondents was never challenged by the appellant, hence it was useless to cry over the spilt milk. He relied on 1994 SCMR 1033, 2006 SCMR 518, 2006 SCMR 1630, 2011 PLC (C.S) 596, PLD Supreme Court 338 and PLD 2014 Supreme Court. He prayed that the appeal being devoid of any merits may be dismissed.

6. The learned Government Pleader resisted the appeal and argued that the appeal had not impugned any final order before the Service Tribunal as required by the Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 hence the appeal is not maintainable in its present form. He further argued that framing of rules and amendment therein fell in the executive domain of Government and the same could not be challenged before any court of law nor the Tribunal enjoyed jurisdiction to pass any directions to the Government in this regard. He further argued that the appellant never challenged up-gradation of 2010 in respect of the private respondents nor did he make any mention of the same in his departmental appeal. He further argued that the appellant was in the knowledge of all cases on the instant subject as he represented Government in all the cases before the Tribunal. He relied on 2006 SCMR 1630, 2015 SCMR 269 and 1994 SCMR 1033. He prayed that the appeal being devoid of any merits may be dismissed.

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7. Arguments of learned counsels for the parties heard at length and record perused with their assistance.

8. From perusal of the record of the case it transpired that the appellant was appointed as Assistant Statistical Officer (BPS-17) through Khyber Pakhtunkhwa Public Service Commission in the year 1987. Under the relevant recruitment rules of the Agriculture Department of 1981 the post of Assistant Statistical Officer (Being District Head) used to be filled in 50% on the basis of promotion from Statistical Investigator (BPS-16) (Tehsil Level-Officer). The post of Assistant Statistical Officer was up-graded on 27.06.1997 as Statistical Officer (BPS-17) and re-designated as Statistical Officer Supervisory, the same was however given effect from 01.07.1997. The appellant was placed at S.No.6 of the Seniority of Statistical Officer Supervisory (BPS-17) vide notification dated 01.05.2001. Subsequently the post of Statistical Officer was up-graded in pursuance of service rules notified on 26.03.2009 in appeal No. 752/2008 wherein the up-gradation was given effect from 01.05.1977. From perusal of the record it reveals that before coming into effect of the Service Tribunal judgment cited above, the appellant enjoyed a senior position viz-a-viz the private respondents. Up-gradation of the private respondents to BPS-17 and given the same effect from 01.05.1977 appears to have created an anomalous situation as the appellant has been ranked junior to his erstwhile juniors in the Crop Reporting Services wing of the Agriculture Department. The Tribunal is therefore, of the considered view that without going into the issue of limitation of the case on technical grounds, the case needs to be

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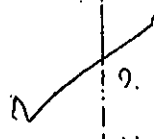
EXAMINER  
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Service Tribunal,  
Peshawar

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Crop Reporting Services  
Khyber Pakhtunkhwa  
Peshawar

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examined on merits to meet the ends of natural justice and requirements of equality as enunciated in the Constitution. The case is accordingly remitted to the respondent-department with the direction to revisit the case on merits strictly in accordance with law and decide the same within a period of two months after receipt of the instant judgment. Parties are left to bear their own costs. File be consigned to the record.



9. This judgment will also dispose of the connected appeal No. 1549 of 2011 titled Maqsood-ur- Rehman-vs- Govt. of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and others as the fate of the case in hand has a close linkage and bearing on the said case.

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Peshawar

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Abdul Wahid

Pir Bakht Khan  
member

ANNOUNCED  
19.10.2015

Date of Reception of Application 20-10-2015  
 Number of Words 3900  
 Copying Fee 18-0  
 Grant —  
 Total 18-0  
 Name of Copyist —  
 Date of Completion of Copy 2-11-2015  
 Date of Delivery of Copy 2-11-2015

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**DIRECTOR,**

Crop Reporting Services  
Khyber Pakhtunkhwa  
Peshawar



GOVT  
DEPARTMENT OF KHYBER PAKHTUNKHWA  
RURAL LIVESTOCK & COOPERATIVE  
DEPARTMENT

Dated Peshawar, the December 22<sup>nd</sup>, 2016

SOE(AD)II(2)291/2014

In pursuance of Section-8 (1) of Khyber Pakhtunkhwa Civil Servant Act, 1973 read with Rule-17 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, final seniority list of officers of Statistical Officers (BS-17) Crop Reporting Services, Agriculture Department Peshawar, as stood on 01.06.2016, is notified:-

Name & Academic Qualification	Date of Birth/ Domicile	Date of 1st entry into Govt. Service	Regular Appointment/Upgradation/ Promotion to the present post			Present posting	Date of retirement	Remarks	
			Date	BPS	Methods of recruitment				
					7				8
2	3	4	5	6	7	8	9	10	
Mr. Farooq Khan M.Sc. Maths)	01.05.1961 D Khan	07.01.1985	07.01.1985	BS-17	By upgradation	Statistical Officer, Tank	31.04.2021		
Mr. Sardar Arifan M.Sc. Statistics	27.06.1956 Katak	08.01.1985	08.01.1985	BS-17	By Upgradation	Statistical Officer, CRS, Katak	26.08.2016		
Mr. Haji Muhammad M.A. (Eco)	01.05.1959 Malakand	08.01.1985	08.01.1985	BS-17	By Upgradation	Statistical Officer, Malakand	30.04.2016		
Mr. Aslam Khan M.Sc. (Stat)	23.12.1959 Bannu	08.01.1985	08.01.1985	BS-17	By Upgradation	Statistical Officer, Bannu	22.12.2019		
Mr. Shaukat Hayat M.A. (Eco)	30.12.1960 Mardan	08.01.1985	08.01.1985	BS-17	By Upgradation	Statistical Officer, Swabi	29.12.2020		
Syed Farman Ali Shah M.Sc. (Stat)	01.11.1956 Peshawar	09.01.1985	09.01.1985	BS-17	By Upgradation	Statistical Officer, Abbottabad	31.10.2016		
Mr. Zia-ul-Islam M.Sc. (Stat)	10.04.1957 Mardan	09.01.1985	09.01.1985	BS-17	By Upgradation	Statistical Officer, Newsheera	09.04.2017		
Mr. Usaid Ali M.Sc. Maths)	01.01.1958 Dir Lower	12.01.1985	12.01.1985	BS-17	By Upgradation	Statistical Officer, Dir Lower	31.12.2015		
Mr. Farooq Khan M.Sc. (Eco)	31.03.1958 Mardan	12.01.1985	12.01.1985	BS-17	By Upgradation	Statistical Officer, Mardan	30.03.2016		
Mr. Usaid Ali M.Sc. (Eco)	02.01.1957 Bannu	12.01.1985	12.01.1985	BS-17	By Upgradation	Statistical Officer, Laska Marwat	01.01.2020		

Annex - VIII

11	Mr. Tanqulman M.Sc. (Stat)	Nablit	21.08.1985	22.08.1985	BS-17	By promotion	Statistical Officer, FATA HQ	21.08.1985
12	Mr. Z. Islam M.Sc. (Stat)	Bajaur	21.08.1985	21.08.1985	BS-17	By promotion	Statistical Officer, Swat	21.08.1985
13	Mr. Abdullah M.A. Eco	Chitral	21.08.1985	21.08.1985	BS-17	By promotion	Statistical Officer, CRS, Chitral	21.08.1985
14	Mr. Fazli Wazir M.Sc. (Stat)	Dir Lower	21.08.1985	21.08.1985	BS-17	By initial recruitment	Instructor, ATL, Peshawar	21.08.1985
15	Mr. Mansoor ur Rehman M.Sc. (Statistics)	Dir Lower	21.08.1985	21.08.1985	BS-17	By initial recruitment	Statistical Officer, CRS, HQ	21.08.1985
16	Syed Aftab Ahmad M.Sc. Statistics	Mardan	21.08.1985	21.08.1985	BS-17	By initial recruitment	Statistical Officer	21.08.1985
17	Mr. Zahidullah M.Sc. Statistics	Bannu	21.08.1985	21.08.1985	BS-17	By initial recruitment	O's DA (FATA) Peshawar	21.08.1985

Certified that the above list is final and correct.

Sd/-  
Chief Secretary

- Endst. No. and Date even  
Copy forwarded to the:
- Director Crop Reporting Services, Khyber Pakhtunkhwa Peshawar.
  - PS to Chief Secretary, Khyber Pakhtunkhwa Peshawar.
  - PS to Secretary Establishment, Khyber Pakhtunkhwa.
  - PS to Secretary Agriculture Department.
  - Officers Concerned ✓
  - Manager, Government Printing Press, Peshawar.
  - Master file

(Dr. Mir Ahmad Khan)  
SECTION OFFICER (ESTE)

(18)

REPORT OF THE COMMITTEE CONSTITUTED TO THRESH OUT THE FACTS  
OF THE SENIORITY DISPUTE OF STATISTICAL OFFICERS (BS-17), CROP  
REPORTING SERVICES (CRS).

In pursuance to the Government of Khyber Pakhtunkhwa Agriculture, Livestock, Fisheries & Cooperatives Department notification No. SOE(AD)III(2)291 /2014 CSR dated 28/03/2016 (Annex-1) with the following TORs.

1. Check the relevant appointment orders and Service Rules of CRS.
2. Determine the seniority positions of all the statistical officers in accord to the rules and court decision in the matter.
3. Recommended the seniority list to be submitted for approval of the competent authority.
4. Submit report within 10 days.

As per instructions contained in the above mentioned notification a meeting of the committee was held under the chairmanship of Deputy Secretary Agriculture, Livestock, Fisheries and Cooperative Department in his office to formulate the strategy. It was decided in the said meeting that the committee will consult both the groups having long lasting dispute of seniority. Both the groups were called separately written statements were recorded from both the groups and were heard personally on 18/04/2016 and 19/04/2016 detail as under:

- i. Written statement of Mr. Maqsood-ur-Rahman Statistical Officer and other and his group representing the officers recruited through Public Service Commission (Annex-2).
- ii. Written statement of Mr. Zia-ul-Islam Statistical Officer and other three officers representing the group upgraded from the post of Statistical Investigator in light of the court decision (Annex-3).
- iii. Written statement also submitted by Mr. Bakhtiar Khan, Retired Statistical Officer (Annex-4).
- iv. Written statement provided by Mr. Shaukat Hayat Statistical Officer Swabi regarding his personal seniority dispute (Annex-5).

BRIEF HISTORY:

In the year 1972, the Government upgraded the professional and non professional posts in Agriculture Department from BPS 11 to BPS-16. In year 1978, in light of the Federal Government decision, the Provincial Government of this

Secretary Agriculture

Diary 409

No. ....

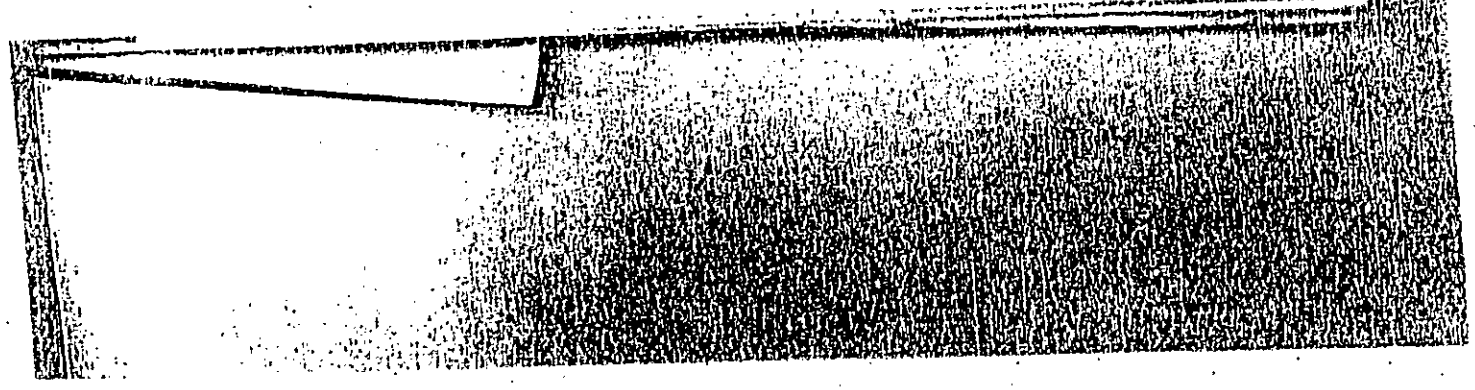
Dated 8/5/16

Province upgraded the posts of Agriculture Assistant, Veterinary Assistant, Soil Conservation Assistant, Research Assistant and other equivalent professional posts from BPS-16 to BPS-17 with effect from 1/5/1977 (Annex-6), While the posts occupied by Science graduates in other disciplines namely Botany, Zoology, Chemistry and statistics working in Agriculture Department were not upgraded.

(2). According to service rules notified vide Govt of Khyber Pakhtunkhwa S&GAD (Regulation wing) notification No. SOR-11(S&GAD2-11/78 dated 1.2.1981) amended in 1989, The method of recruitment for different cadres of post are as under (Annex-7):

S.No	Name of Post	Qualification	Age	Method of recruitment
1	Statistician	----	---	By promotion on the basis of seniority cum fitness, from amongst Assistant Statistical Officers in the extension wing with at least five years experience in planning agriculture experiments and procuring the data obtained there from.
2	Assistant Statistical Officer	Master Degree in Statistics or Maths or Economics with specialization in statistics from a recognized university.	21 to 35 Years	(a) Fifty percent by initial recruitment. (b) Fifty percent by Promotion, on the basis of seniority cum fitness from amongst statistical investigators with at least five year service as such.
3	Statistical Investigator	MSc Statistics, Maths or Economics with statistics of one of the subject from a recognized university	21 to 35 year	(a) Seventy five percent by initial recruitment and (b) Twenty five percent by promotion on the basis of seniority-cum-fitness, from amongst statistical computers/crop reports with at least ten years experience of working in the statistical cell.

1. Twenty eight (28) nos of candidates were appointed as statistical Investigator BPS-16 in the year 1985 on adhoc basis in crop estimation project



(Annex-8), in which twenty two (22) nos of Statistical Investigator joined the duties (Annex-9), who were later on confirmed as statistical Investigator on permanent basis.

2. Five (05) No's of candidates including Mr. Maqsood-ur-Rahman were appointed as Assistant statistical Investigators (BS-17) in the improved crop estimates project NWFP (Extension wing ) of Agriculture Department on temporary basis in light of the recommendation of NWFP Public Service Commission (Annex-10).

3. Later on, all posts of statistical investigators (BS-16) were upgraded and re-designated as Assistant Statistical Officer (BS-17) with effect from 1.7.1997 vide Govt of NWFP Food, Agriculture, Livestock and Corporative Department Notification No. SOE(AD) 11(2)286/91 dated 27/06/1997 (Annex-11) and on the same date all posts of Assistant Statistical Officer (BS-17) of Agriculture (Extension wing) were re-designated as Statistical Officer (BS-17) with a Special Pay of Rs. 150 per month as supervisory pay with effect from 01/07/1997 vide notification No. SOE(AD)11(2)286/91 dated 27/06/1997 (Annex-12).

4. Separate Seniority lists for Assistant Statistical Officer (BS-17) as stood on 01/03/2003 and for Statistical Officer (supervisory) as it stood on 1.6.2004 were circulated by Director General (Extension) Agriculture (Annex-13), but could not finalized due to abolition of posts of Assistant Statistical Officers (BS-17) after devolution. Needless to mention here that due to devolution plan of 20<sup>0</sup>1, the posts of Assistant Statistical Officers were abolished while the post of Statistical Officer (supervisory) remained intact. Moreover, the incumbent of the post of Assistant Statistical Officers were posted against the post of Statistical Officer BS-17 (supervisory).

5. The Research and Statistical Assistant (BS-16) of Agriculture Research, who were non Agriculture graduates possessed degree in simple sciences (in Botany, Chemistry and Statistics) were kept beyond the scope of notification and not upgraded. They took the matter to the Service Tribunal, Peshawar on 16/04/1990,

(21)

21/06/1995 and 28/12/1995 and the Tribunal decided the cases in their favor on 16/06/1991, 16/08/1995 and 19/05/2003, thus they were upgraded and re-designated as Research Officers (BS-17) with all back benefits irrespective of possessing degree in Agriculture and Veterinary discipline. The Statistical Officer of the same status and qualification appointment as Statistical Investigators (BS-16) in Crop reporting services (Agriculture Extension) followed the precedent of the above Court cases and submitted an appeal No.752/2008 before the NWFP Service Tribunal on 26/05/2008 praying to remove the existing disparity in pay and upgrade the post of Statistical Investigator in Crop reporting from BS-16 to BS-17 with effect from 1.5.1977 or the date of appointment with back benefits, which was decided on 26.03.2009 that all the present appellants have higher qualification in other sciences. Through the already granted judgments their posts have already been equated with the posts of other graduates. It is however, repeated for further clarity that the cases of the present appellant, of the appellant in previous cases, and of the other similar placed persons are in respect of the notification dated 26/04/1978, and not in respect of notification dated 02.03.1978, which was specifically concerned with Agriculture and Veterinary.

6. In light of the above, we do not have any other alternative, but to accept the present appeals in light of the previous judgment with costs. We direct the official respondents to give the same benefits to the present appellant (Who are BSc 2<sup>nd</sup> Division in other science like Economics, physics) which have been declared for the other seniority placed persons who are qualified in BSc (Agriculture) or BSc (2<sup>nd</sup> Division) or BSc Statistics or mathematics with statistics as a subject and who had litigated as mentioned above. The official respondents are further directed to grant the same benefits to all other similarly placed person who have not yet litigated in order to avoid compelling them to enter in to litigation with them (Annex-14).

7. The above judgment was sent to the law Department on 28.04.2009 requesting them to ask the Advocate General, NWFP to file an appeal before the supreme court of Pakistan. The law Department intimated on 08/07/2009 that the

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case was not fit for further appeal in the supreme court of Pakistan. In view of the judgment of the NWFP service Tribunal and comments of the law Department a note was moved to the Chief Secretary through Finance Department for approval of the following proposal.

- i. Up gradation of 18 posts of Statistical Investigator from BS-16 to BS-17 and re-designated as statistical Officer from 01/05/1977 or from the date of their appointment.
- ii. Approval of Financial Implication amounting to Rs. 79,23,800/-
- iii. The summary was accordingly approved and notification was issued vide No. SOE(AD)111(2)/201/2009 dated 17/02/2010 (Annex-15)

In addition, the Government of Khyber Pakhtunkhwa Agriculture, Livestock & Cooperative Department accord sanction to the up gradation of the four (04) posts of Statistical Investigator from BS-16 to BS-17 along with incumbents and re designated these posts as Statistical Officer with effect from 01/05/1977 or from the date of the appointment vide notification No. SOF(AD)III(2)/201/2011/CRS dated 07/04/2012 (Annex-16).

After implementation of the Service Tribunal decision the case with regard to the seniority issue of Statistical Officer (BS-17) was sent to Establishment Department, which was accordingly replied dated 17/05/2010 (Annex-17) and the opinion of the Establishment Department are reproduced as under.

I am directed to refer to Agriculture Department letter No. SOE(AD)17-167/2008 dated 05.05.2010 on the subject and to say that under section-8(4) of the NWFP civil servants, Act 1973, Seniority takes effect from the regular date of appointment to the post.

- ii. In the instant case, the posts of Statistical Investigators BS-16 have been upgraded in BS-17 along with incumbents and re designated as Statistical Officers with effect from 01/05/1977 or from the date of their appointment latest i.e 05/05/1986 under the order of the competent authority and notification dated 17/02/2010 issued by the Finance Department.

iv. It is therefore advice that the Seniority of the above mentioned Statistical Officer will be considered with effect from the date of their up gradation".

10. The law Department has also endorsed the opinion of the Establishment Department vide date 02/06/2011 (Annex-18), which are reproduced as under:

"I am directed to refer to Agriculture Department letter No.SOE(AD)14-16/85 dated 14/05/2011 on the subject noted above and to state that the determination of seniority falls within the terms and conditions of service and under Rule 9(3) clause (a) read with rule 9(4) clause (c) of the NWFP government Rules of business, 1985 falls within the domain of Establishment and Administrative Department and that the advice/ Opinion of the E & A Department may be act upon.

11. Mr. Maqsood-Ur-Rehman filed an appeal No.804/212 in the Khyber Pakhtunkhwa Service Tribunal for issuing appropriate directions to respondent No. 1 & 5 to assign/award separate designation to the Statistical Investigator BS-16 upgraded to BS-17 from the designation already assigned to Statistical Officers (BS-17) supervisory directly selected through Public Service Commission in BS-17 or promoted to BS-17 from the post of Statistical Investigator BS-16 in the Department.

12. Decision was arrived in the appeal No.804/212 vide dated 19/10/2015, (Annex-19) which, is as under.

"The Tribunal is therefore of the considered view that without going in to the issue of limitation of the case on technical grounds, the case needs to be examine on merits to meet the ends of natural justice and requirements of equality as enunciated in the constitution. The case is accordingly remitted to the respondent Department with the direction to revisit the case on merits strictly in accordance with law and decide the same within a period of two months after receipt of the instant judgment.

13. The Director, Crop reporting Services Khyber Pakhtunkhwa, Peshawar circulated tentative Seniority list of Statistical Officers (BS-17) Crop reporting



services, Agriculture Department as stood on 01/01/2016 vide No.6013-36/DCRS dated 04/01/2016 (Annex-20).

14. After decision of Khyber Pakhtunkhwa Service Tribunal dated 19/10/2015, the case in respect of the seniority issue of Statistical Officer (BS-17) was again sent to Establishment Department, which was accordingly replied vide dated 26/01/2016 (Annex-21) and the opinion of the Establishment Department are reproduced as under.

"I am directed to refer the Agriculture Department letter No.SOE(AD)III(2)291/2014/CRS dated 11/01/2016 on the captioned subject and to state that the Agriculture Department is advised to examine the case in light of Khyber Pakhtunkhwa Service Tribunal Peshawar judgment read with Rule-17 of Khyber Pakhtunkhwa Civil Servants (appointment, promotion and transfer) Rules, 1989 and section-8 of Khyber Pakhtunkhwa Civil Servant act, 1973 as well as rules of the cadre concerned and decide the case at their own level as the Establishment is not competent to determine the seniority of officers/officials of the Administrative Department".

14. In the year 2011, the service rules for the technical post of Crop reporting services were notified vide notification No.SOE(AD)II(2)/429/2010 dated 06/06/2011 (Annex-22) which are reproduced as under.

S.No	Nomenclature of Post	Qualification for apptt: by initial recruitment	Age limit	Method of Recruitment
1	2	3	4	5
2	E.D.O Agriculture (Crop Reporting Services). (BS-19)			By promotion on the basis of seniority sum fitness, from amongst the Statistician Crop reporting (BS-18) with seven years service in BS-18 or 12 years service in BS-17 and above.
3	Statistician			By promotion on the

	(Crop Reporting Services) (BS-18)			basis of seniority cum illness from amongst the Statistical Officers (supervisory) in Crop reporting services with at least five year service.
4	Statistical Officer (Supervisory) (BS-17)	Master degree in Statistic or Economic or Mathematic with Statistic as a compulsory subject in B.A/B.Sc from a recognized University	21 to 32 year	By initial Recruitment

**FINDINGS:**

**TOR # 1.** Check the relevant appointment orders and Service Rules of CRS.

- i. Twenty eight (28) nos statistical Investigators BPS-16 were appointed in the year 1985 on adhoc basis in crop estimation project, in which twenty two (22) nos of Statistical Investigators join the duty and later on confirmed as statistical Investigator on permanent basis.
- ii. Five (05) Nos Assistant Statistical Officers (BS-17) including Mr. Maqsood-ur-Rahman were appointed as in the improved crop estimates project NWFP (Extension wing) of Agriculture Department on temporary basis in light of the recommendation of NWFP Public Service Commission.
- iii. In the year, 1997, all posts of statistical investigators (BS-16) were upgraded and redesigned as Assistant Statistical Officer (BS-17) with effect from 01/07/1997 vide Govt of NWFP Food, Agriculture, Livestock and Corporative Department Notification No. SOE(AD) 11(2)286/91 dated 27/06/1997, and on the same date all posts of Assistant Statistical Officer (BS-17) of Agriculture (Extension wing) were redesigned as Statistical Officer (BS-17) with a Special Pay of Rs.150/- per month as supervisory pay with effect from 01/07/1997 vide notification No. SOE(AD)11(2)286/91 dated 27/06/1997.

iv. All posts of statistical investigators BPS-16 were upgraded and re-designated as Statistical Officer BPS-17 w.e.f 01/05/1977 OR from the date of their appointment vide notification dated 17/02/2010 in light of the NWFP Service Tribunal decision.

v. Existing Service rules of the cadre are:

S.No	Nomenclature of Post	Qualification for apptt. by Recruitment	Age Limit for Initial	Method of Recruitment
1	2	3	4	5
2	E.D.O Agriculture (Crop Reporting Services) (BS- 19)			By promotion on the basis of seniority cum fitness, from amongst the Statistician Crop reporting (BS-18) with seven years service in BS-18 or 12 years service in BS-17 and above.
3	Statistician (Crop Reporting Services) (BS-18)			By promotion on the basis of seniority cum fitness from amongst the Statistical Officers (supervisory) in Crop reporting services with at least five year service.
4	Statistical Officer (Supervisory) (BS-17)	Master degree in Statistic or Economic or Mathematic with Statistic as a compulsory subject in B.A/B.Sc from a recognized University	21 to 32 year	By initial Recruitment

Analysis:

1. The statistical investigators appointed in Crop Reporting services wing are to be considered as statistical Officer BPS-17 with effect from 01/05/1977 OR from the date of their appointment in light of the notification.
2. The Assistant Statistical Officers appointed by the public Service Commission were in BPS-17 and not supervisory.

3. The qualification for both the posts of Assistant Statistical Officers- BPS-17 and Statistical Investigators BPS-16 are the same i.e.

- a. Assistant Statistical Officers (B-17)- Master degree in statistics or Maths or Economics with specialization in statistic from a recognized University.
- b. Statistical Investigator (B-16)- MSc statistics, Maths or Economics with Statistics of one of the subject from a recognized University.
- c. Statistical Officer (Sup) (B-17)- Master degree in statistics or Maths or Economics with statistics as a compulsory subject in BA/BSc from a recognized University

TOR # 2. Determine the seniority positions of all the statistical officers in accord to the rules and court decision in the matter.

As per rule-17 of Khyber Pakhtunkhwa Civil Servants (appointment, promotion and transfer) Rules, 1989, the seniority inter se of civil servants appointed to posts in the same basic pay scale in a cadre shall be determined.

(a) In the case of persons appointed by initial recruitment, in accordance with the order of merit assigned by the Commission, provided that persons selected for appointment to post in an earlier selection shall rank senior to the persons selected in a later selection; and

(b) In the case of civil servants appointed otherwise, with reference to the dates of their continuous regular appointment in the post; provided that civil servants selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter se seniority as in the lower post.

Analysis.

As per rule mentioned above, presently the cadre is same and there exists no separate cadre in the Department. Therefore, the seniority in the same cadre be fixed from the date of regular appointment to the said post. The date of regular appointment to the said post is 01/05/1977 who were recruited earlier OR the date of their regular appointment.

28

TOR#3. Recommended the seniority list to be submitted for approval of the competent authority.

From the above detail findings, the tentative seniority list of Statistical Officers BS-17 Crop Reporting Services Agriculture Department, Khyber Pakhtunkhwa as it stood on 01/01/2016 circulated by Director Crop Reporting Services vide No. 6013-36/DCRS dated 04/01/2016 is endorsed by the committee and the following seniority position of Statistical Officers (BS-17) Crop reporting services as it stood on 30/04/2016 is concluded.

S. No	Name & Designation	Date of Birth	Date of Admissibility as Statistical Officer BS-17 on the basis of Up gradation in light of NWFP Service Tribunal decision and opinion of Establishment Law Department	Remarks
1	Mr. Samiullah Khan Statistical Officer	01/05/1961	07/01/1985	The inter-se seniority of civil servants in a certain cadre to which promotion is made from different lower posts, carrying the same pay scale shall be determined from the date of regular appointment/promotion of the civil servants in the lower post. Provided that if the regular appointment of two or more Civil servants in the lower post is same, the civil servants older in age, shall be treated senior (Annex-23).
2	Mr. Sardar Aslam Statistical Officer	27/06/1956	08/01/1985	
3	Mr. Haji Muhammad Statistical Officer	01/05/1959	08/01/1985	
4	Mr. Aslam Khan Statistical Officer	23/12/1959	08/01/1985	
5	Mr. Shaukat Hayat Statistical Officer	30/10/1960	08/01/1985	
6	Mr. Syed Farman Ali Shah Statistical Officer	01/11/1956	09/01/1985	
7	Mr Zia-Ul-	10/04/1957	09/01/1985	

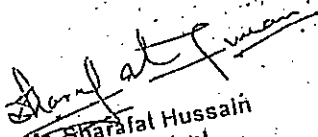
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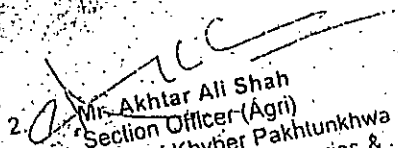
	Islam Statistical Officer			As per advise of the Establishment Department vide notification No.SOR- VI(E&AD)1-3/2008 dated 19/11/2009. Moreover, as per advise of the Establishment Department No.SOR-III(E &AD)1-1/2010 (Agri Department) dated 17/05/2010, the seniority of the Statistical Officers will be considered with effect from the date of their up- gradation.
8	Mr. Liaqat Ali Statistical Officer	01/01/1958	12/01/1985	
9	Mr. Inayatullah Statistical Officer	21/03/1958	12/01/1985	
10	Mr. Nadir Khan Statistical Officer	02/01/1960	19/01/1985	
11	Mr. Tariq Usman Statistical Officer	19/12/1959	22/01/1985	
12	Mr. Noor-Ul Islam Statistical Officer	08/07/1959	24/01/1985	
13	Mr. Asad Ullah Statistical Officer	27/08/1958	24/08/1985	
14	Mr. Fazli Wahab Statistical Officer	01/12/1958	04/04/1987	
15	Mr. Maqsood- Ur-Rehman Statistical Officer	24/10/1961	03/05/1987	
16	Mr. Syed Altaf Ahmad Statistical Officer	25/01/1967	30/05/1994	
17	Mr. Zahid Ullah Statistical Officer	20/02/1967	30/05/1994	

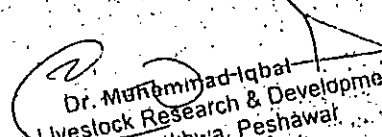
RECOMMENDATIONS:

In light of the above, the committee unanimously recommends that the Seniority list prepared by Director Crop reporting services circulated vide

No.6013/36DCRS dated 04/01/2016 enclosed as (Annex-20) and mentioned in the seniority position above is according to rule-17 of the Appointment Promotion and Transfer Rules-2011 and as per instructions of the Establishment Department and Law Department may be sent to the competent authority for approval and further circulation to implement the decision of the Honorable NWFP Services Tribunal decision announced on 26/03/2009 in Service appeal No.752/2008 and other decision of the Honorable Service Tribunal announced on 19/10/2015 in a service appeal No.804/2012.

1.   
Mr. Sharafat Hussain  
Superintendent  
Livestock & Dairy Development Department  
(Extension) Khyber Pakhtunkhwa, Peshawar

2.   
Mr. Akhtar Ali Shah  
Section Officer (Agri)  
Government of Khyber Pakhtunkhwa  
Agriculture, Livestock, Fisheries &  
Cooperative Department

3.   
Dr. Muhammad Iqbal  
Director, Livestock Research & Development  
Khyber Pakhtunkhwa, Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 255 /2016  
IN  
Service Appeal No. 804 /2012



Diary No. 12

Dated 30-12-2016

Maqsood-ur-Rahman,  
Statistical Officer (Supervisory)  
Crop Reporting Services,  
Khyber Pakhtunkhwa, Peshawar ..... Petitioner

Versus

1. The Govt. of Khyber Pakhtunkhwa through  
Chief Secretary, Civil Secretariat, Peshawar.
2. The Secretary to Govt. of KPK,  
Agriculture, Livestock & Cooperative  
Department, Civil Secretariat, Peshawar.
3. The Secretary to Govt. of KPK,  
Establishment Department,  
Civil Secretariat, Peshawar.
4. The Secretary to Govt. of KPK,  
Finance Department,  
Civil Secretariat, Peshawar.
5. The Director General,  
Agriculture (Extension),  
Khyber Pakhtunkhwa, Peshawar..... Respondents

Execution Petition for directing the Respondents to implement the judgment  
of this Hon'ble Tribunal dated 19.10.2015 passed in Service Appeal  
No.804/2012.

Respectfully Sheweth;

1. That petitioner had filed Service Appeal No.804/2012 before the  
Hon'ble Tribunal which was disposed of vide Judgment dated  
19.10.2015 (*Annex:-A*) in the following terms:

*"From the perusal of the record, it reveals that before  
coming into effect of the Service Tribunal Judgment cited*

**Certified to be true copy**

**MAJID ALI**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar



15.01.2018

Execution Petition No. 255/20  
Mansoor ur Rehman vs Govt



Learned counsel for the petitioner present. Mr. Zia Unan, Learned Deputy District Attorney for the respondents present.

Petitioner has filed the present petition for the implementation of the judgment of this Tribunal dated 19.10.2015 passed in service appeal bearing No.804/2012.

Arguments heard. File perused.

In the above mentioned judgment, this Tribunal held/directed as under

*"The case is accordingly remitted to the respondent department with the direction to revisit the case on merits strictly in accordance with law and decide the same within a period of two months after receipt of the instant judgment."*

Perusal of the file would show that consequent upon the judgment in question of this Tribunal a committee was constituted to thresh out the facts of the seniority dispute of the parties. The committee also gave its findings and recommendations and finally the respondent department issued order/letter dated 06.12.2017 to the petitioner/appellant whereby the appellant was informed that the respondent department is unable to consider the appeal for assigning separate designation to the Statistical Investigator BS-16 upgraded to BS-17 from the designation already assigned to Statistical Officer BS-17 directly appointed through Public Service Commission in 1987.

In the light of above scenario this Tribunal is of the view that the judgment in question has been implemented. Consequently the present execution petition be consigned to the record room having been satisfied/implemented.

*(Signature)*

(Muhammad Hamid Mughal)  
MEMBER

Certified to be true copy

*(Signature)*  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Application 28-9-18  
 Number of Words 800  
 Copying Fee 6-  
 Urgent —  
 Total 6-  
 Name of Copy [Signature]  
 Date of Completion of 03-10-18  
 Date of Delivery of Copy 03-10-18

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No: **766/ 2019**

Maqsood Ur Rahman.....Appellant

**Versus**

Government of KPK & Others..... Respondents

=====

**REJOINDER ON BEHALF OF APPELLANT IN RESPONSE TO REPLY FILED BY  
RESPONDENT NO.1, 2 AND 3**

=====

Respectfully Sheweth

**Preliminary objections:**

1. That preliminary objections raised by answering respondents are erroneous and frivolous.
2. That the appellant has strong cause of action and for that matter has locus standi to file the instant appeal.
3. That the appeal is very much maintainable in its present form. All the essential facts have been incorporated in the instant service appeal and the appellant has approached the Hon'ble Tribunal with clean hands. All the necessary parties have been arrayed.
4. That the present appeal is based upon bonafide intention and nothing has been concealed from the Hon'ble Tribunal. The appeal is well within time and the Hon'ble Tribunal has exclusive jurisdiction to entertain the instant appeal.
5. That no estoppel operates against the appellant in the circumstances.
6. The judgment in Service Appeal No: 567/ 2018 and 339/2017 dictates that the Respondent No: 3 is not a Statistical Officer and his Seniority shall be maintained separately. The Appellant shall be promoted 1<sup>st</sup> to higher scales from the date of his eligibility.

**Facts:**

1. Incorrect. The notification dated 01-5-1987 confirms the factual position (annexure-A in the main appeal).
2. No comments.
3. Incorrect. The findings recorded by this Hon'ble Tribunal under Para-13 of the judgment in Service Appeal No: 567/ 2018 and 339/2017 well highlight the

factual position with regard to baseless claim of respondents (Annex: I). The Para 13 of the judgment reads;

13. We have observed that Agriculture Department as well as Establishment and Law Department did not properly examine the issue of seniority and badly failed to remove the anomaly. It was noted with concern that Establishment department without proper examination of the case, furnished its advice to determine their seniority in light of Section-8 of Civil Servant Act, 1973 as well as Section-17 of Government of Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion & Transfer rules) 1989, which however was not applicable in such case and furnishing such advice without proper evaluation of the issue in question examination amounts to gross negligence, as the appellant and his other colleagues were kept in constant mental agony. The committee constituted for the purpose also did not comprehend the judgment dated 26.3.2009 in its true letter and spirit, which created an anomalous situation and there was nobody on the ground to properly interpret the said judgment. It was astonishing to note that Director Agriculture, while addressing a letter dated 02.7.2010, had hinted to the anomaly and vide his detailed letter had forecasted the forthcoming complications of seniority and had proposed for maintaining separate seniority for the two categories of officers, but nobody appreciated his suggestions. The same letter contained the question as to whether seniority of two distinct groups/batches can be amalgamated, where one group is recruited in BPS-17 and another in BPS-16 having separate seniority. We failed to understand the wisdom behind the action, which put BPS-16 officers senior to BPS-17 with justification that BPS-16 officers were recruited earlier. We also feel sorry to notice that a clear judgment was misinterpreted, which created the whole mess. The judgment so announced was based on the earlier judgments of this Tribunal announced on 16.6.1991, 16.8.1995 and 19.5.2003, where the similar nature posts in BPS-16 were up-graded to BPS-17 with effect from 01.5.1977 or from the date of appointment of the incumbents and were only allowed monetary benefits arising out of up-gradation, but were assigned separate designation from the officers appointed directly in BPS-17. In the judgment dated 26.3.2009, the respondents were directed to extend the same benefits to the appellants as well as other similarly placed persons, which benefits was already extended vide judgments announced on 16-6-1991, 16-8-1995 and 19-5-2003

4. Incorrect. Actually the Respondents are hesitant to reply objectively as they have no plausible justification to deny the fact. The judgment in Service Appeal No: 567/ 2018 and 339/2017 elaborates the facts, that reads under Para 14 & 15 of the judgment as;

14. After perusal of the above-mentioned judgments, it can be easily concluded that the wordings "Same Benefits" used in the judgment dated 26-3-2009 was only up-gradation, which was already granted to similarly placed persons to the extent of monetary consideration having no nexus with seniority. It is otherwise an established fact that up-gradation does not confer any right of seniority, but the respondents considered their seniority with effect from the date

of up-gradation i.e. 01.5.1977 or from the date of appointment of the incumbents, thus a batch of up-graded Statistical Investigators, who were originally inducted in BS-16 on adhoc basis were placed senior over a batch of Statistical Officers who were initially recruited in BPS-17 as Assistant Statistical Officers through Public Service Commission with a justification that the post of Statistical Investigators, who were inducted in 1985-86 were up-graded with effect from 01.5.1977, whereas appellant and his other colleagues were inducted in 1987, hence as per rule 17(b) of Government of Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion & Transfer) Rules, 1989 and Section-8 of Civil Servant Act, 1973, seniority will be reckoned from the date of regular appointment to that post, which however was not applicable in the instant case, as the Rules mentioned above provides for seniority inter-se of civil servants appointed to a service or post in one batch, whereas the amalgamated two groups are separate posts in every respect, as from the very beginning, Assistant Statistical Officer (BPS-17) and Statistical Investigator (BPS-16) were two different cadres having separate seniority and amalgamation of their seniority and putting the appellant and his other colleagues juniors to their erstwhile juniors is illogical.

15. We are of the considered opinion that respondents misinterpreted the judgment dated 26.3.2009, as up-gradation of a post along with incumbent with retrospective effect, cannot confer right of seniority upon the incumbents by any cannon of law over another cadre/post, whose incumbents were separately recruited through Public Service Commission in 1987 in BPS-17 holding a separate seniority and separate job description, whereas the incumbents of the up-graded post were inducted in 1985-86 in BPS-16 on adhoc basis, who in due course of time were declared permanent and their posts were up-graded with effect from 01.5.1977. The expression "Up-gradation" is distinct from the expression "Promotion" which is not defined either in the Civil Servant Act or in the rules framed there under, and is restricted to the post (office) and not with the person occupying it. Reliance is placed on 2016 SCMR 859. We are also of the firm opinion that respondents wrongly interpreted Rule 17 (b) and Section-8 of the Rules/ Act ibid, while determining seniority of two distinct groups.

5. Incorrect. The judgment in Service Appeal No: 567/ 2018 and 339/2017 has well found out that the Respondent No: 3 is not a Statistical Officer and his Seniority shall be maintained separately. The observation under Para-16 of the judgment in Service Appeal No: 567/ 2018 and 339/2017 well elaborates the factual position. The operative Para 16 of the judgment reads;

**16. In view of the foregoing discussion, the instant appeal as well as the connected Service Appeal No: 339/2017 are accepted and the impugned orders dated 22.12.2016 and 06.12.2017 are set aside with directions to the respondents to assign separate nomenclature to both the posts as well as to maintain separate seniority list till retirement of the appellant along with his other batch-mates. The appellant along with his other batch-mates stands senior to their erstwhile juniors and shall be considered first for promotion to the next grade, however in case of their deprivation from**

**promotion on account of impugned seniority list, they shall be considered for promotion with effect from the date, when they stood eligible for promotion in light of this judgment.**

6. In-correct. The Honorable Court had very graciously noted the anomaly and remitted the case to the Department for redressal vide operative para-8 of the judgment in Service Appeal No: 804/2012 dated 19.10.2015 (Annex: M in main Appeal). The Hon'ble Tribunal also pin pointed the anomaly in para-11 of the judgment dated 02.9.2021. Para-11 of the judgment reads,

11. In the meanwhile, the present appellant filed Service Appeal No. 804/ 2012 for issuing appropriate directions to respondents to assign/ award separate designation to the Statistical Investigators (BPS-16) up-graded to (BPS-17) from the designation already assigned to Statistical Officers in BPS-17 or promoted to BPS-17 from the post of Statistical Investigator (BPS-16) in the Department. This Tribunal vide judgment dated 19-10-2015 remitted the matter to the respondents with observations that up-gradation of the private respondents to BPS-17 and given the same effect from 01-5-1977 appears to have created an anomalous situation as the appellant has been ranked junior to his erstwhile juniors, but inspite of clear observations in the said judgment, the respondents amalgamated the seniority of two distinct groups together vide orders dated 04.01.-2016 putting the appellant as well as his other colleagues as juniors to their erstwhile juniors, against which the appellant as well as his colleagues preferred departmental appeals.

7. In-correct. The observations recorded under Para- 13, 14, 15 & 16 in the Judgment dated 02.9.2021 confirm that the seniority of two distinct cadre posts was mindlessly amalgamated and was against all previous Notifications/ Court Judgments.
8. In-correct. The Honorable Court had very graciously set aside the notification dated 22.12.2016 and 06.12.2017.
9. Incorrect. The appeal is well within time and the Hon'ble Tribunal has exclusive jurisdiction to entertain the same.

### **Grounds**

- A. In-correct. As replied in para-5 above.
- B. In-correct. As replied in para-3 & 4 above.
- C. Incorrect, replies under para-3, 4 & 5 above are re-iterated.
- D. In-correct as explained under Para-C above.

- E. In-correct as explained under Para-7 above.
- F. Incorrect. The observations of this Hon'ble Tribunal in para-13 of the judgment dated 02.9.2021 in Service Appeal No: 567/ 2018 and 339/2017 found out the fact as under,

.....It was astonishing to note that Director Agriculture, while addressing a letter dated 02.7.2010, had hinted to the anomaly and vide his detailed letter had forecasted the forthcoming complications of seniority and had proposed for maintaining separate seniority for the two categories of officers, but nobody appreciated his suggestions. The same letter contained the question as to whether seniority of two distinct groups/ batches can be amalgamated, where one group is recruited in BPS-17 and another in BPS-16 having separate seniority. We failed to understand the wisdom behind the action, which put BPS-16 officers senior to BPS-17 with justification that BPS-16 officers were recruited earlier. We also feel sorry to notice that a clear judgment was misinterpreted, which created the whole mess.....


- G. Incorrect as explained under para-8 above.
- H. In-correct. Reply under para-8 above is re-iterated.
- I. No comments.

It is therefore humbly prayed that the reply of answering respondents No: 1, 2 and 3 may graciously be rejected and the appeal as prayed for may graciously be accepted with costs.



Appellant

Through,



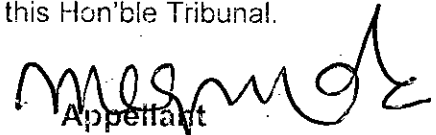
Taimur Ali Khan

Dated: 03/ 02 /2022

Advocate, High Court

Verification

Verified that the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



Appellant



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Amended Service Appeal No. 567 /2018




Mr. Maqsood-ur-Rahman,  
Statistical Officer (Supervisory),  
Crop Reporting Services,  
Khyber Pakhtunkhwa, Peshawar

Appellant

VERSUS

1. The Govt. of Khyber Pakhtunkhwa  
through Chief Secretary,  
Civil Secretariat, Peshawar.
2. The Secretary to Govt. of KPK,  
Agriculture, Livestock & Cooperative  
Department, Civil Secretariat, Peshawar.
3. Samiullah Khan,  
Statistical Officer,  
Crop Reporting Services,  
District Tank.
4. Muhammad Zahid,  
Statistical Officer,  
Crop Reporting Services,  
District Nowshera.
5. Munir Ahmad,  
Statistical Officer,  
Crop Reporting Services,  
District D.I.Khan.
6. Muhammad Aslam,  
Statistical Officer,  
Crop Reporting Services,  
District D.I.Khan.
7. Shaukat Havat,  
Statistical Officer,  
Crop Reporting Services,  
District Swabi.
8. Haji Muhammad,  
Statistical Officer,  
Crop Reporting Services,  
District Malakand.
9. Aslam Khan,  
Statistical Officer,  
Crop Reporting Services,  
District Bannu.

ATTESTED  
  
EXAMINER  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR

post to BS-17 with this Hon'ble

10. Syed Farman Ali Shah,  
Statistical Officer,  
Crop Reporting Services,  
District Abbottabad.
11. Zia-ul-Islam,  
Statistical Officer,  
Crop Reporting Services,  
District Nowshera.
12. Liaqat Ali,  
Statistical Officer,  
Crop Reporting Services,  
District Dir Lower.
13. Inayatullah,  
Statistical Officer,  
Crop Reporting Services,  
District Mardan.
14. Nadir Khan,  
Statistical Officer,  
Crop Reporting Services,  
District Lakki Marwat.
15. Tariq Usman,  
Statistical Officer,  
Crop Reporting Services,  
FATA, Peshawar.
16. Noor-ul-Islam,  
Statistical Officer,  
Crop Reporting Services,  
District Swat.
17. Asadullah,  
Statistical Officer,  
Crop Reporting Services,  
District Chitral.
18. Fayaz Ehsan,  
Statistical Officer,  
Crop Reporting Services, Peshawar

Respondents**ATTESTED**

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED FINAL ORDER  
PASSED VIDE AGRICULTURE DEPARTMENT LETTER 06.12.2017  
PURSUANT TO THE DECISION IN SERVICE APPEAL NO.804/2012  
WHEREBY THE RESPONDENTS REFUSED TO ASSIGN A DIFFERENT  
DESIGNATION TO THE STATISTICAL INVESTIGATORS BS-16 UP-GRADED  
TO BS-17 FROM THE DESIGNATION ALREADY ASSIGNED TO BS-17



3

OFFICERS, DIRECTLY APPOINTED THROUGH PUBLIC SERVICE COMMISSION OR PROMOTED TO BS-17 AGAINST WHICH APPELLANT PREFERRED DEPARTMENTAL REPRESENTATION ON 22.12.2017 BUT THE SAME WAS NOT DISPOSED OFF WITHIN THE STATUTORY PERIOD OF 90 DAYS.

**PRAYER:**

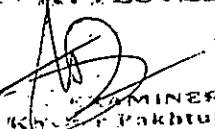
On acceptance of the instant appeal, this honorable Tribunal may graciously set aside the impugned order issued vide letter dated 06.12.2017 and direct the Department to up-grade the post of Statistical Investigators BS-16 to BS-17 with effect from 1.5.1977 either without changing their designation or allow them the designation other than Assistant Statistical Officer/ Statistical Officer, the precedent being followed in pursuance of the previous judgments as well as numerous notifications through which the posts of Agricultural and Non-Agricultural graduates were up-graded from BS-16 to BS-17 with effect from 1.5.1977.

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

1. That appellant was appointed as Assistant Statistical Officer (BS-17) under the Service Rules (Annex: A) approved in 1981. According to the said Service Rules, there were two categories of officers in CRS.
  - i. Assistant Statistical Officer, BS-17 (District In-charge)
  - ii. Statistical Investigator, BS-16 (Tehsil / Circle In-charge)
2. That vide Notification dated 27.06.1997 (Annex;-B), the post of Statistical Investigator BS-16 was upgraded to BS-17 and re-designated as Assistant Statistical Officer.
3. That according to policy of the Finance Department circulated vide letter dated 2.3.1978, special pay of Rs.150/= is admissible to those post who possessed the prescribed minimum qualification for the lower post in the Department and who supervised the work of at least one, subsequently enhanced to two officers in Grade 17.
4. That due to the developments mentioned under para-2 & 3 above, the post of Assistant Statistical Officer (District In-charge) BS-17 was re-designated

**ATTESTED**

  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Direct from

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 567/2018

Date of Institution ... 12.04.2018

Date of Decision ... 02.09.2021



Mr. Maqsood-ur-Rahman, Statistical Officer (Supervisory) Crop Reporting Services, Khyber Pakhtunkhwa, Peshawar.

... (Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa, through Chief Secretary, Civil Secretariat, Peshawar and others.

... (Respondents)

ALI AZIM AFRIDI  
Advocate

... For Appellant

USMAN GHANI  
District Attorney

... For Official Respondents No.1 & 2

NOOR MUHAMMAD KHATTAK  
Advocate

... For Private Respondent No.3

SALAH-UD-DIN  
ATIQU-UR-REHMAN WAZIR

MEMBER (JUDICIAL)  
MEMBER (EXECUTIVE)

**JUDGMENT**

**ATIQU-UR-REHMAN WAZIR MEMBER (E)**:- This single judgment shall dispose of the instant service appeal as well as the connected Service Appeal bearing No. 339/2017, Mr. Maqsood Ur Rehman Vs Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat, Peshawar and others, as common question of law and fact are involved therein.

**ATTESTED**

MEMBER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

02. Brief facts of the case are that the appellant was appointed as Assistant Statistical Officer BPS-17 in 1987 through initial recruitment on the recommendations of Public Service Commission under the service rules approved in 1981 and according to such rules, there were two categories of officers in crop reporting services i.e. Assistant Statistical Officer BPS-17 and Statistical Investigators BPS-16. The post of Statistical Investigators was up-graded vide order dated 27-06-1997 with new nomenclature as Assistant Statistical Officer, whereas the post of Assistant Statistical Officer was re-designated as Statistical Officer with provision of special pay of Rs. 150/pm vide order dated 27-06-1997. Later on up-gradation of the post of Statistical Investigators to BPS-17 was given retrospective effect vide order dated 17-02-2010 and such up-gradation was considered with effect from 01-05-1977 in pursuance of judgment dated 26-03-2009 rendered by this Tribunal in Service Appeal bearing No. 740/2008 titled "Shaukat Hayat VS Government of N.W.F.P through Chief Secretary and others". The post of Statistical Investigators was up-graded to BPS-17, but the post of Assistant Statistical Officer was also maintained in BPS-17, which created an anomalous situation with regard to determination of seniority between the two categories of posts. The respondents referred the issue to establishment as well law department and finally a committee was constituted to resolve the issue of their seniority. The committee considered the issue in light of advice of establishment department as well as judgment of this Tribunal dated 26-03-2009 and finally seniority of the two posts was amalgamated but Assistant Statistical Officer were placed juniors to Statistical Investigators, against which the appellant filed departmental appeal, which was rejected vide impugned order dated 06-12-2017, hence the instant service appeal as well as the connected Service Appeal No. 339/2017. In the instant service appeal, the appellant prayed that the post of Statistical Investigators may be up-graded without changing its nomenclature or allow them the nomenclature other than Assistant Statistical Officer, so as to maintain the separate entity of the post of Assistant Statistical Officer, whose incumbents were recruited through Public Service Commission from those, whose

**ATTESTED**

  
**EXAMINER**  
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 Service Tribunal

posts have been up-graded. In the connected service appeal, the appellant prayed that impugned notification/revised final seniority list dated 22-12-2016 may be set aside, where the appellant is placed junior to his erstwhile juniors.

03. Learned counsel for the appellant has contended that the appellant was not treated in accordance with law, rules and policy and the respondents acted in violation of Article 4 of the constitution; that while allowing similar up-gradation of BPS-16 posts in other attached departments of agriculture department, a separate designation was allowed to the up-graded officers and their seniority was never integrated with the supervisory officers, as is evident from notification dated 02-03-1987; that a different yardstick is used in respect of crop reporting services, which is discriminatory and in clear violation of judgment dated 26-03-2009; that DG Agriculture vide letter dated 02-07-2010 had hinted to the anomaly and had proposed for maintaining separate seniority for the two categories of officers, but in spite of the same, the impugned final seniority list was unlawfully issued in violation of the law; that Section-8 of the Civil Servant Act, 1973 is applicable to a post in one cadre or one batch, whereas in the instant case, there are two different posts with different job natures, which cannot be amalgamated; that due to the impugned revised seniority list, the appellant as well as his other colleagues have become juniors to their erstwhile juniors and who were previously their sub-ordinates, which has resulted in serious miscarriage of justice; that seniority of the appellant has been changed after 30 years of service by placing respondent No. 14, Mr. Fazli Wahab as senior to the appellant; that up-gradation is meant only for monetary benefits and not for seniority. The learned counsel prayed that in order to meet the ends of justice, the instant appeal as well as the connected service appeal may be accepted as prayed for.

04. Learned counsel for private respondent No. 3 has contended that the post of private respondents was up-graded in light of judgment dated 26-03-2009, passed in Service Appeal No. 740/2008 and the appellant was appearing as representative of

TESTED

EXAMINER  
Jal Pakhtukhwa  
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the respondents in the said appeal; that the Notification dated 07.04.2012, issued regarding the up-gradation of the private respondents was never challenged by the appellant, hence the instant appeal is barred by time; that as per section- 8 of Civil Servant Act, 1973 and Section-17 of Government of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, seniority is determined from the date of regular appointment to a post and private respondents were recruited earlier than the appellant.

05. Learned District Attorney appearing on behalf of official respondents No. 1 & 2 has contended that seniority of the two post was amalgamated in light of judgment dated 26-03-2009, as such benefit was granted by this honorable Tribunal to the private respondents, hence in light of such judgment, the private respondents were declared senior to the appellant and others; that seniority takes effect from the date of regular appointment to the post, therefore, the date of up-gradation of the officers is considered as the date of their appointment and thus in conformity with Section-8 of Civil Servant Act, 1973; that seniority of statistical officers was issued after approval of the competent authority i.e. Chief Secretary vide notification dated 22-12-2016; that a critical study of the case was carried out departmentally as well as shared with law and establishment department; that a committee was constituted for the purpose to resolve the issue of seniority and the committee thoroughly examined the issue in light of advice of establishment and law department and formulated recommendations and in light of such recommendations, the seniority of two posts was combined.

06. We have heard learned counsel for the parties and have perused the record.


07. Record reveals that in the year 1972, the government upgraded the professional and non-professional posts in agriculture department from BPS-11 to BPS-16. In the year 1978, in the light of Federal Government decision, the provincial government of this province up-graded the posts of Agriculture Assistants, Veterinary

Assistants, Soil Conservation Assistants, research assistants and other equivalent professional posts from BPS-16 to BPS-17 with effect from 01-05-1977, while the posts occupied by science graduates in other disciplines like Botany, Zoology, Chemistry and Statistics working in Agriculture department were not up-graded.

08. According to service rules notified vide government notification dated 01-02-1981, the appellant was appointed as Assistant Statistical Officer (BPS-17) in 1987 through initial recruitment on the recommendations of Public Service Commission, but before his appointment, a batch consisting of 28 candidates were appointed as Statistical Investigators (BPS-16) in the year 1985 on adhoc basis in crop estimation project, in which 22 candidates joined duty as Statistical Investigators, who were later on confirmed as Statistical Investigators on permanent basis. In order to open avenues of further promotions for the post of statistical investigators, the said service rules notified on 01-02-1981 were amended in 1989 and according to the amended service rules, there were two categories of officers in crop reporting services i.e Assistant Statistical Officer (BPS-17) District In-charge and Statistical Investigators (BPS-16) Tehsil/Circle In-charge. As per service rules, 50% of the posts of Assistant Statistical Officers were required to be filled in by initial recruitment, whereas the remaining 50% were required to be filled in through promotion from amongst the posts of Statistical investigators based on seniority cum fitness basis with at least five years service as such.

09. In 1997, all the posts of statistical investigators (BPS-16) were up-graded and re-designated as Assistant Statistical Officers (BPS-17) w.e.f 01-07-1997 vide order dated 27-06-1997 and on the same date, all posts of Assistant Statistical Officers (BPS-17) were re-designated as Statistical Officers (BPS-17) with a special pay of Rs. 150/pm as supervisory pay with effect from 01-07-1997 vide order dated 27-06-1997. Separate seniority lists for Assistant Statistical Officers (BPS-17) as stood on 01-03-2003, and for Statistical Officers (Supervisory), as stood on 01-06-2004 were circulated, but in the meanwhile posts of Statistical Investigators (Up-graded as

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Assistant Statistical Officers(BPS-17) were abolished in the wake of Devolution plan 2001, whereas the posts of Assistant Statistical Officer (Up-graded as Statistical Officer Supervisory BPS-17) remained intact, but in order to accommodate the incumbents of the abolished post, they were also posted against the posts of Statistical Officer (Supervisory), but their seniority was separately maintained till amalgamation of the seniority of the two groups of officers vide impugned notification dated 22-12-2016

10. Simultaneously another developing story of the Statistical Investigators (BPS-16), whose posts had not been up-graded with their other colleagues at that particular time, as they were possessing degrees other than agriculture, took the matter to this Tribunal vide Service Appeal No. 27/1990 dated 16-04-1990, Service Appeals No. 359/1995, 360/1995, 361/1995, 362/1995 dated 21-05-1995 and Service Appeal No. 9/1995 dated 28-12-1995. The service Tribunal decided the cases in their favor vide judgment dated 16-06-1991, 16-08-1995 and 19-05-2003, thus their posts were up-graded to BPS-17 irrespective of possessing degree in agriculture and veterinary discipline with effect from 01-05-1977 or from the date of their appointments and were allowed monitory benefits, but were assigned separate designation from the officers appointed directly in BPS-17 through public service commission. The Statistical Investigators (BPS-16), whose posts had already been up-graded to BPS-17 with effect from 01-07-1997 also filed Service Appeals before this Tribunal and prayed for their up-gradation with effect from 01-05-1977 or from the date of their appointments, which was decided in their favor vide judgment dated 26-03-2009, operative part of which is reproduced as under:

*"In the light of the above, we do not have any other alternative, but to accept the present appeals in the light of the previous judgments, with costs. We direct the official respondents to give the same benefits to the present appellants (who are B.Sc (2<sup>nd</sup> Division) in other sciences, like Economics, Physics) which have been declared for the other similarly placed persons who were qualified in B.Sc Agriculture or B.Sc 2<sup>nd</sup> Division or B.Sc Statistics or Mathematics with Statistics as a subject and who had litigated as mentioned above. The official respondents are further directed to grant the same benefits to all other similarly placed persons, who have not yet litigated, in order to avoid compelling them to enter into litigation with them."*

In pursuance of the above mentioned judgment, the respondents up-graded all such posts with effect from 01-05-1977 or from the dates of their

ATTESTED

  
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Khyber Pakhtunkhwa  
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appointments against such posts vide order dated 17-02-2010 and 07-04-2012. After implementation of the judgment, the issue of seniority erupted amongst the two groups i.e. Assistant Statistical Officer (BPS-17) and Statistical Officer (Supervisory BPS-17), the former being inducted in BPS-16 as statistical investigators in 1985, whereas the later inducted in BPS-17 as Assistant Statistical Officer through Public Service Commission. Both the groups were having separate seniority list until amalgamation of the seniority of both the groups in 2016. In order to resolve the issue, the case lingered on for quite some time amongst the respondent Departments but they did not arrive at a logical conclusion.

11. In the meanwhile, the present appellant filed Service Appeal No. 804/2012 for issuing appropriate directions to respondents to assign/award separate designation to the Statistical Investigators (BPS-16) up-graded to (BPS-17) from the designation already assigned to Statistical Officers in BPS-17 or promoted to BPS-17 from the post of Statistical Investigator (BPS-16) in the department. This Tribunal vide its judgment dated 19-10-2015 remitted the matter to the respondents with observations that up-gradation of the private respondents to BPS-17 and given the same effect from 01-05-1977 appears to have created an anomalous situation as the appellant has been ranked junior to his erstwhile juniors, but in spite of clear observations in the said judgment, the respondents amalgamated the seniority of two distinct groups together vide order dated 04-01-2016 putting the appellant as well as his other colleagues as juniors to their erstwhile juniors, against which the appellant as well as his colleagues preferred departmental appeals.

12. Finally, the respondent departments constituted a committee vide order dated 28-03-2016 to settle the issue of seniority. The committee examined the issue in light of the advice of Establishment Department, Law Department and judgment of this Tribunal Dated 26-03-2009.

13. We have observed that Agriculture Department as well as Establishment and Law Department did not properly examine the issue of seniority and badly failed

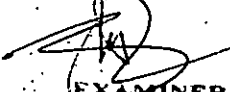
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to remove the anomaly. It was noted with concern that Establishment department without proper examination of the case, furnished its advice to determine their seniority in light of Section-8 of Civil Servant Act, 1973 as well as Section-17 of Government of Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion & Transfer rules) 1989, which however was not applicable in such case and furnishing such advice without proper evaluation of the issue in question examination amounts to gross negligence, as the appellant and his other colleagues were kept in constant mental agony. The committee constituted for the purpose also did not comprehend the judgment dated 26-03-2009 in its true letter and spirit, which created an anomalous situation and there was nobody on the ground to properly interpret the said judgment. It was astonishing to note that Director Agriculture, while addressing a letter dated 02-07-2010, had hinted to the anomaly and vide his detailed letter had forecasted the forthcoming complications of seniority and had proposed for maintaining separate seniority for the two categories of officers, but nobody appreciated his suggestions. The same letter contained the question as to whether seniority of two distinct groups/batches can be amalgamated, where one group is recruited in BPS-17 and another in BPS-16 having separate seniority. We failed to understand the wisdom behind the action, which put BPS-16 officers senior to BPS-17 with justification that BPS-16 officers were recruited earlier. We also feel sorry to notice that a clear judgment was mis-interpreted, which created the whole mess. The judgment so announced was based on the earlier judgments of this Tribunal announced on 16-06-1991, 16-08-1995 and 19-05-2003, where the similar nature posts in BPS-16 were up-graded to BPS-17 with effect from 01-05-1977 or from the date of appointment of the incumbents and were only allowed monetary benefits arising out of up-gradation, but were assigned separate designation from the officers appointed directly in BPS-17. In the judgment dated 26-03-2009, respondents were directed to extend the same benefit to the appellants as well as other similarly placed persons, which benefit was already extended vide judgments announced on 16-06-1991, 16-08-1995 and 19-05-2003.

**ATTESTED**

  
**EXAMINER**  
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 Service Tribunal  
 Peshawar

14. After perusal of the above-mentioned judgments, it can be easily concluded that the wordings "same benefit" used in the judgment dated 26-03-2009 was only up-gradation, which was already granted to similarly placed persons to the extent of monetary consideration having no nexus with seniority. It is otherwise an established fact that up-gradation does not confer any right of seniority, but the respondents considered their seniority with effect from the date of up-gradation i.e. 01-05-1977 or from the date of appointment of the incumbents, thus a batch of up-graded statistical investigators, who were originally inducted in BPS-16 on ad-hoc basis were placed senior over a batch of Statistical Officers, who were initially recruited in BPS-17 as Assistant Statistical Officers through Public Service Commission with a justification that the post of Statistical Investigators, who were inducted in 1985-86 were up-graded with effect from 01-05-1977, whereas appellant and his other colleagues were inducted in 1987, hence as per rule 17 (b) of Government of Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion & Transfer) Rules, 1989 and Section-8 of Civil Servant Act, 1973, seniority will be reckoned from the date of regular appointment to that post, which however was not applicable in the instant case, as the Rules mentioned above provides for Seniority inter-se of civil servants appointed to a service cadre or post in one batch, whereas the amalgamated two groups are separate posts in every respect, as from the very beginning, Assistant Statistical Officer (BPS-17) and Statistical Investigator (BPS-16) were two different cadres having separate seniority and amalgamation of their seniority and putting the appellant and his other colleagues juniors to their erstwhile juniors is illogical.

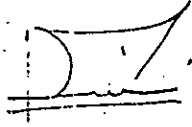
15. We are of the considered opinion that respondents misinterpreted the judgment dated 26-03-2009, as up-gradation of a post along-with incumbent with retrospective effect, cannot confer right of seniority upon the incumbents by any canon of law over another cadre/post, whose incumbents were separately recruited in 1987 in BPS-17 holding a separate seniority


and a separate job description; whereas the incumbents of the up-graded post were inducted in 1985-86 in BPS-16 on ad-hoc basis, who in due course of time were declared permanent and their posts were up-graded with effect from 01-05-1977. The expression "Up-gradation" is distinct from the expression "Promotion" which is not defined either in the Civil Servant Act or in the Rules framed thereunder, and is restricted to the post (office) and not with the person occupying it. Reliance is placed on 2016 SCMR 859. We are also of the firm opinion that respondents wrongly interpreted Rule 17 (b) and Section-8 of the Rules/Act ibid, while determining seniority of two distinct groups.

16. In view of the foregoing discussion, the instant appeal as well as the connected service appeal No. 339/2017 are accepted and the impugned orders dated 22-12-2016 and 06-12-2017 are set aside with directions to the respondents to assign separate nomenclature to both the posts as well as to maintain separate seniority list till retirement of the appellant alongwith his other batch-mates. The appellant alongwith his other batch-mates stands senior to their erstwhile juniors and shall be considered first for promotion to the next grade, however in case of their deprivation from promotion on account of impugned seniority list, they shall be considered for promotion with effect from the date, when they stood eligible for promotion in light of this judgment. Parties are left to bear their own costs. File be consigned to record room.

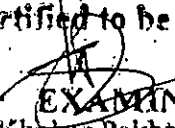
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02.09.2021

  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

  
(ATIQU-UR-REHMAN WAZIR)  
MEMBER (EXECUTIVE)

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Peshawar

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 339 /2017

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 336

Dated 06-4-2017

Mr. Maqsood-ur-Rahman  
Statistical Officer (Supervisory)  
Crop Reporting Services  
Khyber Pakhtunkhwa, Peshawar



Appellant

1. The Govt. of Khyber Pakhtunkhwa  
through Chief Secretary  
Civil Secretariat, Peshawar
2. The Secretary  
Govt. of Khyber Pakhtunkhwa  
Agriculture, Livestock & Cooperative Department  
Civil Secretariat, Peshawar.
3. Mr. Samiullah Khan,  
Statistician (OPS),  
Crop Reporting Service,  
Headquarters, Peshawar
4. Mr. Haji Muhammad  
Statistical Officer,  
Crop Reporting Service, Malakand
5. Mr. Aslam Khan,  
Statistical Officer,  
Crop Reporting Service, Bannu
6. Mr. Shoukat Hayat  
Statistical Officer,  
Crop Reporting Service, Swabi
7. Mr. Asadullah,  
Statistical Officer,  
Crop Reporting Service, Chitral
8. Mr. Zia-ul-Islam,  
Statistical Officer,  
Crop Reporting Service, Nowshera.
9. Mr. Liaqat Ali,  
Statistical Officer,  
Crop Reporting Service, Dir Lower.

submitted to -day

Registrar

7/4/17

submitted to -day  
filed.

Registrar

12/4/17

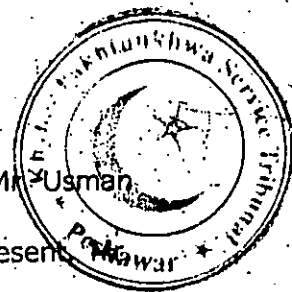
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EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

ORDER

02.09.2021

Appeal No. 339/2017  
Maqsood-ur-Rahman vs Govt



Mr. Ali Azim Afridi, Advocate for the appellant present. Mr. Usman

Ghani, District Attorney for official respondents No. 1 & 2 present.

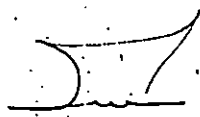
Noor Muhammad Khattak, Advocate for private respondent No.3 present.

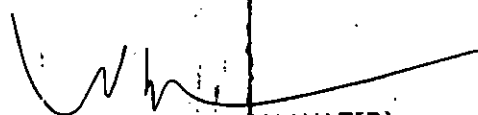
Arguments heard and record perused.

Vide our detailed judgment of today passed in Service Appeal bearing No.567/2018 titled "Maqsood-ur-Rehman Vs. Government of Khyber Pakhtunkhwa, through Chief Secretary, Civil Secretariat, Peshawar and others", the instant appeal is accepted and the impugned orders dated 22-12-2016 and 06-12-2017 are set aside with directions to the respondents to assign separate nomenclature to both the posts as well as to maintain separate seniority list till retirement of the appellant along with his other batch-mates. The appellant alongwith his other batch-mates stands senior to their erstwhile juniors and shall be considered first for promotion to the next grade, however in case of their deprivation from promotion on account of impugned seniority list, they shall be considered for promotion with effect from the date, when they stood eligible for promotion in light of this judgment. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED

02.09.2021

  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

  
(ATIQ-UR-REHMAN WAZIR)  
MEMBER (EXECUTIVE)

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EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

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Number of Words 1250  
Copying Fee 14.00  
Urgent \_\_\_\_\_  
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GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
AGRICULTURE, LIVESTOCK & COOPERATIVE DEPARTMENT

No. SCE/ DIV-7/PSB/Maqsood/CRS/22/402  
Dated Peshawar, the 1<sup>st</sup> December, 2022

To

The Section Officer (PSB),  
Establishment Department,  
Khyber Pakhtunkhwa, Peshawar.

Subject:

PROMOTION TO THE POST OF STATISTICIAN (BS-18) TO THE POST OF DIRECTOR  
(BS-19) AND TO THE POST OF DIRECTOR GENERAL (BS-20) IN LIGHT OF COURT  
JUDGEMENT

I am directed to refer to the subject cited above and to enclose herewith 07 sets of working papers in respect of Mr. Maqsood ur Rehman an officer of Crop Reporting Services who had filed a Service Appeal No. 339/17 & 567/2018, wherein the appellant has prayed three steps promotion which was delayed during his service because of the seniority disputes in the department.

02. It is submitted that the Officer concerned has already been promoted to BS-18 on regular basis on 29.01.2021 and retired on 07<sup>th</sup> September, 2021 on superannuation (Annexure-II-III). However, he had filed court cases in 2017 and 2018 for seniority against officers who were junior to him but they were considered senior vide court Judgment 26.03.2009 (Annex-IV) as well as Notification dated 22.12.2016 and 06.12.2017 (Annexure-V-VI). Accordingly, his Colleagues were promoted to BS-18, then to BS-19 and finally to BS-20. Now the Service Tribunal accepted the appeals and set aside both the above Notifications and entitled him for promotion to higher grade since when he became eligible (Annexure-VII). The department has already filed CPLA in Supreme Court of Pakistan (Annexure-VIII). However, the Hon'ble Service Tribunal in its hearing dated 20.10.2022 in Execution Petition directed the respondents to submit compliance report (Annexure-IX). Therefore, the case is submitted for conditional implementation in light of Service Tribunal judgement.

02. Considering the gravity of the situation the working papers may kindly be placed before Provincial Selection Board for its consideration, please.

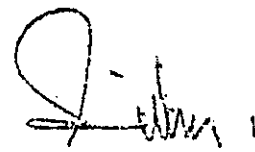
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SECTION OFFICER-ESTT:

Encls. Of even No. & Date:

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2. P.S to Secretary Agriculture, Livestock, Fisheries & Cooperative Department Khyber Pakhtunkhwa, Peshawar.
3. P.A to Deputy Secretary (Admn) Agriculture, Livestock, Fisheries & Cooperative Department Khyber Pakhtunkhwa, Peshawar.
4. Master File

  
SECTION OFFICER-ESTT: