

REJOINDERKhyber Pakhtunkhwa
Service Tribunal

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Diary No. 6445

Dated 13/7/2023

Service appeal No.1046 / 2016

date of institution: 26/9/2016

Sher Wali Khan Senior clerk ... (Appellant) VS E&SE Department... (Respondents)

PARAWISE COMMENTS FOR & ON BEHALF OF APPELLANT AGAINST RESPONDENTS No.12Preliminary Objection

PARA-1: - Comments of Respondent-12 is correct to the extent: -

1. That Respondent-12 was initially inducted in service as Laboratory Assistant on 04-12-1980, in BPS-5, upgraded to BPS-7 on 01-07-1983, while rest of the comments of respondent-12 are declined and rejected on the grounds that appellant of appeal No.1046/2016 has been appointed as junior clerk BPS-5 on 9/1/1990 under APT rules of 1989 hence it is incorrect to say that the appellant was initially appointed as junior clerk under APT Rules of 9/5/1978
2. That promotion to the post of senior Clerk from the Post of Lab assistant is the violation of the section 8 & 9 of the CIVIL SERVANT ACT NO.XVIII of 1973

PARA-2: Comments of Respondent No.12 are rejected on the Grounds that: -

1. It is evident that the appellant or parent cadre of the appellant has not been made party as respondent dependent in appeal No.113/1993 which was necessary to be made party as respondent dependents by that time
2. and the opportunity for defense has not been given to the appellant in appeal No.113/1993 decision 12/7/1994 hence the appeal No.113/1993 decision 12/7/1994 has no binding effect upon the appellant of appeal No.1046/2016
3. It is evident that the judgment decision of appeal No.113/1993 is forthwith & prospective in effect from the date of decision i.e. 12-7-1994 hence the allotment of seniority Number 327 to Respondent-12 from retrospective effect date of 1980 is against the court decision dated 12/7/1994

PARA-3, PARA-4, PARA-5, PARA-6, PARA-7, PARA-8, PARA-9, PARA-10, PARA-11, PARA-12, PARA-13 & PARA -14 of preliminary objection / Comments of the Respondent-12 are declined and rejected

FACTS

PARA-1: Comments of the Respondents-12 is correct to the extent that: -

- i. Respondent-12 was initially inducted in service as Laboratory Assistant BPS-5
- ii. Respondent-12 was upgraded from BPS-5 to BPS-7 on 01/07/1983
- iii. While the appellant was up graded from BPS-5 to BPS-7 on 01/07/2007

That rest of the Annexure "C" of Respondent-12 is declined and rejected on the grounds: -

- i. That the notification of 9/5/1978 has not been implemented in the department for about 20 years from 1978 to 12/12/1998 hence the

implementation of this old, invalid notification after 20 years laps of time is not adjustable in the department.

- iv. That it is evident that the appellant and parent cadre of the appellant has not been made party as respondent dependent in appeal No.113/1993 which was necessary to be made party as respondent/ dependent by that time hence appeal No.113/1993 decision 12/7/1994 has no binding effect upon the appellant of appeal No.1046/2016

PASRA-2: Comments objections of respondent-12 are declined and rejected as under:

- i. That respondent-12 himself admitted that the seniority list is prepared on 12/12/1998 after 5 years from court decision of 12/7/1994
- ii. It is evident that a Group of 72 Lab Assistants was promoted to the post of senior clerks by pick and chose method from the different pages of seniority list of j/c updated till 31-12-1997 while about 500 senior most original incumbents of clerical cadre were present in the same seniority list of j/c updated till 31-12-1997,

Copy of junior clerks seniority list Annexure "D" in Rejoinder at page 41 to 92

- iii. That the judgment decision of nonpartisan appeal No.113/1993 is forthwith & prospective in effect from the date of decision 12-7-1994 and the allotment of retrospective seniority to the Respondent-12 is the contempt of court decision 12-7-1994
- iv. Respondent-12 promoted to senior clerk post on 12-5-2001 and he used the 5 years old seniority list of J/C updated 31-12-1997 which reveals that the seniority lists for 2001, 2000, 1999 & 1998 has not been prepared nor issued nor circulated and respondent-12 has been promoted to the post of senior clerk by nominal & false DPC meeting

PASRA-3, PASRA-4: PASRA-5: Comments of respondent-12 are declined & rejected

PASRA-6: Comments of respondent-12 are rejected on the grounds

- i. That about 109 junior were promoted to the post senior clerk
Copy of seniority list of senior clerks up dated till 30/9/2013 is annexure "C" in main case at page No.17 to 37

PASRA-7: Comments of respondent-12 are declined & rejected on the grounds given in Rejoinder against the official respondent-1 to 4

PASRA-8: Comments / objections of respondent-12 are declined and rejected on the grounds;

- i. That the appellant and parent cadre of the appellant has not been made party as respondent / dependent in appeal No.113/1993 which was necessary to be made party as respondent dependent by that time' hence the notification of 9/5/1978 and decision of 12/7/1994 has no binding effect upon the appellant and this

nonpartisan decision of 12/7/1994 in not applicable against the appellant of appeal No.1046/2016

- ii. That notification of 9/5/1978 has not been implemented in the department for 20 years since 9/5/1978 to 12/12/1998 hence the implementation of this old notification after 20 years laps of time is not adjustable
- iii. That the notification of 9/5/1978 has not been passed through the proper procedures of KPK Government business rule of 1986, submission of summaries to the governor / legislative cabinet hence the notification of 9/5/1978 is a self made fabricated paper,
- iv. That respondent-12 avail the benefits of BPS-10 Selection Grade in his parent cadre and avail the benefits of promotion to senior clerk post BPS-7 as dual benefit
- v. That promotion from BPS-10 to BPS-7 is against the parameter of promotions
- vi. That respondent-12 was promoted to senior clerk post on 12-5-2001 and he used the 5 years old seniority list of 31-12-1997

PASRA-9: PASRA-10: PASRA-11: PASRA-12: PASRA-13: Comments/ objections of respondent-12 are declined & rejected in Rejoinder against official respondent-1 to 4

PASRA-14: Comments of respondent-12 are declined and rejected on the grounds:

- i. That the illegal promotion of respondent-12 & 71 Lab Assistants from different page of junior clerks seniority list up dated till 12/12/1998 is the violation of the CIVIL SERVANT ACT NO.XVIII OF 1973 section 8 & 9

PASRA-15:

GROUND: comments / objection of private respondent-12 pertaining to following Para: -

- A) ,
- B) ,
- C) and
- D) , are rejected being incorrect

1. That the seniority list of junior clerks updated till 31-12-1997 has not been circulated for correction
2. That the appellant and parent cadre of the appellant has not been made party in appeal No.113/1993 which was necessary to be made party as respondent dependent by that time hence the notification of 9-5-1978 and appeal No.113/1993 decision 12/7/1994 has not binding effect on promotions of appellant in appeal No.1046/2016

- F. Comments of respondent-12 are declined and rejected being incorrect
- G. Comments of respondent-12 are declined and rejected being incorrect

- H. Comments of respondent-12 are declined and rejected being incorrect
- I. Comments of respondent-12 are declined and rejected being incorrect on the grounds
 - 1. That the notification of 9-5-1978 has not been passed by the legislative cabinet of KPK Government in the present shape while the original appendix of the said notification has been fabricated by the anti clerk group of out from cadres officials
 - 2. That the notification of 9-5-1978 seeks the advice of S&GAD/ A&ED of KPK to provide the original appendix of the notification of 9-5-1978
 - 3. That all pages of the said notification has not been signed by the issuing authority
- J. Comments of respondent-12 are declined and rejected being incorrect

Affidavit

I Sher wali Khan, Senior Clerk Government Girls Higher Secondary School (GGHSS) Pabaini District Swabi solemnly affirm and declare on oath that the contents of instant Service Appeal are true and correct accordingly to my knowledge and belief and that nothing has been concealed intentionally from this Honorable Tribunal

Deponent: CNIC#16202-0668822-3

Dated 13/7/23 ~~2018~~

Appellant: Sher Wali Khan Senior Clerk,

Through

- 1. Naqibullah Khan
- 2. Anwar Shah
- 3. Miss Naheeda Bibi
- 4. Gohar Ali Kheweshgi Advocates High Court, Peshawar

