

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**  
**FAREEHA PAUL ... MEMBER (Executive)**

*Service Appeal No.764/2018*

Date of presentation of appeal .....25.05.2018  
Dates of Hearing.....25.05.2023  
Date of Decision.....25.05.2023

**Ihsan Ul Haq, Patwari, District Peshawar.....(Appellant)**

Versus

1. **Government of Khyber Pakhtunkhwa** through Senior Member Board of Revenue.
2. **Board of Revenue** through Senior Member Board of Revenue.
3. **Commissioner Peshawar Division, Peshawar.**
4. **Secretary, Board of Revenue.**
5. **Deputy Commissioner, Peshawar.**
6. **Assistant Commissioner, Peshawar.**
7. **Mian Noor Ul Haq, Patwari Peshawar** through Deputy Commissioner, Peshawar.
8. **Fazal Rabbi, Patwari Peshawar** through Deputy Commissioner, Peshawar.
9. **Gul Zar Ahmad, Patwari, Peshawar** through Deputy Commissioner, Peshawar.
10. **Riaz Khan, Patwari, Peshawar** through Deputy Commissioner, Peshawar.
11. **Salah Ud Din, Patwari, Peshawar** through Deputy Commissioner, Peshawar.
12. **Qaiser Ud Din, Patwari, Peshawar** through Deputy Commissioner, Peshawar.
13. **Mir Zaman Shah, Patwari, Peshawar** through Deputy Commissioner, Peshawar.
14. **Mian Sadiq Ali Shah, Girdawar (OPS) Gulbela.**

.....(Respondents)

Present:

Mr. Javed Iqbal Gulbela, Advocate.....For appellant.

Mr. Fazal Shah Mohmand,  
Additional Advocate General.....For the official respondents.



Nemo.....For the private respondents

**SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST THE IMPUGNED PLACEMENT OF THE APPELLANT IN THE FINAL SENIORITY LIST WHEREBY THE APPELLANT HAS BEEN KEPT DEPRIVED OF HIS DUE SENIORITY AND FURTHER PROMOTIONS.**

**Service Appeal No.718/2020**

Date of presentation of appeal .....29.01.2020

Dates of Hearing.....25.05.2023

Date of Decision.....25.05.2023

**Ihsan Ul Haq S/O Noor Ul Haq R/O Professor Colony, House No.80-A Street No.3 Near Agriculture University Peshawar.....(Appellant)**

Versus

1. **Board of Revenue** Khyber Pakhtunkhwa through Senior Member Board of Revenue.
2. **Senior Member Board of Revenue**, Khyber Pakhtunkhwa.
3. **Commissioner Peshawar Division**, Peshawar.
4. **Deputy Commissioner**, Peshawar.....(**Respondents**)

Present:

Mr. Javed Iqbal Gulbela, Advocate.....For appellant.

Mr. Fazal Shah Mohmand,  
Additional Advocate General.....For respondents.

**SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED OFFICE ORDER NO. 2814/DC(P)/DK DATED 07.10.2019 OF THE OFFICE OF THE DEPUTY COMMISSIONER PESHAWAR, WHEREBY THE APPELLANT WAS PROMOTED AS KANUNGO (BPS-11) WITH IMMEDIATE EFFECT, INSTEAD OF RETROSPECTIVE WITH EFFECT FROM 19.02.2016 WITH ALL BACK BENEFITS AND TO PLACE THE APPELLANT WITH ALL BACK BENEFITS AND TO PLACE THE APPELLANT ON HIS DUE PLACEMENT ON SENIORITY LIST.**

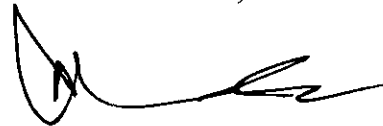
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## **CONSOLIDATED JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** Through this single judgment this appeal and the connected service appeal No.718/2020 titled "Ihsan Ul Haq versus Board of Revenue Khyber Pakhtunkhwa through Senior Member Board of Revenue and others" are decided as both the appeals have been filed by the same appellant and can thus conveniently be decided together.

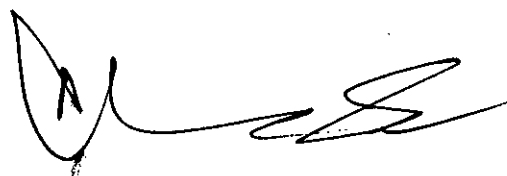
2. According to the facts gathered from the record in service appeal No.764/2018, the appellant joined the Revenue Department Peshawar as Patwari Halqa in the year 2000 after undergoing the training etc and since then has been performing his duties in the same capacity; that the recruitment procedure was provided in the manual of the land record, whereby those, who aspired for becoming patwaris were supposed to move application and those were accordingly placed serial wise. That thereafter the candidates were sent for training as per seniority list, maintained for that purpose; that on getting training the candidates were given their respective serial number in the register patwaris; that whenever the post became vacant, the recruitment was to be made from the patwar Register as per Seniority position and anyone who was senior in the register Patwari was also given the seniority, even after getting inducted as Patwaris at the same sequence and seniority position was kept intact for further promotions to the higher grades/posts; that the appellant was placed ahead of the private respondents in the register Patwari although got appointed on 17.05.2000; that the seniority list was issued on 31.12.2013, wherein the appellant was placed at the correct and his actual seniority at serial No.48 while the private respondents were placed at their respective position i.e. at serial Nos. 49,50,52,53,54,57 and 59; that besides the above, when the minutes



of the Departmental Promotion Committee were issued on 19.02.2016, the same seniority list was circulated which further strengthened the stance of the appellant that the inter-se seniority of the Patwaris were to be determined strictly as per register Patwar pass persons; that that was the backdrop when the impugned alleged final seniority list dated 30.09.2017 was issued, wherein the juniors of the appellant were placed at serial No. 18,20,21,23,25 and 26 while the appellant was relegated in seniority and placed below the private respondents at serial No.28; that feeling aggrieved, the appellant filed departmental appeal, which was not responded within the statutory period of ninety days, hence, the instant service appeal.

3. Facts of the connected service appeal No.718/2020 are the same with the addition that one Telawat Ur Rehman Patwari was appointed with the appellant on the same date i.e. on 17.05.2000 and was junior in age then the appellant, therefore, he ought to have been placed below the appellant in the seniority list; that the said Telawat Ur Rehman was promoted to the post of Girdawar vide DPC/promotion order dated 19.02.2016 while the appellant was subsequently promoted to the post of Girdawar on 07.10.2019 with immediate effect instead of retrospective effect w.e.f. 19.02.2016; that the appellant preferred departmental appeal against the impugned promotion order, which was not responded within the statutory period, hence, the instant service appeal.

4. On receipt of appeal No.764/2018 and admission to full hearing, the respondents were summoned but only official respondents on putting appearance, contested the appeal by filing written reply raising therein numerous legal and



factual objections and the private respondents No.7 to 14 were placed ex-parte. The defence setup was a total denial of the claim of the appellant.

5. On receipt of the appeal No.718/2020 and admission to full hearing, the respondents were summoned but despite numerous opportunities given to them to file reply, they failed to submit the same. On 18.01.2022 last chance was given to the respondents for submission of written reply failing which their right to file written reply/comments was to be struck off by virtue of that order.

6. We have heard learned counsel for the appellants and learned Additional Advocate General for the respondents.

7. As to the seniority appeal of the appellant we found that the claim of the appellant has been admitted by the official respondents in para-6 of the reply on facts in the following manner:

*"The position of the appellant in the seniority list of 2013 was the same as claimed, but after the amendment in 2016 the situation has been changed altogether and hence the new seniority list was issued"*

8. The above paragraph of the reply shows that before amendments in the rules in the year 2016 not only the appellant was on the rolls of the respondent-department but position of the appellant in the seniority list of 2013 of Patwaris was the same as he is claiming but the stance of the respondents is that after making amendments in the appointment rules of Patwaris vide Board of Revenue Notification No.Estt:I/Amendment/38383-38423 dated 25.11.2016, the situation had been



changed altogether and new seniority list was issued. The amendment in the earlier rules made vide the Notification dated 25.11.2016 is also reproduced below:-

*"In the appendix, against serial No.8, in column No.7 for the existing entry, the following shall be substituted, namely:*

*"By initial recruitment from amongst the patwar passed candidates entered in the patwar candidates register of Tehsil or District concerned on the basis of test and interview to be conducted after advertising the post."*

9. Apart from the fact that amendment in the rules has not been given retrospective effect as is evident from the above amendment because the rules cannot be applied retrospectively unless such retrospective effect is provided in the law under which these are framed/amended and that too could be done when the rules themselves expressly provide that the amendment would apply retrospectively. Reliance is placed on 2023 SCMR 111 titled *"Controller General of accounts, Government of Pakistan, Islamabad and others versus Abdul Waheed and others"* wherein the august Supreme Court of Pakistan was pleased to have held in para-6 as under (relevant part):-

*"It is a well-settled principle of interpretation of statutes that where a statute affects a substantive right, it operates prospectively unless, by express enactment or necessary intendment, retrospective operation has been given. The insertion or deletion of any provision in the rules or the law, if merely procedural in nature would apply retrospectively but not if it affects substantial rights which already stood accrued at the time when the un-amended rule or provision was in vogue. [Reference can be made to Zakaria H.A. Sattar Bilwani and another v. Inspecting Additional Commissioner of Wealth Tax, Range-II, Karachi (2003 SCMR 271), Government*

*of KPK and others v. Khalid Mehmood (2012 SCMR 619) and Senior Member BOR and others v. Sardar Bakhsh Bhutta and another (2012 SCMR 864)]."*

10. Similarly in 2023 PLC (CS) 408 titled "*Salah Ud Din vs Government of Khyber Pakhtunkhwa through Secretary Revenue and Estate and 4 others*", the Hon'ble Peshawar High Court, Peshawar, while dealing with the case of a Patwari has discussed the above amendments (of 25.11.2016), especially the retrospective effect of the same. The relevant paragraphs of the judgement are reproduced as under:

*"4. The foundation of petitioner's case is the judgment of this Court in W.P No. 931-B dated 17.01.2018 and the provisions of Para 3.11 of Land Record Manual. In the former, it appears the learned counsel for the petitioner in the instant case was representing the petitioner of referred to above petition and even at that time this Court was assisted with reference to Para No 3.11 of the Land Record Manual because sub-para (2) of the para 3.11 was reproduced in the judgment of this Court. However, Paras Nos.3.11 and 3.12 have been omitted vide Circular No.6/89, Land Record Manual, dated 18th October, 1989, since then it is no more the part of the book. Thus, neither at the time of hearing of the referred writ petition nor today the learned counsel for petitioner is assisting the Court properly. When a particular para does not exist for almost three decades then how could reference of the same be given and prayer could be sought on the basis of a provision which has already been omitted. Secondly, the larger bench was constituted in order to resolve the controversy and this Court in Writ Petition No.129/2012,*

*has held that appointment of Patwari(s) shall be made after conducting test and interview and dispatching the Merit List. Similarly, in Writ Petition No.278 of 2012 (D.I. Khan Bench) issued direction that such appointments shall be made according to the position and seniority in the Register of Patwari Candidates. Thus, the Assistant Secretary Establishment in a letter, addressed to the Registrar of this Court, requested that the controversy arising out of the two judgments may be cleared, upon which the Honorable Chief Justice (Mr. Justice Waqar Ahmad Seth, as then he was) has constituted a Larger Bench for determination as to whether the appointment of Patwari is to be made in accordance with Paragraph 3.6 of Land Record Manual or otherwise. The Larger Bench, vide its judgment dated 04.02.2015, rendered in Writ Petition No. 3398 of 2014, decided that "till the amendment in the rules, respondents are bound to make appointments in accordance with the existing rules and policy which governs the appointment of Patwari". (Underlined and bold by us for emphasis).*

5. *Moreover, after the decision of larger bench the new amendments in the rules were notified on 25th of November 2016 in the official Gazette by the Khyber Pakhtunkhwa, Revenue and Estate Department, in consultation with the Establishment and Finance Department, Peshawar, regarding the method of recruitment, qualifications and other conditions as specified in columns Nos. 3 to 7 of the Appendix to the said notification, whereby serial No.8 pertains to Patwari which reads as under;-*





1	2	3	4	5
8	Patwari-BPS-5	District Officer (Revenue and Estate)/ Collector	Intermediate or equivalent qualification, who have passed the Patwari Examination having one year diploma in information technology from any institution recognized by Board of Technical education	18 to 30

6	7
By initial recruitment	By initial appointment from amongst the Patwari passed candidates entered in Register maintained by the District Collector of the District concerned having one year diploma in information technology from any institution recognized by Board of Technical education. The condition of diploma will be applicable after three years from the date of issuance of Notification

*Secretary to Government of KPK, Revenue and Estate Department*

6. In the background of rules, it must be mentioned that rules can be amended in consonance with Chapter No.VI of Establishment Code Khyber Pakhtunkhwa, Edition, 2011 "(Estacode)" which provides the Constitution of Standing Service Rules Committee, which reads as;

*Constitution of Standing Service Rules Committee.*

Under the provision of Rule 3(2) of KPK Civil Servant (Appointment, Promotion and Transfer) Rules, 1989, the Provincial Government is pleased to consider it with immediate effect and in supersession of services and General Administration Department Notification No. SOR-II (S&GAD) 2 (a) / 97 dated 12th September, 2001, the Standing Service Rules Committee with the following composition;

The formation of the committee was as under:



1.	Administrative Secretary concerned	Chairman
2.	Additional Secretary (Regulation) E&A Department	Member
3.	Additional Secretary Finance Department	Member
4.	Additional Secretary Law Department	Member
5.	Head of attached Department concerned	Member
6.	Deputy Secretary (Admn) of the Department concerned	Member/Secretary

7. Consequently, in the light of Standing Service Rules Committee

(SSRC), the Government of Khyber Pakhtunkhwa, Revenue and Estate Department, on 26th of December 2008, issued a notification, which was published in the official Gazette Part-III on 4th February, 2009, which reads as;

"No. 32102-61/Admn:/135/SSRC. - In pursuance of the provisions contained in sub-rule (2) of rule 3 of the North West Frontier Province Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 read with the Cabinet Division Notification No. SRO 457(I)/ 2001 dated 28th June, 2001 and in supersession of all previous rules issued in this behalf, the Revenue and Estate Department, in consultation with the Establishment and the Finance Department, hereby lays down the method of recruitment, qualification and other conditions specified in columns 3 to 7 of the Appendix to this Notification and applicable to posts born on the cadre strength of Revenue and Estate Department specified in column 2 of the said appendix"

8. It may not be out of context that earlier to the amendments, the Patwaris were to be appointed in BPS-5, however, the Board of Revenue, Government of Khyber Pakhtunkhwa, upgraded the post of Patwari from BPS-5 to 7 and, thereafter, from BPS-7 to 9. Before framing of the Rules, the basic qualification for Patwari was matric with Patwar passed course but consequent upon the upgradation of post

*from BPS-5 to 7 and, thereafter, from BPS-7 to 9 the qualification was accordingly enhanced i.e., with computer literate. The rules, thereafter, were amended to meet the object of the computer operating system and to update the record with regard to revenue administration with current necessities of the post, as such, on the basis these changes in the rules the amended notification was issued/notified which for convenience is reproduced as under:*

*"By initial recruitment from amongst the Patwar passed candidates entered in the Patwar Candidates Register of Tehsil or District on the basis of Test and Interview to be conducted after advertising the posts."*

*9. It is pertinent to mention that new amendments in the rules notified on 25th of November 2016, was assailed in two Writ Petitions No.4785-P of 2016 and No.1894-P of 2017, but both the petitions were dismissed on 30.10.2018. It is also undisputed that in Writ Petition No.4785, decided on 30.10.2018, a Review Petition No.247-P of 2018 was filed, which was decided on 22.01.2019, the operative part of which is reproduced as under:*

*"4. The issue decided by this Court in Writ Petition No. 4785 of 2015 was that till now rules are not framed by the Government, the respondent / government was bound to make appointment of Patwari is in regard to the old policy, so inadvertently the writ petitions were dismissed. As such the instant petition is disposed of in term that the last paragraph of the impugned judgment is rectified as "consequently, both the writ petitions referred above are disposed of accordingly."*

*10. In fact, on 25.11.2016, notification was issued, thus, on the date of decision in review petition i.e., on 22.01.2019 amendment was in the field. So, neither through Writ Petition*

*nor vide Review, the amendments in the rule were declared to be unconstitutional, illegal, without jurisdiction and against the statute.*

*11. Likewise, another significant aspect of the matter is as to whether the amendments in appendix at serial No. 8 column No.7 are inconsistent, incoherent, discordant or in conflict with Para 3.6 of Land Record Manual. For ready reference, Para 3.6 is reproduced as under;*

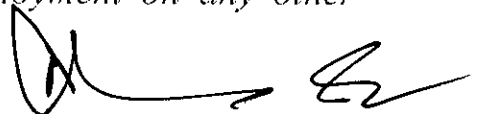
*"3.6. List of Patwar Pass persons:---*

*1) For each Sub-Division, a list of all Patwar Pass persons shall be maintained by the Sub-Divisional Collector/ Political Assistant in Form P-1 given in Appendix "G" with a view to have ready information about the availability of eligible persons in the Sub-Division to facilitate filling up the vacancies. However, the appointment of Patwaris shall be made strictly in accordance with Service Rules and the Recruitment Policy as may be applicable at the relevant time.*

*2) Maximum Education qualification for the Patwari is F.A/ Intermediate. The name of only those persons shall be enrolled, who are bona fide residents of the concerned Sub-Division.*

*3) The name of the eligible persons shall be added to the list and when the result of the Patwar Examination is received and no eligible person shall be refused enrollment*

*4) The aforesaid list shall be verified and up-dated by the Collector concerned at least once in a year so as to exclude the names of those, who have become un-available on account of death, migration, employment on any other post, etc."*



*12. As we have seen that Sub-Para (1) of Para 3.6 of Land Record Manual provides that "the appointment of Patwari*

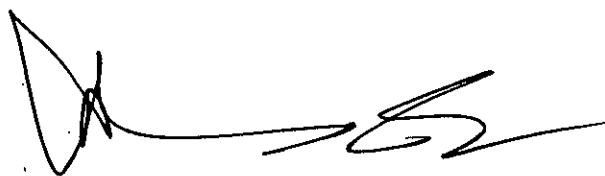
*shall be made strictly in accordance with service rules and the recruitment policy, as may be applicable at relevant time", (Underlined and bold by us for emphasis). So, now the service rules and the recruitment policy explicitly provide that it shall be on the basis of Test and Interview to be conducted after advertising the post, so, there is no inconsistency or conflict in between the Land Record Manual and the service rules for the recruitment of Patwari. The amendment in the rules for recruitment of Patwaris was after the judgment of the larger bench dated 04.02.2015 which is neither in conflict with the any provision of law nor is inconsistency with the provisions of Land Record Manual. The contentions of the learned counsel for petitioner are misconceived and without any substance.*

*13. In addition to the above, the impugned notification was issued by the Government of Khyber Pakhtunkhwa, Revenue and Estate Department, on 25.11.2016, thus, it would have only prospective effect, on the basis of notification applications were invited for the post of Patwari to be filled in accordance with the criteria as provided in service rules for the recruitment of Patwari in the Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion and Transfer) Rules, 1989, the effect of the notification was never intended by the respondents to have retrospective in nature and it was not even disputed by the respondents. After issuance of notification the appointment of Patwari shall be made in accordance with the amended rules which are in consonance with Paragraph 3.6 of the Land Record Manual, the effect shall be given from the date of publication of Notification and not from the date of passing of examination of Patwar course accordingly, the arguments of learned counsel for the petitioner pertaining to section 6 of the General Clauses Act, 1956 and Article 264 of the Constitution have also no force.*



*The petitioner at the best may compete with others candidates through proper test and interview as and when the posts are advertised where his prayer for age relaxation shall be considered in accordance with the law.*

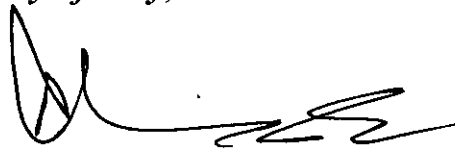
11. In paragraph-13 of the above judgment, the hon'ble Peshawar High Court, Peshawar has also held that "the amendment notification dated 25.11.2016 would have only prospective effect and that the effect of the notification was never intended by the respondents to have retrospective in nature and it was not even disputed by the respondents. The judgment further said that after issuance of notification, the appointment of the Patwari should be made in accordance with the amended rules which were inconsonance with paragraph 13.6 of the Land Records Manual, the effect shall be given from the date of publication of notification and not from the date of passing examination of patwar course accordingly. The retrospective effect of the amended rules of 2016 has been settled once before by the honourable Peshawar High Court in the above judgment and thus we would also not maintain the contention of the respondents that with the amendment in the rules, the position of the appellant would change. Also because there is nothing in the amended rules of 2016 regarding such contention of the respondents that with the notifying amended rules the appellant would relegate in his already fixed seniority. The reply/comments are also totally silent as how the appellant would be relegated in his seniority on issuance/notifying the amendment rules, 2016. Nothing else was urged by the respondents regarding the reason of disturbing the seniority of the appellant, which he had in the year 2013. We are thus constrained to upset the impugned seniority list.



12. Therefore, when the respondents are themselves saying that before amendment in the rules in the year 2016, the position of the appellant, in the seniority list, as claimed by him, was correct, we direct that the seniority of the appellant shall not be disturbed after notifying the amendments in the rules and he be assigned his correct seniority as he was having before revising the seniority list after amendment in the rules in 2016.

13. As to the connected appeal No.718/2020 of the appellant vide which he is seeking antedation of promotion w.e.f. 19.12.2016, the learned counsel for the appellant says that the result of the seniority appeal would also determine the fate of the connected appeal. So we dispose of the connected appeal with the direction to the competent authority to consider the prayer made in the connected appeal subject to his otherwise entitlement for such consideration and as regard the seniority issue that has been resolved in this appeal as above. Costs shall follow the event. Consign.

14. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 25<sup>th</sup> day of May, 2023.*



**KALIM ARSHAD KHAN**  
Chairman



**FARZEHA PAUL**  
Member (Executive)

\*Adnan Shah, PA\*