

Pakhtunkhwa
31/07/2023
7292

BEFORE THE SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL.NO. 895/2023.

Mr. Hashim Khan S/O Lal Badin, R/O Attikhel, Post office Chokara, Tehsil Takht Nusratti,
District Karak

.....**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**

I N D E X

S.No.	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGES
1.	Joint Para-wise Comments	-	01 to 05
2.	Affidavit	-	06
3	Advise of the Establishment Department	I	07
4.	Order dated: 16/02/2023 in E.P no. 249/2021	II	08 to 09
6.	Authority Letter	-	10

DEPONENT

Through


SECTION OFFICER (LIT)

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

S.A No. 895/2023

Muhammad Hashim S/O Lal Badin, R/O Attikhel, Post Office Chokara, Tehsil
Takht Nusratti, District Karak

.....APPELLANT

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.
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, Social Welfare Department 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

h

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) The representation of the appellant made on tentative seniority list issued on 23.10.2020 was processed/examined and regretted/filed being not covered under any rule/regulation/policy.
- 15) Incorrect. 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-I, -II)
- 16) Correct to the extent the final seniority list of PPS BS-18 officer was notified on 06.012.2022, however, representation of the applicant was processed and regretted/filed being not covered under any rule/law/policy.
- 17) Correct to the extent that tentative seniority lists of PPS BS-18 was issued on 30.01.2023 and representation of the appellant was received and is still under process. However, the same is not covered under any rule/law/policy and will be regretted and filed after approval of competent authority.
- 18) 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.

h

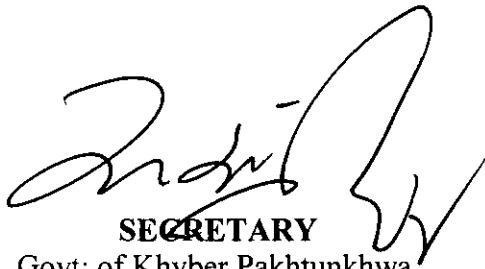
h


- 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. In-correct. 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.
- 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.


P R A Y E R:

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)


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


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

6

BEFORE THE SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL.NO. 895/2023.

Mr. Hashim Khan S/O Lal Badin, R/O Attikhel, Post office Chokara, Tehsil Takht Nusratti,
District KarakAPPELLANT

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

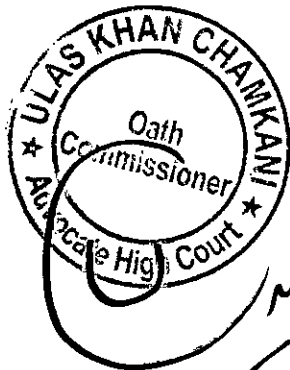
I, Assad Ullah khan, Section Officer (Lit), Planning & Development Department do hereby solemnly affirm and declare on oath that the contents of Comment are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal, intentionally.

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.



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

ATTESTED



Handwritten signature and date: 3/8/23

7

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)

4-9-19

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-SAHMAN)
SECTION OFFICER (R-III)
Phone # 9211793

Attefall

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

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

S. (E)

Adla
04/09

HA

6/9/19

SLC

D. (E) (P&D)
Diary No. 118
Date: 05-09-2019

8

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
[Signature]

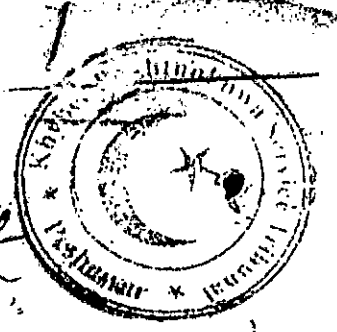
EXECUTION PETITION TO GIVE EFFECT & IMPLEMENT
THE JUDGMENT OF THIS HONORABLE TRIBUNAL

DATED 14-07-2021.

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

Respectfully Sheweth.

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



⑨
E.P. No. 249/2021
Shah Fazil vs Govt

16th 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 16th day of February, 2023.

(Kalim Arshad Khan)
Chairman, etc.

Certified true copy
REGISTRAR
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Attested

Date of Presentation of Application 22/3/2023

Number of ~~pages~~ Page 1

Section Officer (Lit) Copying Fee _____
Planning & Dev. Deptt. Urgent _____
K.P.K. Total 16/5/23

Blank _____

Date of Conf. 25/3/23

Date of Delivery of Copy 27/3/23


10



**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**