

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 7279/2021

BEFORE: **MRS RASHIDA BANO** ... **MEMBER (J)**
MISS FAREEHA PAUL ... **MEMBER (E)**

Said Nawaz, Assistant Programmer/Assistant LAN Administrator (BPS-16)
City Traffic Police Headquarter Peshawar. (*Appellant*)

Versus

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Chief Traffic Officer, City Traffic Police, Peshawar.
3. Shahidullah Computer Operator, CTD, Malak Saad Shaheed Police Lines, Peshawar.
4. Muhammad Hussain, Computer Operator BPS-16 CTD, Malak Saad Shaheed Police Lines, Peshawar. (*Respondents*)

Mr. Mir Zaman Safi
Advocate ... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney ... For official respondents

Mr. Noor Muhammad Khattak
Advocate ... For private respondents

Date of Institution..... 17.08.2021
Date of Hearing..... 07.08.2023
Date of Decision..... 07.08.2023

JUDGEMENT

FAREEHA PAUL, MEMBER (E): Through this single judgment, we intend to dispose of instant appeal as well as connected Service Appeal No. 7280/2021 titled "Muhammad Ikram Khan Versus Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar & others" and (ii) Service Appeal No. 7543/2021, titled "Abdullah Versus Provincial Police Officer, Khyber



Pakhtunkhwa, Peshawar and others” as in all the appeals common questions of law and facts are involved.

2. The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the notification dated 28.04.2021 of respondent No. 1 to the extent of amendment in Appendix against serial No. 2 in column 5, for clause (A) and to the extent of “Note” whereby the KP Police Department (Information Technology Wing) Service Rules, 2014 had been amended thereby maintaining joint seniority list of the Assistant Programmers, Assistant LAN Administrators and Computer Operators (BS-16) for the purpose of promotion against which departmental appeal of the appellant had not been responded within the statutory period of ninety days. It has been prayed that on acceptance of this appeal, the impugned notification dated 28.04.2021 of respondent No. 1 to the extent of Amendment in Appendix against Serial No. 2 in Column 5, for Clause (A) and to the extent of adding “Note” whereby the KP Police Department (Information Technology Wing) Service Rules 2014, had been amended thereby maintaining joint seniority list of the Assistant Programmers, Assistant LAN Administrators and Computer Operators (BPS-16) for the purpose of promotion might be declared illegal and unlawful, and be struck down and expunged from the KP Police Department (Information Technology Wing) Service Rules 2014 from the date of its issuance.

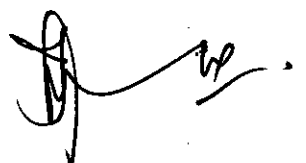
3. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Assistant Programmer/Assistant LAN



Administrator (BPS-16) vide notification dated 10.05.2018, pursuant to the recommendations of the Khyber Pakhtunkhwa Public Service Commission. There were only three incumbents in the KP Police Department who were serving as Assistant Programmer/Assistant LAN Administrator (BPS-16) and the appellant was at the top of the seniority list. Vide notification dated 28.04.2021 of respondent No. 1, amendments were made in Appendix against serial No. 2 in Column 5, for Clause (a) and "Note" was also added whereby the KP Police Department (Information Technology Wing) Service Rules 2014, were amended thereby maintaining joint seniority list of the Assistant Programmers, Assistant LAN Administrators and Computer Operators (BPS-16) for the purpose of promotion. The appellant preferred departmental appeal against the notification dated 28.04.2021 which was not responded within the statutory period of ninety days; hence the present appeal.

4. Respondents were put on notice who submitted written replies/comments on the appeal. We heard the learned counsel for the appellant, the learned Deputy District Attorney for the official respondents as well as counsel for private respondents No. 6 & 7 and perused the case file with connected documents in detail.

5. Learned counsel for the appellant, after presenting the case in detail, argued that the impugned amendments were illegal and void ab-initio. He further argued that the impugned amendments had adversely affected the accrued rights of the appellant, as he was by now on the second position of seniority list while subsequent to maintaining joint seniority list, his seniority



would be affected adversely as he would lose his seniority position. He further argued that through the impugned amendments, the Computer Operators had been included with the appellant in seniority list, despite the facts that both the posts were of distinct nature and of different cadres. He further argued that the requisite qualification for both the posts was also not the same, as for Computer Operator minimum qualification was second class Bachelor Degree with one year Diploma in IT while [REDACTED] minimum qualification for the post of Assistant Programmers/Assistant LAN Administrators was second class Master Degree in Computer Science or four years Bachelor Degree in Information Technology or Computer Science or equivalent qualification. According to him the impugned amendments were in violation of the Section 20 to 24 of the General Clauses Act 1897. He requested that the appeal might be accepted as prayed for.

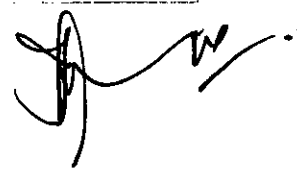
6. Learned Deputy District Attorney and learned counsel for private respondents No. 6 & 7, while rebutting the arguments of learned counsel for the appellant, argued that the Provincial Police Officer empowered by Section 140 of the Khyber Pakhtunkhwa Police Act, 2017 (KP Act No. II of 2017) made amendment in the Khyber Pakhtunkhwa Police Department (Information Technology Wing) and in the light of sub rule 2 of Rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 and also in the light of recommendation of SSRC and with the approval of Government amended the 2014 Service Rules in the best interest of all the Information Technology staff members of the Khyber Pakhtunkhwa Police. They contended that according to those rules, the respondents issued joint



seniority list for the cadres of Computer Operators, Assistant Programmers and Assistant LAN Administrators. They further argued that the private respondents No. 6 & 7 were senior to the appellant as per their initial regular appointment, therefore, they were entitled for promotion to the next higher scale. They requested that the appeal might be dismissed.

7. The appellant has impugned the amendment in service rules issued vide notification dated 28.04.2021 on the grounds that the cadre of Computer Operators is different from that of Assistant Programmers/Assistant LAN Administrators and hence no joint seniority list of these positions could be maintained. Perusal of impugned notification indicates that the posts of Computer Operators as well as Assistant Programmers/Assistant LAN Administrators are in BS-16. As far as qualification for both posts is concerned, the notification provides as follows:-

<i>Assistant Programmer/Assistant LAN Administrator (BPS-16)</i>	<i>Computer Operator (BPS-16)</i>
<i>At least Second Class Master Degree in Computer Science/Information Technology or four years Bachelor Degree in Information Technology or Computer Science or equivalent qualification from a recognized university</i>	i) <i>Second Class Bachelor's Degree in Computer Science/Information Technology (BCS/BIT 4 years), from a recognized University; or</i> ii) <i>Second Class Bachelor's Degree from a recognized university with one year Diploma in Information Technology from a Recognized Board in Technical Education with two years experience as Computer Operator.</i>



The above mentioned comparison of the positions indicates that the qualification for both sets of posts is the same except Sr. No. (ii) for Computer Operators.

8. There is no second opinion on the fact that prescribing qualification for a specific post in any provincial government organization is the sole domain of the Provincial Government. The Provincial Government is fully empowered to prescribe service rules and amend them in such a way that the rights of its employees are fully protected on one hand and they are given fair opportunity of career progression also. In the case under reference here, it has been found that all the positions are in BS-16 and related to computer, and hence clubbed together. It is further noted that it is not just the Provincial Police in which such step has been taken, rather the same practice has already been adopted by various departments in the Civil Secretariat of the Provincial Government, and specially the Establishment Department, which is a regulatory department in all the service matters of employees of provincial government.

9. In view of the above discussion, the appeal in hand as well as connected appeals, being devoid of merits, are dismissed. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 07th day of August, 2023.*


(FAREEHA PAUL)
Member (I)



(RASHIDA BANO)
Member (J)

SA 7279/2021

07th Aug. 2023 01. Mr. Mir Zaman Safi, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, the appeal in hand being devoid of merits, is dismissed. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 07th day of August, 2023.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

Fazle Subhan, P.S