FORM OF ORDER SHEET

Court of _____

Review Petition No. 696/2023

.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	27/9/2023	The Review Petition of Mr. Muhammad Ikram submitted today by Mr. Baseer Ahmad Shah Advocate. It is fixed for hearing before Division Bench at Peshawar on 02-10-2023. Original file be requisitioned. By the order of Chairman REGISTRAR

The review petition in appeal no. 7280/2021 received today i.e. on 25.09.2023 is incomplete on the following scores which is returned to the counsel for the petitioner for completion and resubmission within 15 days.

Annexures of the petition are not in sequence be annexed serial wise as mentioned in the memo of petition.

No. 3292 /S.T,

Dt. 26/9 /2023.

REGISTRAR
KHYBER PAKHTUNKWA
SERVICE TRIBUNAL
PESHAWAR

Baseer Ahmad Shah Adv.
Hogh Court Peshawar.

Respected Sir,

Re-submitted after removal of all the objections.

Dated 26-9-2023

Baseer Ahmad Shah
Advocate

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Review Petition No 696 /2023

In

Service Appeal No 7280/2021

Muhammad Ikram.....**Petitioner**

VERSUS

PPO and Others.....**Respondents**

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Dated:-25-09-2023

Petitioner

Through

Baseer Ahmad Shah

&

Ibad Ur Rehman
Advocates,
Peshawar

OFFICE:- Cantonment Plaza Flat 3/B Khyber Bazar Peshawar Cell# 0315-0195187

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Review Petition No 696 /2023

In

Service Appeal No 7280/2021

Muhammad Ikram Khan, Assistant Programmer/Assistant LAN Administrator (BPS-16), City Traffic Police Headquarter, Peshawar.

.....**Petitioner**

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Chief Secretary, Govt. of Khyber Pakhtunkhwa, Peshawar.
3. Chief Traffic Officer, City Traffic Police, Peshawar.
4. Govt. of Khyber Pakhtunkhwa through Secretary Finance Department, Civil Secretariat, Peshawar.
5. Govt. of Khyber Pakhtunkhwa through Secretary Establishment Department, Civil Secretariat, Peshawar.
6. Shahid Ullah, Computer Operator, CTD, Malik Saad Shaheed Police Lines, Peshawar.
7. Muhammad Hussain, Computer Operator, CTD, Malik Saad Shaheed Police Lines, Peshawar.

.....**Respondents**

REVIEW PETITION AGAINST THE JUDGMENT AND ORDER DATED 07-08-2023 OF THIS HONORABE TRIBUNAL PASSED IN THE ABOVE SERVICE APPEAL.

Respectfully Submitted:-

1. That the petitioner earlier filed the mentioned Service Appeal before this honorable Tribunal which was dismissed vide Judgment and Order dated 07-08-2023. **(Copy of Judgment and Order dated 07-08-2023 is enclosed as Annexure A).**

2. That this honorable Tribunal is very much vested with powers to review its Judgment as this honorable Tribunal has allowed Review Petition No 444/2019 in Service Appeal No 939/2015 which was even not challenged by the respondents, thus attained finality, hence the instant Review Petition. **(Copy of Judgment passed in Review Petition No 444/2019 is enclosed as Annexure B).**

3. That the impugned Judgment and order dated 07-08-2023, is against the law, facts and principles of justice and liable to review on grounds inter-alia as follows:-

GROUNDS:-

A. That the impugned Judgment and Order is illegal, void against the law and record.

B. That the impugned Notification to the extent of amendment in appendix against Serial 2 in Column 5, for clause (a) and to the extent of adding "Note" has even not been approved by the competent forum, as the Standing Service Rules Committee (SSRC), was not Constituted in accordance with law and instructions of the provincial Government, thus the same is corum non judice and as such the impugned Judgment is liable to be reviewed on this score alone. **(Copy of Minutes of the SSRC dated 14-07-2020 is enclosed as Annexure C).**

C. That it is worth to note that no qualification was approved in the meeting of Standing Service Rules Committee (SSRC), while in the impugned Notification the qualification was later on included, without the approval of SSRC, hence the impugned Judgment and Order is liable to review, on this score alone.

D. That in para 8 of the impugned Judgment it has been held that the Establishment Department which is regulatory department of the provincial Govt. has already adopted such step, while according to Sub para III of the Minutes of the SSRC dated 14-07-2016, the decision regarding seniority was made according to which the Seniority List will begin from the Assistant Programmer, followed by the Data Processing Supervisor and subsequently by the Computer Operators, which has further been elaborated by adding the "Explanation" which in clear terms sates that the Assistant Programmers will rank senior to Data Processing Supervisor and Data Processing Supervisors will rank senior to the Computer Operators, while in the instant case the petitioner has been treated totally in different manner, thus too the impugned Judgment is liable to be reviewed. **(Copy of Minutes of the SSRC dated 14-07-2016 is enclosed as Annexure D).**

E. That the impugned Judgment is in violation of Section 20 to 24 of the General Clauses Act, 1897 in which case such appeals were accepted by this honorable Tribunal and which were also upheld by the Apex Court. **(Copy of Judgment dated 29-01-2013 passed in Service Appeal No 251/2011 is enclosed as Annexure E).**

F. That it has been held by the honorable Peshawar High Court, Peshawar vide para No 8 of its Judgment passed in Writ Petition No 3893-P/2020 dated 12-07-2021, that the posts of Computer Operators and that of Assistant Programmers are two distinct posts. **(Copy of Judgment dated 12-07-2021 in Writ Petition No 3893-P/2020 is enclosed as Annexure F).**

G. That the post held by the petitioner, i,e Assistant Programmer/Assistant LAN Administrator (BPS-16) and that of Computer Operators are totally distinct posts even in terms of qualification, besides previously the Computer Operators were promoted to the post of Data Processing Supervisors and the then the data Processing Supervisors were to be promoted to the post of Assistant Programmers, thus the Computer Operators have been brought two step up and now are placed senior to the petitioner, hence the impugned Judgment is liable to be reviewed.

H. That the impugned order is liable to be reviewed as the accrued rights of the petitioner have been snatched and that too for no fault on their part.

I. That the impugned Judgment and order has been passed in violation of record, facts besides principles of natural justice.

J. That the petitioner seeks the permission of this honorable Court to rely upon additional grounds at the time of arguments.

It is therefore prayed that by accepting this Review Petition, the impugned Judgment and Order dated 07-08-2023 passed by this honorable Tribunal in the above mentioned Service Appeal, may kindly be set aside, be reversed and the Service Appeal of the petitioner may kindly be accepted as prayed for.

Dated:-25-09-2023

Petitioner

Through

Baseer Ahmad Shah
&
Ibad Ur Rehman
Advocates, Peshawar

CERTIFICATE:

Certified that as per instructions of my client, no Review Petition on the same subject and between the same parties has been filed previously or concurrently before this honorable Tribunal.

ADVOCATE

(4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Review Petition No_____/2023

In

Service Appeal No 7280/2021

Muhammad Ikram Khan.....**Petitioner**

VERSUS

PPO and Others.....**Respondents**

AFFIDAVIT

I, Muhammad Ikram Khan, Assistant Programmer/Assistant LAN Administrator (BPS-16), City Traffic Police Headquarter, Peshawar, do hereby solemnly affirm and declare on oath that the contents of this **Review Petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

DEPONENT

Identified by

Baseer Ahmad Shah

&

Ibad Ur Rehman

Advocates Peshawar.

ATTESTED

Gul Daraz Khan

Oath Commissioner

Advocate High Court Peshawar

(5)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Review Petition No_____/2023

In

Service Appeal No 7280/2021

Muhammad Ikram Khan.....**Petitioner**

VERSUS

PPO and Others.....**Respondents**

Application for the suspension of the operation of the impugned order and Judgment dated 07-08-2023, till the final disposal ot this Review Petition.

Respectfully Submitted:

1. That the above titled Review Petition is being filed today, in which no date of hearing has been fixed so far.
2. That the facts and grounds of Review Petition may kindly be considered as integral part of this application.
3. That the applicant/Petitioner has got good prima facie case and is sanguine of its success.
4. That the balance of convenience also lies in favor of the applicant/petitioner.
5. That in the given circumstances if the impugned Judgment and order is not suspended the applicant/petitioner will suffer irreparable loss.

It is therefore prayed that on acceptance of this application, the impugned Judgment and Order dated 07-08-2023, may kindly be suspended till the final disposal of the titled Review Petition.

(6)

Dated:-25-09-2023

Petitioner

Through

Baseer Ahmad Shah

&

Ibad Ur Rehman

Advocates, Peshawar

AFFIDAVIT

I, Muhammad Ikram Khan, Assistant Programmer/Assistant LAN Administrator (BPS-16), City Traffic Police Headquarter, Peshawar, (the petitioner), do hereby solemnly affirm and declare on oath that the contents of this **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

DEPONENT

Identified by

Baseer Ahmad Shah

Advocate Peshawar

ATTESTED

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 7280 /2021

Muhammad Ikram Khan, Assistant Programmer/Assistant LAN Administrator, (BPS-16), City Traffic Police Headquarter Peshawar.

.....**Appellant**

V E R S U S

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Chief Secretary Govt. of Khyber Pakhtunkhwa, Peshawar.
3. Chief Traffic Officer, City Traffic Police, Peshawar.
4. Govt. of KPK through Secretary Finance Department, Civil Secretariat, Peshawar.
5. Govt. of KPK through Secretary Establishment Department, Civil Secretariat, Peshawar.....**Respondents**

APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974 AGAINSTTHE 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, HAVE BEEN AMENDED THEREBY MAINTAINING JOINT SENIORITY LIST OF THE ASSISTANT PROGRAMMERS, ASSISTANT LAN ADMINISTRATORS AND COMPUTER OPERATORS (BPS-16) FOR THE PURPOSE OF PROMOTION AND AGAINST WHICH DEPARTMENTAL APPEAL OF THE APPELLANT HAS NOT BEEN RESPONDED SO FAR DESPITE THE LAPSE OF MORE THAN THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:-

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, have been amended thereby maintaining joint Seniority List of the Assistant Programmers, Assistant LAN Administrators and Computer Operators (BPS-16) for the purpose of promotion may kindly be declared illegal, unlawful, be struck down and be expunged from the KP Police Department (Information Technology Wing) Service Rules, 2014 from the date of its issuance.

Respectfully Submitted:-

1. That the appellant is highly qualified who has passed his Master of Computer Science Degree and was appointed as Assistan Programmer/Assistant LAN Administrators (BPS-16) vide Notificatio

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Khyber Pakhtunkhwa Service Tribunal Peshawar

SA 7280/2021

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, in connected Service Appeal No. 7279/2021, titled "Said Nawaz Vs. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others", 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

Certified to be ture copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 07/8/23
Number of Words page 2
Copying Fee 10/
Urgent
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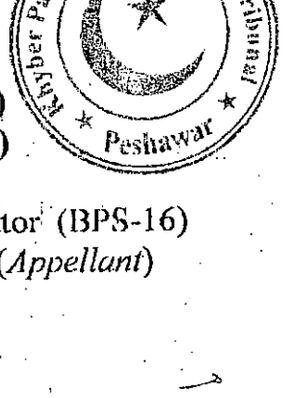
Date of Completion of Copy 06/9/23
Date of Delivery of Copy 06/9/23

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 ... For official respondents
Deputy District Attorney

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

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

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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

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Khyber Pakhtunkhwa Service Tribunal Peshawar

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 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

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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:-

Assistant Programmer/Assistant LAN Administrator (BPS-16)	***Computer Operator (BPS-16)***
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) Second Class Bachelor's Degree in Computer Science/Information Technology (BCS/BIT 4 years), from a recognized University, or* *ii) 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.*

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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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 (E)

(RASHIDA BANO)
Member (J)

Fazle Subhan, P.S

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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Annex B

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Review Petition No 444/2019 Diary No. 1678 Dated 25/11/2019

Service Appeal No. _____

1. Muhammad Sohail, Ex-Deputy Secretary (BPS-18), Industries, Commerce and Technical Education Department, Khyber Pakhtunkhwa (KP), Peshawar & R/o House No. 31, Street No 9-A, Gulbahar Colony No.2, Peshawar City

.....(Appellant)

VERSUS

1. Govt of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

2. Secretary to Govt. of Khyber Pakhtunkhwa Commerce & Industries Department, Peshawar.

3. Secretary to Govt. of Khyber Pakhtunkhwa Environment Department, Peshawar

.....(Respondents)

LEAVE TO FILE REVIEW APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974. THE JUDGEMENT ANNOUNCED VIDE DATED 13.04.2016. WHEREBY THE SERVICES TRIBNAL CONVERNT THE PUNISHMENT AWAREDED BY DEPARTMENTAL INQUIRY COMMITTEE IN TO COMPLUSORY RETIREMENT FROM SERVICES.

Prayer in Appeal:

1. Upon acceptance of this leave to file review appeal the appellant pray as below;

1.1. The decision/order announced dated 13.04.2016 may please be review and set-aside on humanitarian ground (Annexure-2).

ATTESTED

(16)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Review Petition No. 444/2019

Date of Institution ... 25.11.2019

Date of Decision ... 01.02.2022

Muhammad Sohail, Ex-Deputy Secretary (BPS-18), Industries, Commerce and Technical Education Department Khyber Pakhtunkhwa Peshawar. R/O House No. 31, Street No. 9-A Gulbahar Colony No. 2, Peshawar City.
.... (Petitioner)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others.
...(Respondents)

Present.

Mr. Fazal Shah Mohmand, Advocate ... For Petitioner.

Mr. Muhammad Adeel Butt, Addl. Advocate General, ... For respondents.

MR AHMAD SULTAN TAREEN ... CHAIRMAN
MR. ATIQ-UR-REHMAN WAZIR, ... MEMBER(E)

JUDGMENT

AHMAD SULTAN TAREEN, CHAIRMAN:- Through the Review Petition described above in the heading, the petitioner has prayed for the relief as copied below:-

"1. Upon acceptance of this leave to file review appeal, the appellant pray as below:-

1.1. The decision/order announced dated 13.06.2016 may please be reviewed and set aside on humanitarian ground.

1.2. The appellant appeal/case may please be transferred to the Establishment Department to conduct re-inquiry/hearing."

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2. The facts stated in the Review Petition precisely include that the petitioner was proceeded against under the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 and penalty of removal from service was imposed upon him vide order dated 19.05.2015. He filed departmental appeal which was rejected vide order dated 05.08.2015. Consequently, Service Appeal No. 939/2015 was preferred before this Tribunal. The service appeal was adjudicated upon by the Tribunal under due course and vide judgment dated 13.04.2016, the penalty of removal from service was converted into that of compulsory retirement.

3. The grounds urged in the Review Petition include that no original documents were presented by the respondents before the departmental enquiry committee, and before this Tribunal; that the episodes of departmental enquiry, review petition and proceedings before this Tribunal were misguided by presenting a photocopy of fabricated, concocted, false and baseless letter provided by the Establishment Department, having no legal status under the *Qanun-e-Shahadat* Ordinance, 1984; that no relevant and specific documentary proofs were presented; that the evidence presented by the respondents was based on mere verbal statements specifically the statement of Mr. Naeem Khan which was used to build ground to initiate departmental proceedings; that the appellant was not treated in accordance with the basic principles of law and his rights guaranteed under the law were violated; that no legal proceedings were adopted to conduct departmental enquiry and awarded major penalty of removal from service; that the charges leveled against the appellant were never proved in the enquiry; and that the appellant never committed any act or omission which should be termed as misconduct.

4. Arguments advanced on behalf of the petitioner and by learned AAG on behalf of the respondents have been heard. Copies of the record comprising

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judgment dated 13.04.2016 of this Tribunal, charge sheet/statement of allegations and reply, enquiry report and proceedings, show cause notice and reply, among others as annexed with the Review Petition have been perused.

5. The maintainability of this review petition is the first point for determination before embarking upon reviewability of the impugned judgment. Needless to say that this Tribunal has been established under the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with defined jurisdiction by the same statute. According to sub section (2) of Section 3 of the said Act, the Tribunal has been vested with exclusive jurisdiction in respect of matters relating to terms and conditions of service of civil servant including disciplinary matters. Section 4 of the Act ibid provides that any civil servant aggrieved by any final order, whether original or appellate made by departmental authority in respect of any of the terms and conditions of his service may prefer an appeal to the Tribunal having jurisdiction in the matter. However, Section 4 ibid does not provide right of appeal for civil servant in disciplinary matters. The right of appeal in disciplinary matter has been provided specially under Rule 19 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 which is copied below for ready reference:-

> ***"19. Appeal before Khyber Pakhtunkhwa Services Tribunal-.***
>
> *(1) Notwithstanding anything contained in any other law or rules for the time being in force, any Government servant aggrieved by any final order passed under rule 17 may, within thirty days from the date of communication of the order, prefer an appeal to the Khyber Pakhtunkhwa Service Tribunal established under the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974(Khyber Pakhtunkhwa Act No. 1 of 1974).*
>
> *(2) xxx*

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6. In view of the above legal position, a civil servant has been given right of appeal generally in respect of any of the terms and conditions of his service under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 while specially under Rule 19 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 in respect of disciplinary matters.

7. The Khyber Pakhtunkhwa Service Tribunal Act does not specifically provide for right to file a review petition before the Service Tribunal against its decision made in pursuance to the appeal preferred under Section 4 of the Act or Rule 19 of the Government Servants (E&D) Rules, 2011. Khyber Pakhtunkhwa Service Tribunal Rules, 1974 have been framed in pursuance to Section 11 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 for carrying out the purpose of the said Act. However, the said rules are also silent about review petition. In general sense, the purpose of review petition is to make a request/submission for reconsideration of a decision already made by a Court/Tribunal for the purpose of making changes or making of fresh decision. In the strict legal sense, a court or Tribunal having given a final decision become *functus officio* and review of the decision thereafter is subject to the jurisdiction expressly provided by law or derived impliedly. In the present case, this Tribunal has got no express jurisdiction provided under the Act or Rules discussed above to embark upon review of its own decision. However, Federal Service Tribunal (FST) established under the federal legislation i.e. Service Tribunals Act, 1973 (LXX of 1973) has been vested with review jurisdiction under section 4A of the said Act. The same is copied herein below:-

> ***"4A. Review.***—*(1) A Tribunal shall have the power to review its final order on a review petition filed by an aggrieved party within thirty days of the order on the following grounds, namely:-*

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(i) discovery of new and important matter or evidence which, after exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him at the time when the order was passed;

(ii) on account of some mistake or error apparent on the face of record; or

(iii) for any other sufficient cause.".

(2) The Tribunal shall decide the review petition within thirty days.

(3) The Tribunal may confirm, set aside, vary or modify the judgment or order under review.".

8. FST and all provincial service tribunals including Khyber Pakhtunkhwa Service Tribunal have been established in pursuance to Article 212(1)(a) of the Constitution of Islamic Republic of Pakistan obviously with different territorial jurisdictions. Adjudicatory jurisdiction, which refers to the power of a tribunal to hear an appeal, is common for all the said tribunals as provided under section 4 of respective Service Tribunal Acts. However, unlike Provincial Service Tribunals, FST has been vested with express powers of review under section 4A copied above in addition to its basic adjudicatory jurisdiction under section 4 of Service Tribunal Act, 1973. Article 240 of the Constitution of Pakistan relates to appointment to Service of Pakistan and conditions of service. The Service of Pakistan as defined by Article 260 of the Constitution means any service, post or office in connection with the affairs of the Federation or a Province. Needless to say that FST exercises jurisdiction in connection with appeals of Federal Civil Servants who make part of the Service of Pakistan and the power of review has been expressly given to FST under Section 4A of the Service Tribunal Act, 1973 in the cases of such civil servants which the Provincial Service Tribunals lack in absence of appropriate legislation

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for the sake of bringing conformity in the adjudicatory jurisdiction as the Provincial Civil Servants also make part of Service of Pakistan like the Federal Civil Servants. Therefore, if a civil servant in the province seeks review of the judgment of this Tribunal, he being part of the Service of Pakistan like Federal Civil Servants cannot be compelled to avoid seeking review when there is no specific prohibition in this respect in the Khyber Pakhtunkhwa Service Tribunal Act, 1974. On the other hand, having regard to general conformity of jurisdiction of FST and Khyber Pakhtunkhwa Service Tribunal, borrowing of review jurisdiction by the latter from the former is best suited to the purposes of Article 4 read with Article 25 of the Constitution of Pakistan. Hence, the review petition at hand is held as maintainable.

9. Coming to reviewability of the judgment passed by this Tribunal against the petitioner, it is apt to reproduce herein below the concluding part of the impugned judgment:-

> *"We have carefully perused the record and have come to the conclusion that all codal formalities for disciplinary action against the appellant have been fulfilled by the respondent department. He has been given full opportunity of defense and hearing. Since charge No. 2 and No. 3 stands proved against the appellant, therefore, he has been punished. The major punishment awarded to the appellant is that of removal from service however it was observed that the appellant has rendered about thirteen years of service. Presently he was in grade-18 which shows that he was promoted from grade-17. Since Section-19 of the Civil Servant Act, 1973 provides for compassionate allowance not exceeding two-third of the pension or gratuity to dismissal/removed Government Servant on compassionate ground, therefore, the Tribunal is inclined to form the opinion that though penalty of removal from*

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service and that of compulsory retirement both falls in the domain of major punishment yet the latter is lesser harsh. We therefore, deem it appropriate to convert the appellant punishment of removal from service into that of compulsory retirement."

10. The conditions which work for review of a judgment are as follow:-

(i) *discovery of new and important matter or evidence which, after exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him at the time when the order was passed;*

(ii) *on account of some mistake or error apparent on the face of record; or*

(iii) *for any other sufficient cause.*

11. In order to see whether any of the above conditions is instrumental to make the review of impugned judgment possible, we have to have recourse to the charge sheet served upon the petitioner for formal inquiry. The said charge sheet includes three heads of charge as copied below:-

i) **You issued the fake Environment Protection Agency approval to 780 BTS sites for Pakistan Communication Limited (Mobilink).**

ii) **You, yourself delivered the fake Environmental Protection Agency approval to 780 BTS sites for Pakistan Mobile Communication Limited (Mobilink) to the office of Chief Secretary, Khyber Pakhtunkhwa and Secretary Environment.**

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iii) You had no official relation being a Deputy Secretary Industry with the EPA Environmental Approval but got yourself involved in it.

12. According to Inquiry report, first charge was not proved. The second charge as per Findings of Inquiry Committee was proved. The said charge relates to delivery of EPA approval in office of the Chief Secretary. The said committee as per its observation was concerned that a letter which was neither addressed nor endorsed to the Chief Secretary Khyber Pakhtunkhwa had been registered under Diary No. 10269 on 25th September, 2013 by Mr. Zafrullah, Junior Clerk, Chief Secretary Office. His statement that he received it with "positive intention" was noted with a question by the Committee that what could have been that "positive intention"? The Inquiry Committee itself answered that this was a lapse on part of him (Zafrullah). The Committee then embarked upon discussion of statements of other persons having no relevancy at all to proof of second charge but there seems no effort on part of the inquiry committee to dig out that who actually delivered the EPA approval to Mr. Zafarullah, Junior Clerk, Chief Secretary Office. When no evidence was brought on record to prove the charge that the petitioner had delivered the EPA approval in Chief Secretary's office, it was not warranted for the Inquiry Committee to give findings as to proof of said charge against the accused/petitioner. The third charge was itself inconsequential and it could work when there was no second opinion as to proof of the second charge. As already noted that first charge was not proved against the petitioner even during the departmental proceedings while second charge was held as proved quite imaginatively just to show something against the accused let it be with findings highly irrational and farfetched.

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13. The concluding part of the judgment of this Tribunal impugned for review has already been reproduced herein above. Accordingly, it was concluded that all codal formalities for disciplinary action against the appellant (present petitioner) have been fulfilled by the respondent department. He has been given full opportunity of defense and hearing. Since charge No. 2 and No. 3 stand proved against the appellant, therefore, he has been punished. As far as fulfillment of codal formalities for disciplinary action is concerned, it is a matter relating to due process which the departmental authorities are bound to ensure in the proceedings but it also makes part of due process that evidence collected during inquiry is appraised impartially having regard to its probative value. Prior to initiation of disciplinary proceedings, there were only verbal allegations against the accused/petitioner which culminated into three heads of charges already discussed above. The inquiry report if read as a whole is mostly imaginative and unsupported by any tangible material. The factual details followed by pro and contra arguments were summed up in paragraph 10 of impugned judgment of this Tribunal which includes the findings that it is established on record that NOC in question was a fake document. Charge No. 2 pertains to the delivery of this fake document about which the inquiry committee reached on the conclusion that the document had been delivered by appellant himself to Muhammad Naeem, PS of the Secretary Environment. The finding is based on statement of Muhammad Naeem. May be there would have been a case of an allegation against the petitioner at the stage of facts finding that he delivered fake NOC to afore-named Mr. Muhammad Naeem but this allegation did not make part of the charge sheet or statement of allegations served upon accused/petitioner in the course of formal disciplinary proceedings. The findings in the impugned judgment of this Tribunal in this respect and believing the proof of second charge are beyond the scope of

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charge sheet which is an error on the face of record making a good ground for review of the impugned judgment. It has been observed herein above that no evidence was brought on record to prove the charge that the petitioner had delivered the EPA approval in Chief Secretary's office. The alleged delivery of fake NOC to Mr. Muhammad Naeem cannot be stretched for proof of second charge in absence of further inquiry as to how and when the petitioner/accused had delivered fake NOC in the office of Chief Secretary. Therefore, there is a need of denovo inquiry in this respect to this extent.

14. For what has gone above, this review petition is accepted. Consequently, impugned judgment of this Tribunal being reviewable is set aside. The impugned order of removal of the petitioner from service is also set aside. He is reinstated into service for the purpose of denovo inquiry to be completed within 90 days of the receipt of this judgment officially. The back benefits are subject to outcome of the denovo inquiry. There is no order as to costs. File be consigned to the record room.

(AHMAD SULTAN TAREEN)
Chairman

(ATIQ-UR-REHMAN WAZIR)
Member (E)

ANNOUNCED
01.02.2022

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Date of Presentation of Application 03/06/22
Number of Words 4400
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Total 50/-
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MINUTES OF THE STANDING SERVICE RULES COMMITTEE MEETING HELD ON 14-07-2020

A meeting of the Standing Service Rules Committee is scheduled to be held on 14.07.2020 (Tuesday) at 14.30 hours in CPO Conference Room-I, under the Chairmanship of Inspector General of Police, Khyber Pakhtunkhwa, to discuss the Amendments in the Khyber Pakhtunkhwa Police Department (Information Technology Wing) Service Rules 2014.

2. The following Officers attended the meeting:-

1. Dr Sanaullah Abbasi, Inspector General of Police, Khyber Pakhtunkhwa.
2. Mr Akhtar Hayat, DIG Special Branch, Khyber Pakhtunkhwa.
3. Mr. Salman Choudhry, DIG/HQrs:, Khyber Pakhtunkhwa.
4. Mr. Muhammad Saeed Khan, Commandant Elite Force, Khyber Pakhtunkhwa
5. Mr. Sajid Ali Khan, Commandant FRP, Khyber Pakhtunkhwa.
6. Mr. Muhammad Saleem Marwat, DIG Finance and Procurement, Khyber Pakhtunkhwa.
7. Mr. Kashif Zulfiqar, AIG/Establishment, Khyber Pakhtunkhwa.
8. Mr. Naveed Gul, Director, Information Technology, CPO Peshawar.
9. Mr. Javed Ahmed, AIG Legal, Khyber Pakhtunkhwa.
10. Mr. Tariq Mehmood Khattak, Section Officer (FR) Government of Khyber Pakhtunkhwa Finance Department.
11. Mr. Saif Ullah Khan, Section Officer (R-VI), Government of Khyber Pakhtunkhwa Establishment Department.

3. The following agenda items were discussed in the meeting:-

I. Amendments in the Khyber Pakhtunkhwa Police Department (Information Technology Wing) Service Rules 2014.

II. The Provincial Police Officer, welcomed the participants. Director, Information Technology gave a detailed briefing / Presentation on the Amendment in the Khyber Pakhtunkhwa Police Department (Information Technology Wing).

III. After thorough deliberations and discussing each and every clause of these rules, the committee unanimously decided to remove the clause "b" condition of one year Diploma in Information Technology and recommended the following proposed amendments in the Khyber Pakhtunkhwa Police Department (Information Technology Wing) Service Rules 2014.

THE KHYBER PAKHTUNKHWA POLICE DEPARTMENT (INFORMATION TECHNOLOGY WING) SERVICE RULES 2014.

Existing and proposed Rules for BS-17 are tabulated below:-

S.No	Nomenclature of Posts	Minimum Qualification for Appointment by Initial Recruitment	Age Limit	EXISTING method of Recruitment	Proposed Method of Recruitment
1	2	3	4	5	
2	Assistant Director /Programmer/LAN Administrator/ Web Administrator /Data Processing Officer/ Deputy Database Administrator (BPS-17)	At least Second Class Master's Degree in Computer Science/ Information Technology or equivalent qualification from a recognized University, having five	22-35 Years	a. Fifty percent by promotion, on the basis of seniority cum-fitness, from amongst the Assistant Programmer/ Assistant LAN Administrator (BPS-16) having five years' service as such and having	a. Fifty percent by promotion, on the basis of seniority-cum-fitness, from amongst the Assistant Programmer/Assistant LAN Administrator/ Computer Operator (BPS-16), having five year's service as such; and b. Fifty percent by initial recruitment.

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	[illegible] in the relevant field	Qualification specified in column 5 for initial recruitment Provided that if no suitable officer is available for promotion then by initial recruitment and b. Fifty percent by initial recruitment.	

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Meeting ended with vote of thanks to all.

(AKHTAR HAYAT)
Deputy Inspector General of Police,
Special Branch,
Khyber Pakhtunkhwa.

(SALMAN CHOUDHRY)
Deputy Inspector General of Police,
HQrs: Khyber Pakhtunkhwa

(MUHAMMAD SALEH KHAN)
Commandant, Elite Force,
Khyber Pakhtunkhwa.

(SAJID ALI KHAN)
Commandant, FRP,
Khyber Pakhtunkhwa

(MUHAMMAD SALEEM MARWAT)
Deputy Inspector General of Police,
Finance & Procurement Khyber Pakhtunkhwa

(KASHIF ZULFIQAR)
AIG/Establishment
Khyber Pakhtunkhwa.

(NAVEED GUL)
Director, Information Technology
Khyber Pakhtunkhwa.

(JAVED AHMED)
AIG/Legal
Khyber Pakhtunkhwa.

(TARIQ MEHMOOD KHATTAK)
Section Officer (FR)
Govt. of Khyber Pakhtunkhwa
Finance Department.

(SAIF ULLAH KHAN)
Section Officer (R-VI),
Govt: of Khyber Pakhtunkhwa
Establishment Department.

CHAIRMAN

(DR. SANAULLAH ABBASI)
Inspector General of Police,
Khyber Pakhtunkhwa

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(28)

GOVERNMENT OF THE KHYBER PAKHTUNKHWA
POLICE DEPARTMENT.

NOTIFICATION

Peshawar, dated the 29/6/2021.

No. 13331E-V In exercise of the powers conferred by section 140 of the Khyber Pakhtunkhwa Police Act, 2017 (Khyber Pakhtunkhwa Act No. II of 2017), the Provincial Police Officer, with the approval of the Government, hereby makes the following further amendments, in the Khyber Pakhtunkhwa Police Department (Information Technology Wing) Service Rules, 2014, namely:

AMENDMENTS

In the Appendix,-

(a) against Serial No. 2, in Column No. 5, for clause (a), the following shall be substituted, namely:

"(a) fifty percent by promotion, on the basis of seniority-cum-fitness, from amongst the Assistant Programmers, Assistant LAN Administrators and Computer Operators (BPS-16), having qualification prescribed for initial recruitment for the post of Computer Operator at Serial No. 6, with five years' service as such; Note: For the purpose of promotion the Department shall maintain a joint seniority list of the Assistant Programmers, Assistant LAN Administrators and Computer Operators (BPS-16); and";

(b) against Serial No. 3, in Column 5, for the existing entries, the following shall be substituted, namely:

"By initial recruitment.";

(c) Serial No 5 shall be deleted; and

(d) against Serial No 6, in Column No. 2, for the abbreviation, figures and hyphen "BPS-12", the abbreviation, figure and hyphen "BPS-16" shall be substituted.

Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.

(29)

MINUTES OF THE MEETING OF S.S.R.C HELD ON 14-07-2016 IN THE OFFICE OF SECRETARY ESTABLISHMENT DEPARTMENT - AMENDMENT IN KHYBER PAKHTUNKHWA (PROVINCIAL INFORMATION TECHNOLOGY GROUP) SERVICE RULES, 2006.

A meeting of S.S.R.C was held in the Office of Secretary, Establishment on **14-07-2016 at 1100 hours** under her chairmanship to discuss amendments in the Appendix to the Khyber Pakhtunkhwa (Provincial Information Technology Group) Service Rules, 2006 in light of approved summary and representation, received from All Assistant Programmers Association, Khyber Pakhtunkhwa (unregistered).

2. The following attended:-

(1) **Mrs. Humaira Ahmad** ..... **In Chair.**
Secretary,
Establishment Department.

(2) **Mr. Mian Muhammad**
Special Secretary (Reg)
Establishment Department.

(3) **Mr. Muhammad Ali Asghar,**
Deputy Secretary (Estt:),
Establishment Department.

(4) **Ms. Saira**
Deputy Legal Drafter,
Law Department.

(5) **Mr. Hidayat Ullah**
Section Officer (FR)
Finance Department.

(6) **Mr. Muhammad Fayyaz,**
Section Officer (R-IV),
Establishment Department.

(7) **Mr. S.R. Jamil**
Section Officer (E-V),
Establishment Department.

3. Meeting started with the recitation from the Holly Quran.

4. After thorough deliberation, it was decided that:-

i. The existing post of Assistant Programmers on the strength of Establishment Department will be declared as dying cadre on the pattern of Ex-PCS Secretariat and

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Executive Groups. The Incumbent Assistant Programmer shall continue to be governed under the existing rules till promotion to the post of Assistant Director.

ii. The posts of Data Processing Supervisor and Computer Operator be merged and re-designated as Computer Operator (BPS-16). However, their further promotion as Assistant Director (BPS-17) will be subject to the prescribed qualification and experience for the post of existing Computer Operators.

iii. The Seniority List will begin from Assistant Programmer, followed by Data Processing Supervisor and subsequently by Computer Operators.

Explanation.

The last incumbent of Assistant Programmers shall rank senior to the first Data Processing Supervisor and the last incumbent of Data Processing Supervisor shall rank senior to the first existing incumbent of Computer Operators.

iv. The present Assistant Programmer, at the strength of Establishment Department will be considered for promotion as Assistant Director, in due course of time on the basis of seniority-cum-fitness.

5. In light of foregoing, the requisite amendments will be made in the Appendix to Khyber Pakhtunkhwa (Provincial Information Technology Group) Service Rules, 2006 in the following manner:-

i. At S.No 3 of the Appendix in column 5 at (b), the following will be substituted:-

"50% By promotion, on basis of seniority-cum-fitness, from amongst Assistant Programmers and Computer Operators having qualification prescribed for initial recruitment with five years service as such."

ii. S.No 4 of the Appendix pertaining to the post of Assistant Programmer will remain intact till promotion of the sole incumbent Assistant Programmer.

iii. S.No 5 of the Appendix pertaining to the post of Data Processing Supervisor will be deleted.

iv. In S.No 6, column 1, the BPS may be deleted.

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(31)

Mr. S.R.Jamil
Section Officer (E-V),
Establishment Department

Mr. Muhammad Fayyaz
Section Officer (R-IV),
Establishment Department.

Mr. Hidayat Ullah,
Section Officer (SR-III),
Finance Department.

Ms. Saira,
Deputy Legal Drafter,
Law Department.

Mr. Muhammad Ali Asghar
Deputy Secretary (Estt)
Establishment Department

Mr. Mian Muhammad,
Special Secretary (Reg)
Establishment Department

Mrs. Humaira Ahmad,
Secretary
Establishment Department/Chairman.

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 251/2011

Date of Institution. ... 08.2.2011
Date of Decision ... 29.1.2013

Mian Farooq Iqbal, Chief Inspector of Mines, Peshawar. ... (Appellant)

VERSUS

1. The Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Peshawar.
3. The Secretary to Govt. of Khyber Pakhtunkhwa Mineral Dev: Department Peshawar with addl. charge of D.G Mines & Mineral, Peshawar.
4. Mr. Obaidullah, Director Licensing, D.G Mines & Mineral, Peshawar.
5. Mr. Mustafa Kamal, Director Licensing D.G Mines and Mineral, Peshawar..... ... (Respondents)

MIAN FAZAL WAHAB, Advocate ... For appellant.

MR. SHERAFGAN KHATTAK, Addl. Advocate General ... For official respondents.

SYED MANZOOR ALI SHAH, ... MEMBER
MR. NOOR ALI KHAN, ... MEMBER

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

JUDGMENT

SYED MANZOOR ALI SHAH, MEMBER:- This appeal has been filed by Mian Farooq Iqbal, the appellant initially against the (i) notification No. SO(E-I)E&AD/9365/2010, dated 2.12.2010 authorizing Mr. Usman Ali Marwat Secretary Mineral Development Department to look after the work of Director General Mines & Minerals in addition to his own duties; (ii) Service Rules notified by the Government of Khyber Pakhtunkhwa vide notification No. SO-Admn(MD)/1-6/88 Vol-V dated 17.10.2010 for appointment of Director General Mines and Mineral in the Directorate General Mines and Minerals; (iii) To replace words "selection on merit" in clause (a) of Service Rules notified vide notification No.SO-Admn(MD)1-6/88 Vol-V dated 17.10.2010 towords "seniority-cum-fitness"; and non notification of seniority list of the officers in BPS-19 of the Directorate General Mines and Minerals for the last two years. During the proceedings in the case, the learned counsel for the appellant submitted an application for allowing him to delete prayers at S.No. i, ii, and iv. His application was allowed on 5.12.2012 and the case was considered only for prayer No. iii, wherein it has been prayed that on acceptance of the appeal, restore the previous clause (b) of notification No. SOI(IND)1-6/88-Vol-V dated 10.12.2003 for appointment to the post of Director General Mines and Minerals.

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2. Facts of the case briefly stated are that the appellant is serving in Mines and Mineral Department as Chief Inspector of Mines in BPS-19 since 18.11.2004 having degree in Masters in Mining Engineering from University of Engineering & Technology Peshawar and is the senior most officer in BPS-19. His name is in the top of seniority list as it stood on 31.12.2008. Vide notification dated 10.12.2003, in pursance of the provisions contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules 1989, and in supersession of all notifications on the subject, the Industries, Commerce, Mineral Development, Labour and Technical Education Department in consultation with the Establishment and Administration Department and the Finance Department laid down the method of recruitment, qualifications and other conditions in the Director General Mines and Minerals Department. The criteria for appointment of Director General laid down as under:-

"(a) by promotion on the basis of selection on merit, from amongst the holders of the posts of Director Mineral Exploration/Licensing and Chief Inspector of Mines Labour Welfare, having at least 17 years service in BPS-17 and above, provided that in case of persons initially appointed in BPS-18, the length of service for promotion shall be 12 years in BPS-18 and above; or

(b) by transfer from persons having Bachelor's Degree in Mining Engineering or Master Degree in Geology."

These rules remained in force till 16.10/2010, when all of a sudden vide impugned notification dated 17.10.2010, the Government of Khyber Pakhtunkhwa notified new Rules vide notification dated 17.10.2010 wherein clause (b) of the rules was replaced on malafide intentions. According to which the criteria for appointment for the said post was laid down as under:-

"(a) by promotion, on the basis of selection on merit, from amongst the Director Exploration (Minerals), Director Licensing, Chief Inspector of Mines and Commissioner Mines Labour Welfare, having at least 17 years service in BPS-17 and above, and in case of persons initially appointed in BPS-18, the length of service for promotion to the post shall be 12 yars in BPS-18 and above; or

(b) by transfer from the provincial government department."

The appellant has been deprived from promotion to the next higher post. Feeling aggrieved the appellant filed departmental appeal and after exhausting departmental remedy, the appellant filed the present appeal.

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(RT)

3. The appeal was admitted to regular hearing on 10.2.2011 and notices were issued to the respondents. The official respondents have filed their joint written reply and contested the appeal. The appellant also filed rejoinder in rebuttal.

4. Counsel for the appellant stated that Directorate of Mineral and Minos was created subsequent to detail study by Aus AID (Australian Consultation) in view of National Mineral Policy (NMP) in 1995. The post of Director General Mines & Mineral was designated to be a technical post. This has also been confirmed vide Para 7 of Reply of the respondents. Rules of appointment, promotion etc. of D.G Mines & Mineral were notified on 10.12.2003. Method of recruitment for Director General in Service Rules is as follows:-

"(a) By promotion, on the basis of selection on merit, from amongst the holders of the posts of Director Mineral Exploration, Director Mineral Licensing and Chief Inspector of Mines Labour Welfare having at least 12 years service in BPS-17 and above, provided that in case of persons initially appointed in BPS-18, the length of service for promotion shall be 12 years in BPS-18 and above, or

(b) By transfr, from persons having Bachelor's Degree in Mining Engineering or Master Degree in Geology."

The above rules were abruptly modified on 17.10.2010 where in Clause (b) was malafidely modified to defeat decision of the Tribunal dated 23.4.2010 in Service Appeal No. 1876/2009 (not to give charge to junior person on transfer of the then Director General Mines & Mineral), to appoint its own blue eyed person and not to allow qualified and professional officers of the department to get promotion. Clause (b) was replaced "by transfer from the provincial Government Department". Furthermore in clause (a) the words "Selection on merit" be changed to selection on "Seniority-cum-fitness" as was the case in Punjab Government Service Rules.

5. The procedure for making rules or by-laws as specified in Section 23 of General Clauses Act 1897 as given below were not followed:-

Section 23

(1) the authority having power to make the rules or bye-laws shall, before making them publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby;

(2) the publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to

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previous publication so requires, in such manner as the (government concerned) prescribes;

(3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration."

2012 PLC (CS) 1330 was relied upon wherein it has been stated that rules cannot be changed to disadvantage of employees. Regarding jurisdiction of Tribunal in the matter and filing of appeal against notification issued by the Government. Reliance was placed on 2011-SCMR-698 and 2012-PLC (C.S)142.

6. The learned AAG argued that rules have been modified in accordance with Section 21 of the Ganeral Clauses Act. It provides for posting of officers of the department as well as from outside and as such no discrimination has been made.

7. Arguments heard and record perused.

8. The Tribunal observes that the change in rules have not been made in accordance with Section 23 of the General Clauses Act 1897. No reason or rational has been stated for the modification, from which malafide on part of respondents can be seen. The appellant has also pleaded for replacing the words "selection on merit" by "selection on seniority-cum-fitness in clause (a) of the Rules. The Khyber Pakhtunkhwa Civil Servants Act 1973 has clearly elaborated the same vide Section 9-Promotion which is reproduced as below:-

"9. Promotion:-(1) A civil servant possessing such minimum qualification as may be prescribed shall be eligible for promotion to a higher post for the time being reserved under the rule for departmental promotion in the service or cadre to which he belongs.

(2) A post referred to in sub-section(1) may either be a selection post or a non-selection post to which promotion shall be made as may be prescribed-

(a) in the case of a selection post, on the basis of selection on merit; and

(b) in the case of non-selection post, on the basis of seniority-cum-fitness.

Furthermore, the matter has also been explained in the Esta-Code (Establishment Code) Khyber Pakhtunkhwa- Promotion Policy-Section 6 S.No. 4 as below:-

"After careful consideration and in super session of all previous orders and instructions on the subject, the Government of West Pakistan have decided that the principle for promotion from one post to anothr should be "by selection on merit with due regard to seniority" and that this principle should be applied uniformaly all along the line from the lowest to the highest posts and from one class of service to another.

2. For this purpose, "merit" does not mean good service record only, but also includes experience, qualification and suitability for the post or service to which promotion is being made. The value of all these different factors has to be assessed in rating the officer's fitness for promotion. The words "with due regard to seniority" imply that, while emphasis is to be placed on good service record qualifications and aptitude for the higher post, the officer's relative seniority in the cadre, from which promotion is being made, should be given due weight, the greater the disparity in seniority the greater should be the junior officer's superiority in point of merit."

9. In view of the above, the Tribunal concluded to set aside modification in rules notified on 17.10.2010 and clause (b) of notification No. SOI(IND)1-688-Vol-V dated 10.12.2003 is restored and further more that promotions should be made strictly keeping in view Section 9(2) (a)(b) of Civil Servants Act 1973 and Esta Code directions stated above. This appeal alongwith connected appeal No. 456/2011 titled "Obaidullah Versus Chief Secretary Khyber Pakhtunkhwa" having common question of law are disposed off accordingly. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED
29.1.2013.

Sd/- Syed Mansoor Ali Shah
Member

Sd/- Abdul Latif
Member

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Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 30-11-18
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Anex F

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
(JUDICIAL DEPARTMENT)

WP No. 3893-P/2020

Afnan Bin Sultan and others vs. Govt. of KP through Secretary Home & Tribal Affairs Department, Peshawar and others.

JUDGMENT.

Date of hearing: 12.07.2021

Petitioner (s) By Mr. Muhammad Isa Khan Khalil Advocate.

Respondent (s) By M/s Rab Nawaz Khan AAG & Muhammad Yasir Khattak Advocate along with Zahid Hussain Assistant Home Department.

SYED ARSHAD ALI, J.:- Petitioners, who are 28 in numbers and are working as Computer Operators (BPS-16) in the office of Home Department Government of Khyber Pakhtunkhwa, seek constitutional jurisdiction of this Court praying that:-

> *"In the given factual and legal position, it is , therefore, prayed that on acceptance of this petition, this hon'ble court may be pleased:*
>
> *i. to declare the process of further upgradation of the private respondents, in absence of proper determination of inter se seniority of the employees, as illegal, without lawful authority and of no legal effect;*
>
> *ii. to direct the respondents No. 1 & 2 to prepare a proper seniority list in accordance with the provision contained in Section 6(2) of the KPK Employees (Regularization of Sevices) Act, 2018;*
>
> *iii. to rectify the notification dated 03.08.2018 to the extent of employees at Serial No. 2 to 27, being wrongly designated as Assistant Programmer and designate them as Computer Operator;*
>
> *iv. to direct the official respondents to provide a proper service structure for the employees/computer operators; and*
>
> *v. to grant any other remedy to which the petitioners are found fit in law, justice and equity".*

ATTESTED

2. It is averred in the petition that all the petitioners were initially appointed in the Project of the Provincial Government known as *"Computerization of Arms Licenses"* in the year, 2013 and 2016 (***"Project"***). Their appointments were initially made in BPS-12, however, later, through Notification dated 29.07.2016, the posts of Computer Operator and Data Processing Supervisor were merged into a single cadre of Computer Operator and were upgraded to BPS-16. According to this Notification, before merger of the cadre, Computer Operators were working in BPS-12 whereas Date Processing Supervisors were working in BPS-14. The services of the employees in the said Project along with employees in other projects were regularized through Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2018 (***"Act"***) and accordingly a Notification in this regard was issued on 03.08.2018. The essential grievances of the present petitioners are that in the said notification, the private respondents were ranked senior to the present petitioners with a different nomenclature i.e. Assistant Programmer whereas in true sense the said respondents were initially appointed as Data Processing Supervisor whose services were later merged along with the present petitioners vide aforesaid Notification dated 29.07.2016, thus, their proposed upgradation and re-designation in BPS-17 is illegal and without lawful authority.

ATTESTED

3. The official respondents have filed their comments wherein they have stated that the private respondents were initially appointed as Data Entry Supervisors (BPS-16) and were holding a supervisory position, who were later re-designated as Assistant Programmers. As such, the said private respondents were later upgraded to the post of Assistant Programmers from BPS-16 to BPS-17 and were re-designated as Assistant Directors I.T. through impugned Notification dated 25.07.2019.

4. Arguments heard and record perused.

5. It is evident from record that the present petitioners were appointed as Computer Operators on fixed pay in the Project initiated and launched by the Home Department for *"Computerization of Arms Licenses"*. The offer letter clearly envisages that their appointments were in BPS-12. The respondents-Finance Department had issued the Notification dated 29.07.2016 whereby the then posts of Computer Operators and Data Processing Supervisors were merged into a single cadre/post of Computer Operator and were upgraded to BPS-16. Whereas the private respondents were appointed against the post of Data Entry Supervisor (BPS-16), which is a post falls in a separate category, in the Project.

6. Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2018 was passed by the Provincial Assembly regularizing the services of various employees working in 58

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projects of the Provincial Government. The Project where the present petitioners and respondents were working appears at serial No.21 of the Schedule to the Act. Pursuant to the Act, through notification dated 03.08.2018 services of 94 employees, who were working in the Project were regularized w.e.f 07.03.2018. In the said list incumbent officials holding one post of Assistant Director, 26 posts of Assistant Programmers and 65 posts of Computer Operators, 01 post of Driver and 01 post of Naib Qasid were regularized.

7. The SNE available on record further clarify the matter that the post of Data Entry Supervisor was a distinct category of post from the post of Computer Operator in the Project. The posts of Data Entry Supervisor appear at serial No. 05 of the SNE which were proposed to be re-designated as Assistant Programmer (BPS-16) whereas the post of Computer Operator appears at serial No. 06 of the SNE. In the relevant column, scope of their duties has also been enumerated. The respondents have also placed on file letter dated 28.06.2018, according to which, the aforesaid posts were sanctioned by the Finance Department and according to the said letter, the posts of Assistant Programmer as well as Computer Operator have been categorized differently. It is mentioned in the said letter that 26 posts of Assistant Programmers whereas 80 posts of Computer Operators have been sanctioned. Thus, from the aforesaid letter, it is clear that the posts of Assistant

ATTESTED

Programmer as well Computer Operator are two different/distinct posts.

8. Later, through the impugned Notification dated 25.07.2019 the post of Assistant Programmer has been re-designated as Assistant Director I.T. The assertion of the learned counsel for the petitioners that the posts of present petitioners and private respondents are one and the same and since the present petitioners were appointed prior to the private respondents therefore, the upgradation of the respondents is illegal are not supported by the record. As stated above, in view of the aforesaid document, Computer Operator constitutes a different category of post whereas the Date Entry Supervisors, who were later re-designated as Assistant Programmers are distinct post. Similarly, the allegations of the present petitioners that the job description of the two posts is one and the same cannot be appreciated by this Court in its constitutional jurisdiction as essentially the same is a policy matter of the Executive.

9. What should be the requirement for a particular post and the suitability of the incumbent officer to hold the said post is exclusive domain of the Executive and the Constitutional Court has no jurisdiction to interfere in the said policy decision of the Provincial Government unless the same is against law or offend the fundamental rights of the petitioners, which is not the case of the petitioners. Reliance is placed on ***Syed Mufeed Shah vs. Principal Khyber Medical***

College (2006 SCMR 1076), Suo Motu Case NO. 10 of 2007 (PLD 2008 Supreme Court 673), Human Rights Case No. 14392 of 2013 etc (2014 SCMR 220) and Messrs Power Construction Corporation of China Ltd through Authorised Representative vs. Pakistan Water and Power Development Authority through Chairman WAPDA and 2 others (PLD 2017 SC 83).

10. Before parting with the judgment, we may hold that the present petitioners may agitate their grievance for providing them further structure of their service, if permissible under the law, before the appropriate forum.

11. In view of the above, the alleged grievances of the petitioners canvassed in the present petition are misconceived and as such, we find no merit in this petition, which is accordingly dismissed.

ANNOUNCED.
12.07.2021

JUDGE

JUDGE

ATTESTED

VAKALATNAMA

IN THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Muhammad Ikram Khan .....Petitioner/Appellant.

VERSUS

PPO & others ..... Respondents/Defendants.

We the undersigned, do hereby appoint and constitute,
BASEER AHMED SHAH Advocate **To** act, appear and plead in the above-mentioned matter and to withdraw or compromise the said matter or submit to arbitration any differences or dispute that shall arise touching or in any manner relating to the said matter and to receive money and grant receipts therefore and to do all other acts and things which may be necessary to be done for the progress and the course of the prosecution of the said matter.

1. **To draft and sign files at necessary pleadings, applications, objections, affidavits or other documents as shall be deemed necessary and advisable for the prosecution of the said matter at all its stages.**

2. **To employ any other Legal Practitioner, authorizing him to exercise the power as conferred on the undersigned Advocate, wherever he may think fit to do so.**

AND we hereby agree to ratify whatever the Advocate or his substitute shall do in the above matter. I/We also hereby agree not to hold the Advocate or his substitute responsible for the result of the said matter in consequence of his absence from the Court when the said matter is called up for hearing. I/We further hereby agree that in the event for the whole or any part of the fee to be paid to the Advocate remaining unpaid, he shall be entitled to withdraw from the above matter. Received by me on 25/9/2023.

Client (s)

BASEER AHMED SHAH

&

IBAD UR REHMAN KHALIL
Advocates
Peshawar

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