KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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

Service Appeal No.5793/2021

Date of presentation of Appeal.....24.08.2021
Date of Hearing.....25.07.2023
Date of Decision.....25.07.2023

Mr. Zahid Ullah, Assistant Government Technical & Vocational Training Authority (KP TEVTA) Khyber Pakhtunkhwa..***(Appellant)***

Versus

1. **Secretary to Government Industry Department** Khyber Pakhtunkhwa Civil Secretariat Peshawar.
2. **Managing Director,** Technical & Vocational Training Authority (KP TEVTA) University Town, Peshawar.
3. **Deputy Director (Estt.)** Technical & Vocational Training Authority (KP TEVTA) University Town, Peshawar.
4. **Mr. Aenul Haq, Assistant** (GCT Abbottabad).
5. **Mr. Ahmed Ali, Assistant** (GCT Kohat).
6. **Mr. Zar Khan, Assistant** (GPI Karak).
7. **Mr. Junaid Ur Rehman, Assistant** (KP TEVTA) Head Office.....(***Respondents***)

Present:
Mr. Zartaj Anwar, Advocate .....For the appellant
Mr. Muhammad Jan, District Attorney ...For official respondent No.1
Mr. Ali Gohar Durrani, Advocate .....For official respondents No.2 & 3

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APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST OFFICE ORDER DATED 07.06.2021 ISSUED BY THE KHYBER PAKHTUNKHWA TECHNICAL AND VOCATIONAL TRAINING AUTHORITIES (KHYBER PAKHTUNKHWA TEVTA) WHEREBY THE NAME OF THE APPELLANT IS WRONGLY LISTED IN THE FINAL SENIORITY LIST AT SERIAL NO.17 INSTEAD OF SERIAL NO.4 IN THE SENIORITY LIST DATED 20.05.2021. AFTER MR. MUHAMMAD ISHAQ, ASSISTANT (BPS-16). NOT TO INCLUDE THE NAME OF THE APPELLANT IN THE FINAL SENIORITY LIST AT SERIAL NO.4 ALSO NOT TO INCLUDE MY CONTRACT SERVICE AS A REGULAR SERVICE IS ILLEGAL UNLAWFUL AND EFFECTIVE UPON THE APPELLANT. THE FINAL SENIORITY LIST DATED 20.05.2021 HAS BEEN ISSUED BY THE RESPONDENT NO.3 IN EXCESS OF LAWFUL AUTHORITY AND JUSTIFICATION IS BASED ON MALAFIDE DISCRIMINATION

AGAINST FUNDAMENTAL RIGHTS AND NOT IN ACCORDANCE WITH MERIT.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Brief facts of the case are that appellant was appointed as Junior Clerk on 12.03.1983. His services were regularized on 24.09.1991 w.e.f 14.03.1983 but in the last seniority list, his date of entry, into Government service, was written as 21.09.1988. Therefore, the name of the appellant was placed at serial No.17 instead of serial No.6.

2. Feeling aggrieved the appellant filed departmental appeal but in vain. Therefore, he filed the instant service appeal before this Tribunal.

3. On receipt of the appeal and its admission to full hearing, the respondents were summoned, they put appearance and contested the appeal by filing their respective written replies raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

4. We have heard learned counsel for the appellant, learned District Attorney for respondent No.1 and learned counsel for the respondents No.2 & 3.

5. The Learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned District Attorney assisted by the learned counsel for respondents No.2 & 3, controverted the same by supporting the impugned order(s).

6. The first point waged in this appeal is that the appellant was appointed on 12.03.1983 and his services were regularized on 24.09.1991 giving that effect from 14.03.1983 but in the last seniority list, his date of entry into Government service was written as 21.09.1988, which required correction. This contention of the appellant was conceded at the bar by the learned counsel for TEVTA, expressing no objection on rectifying the seniority list by making correction of date of entry into Government service on regular basis as 14.03.1983. The next point mooted before us is the claim/contention of the appellant that he was appointed prior to the private respondents but had not been placed at appropriate place in the seniority list i.e. above the private respondents. In this respect, it is found that, admittedly, the appellant was superseded when the private respondents were promoted to the next/higher grade which became reason for relegating the appellant in seniority and that was a rightful act in view of the Explanation-II Sub Rule-(1) of Rule-17 of the Khyber Pakhtunkhwa Civil Servants, (Appointment, Promotion & Transfer) Rules, 1989. The Explanation-II is reproduced as under:

> ***"Explanation-II.**---If a junior person in a lower post is promoted to a higher post by superseding a senior person and subsequently that senior person is also promoted the person promoted first shall rank senior to the person promoted subsequently; provided that junior person shall not be deemed to have superseded a senior person if the case of the senior person is deferred for the time being for want of certain*

information or for incompletion of record or for any other reason not attributing to his fault or demerit."

Since the appellant was superseded, therefore, he could not regain his original seniority in view of explanation-II of the above rule. This being so, this appeal is not well founded and is dismissed with costs. Consign.

7. ***Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 25th day of July, 2023.***

(KALIM ARSHAD KHAN)
Chairman

(FAREEHA PAUL)
Member (Executive)

Mutazem Shah