


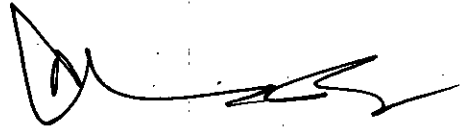
ORDER

3rd May, 2023

1. Appellant alongwith his counsel present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.
2. Vide our detailed order of today placed in service appeal No. 143/2019 titled "Muhammad Usman versus Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar and others" (copy placed in this file), this appeal is also allowed. Costs shall follow the event. Consign.
3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 3rd day of May, 2023.*



(Salah Ud Din)
Member(Judicial)



(Kalim Arshad Khan)
Chairman

***Adnan Shah, PA*

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

**BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN
SALAH UD DIN ... MEMBER (Judicial)**

Service Appeal No.143/2019

Date of presentation of appeal30.01.2019
Dates of Hearing.....03.05.2023
Date of Decision.....03.05.2023

**Muhammad Usman, SDFO Forestry, Environment & Wildlife
Department, Civil Secretariat Peshawar.....(Appellant)**

Versus

- 1. Government of Khyber Pakhtunkhwa** through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 2. Secretary** to the Government of Khyber Pakhtunkhwa Forestry, Environment & Wildlife Department, Civil Secretariat Peshawar.
- 3. Director General, Pakistan Forest Institute, Khyber Pakhtunkhwa, Peshawar.....(Respondents)**

Present:

Mr. Zartaj Anwar, Advocate.....For appellant.

Mr. Asif Masood Ali Shah,
Deputy District Attorney.....For respondents.

.....
**SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, FOR
CORRECTION OF FINAL SENIORITY LIST OF SDFO'S DATED
31.08.2018 AS PER MERIT ASSIGNED BY KHYBER
PAKHTUNKHWA PUBLIC SERVICE COMMISSION, AGAINST
WHICH THE DEPARTMENTAL APPEAL DATED 11.10.2018,
HAS NOT BEEN RESPONDED DESPITE THE LAPSE OF
NINETY DAYS STATUTORY PERIOD.**
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Service Appeal No.7608/2021

Date of presentation of appeal18.10.2021
Dates of Hearing.....03.05.2023
Date of Decision.....03.05.2023



Mr. Muhammad Waqas Khan, DFO (BPS-17), Unit-3 Forestry Planning and Monitoring Circle, Peshawar.

.....(**Appellant**)

Versus

1. **Government of Khyber Pakhtunkhwa** through Chief Secretary, Civil Secretariat Peshawar.
 2. **The Secretary** Forestry, Environment & Wildlife Department, Civil Secretariat Peshawar.
 3. **Director General**, Pakistan Forest Institute, Khyber Pakhtunkhwa, Peshawar.
 4. **Mr. Zahid Muhammad**, SDFO Tank, D.I. Khan Division. Ex.Parte
 5. **Mr. Saeed Anwar**, SDFO, Karak, Kohat Forest Division. Ex.Parte
 6. **Mr. Bilal Ahmad**, SDFO, Besham Kohistan Watershed Division. Ex.Parte
 7. **Aman Ullah**, SDFO, Jared, Kaghan Forest Division. Ex. Parte
 8. **Sardar Muhammad Saleem**, DFO, Hazara Tribal Forest Division, Battagram.
 9. **Ihsan Ud Din**, SDFO, Drosh, Chitral Forest Division. Ex.Parte
-(**Respondents**)

Present:


Mr. Amin Ur Rehman Yousafzai, Advocate....For appellant.

Mr. Asif Masood Ali Shah,
Deputy District Attorney.....For respondents.

.....
SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 07.10.2021, WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT FOR CORRECTION HIS SENIORITY POSITION IN THE FINAL SENIORITY LIST OF SDFO, DATED 26.06.2021 ACCORDING TO MERIT ORDER ASSIGNED BY KHYBER PAKHTUNKHWA

CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Through this single judgment this appeal and the connected service appeal No. 7608/2021 titled "Muhammad Waqas Khan versus The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar and others" are decided as both are the same and can conveniently be decided together.



2. According to the facts gathered from the record in service appeal No. 143/2019, the appellant was initially appointed on the recommendation of Khyber Pakhtunkhwa Public Service Commission as Forest Ranger (BPS-16) vide appointment order dated 25.11.2010; that the respondent department advertised the post of Sub Divisional Forest Officers through open advertisement, appellant having all the required eligibility applied for the post of Sub Divisional Officer through proper channel and was selected and recommended for the post of SDFO by the Khyber Pakhtunkhwa Public Service Commission and vide notification dated 19.10.2015 appointed by the competent authority, and on the same date submitted his arrival report i.e. 19.10.2015; that vide notification dated 17.11.2015 respondent-department issued attachment/field training of the newly appointed SDFO (BPS-17) according their respective joining, where as appellant was nominated for the subject course; that according to the inter-se merit position of all the selectees of male SDFO the appellant was at serial No.14; that the respondent department in violation of rules while withdrawing appointment order of the appellant and placing him in the panel of junior SDFO who had been appointed in pursuance to another advertisement against the different merit position and issued seniority list as stood on 31.08.2018 by placing the appellant at serial No. 44 instead of serial No. 37; that the appellant, feeling aggrieved, filed departmental appeal on 11.10.2018, which was not responded within the statutory period of ninety days and, hence, filed the instant service appeal.

3. In service appeal No. 7608/2021, the appellant was appointed as SDFO (BPS-17) in the respondent department; that the appellants was assigned inter-se seniority wherein he was rendered at serial No. 3 on merit order, while the private respondents No. 4,5 and 7 were placed at serial No. 4,6,8 and 9 while the private respondent No. 8 and 9 were promoted to the post of SDFO(BS-17) on 13.12.2018; that the appellant alongwith other officials were nominated for training at the Pakistan Forestry Institute through a letter dated



14.12.2017 and has completed his training at the Pakistan Forestry Institute successfully and after completing his training he was appointed as SDFO (BS-17) vide notification dated 03.02.2020. It was clearly mentioned in the appointment order of the appellant that the inter-se seniority should be determined in the light of the merit order drawn by the Khyber Pakhtunkhwa Public Service Commission; that the respondent/department issued the final seniority list of SDFOs on 26.06.2021 as stood on 20.01.2021, wherein the private respondents were shown senior to the appellant; that the appellant, feeling aggrieved, filed departmental appeal, which was rejected on 07.10.2021, hence, the instant service appeal.

4. On receipt of the appeals and admission to full hearing, the respondents were summoned, who, on putting appearance, contested the appeals by filing written replies raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellants.

5. We have heard learned counsel for the appellants and learned Deputy District Attorney for the official respondents.

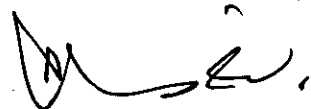
6. Learned counsel for the appellants argued that the appellants have not been treated in accordance with law and rules. The department had never taken into consideration the settled principles governing seniority/promotion before issuance of the final seniority list. He further argued that according to the terms and conditions of the appointment order (viii) their inter-se seniority shall be determined in the light of the merit order drawn by the Khyber Pakhtunkhwa Public Service Commission.

7. Conversely learned Deputy District Attorney argued the appellant has been treated in accordance with law and rules. He further argued that as per the existing service rules of Forest Department, the appointment of candidates for the post of SDFO by the Public



service Commission shall be subject to the condition that "the selected candidate shall undergo and successfully complete the training at Pakistan Forest Institute leading to Master's Degree in Forestry, however, those already having Master's Degree in Forestry from PFI shall be exempted from the training". Since the appellant was not M.Sc Forestry Degree holder vide Administrative Department letter No. SO(Estt)/FE&WD/1-50/(189)/2k15/36-39, dated 04.01.2023 after withdrawal of this appointment/attachment notification bearing No. SO(Estt)/FE&WD/1-50(189)/2015/28-34 dated 29.12.2015, he was referred for M.Sc Forestry Degree in the Session 2015-17 to Pakistan Forest Institute as per the above rules. His appointment order was after withdrawal & was directed to report to Pakistan Forest Institute for undergoing M.Sc Forestry.


8. There is no denying the fact that seniority of civil servants on initial recruitment is determined and fixed by the Competent Authority in accordance with the merit order assigned by the Selection Authority as mandated by Rule-17(a) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. Similarly there is no denial of the fact that the appellants have been appointed on the recommendation of the Khyber Pakhtunkhwa Public Service Commission and the Khyber Pakhtunkhwa Public Service Commission has also sent an inter-se merit order of all the recommendees. Such merit order was to remain intact which has been disturbed by the official respondents as is evident from the impugned seniority list but without justification. The official respondents in their reply contend that the appellants had to undergo some mandatory training where-after they were appointed. This does not mean that their seniority would be taken away or that the passage of sometime between recommendation and appointment would disturb the inter-se seniority of the appellants, which they had initially gained on finalization of selection process by the Khyber Pakhtunkhwa Public Service Commission. The appointment and seniority are entirely two different things, therefore, if some time has passed between recommendation of the Khyber Pakhtunkhwa



Public Service Commission and appointment of the appellants, that would not adversely affect their seniority in accordance with the provisions of Rule-17(a) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules 1989. The respondents have not quoted any rule which could disentitle the appellants from their seniority in accordance with Rule-17(a) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules 1989. Even during the course of arguments when the Law Officer was asked to quote any rule, he could not refer to any such rule except the service rules of the department, wherein the qualification etc is given for certain posts. This being so we hold that the appellants were entitled to retain their inter-se seniority in accordance with the merit order assigned by the Khyber Pakhtunkhwa Public Service Commission and, therefore, while allowing these appeals we direct that the appellants be assigned their correct seniority in accordance with the merit order assigned by the Khyber Pakhtunkhwa Public Service Commission. Costs shall follow the event. Consign.

9. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 3rd day of May, 2023.*


KALIM ARSHAD KHAN
Chairman


SALAH UD DIN
Member (Judicial)

Adnan Shah, PA