

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

BEFORE: KALIM ARSHAD KHAN --- CHAIRMAN
MUHAMMAD AKBAR KHAN--- MEMBER(E)

Service Appeal No. 1119/2022

Mr. Khan Muhammad, CT (BPS-15), GMS Gulsheen School Spulga,
North Waziristan.....(**Appellant**)

Versus

1. The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
2. The Director Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer Miranshah, North Waziristan District.
.....(**Respondents**)

Present:

Mr. AFRASIAB KHAN WAZIR
Advocate..... For appellant

Date of Institution.....18.07.2022
Dates of Hearing.....12.04.2023
Date of Decision.....12.04.2023
.....

Service Appeal No.1120/2022

Mr. Raghیب Ullah, TT (BPS-15), GPS Badshah, Mir Khan Kot Tehsil
Miranshah, North Waziristan District.....(**Appellant**)

Versus

1. The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
2. The Director Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer Miranshah, North Waziristan District.
.....(**Respondents**)

Present:

Mr. AFRASIAB KHAN WAZIR
Advocate..... For appellant

Date of Institution.....18.07.2022
 Dates of Hearing.....12.04.2023
 Date of Decision.....12.04.2023

.....
Service Appeal No. 1121/2022

Mr. Ihsan Ullah, AT (BPS-15) GMS Gulsheen Kot Spulga, North
 Waziristan District.....(*Appellant*)

Versus


1. The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
2. The Director Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer Miranshah, North Waziristan District.
(*Respondents*)

Present:

Mr. AFRASIAB KHAN WAZIR
 Advocate..... For appellant

 Date of Institution.....18.07.2022
 Dates of Hearing.....12.04.2023
 Date of Decision.....12.04.2023

Service Appeal No.1122/2022

 Mr. Qareeb Ullah, CT (BPS-15), GHS Spulga Tehsil Miranshah, North
 Waziristan District.....(*Appellant*)

Versus

1. The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
4. The Director Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
5. District Education Officer Miranshah, North Waziristan District.
(*Respondents*)

Present:

Mr. AFRASIAB KHAN WAZIR
 Advocate..... For appellant

 Date of Institution.....18.07.2022
 Dates of Hearing.....12.04.2023

Date of Decision.....12.04.2023

CONSOLIDATED JUDGMENT


MUHAMMAD AKBAR KHAN, MEMBER(E):-Through this single judgment the instant appeal and connected service appeals detailed above are decided as all the four are against the same departmental proceedings and involve similar question and thus conveniently be decided together.

02. According to the facts gathered from the record, the appellants are aggrieved of the impugned order dated 28.06.2019 whereby they were appointed as CT (BS-15) with immediate effect whereas their other colleagues were appointed vide order dated 30.11.2016 and 27.12.2016 thus effecting seniority of the appellants. The appellants filed Writ Petition No. 690-B of 2017 before the Hon'ble Peshawar High Court, Bannu Bench, which was disposed of and directions were issued to respondent No. 3 to consider the prayer of the petitioners strictly in accordance with law, and merit, and if no relief could be granted to the petitioners, they be provided the reasons in writing within a period of one (01) month. The appellants filed another Writ Petition No. 295/2019 before the Hon'ble Peshawar High Court, Bannu Bench for their appointment as CT, and in the meanwhile appellants were issued appointment orders in question i.e. dated 28.06.2019. Feeling aggrieved, the appellants preferred departmental appeal on 06.04.2022, which was not responded within a statutory period hence the instant service appeal.

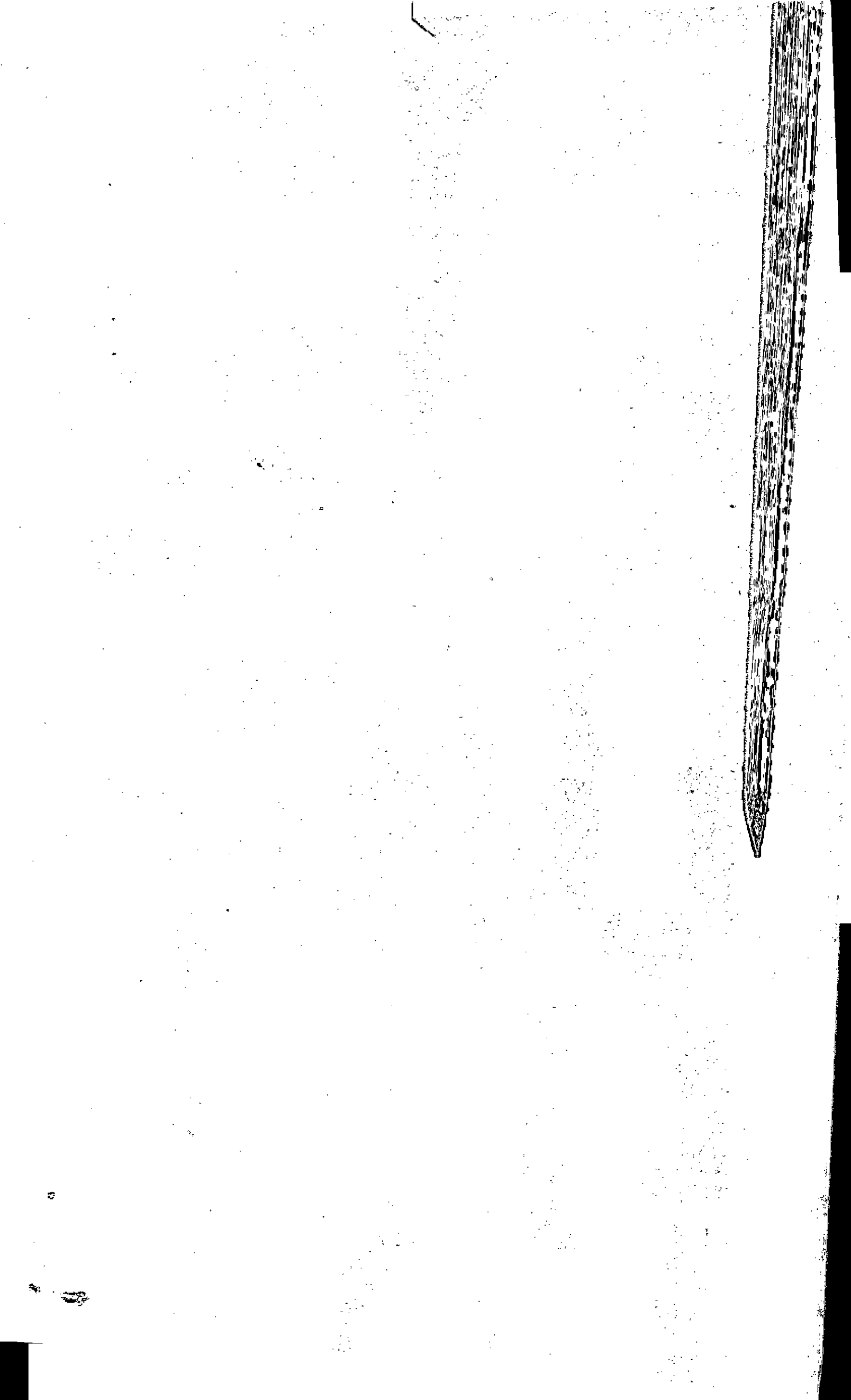
03. Notices were issued to the respondents, despite various opportunities they failed to submit their reply/comments hence they were proceeded ex-parte and their right to file reply/comments was struck off vide order sheet

dated 05th Jan, 2022. We have heard arguments of learned counsel for the appellant and have gone through the record with connected documents.

04. Learned counsel for the appellant contended that the inaction of the respondents by not issuing order of appointment of appellants w.c.f. their colleagues appointment dated 30.11.2016 is against law rules, norms of natural justice hence the impugned order dated 28.06.2019 may be modified to the extent of seniority of appellants. That the appellant have not been treated in accordance with law and rules, hence respondents violated Article 4 and 25 of the constitution of Islamic Republic of Pakistan, 1973. Learned counsel for the appellant further contended that the respondents acted in sheer discrimination while appointing the appellants with immediate effect vide order dated 28.06.2019 instead of 30.11.2016 when their other colleagues were appointed which is not tenable in the eye of law. Learned counsel for the appellant argued that the respondent department also violated Article 38(e) of the constitution of Islamic Republic of Pakistan, 1973. He further argued that the appellant have the right to be issued appointment order and granted seniority w.c.f their colleagues appointment order i.e. 30.11.2016, and the action of the respondents is against the principle of consistency.



05. It is evident from the facts of the case narrated in the preceding Paras the appellants were appointed on 28.06.2019. During the pre-appointment process, the order of merit, union council wise quota etc remained sub-judice before the Hon'ble Peshawar High Court, and the Hon'ble Peshawar High Court, disposed of the matter on 19.11.2019 after production of the appointment orders of the appellants dated 28.06.2019 before the court. The




appellant did not press the question of antedation of their initial appointment before the Hon'ble Peshawar High Court, then and as such the chapter stands closed which is otherwise too outside the jurisdiction of this Tribunal. Instead they approached this Tribunal on 18.07.2022 with the prayer to modify their appointment order dated 28.06.2019 under the garb of seniority to consider their appointment with effect from 31.11.2016 in which their other colleagues were appointed. Modifying the terms of appointment order could not be ordered by this Tribunal especially when the Hon'ble Peshawar High Court, was not so requested in the Writ Petition of the appellants rather the Hon'ble Peshawar High Court, has in fact not issued the Writ in favour of the appellants but referred the matter to the authorities for consideration of the prayer of the appellants.

06. In view of the above discussion we are constrained to dismiss the instant appeals. Costs shall follow the event. Consign.

07. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 12th day of April, 2023.*


(KALIM ARSHAD KHAN)
CHAIRMAN


(MUIHAMMAD AKBAR KHAN)
MEMBER (E)