

Service Appeal No.712/2016 titled "Miss Faiza Abbasi Vs. & other -vs- Government of Khyber Pakhtunkhwa through Secretary Board of Revenue, Khyber Pakhtunkhwa, Peshawar and others". declared on 27.09.2023 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Salah-Ud-Din, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, Abbottabad.

14. As to the connected appeal, since, the private respondent of the above appeal No.712/2016 named Miss Farah Naz was promoted on the basis of the unauthentic/invalid seniority list, as per findings made hereinabove, therefore, this matter is also remitted to the official respondents to decide it in accordance with the final and duly notified seniority list and the relevant rules. Needless to say that the promotions made in the meantime or further career progression of any of the parties, secured on the basis of disputed/invalid/unauthentic seniority list has to raze to the ground, and in the interest of justice, the person(s) who become senior after the above exercise would have right to such career progression subject to their otherwise entitlement under the relevant rules. Copy of this judgment be placed in the connected Service Appeal No.7313/2021 titled "Abdul Wahab Vs. Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar & others". Consign.

15. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 27th day of September, 2023.*



KALIM ARSHAD KHAN
Chairman



SALAH-UD-DIN
Member (Judicial)

Mutazem Shah

department to determine the seniority under section-8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule-17(a) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. Despite giving a number of opportunities to the Commissioner Hazara Division, the Tribunal was also not provided any authentic and single merit list or one signed or certified by him, to decide the issue in accordance with law & rules nor any seniority list had been shown to have been notified in the official gazette as required by law. The Commissioner, instead, vide his report in writing, also raised doubts on the entire selection ~~the~~ ^{the} process and could not confirm any of the two merit lists produced by the appellants and private respondent, to be the valid merit list of the candidates, who appeared in the process of selection, against the post of Computer Operators, in the office of Commissioner, Hazara Division advertised on 07.07.2010 in Daily "Aaj". Because of this situation, especially, in absence of authentic/valid or duly signed/certified merit list or missing of the said merit list, the Tribunal could not decide the matter in accordance with law & rules and thus has no other way but to send the matter back to the authorities concerned with the direction to fix/determine the seniority strictly in accordance with Section-8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule 17(a) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 and then issue final seniority list and properly notify the same in the official gazette as required by law & rules.



promotion as Senior Scale Stenographer (BPS-16) instead of Mr. Awais Qureshi might have misplaced the service record while posted in Establishment Branch for declaring herself to be senior in the respective cadre. She may be proceeded against independently for misplacement of relevant record from the main file, since she did not file appeal well in time and to cover the lacuna as the misplacement was in her best interest. She did so after misplacing the record on the basis of her vested interest in the matter, which has been established from the file to get benefit herself from the situation. Moreover, some copies of Note Sheets produced during the course of investigation by Mr. Awais Qureshi would further corroborate the involvement of Ms. Farah Naz, Computer Operator rendering her for disciplinary action under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011."(underlining is own).

No further proceedings appear to have been done by the Deputy Commissioner, Haripur nor by anybody else, as nothing was produced before the Tribunal in that respect. So it is unknown as to what had happened thereafter.

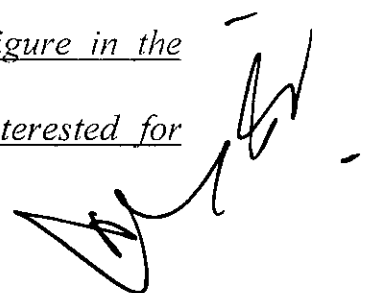
13. Be that as it may, it is nowhere denied by anybody that the appellant and private respondent, were initially appointed as Computer Operators in the same selection process though for the unknown reasons two meetings of the DSC were held on two different dates i.e. one on 03.10.2011 and the second was on 16.12.2011. That right from initial recruitment, until date, no effort seems to have been done by the

could not be disposed due to non-availability of relevant record. It was further stated that misplacement of record/merit list of subject DSC was extreme negligence/inefficiency on the part of the dealing hand/officials, who remained posted in the Establishment Branch of the Commissioner Office. Following officials were stated to be posted:

1. Mr. Awais Ahmad, Assistant.
 2. Mr. Muhammad Babar, Assistant.
 3. Mr. Awais Qureshi, Computer Operator
 4. Mr. Obaid ur Rehman Senior Clerk.
 5. Mr. Fazal ur Rehman, Assistant.
 6. Mr. Muhammad Shoaib, Junior Clerk.
 7. Miss. Farah Naz, Computer Operator.
12. Mr. Tasleem Khan, DC Haripur conducted detailed inquiry and submitted findings/recommendations which are reproduced as under:

"From the perusal of record produced before the undersigned, written statements and cross examination etc, it recommended that:-

1. *Under the policy/rules/laws, all the officials who remained posted in the Establishment Branch were bound to undertake proper handling/taking of branch record at the time of their transfers/postings but they did not do so as a result they all are liable to be proceeded against the E&D Rules in connection with misplacement of record on the basis of negligence/ignorance of rules/laws and inefficiency as they were totally naïve and casual to their prime responsibility/job description as well.*
2. *Ms. Farah Naz, Computer Operator whose name appeared in the minutes of DPSC dated 03.10.2011 and does not figure in the Attendance Sheet and Call Letter seemed to be interested for*



Board of Revenue while notification issued by the then Commissioner Hazara Division excluded the Board of Revenue from DPSC and included the DCO Abbottabad as member which is violation of the Board of Revenue's notification.

3. *Mr. Matloob ur Rehan has completed the entire process except interview but merit list of written test and computer typing test provided by te petitioner were signed by a single member i.e. Mr. Matloob ur Rehman (ACR) not by all members of the DPSC.*

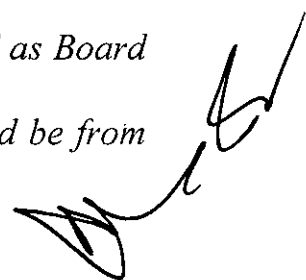
4. *Mr. Abdul Haleem then ACR who assumed charge on 30.09.2011 when the process of written test, typing test and interview were completed except meeting of DPSC, prepared all record again during his tenure which is doubtful as it is in contradiction with other merit lists prepared by his predecessor.*

5. *In present situation, this office cannot ascertain that which merit list is genuine at the entire recruitment process from beginning has procedural lapses and after lapse of 12 years; it is not possible to validate the said process or any part/document of it".*

11. It is reflected from the record that vide order dated 01.08.2017, Mr. Tasleem Khan, Deputy Commissioner, Haripur was appointed as Inquiry Officer. The said order stated that a meeting of the Departmental Selection Committee for appointment of Computer Operator was reportedly held on 03.10.2011; that while processing an appeal of the seniority of Computer Operators, it was found that original record of the said DSC was not available in the office, consequently, the subject appeal

				1. Date of practical test: 08.06.2011 1. Date of Interview: 25.06.2011 1
2	Abdul Haleem Khan (Now serving as Deputy Secretary, Chief Minister's Secretariat, Peshawar)	30.09.2011 to 19.10.2011		DPSC meeting held on 03.10.2011 vide which Miss Farah Naz and Awais Qureshi were appointed
3	Adeela Hafeez (Now serving in Punjab)	19.10.2011 to 31.12.2011		DPSC meeting held on 16.12.2011 vide which Miss Faiza Abbasi was appointed

2. There is contradiction between constituted DPSC as Board of Revenue's Notification reveals that one ~~member~~ ^{member} should be from



Division to produce a certified merit list duly signed by him of all the candidates not from the record available in his office and already produced before the Tribunal as that is not reliable containing two different merit lists but from the record of the selection process on or before 24.05.2023 before D.B at Camp Court, Abbottabad."

9. On the next date i.e. on 24.05.2023, Syed Asif Iqbal, Assistant to Commissioner submitted written report of the Commissioner, Hazara Division. On 19.06.2023, the Commissioner, Hazara Division sought some time to assist the Tribunal but thereafter, no assistance was given.

10. Written report of the Commissioner Hazara Division was also submitted which is reproduced as under:

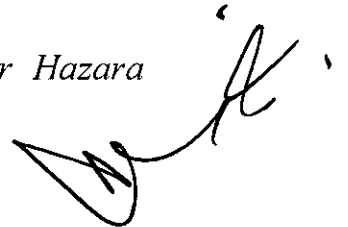
"In compliance with the directions of the Honorable Tribunal dated 08.05.2023 in respect of subject case, the following fact/report is submitted:

1. The relevant record has been checked which transpires that the recruitment process for the appointment of Computer Operators (BPS-12) was completed by the following dealing officers.

S #	NAME OF OFFICER/DEALING OFFICER	TENURE	DATE OF TEST
1.	Matloob ur Rehman (Then Assistant to Commissioner) Retired	02.04.2011 to 30.09.2011	Date of written test: 20.05.201

Syed Asif Iqbal, Assistant to Commissioner for the respondents present.

2. In compliance with the previous order sheet dated 27.04.2023 Syed Asif Iqbal Assistant Commissioner (Political) Office of Commissioner Hazara Division submitted a report alongwith some documents with some irregularities and malpractice stated in the report regarding misplacement of the record of recruitment process, however, the authentic merit list, of the candidates who had applied, appeared and competed in the selection process, has not been produced before the Tribunal rather the two lists, available on the record of the Commissioner Hazara Office as mentioned in the previous order sheet, were again produced. It is observed in the previous order sheet that the case in the Tribunal is one of the seniority of the persons as to determine the seniority under section-8 of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule-17(a) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, wherein the sole criteria and the criteria is merit order. There are two merit lists produced before the Tribunal one is containing four names without the name of private respondent No.6, while the other produced by the private respondent No.6, as representative of respondents containing five names. Therefore, we would like to direct Commissioner Hazara



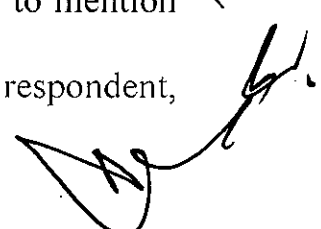
Miss. Farah Naz), an order No.CHD/Estab/2/3/5027-34 dated 01.08.2017, enquiry proceedings conducted by Tasleem Khan, Deputy Commissioner, Haripur. It was observed by the Tribunal that although the question before ~~the~~^{it} it was the claim of seniority of the appellant, yet undisputedly the appellant and private respondent No.6 were appointed through initial recruitment, the process of which was initiated as a result of the same advertisement. In case of initial recruitment the seniority is to be determined under Section-8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule-17(a) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, while the only criterion, for fixation of seniority, of the persons, appointed through initial recruitment, provided in the rules, is the merit order assigned to the candidates, by the Selection Committee. The Tribunal directed the Commissioner, Hazara Division to produce all the record of recruitment process, right from the advertisement, applications, list of eligible candidates, list of candidates, who appeared for tests and interviews etc. till appointment date and in case no such record was found, as was evident from the different documents, produced before the Tribunal, a detailed report, in writing, or an authentic merit list duly certified by the Commissioner, should be submitted, enabling the Tribunal for further proceedings in the matter. The case was adjourned to 08.05.2023.

8. On 08.05.2023, following order sheet was passed:

"1. Learned counsel for the appellant present. Mr. Fazal Shah Mohmand, Additional Advocate General alongwith

vacancy of Junior Clerk occurred which was to be filled in by fresh recruitment. The case of one Mr. Muhammad Imran who had also applied for the post of KPO has placed before the committee. The candidate though had good knowledge of computer and found competent but his qualification was F.Sc and not legible for appointment as KPO, hence the committee unanimously decided to appoint the candidate against the above occurring vacancy of Junior Clerk (BPS-07)."

7. From the record placed before the Tribunal, it seems undisputed that the appellant and private respondent No.6 were candidates and were selected and appointed as Computer Operator (BPS-16) in the same selection process, initiated in response to the same advertisement published in Urdu Daily "Aaj" dated 07.07.2010. On 27.04.2023, learned counsel for the appellant submitted a detailed application alongwith list of 43 shortlisted candidates for the post of Computer Operator, call letters for written test bearing No.CHD/1/2-Estab:4966 dated 03.06.2011, issued to the appellant for computer practical test, computer practical result sheet dated 08.06.2011, some note parts of the relevant file of the office of the Commissioner, Hazara Division, call letter No.CHD/1/2-Estab:5569-71 dated 21.06.2011, issued to the appellant for her appearance in interview, merit list of only 4 candidates named Faiza Abbasi, Noman Khan, Awaiz Qureshi and Zia Ul Haq signed by the Assistant to Commissioner (Rev-GA) Hazara Division, (it is pertinent to mention here that the list does not contain the name of private respondent,



While the second meeting was held 16.12.2011², which was attended by Mr. Muhammad Khalid Khan Umarzai, Commissioner Hazara Division, Syed Imtiaz Hussain, District Coordination Officer, Abbottabad and Miss. Adeela Hafeez, Assistant to Commissioner (Rev/GA) Hazra Division, Abbottabad and the minutes were recorded in the following manner:

"APPOINTMENT AGAINST THE POST OF COMPUTER

OPERATOR (BPS-12)

The vacancies of Computer Operators were advertised by this office in the Daily (Aaj) on 7th July, 2010. Total 43 candidates were called for the screening test held on 20.05.2011 while 33 appeared for the test. For the Practical Computer typing test, 19 candidates attended which was held on 08.06.2011.

The committee gone through the qualification and merit of all the candidates thoroughly and recommended that one Miss. Faiza Abbasi D/O Jana-e-Alam whose performance and fitness for the required duties seems appropriate. The committee unanimously decided to appoint Miss. Faiza Abbasi as Computer Operator (BPS-12) against the vacant post.

APPOINTMENT AGAINST THE POST OF JUNIOR

CLERK (BPS-07)

Consequent upon the appointment of Miss. Faiza Abbasi Junior Clerk as Computer Operator (BPS-12) one

meetings of the Departmental Selection Committee were held. One meeting was held on 03.10.2011, which was attended by Mr. Muhammad Khalid Khan Umarzai, the then Commissioner Hazara Division, Syed Imtiaz Hussain, the then District Coordination Officer, Abbottabad and Mr. Abdul Haleem Khan, the then Assistant to Commissioner (Rev/GA) Hazara Division, Abbottabad and the minutes were recorded in the following manner:

"The vacancies of Computer Operators were advertised by this office in the Dail (Aaj) on 7th July, 2010. Total 43 candidates were called for the screening test held on 20.05.2011 while 33 appeared for the test. Out of 33, 19 qualified the test. For the Practical Computer typing test, 19 candidates attended which was held on 08.06.2011. Out of the 19 candidates, only 5 qualified who were called for interview today.

The committee interviewed all the 5 candidates, and at the end concluded that out of the 5 candidates, the 2 at the top of the final merit list i.e. Ms. Farah Naz D/O Muhammad Ismail and r. Awais Qureshi S/O Wali Muhammad may be appointed on the posts of Computer Operator keeping in view the emergent need of this office while the remaining vacancy will be considered for filling later on either from the candidates on the present merit list or otherwise. The committee unanimously agreed with this decision and approved accordingly."



vacant and a DPC was convened for filling of the said post; that the case of the appellant was also placed before the Committee, but instead of the appellant, Mr. Awais Ahmad Qureshi (private respondent) was promoted on Acting Charge Basis vide impugned order dated 29.12.2020. Feeling aggrieved, the appellant filed departmental appeal which was rejected vide order dated 27.07.2021, hence, the instant service appeal.

3. On receipt of the appeals and their admission to full hearing, the respondents were summoned, who put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

4. We have heard learned counsel for the appellant, learned Assistant Advocate General for the official respondents and learned counsel for private respondent(s), on different dates and also sought assistance of the Commissioner, Hazara Division.

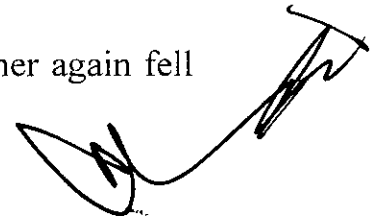
5. The learned counsel for the appellants reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Assistant Advocate General assisted by learned counsel for private respondent(s), controverted the same by supporting the impugned order(s).

6. Before proceeding ahead, we would like to give certain facts brought on record by the parties. After the advertisement, receipt of applications of the candidates for appointment against the post of Computer Operator, written tests & Computer Practical Test etc., two

departmental appeal on 08.01.2016 which was dismissed on 19.05.2016, hence the instant service appeal.

ii. S.A No.7313/2021 Abdul Wahab:

Appellant joined the respondent department as Junior Scale Stenographer (BPS-14) w.e.f 27.02.2018 on regular basis. While serving there, two sanctioned posts of Senior Scale Stenographer became vacant and for filling of post, criteria set was that 60% by promotion on the basis of seniority-cum-fitness from amongst the Junior Scale Stenographers with at least five years service and 40% by promotion on the basis of seniority-cum-fitness from amongst the Computer Operators with at least five years service. That the seats were filled by Mr. Aminul Haq Junior Scale Stenographer on the basis of 60% promotion quota and Mr. Awais Ahmad Qureshi, Computer Operator (private respondent) on the basis of 40% quota, on 21.09.2016; that at the relevant time, the quota reserved for Junior Scale Stenographer was 1.2 while the 0.8 for Computer Operators; later on, Mr. Aminul Haq was promoted as Private Secretary (BPS-17) and the post of Senior Scale Stenographer (BPS-16) became vacant against which, Mr. Muhammad Faisal, Junior Scale Stenographer was promoted; that on reversion of Mr. Awais Ahmad Qureshi from Senior Scale Stenographer to the post of Computer Operator, the Senior Scale Stenographer seat became vacant; that against the said post, Miss Farah Naz Computer Operator was promoted and upon her further promotion to the post of Private Secretary (BPS-17), the post of Senior Scale Stenographer again fell



Present:

Sardar Muhammad Irshad, Advocate.....For the appellant
Mr. Asad Ali Khan, Assistant Advocate GeneralFor official respondents
Mr. Arshad Khan Tanoli, Advocate..... For private respondent No.3

CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Through this single judgment the above two appeals are going to be decided as decision of the both is interdependent, therefore, can be conveniently taken up and decided together.

2. Brief facts of the appeals are as under:

i. SA No.712/2016 Miss Faiza Abbasi:

The appellant was appointed as Junior Clerk in BPS-07 in the office of Commissioner, Hazara Division Abbottabad; that vide advertisement dated 07.07.2010 in the Urdu daily "AAJ", applications were invited for the vacant posts of Computer Operators in the office of Commissioner, Hazara Division. The appellant applied for the same and vide order dated 16.12.2011 she was appointed as Computer Operator in BPS-12 in the office of Commissioner Hazara Division, Abbottabad; that on 16.12.2015 the official respondents issued tentative seniority list of Computer Operators working in BPS-12 but service of two and half years of the appellant as Junior Clerk was not included and she was placed at Serial No.3; that the appellant filed objection petition against the said tentative seniority list on 29.12.2015; that despite her objection, she was placed at the same serial i.e. Serial No.3 in the impugned seniority list dated 08.01.2016. Feeling aggrieved, she filed

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR AT CAMP COURT, ABBOTTABAD

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**
SALAH-UD-DIN ... **MEMBER(Judicial)**

Service Appeal No.712/2016

Date of presentation of Appeal.....20.06.2016
Date of Hearing.....26.09.2023
Date of Decision.....27.09.2023

Miss Faiza Abbasi daughter of Jan-e-Alam Abbasi, resident of Sir Syed Colony, Mandian, Tehsil & District Abbottabad, presently working as Computer Operator (BPS-12) in the office of Commissioner, Hazara Division, Abbottabad.....Appellant

Versus

1. **Government of Khyber Pakhtunkhwa**, through Secretary Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
2. **Senior Member Board of Revenue**, Peshawar.
3. **Commissioner Hazara Division**, Abbottabad.
4. **Assistant to Commissioner**, (Rev;/GA), Hazra Division, Abbottabad.
5. **Awais Ahmad Qureshi**, Computer Operator, Commissioner Office, Hazara Division, Abbottabad.
6. **Farah Naz**, Computer Operator, Commissioner Office, Hazara Division, Abbottabad.(**Respondents**)

Present:

Mr. Sajjad Ahmad Abbasi, Advocate.....For the appellant
Mr. Asad Ali Khan, Assistant Advocate GeneralFor official respondents
Mr. Arshad Khan Tanoli, Advocate.....For private respondent No.5
Syed Raza Shah, Advocate.....For private respondent No.6

Service Appeal No.7313/2021

Date of presentation of Appeal.....24.08.2021
Date of Hearing.....26.09.2023
Date of Decision.....27.09.2023

Abdul Wahab, Junior Scale Stenographer, Office of Commissioner Hazara Division, Abbottabad.....Appellant

Versus

1. **Senior Member Board of Revenue, Government of Khyber Pakhtunkhwa, Peshawar.**
2. **Commissioner, Hazara Division**
3. **Awais Ahmad Qureshi**, Computer Operator, Commissioner Office, Hazara Division, Abbottabad. (**Respondents**)

