

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1023/2019

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

Karim Jan, Session Court, Charsadda presently posted as Moharrir/Junior Clerk in the Office of Judicial Magistrate-IV, Charsadda.

.... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Law & Parliamentary Affairs, Peshawar.
 2. District & Session Judge, Charsadda.
 3. Senior Civil Judge(Admn), Charsadda.
 4. Kifayat Ullah Jan
 5. Sufaid Gul, Reader/Senior Clerk
 6. Mushtaq Ali
 7. Jahngir Shah, Moharrir/Junior Clerk Sessions Court, Charsadda.
- (Respondents)

Mr. Bilal Ahmad Kakazai
Advocate ... For appellant

Mr. Noman Ali Bukhari
Advocate ... For private respondents

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....26.07.2019
Date of Hearing.....13.10.2023
Date of Decision.....13.10.2023

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of instant appeal the impugned order dated 26.06.2019 of respondents No.2 may very graciously be set aside and appellant may be ordered be placed at



**serial No. 1 of the seniority list of Junior Clerks /Moharrirs
issued on 10.06.2019 .”**

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant alongwith private respondent No. 4 to 7 were appointed as Junior Clerk in respondent department vide order dated 14.07.2003. Upon issuance of seniority list on 10.06.2019 appellant found his name at serial No.5, despite the fact that respondent No. 4 to 7 were their batch mates appointed on the same date and as per rules being older in age appellant deserved seniority over private respondents. Feeling aggrieved appellant filed departmental appeal, which was dismissed being time barred, hence the instant service appeal .

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and rules. He contended that appellant was never conveyed any earlier seniority lists, directly or through immediate boss issued by respondent No. 2 & 3 and he was unaware about his position in the seniority.

5. Learned counsel for private respondents assisted by learned District Attorney has contended that seniority list issued from time to time by the respondent No.1 clearly and categorically intimated the staff if they have any objection on the seniority it can be raised before the competent authority but appellant after deep slumber of 15 years awakened after missing 14 opportunities of appeals. He further argued that appellant joined the service on 16.07.2003 while private respondent No. 4 & 5 joined one day before the appellant i.e 15.07.2019. He, therefore, requested for dismissal of instant service appeal.


6. Perusal of record reveals that appellant was appointed as Junior Clerk in



vigilantly and no indulgence could be shown to indolent and negligent litigant. In matter relating to and arising out of service matters, a civil servant had to display vigilance and promptitude in approaching the appropriate forum and unexpected delay was always a material factor which could prove fatal for him. Appellant did not object the the seniority list issued periodically and after lapse of 15 years, re-agitated the matter. Contention of the appellant was that incorrect publication of seniority lists periodically would be the continuous wrong and the same every time would give rise to fresh cause of action, hence the departmental appeal wrongly dismissed by the respondents as time barred. Where the appellant did not raise any objection to the seniority list issued periodically in the intervening period, it would be deemed that the appellant had accepted the seniority assigned to him. Reliance is placed on 2018 SCMR 997 and on 2002 SCMR 889.

9. For what has been discussed above, the appeal in hand is dismissed being devoid of merits. 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 13th day of October, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)

*Kaleemullah


(RASHIDA BANO)
Member

ORDER

13th October, 2023

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney for official respondents present. Learned counsel for private respondents present.

2. Vide our detailed judgement of today placed on file, the appeal in hand is dismissed being devoid of merits. Costs shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 13th day of October, 2023.*



(Muhammad Akbar Khan)
Member (E)



(Rashida Bano)
Member (J)