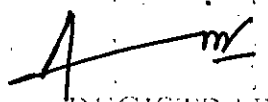


FORM OF ORDER SHEET

Court of _____

Appeal No. 1159/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	23/05/2023	<p>The appeal of Mr. Muhammad Nawaz Khan resubmitted today by Mr. Baseer Ahmad Shah Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

This is an appeal filed by Mr. Muhammad Nawaz today on 10/03/2023 against the final seniority list dated 15.12.2022 against which he made/preferred departmental appeal/ representation on 05.2.2023 the period of ninety days is not yet lapsed as per section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, which is premature as laid down in an authority report as 2005-SCMR-890.

As such the instant appeal is returned in original to the appellant/Counsel. The appellant would be at liberty to resubmit fresh appeal after maturity of cause of action and also removing the following deficiencies.

- 1- Copy of departmental appeal against the final seniority list is not attached with the appeal which may be placed on it. Annexure-G is appeal against the tentative seniority list but not a departmental appeal against the final seniority list.

No. 923 /ST

DC 13/3 /2023.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Fazal Shah Mohmand Adv.
High Court at Peshawar.

Sir, Resubmitted with request that I (inadvertently) the word tentative has been mentioned in departmental appeal while in fact it is departmental appeal dated 15-2-23 was filed against the final Seniority list as stood on 31-12-2022 which can be substantiated from the date as well as covering letter dated 15-2-23 available at page No 16, so the case may please be placed before the honorable Tribunal please

DATED 13/3/2023

BASEER AHMAD SHAH
ADVOCATE


Baseer Shah

⇒ Resubmitted after completion

Dated 23/5/2023

Shah
Rasem
23/5/23

BASEER AHMAD SHAH
Advocate

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No 1159 / 2023

MUHAMMAD NAWAZ KHAN

.....Appellant

V E R S U S

GOVERNMENT OF K.P & OTHERS

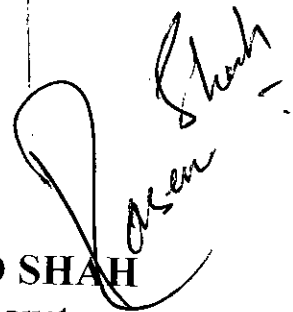
.....Respondents

I N D E X

S. No	Description of Documents	Annexure	Pages
1.	Service Appeal with Affidavit	1-4
2.	Application for interim relief with Affidavit	5
3.	Notification dt: 22-09-2015 & Notification dt: 01-06-2015	A & B	6-7
-4.	Tentative Seniority List dt: 29-04-2022, Departmental appeal & letter dt: 17-10-2022	C, D & E	8-12
5.	Final seniority List dt; 15-12-2022	F	13-14
6.	Departmental appeal & Letter/Order dt; 21-02-2023	G & H	15-17
7.	Judgment		18-29
8.	Wakalat Nama		30

Appellant
Through

BASEER AHMAD SHAH
Advocate High Court
Peshawar



①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Service Appeal No 1159 /2023

Muhammad Nawaz Khan, District Accounts Officer, Charsadda.

.....Appellant

V E R S U S

1. Govt. of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Govt. of Khyber Pakhtunkhwa through Secretary Finance Department, Civil Secretariat, Peshawar.
3. Dr. Yaqoob Ahmad, Treasury Officer, Office of District Comptroller of Accounts, Treasury Wing, Peshawar.
4. Jan Muhammad, District Accounts Officer, District Batagram.

.....Respondents

APPEAL U/S 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE LETTER/ORDER DATED 21-02-2023 WHEREBY DEPARTMENTAL APPEAL OF THE APPELLANT FILED AGAINST THE FINAL SENIORITY LIST OF ASSISTANT/SUB TREASURY OFFCIER (BPS-17) DATED 15-12-2022 HAS BEEN REGRETTEED.

PRAYER:-

On acceptance of this appeal the impugned Letter/Order dated 21-02-2023 may kindly be set aside and Final Seniority List dated 15-12-2022 to the extent of respondents No 3 and 4 may kindly be revised/modified thereby placing the appellant Senior to respondents No 3 & 4 with all back benefits.

Respectfully Submitted:-

1. That the appellant was appointed as Sub Accountant (BPS-11) on 28-10-1989 in Finance Department Khyber Pakhtunkhwa and was promoted as Assistant Treasury Officer (BPS-16) in June 2004 which post was later on upgraded to BPS-17 in March 2008.
2. That the appellant was promoted as Assistant Treasury Officer (ATO) on 22-09-2015 and presently the appellant is serving as District Accounts Officer Charsadda which is post of Basic Pay Scale 18.
3. That the appellant along with others was promoted as Assistant Treasury Officer (BPS-17), vide Notification dated 22-09-2015 while respondents No 3 & 4 were appointed as Assistant Treasury Officers

(2)

vide Notification dated 01-06-2015, i.e in the same calendar year but strangely both the mentioned officers were placed senior to the appellant in violation of law and rules besides plethora of pronouncements of the superior Courts. **(Copies of Notification dated 22-09-2015 & Notification dated 01-06-2015 are enclosed as Annexure A & B).**

4. That according to the Tentative Seniority List of Assistant/Sub Treasury Officers dated 29-04-2022, respondents No 3 & 4 were placed seniors to the appellant though the appellant was promoted while the said officers were appointed in the same calendar year thus according to the rules governing inter-se-Seniority, the appellant was required to had been placed senior to them, against which the appellant filed departmental appeal on 30-09-2022 which was duly processed but not responded. **(Copy of Tentative Seniority List dated 29-04-2022, departmental appeal & letter dated 17-10-2022 is enclosed as Annexure C, D & E).**
5. That there after Final Seniority List of Assistant/Sub Treasury Officers dated 15-12-2022 was issued which was received by the appellant on 02-01-2023, wherein too respondents No 3 & 4 were placed Senior to the appellant. **(Copy of Final Seniority List dated 15-12-2022 is enclosed as Annexure F).**
6. That the appellant preferred departmental appeal against the Final Seniority List dated 15-12-022 on 15-02-2023 which was responded/regretted vide letter dated 21-02-2023. **(Copy of departmental appeal & Letter/Order dated 21-02-2023 is enclosed as Annexure G & H).**
7. That the impugned Letter/Order dated 21-02-2023 & Final Seniority List dated 15-12-2022 to the extent of respondents No 3 & 4 is against the law, facts and principles of justice on grounds inter-alia as follows:-

GROUND:

- A. That the impugned Letter/Order dated 21-02-2023 & Final Seniority List dated 15-12-2022 to the extent of respondents No 3 & 4 is illegal, unlawful, without lawful authority hence liable to be set aside.
- B. That mandatory provisions of law and rules have been badly violated by the respondents and the appellant has not been treated according

to law and rules in violation of Article 4 and 25 of the Constitution and law of the land.

- C. That the appellant was promoted while respondents No 3 & 4 were appointed in the same calendar year, thus the appellant is required to have been placed Senior to respondents No 3 & 4.
- D. That the impugned Letter/Order dated 21-02-2023 & Final Seniority List dated 15-12-2022 to the extent of respondents No 3 & 4 is in sheer violation of law and rules on the subject.
- E. That the principle is also upheld by the Apex Court in various judgments including 2011 SCMR 389 which has adversely affected the fundamental rights of the appellant, thus too the impugned Letter/Order and Final seniority List to the extent of respondents No 3 & 4 is liable to be set at naught.
- F. That the impugned Letter/Order is also not speaking one, as per Section 24-A (2) of the General Clauses Act 1897, thus too the same is liable to set at naught.
- G. That the appellant is subjected to loss in terms of seniority, promotion etc, and causing heavy financial loss to him for no legal reason.
- H. That valuable rights had accrued in favor of the appellant from which he could not be deprived and more particularly at the whims of someone.
- A. That the appellant has been deprived of his due seniority without any omission and commission on his part.
- B. That the law as well as rules is very much clear on the point and the impugned Letter/Order and Seniority List are violative of the principles of natural justice for unknown reasons.
- C. That the appellant has about 34 years of service with unblemished service record.

It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for.

Any other relief deemed appropriate in the circumstances of the case and not specifically asked for may also be granted in favor of the appellant.

(4)

Dated:- 10-03-2023

Appellant
Through

Shah
Caseem

BASEER AHMAD SHAH
Advocate, Peshawar

LIST OF BOOKS

1. Constitution 1973.
2. other books as per need

CERTIFICATE:

Certified that as per instructions of my client, no other Service Appeal on the same subject and between the same parties has been filed previously or concurrently before this honorable Tribunal.

ADVOCATE

Shah
Caseem

AFFIDAVIT

I Muhammad Nawaz Khan, District account officer, Charsadda, do hereby solemnly affirm and declare on oath that the contents of this **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

DEPONENT

Shah
Caseem

5

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No _____/2023

MUHAMMAD NAWAZ KHAN.

.....Appellant

V E R S U S

GOVERNMENT OF K.P & OTHERSRespondents

APPLICATION FOR RESTAINING RESPONDENTS FROM
PROMOTIONS TO THE EXTENT OF RESPONDENTS NO. 3
& 4 TILL THE FINAL DISPOSAL OF INSTANT APPEAL.

Respectfully Submitted:-

1. That the accompanying appeal is being filed today in which no date of hearing has been fixed so far.
2. That the applicant/appellant is the senior to respondent No 3 & 4 while he is malafidely kept deprived of his due seniority for reason other than fair and bonafide.
3. That the applicant has got a good prima facie case and is sanguine of its success.
4. That the balance of convenience lies in his favor and if the respondents are not restrained from make promotions, the applicant would suffer an irreparable loss.

It is therefore prayed that on acceptance of this application, respondents may kindly be restrained from promotion to the extent of respondent no. 3 & 4 till the final disposal of instant appeal.

Appellant
Through

BASEER AHMAD SHAH
Advocate high court
Peshawar

AFFIDAVIT

I MUHAMMAD NAWAZ KHAN, do hereby solemnly affirm and declare on oath that the contents of this **Application**, are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

DEPONENT



NOTIFICATION

NOTIFICATION NO. 135/2015. On the recommendation of Departmental Promotion Committee, the competent authority has been pleased to appoint the following Assistant Accountants (BS-16) Assistant Treasury Officer (BS-17) on acting charge Basis of Khyber Pakhtunkhwa Treasury Establishment to the post of Assistant Treasury Officer /Sub-Treasury Officers (BS-17) on regular basis with immediate effect in the public interest. They will be on probation for a period of one year extendable for another year.

S.No	Name of Officers
1	Mr. Ali Zaman
2	Mr. Attaullah
3	Mr. Abdul Wahid Abbasi
4	Mr. Shafiq-ur-Rehman
5	Mr. Khairullah
6	Mr. Muhammad Nawaz

Consequent upon the above, the following posting/transfer are made henceforth-

S.No	Name of officers	From	To	Remarks
1	Mr. Ali Zaman	Assistant Treasury Officer (acting charge basis) o/o Agency Accounts Officer NWA Miranshah	Assistant Treasury Officer o/o Agency Accounts Officer NWA Miranshah.	Retain on the same post on regular basis.
2	Mr. Attaullah	Assistant Treasury Officer (acting charge basis) o/o District Accounts Officer, Charsadda.	Assistant Treasury Officer o/o District Accounts Officer, Charsadda.	Retain on the same post on regular basis.
3	Mr. Abdul Wahid Abbasi	Assistant Accountant o/o District Accounts Officer, Manshera.	Assistant Treasury Officer o/o District Accounts Officer, Manshera.	Vice S No. 7
4	Mr. Shafiq-ur-Rehman	Assistant Treasury Officer (acting charge basis) o/o District Accounts Officer, Kohistan.	Assistant Treasury Officer o/o District Accounts Officer, Kohistan.	Retain on the same post on regular basis.
5	Mr. Khairullah	Assistant Treasury Officer (acting charge basis) o/o District Comptroller of Accounts, Bannu.	Assistant Treasury Officer o/o District Comptroller of Accounts, Bannu.	Retain on the same post on regular basis.
6	Mr. Muhammad Nawaz	Assistant Treasury Officer (acting charge basis) o/o District Comptroller of Accounts, Peshawar.	Assistant Treasury Officer o/o District Comptroller of Accounts, Peshawar.	Retain on the same post on regular basis.
7	Mr. Shabir Azam	Assistant Treasury Officer o/o District Accounts Officer, Manshera.	Sub-Treasury Officer o/o District Accounts Officer, Haripur.	Against vacant post



SECRETARY TO GOVERNMENT OF
KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

(2)

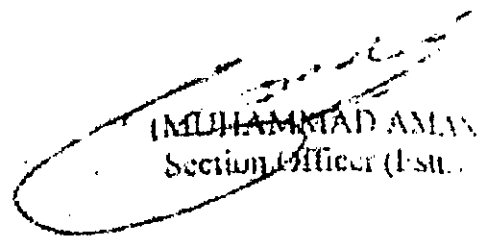
--(2)--

Dated: 22/09/2015

NO.50 (EST) D-1-55 DPC-2015

Copy forwarded to the:-

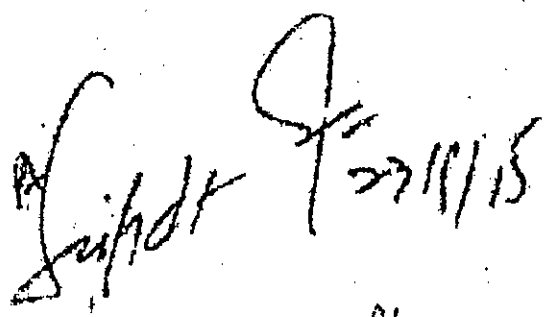
1. Director Treasuries and Accounts Khyber Pakhtunkhwa Peshawar.
2. District Comptroller of Accounts, Banna & Peshawar.
3. District Accounts Officers, Charsadda, Mansehra, Kohistan, Mansehra & Haripur.
4. Agency Accounts Officers, NWA Miranshah.
5. PS to Chief Secretary, Khyber Pakhtunkhwa.
6. PS to Finance Secretary.
7. Officers concerned.
8. Office Order file.


 MUHAMMAD AWAN
 Section Officer (Estt.)

1. Name, Designation

D.D.

23/9/15


 27/11/15

27/11/15

etc

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**GOVERNMENT OF KHYBER PAKHTUNKHWA FINANCE
DEPARTMENT**

Dated: Peshawar the 22.09.2015

NOTIFICATION

NO. SOLESTDFD/1-55/DPC/2015:- on the recommendation of Departmental promotion committee, the competent authority has been pleased in appoint the following Assistant Accountant (BS-16) Assistant Treasury Officer (BS-17) on acting charge basis of Khyber Pakhtunkhwa Treasury Establishment to the posts of Assistant Treasury Officer Sub-Treasury Officer (BS-17) in regular with immediate effect in the public interest. They will be on probation for a period of time year extendable for another year.

S.#	Name of Officers
1.	Mr. Ali Zaman
2.	Mr. Attaullah
3.	Mr. Abdul Wahid Abbasi
4.	Mr. Shafiq-ur-Rehman
5.	Mr. Khairullah
6.	Mr. Muhammad Nawaz

Consequent upon the above the following posting/transfer are made hence forth:

S.#	Name of Officers	From	To	Remarks
1.	Mr. Ali Zaman	Assistant Treasury Officer (acting charge basis) c/o Agency Accounts Officer NWA Miranshah	Assistant Treasury officer c/o Agency Accounts Officer NWA Miranshah	Retain on the same post on regular basis
2.	Mr. Attaullah	Assistant Treasury Officer (acting charge basis) c/o District Account Officer Charsadda	Assistant Treasury Officer c/o District Accounts Officer Charsadda.	Retain on the same post on regular basis
3.	Mr. Abdul Wahid Abbasi	Assistant Accountant c/o District Accounts Officer, Mansehra	Assistant Treasury Officer c/o District Accounts Officer Mansehra.	Vice S No. 7
4.	Mr. Shafiq-ur-Rehman	Assistant Treasury Officer (acting charge basis c/o District Accounts Officer, Kohistant.	Assistant Treasury Officer c/o District Accounts Officer Kohistan.	Retain on the same post on regular basis
5.	Mr. Khairullah	Assistant Treasury Officer (acting charge basis c/o District Comptroller of Accounts, Bannu.	Assistant Treasury Officer c/o District Comptroller of Accounts Peshawar.	Retain on the same post on regular basis
6.	Mr. Muhammad Nawaz	Assistant Treasury Officer (acting charge basis c/o District Comptroller of Accounts, Peshawar	Assistant Treasury Officer c/o District Comptroller of Accounts Peshawar.	Retain on the same post on regular basis
7.	Mr. Shabir Azam	Assistant Treasury Officer c/o District Accounts Officer, Mansehra	Sub-Treasury Officer Ghazi c/o District Accounts Officer, Haripur.	Against post

Handwritten signature
ATTESTED

**SECRETARY TO GOVERNMENT OF
KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT**

Annex B
7

GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

Date: Perth the 1st June 2015

NOTIFICATION

ADDITIONAL ASSISTANT SECRETARY (A.S.), On the recommendation of Khyber Pakhtunkhwa Public Service Commission, the competent authority is pleased to order the appointment of following candidates as Assistant Treasury Officers (BS-17) (Rs 16000-1200-4000) in the Khyber Pakhtunkhwa Treasury establishment, subject to the terms & conditions mentioned hereunder:-

S.No.	Name of candidates with father's name
1	Mr. Jan Muhammad S/O Taji Muhammad
2	Mr. Yaqoob Ahmad S/O Shamroz Khan

TERMS & CONDITIONS

- (i) They shall be governed by the Khyber Pakhtunkhwa Civil Servants Act 1973 (as amended for time to time) and all the Rules made there under and subject to the terms and conditions, original documents i.e. qualification, domicile and age etc.
- (ii) They shall, initially be on probation for a period of one year extendable for further one year.
- (iii) Their services will be liable to termination at any time without assigning any reason before the expiry of the period of probation / extended period of probation, if their performance during this period is not found satisfactory. In such an event, they will be given one month's notice of termination from service or one month pay in lieu thereof. In case they are terminated at any time, one month's pay shall be forfeited.
- (iv) They will not be entitled to any TADA on their first appointment.
- (v) Their services are transferable anywhere in Khyber Pakhtunkhwa FATA/BJT.

Consequent on their appointment, they are posted as under:-

S.No.	Name & Designation	Office for posting	Remarks
1	Mr. Jan Muhammad Assistant Treasury Officer (BS-17)	District Account Officer, Haripur	Agent for the post
2	Mr. Yaqoob Ahmad Assistant Treasury Officer (BS-17)	District Comptroller of Accounts, Mardan	Agent for the post

If the above terms and conditions are acceptable to them, they should report to the concerned offices within 30 days, to the respective offices noted against their names.

SECRETARY TO GOVERNMENT
KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

Date: 1st June 2015

Copy forwarded to:-

1. The Director, Treasuries & Accounts, Khyber Pakhtunkhwa, Perthwar
2. The District Accounts Officer, Haripur.
1. The District Comptroller of Accounts, Mardan.
4. PS to Chief Secretary, Khyber Pakhtunkhwa.
3. PS to Secretary Finance Department.
6. Mr. Jan Muhammad S/O Taji Muhammad
C/O Safer Electrical Store, Near Sakhi CMG,
Upper Channai, Abbottabad Road Mardan
7. Mr. Yaqoob Ahmad S/O Shamroz Khan
R/O H No 34, Mohalla Mohmmud Abad,
Chamba Peer Road, Nothin Jadedo Peshawar

They are directed to report their names to the concerned offices within 30 days of the receipt of this order and produce original certificates in connection with their qualification, domicile and age for personal verification to the concerned offices.

Office order file

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SECTION OFFICER (ESTD)

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GOVERNMENT OF KHYBER PAKHTUNKHWA FINANCE
DEPARTMENT

Dated: Peshawar the 1st.June.2015

NOTIFICATION

NO.SO/ESTDED/1-40/15/PSC/ATO: On the recommendation of Khyber Pakhtunkhwa public of Commission, the competent authority is pleased to order the appointment of following candidates as Assistant Treasury Officers (BPS-17) (Rs.16000-1200-40000) in the Khyber Pakhtunkhwa Treasury Establishment subject in the terms & conditions mentioned hereunder:-

S.#	Name of candidates with father's name
1.	Mr. Jan Muhammad S/o Taj Muhammad
2.	Mr. Yaqoob Ahmad S/o Shamroz Khan

TERMS & CONDITIONS

- They shall be governed by the Khyber Pakhtunkhwa Civil Servants Act 1973 (as amended for time to time) and all the Rules made there-under and subject to verification of their antecedents, original documents ie qualification, domicile and age etc.
- They shall, initially be on probation for is period of one year extendable for further on year.
- Their services will be liable to termination at any time without assigning any reason before expiry of the period of probation / extended period of probation, if their performance d this period is not found satisfactory. In such an even, they will be given one month price police of termination from service or one month pay in lieu thereof, in case they wish at any time, one month's pay shall be for field.
- They will not be entitled to any TA/DA on their first appointment.
- Their services are transferable anywhere in Khyber Pakhtunkhwa FATARATA

2. Consequent on their appointment, they are posted as under-

S.#	Name & Designation	Officer for Posting	Remarks
1.	Mr. Jan Muhammad Assistant Treasury Officer BS-17	District Account Office, Haripur	Against the Post
2.	Mr. Yaqoob Ahmad Assistant Treasury Officer BS-17	District Comptroller of Accounts Mardan	Against the post

- If the above terms and conditions are acceptable to them, they should report their in the respective officer noted against their names.


**SECRETARY TO GOVERNMENT OF
KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT**

Endst: No. Date even

Copy forwarded to.

- The Director, Treasuries & Accounts, Khyber Pakhtunkhwa, Peshawar
- The District Accounts Officer, Haripur
- The District Comptroller of Accounts, Mardan.
- PS to Chief Secretary, Khyber Pakhtunkhwa,
- PS to Secretary Finance Department
- Mr. Jan Muhammad S/O Taj Muhammad } They are directed to report their arrival
C/O Safer Electrical Store, Near Saddi CNG } for duty within 30 days of the receipt of
Upper Chama, Abbottabad Road Mansehra } this order and produce original confidence
- Mr. Yaqoob Ahmad S/o Shamraz Khan } in connection with their qualification
R/o House No. 34, Mohallah Mohamand Abad, } domicile and age for personal verification
Chamba Peer Road, Nothia Jadeed Peshawar } to the concerned officer
- Officer order file

(Muhammad Aman)
SECTION OFFICER (EST)


A1 ESTED



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

Dated Peshawar the 29th April, 2022.

Annex

8

TENTATIVE SENIORITY LIST OF ASSISTANT / SUB-TREASURY OFFICERS (BS-17) OF TREASURY ESTABLISHMENT, KHYBER PAKHTUNKHWA AS IT STOOD ON 31-12-2021

Sanctioned Posts	59
Filled Posts	35
Vacant Posts	24

S. #	Name of the Officer	Domicile and Date of birth	Qualification	Whether SAS qualified or otherwise	Date of 1st entry into Govt. Service	Date of regular promotion / appointment in lower post (Asstt./ Sub-Acctt.)	Date of regular appointment / promotion as ATO/STO	Place of present posting
1	2	3	4	5	6	7	8	9
1	Mr. Ashfaq-ur-Rehman	Abbottabad 24-12-1966	M.A.	SAS	16-10-1990	16-10-1990	25-06-2012	DAO, Haripur (OPS)
2	Mr. Muhammad Naeem	Mansehra 07-04-1966	B.Com. (Hons)	SAS	01-12-1990	01-12-1990	25-06-2012	DAO, Torghar (OPS)
3	Mr. Zahoor Khan	Khyber Agency 15-03-1967	M.A.	SAS	03-02-1991	03-02-1991	25-06-2012	O/o DAO Nowshera
4	Mr. Qasim Mahmood	Karak 28-08-1976	MBA	PSC	31-05-2004	By initial recruitment.	18-12-2012	O/o DAO, Karak
5	Mr. Waqar Khan	LakkiMarwat 26-04-1986	B.Sc. (Hons)	PSC	18-12-2012	By initial recruitment.	18-12-2012	O/o DCA Peshawar
6	Dr. Yaqoob Ahmad	Mohmand Agency 09-07-1988	Ph.D (Financial Management)	PSC	01-06-2015	By initial recruitment.	01-06-2015	Treasury Officer (Peshawar) OPS

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7.	Mr. Jan Muhammad	Mansehra 11-01-1985	MBA	PSC	01-06-2015	By initial recruitment.	01-06-2015	DAO Battagram OPS
8.	Mr. Muhammad Nawaz	Peshawar 05-01-1967	B.Com.	SAS	29-10-1989	09-08-2012	22-09-2015	DAO Charsadda OPS
9.	Mr. Shafiq-ur- Rehman	Abbottabad 25-06-1968	B.Com (Hon)	SAS	19-02-1991	09-08-2012	22-09-2015	DAO Kohistan Upper OPS
10.	Mr. Khairullah	Bannu 20-02-1968	M.Com.	SAS	30-03-1991	09-08-2012	22-09-2015	DAO Kurram OPS
11.	Mr. Muhammad Saeed	Dir Lower 12-04-1963	M.A.	SAS	11-10-1986	09-08-2012	23-09-2016	O/o DAO Dir Lower
12.	Mr. Muhammad Safiullah	D.I. Khan 12-06-1967	M.A.	SAS	22-01-1991	09-08-2012	08-08-2017	O/o DCA D.I. Khan
13.	Mr. Taj Muhammad	Swat 24-05-1968	M.A.	SAS	29-01-1991	09-08-2012	08-08-2017	A.O. in Saigu Medical College on deputation
14.	Mr. Noor-ul-Amin	Peshawar 05-09-1971	M.A, M.Com.	SAS	03-02-1991	09-08-2012	08-08-2017	Tourism Authority on deputation.
15.	Mr. Pervez Khan	Mohmand 01-04-1963	BSc, LLB	SAS	03-02-1991	09-08-2012	08-08-2017	A.O. Board of Revenue on deputation
16.	Mr. Muhammad Shamrez	Abbottabad 03-04-1966	B.Com (Hon)	SAS	22-07-1993	09-08-2012	12-02-2018	BISE Abbottabad on deputation
17.	Mr. Muhammad Tahir	Mardan 12-02-1967	M.A.	SAS	30-08-1988	09-08-2012	12-02-2018	DAO, Kohistan Lower OPS
18.	Mr. Ikramullah	Swabi 05-04-1967	M.A.	SAS	17-11-1992	09-08-2012	12-02-2018	DAO Swabi OPS
19.	Mr. Inamtaiz Ali	Bannu 01-04-1968	M.Com.	SAS	01-09-1993	09-08-2012	12-02-2018	O/o DCA Bannu
20.	Mr. Amjad Khan	Abbottabad 06-06-1969	B.Sc.	SAS	30-04-1995	09-08-2012	12-02-2018	O/o DAO Mansehra
21.	Mr. Salim Dad Khan	Bannu 02-01-1965	M.A.	SAS	21-09-1987	24-01-2008	29-11-2018	O/o DAO Larki Marwal

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TO BE TRUE COPY

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22.	Mr Ayub-ur-Rehman	Bannu 01-01-1968	M Com.	SAS	27-07-1993	09-06-2012	29-11-2018	O/o DCA Bannu.
23.	Mr. Muhammad Ramzan	D.I. Khan 08-01-1965	M.Com.	SAS	03-12-1988	09-08-2012	29-11-2018	O/o DAO Tank
24.	Mr. Asad Ali Shah	Abbottabad 12-07-1968	B.Sc. (Math)	SAS	30-04-1995	09-08-2012	29-11-2018	A.O. Irrigation Deptt. on deputation
25.	Mr. Bilal Ahmad Alif	Mansehra 16-01-1973	M.Com.	SAS	04-05-1995	09-08-2012	29-11-2018	O/o DCA Mansehra
26.	Mr. Lal Zada	Dir (L) 03-04-1972	M.A.	SAS	03-12-1995	09-08-2012	29-11-2018	O/o DAO Malakand
27.	Mr. Niamatullah	Karak 19-01-1962	M.A.		01-11-1983	20-11-2003	27-05-2019	O/o DAO Karak
28.	Mr. Shahid Waqar	Kohat 24-05-1962	B.A.		01-11-1984	04-05-2005	14-11-2019	O/o DAO Hangu
29.	Mr. Ahmad Abbas	Kohat 21-04-1962	M.A.		28-04-1985	04-05-2005	14-11-2019	O/o DAO Orakzai
30.	Mr. Said Ali Shah	Mardan 19-02-1965	B.A.	SAS	30-09-1987	01-07-2008	14-11-2019	O/o DCA Mardan
31.	Mr. Hussain Gul	Dir Lower 04-04-1962	M.A. & LLB	SAS	09-04-1990	09-08-2012	14-11-2019	A.O. o/o of D.C. Dir Lower on deputation basis
32.	Mr. Muhammad Masood Afridi							Law Department on deputation basis
33.	Mr. Mohib-ur-Rehman							Zakat Ushr Department on deputation basis
34.	Mr. Najeeb Ullah							O/o DAO South Waziristan
35.	M/s Sadia Asghar							P&D Department on deputation basis

Section Officer
Establishment
Finance Department
Gulistan

Annex

(11)

To,
The Honorable Chief Secretary,
Khyber Pakhtunkhwa,
Peshawar.

Through: Proper Channel.

Subject:- Appeal against the tentative Seniority List of Assistant/Sub Treasury Officers (BPS-17) dated 29-04-2022.

Respectfully Submitted:-

That the appellant was appointed as Sub Accountant (BPS-11) on 28-10-1989 in Treasury Office Peshawar attached with Finance Department Khyber Pakhtunkhwa and was promoted as Assistant Treasury Officer (BPS-16) in June 2004 which post was later on upgraded to BPS-17 in March 2008 and was promoted as Assistant Treasury Officer (ATO) on 22-09-2015 on regular basis and presently the appellant is serving as District Accounts Officer Charsadda which is post of Basic Pay Scale 18.

It is pertinent to mention that as the appellant was promoted as ATO on 22-09-2015 regular basis while two other officers namely Yaqoob Ahmad and Jan Muhammad were appointed as Assistant Treasury Officer on 01-06-2015, i.e in the same calendar year but strangely both the mentioned officers have been placed senior to the appellant in violation of law and rules besides plethora of pronouncements of the superior Courts. **(Copies of Notification dated 22-09-2015 & Notification dated 01-06-2015 are enclosed as Annexure A & B).**

That according to the Seniority List dated 29-04-2022 the said officers have been placed senior to the appellant though the appellant was promoted while the said officers were appointed in the same calendar year thus according to the rules governing inter-se-Seniority, the appellant is required to be placed senior to them which principle is also upheld by the Supreme Court of the country in various judgments including 2011 SCMR 389 which has adversely affected the fundamental rights of the appellant.

It is therefore prayed that on acceptance of this appeal, the impugned Seniority List of Assistant/Sub Treasury Officers (BPS-17) dated 29-04-2022 may kindly be revised/modified thereby placing the appellant senior to the said Yaqoob Ahmad and Jan Muhammad with all back benefits.

Dated:-30-09-2022



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Muhammad Nawaz Khan, posted
as District Accounts Officer
Charsadda.

Cell # 0317 5827066



12

Annex

E

Office of the
District Accounts Officer
Charsadda
Phone & Fax: 091 9220142

NO.DAO/CHD/ADMN/2022-23/ 531

DATED: 17/10/2022

To,

The Director,
Treasuries & Accounts,
Khyber Pakhtunkhwa,
Peshawar.

Subject: **Appeal against the tentative Seniority List of Assistant/Sub Treasury Officers (BPS-17) dated 29-04-2022.**

Kindly refer to the subject cited above and to state that an application is enclosed for consideration and necessary action please.


DISTRICT ACCOUNTS OFFICER
CHARSADDA


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Annex F R

13



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

Dated Peshawar the 15/12/2022

NO. SO (EST) FD/1-45/S.L./ATOs/2021 In pursuance of Sub-section (1) of Section 8 of the Khyber Pakhtunkhwa Civil Servants Act 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), the competent authority has been pleased to order issuance of final seniority list (as it stood on 31-12-2021) of the Assistant/Sub-Treasury Officers (BS-17) in Khyber Pakhtunkhwa belonging to the Treasury Establishment for information of all concerned.

**FINAL SENIORITY LIST OF ASSISTANT / SUB-TREASURY OFFICERS (BS-17) OF TREASURY ESTABLISHMENT
KHYBER PAKHTUNKHWA AS IT STOOD ON 31-12-2021**

Sanctioned Posts	59
Filled Posts	35
Vacant Posts	24

S. #	Name of the Officer	Domicile and Date of birth	Qualification	Whether SAS qualified or otherwise	Date of 1st entry into Govt. Service	Date of regular promotion / appointment in lower post (Asstt./ Sub-Acctt.).	Date of regular appointment / promotion as ATO/STO	Place of present posting
1	2	3	4	5	6	7	8	9
1	Mr. Ashfaq-ur-Rehman	Abbottabad 24-12-1966	M.A.	SAS	16-10-1990	16-10-1990	25-06-2012	DAO Hanpur (OPS)
2	Mr. Muhammad Naeem	Mansehra 07-04-1966	B.Com. (Hons)	SAS	01-12-1990	01-12-1990	25-06-2012	DAO Tordhar (OPS)
3	Mr. Zahoor Khan	Khyber Agency 15-03-1967	M.A.	SAS	03-02-1991	03-02-1991	25-06-2012	O/o DAO Nowshera
4	Mr. Qasim Mahmood	Karak 28-08-1976	MBA	PSC	31-05-2004	By initial recruitment	18-12-2012	O/o DAO Karak
	Mr. Waqar Khan	LakkiMarwat 26-04-1986	B.Sc. (Hons)	PSC	18-12-2012	By initial recruitment	18-12-2012	O/o DCA Peshawar

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6	Dr. Yaqoob Ahmad	Mohmand Agency 09-07-1988	Ph.D (Financial Management)	PSC	01-06-2015	By initial recruitment	01-06-2015	Treasury Officer (Peshawar) OPS
7	Mr. Jan Muhammad	Mansehra 11-01-1985	MBA	PSC	01-06-2015	By initial recruitment	01-06-2015	DAO Battagram OPS
8	Mr. Muhammad Nawaz	Peshawar 05-01-1967	B.Com.	SAS	29-10-1989	09-08-2012	22-09-2015	DAO Charsadda OPS
9	Mr. Shafiq-ur-Rehman	Abbottabad 25-06-1960	B.Com (Hon)	SAS	19-02-1991	09-08-2012	22-09-2015	DAO Kohistan Upper OPS
10	Mr. Khairullah	Bannu 20-02-1968	M.Com.	SAS	30-03-1991	09-08-2012	22-09-2015	DAO Kurram OPS
11	Mr. Muhammad Saeed	Dir Lower 12-04-1963	M.A.	SAS	11-10-1986	09-08-2012	23-09-2016	O/o DAO Dir Lower
12	Mr. Muhammad Safiullah	D.I. Khan 12-06-1967	M.A.	SAS	22-01-1991	09-08-2012	08-08-2017	O/o DCA D.I. Khan
13	Mr. Taj Muhammad	Swat 24-05-1968	M.A.	SAS	29-01-1991	09-08-2012	08-08-2017	A.O. in Saidu Medical College on deputation
14	Mr. Noor-ul-Amin	Peshawar 05-09-1971	M.A. M.Com.	SAS	03-02-1991	09-08-2012	08-08-2017	Tourism Authority on deputation
15	Mr. Pervez Khan	Mohmand 01-04-1963	B.Sc. LLB	SAS	03-02-1991	09-08-2012	08-08-2017	A.O. Board of Revenue on deputation
16	Mr. Muhammad Saqeeb	Abbottabad 03-04-1966	B.Com (Hon)	SAS	22-07-1993	09-08-2012	12-02-2018	BISE Abbottabad on deputation
17	Mr. Muhammad Hanif	Mardan 12-02-1967	M.A.	SAS	30-08-1988	09-08-2012	12-02-2018	DAO Kohistan Lower OPS
18	Mr. Khairullah	Swabi 05-04-1967	M.A.	SAS	17-11-1992	09-08-2012	12-02-2018	DAO Swabi OPS
19	Mr. Hamid Ali	Bannu 01-04-1968	M.Com.	SAS	01-09-1993	09-08-2012	12-02-2018	O/o DCA Bannu
20	Mr. Arif Khan	Abbottabad 05-06-1969	B.Sc.	SAS	30-04-1995	09-08-2012	12-02-2018	O/o DAO Mansehra
21	Mr. Salim Dad Khan	Bannu 02-07-1965	M.A.	SAS	21-09-1987	24-01-2008	29-11-2018	O/o DAO Lakkhi Marwal
22	Mr. Ayub Rehmat	Bannu 01-01-1968	M.Com.	SAS	27-07-1993	09-08-2012	29-11-2018	O/o DCA Bannu
23	Mr. Muhammad Manzoor	D.I. Khan 08-01-1965	M.Com.	SAS	03-12-1988	09-08-2012	29-11-2018	O/o DAO Tank

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	Mr Asad Ali Shah	Abbottabad 12-07-1968	B.Sc. (Math)	SAS	30-04-1995	09-08-2012	29-11-2018	A.O. Irrigation Deptt. on deputation
25	Mr. Bilal Ahmad Atif	Mansehra 16-01-1973	M.Com.	SAS	04-05-1995	09-08-2012	29-11-2018	O/o DCA Mansehra
26	Mr. Lal Zada	Dir (L) 03-04-1972	M.A.	SAS	03-12-1995	09-08-2012	29-11-2018	O/o DAO Malakand
27	Mr Niamatullah	Karak 19-01-1962	M.A.	-	01 11-1983	20-11-2003	27-05-2019	O/o-DAO Karak
28	Mr Shahid Waqar	Kohat 24-05-1962	B.A.	-	01 11-1984	04 05-2005	14-11-2019	o/o DAO, Hangu
29	Mr. Ahmad Abbas	Kohat 21-04-1962	M.A.	-	28-04-1985	04-05-2005	14-11-2019	o/o DAO, Orakzai
30	Mr. Said Ali Shah	Mardan 19-02-1965	B.A.	SAS	30-09-1987	01-07-2008	14-11-2019	O/o DCA, Mardan
31	Mr Hussain Gul	Dir Lower 04-04-1962	M.A. & LLB	SAS	09-04-1990	09-08-2012	14-11-2019	A.O o/o of D.C Dir Lower on deputation basis
32	Mr. Muhammad Nasir Afridi	FR Kohat	MBA (Finance)	Merged Employee	-	-	04-05-2020	Law Department on deputation basis
33	Mr. Mohib-ur- Rehman	FR Kohat	MSC.(Hons)	Merged employee	-	-	04-05-2020	Zakat, Ushr Department on deputation basis
34	Mr. Najeeb Ullah	South Waziristan	-	Merged employ yee	-	-	04-05-2020	o/o DAO South Waziristan
35	Mrs. Badia Asghar	Nowshera	MSC (Hons)	Merged employee	-	-	04-05-2020	P&D Department on deputation basis

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SECTION OFFICER (E-I)

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Office of the
District Accounts Officer
Charsadda.
Phone & Fax: 091 9220142

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DATED: 05/02/2023.

NO.DAO/CHD/ADMN/2022-23/ 933

To,

The Director,
Treasuries & Accounts,
Khyber Pakhtunkhwa,
Peshawar.

Through Proper channel

Subject: APPEAL AGAINST THE FINAL SENIORITY LIST OF ASSISTANT/SUB TREASURY OFFICER (BPS-17) AS STOOD ON 31/12/2022.

R/Sir,

Kindly refer to the subject cited above.

Enclosed please find herewith an application of the undersigned which is in detail self-explanatory, please.


DISTRICT ACCOUNTS OFFICER
CHARSADDA


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DESPATCHED
Directorate of Treasuries & Accounts
Khyber Pakhtunkhwa, Peshawar.

Received. Amanullah

Dairy No. 373

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Annex

9

**BEFORE THE CHIEF SECRETARY, DEPARTMENT KHYBER
PAKHTUNKHWA PESHAWAR.**

**Subject:- Appeal against the tentative Seniority List of Assistant/Sub
Treasury Officers (BPS-17) dated 31-12-2022.**

Respectfully Submitted:-

That the appellant was appointed as Sub Accountant (BPS-11) on 28-10-1989 in Treasury Office Peshawar attached with Finance Department Khyber Pakhtunkhwa and was promoted as Assistant Treasury Officer (BPS-16) in June 2004 which post was later on upgraded to BPS-17 in March 2008 and was promoted as Assistant Treasury Officer (ATO) on 22-09-2015 on regular basis and presently the appellant is serving as District Accounts Officer Charsadda which is post of Basic Pay Scale 18.

It is pertinent to mention that as the appellant was promoted as ATO on 22-09-2015 regular basis while two other officers namely Yaqoob Ahmad and Jan Muhammad were appointed as Assistant Treasury Officer on 01-06-2015, i.e in the same calendar year but strangely both the mentioned officers have been placed senior to the appellant in violation of law and rules besides plethora of pronouncements of the superior Courts. **(Copies of Notification dated 22-09-2015 & Notification dated 01-06-2015 are enclosed as Annexure A & B).**

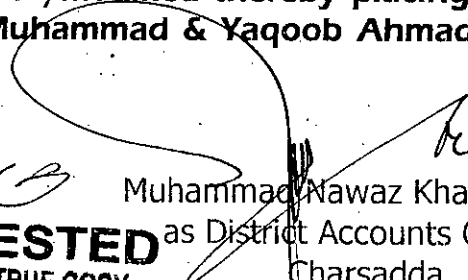
That according to the Seniority List dated 29-04-2022 the said officers have been placed senior to the appellant though the appellant was promoted while the said officers were appointed in the same calendar year thus according to the rules governing inter-se-Seniority, the appellant is required to be placed senior to them which principle is also upheld by the Supreme Court of the country in various judgments including 2011 SCMR 389 which has adversely affected the fundamental rights of the appellant, the appellant filed appeal against mentioned Tentative Seniority List on 17-10-2022 which was not responded. **(Copy of Tentative Seniority List dated: 29-04-2022 & departmental appeal is enclosed as Annexure C & D).**

That by now Final Seniority List Assistant/Sub Treasury Officers (BPS-17) of Treasury Establishment KP as stood on 31-12-2022 has been issued, received by appellant on 02-01-2023, wherein too both the mentioned officers have been placed senior to the appellant in violation of law and rules besides plethora of pronouncements of the superior Courts. **(Copy of Final Seniority List dated: 31-12-2022 is enclosed as Annexure E).**

It is therefore prayed that on acceptance of this appeal, the impugned Seniority List of Assistant/Sub Treasury Officers (BPS-17) dated 31-12-2022 may kindly be revised/modified thereby placing the appellant senior to the said Jan Muhammad & Yaqoob Ahmad with all back benefits.

Dated:-15/02/2023

**ATTESTED
TO BE TRUE COPY**


Muhammad Nawaz Khan, posted
as District Accounts Officer
Charsadda.

Cell # 0317 5827066

Directorate of Treasuries & Accounts
Khyber Pakhtunkhwa
Treasury Block, District Courts Compound, Behind Jamia Masjid,
Khyber Road, Peshawar.
Phone & Fax: 091-9211856

Annex

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No. 1-45/DT&A/22/S List 180
Dated Peshawar the 21-02-2023

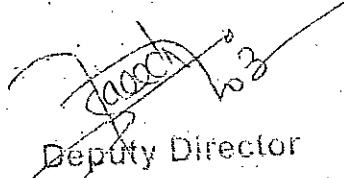
To

The District Accounts Officer,
Charsadda.

Subject: APPEAL AGAINST THE FINAL SENIORITY LIST OF
ASSISTANT/SUB TREASURY OFFICER (BPS-17) AS STOOD ON
31-12-2022.

I am directed to refer to your office letter No. DAO/CHD/ADMN/2022-23/933 dated 15-02-2023 on the subject noted above and to state that your previous appeal on the same issue has already been forwarded to the Govt. of Khyber Pakhtunkhwa, Finance Department vide letter No. 1-45/DT&A/22/TS List/163 dated 25-10-2022 please.


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Deputy Director
Treasuries & Accounts
Khyber Pakhtunkhwa

DIRECTOR-GENERAL INTELLIGENCE BUREAU, ISLAMABAD Versus
AMIR MUJAHID KHAN

October 13, 2009 — SUPREME COURT — Honorable Justice Ch. Ijaz
Ahmed — Hafiz S.A. Rehman, Haider Hussain — 2011 SCMR 389

No comments yet. Be the first to comment

JUDGMENT

CH. IJAZ AHMED, J.---We intend to decide the captioned appeals by one consolidated judgment having similar facts and law arising out of the common impugned judgment.

2. Respondents, namely, Amir Mujahid Khan, Shahid Hussain, Lt. Col.(R) M. Amjad, Major (R) Abdul Jabbar Tareen and Ghulam Hussain Khoso joined Intelligence Bureau in the year, 2005 as Deputy Directors (BPS-18) through Federal Public Service Commission on 1-8-2005. Prior to their appointment in the Intelligence Bureau all these respondents were serving in Pakistan Army/Inter Services Intelligence. A meeting of the Departmental Promotion Committee was convened on 18-8-2005 to fill the 37 vacant posts of Deputy Directors of departmental promotion quota in terms of general instructions regarding promotion contained in Serial No.147 at pages 220 and 221 of the ESTACODE, Edition 2000. Accordingly, 42 senior-most Assistant Directors were considered in accordance with their order of seniority in BPS-17., Private respondents Nos.2 to 4 and 6 to 14 (in C.A.No. 710 of 2009 and Nos.2 to 13 in C.As. Nos.711 to 714 of 2009) were promoted as Deputy Directors on acting charge basis against the vacant posts of promotion quota with immediate effect and until further orders vide Notification dated 18-8-2005. Respondents Malik Zafar Iqbal, Muhammad Afzal Shaikh, Abdul Aziz, Muhammad Nasir Mahmood, Arshad Jan, Hamidullah Khan, Saqlain Ahmad, Mukhtar Ahmad, Muhammad Aslam Khan, Fazal-ul-Haq, Nasir Habib, Ikram-ul-Haq, Saif-ur-


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Rehman, Ijaz Ali and Imtiaz Ali, Assistant Directors of Intelligence Bureau were promoted as Deputy Directors against the vacancies of promotion quota with immediate effect and until further orders vide notification dated 18-8-2005. Assistant Directors, who were promoted as Deputy Directors on acting charge basis vide notification dated 18-8-2005, were subsequently promoted as Deputy Directors against the vacancies of promotion quota with immediate effect and until further orders vide notification dated 11-8-2006. Government of Pakistan, Intelligence Bureau, Islamabad, issued provisional.

Government of Pakistan, Intelligence Bureau, Islamabad, issued provisional gradation list of Deputy Directors (BS-18) in the Intelligence Bureau vide memo. dated 26-5-2007. Aamir Mujahid Khan and other respondents being aggrieved filed representations against the provisional seniority/gradation list which were dismissed. They filed Service Appeals Nos.739(R)CS/2007, 740(R)CS/2007, 741(R)CS/2007, 742(R)CS/2007 and 16(Q)CS/2007 before the Federal Service Tribunal, Islamabad. The learned Service Tribunal accepted the appeals vide impugned judgment dated 31-12-2008. Present appellants being aggrieved filed petitions before this Court which were fixed on 4-6-2009 and the leave was granted in the following terms:--

"The question involved in these cases, is the seniority of three categories of employees vis-a-vis: the first category is of those employees who were promoted to grade 18 prior to the appointment of the direct recruitees; the second category is of the direct recruitees; and the third category is of the promotees who were promoted on acting charge basis as they were not qualified for the appointment like the first category on account of their incomplete length of service, which question assume more importance in view of the contention raised by the learned counsel for the respondents that even the earlier promotees were not eligible for promotion as their length of service required for grade 18 was not complete in grade 17 but their length of service in grade 16 was included, which under the law cannot be."

3. The learned counsel for the appellants (in C.As. Nos.710 to 714 of 2009) submit as under:-

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(i) The learned Service Tribunal erred in law to accept the appeals of the respondents by relying upon the instructions contained in Serial Nos.147, 148 and 151 published in ESTACODE, Edition 2000 at pages 220 to 227.

(ii) Service Tribunal also erred in law to accept the appeals of the respondents in violation of the general guidelines published in ESTACODE at pages 233 - 234.

(iii) Rule 8-B(2) was deleted vide S.R.O. No. 269(I)/2000 on 19-5-2000, therefore said instructions are no more in the field and not in consonance with the provisions of Civil Servants (Appointment, Promotion and Transfer) Rules, 1973.

(iv) The learned Service Tribunal had decided the cases in violation of Rule 3 of Civil Servants (Seniority) Rules, 1993.

(v) The impugned judgment is not

(v) The impugned judgment is not in consonance with the law laid down by this Court in various pronouncements.

They have relied upon the following judgments:--

(a) Muhammad Gulshan Khan's case (PLD 2003 SC 102), (b) Ch. Muhammad Saleem's case (1994 SCMR 517); (c) Fasihuddin Siddiqui's case 1998 SCMR 637 and (d) Luqman Zareen's case (2006 SCMR 1938).

(vi) Assistant directors who were promoted on acting charge basis vide notification dated 18-8-2005 were senior to the Assistant Directors who were promoted as Deputy Directors on permanent basis vide another notification dated 18-8-2005, therefore, cases of the respondents were considered by the Departmental Promotion Committee and were rightly deferred in terms of the afore-said instructions and rules on the subject.

4. Hafiz S.A. Rehman, Senior Advocate Supreme Court, appearing on behalf of the appellants (in C.As. Nos. 715 to 719 of 2009) adopted the arguments of the learned counsel of the appellants (in C.As. Nos.710 to 714 of 2009).


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5. Learned counsel for the respondents submit that competent authority with mala fide did not issue the seniority/gradation list for one and a half year without any justification till the Assistant Directors, Intelligence Bureau, who were promoted on acting charge basis, have acquired requisite length of service. Thereafter, they were appointed permanently as Deputy Directors; therefore, action of the appellants is without lawful authority. The learned Service Tribunal was justified to decide the cases in their favour. The impugned judgment is in accordance with the instructions and rules on the subject and law laid down by this Court in various pronouncements. He has relied upon Nazeer Ahmed's case 2001 SCMR 352=2001 PLC (C.S.) 394 and Muhammad Yousaf's case 1996 SCMR 1297. He further urges that their services in grade 16 and grade 17 were counted properly by the Service Tribunal in terms of instructions appearing at Serial No.148(3) of the ESTACODE, Edition 2000. Minutes of the meetings were also relied upon by the counsel of the private respondents and he supported the impugned judgment.

6. We have given our anxious consideration to the contentions of

6. We have given our anxious consideration to the contentions of the learned counsel of the parties and perused the record. It is better and appropriate to reproduce the relevant provisions of the Civil Servants Act, 1973, Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, Civil Servants (Seniority) Rules, 1993 and relevant paragraphs from ESTACODE along with relevant notifications to resolve the controversy between the parties:

Civil Servants Act, 1973.

8. Seniority.-- (1) For proper administration of a service, cadre of post, the appointing authority shall cause a seniority list of the members for the time being of such service, cadre or post to be prepared; but nothing herein contained shall be construed to confer any vested right to a particular seniority in such service, cadre or post, as the case may be.

(2) Subject to the provision of subsection (1), the seniority of a civil servant shall be reckoned in relation to other civil servants belonging to the same

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service or cadre, whether serving in the same department or office or not, as may be prescribed.

(3) Seniority on initial appointment to a service, cadre or post shall be determined as may be prescribed.

(4) 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 as in the lower post.

Civil Servants (Appointment, Promotion and Transfer) Rules, 1973

8.B. (1) Where appointing authority considers it to be in the public interest to fill a post reserved under the rules for departmental promotion and the most senior civil servant belonging to the cadre of service concerned who is otherwise eligible for promotion, does not possess the specified length of service the authority may appoint him to that post on acting charge basis.

(2) So long as a civil servant holds the acting charge appointment, a civil servant junior to him shall not be considered for regular promotion but may be appointed on acting charge basis to a higher post. Omitted with S.R.O. 269(I)/2000 dated 19-5-2000.

(3) In the case of a post in basic pay scales 17 to 22 and equivalent, reserved under the rules to be filled by initial appointment, where the appointing authority is satisfied that no suitable officer drawing pay in the basic pay scale in which the post exists is available in that category to fill the post and it is expedient to fill the post, it may appoint to that post on acting charge basis the most senior officer otherwise eligible for promotion in the organization, cadre or service, as the case may be, in excess of the promotion quota.

(4) Acting charge appointment shall be made against posts which are likely to fall vacant for a period of six months or more. Against vacancies occurring for


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less than six months, current charge appointment may be made according to the orders issued from time to time.

(5) Appointment on acting charge basis shall be made on the recommendations of the Departmental Promotion Committee or the Central Selection Board, as the case may be, save in the case of post in basic pay scale 22 and equivalent.

(6) Acting charge appointment shall not amount to appointment by promotion on regular basis for any purpose including seniority.

(7) Acting charge appointment shall not confer any vested right for regular promotion to the post held on acting charge basis.

Civil Servants (Seniority) Rules, 1993.

3. Seniority on promotion.---Seniority in a service cadre, or post to which a civil servant is promoted shall take effect from the date of regular promotion to that service cadre or post.

Provided that:--

(a) civil servants selected for promotion to higher posts on an earlier date shall be senior to those selected for such promotion on a later date;

(b) civil servants selected for promotion to higher posts in one batch shall, on their promotion to the higher post, retain their inter se seniority as in the lower post; and

(c) civil servants eligible for promotion who could not be considered for promotion in the original reference in circumstances beyond their control or whose case was deferred while their juniors were promoted to the higher post, shall, on promotion, without supersession, take their seniority with the original batch.

(6) Inter se seniority of civil servants appointed in the same calendar year.-- Persons appointed by transfer in a particular calendar year shall, as a class, be senior to those appointed by promotion or by initial appointment to such

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posts in that year, and persons promoted to higher posts in a particular calendar year shall, as a class, be senior to those appointed by initial appointment to such posts in that year.

ESTACODE Edition 2000

SI. No.147

Sequence in departmental promotions and direct recruitment.--

Reference.--Establishment Division Office Memorandum No.15/38/52-SEII, dated the 22nd June, 1953 (Annexure)

The replies received from the Ministries and Divisions on the suggestions contained in the above Memorandum have been considered and, in order to ensure that candidates rejected by the Federal Public Service Commission in open competition or selection should not be absorbed in vacancies meant for departmental quotas, it has been decided that the following procedure should be adopted in future:

(i) Where a cadre has definite quotas reserved for departmental promotions and direct recruitment, promotions against the departmental quota, should be made first and the posts reserved for direct recruitment filled later. These orders, however, will have no effect on those cadres where recruitment is made solely by direct recruitment or where all appointments are made only by promotion;

(ii) Necessary provision regarding the above should be made in all recruitment rules already framed or framed hereafter; and

(iii) In the case of isolated posts, a roster should be maintained in each Ministry and Division to ensure the observance of the prescribed percentage for departmental promotions and direct recruitment.

SI. No.148

Minimum length of service for eligibility for promotions for various grades.---
In pursuance of rule 8-A of the Civil Servants (Appointment, Promotion and

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Transfer) Rules, 1973 and in supersession of the instructions laid down in the Establishment Division's O.M.No.1/9/80 R.II(A), dated the 12th January, 1981, (Annexure), the President is pleased to decide that the minimum length of service for promotion to various grades shall be as follows:

For Grade 18

5 years in Grade-17

For Grade 19

12 years in Grade-17 and above

For Grade 20

For Grade 20

17 years in Grade 17 and above

For Grade 21

22 years in grade 17 and above

Provided that:--

(i) Where initial appointment of a person not being a person in government service takes place in a post in BPS-18, 19 or 20 the length of service specified in the Office Memorandum shall be reduced by the following periods:--

First appointment in

Reduced by

Grade-18

5 years

Grade-19

12 years

Grade-20

17 years

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(ii) Where initial appointment or a person already in government service takes place, on recommendations of the Federal Public Service Commission, in a post in BPS-18, 19 or 20, the length of service specified in this Office Memorandum shall be reduced by the periods specified in proviso (i);

(iii) Where first appointment of a person other than a person covered by proviso (ii) was made to government service in BPS-16 or below, one half of the service in BPS-16 and one fourth in BPS-15 and below may be counted as service in BPS-17 for computing length of service for the purpose of promotion only.

Guidelines for Departmental Promotion Committees/Central Selection Boards

1. General

1. The DPC/CSB shall consider the cases of eligible civil servants in order of seniority and either:

(c)(iv) the civil servant, does not possess the requisite length of service; or

7. It is settled proposition of law that department promotees would be regarded senior to direct recruits of the same year as per rule 6 of Seniority Rules, 1993. There are several pronouncements of this Court to this effect including the following judgments:--

(i) Fasihuddin Siddiqui's case (1998 SCMR 637).

(ii) Muhammad Yousaf's case (1996 SCMR 1297).

(iii) Rustam Khan's case (1994 SCMR 1957).

It is also settled principle of law that seniority is not vested right as law laid down by this Court in the following judgments:--

(i) Muhammad Zakir Khan's case (2004 SCMR 497).

(ii) Jehangir Mirza's case (PLD 1990 SC 1013).

It is also settled principle of law that "seniority" in the grade to which a civil servant is promoted is to take effect from the date of regular appointment to

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a post in the grade. It is also settled principle of law qua the question of conferring seniority with retrospective effect is concerned that cannot be done unless such right was established. There are several pronouncements of this court that regularization of seniority from the retrospective date is not permitted and is beyond the power of Government. See Wajahat Hussain's case (PLD 1991 SC 82), Sh. Anwar Hussain's case (1985 SCMR 1201), Muhammad Yousaf's case (1996 SCMR 1297) and Nazeer Ahmed's case (2001 SCMR 352=2001 PLC(C.S.) 394). It is also settled principle of law that civil servants who were senior in lower grade would retain inter se seniority in higher grade in case they were promoted in a batch. It is an admitted fact that respondents Nos.2 to 4 and 6 to 14 (in C.A.No. 710 of 2009 and Nos.2 to 13 in C.A.Nos.711 to 714 of 2009) were considered for promotion by the DPC in its meeting held on 18-8-2005 who were not promoted as their length of service was less than 5 years which was the condition precedent for their promotion in Grade 18 meaning thereby that they are not eligible for promotion whereas remaining private respondents were promoted by the DPC vide separate notification of the said date as their length of service and other conditions/requirements of the criteria were fulfilled. Therefore, respondents who were not deferred but were appointed on acting charge basis. It is an admitted fact that appellants/competent authority had not circulated seniority list till the length of service of the afore-said respondents was completed as required under the law. They were promoted subsequently on permanent basis vide notification dated 11-8-2006 from the date of their assuming charge of the post of Deputy Director on acting charge basis. The sole question for our determination is that in such situation whether these respondents regained original seniority on subsequent promotion so long the order of the DPC dated 18-8-2005 remains in the field. This fact brings the case of the afore-said respondents that they were considered and were not promoted on permanent basis due to lack of requisite length of service, therefore, they could not be granted seniority from the original date of their consideration for promotion. See Abdul Ghani Chaudhry's case 1998 PLC (C.S.) 1278. It is pertinent to mention here that respondents who were

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It is pertinent to mention here that respondents who were promoted on permanent basis as they had requisite length of service in their grade as mentioned above. Therefore respondents who had filed appeals before the Federal Service Tribunal, as they were fresh appointees through Federal Public Service Commission, therefore, they are not senior to respondents who were promoted on permanent basis in the same year on 18-8-2005 in terms of the law laid down by this Court mentioned hereinabove read with rule 6 of the Seniority Rules, 1993 whereas respondents who were considered in the year 2005 but they were not deferred as they were not eligible for promotion and in fact as mentioned above they were promoted and appointed as Deputy Director on acting charge basis, therefore, they could not be senior to the fresh appointees as they were not promoted in the same year. It is no doubt that if the promotion of a civil servant is deferred without any fault on his part he can be given promotion from ante date when their juniors were promoted. See Muhammad Jan Marwat's case (1997 PLC (C.S.) 512). It is settled principle of law that each and every case is to be decided on its own peculiar circumstances and facts as law laid down by this court' in Trustees of the Port of Karachi's case (1984 SCMR 2213). The case of the respondents, who were posted/appointed on acting charge basis, is entirely on different footing as mentioned above as they were considered and promoted on current charge basis because they were not eligible for promotion due to lack of length of service. 8. In view of what has been discussed above appeals are partly accepted to the extent of respondents who were not promoted on permanent basis but were appointed on acting charge basis and partly dismissed to the extent of respondents who were promoted on permanent basis. In simple word fresh appointees are juniors to the departmental appointees who were promoted in the same year by DPC in its meeting held on 18-8-2005 whereas they were senior to the promotees who were promoted in the subsequent year, 2006. It is also settled principle of law that inter se seniority of the promotees cannot be decided in these proceedings on well known principle that their inter se seniority is not in issue before us, therefore, issue qua their inter se seniority cannot be decided in collateral proceedings as law laid down by this court in Sabir Shah's case (PLD 1994 SC 738).

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9. In view of what has been discussed above the appeals are disposed of in the afore-said terms.

M.H./D-10/SC Order accordingly.

Discussion

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WAKALAT NAMA

IN THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

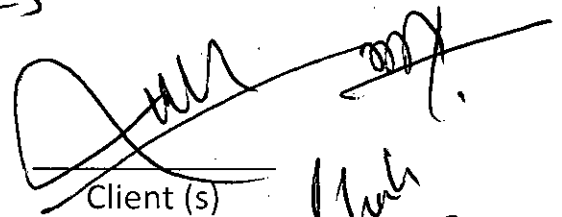
M. Nawaz KhanPetitioner/Appellant.
VERSUS

Govt of K.P govters..... Respondents/Defendants.

We the undersigned, do hereby appoint and constitute,
BASEER AHMED SHAH Advocate To act, appear and plead
in the above-mentioned matter and to withdraw or compromise the said
matter or submit to arbitration any differences or dispute that shall arise
touching or in any manner relating to the said matter and to receive money
and grant receipts therefore and to do all other acts and things which may
be necessary to be done for the progress and the course of the prosecution
of the said matter.

1. To draft and sign files at necessary pleadings, applications, objections, affidavits or other documents as shall be deemed necessary and advisable for the prosecution of the said matter at all its stages.
2. To employ any other Legal Practitioner, authorizing him to exercise the power as conferred on the undersigned Advocate, wherever he may think fit to do so.

AND we hereby agree to ratify whatever the Advocate or his substitute shall do in the above matter. I/We also hereby agree not to hold the Advocate or his substitute responsible for the result of the said matter in consequence of his absence from the Court when the said matter is called up for hearing. I/We further hereby agree that in the event for the whole or any part of the fee to be paid to the Advocate remaining unpaid, he shall be entitled to withdraw from the above matter. Received by me on 24/5/2023.


Client (s)

BASEER AHMED SHAH

&

IBAD UR REHMAN KHALIL
Advocates High Court
Peshawar

