

# **BEFORE THE SERVICE TRIBUNAL, PESHAWAR**

**SERVICE APPEAL.NO. 897/2023.**

**Mr. Naseer Ahmad, (PPS BS-18), presently working as Project Manager, Provincial Land Use Plan (PLUP), Urban Policy & Planning Unit (UPPU), P&D Department Khyber Pakhtunkhwa, Peshawar.**  
.....**APPELLANT**

## **VERSUS**

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.
2. Secretary to Govt of Khyber Pakhtunkhwa, Establishment Department.
3. Secretary to Govt of Khyber Pakhtunkhwa, Planning & Development Department.
4. Secretary to Govt of Khyber Pakhtunkhwa, Finance Department.
5. Mr. Sher Afzal, Senior Planning Officer, Social Welfare Department & others.

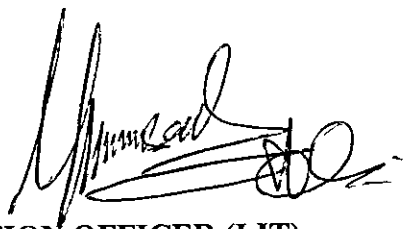
.....**RESPONDENTS**

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**DEPONENT**

**Through**

  
**SECTION OFFICER (LIT)**

(1)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

S.A No. 897/2023

**Mr. Naseer Ahmad**, (PPS BS-18), presently working as Project Manager, Provincial Land Use Plan (PLUP), Urban Policy & Planning Unit (UPPU), P&D Department Khyber Pakhtunkhwa, Peshawar

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2. The Secretary to Govt of Khyber Pakhtunkhwa, Establishment Department.
3. The Secretary to Govt of Khyber Pakhtunkhwa, Planning & Development Department.
4. The Secretary to Govt of Khyber Pakhtunkhwa, Finance Department.
5. Mr. Sher Afzal, Senior Planning Officer, Minerals Development Deptt and Others

.....**RESPONDENTS**

**JOINT PARA-WISE COMMENTS OF RESPONDENTS (1 to 4)**

**RESPECTFULLY SHEWETH:**

**PRELIMINARY OBJECTIONS**

- 1- That the appeal is not maintainable in its present form.
- 2- That the appellant has got no locus standi and cause of action to file the instant appeal.
- 3- That the appellant has not come to the Tribunal with clean hands.
- 4- That the appeal is not maintainable due to mis-Joinder and non-Joinder of necessary and proper parties.
- 5- That the appellant concealed the material fact from the Honorable Tribunal.
- 6- That the appellant is estopped by his own conduct to file the present appeal.
- 7- That the appeal is barred in law and limitation.

**BRIEF FACTS:**

- 1) Pertains to record.
- 2) Pertains to record.
- 3) Pertains to record.
- 4) Pertains to record.
- 5) Pertains to record.
- 6) Pertains to record.
- 7) Pertains to record.
- 8) Pertains to record.

- 9) Pertains to record.
- 10) Pertains to record.
- 11) Respondents by taking into account the PPS Service Rules and in light of the Provincial Cabinet decision made in its meeting held on 09.05.2019, all planning oriented posts in BS-17 and above of newly regularized components/units of P&D Department and Planning Cells of Administrative Departments, Civil Secretariat alongwith incumbents as well as left over posts were included in the Schedule-I of the PPS Service Rules vide Notification 09.01.2020. Since, the regularized employees were included in the Schedule-I of the PPS Service Rules alongwith posts, therefore, they did not affect promotion quota of the appellant rather inclusion of posts widen/enhanced the promotion prospects of the PPS Officers.
- 12) PPS Cadre was established and PPS Rules 2018 were notified for the officers of planning oriented in all Administrative Departments as well as in districts for better career progression. Various employees working in Planning Cells on regular basis and projects employees working in Planning Cells whose services were regularized under Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2018 were also required to include them in the Schedule-I of PPS Rules. In order to settle the anomalies arising out in the wake of promulgation of the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2018; a Ministerial Committee was constituted. The Committee submitted its recommendations to Provincial Cabinet and recommended that all the positions created by Finance Department for all the regularized projects under the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2018 shall be created/ placed at the strength of attached formations of respective Administrative Departments except the positions of Planning Cells which fall under the Provincial Planning Service (PPS). Recommendations of Ministerial Committee was approved by the Provincial Cabinet in its meeting held on 09.05.2019. Therefore, all the officers of Planning Cells and Officers of the projects in P&D Department regularized under the Act ibid were included alongwith their posts in the Schedule-I of PPS Rules after approval of Chief Secretary, Khyber Pakhtunkhwa. No fresh appointment was made rather employees alongwith their posts as explained above were included in the Schedule-I of PPS Rules.
- 13) Pertains to record, hence needs no comments.
- 14) Correct to the extent that tentative seniority lists of PPS BS-17 and above officers were issued time and again but could not finalized due to frequent observations/ objections of the officers. A committee under the chairmanship of

Secretary Establishment Department, Secretary Law and Secretary, P&D as its members was constituted to resolve the issues once for all. The committee in its meeting held on 02.06.2021 unanimously agreed that P&D Department may resolve the issues of the seniorities of PPS Cadre in light of Rule-8 of PPS Rules 2018, under Section-4 and Section-6(2) of the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2018 and under Section-8(4) of Civil Servant Act, 1973. In pursuance of the recommendations of the Committee, seniority lists of PPS BS-17 and above were finalized and final seniority lists were issued after approval of the competent authority (i.e. Chief Secretary, Khyber Pakhtunkhwa and Secretary Establishment). Moreover, the appellant has been assigned seniority in BS-18 w.e.f 22.10.2019 i.e the date of his regular promotion to the post of PPS BS-18.

The representation of the appellant dated 11.11.2020 made on the tentative seniority list issued on 23.10.2020 was processed/examined and regretted and filed being not covered under any rule/regulation/policy.

- 15) Pertains to record, hence needs no comments.
- 16) The representation of the appellant dated 26.10.2021 made on the tentative seniority list issued on 23.10.2020 was processed/examined and regretted and filed being not covered under any rule/regulation/policy.
- 17) Incorrect. The Officers concerned encadred vide notification dated 22.03.2019 were employees of Merged Areas, P&D employees and they were assigned seniority according to advice of the Establishment Department (**Annex-I**). Therefore, the respondents have no ulterior motives.
- 18) The appellant was treated at par with other departments. The officers included in the PPS cadre vide notification dated 09.01.2020 were in accordance with the decision of the Provincial Cabinet as well as approval of the competent authority.
- 19) In correct. As explained in preceding paras. Appellant was assigned seniority in PPS BS-18 as per rules/laws and final seniority list was issued after fulfilling all codal formalities with the approval competent authority and in light of the decision of the Hon'able Tribunal, therefore, his representation was examined and filed being not covered under the rules/law/policy. (**Annex-II**)
- 20) Pertains to record. Comments on behalf of respondents were filed in Execution Petition before this Hon'able Tribunal.
- 21) Pertains to record. The representations of the appellant were examined/processed and regretted/filed being not covered under the rules/law/policy

- 22) Incorrect. The final seniority list of PPS BS-18 was issued in light of the directions of the Service Tribunal in Execution Petition/appeal of the appellant and he has rightly been placed at Sr. No. 46 of the seniority list of PPS BS-18.
- 23) The representations of the appellant were examined/processed and regretted/filed being not covered under the rules/law/policy, therefore, he has no valid grounds/justification to approach the Hon'able Tribunal.

**GROUNDS:**

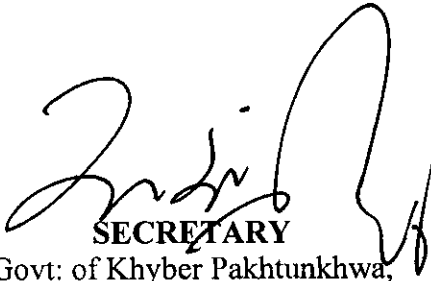
- a. Incorrect. As explained in preceding paras, the appellant is not an aggrieved person.
- b. Incorrect. No Fundamental Rights of the appellant have been violated and no illegal and unjust acts have been done by the respondents.
- c. Incorrect. As explained in preceding paras. Moreover, the employees regularized under the Act ibid were not appointed rather the incumbents alongwith posts were included in the Schedule-1 of PPS Service Rules after approval of Provincial Cabinet as well as approval of competent authority.
- d. Incorrect. The appellant has been rightly assigned the seniority position as per provision of rules/regulation/policy.
- e. Incorrect. As explained in preceding paras of Facts and Grounds.
- f. Incorrect. The seniority list is in accordance with the Regularization Act, 2018 and does not vitiate the APT Rules, 1989.
- g. Incorrect. As explained in Ground-b.
- h. Incorrect. As explained in Ground-c.
- i. Incorrect. Appellant has not been discriminated.
- j. Incorrect. The appellant has been treated in accordance with law/constitution.
- k. Incorrect. The appellant has not been suffered and his seniority has been fixed in accordance with rules/law/policy.
- l. Incorrect. As explained in Fact-9.
- m. Incorrect. As explained in Fact-9.
- n. Incorrect. The appellant has not been deprived of his due rights.
- o. Incorrect. As explained in preceding paras of Facts & Grounds.
- p. Incorrect. As explained in Fact-18.


h

- 5
- q. Incorrect. The advice of Establishment Department in service matters is in accordance rule/law/policy.
- r. Incorrect. As explained in Ground-n.
- s. Incorrect. The seniority list of PPS BS-18 was issued in accordance with law/rules/policy.
- t. Incorrect. As explained in preceding paras of Facts & Grounds.
- u. Incorrect. No right of the appellant has been violated.
- v. Incorrect. The appellant has been treated in accordance with rule/law/policy.
- w. Incorrect. The appellant has not been suffered rather he has been assigned seniority in accordance with rules/law/policy.
- x. Incorrect. As explained in Fact-9.
- y. Each and every case has its own merits and requires to be decided in accordance with rules/laws/policies.
- z. The respondents also seek leave of this honorable Tribunal to raise further points at any time during arguments before this Honorable Tribunal.

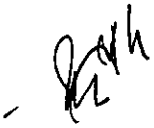
**PRAYER:**


Keeping in view of the above reasonable & just grounds, it is very humbly prayed that the Service Appeal may graciously be dismissed with cost on the appellant.

  
**SECRETARY**  
Govt: of Khyber Pakhtunkhwa,  
Establishment Department  
(Respondent No. 2)

  
**SECRETARY**  
Govt: of Khyber Pakhtunkhwa,  
P&D Department.  
(Respondent No. 3)

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**SECRETARY**  
Govt: of Khyber Pakhtunkhwa,  
Finance Department  
(Respondent No. 4)

  
**CHIEF SECRETARY**  
Govt: of Khyber Pakhtunkhwa.  
(Respondent No. 1)

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**BEFORE THE SERVICE TRIBUNAL, PESHAWAR**

**SERVICE APPEAL.NO. 897/2023.**

Mr. Naseer Ahmad, (PPS BS-18), presently working as Project Manager, Provincial Land Use Plan (PLUP), Urban Policy & Planning Unit (UPPU), P&D Department Khyber Pakhtunkhwa, Peshawar. ....APPELLANT

**VERSUS**

6. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.
7. Secretary to Govt of Khyber Pakhtunkhwa, Establishment Department.
8. Secretary to Govt of Khyber Pakhtunkhwa, Planning & Development Department.
9. Secretary to Govt of Khyber Pakhtunkhwa, Finance Department.
10. Mr. Sher Afzal, Senior Planning Officer, Social Welfare Department & others. ....RESPONDENTS

**AFFIDAVIT**

I, Assad Ullah khan, Section Officer (Lit), Planning & Development Department do hereby solemnly affirm and declare on oath that the contents of Comment are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal, intentionally.

It is further stated on oath that in this appeal, the answering respondent have neither been placed ex-parte nor their defence has been struck-off/cost.

ATTESTED



DEPONENT  
CNIC No. 17301-6715993-1  
Cell # 0313-0993747

W  
35787023

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Annex-I

GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT  
(REGULATION WING)



Secretary  
P&D Department

Secretary No: 2058

NO. SOR.III(E&AD) 5-2/2011 (A)

Dated Peshawar the September 3, 2019

33

6-9-19

544

4-9-19

To

The Secretary to Govt of Khyber Pakhtunkhwa,  
Planning & Development Department.

Subject:

ADVICE REGARDING FIXATION OF SENIORITY OF OFFICERS  
OF P&D DEPARTMENT, MERGED AREAS SECRETARIAT IN  
RESPECTIVE SENIORITY LISTS OF PROVINCIAL PLANNING  
SERVICE (PPS) CADRE

Dear Sir,

I am directed to refer to P&D Department letter No. SO(E)P&D/19-37/PPS/2019 dated August 19, 2019 on the subject noted above and to advise that employees of P&D Department merged areas (erstwhile FATA) had earlier not been declared surplus, therefore, the seniority of these employees are required to be determined from the date of their regular appointment in line with Section 8 of Civil Servant Act, 1973 and Rule 17 of APT Rules, 1989.

Yours faithfully,

(KHALIL-UR-RAHMAN)  
SECTION OFFICER (R-III)  
Phone # 3211793

05-9-19 A.S.  
D.S.(A)

Attested  
*[Signature]*

Section Officer (Lit)  
Planning & Dev: Deptt:  
K.P.K.

*[Signature]*

04/09

P.M.

*[Signature]*  
07/11/19

JA

etc

Pho

Diary No: 1113  
Date: 05-09-2019



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Annex-II

1

BEFORE THE  
HONORABLE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL

In Re:

Implementation Petition No. 249 /2021

In Service Appeal No. 3521/2021

Decided on: 14. 07. 2021

Mr. Shah Fazil S/o Sardar Hussain, Senior Planning Officer, Higher  
Education Department, Khyber Pakhtunkhwa, Peshawar.

..... Appellant

Versus

1. The Government of Khyber Pakhtunkhwa,  
Through Chief Secretary Government of Khyber Pakhtunkhwa,  
Civil Secretariat Peshawar.
2. The Establishment Department, Government of Khyber Pakhtunkhwa.  
Through Secretary Establishment, Government of Khyber Pakhtunkhwa  
Civil Secretariat, Peshawar.
3. The Planning & Development Department, Government of Khyber  
Pakhtunkhwa.  
Through Secretary P & D, Government of Khyber Pakhtunkhwa  
Civil Secretariat, Peshawar.
4. The Finance Department, Government of Khyber Pakhtunkhwa.  
Through Secretary Finance, Government of Khyber Pakhtunkhwa  
Civil Secretariat, Peshawar.

..... Respondents

Attested

Section Officer (Lif)  
Planning & Dev. Deptt:  
K.P.K.

EXECUTION PETITION TO GIVE EFFECT & IMPLEMENT  
THE JUDGMENT OF THIS HONORABLE TRIBUNAL  
DATED 14-07-2021.

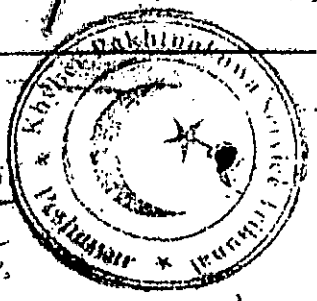
Respectfully Sheweth.

That the Appellant earnestly craves the permission of the Honorable  
Service Tribunal to submit as under:

Khyber Pakhtunkhwa  
Peshawar

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E. P. No. 249/2021  
Shah Razil vs Govt



16<sup>th</sup> Feb, 2023

1. Learned counsel for the petitioner present. Mr. Muhammad Riaz Khan Paindakhel, Asst: AG for respondents present.

02. Learned counsel for the petitioner, after going through the notification dated 06.12.20022 whereby final seniority list of PPS (BS-18) Officer was notified has been challenged by the petitioner through a separate departmental representation. therefore, he says that this application may be filed. Disposed of accordingly. Consign.

3. Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal on this 16<sup>th</sup> day of February, 2023.

(Kalim Arshad Khan)  
Chairman, etc.

**Certified to be true copy**  
  
**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

*Attested*

**Section Officer (Lit)**  
Planning & Dev: Deptt:  
K.P.K.

Date of Presentation of Application 22/3/2023

Number of Pages 1

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Trial 15/5/23

Name \_\_\_\_\_

Date of Copy \_\_\_\_\_

Date of Delivery of Copy 25/3/23

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**GOVERNMENT OF KHYBER PAKHTUNKHWA  
PLANNING & DEVELOPMENT DEPARTMENT**

**AUTHORITY LETTER**

Mr. Assad Ullah Khan, Section Officer (Litigation) of Planning & Development Department is hereby authorized to pursue / defend court cases of Service Tribunal, Khyber Pakhtunkhwa and Civil / District Courts as well as submit Para-wise Comments / Replies in the cases duly sworn on affidavit in the courts on behalf of Additional Chief Secretary and Secretary P&D Department.

  
**DEPUTY SECRETARY  
P&D Department**