FORMOF ORDERSHEET

Court of _____

Misc. application No. 570/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	10/08/2023	The Misc. application in Service Appeal No. 234/2022 submitted today by Mr. Saadullah Khan Marwat Advocate. It is fixed for hearing before Division Bench at Peshawar on 15.08.2023. Original file be requisitioned. By the order of Chairman REGISTRAR

15.08.2023

1. Learned counsel for petitioner present. Mr. Fazal Shah Mohmand learned Additional Advocate General for the respondents present.

2. Due to summer vacations D.B is not available, therefore, case is adjourned. To come up for arguments on restoration application on 03.11.2023 before D.B. P.P given to parties.

(Rashida Bano)
Member (J)

*KaleemUllah

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Misc. A. No. 570/2023
IN
S. A. No. 234/2022

Arifa Saleem versus Director & Others

INDEX

S. No.	Documents	Annex	P. No.
1.	Memo of Application		1-2
2.	Service Appeal No. 234/22	"A"	3-8
3.	Written statement / reply	"B"	9-12
4.	Order dated 27-07-2023	"C"	13

Applicant

Through

Saadullah Khan Marwat
Advocate
21-A, Nasir Mansion,
Shoba Bazaar, Peshawar
Ph: 0300-5872676

Dated: 09-08-2023

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

Misc. A. No 570/2023

IN

S. A. No. 234/2022

Arifa Saleem W/O Sardar Naeem,
Senior Instructor, Physical Education,
GGHSS, Nishterabad, Peshawar . . . . . Appellant

VERSUS

1. Director, Elementary and Secondary Education, KP, Peshawar.

2. Secretary, Government of KP, Elementary & Secondary Education Department, Peshawar. . . . . Respondents

APPLICATION FOR CORRECTION / RE-HEARING / RESTORATION OF THE SUBJECT APPEAL REGARDING SENIORITY DISPUTE:

Respectfully Sheweth,

1. That applicant along with 03 other colleagues filed appeals this hon'ble Tribunal for correction of seniority position which was admitted to regular hearing and the parties were then served with notices. (Copy as annex "A")

2. That written statements / reply was submitted by the official respondents and the private respondents were placed x-party by the hon'ble Tribunal. (Copy as annex "B")

3. That the said appeals came up for hearing on 27-07-2023 after full probe, the hon'ble Tribunal was pleased to disposed of the matter with direction to the official respondents to anti-date the promotion order with effect from 13-11-2007 instead of 19-05-2009

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

Misc. A. No 570/2023

IN

S. A. No. 234/2022

Arifa Saleem W/O Sardar Naeem,
Senior Instructor, Physical Education,
GGHSS, Nishterabad, Peshawar . . . . . Appellant

VERSUS

1. Director, Elementary and Secondary Education, KP, Peshawar.

2. Secretary, Government of KP, Elementary & Secondary Education Department, Peshawar. . . . . Respondents

APPLICATION FOR CORRECTION / RE-HEARING / RESTORATION OF THE SUBJECT APPEAL REGARDING SENIORITY DISPUTE:

Respectfully Sheweth,

1. That applicant along with 03 other colleagues filed appeals this hon'ble Tribunal for correction of seniority position which was admitted to regular hearing and the parties were then served with notices. (Copy as annex "A")

2. That written statements / reply was submitted by the official respondents and the private respondents were placed x-party by the hon'ble Tribunal. (Copy as annex "B")

3. That the said appeals came up for hearing on 27-07-2023 after full probe, the hon'ble Tribunal was pleased to disposed of the matter with direction to the official respondents to anti-date the promotion order with effect from 13-11-2007 instead of 19-05-2009

accordance with the department Notification dated 29-04-2014. (Copy as annex "C")

4. That applicant was promoted to the post of Instructor Physical Education B-17 on 15-06-2009 and she should be given seniority with effect from 15-06-2009 instead of 13-11-2007 which requires correction.

It is, therefore, most humbly requested that applicant be awarded / anti-dated seniority with effect from 15-06-2009 instead of 13-11-2007, with such other relief as may be deemed proper and just in circumstances of the case.

Applicant

Through

Saadullah Khan Marwat
Advocate

Date: 09-08-2023

AFFIDAVIT

I, Arifa Saleem, Applicant, do hereby solemnly affirm and declare that contents of **Application** are true and correct to the best of my knowledge and belief.

DEPONENT

ATTESTED
Commissioner
Advocate High Court Peshawar

A 3

BEFORE KPK SERVICE TRIBUNAL PESHAWAR

S.A No. 234 /2022

Mst. Arifa Saleem W/O Sardar Naeem,
Senior Instructor, Physical Education,
GGHSS, Nishtar Abad, Peshawar . . . . . Appellant

Khyber Pakhtukhwa
Service Tribunal
Diary No. 245
Dated 10-01-2022

VERSUS

1. Director, Elementary and Secondary Education, KP, Peshawar.
2. Secretary, Government of KP, Elementary & Secondary Education Department, Peshawar.
3. Mst. Misbah Seema, Senior Instructor, Physical Education, Govt. Girls Higher Secondary School Munawar Shah No. 06. D. I. Khan. (S. No. 09)
4. Mst. Rahila Bano, Senior Instructor, Physical Education, GGHSS, No. 05 Qasaban D. I. Khan. (S. No. 10)
5. Mst. Parveen Akhtar, Senior Instructor, Physical Education, Govt. Girls Higher Secondary School, Akora Khattak, Nowshera. (S. No. 16)
6. Mst. Yahya Begium, Senior Instructor, Physical Education, GGHSS Pir Piai Nowshara. (S. No. 19)
7. Mst. Mufeeda Begium, Senior Instructor, Physical Education, GGHSS, Shehbaz Ghara, Mardan. (S. No. 22)

Filed to-day
Registrar

ATTESTED
to be true Copy

8. Mst. Samina Akhtar, Senior Instructor, Physical Education, GGHSS, Comprehensive Peshawar City. (S. No. 23)
9. Mst. Ghazala Naeem, Senior Instructor, Physical Education, GGHSS, Behzad Chakarkot Kohat. (S. No. 27)
10. Mst. Basreet Afzal, Senior Instructor, Physical Education, GGHSS, Hathian Mardan. (S. No. 29)
11. Mst. Tasleem Kausar, Senior Instructor, Physical Education GGHSS, Skhakot Malakand (S. No. 35)
12. Mst. Maryum Rasool, Senior Instructor, Physical Education GGHSS, Kalabut Township-II Haripur (S. No. 39)
13. Mst. Mussarj Iqbal, Senior Instructor, Physical Education GGHSS, Esak Chuntra Karak (S. No. 41)
14. Mst. Sardar Bibi, Senior Instructor, Physical Education, GGHSS, No. 01 Karak. (S. No. 42)
15. Mst. Shahida Begium, Senior Instructor, Physical Education, GGHSS, Esak Chuntra, Karak (S. No. 46)
16. Mst. Nazma Shaheen, Senior Instructor, Physical Education, GGHSS, Larama, Peshawar (S. No. 50). . . . . Respondents

APPEAL U/S 4 OF SERVICE TRIBUNAL ACT, 1974 AGAINST FINAL SENIORITY LIST OF SENIOR INSTRUCTORS PHYSICAL EDUCATION ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT KP PESHAWAR DATED 02-03-2021 OF R. NO. 01 WHEREBY JUNIOR TO APPELLANT WERE SHOWN SENIOR WITHOUT ANY REASON AND JUSTIFICATION:

ATTESTED
to be true Copy

Respectfully Sheweth;

1. That on 20-10-1993, appellant was appointed as Physical Education Teacher (Female) (PET) on the recommendation of Departmental Selection Committee with some terms and conditions contained therein and her name was figured at S. No. 9 of the order ibid. (Copy as annex "A")

2. That on 08-05-2008, appellant was awarded degree of Master of Science obtained from Gomal University, D. I. Khan. (Copy as annex "B")

3. That on 13-11-2007, Secretary Education, Govt. of KP, Schools and Literacy Department issued Notification accorded up-gradation to the post of Librarians and Director Physical Education from B-16 to B-17 regular of the existing incumbents who hold Master Degree in the relevant subject. Her existing seniority position will remain intact.

   Here it would be not out of place to mention that appellant was awarded degree of M. Sc on 08-05-2008 with B-17. (Copy as annex "C")

4. That on 10-02-2009 on the recommendation of Departmental Promotion Committee, appellant was promoted to the post of Director Physical Education B-16 on regular basis and her name was figured at S. No. 02. (Copy as annex "D")

5. That on 31-03-2009, Director Education issued Final Seniority List wherein name of appellant was placed at S. No. 78.(Copy as annex "E")

6. That prior to the aforesaid exercise, up-gradation, promotion, seniority list, etc, no proper rules were infield, yet on 16-05-2009, for the first time service structure was given to the employees of the department.

7. That on 15-06-2009, appellant was promoted to B-17 on regular basis on the recommendation of DPC. Her name was placed at S. No. 13. (Copy as annex "F")

ATTESTED
to be true Copy

8. That on 01-01-2017, subsequent seniority list was circulated wherein appellant name was figured at S. No. 65. This seniority list was also not prepared properly and per the mandate of law. Seniors were not assigned proper place in seniority list. (Copy as annex "G")

9. That on 10-02-2017 representation was submitted to the authority for correction of the aforesaid seniority. (Copy as annex "H")

10. That on 23-05-2018, the competent authority issued Notification for promotion of 60 female Instructors Physical Education B-17 to the post of Senior Instructor Physical Education B-18 in the department. The name of appellant was figured at S. No. 60. (Copy as annex "I")

11. That on 31-12-2018, Tentative Seniority List of B-18 female Senior Instructor Physical Education was circulated wherein the name of appellant was figured at S. No. 61. Being senior, proper place was not assigned to her. (Copy as annex "J")

12. That on 02-03-2021, Final Seniority List of Senior Instructors Physical Education B-18 (F) with covering letter dated 26-10-2021 was circulated wherein the name of appellant was placed at S. No. 53 instead of proper place. The said List was shown as draft seniority list and the department is going to make promotion over this list. (Copy as annex "K")

13. That on receipt of the said seniority list, appellant submitted representation on 29-10-2021 before authority which met dead response till date. (Copy as annex "L")

Hence, this appeal, Inter alia on the following grounds:-

GROUNDS

a. That appellant was initially appointed on 20-10-1993 as PET and was promoted to the post of DPE on 10-02-2009. She was further promoted to the Senior Instructor B-18 on 23-05-2018. Similarly contesting respondents was initially appointed on 15-11-1984 and promoted to the post of DPE on 18-02-2003 B-16, while she was

ATTESTED
to be true Copy

awarded B-17 on 14-10-2013 and B-18 on 18-04-2019. Same is the position of other respondents but instead contesting respondents were shown senior to appellant for no legal reason.

b. That on 08-05-2009, result of appellant was declared by admitting her two degree of Master of Science and thereafter on 15-06-2009, she was upgraded to B-17 from B-16 on regular basis and was then entitled to seniority.

   As against contesting respondents admitted to the degree of M. Sc and upgraded to the post of B-17 on regular basis.

c. That as and when seniority list was issued by the respondents, the same was not based on legal footing and contesting respondents being junior were shown senior.

d. That every seniority list as per the judgments of the apex court gives fresh cause of action to an aggrieved person to assail the same for her vested right.

e. That as and when appellant filed representation for correction of the seniority list of B-18, Deputy Director (F & A) Elementary & Secondary Education KP, Peshawar forwarded the same to R. No. 02 on 06-12-2021 to look into the matter and to promote seniors amongst all the eligible candidates to B-19, meaning thereby that the former seniority lists were not prepared as per the mandate of law and seniority rules.

f. That in preparing the seniority lists, seniority rules were not taken into task and juniors were placed seniors only and only on the pre-text that the seniority positions of all candidates would remain intact. With due respect it is not the law to destroy legal right of a servant, but seniority shall follow seniority rules and not Notification dated 13-11-2007.

g. That the impugned seniority list dated 02-03-2021 is not based on law and seniority rules but is based on favoritism, discrimination and malafide by placing seniors, juniors and their future rights were infringed for no legal reason and justification.

ATTESTED
to be true Copy

h. That in numerous letters, respondents showed reservation over the seniority lists, meaning thereby that the same were not based on legal footing.

i. That though the seniority lists were circulated time and again by the respondents but no merit position was assigned to the contesting respondents viz-a-viz appellant.

j. That for the first time service structure was given in the year 2009 to the employees of the department and if such is the position, then the former exercise was of no avail to contesting respondents but was a futile exercise. All such actions were not based on law but were based on favoritism, discrimination and malafide.

It is, therefore, most humbly prayed that on acceptance of appeal, the impugned seniority list dated 02-03-2021 of R. No. 01 be set aside by placing appellant senior to contesting respondents, etc, with such other relief as may be deemed proper and just the circumstances of the case.

Appellant

Through Saadullah Khan Marwat

Arbab Saiful Kamal

Amjad-Nawaz

Advocates

Dated: 10-01-2022

ATTESTED
to be true Copy

3 9

BEFORE THE HONORABLE KHYBER PAKHATUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No: 234/2022

Mst. Arifa Saleem, SIP BPS-18 GGHSS Nishtar Abad District Peshawar.....Appellant.

VERSUS

Director, E&SE Khyber Pakhtunkhwa & others.....Respondents

IOINT PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENTS No: 1-2.

Respectfully Sheweth:-

The Respondents No. 1-2 submit as under:-

PRELIMINARY OBJECTIONS.

1 That the Appellant has got no cause of action/locus standi.

2 That the Appellant is not an aggrieved person within the meaning of Article-212 of the Constitution of Islamic Republic of Pakistan 1973.

3 That the instant Service Appeal is badly time barred under relevant provision of law of limitation Act 1908.

4 That the Appellant has concealed material facts from this Honorable Tribunal in the instant Service Appeal.

5 That the Appellant has not come to this Honorable Tribunal with clean hands.

6 That the Appellant is not entitled for the relief he has sought from this Honorable Tribunal.

7 That the instant Service Appeal is against the prevailing law & rules.

8 That this Honorable Court has got no Jurisdiction to entertain the present appeal.

9 That the impugned final Seniority list dated 02-3-2021 of the Department is in accordance with the mandatory provisions of Rules-17 of APT Rules 1989 read with section-8 of Civil Servants Act 1973 and liable to be maintained in favor of the Respondents No. 1-2 in the interest of justice.

10

10 That the appellant has correctly being placed at seniority No. 47 in the final seniority list as stood on 02-03-2021.

ON FACTS.

1. ***That*** Para-1 needs no comments being pertains to the appointment of the appellant against the PET (F) post vide order/Notification dated 17-11-1994 and a copy of the said order is ***Annexure-A*** for ready reference.

2. ***That*** Para-2 needs no comments being pertains to the record of the Gomal University D.I.Khan regarding his MSc degree in Session-2005-2006 under Registration No. 09-CPER-2003 Roll No. 251 with result declaration dated 6-05-2006 but in spite of this the appellant has not made the aforesaid University as a Respondent in the instant case on mala fide and a copy whereof is attached as ***Annexure-B*** for ready reference.

3. ***That*** Para-3 is correct that vide order & Notification dated 12-12-2006, the appellant has promoted to the post of DPE in BPS-16 on regular basis by the DPC and a copy of the said order is ***Annexure-C*** for ready reference.

4. ***That*** Para-4 is correct that the policy of one time upgradation in the upper scale was allowed by the Respondent No.1 to the appellant in BPS-17 (Personal) and a copy of the said Notification dated 13-11-2007 is ***Annexure-D*** for ready reference.

5. ***That*** Para-5 is correct that as per final Seniority list dated 31-3-2009 pertaining to the DPE cadre in BPS-17, the appellant was placed at S. No. 69 and a copy of the said seniority is ***Annexure-E*** for ready reference.

6. ***That*** Para-6 is incorrect, hence, denied formal rules & structure were there which were updated and amended from time to time by the Department according to the needs & demands of the Department in the interest of public interest.

7. **That** Para-7 is also incorrect & denied on the grounds that the seniority list dated 01-01-2017 of the Department is in accordance with the aforesaid Rules, wherein, the appellant has correctly been placed as per her service record in the custody of the Department, hence, the plea of the appellant is illegal & liable to be rejected and a copy of the said Seniority list ***Annexure-F.***

8. That para-8 is incorrect & denied on the grounds that no Departmental appeal against the seniority list dated 01-1-2017 has been filed by the appellant to the appellate authority till date, therefore, got finality under the law & limitation Act 1908 against the appellant.

ATTESTED
to be true Copy

9. *That* Para-9 is incorrect vide order & Notification dated 23-5-2018 attached as *(Annexure-G)* at around 60 (F) Instructure Physical Education in BPS-17 were promoted to the post of SIP in BPS-18 by the Department under the existing rules & policy.

10. *That* Para-10 is correct to the extent of Tentative Seniority list of SIP in BPS-18 which was later on circulated for the information of all concerned for necessary correction through Departmental appeal. Therefore, no vested right of placing the appellant at a Seniority list number of her choice is accrued to the appellant. Hence, the claim of the appellant is illegal & liable to be rejected.

11. *That* Para-11 is correct that vide Notification dated 2-3-2021, the Department has Notified final Seniority list relating to the SIP, in BPS-18 (F) cadre by the Department under the above mentioned provision of law & rules, wherein, the appellant has correctly been placed at Seniority list No. 47 as per her service record in the custody of the Department since 1994. Therefore, the plea of the appellant is illegal & liable to be rejected and a copy of the said seniority list dated 02-3-2021 is **Annexure-H.**

12. That Para-12 is incorrect, no departmental has been filed by the appellant against the said final seniority list dated 02-3-2021 to the appellate authority till date, hence, got finality under the law. Therefore, the appeal in hand is liable to be rejected on the following grounds inter alia:-

GROUNDS:-

a. **Incorrect & not admitted.** The plea of the appellant is illegal in view of the forgoing submission in the instant reply on behalf of the Respondent No. 1-2, as he has been treated as per law rules & policy by the Department.

b. **Incorrect & not admitted**, hence, needs no further comments as already replies in the foregoing paras by the Department as the seniority list dated 02-3-2021 is legal & liable to be maintained.

c. **Incorrect & not admitted,** the seniority list dated 02-3-2021 legally competent liable to be maintained as the act of the Department with regard to the seniority list dated 02-3-2021 is the result of due process of law & rules.

d. **Incorrect & not admitted**, the plea of the appellant is without any legal grounds and justification, hence, liable to be rejected in favor of the Department.

e. **Incorrect & not admitted**, the statement of the appellant is against the facts, hence, liable to be rejected.

ATTESTED
to be true Copy

f. Incorrect & not admitted, as detail reply to this ground has been given in the forgoing paras by the Department.

g. Incorrect & not admitted, the act of the respondent Department is within legal para meters and liable to be maintained.

h. Incorrect & not admitted, hence, needs no further comment as already replies above by the Department. That the act of the Respondent with regard to the seniority list dated 02-3-2021 is legal.

i. Incorrect & not admitted, the stand of the appellant without any legal proof and justification, hence, liable to be dismissed.

j. Incorrect & not admitted, the competent authority is entitled to frame rules & regularization for the employees in that interest just to avoid the aspect of stagnancy & disparity among the employees including the appellant. Therefore, the appeal in hand is liable to be rejected with the additional submission that the Honorable Bench is requested to allow the Respondent Department for the submission of additional grounds case law & record at the time of arguments on the date fixed please.

Therefore, it is most humbly requested that this Honorable Tribunal may very graciously be pleased to dismiss the instant Service Appeal in favor of the Department in the interest of justice please.

Dated. ____/ ___/2022.

DIRECTOR
E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondent No: 1)

SECRETARY
E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondent No: 2)

AFFIDAVIT

I, Dr. Hayat Khan Assistant Director (Litigation-II) E&SE Department Khyber Pakhtunkhwa, do hereby solemnly affirm & declare on oath that the contents of the instant para wise Comments are true & correct to the best of my knowledge & belief.

ATTESTED
to be true Copy

Deponent

"C" 13

Service Appeal No. 234/2022
Titled "Arifa Saleem-vs-Director Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar.

ORDER
27th July, 2023

KALIM ARSHAD KHAN, CHAIRMAN: Learned counsel for the appellant present. Mr. Fazal Shah Mohmand, Additional Advocate General for official respondents present.

02. At the very outset learned counsel for the appellant produced copy of notification dated 29.04.2014 and contended that vide this notification the promotion of the appellant and others, mentioned in the notification from the post of Director Physical Education (DPE) (BPS-16 to BPS-17) on regular basis was given effect from 13.11.2007 instead of 19.05.2009. Learned counsel for the appellant submitted that in the impugned seniority list of 02.03.2021 the date of promotion of the appellant was still written as 19.05.2009 instead of 13.11.2007 and submitted that the appeal might be disposed of with the direction to the official respondents to incorporate the date of promotion of the appellant from BPS-16 to BPS-17 as 13.11.2007 in the impugned seniority list. The learned Additional Advocate General when confronted with the situation submitted that the department ought to have mentioned the correct date of promotion in the notification. The appeal is thus disposed of in the above terms. Costs to follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 27th day of July, 2023.*

Attested to be true Copy

(Farecha Paul)
Member(Executive)

(Kalim Arshad Khan)
Chairman

Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

بعدالت جناب سروس ٹریبونل صوبہ سرحد پشاور

منجانب اپیلانٹ

عارفہ سلیم بنام محکمہ تعلیم

دعویٰ / اپیل / درخواست۔

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی وجواب دہی وکل کاروائی متعلقہ آں بمقام پشاور کیلئے اسعد اللہ خان مروت ایڈووکیٹ ہائی کورٹ کو وکیل مقرر کرکے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا نیز وکیل صاحب کو کرنے راضی نامہ وتقرر ثالث وفیصلہ برحلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک وروپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق اور اس پر دستخط کرانے کا اختیار ہوگا نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی ونظرثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا بیرسٹر قانونی کو اپنے ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور قبول ہوگا و دوران مقدمہ میں جو خرچہ وہرجانہ التوا مقدمہ کے سبب سے ہوگا اس کے مستحق وکیل صاحب موصوف ہوں گے نیز بقایا وخرچہ کی وصولی کرنے کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام مذکورہ پر ہو یا حدود سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکور کریں۔

لہٰذا وکالت نامہ لکھ دیا کہ سند رہے۔

المرقوم 9-08-23۔

الـعـبـد الـعـبـد الـعـبـد

ارباب سیف اکمال
ایڈووکیٹ

سعد اللہ خان مروت
ایڈووکیٹ

Aa Saleem

عارفہ سلیم۔

امجد نواز
ایڈووکیٹ