

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

In Service Appeal No.652-P/2023

Usman Ali

(Appellant)

Versus


Advocate General & others

(Respondents)

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Respondent No:05
Through


Muhammad Irshad Mohmand
Advocate High Court
Peshawar

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**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
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In Service Appeal No. 652-P/2023

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 7941

Dated 27/09/23

Usman Ali

(Appellant)

Versus

Advocate General & others

(Respondents)

**WRITTEN REPLY ON BEHALF OF
RESPONDENT NO:05**

Respectfully Sheweth:-

That the Replying Respondent No 05 submit as under: -

Preliminary Objections: -

- i. That the appellant has no locus standi and cause of action against the answering respondent to file the instant Service appeal.
- ii. That the appellant admits in Para No 4 of the service appeal, that the appellant has passed his SSC examination in the year 2017, furthermore the required qualification for the post of junior clerk is intermediate examination, but the appellant is not having the requisite qualification and also admit in Para 14 of the service appeal, that the appellant has passed his intermediate examination after the seniority list and under the law, the appellant seniority will be prepared / determined with the reference to the date of acquiring the requisite qualification, therefore the appellant is not entitle for any kind of relief and is having no legal right to file this service appeal.
- iii. That it is also pertinent to mentioned here that the replying Respondent No 5 has passed his SSC exam in the year 1999

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while intermediate examination in the year 2005 prior of appointment, and the replying respondent is also having Bachelor degree obtained in the year 2015, and since from the appointment, the replying respondent is waiting for his promotion and after long time the name of replying respondent is placed at S. No 8 in the Seniority list issued on 31-05-2022, and now the name of Replying respondent is at S.No 1 of the Seniority list maintained for the purpose of promotion to the post of junior clerk and being eligible and top of the seniority list is entitle for promotion to the post of junior clerk.

- iv. That the present service appeal filed by the appellant is baseless and not maintainable, as it shows no strong cause to be taken for adjudication, therefore the same is liable to be dismissed.
- v. That the appellant has not come to this Honorable Tribunal with clean hands, therefore the appellant is not entitled to equitable relief.
- vi. That the instant service appeal filed by the appellant is incompetent, misconceived and not tenable in the eye of law against the answering respondent therefore is liable to be dismissed with order of compensatory cost.
- vii. That the appellant is completely estopped / precluded by his own conduct to file this service appeal against the answering respondent.
- viii. That no legal right of the appellant has been violated, therefore the appellant has no right to file instant service appeal.
- ix. That the service appeal filed by the appellant is **badly time barred**, therefore on this score the service appeal filed by the appellant is liable to be dismissed.

Reply to Facts:

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1. Para No 1 of the Service appeal is pertain to the concerned office record / service record of the appellant, therefore needs no reply.
2. Para No. 2 of the Service appeal is incorrect and the name of the appellant is at S.No 48 in the seniority list with Middle qualification
3. Para No. 3 of the Service appeal is pertain to the office record.
4. In reply to Para No. 4 of the Service appeal, it is submitted that the alleged SSC certificate is not of the appellant and subject to proof, furthermore the required qualification for the post of junior clerk is intermediate examination, but the appellant is not having the requisite qualification, which is also clear from Para No 14 of the service appeal, that the appellant has passed his alleged intermediate examination after issuance of the seniority list, and under the law / rules the appellant seniority will be prepared / determined with the reference to the date of acquiring the requisite qualification, therefore the appellant is not entitle for any kind of relief and is having no legal right to file this service appeal.
5. Para No 5 of the Service appeal is not related to the replying respondents and pertain to the office record.
6. Para No. 6 of the Service appeal is also pertains to the office record, therefore needs no reply from the replying respondent.
7. Para No. 7 of the service appeal is related to the rules, furthermore according to the Note mentioned in the rules for the purpose of promotion that, ***there shall be maintained a common seniority list with reference to the date of their acquiring the intermediate certificate***, but the appellant is not having the requisite qualification at the time of preparation of seniority list and has passed the alleged intermediate examination after issuance of the seniority list.

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8. Para No. 8 of the Service appeal is pertain to the office record, and it is pertinent to mentioned here that the appellant is not having the requisite qualification while the name of replying respondent is at S.No 10 in the seniority list as stood on 31-03-2021.
9. Para No 9 of the Service appeal is incorrect and related to the office record, while the detail reply has been given in above mentioned para, as such the appellant is not having the requisite qualification, which is also clear from Para No 14 of the service appeal, that the appellant has passed his alleged intermediate examination after issuance of the seniority list, and under the law / rules the appellant seniority will be prepared / determined with the reference to the date of acquiring the requisite qualification.
10. Para No 10 of the service appeal is related to the office record, and it is further submitted that after the promotion of Candidates at S.No 2 & 9 mentioned in the Seniority list issued on 31-03-2021 (page No 19 Annex "F"), therefore in the seniority list issued on 31-05-2022 (page No 22) the name of appellant has been placed from S.No 17 to 15 while the name of replying respondent figured from S.No 10 to 8 of the Seniority list.
11. Para No 11 of the Service appeal is also pertain to office record, and the detail reply has been given in above mentioned para, therefore needs no further reply being repetition.
12. Para No 12 of the Service appeal is not related to the replying respondent.
13. Para No 13 of the Service appeal is correct to the extent of promotion of private respondents and the remaining para is incorrect and not related to the replying respondent , it is further submitted that according to the prescribed rules, the seniority list is to be maintained with reference to the date of acquiring

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the requisite qualification and the one whose qualification is prior will be placed senior in the seniority list and will be promoted according to his seniority under the law, which is clear from the rules that if a senior official does not possess the requisite qualification at the relevant time of filling up a vacancy, the official next junior to him possessing the requisite qualification shall be promoted in preference to the senior official.

14. Para no 14 of the Service Appeal is related to the alleged intermediate DMC of the appellant, subject to proof, but it is clear that the intermediate examination of the appellant is after issuance of the seniority list, therefore the appellant is not entitle for promotion.
15. Para No 15 of the Service appeal is not related to the replying respondent and pertain to the office record.

Reply to Grounds:-

- A. Ground A of the Service appeal is incorrect & misleading and the seniority list is always prepared in accordance with the law & rules.
- B. Ground B of the Service appeal is incorrect and seniority list is prepared according to the rules prescribed for promotion, and as such the appellant is not having the requisite qualification, therefore not entitle for any kind of relief in shape of promotion under the law.
- C. Ground C of the Service appeal is incorrect, and the rules provided for promotion has not been challenged by the appellant, furthermore the appellant is having Middle pass education and has passed his alleged SSC examination in the year 2017 and FA in the year 2022 after issuance of the seniority list, therefore the appellant is having no right to file instant appeal against the replying respondent.

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- D. Ground D of the Service appeal is pertains to the office record while detail reply has been given in the reply to the fact, therefore needs no further reply being repetition
- E. Ground E of the Service appeal is incorrect.
- F. Ground F of the service appeal is incorrect; rather all the promotions have been made in accordance with law as per seniority list.
- G. Ground G of the Service appeal is not related to the replying Respondent.
- H. Ground H of the Service appeal is incorrect, and it is submitted that the seniority list & promotion have been made in accordance with the law and rules, and the replying respondent is also waiting for his promotion since long and is entitle for promotion according to the seniority list maintained for the purpose of promotion.

Prayer:-

It is therefore, respectfully prayed that on acceptance of this Written Reply on behalf of Respondents No 5, the Service appeal filed by the appellant may graciously be dismissed with cost being illegal, time barred, unwarranted and unjustified against the Replying Respondent No 05 and the Replying respondent is also entitle for promotion to the post of junior clerk being eligible & on top of the seniority list.



Respondent No:05
Through



Muhammad Irshad Mohmand
Advocate High Court
Peshawar

(7)

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AFFIDAVIT

I, Muhammad Arif s/o Riyaz R/o Hassan Ghari near Warsak Road Peshawar do hereby affirm and declared on oath that the contents of this Written Reply are true and correct to the best of my knowledge and nothing has been concealed from this Honorable Tribunal.

It is further stated on oath that in this appeal the answering respondents have neither been placed ex parte nor their defence

Identified by *struck off/cost*

Muhammad Irshad Mohmand

Muhammad Irshad Mohmand
Advocate High Court
Peshawar

Deponent

17301-7270964-3

0301-5933200

