BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

Service Appeal No. 39/2022

Mr. Azhar Nawaz

----------Appellant

VS

Government of Khyber Pakhtunkhwa through Chief Secretary & Others

--------Respondents

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Respondent No. _____

Through

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(1)

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

Service Appeal No. 39/2022

Mr. Azhar Nawaz

----------Appellant

VS

Government of Khyber Pakhtunkhwa through Chief Secretary & Others

--------Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS No.

Respectfully Sheweth:

Preliminary Objections:

40. That the appellant has no cause of action to file the instant appeal and is badly time barred.
41. That the appellant has no locus standi to file the instant appeal.
42. That the instant appeal is not maintainable in its present form.
43. That the instant appeal is bad for non-joinder and mis-joinder of necessary parties.
44. That the appellant has concealed material facts in the instant appeal.
45. That the Appellant cannot seek the relief sought in the Appeal as the same goes against the spirit of the law and the judgments on the subject matter. The Appeal is thus clearly barred by law.
46. That the instant Appeal is filed on the basis of blatant lies and skirmishes hence this Hon'ble Tribunal has no jurisdiction to adjudicate the instant Appeal.
47. That the claim of the Appellant is concocted, malicious, baseless, false, manufactured, fabricated and bogus. The documents so annexed withtheAppeal neither supports the claim of the Appellant, nor do they support the stance of the Appellant.
48. That the instant Appeal is based on malafide and so are the acts of the Appellant.
49. That the instant Appeal is nothing but wastage of precious time of this Honorable Tribunal, and has been filed with ulterior motives for annoying, disrupting and creating obstacles in the life of the Respondents therefore, warrants dismissal.
50. That the Appeal as framed is not maintainable as the Appellant has no locus standi and legal character to file the same.
51. That the Appellant is esstopped by his own conduct.
52. That no vested rights of the appellant are violated.

Para wise reply:

4. Para No.1 of the instant appeal pertains to record.
32. Para No.2 of the instant appeal pertains to record.
33. Para No.3 of the instant appeal is correct. Hence needs no reply.
34. **Para No.4** of the instant appeal pertains to record. However, three different advertisements were issued i.e. Advertisement no. 01/2008, and 03/2008. Against these advertisements appointments were made, however due to the discrepancy in the seniority of various individuals, various representations were filed, for the decision of which a proper committee was constituted and the committee in light of the law and the judgments of this Honorable Tribunal and the Apex Supreme Court decided the representations in accordance with the law, and gave correct seniority to the answering respondents. The whole premise of the appellants case is based in malice and they have concealed the committee report with ulterior motives from this honorable tribunal.
35. **Para No.5** pertains to the record, however the facts laid in para 4 above are emphasized. It is reiterated that against the representations so filed, a committee was constituted in which it was decided that the appointments against prior notifications/advertisements will be considered senior as opposed to those appointments made against notifications/advertisements dated later in time, irrespective of whether their recruitment process was initiated before notification/advertisement dated 01/2008. It is also pertinent to mention that the first appointment was from Advertisement No. 01/2008, which is also being concealed by the appellants.

36. **Para No.6** of the instant appeal is incorrect hence denied. The appellant was placed senior to the answering respondents, where as he should have been placed junior to the answering respondents due to the reason that his advertisement was later in time than that of the answering respondents, hence making him junior to the answering respondents, who were appointed against notification/advertisement prior to the appellant's notification/advertisement. And the same was laid down in the findings of the Committee.
Reference also be made to reported judgment **1995 PLC (C.S) 950** in which it was clearly held that cases of civil servants who applied in response to subsequent advertisement were finalized earlier, whereas, cases of co-civil servants who applied in response to earlier advertisement were finalized later for no fault on their part, the inter- se- seniority of the civil servants was to be reckoned not from the date of joining but would be determined through earlier open advertisement.
(Copy of the Committee report is Annex-A)
(Copy of the Relevant Documents is Annex-B)
37. **Para 7** of the instant appeal is incorrect, hence denied. The seniority of the Appellant wrongly remained intact till the year 2018, as well as, upon promotion of the Appellant, whereas, the Appellant should have been placed junior to the answering respondents in the seniority list, in accordance with the above-mentioned facts. The facts laid in paras above are reiterated. It is added that promotion was due to the directives of the competent authority that promotions be made irrespective of the seniority issues.

38. **Para No.8** of the instant appeal is misconceived, hence denied. There are no ulterior motives, and neither are any rules and law governing the subject being violated, in fact, the question of seniority of the Appellant as well as Seniority list since 2009-2021 were required to be rectified in accordance with well settled established principles as laid in rules, laws and reported judgments on the said subject, and were duly rectified by placement of the answering respondents on their current seniority. The seniority list is well within the bounds of the law and according to the dictums of the superior courts as well as this honorable tribunal.

39. **Para No.9** of the instant appeal is misconceived, hence incorrect. The Appellant has now been rightly placed in the Seniority list. No deprivation of his due place in the seniority list has taken place, and those placed ahead of the Appellant have rightly been placed in accordance with the rules, laws and reported judgments as provided in the findings of the committee. Furthermore, no illegality as falsely claimed has been committed by the answering respondents.

40. **Para No.10** of the instant appeal pertains to record, hence needs no comments by answering respondents. Moreover, the representation and the appeal are badly time barred.

41. **Para No.11** of the instant appeal is incorrect. The Appellant is not aggrieved and has been rightly placed in the seniority list, in accordance with law. The Appellant bereft of any cause, legal grounds and standing before this Honourable Tribunal, the whole premise of the Appellant's case is based on contradictions and falsifications.

GROUNDS:

tt. **Ground A** is Incorrect as laid. As explained above the impugned notification as well as seniority list circulated thereunder is well in accordance with the law.

uu. **Ground B** is Incorrect as laid. There has been no illegality committed and there is no negation or deviation from the legal course, rules or policy by the answering respondents.

vv. **Ground C** is completely misconceived, hence denied. The said seniority list has been rightly been issued keeping in view findings of the inquiry report and the laws on the said matter, there is no intention to accommodate any blue eyed as has wrongly been alleged by the Appellant.

ww. Ground D of the instant appeal is incorrect. As per the judgments of the Supreme Court, it is the first advertisement prior in time which is going to take preference. Reference can be given to **1995-PLC (C.S) 950**, relevant portion of which has been produced herein below:

"Civil servants whose seniority was relegated despite they were recommended and assigned merits by Federal Public Service Commission earlier than co-civil servants and who also assumed charge of the respective posts on regular basis earlier than co-civil servants, had challenged order of relegating their seniority alleging that the order was illegal, unjustified and against principles of natural justice---Civil servants though were recommended and assigned merit by Public Service Commission and also were appointed earlier than co-civil servants had applied for posts through advertisement subsequently issued by the Commission whereas co-civil servant had applied through advertisement issued earlier by the Commission---Candidates who applied in response to such advertisements, were interviewed by the Commission at different stations and selections were also made at different stations and that process took sufficiently long time---Cases of civil servants who applied in response to subsequent advertisement, were finalised earlier whereas cases of co-civil servants who applied in response to earlier advertisement, were finalised later for no fault on their part---Civil servant's joining earlier than co-civil servants, was immaterial as seniority on initial appointment by way of selection through Commission was not reckoned from date of joining, but would be determined through earlier open advertisement as provided in para. A(i) of General Principles of Seniority, 1989---Authority had rightly determined seniority of co-civil servants over civil servants on the advice of the Commission."

xx. Ground E of the instant appeal is incorrect as laid. As per the judgments of the Supreme Court, it is the first advertisement prior in time which is going to take preference. Reference can be given to the decision of Khyber Pakhtunkhwa service tribunal in **appeal no. 1289/2020** dated 7th January 7th, 2021, relevant portion of which has been produced herein below:

*"By virtue of having applied in pursuance to an earlier advertisement 05/2014 the appellant and other were senior to candidates recommended against advertisement No. 01/2015. There is no denial of the fact that the recommendation of the appellant was outcome of an earlier advertisement. In the circumstances and in view of judgment reported as **1991-SCMR-1632**,*

*it is not unsafe to hold that inter-se seniority of candidates at one selection was to be determined on the basis of merit assigned to the candidates by the Public Service Commission. It is also worth noting that in judgment reported as **1995 - PLC (C.S) 950**, it was clear by held that cases of civil servants who applied in response to subsequent advertisement were finalized earlier, whereas cases of co-civil servants who applied in response to earlier advertisement were finalized later for no fault on their part, the inter-se seniority of civil servants was to be reckoned not from the date of joining but would be determined through earlier open advertisement. We are, therefore, firm in our view that the impugned seniprity list is susceptible to correction and alteration." "Ex-consequentia, the appeal in hand is allowed as prayed for in its memorandum."*

yy. Ground F of the instant appeal is incorrect as laid. As per the judgments of the Supreme Court, it is selectees of the first advertisement prior in time which is going to take preference. Reference can be made to reported judgment **1995 PLC (C.S) 950** in which it was clearly held that cases of civil servants who applied in response to subsequent advertisement were finalized earlier, whereas, cases of co-civil servants who applied in response to earlier advertisement were finalized later for no fault on their part, the inter- se- seniority of the civil servants was to be reckoned not from the date of joining but would be determined through earlier open advertisement.

zz. **Ground G** of the instant appeal is incorrect as laid. The appointees were previously not given their due place in the Seniority list as they should have been in accordance with the law, which was later on challenged by various representations, based on which a committee was constituted and according to the findings the committee, the previous seniority list was deemed unlawful and was rectified through the issuance of a new seniority list in accordance with the law. The said seniority list has been rightly been issued keeping in view findings of the inquiry report and the laws on the said matter, there is no intention to accommodate any blue eyed or any ulterior motives, as has wrongly been alleged by the Appellant.

aaa. **Ground H** of the instant appeal is incorrect. It is again stated that the issue of seniority of candidates has been addressed in various judgments, which have also been clarified in the report by the committee.

bbb. **Ground I** of the instant appeal is incorrect as laid. It is very clear by now that even if the recruitment process of the first advertisement was slow and was completed after the advertisements No. 03/2008, however, still the selectees appointed against the prior advertisement would be preferred over the selectees of the advertisements issued later on. When it comes to the seniority list. Reference can be made to the ruling given by the **Honorable Supreme Court of Pakistan in the November 10th, 2020 verdict**, all selectees of Ad No. 1/2008 batch shall rank senior, in terms of seniority over selectees of Ad. No. 3/2008. However, inter-se seniority among the selectees of all three batches to be determined in accordance with the order of merit assigned by commission for each batch separately.

ccc. **Ground J** of the instant appeal is incorrect as laid. As per the judgments of the Supreme Court, it is the selectees of first advertisement prior in time which is going to take preference over the selectees of later advertisements. Reference can be made to reported judgment **1995 PLC (C.S) 950** in which it was clearly held that cases of civil servants who applied in response to subsequent advertisement were finalized earlier, whereas, cases of co-civil servants who applied in response to earlier advertisement were finalized later for no fault on their part, the inter- se- seniority of the civil servants was to be

reckoned not from the date of joining but would be determined through earlier open advertisement.

ddd. **Ground K** of the instant appeal is denied as laid. The Appellant has not been subjected to any ulterior motives, but instead he has been subjected lawful procedure of rectifying the impugned seniority list. The reported judgment **1995 PLC (C.S) 950,** the decision of **Khyber Pakhtunkhwa service tribunal in appeal no. 1289/2020 dated 7th January 7th, 2021, and the ruling given by the Honorable Supreme Court of Pakistan in the November 10th, 2020 verdict,** all of them the selectees of first advertisement prior in time which is going to take preference over the selectees of later advertisement.

eee. **Ground L** of the instant appeal is incorrect as laid. The example of the "once the black sheep entered the directorate, the whole seniority list was disturbed", is utterly false. No valuable rights of the Appellant has been violated neither has any unjust treatment been meted out to the Appellant nor have any illegality been committed by the respondents and therefore the Appellant has no cause or case at all. The claim of the Appellant is unsubstantiated and not based in law.

fff. Ground M of the instant appeal is incorrect and has been responded to in great detail above.

ggg. Ground N of the instant appeal is incorrect as laid. The alleged "juniors" who have been placed ahead of the Appellant in the seniority list have the preference to be placed ahead of the Appellant as per the above mentioned judgments.

hhh. Ground O of the instant appeal is incorrect. No such additional grounds exist.

It is therefore most humbly prayed that the instant appeal is meritless, may please be dismissed with cost.

Date: ___/____/2023

Respondents

THROUGH

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--------Respondents

AFFIDAVIT

I, do hereby solemnly affirm and declare on oath that the contents of the accompanying parawise comments are true and correct to the best of my knowledge & belief and nothing has been concealed from this Honorable Tribunal .

(Deponent)

ATTESTED

Gul Daraz Khan
Oath Commissioner
Advocate High Court Peshawar

23 2023

To

Director General
Commerce Education & Management Sciences,
Khyber Pakhtunkhwa Peshawar.

Subject: **SENIORITY ISSUE OF TEACHING CADRE AS STOOD ON 31-12- 2020**

Reference: Your office order bearing Endst. No. DGCE&MS/Admn/Enquiry Gen; /1312(1-4) Dated: 23/02/2021 on the subject noted above.

The issues relating to seniority of teaching cadre referred to the committee have been thoroughly examined and disposed of as per detail given in the following paragraphs.

1. The appeals lodged by Muhammad Ilyas Assistant Professor GCMS Karak and Muhammad Zahoor GCMS Mansehra are genuine and accepted. To substantiate their plea, their old seniority position retention is supported by APT Rules 17(2). The extract of the said rule is reproduced below: - "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." In the light of the provision contained in the above mentioned rule, their old seniority position remains intact, as claimed by the appellants.

2. The appeal submitted by Mr. Jan Ayaz, Saz Wali Khan, Shakeel Khan, Aftab Ahmad, Israr Ahmad, Tajir Khan, Asghar Ali and Shujaat Hussain are examined.

Their date of appointment is to be considered from the date of their notification/taking of charge against a promoted post and not the date of DPC which is only recommendation. They were first promoted as instructors (BPS-17) on "Acting Charge" basis vide Notification bearing No.SOIII(IND) TE/1-17/07/V-II dated 20-10-2010 and subsequently on regular basis vide notification bearing even No.14-15-211. Hence their contention is not tenable in face of sub rule (2) to Rule 17 of APT Rules 1989, reproduced in KP ESTA-CODE 2011, referred to in para one above. The said rule clearly states that seniority of the civil servants promoted to a post in a cadre shall be determined from the date of their regular appointment.

3. The appeal submitted by Mr. Farid Ullah Khan, Zarrar Zia Uddin, Shakil Ahmad Afridi, Ikram Ud Din, Nasir Jamal, Miskeen Shah, Sajjad Ali, Mujeeb Ur Rehman, Naeemullah, Dr Muhammad Asif, relates to demand for grant of anti-dated seniority. The case pertaining to claim for grant of ante-dated seniority in BPS-18 in respect of the above applicants has been examined at length. In this regard it is clarified that the applicants got promoted to the post of Assistant Professor w.e.f 10/08/2018. Some of the applicants were directly recommended as Assistant Professor through Khyber Pakhtoonkhwa Public Service Commission in 2014. They have based their claim on the analogy of 15 Assistant Professors who were granted ante-dated seniority from 2011 & 2012 by the Khyber Pakhtoonkhwa Service Tribunal and Supreme Court of Pakistan. The court verdict was endorsed by PSB as notified by Higher Education Department notification bearing No. SO(CE&MS)HED/1-2/695(1-33) dated 11/05/2020.

4. The appeals of the applicants cannot be entertained by this committee as these fall outside the jurisdiction of the committee to recommend to the department for entertaining their claims for grant of ante-dated seniority. They may approach the competent authority for redressal of their grievances, if there be any.

5. Khurshid Alam Assistant Professor, Hussain Ahmad Assistant Professor were promoted on 22/02/2019, and were placed junior to the recommendees of Khyber Pakhtoonkhwa Public Service Commission of Advertisement No-03/2018 who joined the department on 14/02/2020. In light of the provisions contained in Rules 17(2) of APT Rules 1989, those who got promoted earlier than Khyber Pakhtoonkhwa Public Service Commission recommendees shall stand senior to them. Thus, their appeal is accepted and their seniority be corrected as requested.

6. The appeals submitted by Malik Muhammad Naveed Assistant Professor and Ashfaq Ahamd Assistant Professor are disposed of by determining their seniority in conforming to the order of merit assigned by the Khyber Pakhtoonkhwa Public Service Commission.

7. The appeals submitted by the Shahab – E – Saqib, Mr. Muhammad Dost, Mr. Sajjad Hussain and Mr. Shamsher Ali. Mr. Azhar Nawaz Assistant Professors are examined at length. They are selectees of the March 2008 batch of Khyber Pakhtoonkhwa Public Service Commission. Keeping in view the detail explanation given in paragraph No. 09 to 13 of the report, there do not appear to be any lacuna in their

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seniority position. As such, their appeals are disposed of by maintaining their current seniority positions as reflected in the tentative seniority list of December 2020.

8. Mr. Fida Muhammad Khan Assistant Professor, Mr. Niamatullah (Assistant Professor), Mr. Noor Ul Hadi (Assistant Professor), Mr. Amir Shehzad (Assistant Professor) Mr. Tahir Khan Assistant Professor, Sumaira Ishaq Assistant Professor and 17 others were recommended as Lecturer BPS – 17 vide adv.no.8/2009. Their appointment orders were issued on November 26th, 2010 vide no. SOIII(IND)TE/3-6/2010 and before, followed by subsequent orders issued vide even no. thereafter. On the eve of their appointment, their seniority was determined on the basis of joining the department. Now their seniority has been changed in light of Rule 17 (1) (a).of APT Rules 1989. In their appeals they have raised objection on changing their seniority after a long period and placing the January 2009 recommendees of KPPSC prior to them in the tentative seniority list of 2020.

9. Mr. Fida Muhammad Khan Assistant Professor has attached with his application Supreme Court's Judgment in civil petition No.331 of 1996, decided on December 12th, 1997 as a reference for interpretation of rules 17(a) of APT rules 1989. Paragraph 4 & 5 of said verdict clearly explains that "a person selected for appointment to post in an earlier selection shall rank senior to person selected in a later selection", which means that nominees of first batch were to rank senior than the petitioner on account of their initial selection. Hence, the earlier selection has been linked with first batch, which in turn, seems to be meaning nominees of first advertisement. In addition to the above, Supreme Court of Pakistan in its judgment dated November 10th, 2020 in CA 762 L to 766 L of 2012 (**Annexure - A**) has explicitly clarified that" in case a group of persons is selected for initial appointment at one time, the earliest date on which any one out of the group joined the service will be deemed to be the date of appointment for all the persons in the group. The honorable Supreme Court defines the word "batch" people dealt with as a group or the same time. Placing reliance on the ruling given in the Supreme Court of Pakistan verdict of November 10th, 2020, referred to above, the dispute of seniority between appellants / nominees of Khyber Pakhtoonkhwa Public Service Commission as lecturer in three successive batches of January 2009, March 2009 and August 2009 can be settled in the following manner.

10. Miss. Norul Ain selectee of January 2009 batch joined the service on February 2010 out of the total 29 nominees / selectees of the same batch. Thereby paving the way for the remaining 28 nominees / selectees of the January / 2009 batch to be deemed to have been appointed on the same date i.e. Feb

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22nd, 2010 her date of joining comes earlier than all the selectees of the remaining two batches, i.e. 3/2009 & 8/2009. Judged into the paradigm set by the Honorable Supreme Court of Pakistan in its ruling given in the November 10th, 2020 verdict, all selectees of Jan 2009 batch shall rank senior, in terms of seniority over selectees of two other batches of March 2009 and August 2009. In the seniority list, the selectees of March 2009 batch to be placed next to January 2009 batch, to be followed by selectees of August 2009 batch. However, inter-se seniority among the selectees of all three batches to be determined in accordance with the order of merit assigned by commission for each batch separately. To put the seniority dispute between teaching cadre of the commerce wing of Higher Education Department, reference may also be made the decision of Khyber Pakhtoonkhwa service tribunal in appeal no. 1289/2020 dated January 7th, 2021 **(Annexure - B)**. It has vividly been clarified in the verdict of Khyber Pakhtoonkhwa Service Tribunal dated January 7th, 2021 that "by virtue of having applied in pursuance to an earlier advertisement 05/2014 the appellant and other were senior to candidates recommended against advertisement No. 01/2015. There is no denial of the fact that the recommendation of the appellant was outcome of an earlier advertisement. In the circumstances and in view of judgment reported as 1991-SCMR-1632, it is not unsafe to hold that inter-se seniority of candidates at one selection was to be determined on the basis of merit assigned to the candidates by the Public Service Commission. It is also worth noting that in judgment reported as 1995 – PLC (C.S) 950 it was clear by held that cases of civil servants who applied in response to subsequent advertisement were finalized earlier, whereas cases of co-civil servants who applied in response to earlier advertisement were finalized later for no fault on their part, the inter-se seniority of civil servants was to be reckoned not from the date of joining but would be determined through earlier open advertisement. We are, therefore, firm in our view that the impugned seniority list is susceptible to correction and alteration." "Ex-consequentia, the appeal in hand is allowed as prayed for in its memorandum."

11. Secretary Local Govt. Khyber Pakhtoonkhwa approached the Khyber Pakhtoonkhwa Law Parliamentary Affairs and Human Right Department for seeking opinion on the judgment of Khyber Pakhtoonkhwa Service Tribunal in Appeal No.1289/2020 referred to above. The Law Department in its decision dated March 3rd, 2021 (Agenda Item No 18) **(Annexure – C)** explicitly supported the judgment passed by Khyber Pakhtoonkhwa Service Tribunal and stated that the judgment is in line with rules. It is further clarified that in pursuance of an earlier advertisement, the appellant and others are senior to the candidates recommended against later advertisement, as the process of selection starts

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from the date of advertisement and the appellant had applied through earlier advertisement than the private respondent's No. 6 and 7, therefore, is senior the private respondents No. 6 & 7. The term "earlier selection" means earlier recommendation, which, intern means that the advertisement in which the appellant was recommended had been advertised earlier than the advertisement in which private respondents no 6 & 7 were recommended. To substantiate the arguments in more explicit terms, the Law Department placing reliance on Federal Government Civil Servants Seniority Rules 1993, sub-rules 2(1), which states that, "persons initially appointed on the recommendation of the selection authority through an earlier open advertisement shall ranks senior to those appointed through subsequent open advertisement." In view of the above, request for CPLA in the Supreme Court was turned down, in subject case.

12. Similarly, 29 lecturers (BPS-17) were recommended by KPPSC vide Adv.No.1/2009 and their appointment dates by joining the department are as under:

    a. 01 female lecturer February 2nd 2010.
    b. 01 male lecturer May 31st, 2010.
    c. 01 male lecturer October 26th, 2010.
    d. 22 male lecturers January 8th, 2011.
    e. 01 male lecturer February 26th, 2011.
    f. 01 male lecturer March 8th, 2011.
    g. 01 male lecturer March 18th, 2011.
    h. 01 male lecturer August 8th, 2011.

13. Mr. Ibadullah, Mr. Noor Rehman, Syed Rahim Shah, Mr. Anwar Khan, Mr. Farman Ullah Jan, Mr. Rahatullah, Mr. Riaz Ahmad and others submitted their appeals wherein they have claimed that the selectees of Khyber Pakhtoonkhwa Public Service Commission of January 2009 batch to which they belong, have been placed junior to the March 2009 batch which is an anomaly and needs to be rectified. The matter in question has been elaborated in the above paragraphs in light of Khyber Pakhtoonkhwa Service Tribunal / Supreme Court decisions and the ruling given by the Khyber Pakhtoonkhwa Law Department with regards to clarification given on the term "Earlier Selection" contained in para 17(1)(a) of APT rules 1989. It is abundantly clear that earlier selection means earlier open advertisement by an appointing authority. Their appeals are genuine and based on legal grounds, which needs to be considered favorably and their respective seniority positions be fixed before the batches of

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3/2009 and 8/2009. All similar nature anomalies in the seniority list of different cadres must be disposed of accordingly to settle the dispute once for all. Making any kind of departure from the ruling given in the courts decisions / law department opinion would create further complications for the aggrieved faculty members and the department.

14. Khalid Nawaz Assistant Professor and 04 others were also selected as lecturers vide Adv. No. 3/2009. They joined the department in April & May 2010. They also claim their seniority in BPS-17 and subsequently in BPS – 18, after their promotion, to be fixed on the basis of joining the post in BPS – 17. Their appeals have been thoroughly examined in light of the prevailing rules on the subject of seniority of govt. employees. Due consideration is also given to the Supreme Court decisions attached with the appeals. In this regard reference is made to rules 17(1)(a) of APT rules 1989, reproduced in Khyber Pakhtoonkhwa ESTACODE 2011, where in the procedure for determining inter-se seniority of civil servants appointed through initial appointment is explicitly laid down "Rule 17 (1) (a)".

15. Mr. Yasir Imran and Mr. Gohar Rehman Assistant Professors at serial number 37 and 38 respectively shown in the seniority list were selected as Assistant Professors in English subject wide Advertisement No.02/2011 and their notification of appointment was issued on 13th March 2014. They joined the department on 19-03-2014 and 13-03-2014 respectively. Those candidates who were selected in Advertisement No 01/2012 and 02/2012 were wrongly placed senior to them. Their inter-se seniority is to be determined in light of the Rule 17(1)(a) APT Rules 1989 and the clarifications given in the above paragraphs.

16. Keeping in view the above clarifications no room is left for any doubt the issue of the seniority be settled according to chronological order of advertisement of Khyber Pakhtoonkhwa Public Service Commission, i.e. 1/2009, 3/2009 & 8/2009 and not the date of joining the post. However the order of merit assigned by the Commission shall be made base for determining the inter-se seniority of the nominees / recommendees of Khyber Pakhtoonkhwa Service Commission for each advertisement.

17. Mr. Kiramat Ullah Wazir (Assistant Professor) was selected in Advertisement 1/2012 and has been placed at serial No. 32 of the seniority list within the nominees of his own batch. Apparently there seems to be no anomaly in his seniority. However, if any discrepancy exists in his inter-se seniority it must be settled in conformity to the merit assigned by the Khyber Pakhtoonkhwa Public Service Commission of January 2012 batch.

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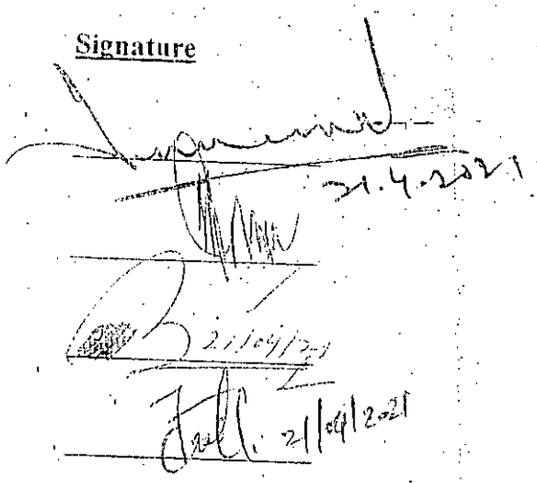
18. The appeal of Aisha Atif be disposed of according to the order of merit assigned by Khyber Pakhtoonkhwa Public Service Commission with regard to inter-se seniority.
19. The appeal of Mr. Tufail Khan (Assistant Professor) is examined in light of seniority list as well as consolidated merit of Khyber Pakhtoonkhwa of 8/2009 batch. The plea taleem-by Mr. Tufail is seems genuine. His seniority position be altered as per inter-se and merit assigned by Khyber Pakhtoonkhwa Public Service Commission.
20. The appeal submitted by Muhammad Khalid Assistant Professor GCMS Balakot is not sustainable as their seniority is already determined according to inter-se seniority / merit of Khyber Pakhtoonkhwa in advertisement No. 1/2008.

In view of the above facts and findings it is requested that the seniority list of the Assistant Professors may be corrected accordingly. Moreover, minor corrections relating to change of name, qualification etc may be done by the Directorate at its own level, according to the request of appellants

S.No	Name	Signature
1	Prof. Shah Fayaz Khan (Chairman) GCMS, Abbottabad	
2	Prof. Dr. Muhammad Ayaz (Member) GCMS-II Ring Road	
3	Prof. Khalid Khan (Member) Principal, GCMS-II Ring Road	
4	Mr. Imtiaz Ali, Lecturer (Member) GCMS, Peshawar City	



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Appeal No. 1289/2020

Date of Institution ... 04.03.2020

Date of Decision ... 07.01.2021

Adnan Nawaz Assistant Engineer, Local Government & Rural Development Department, K.P District Mardan. ... (Appellant)

VERSUS

Secretary Local Government, Elections & Rural Development Department, K.P Peshawar and six others. ... (Respondents)

Present.

Mr. Zia-Ur-Rahman Tajik,
Advocate. ... For appellant

Mr. Muhammad Riaz Khan Paindakhel,
Assistant Advocate General, ... For official respondents.

MR. HAMID FAROOQ DURRANI, ... CHAIRMAN
MR. ATIQ-UR-REHMAN WAZIR, ... MEMBER(E)

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

1. Instant appeal has been preferred against the order dated 07.02.2020 by respondent No.1. In the order, departmental appeal of the appellant was dismissed upholding the seniority list dated 08.11.2019.

2. It is provided in the memorandum of appeal that consequent to advertisement No. 5/2014, dated 15.09.2014, the appellant applied for the post of Assistant Engineer. Upon completion of process of recommendation for appointment, the Public Service Commission recommended the appellant for appointment on 09.09.2015. The ensuing appointment order of the appellant was issued on 11.11.2015. Consequently, he submitted arrival report on 24.11.2015.

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EXAMINER
Khyber Pakhtunkhwa

On 11.01.2018, a tentative seniority list was issued by the respondent No. 1. The name of appellant found mention at S. No. 8 thereof. On 29.06.2018 a final seniority list was issued in which the name of appellant appeared at S. No. 10. The list was questioned through departmental representation on 18.07.2018, which remained unanswered. The respondent No. 2, due to objections by the appellant, referred the issue of seniority to respondent No. 5/K.P Public Service Commission whose reply was received on 08.05.2019. The matter was also referred to respondent No. 4/Establishment Department which replied that the seniority may be determined on the basis of order of merit assigned by Public Service Commission. Subsequently, the order of merit was also provided by the PSC. It is claimed that the appellant was placed on top of the merit list. For reason best known to the respondents, the issue was yet again referred to the Establishment Department. Resultantly, a subsequent seniority list was issued on 08.11.2019, wherein, the appellant was placed at S. No. 7 instead of S. No. 5 while the private respondents were noted at Sr. Nos. 5 and 6, respectively. A departmental representation was filed by the appellant which was dismissed on 07.02.2020, hence the appeal in hand.

3. Learned counsel for the appellant as well as learned Assistant Advocate General on behalf of official respondents heard and available record examined with their assistance. The private respondent No. 6 was proceeded against ex-parte due to her non-representation on 11.09.2020. Similarly, on 30.09.2020 respondent No. 7 was also placed ex-parte. They, till date, did not choose to apply for setting aside the ex-parte proceedings.

4. After recapitulating the factual aspect of the case in hand, learned counsel for the appellant argued that the private respondents No. 6 & 7 were recommended for appointment by the Public Service Commission consequent to advertisement

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No. 1/2015 dated 01.01.2015. On the other hand, the appellant applied and was recommended on the basis of advertisement No. 5/2014. The respondents, therefore, could not be placed senior to the appellant. He also referred to the inter-se merit list issued by Khyber Pakhtunkhwa Public Service Commission and contended that the appellant's name was at the top of merit while private respondents were at S. No. 17 and 18 thereof. In his view, the impugned seniority list, as well as the order dated 07.02.2020, were not sustainable and liable to be struck down. He relied on judgments reported as 1995-PLC(C.S) 950, 1993-PLC(C.S) 1005, 2014-PLC(C.S) 335 and PLJ-2004-Supreme Court-435.

Learned AAG, while responding to the arguments from other side laid much emphasis on the competence and maintainability of instant appeal. In his view, the appellant questioned the seniority list of Assistant Engineers on 18.07.2018, however, no service appeal was preferred by him after remaining unsuccessful in getting relief from the departmental authorities. He was, therefore, barred from submitting a departmental appeal against the order dated 07.02.2020 passed by respondent No.1. As the subsequent appeal of appellant was not competent, the appeal in hand was also not to be proceeded with. Regarding merits of the case, learned Asstt. AG referred to Rule 17(1)(a) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 and contended that the impugned seniority list was properly drawn which did not require any alteration.

5. We have carefully examined the record and are of the opinion that the reply to the appeal in hand was jointly submitted by respondents No. 1 to 5. The reply is scanty, evasive and no supporting documents have been appended therewith.

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On record there is a notification providing final seniority list of Assistant Engineers BPS-17, as stood on 31.05.2018. The name of appellant is noted against S. No. 10 while those of private respondents appeared at S. No. 8 and 9. An appeal was submitted by the appellant on 18.07.2018, questioning the order of seniority contained therein. The proceedings were taken up by the respondents and the Local Government, Elections & Rural Development Department, through letter dated 04.03.2019 addressed to the Secretary Khyber Pakhtunkhwa Public Service Commission sought clarification with regard to inter-se seniority of the officers. On 08.05.2019, the Assistant Director-I of Khyber Pakhtunkhwa Public Service Commission/respondent No. 5 replied to the letter dated 04.03.2019. It was detailed in the reply that five posts of Assistant Engineer (Civil) (BPS-17) in Local Government & Rural Development Department were advertised vide Advertisement No. 05/2014. Subsequently sixteen posts of Assistant Engineers (Civil) and two posts of female quota were advertised vide Advertisement No. 01/2015. Interviews for the posts against female quota were conducted on 16.07.2015 directly while for the posts against general quota, ability test was conducted and then interviews were arranged. Female candidates (respondents No. 6 & 7) were recommended on 21.08.2015 whilst candidates of Advertisement No. 05/2014 on 09.09.2015. The appointment orders of two females & five Assistant Engineers were notified on same day i.e. 11.11.2015. It was, however, opined that the candidates recommended against Advertisement No. 05/2014 were senior to candidates recommended against advertisement No. 01/2015. It was also suggested that the views of the Establishment Department on the subject matter shall also be obtained. Consequently, the Secretary Establishment Department Khyber Pakhtunkhwa Peshawar was contacted on 22.05.2019 through a letter, whose reply dated

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15.07.2019, was in terms that the Public Service Commission may be approached for submission of "Order of merit" of both the male and female recommendees. The KP PSC/respondent No. 5 provided the requisite inter-se merit list on 19.08.2019, wherein, it was incorporated in unambiguous terms that the name of appellant was placed at S. No. 1 of the inter-se merit of recommendees against Advertisement No. 05/2014 while the names of respondents No. 6 & 7 were noted against S. No. 17 and 18, respectively, having been recommended in pursuance to Advertisement No. 01/2015.

6. On the record there is a copy of another notification dated 08.11.2019 providing substituted final seniority list of Assistant Engineers BPS-17 as stood on 31.10.2019. Surprisingly, the names of private respondents found mention at S. No. 5 and 6 while that of appellant at S. No. 07. It is important to note that the list was drawn subsequent to the provisions of inter-se merit list by K.P Public Service Commission. Aggrieved from the list, the appellant submitted departmental appeal. The appeal/reservations were, however, rejected on 07.02.2020 on the ground that the impugned final seniority list was finalized strictly in accordance with the relevant law/rules. No loop-hole was left which could warrant for interference in the seniority list already finalized, it was added.

7. Adverting to Rule 17 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, referred to by both the parties, it surfaces that the seniority inter-se of civil servants (appointed to a service, cadre or post) shall be determined in the case of persons appointed by the initial recruitment, in accordance with the order of merit assigned by the Commission (or, as the case may be, the Departmental Selection Committee): provided that persons selected for appointment to post in an earlier selectio

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shall rank senior to the persons selected in a later selection. (Underlining is applied).

In the instant case, the Public Service Commission/respondent No. 5 had a clear stance that by virtue of having applied in pursuance to an earlier advertisement (05/2014) the appellant and others were senior to candidates recommended against advertisement No. 01/2015. It was duly communicated to respondent No. 1 through correspondence dated 08.05.2019. There is no denial of the fact that the recommendation of appellant was outcome of earlier advertisement. In the circumstances and in view of judgment reported as 1991-SCMR-1632, it is not unsafe to hold that inter-se seniority of the candidates at one selection was to be determined on the basis of merit assigned to the candidates by the Public Service Commission. It is also worth-noting that in judgment reported as 1995-PLC(C.S) 950 it was clearly held that cases of civil servants who applied in response to subsequent advertisement, were finalized earlier whereas cases of co-civil servants who applied in response to earlier advertisement, were finalized later for no fault on their part, the seniority inter-se of civil servants was to be reckoned not from the date of joining but would be determined through earlier open advertisement. We are, therefore, firm in our view that the impugned seniority list is susceptible to correction and alteration.

8. Attending to the objection of learned AAG regarding competence and maintainability of appeal in hand, it is sufficient to note that the appellant, due to non-filing of service appeal against the earlier seniority list was not precluded from preferring the appeal in hand. Any wrong committed by the respondents, culminating into issuance of fresh seniority list, provided fresh cause of action to

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a civil servant/appellant. The objection of learned AAG is, therefore, overruled hereby.

9. Ex-consequentia, the appeal in hand is allowed as prayed for in its memorandum. The parties are, however, left to bear their respective costs. File be consigned to the record room.

Sd/-
(HAMID FAROOQ DURRANI)
CHAIRMAN

Sd/-
(ATIQ-UR-REHMAN WAZIR)
MEMBER(E)

ANNOUNCED
07.01.2021

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application	14/01/2021
Number of Words	2800
Copying Fee	30.00
Urgent	
Total	30.00
Name of Copyist	
Date of Completion of Copy	20/01/2021
Date of Delivery of Copy	20/01/2021

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GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS AND
HUMAN RIGHTS DEPARTMENT

MINUTES OF THE SCRUTINY COMMITTEE MEETING.

(AGENDA ITEM NO. 18)

SERVICE APPEAL NO. 1289/2020 ADNAN NAWAZ VERSUS SECRETARY LOCAL GOVERNMENT AND OTHERS.

A meeting of the Scrutiny Committee was held on **03.03.2021 at 11:00 A.M.** in the office of Secretary, Law Parliamentary Affairs & Human Rights Department under his Chairmanship to determine the fitness of the subject case for filing of Appeal/CPLA in the Supreme Court of Pakistan. Assistant Advocate General (Mr. Muhammad Sohail) represented the Advocate General, Khyber Pakhtunkhwa.

2. The Chairman of the Committee invited the representatives of **Local Government Department Mr. Niaz Ahmad, Addl: Secretary alongwith Mr. Abdul Shakoor, SO, Mr. Hamid Saleem, Law Officer, KPPSC and Mr. Muhammad Yousaf Deputy Secretary R-III, Establishment Department** to apprise the Committee about the background of the case which they did accordingly and stated that appellant filed the subject service appeal for setting aside the impugned order dated: 07.02.2020, whereby the Departmental Appeal of the appellant was dismissed and the seniority dated: 08.11.2019 was upheld with further prayer to direct the respondents to correct the seniority list by placing name of the appellant at serial No. 5 instead of serial No. 7. The Khyber Pakhtunkhwa Service Tribunal allowed the subject service appeal as prayed for vide order dated: 07.01.2021. Now, the Department intended to file CPLA against the judgment on the following grounds:

GROUNDS/DISCUSSIONS:

3. The representative of Khyber Pakhtunkhwa Public Service Commission, present in the meeting, supported the judgment passed by the Khyber Pakhtunkhwa Service Tribunal and stated that the judgment is in line with rules. He further added that in pursuance of an earlier advertisement, the appellant and others are senior to the candidates recommended against later advertisement. He further added that process of selection starts from the date of advertisement and the appellant had applied through earlier advertisement then the private respondents No. 6 and 7, therefore, is senior than the private respondents No. 6 and 7. He further added that term "earlier selection" means earlier recommendation. The Scrutiny Committee observed that the advertisement, in which the appellant was recommended, had been advertised earlier than the advertisement in which the private respondents No. 6 and 7 were recommended. It was further observed that though the appointments of the appellant and private respondents No. 6 and 7 have been made on the same day yet the appellant was recommended in earlier advertisement. During the course of discussion the representative of Establishment Department produced rules of Federal Government regarding seniority, according to rule 2 (1) of Civil Servants (Seniority) Rules, 1993, "persons initially appointed on the recommendations of the selection authority through an earlier open advertisement shall rank senior to those appointed through a subsequent open advertisement." The representative of Establishment Department produced a judgment of Federal Service Tribunal reported in 1995 PLC(CS) 950 on the same issue which support the instant judgment, the representative also supported the judgment of the Khyber Pakhtunkhwa Service Tribunal. The Scrutiny Committee observed that based upon above discussion, no plausible grounds exist against which CPLA could be filed in the Supreme Court of Pakistan as the representatives of Khyber Pakhtunkhwa Public Service Commission and Establishment Department both supported the impugned judgment.

DECISION:

4. Hence in view of above, it was decided with consensus by the Scrutiny Committee that the subject case was not a fit case for filing of Appeal/CPLA in the Supreme Court of Pakistan.

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(TAHIR IQBAL KHATTAK)
SOLICITOR

21

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Mr. Justice Manzoor Ahmad Malik
Mr. Justice Syed Mansoor Ali Shah

C.A.762-L to 766-L of 2012
(on appeals from the judgments of Punjab Service Tribunal, Lahore Dated 26.03.2012, passed in Appeal Nos.3776 to 3780/2010)

Dr. Zohara Jabeen, etc. (In all cases) .....*Appellant(s)*

Versus

Muhammad Aslam Pervaiz, etc. (In CP 762-L of 2012)
Aftab Ahmad, etc. (In CP 763-L of 2012)
Shahid Mehmood, etc. (In CP 764-L of 2012)
Muhammad Mehdi, etc. (In CP 765-L of 2012)
Fayyaz Ahmad Chaudhry, etc. (In CP 766-L of 2012)
.....*Respondent(s)*

For the appellant(s): (In all cases) Malik Muhammad Awais Khalid , ASC.

For the respondent(s): Mr. Amir Sana Ullah, ASC (For R.1)

For respondent Nos.2 to 4 Ch. Zafar Hussain Ahmed, Addl. A.G.
Mr. Ali Bahadur, Secretary, Population Welfare Department.
Mr. Khalid Pervaiz, Addl. Secretary.
a/w Tania Malik, D.S.
Arooj Naseem, S.O.

Date of hearing: 10.11.2020

ORDER

Syed Mansoor Ali Shah, J.- The question that arises in this case is regarding the seniority between the appellants (promotees) vis-à-vis the respondents (direct appointees), both appointed to the post of District Population Welfare Officer/Deputy Director (Non-Technical) (BS-18) close in time to each other in the manner described hereunder.

2. Briefly the facts are that the direct appointees (respondents) were recommended by the Punjab Public Service Commission (PPSC) and appointed vide order dated 03.12.2003 as Deputy Director/District Population Welfare Officer (Non-Technical) in BS-18. On the other hand the appellants were recommended for promotion by the Departmental Promotion Committee (DPC) on 24.11.2003, however, their notifications for promotion were issued successively as follows: the promotion notification of Dr. Naureen Asghar was issued on 2.12.2003, while that of Dr. Zohra Jabeen

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and Dr. Farkhanda Almas, who were recommended for promotion in the same DPC but subject to the completion of their ACRs for the year 2001-2002 were notified for promotion on 10.4.2004 and 24.11.2004, respectively. Dr. Zubda Riaz (appellant no.3), however, was initially deferred in the DPC held on 24.11.2003 and was later on considered in the DPC held on 12.10.2007 and notified for promotion on 26.4.2008. The seniority list prepared by the department placed the appellants over the respondents, who were appointed through direct recruitment. The respondents made a representation before the Chief Secretary, which was dismissed on 27.9.2010, whereafter they preferred an appeal before the Punjab Service Tribunal, which was allowed through the impugned judgment, holding that the respondents were senior to the appellants, with the direction to the department to re-draw the seniority list accordingly. To consider the question of seniority between the appellants and the respondents, leave was granted by this Court on 20.12.2012.

3. To answer the question regarding seniority between the appellants and the respondents, proviso to section 7(2) of the Punjab Civil Servants Act, 1974 (**"Act"**) and Rule 8 (2) alongwith its Explanation under the Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974 (**"Rules"**) need to be examined. Both the provisions are reproduced hereunder:

> **Section 7. Seniority.-** (1) ...
>
> (2) Seniority in a post, service, or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post:
>
> Provided that civil servants who are selected for promotion to a higher post in one batch shall on their promotion to the higher post retain their inter-se seniority in the lower post.
>
> **Rule 8.** The seniority inter se of persons appointed to posts in the same grade in a functional unit shall be determined:
>
> (2) The seniority of the persons appointed by initial recruitment to the grade vis-à-vis those appointed otherwise shall be determined with reference to the date of continuous appointment to the grade; provided that if two dates are the same, the person appointed otherwise shall rank senior to the person appointed by initial recruitment; provided further that inter se seniority of person belonging to the same category will not be altered.

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> Explanation- In case a group of persons is selected for initial appointment at one time, the earliest date on which any one out of the group joined the service will be deemed to be the date of appointment of all persons in the group. Similarly in case a group of persons is appointed otherwise at one time in the same office order the earliest date on which any one out of the group joined the service will be deemed to be the date of appointment of all persons in the group. And the persons in each group will be placed with reference to the continuous date of appointment as a group in order of their inter se seniority."

According to the above provisions, if civil servants are selected for promotion in a "batch[1]" or as a "group of persons[2]" then the date of promotion of all the persons in the batch or the group shall be the date when anyone of them was first promoted to the post and they shall retain their *inter se* seniority. The word "batch" used in section 7 of Act has been interchangeably used as "group of persons" in Rule 8. Ordinary dictionary meaning of the word 'batch" is "people dealt with as a group or at the same time".[3] Therefore, appellants, in the same grade, when considered and recommended for promotion for the next grade in the same Departmental Promotion Committee (DPC) pass for a "batch" or "group of persons" and therefore as per the above provisions will be considered to have been promoted from the date when the first amongst the batch was promoted and will also retain their *inter se* seniority of the lower post. In this legal background, the three appellants were recommended for promotion to BS-18 in DPC dated 24.11.2003. One of them i.e., Dr. Naureen Asghar was promoted on 2.12.2003, thus the entire batch of appellants/ promotees who were recommended for promotion in the same DPC namely Dr. Zohara Jabeen and Dr. Farkhanda Almas shall be considered to have been appointed w.e.f 2.12.2003, the date of promotion of Dr. Naureen Asghar, one of the promotees, from the same batch or group of persons. Further their *inter se* seniority amongst the promotees shall be the same as maintained in the lower post as per the provisions discussed above. However, Dr Zubda Riaz (appellant no. 3) who was deferred in the DPC held on 24.11.2003 on the ground that she was on a long leave and was subsequently recommended in the DPC held on 12.10.2007 (after

[1] Term used in the Proviso to Section 7(2) of the Act.
[2] Term used in the Explanation to Rule 8(2) of the Rules.
[3] Shorter Oxford English Dictionary, Sixth edition Volume 1 p 196 Chambers 21st Century Dictionary p 109 and Cambridge Advanced Learner's Dictionary, Fourth Edition, Cambridge University Press p 118

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almost four years) and promoted on 26.4.2008, cannot be considered to be from the same batch as that of the other appellants selected in the year 2003 and therefore the above provisions do not come to her rescue. Her seniority will be fixed according to the date of her promotion. The respondents were appointed through initial appointment on 03.12.2003, a day after the promotion of the first promottee out of the batch of promotes, hence the respondents will fall under the appellants. Therefore, the seniority of the appellants No.1 & 2 shall be re-fixed above the respondents in the manner discussed above and of appellant No.3 according to her date of promotion. For the above reasons the impugned judgment of the Tribunal dated 26.03.2012 is set aside and these appeals are allowed accordingly.

Judge

Announced.
Lahore,
2nd December, 2020.

Judge

Judge

Approved for reporting.
Iqbal

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