

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

**BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN
M. AKBAR KHAN ... MEMBER (Executive)**

Service Appeal No. 7898/2021

Date of presentation of Appeal.....10.12.2021

Date of Hearing..... 29.05.2023


Date of Decision.....29.05.2023

**Abdul Sattar S/O Nisar Muhammad Forest Ranger (BPS-16) Forestry,
Environment & Wildlife Department, Civil Secretariat Peshawar.**

.....**Appellant**

Versus

1. **The Province of Khyber Pakhtunkhwa** through Chief Secretary, Civil Secretariat, 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.
4. **Umar Khetab (Forest Ranger BPS-16) SDFO Donga Gali Divisional Forest Officer Gallies Abbottabad.**
5. **Junaid Alam (Forest Ranger BPS-16) SDFO Donga Gali Divisional Forest Officer Gallies Abbottabad.**
6. **Muhammad Ilyas (Forest Ranger BPS-16) RFO, Divisional Forest Officer Khar Bajaur.**
7. **Sher Aman Ullah (Forest Ranger BPS-16), RFO, Divisional Forest Officer Lower Mohmand.**
8. **Sakhi Jan (Forest Ranger BPS-16) RFO F.R Tank Range, Divisional Forest Officer South Waziristan.**
9. **Nadar Khan (Forest Ranger BPS-16) Kalkot Range Divisional Forest Officer Dir Kohistan.**
10. **Syed Abdul Wahid Bacha (Forest Ranger BPS-16) RFO Chakdara, Divisional Forest Officer Lower Dir.**
11. **Muhammad Yakoob (Forest Ranger BPS-16) RFO Wanna, Divisional Forest Officer South Waziristan.**
12. **Hammed Ullah (Forest Ranger BPS-16) SDFO Sheikh Buddin, Divisional Forest Officer, D.I.Khan.**
13. **Munawar Khan (Forest Ranger BPS-16) RFO Paroa, Divisional Forest Officer D.I.Khan.**
14. **Rahim Khan (Forest Ranger BPS-16) RFO Khyber, Divisional Forest Officer Khyber.**
15. **Mir Afzal (Forest Ranger BPS-16) SDFO Hangu, Divisional Forest Officer Kohat.**



16. **Wasil Khan (Forest Ranger BPS-16) RFO Batkhela, Divisional Forest Officer Malakand.**

17. **Muqaid Khan (Forest Ranger BPS-16) SDFO Timergara, Divisional Forest Officer Lower Dir.**

.....(Respondents)

Present:

Mr. Imran Khan,
Advocate.....For the appellant.

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

Nemo for the private respondents.....Ex-parte.

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 FOR CORRECTION OF FINAL SENIORITY LIST OF FOREST RANGER BPS-16 DATED 09.09.2021 AS PER MERIT ASSIGNED BY KHYBER PAKHTUNKHWA PUBLIC SERVICE COMMISSION, AGAINST WHICH THE APPELLANT FILED DEPARTMENTAL APPEAL ON 17.09.2021, WHICH WAS TURNDOWN/REJECTED BY THE RESPONDENTS VIDE REJECTION ORDER DATED 17.11.2021.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Facts of the case are that the appellant was recommended as Forest Ranger (BPS-16) by the Khyber Pakhtunkhwa Public Service Commission on 21.07.2017 and the inter-se seniority list was issued by the Khyber Pakhtunkhwa Public Service Commission, where the appellant stood at serial No. 5; that on the recommendation of the Khyber Pakhtunkhwa Public Service Commission, the respondent/department nominated the appellant for mandatory training, and after completion of training, the appellant was appointed on the post of Forest Ranger (BPs-16), vide office order dated 13.01.2020; that the respondent/department issued/circulated tentative seniority list of the Forest

Ranger (BPS-16), wherein the name of the appellant was placed at serial No.24 instead of serial No. 10; that the appellant being aggrieved, submitted an application and raised objection on the tentative seniority list; that thereafter the respondent/department issued/circulated a Final Seniority list wherein the name of the appellant was still at serial No. 24 instead of serial No.10 ignoring the inter-se seniority issued by the Khyber Pakhtunkhwa Public Service Commission; that feeling aggrieved, the appellant preferred departmental appeal on 17.09.2021 which was rejected on 17.11.2021, hence, the instant service appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Official respondents No.1 to 3 put appearance and contested the appeal by filing their respective written replies raising therein numerous legal and factual objections while the private respondents No. 4 to 17 were placed ex-parte. The defense setup was a total denial of the claim of the appellant.

3. We have heard learned counsel for the appellant and learned Additional Advocate General for the respondents.

4. Learned counsel for appellant contended that the impugned seniority list is against the law and rules on the subject, the department had never taken into consideration the settled principles governing seniority/promotion before issuance of the final seniority list. He further argued that the appellant



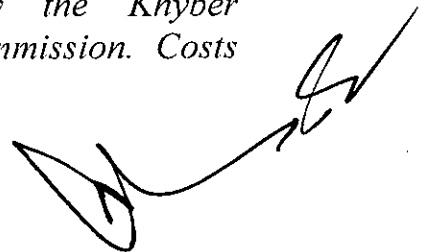
has not been treated according to law and rules. Lastly, he submitted that the instant appeal might be accepted.

5. Learned Additional Advocate General argued that the appellant has been treated in accordance with law and rules. He further argued that according to service rules for the post of Range Forest Officer, the appellant having no B.Sc Forestry Degree before issuance of his appointment notification, he was deputed for two years course for leading B.Sc Degree in Forestry at Pakistan Forest Institute and subsequently the appellant accepted all the terms and conditions available in the advertisement. On successful completion of B.Sc Degree from Pakistan Forest Institute, the appellant alongwith his other colleagues were appointed to the post of Forest Ranger (BPS-16) w.e.f. 13.01.2020. According to Rule-17(2) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, seniority of a civil servant shall be determined from the date of his regular appointment. He requested that the appeal might be dismissed.

6. This Tribunal in its earlier judgment in service appeal No. 1145/2022 titled "Muhammad Usman versus Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar and others" in almost the same matter has found as under:-

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.



Service Appeal 7898/2021 titled "Abdul Sattar versus The Province of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and others", declared on 29.05.2023 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Muhammad Akbar Khan, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

7. This question involved in this appeal is no different than the above.
8. Therefore, while allowing this appeal, we direct that the appellants be assigned their correct seniority in accordance with the merit order assigned by the Khyber Pakhtunkhwa Public Service Commission as per the criteria laid down/prescribed by rule-17 (a) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. Costs shall follow the event. Consign.
09. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 29th day of May, 2023.*



KALIM ARSHAD KHAN
Chairman



MUHAMMAD AKBAR KHAN
Member (Executive)

Adnan Shah, P.A