BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

PESHAWAR.

Khyber Pakhtukhwa Service Tribunal
Diary No. 8928
Dated 8/11/23

PROFORMA FOR EARLY HEARING

FORM 'A'

To be filled by the counsel

Case Number	Appeal No: 1184/2022						
Case Title	Fida Hussain **.....Versus.....** Govt of KP & others						
Date of Institution	2022						
Bench	SB		DB	√			
Case Status	Fresh		Pending	√			
Urgency to be clearly stated	That the Hon`ble Supreme Court of Pakistan vide order dated 07.04.2023 has directed this august tribunal to decide the instant appeal within period of two months. It is therefore requested that the instant appeal may kindly be fixed as early as possible. **(Copy of Judgment is attached)**						
Nature of the relief sought	That the matter-in-issue is old one and urgent in nature therefore request for early hearing.						
Next date of haring	13.02.2024						
Alleged target date	**NEXT WEEK**						
Counsel for	Appellant	√	Respondent		In person		

Signature of Counsel/party: - _____

Noor Muhammad Khattak
ASC

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

PROFORMA FOR EARLY HEARING

Form "B"

Inst:

Early Hearing No:- _____-P/2023

In case Service Appeal No:- **1184**-P/2021

FIDA HUSSAIN VS REVENUE DEPTT: & OTHERS

Presented by **Noor Muhammad Khattak, Advocate Supreme Court of Pakistan** on behalf of **Petitioner/Appellant,** entered in the relevant register.

Put up along with main case_____

REGISTRAR

Last date fixed	
Reasons(s) for last adjournment, if any by the Branch Incharge	
Date(s) fixed in the similar matter by the Branch Incharge	
Available dates readers/Assistant Registrar Branch	

Assistant Registrar/REGISTRAR

(1)

BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

Appeal No: 1184/2022.

Mr. Fida Hussain, Patwari (BPS-09),
District Kurram.

.....***Applicant***

Versus

Govt of KP & others.....***Respondents***

APPLICATION FOR THE EARLY HEARING OF THE CAPTIONED/TITLED CASE.

R/SHEWETH.

1. That the above-captioned appeal is pending adjudication before this Hon'ble court, which is fixed for 13.02.2024.

2. That the next date of hearing in the above-titled appeal is 13.02.2024, which is too long, therefore request for early hearing.

3. That the Hon`ble Supreme Court of Pakistan vide order dated 07.04.2023 has directed this august tribunal to decide the instant appeal within period of two months. It is therefore requested that the instant appeal may kindly be fixed as early as possible. **(Copy of Judgment is attached)**

4. That the matter-in-issue is old one and urgent in nature therefore request for early hearing.

It is therefore, most humbly prayed that on acceptance of this application the above titled appeal may kindly be fixed for an early convenient date.

Applicant

Through

Noor Muhammad Khattak
Advocate Supreme Court of Pakistan

(2)

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
MR. JUSTICE UMAR ATA BANDIAL, CJ
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL PETITION NO.1777 OF 2020
(Against Order judgment 24.04.2020 passed by the Peshawar High Court, Peshawar in W.P.No.4181-P/2018)

Fida Hussain ...Petitioner

Versus

Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, and others ... Respondents

For the Petitioner: In person

For the Respondents: Mr. Asif Hameed Qureshi, ASC
Respondent No. in person

Date of Hearing: 07.04.2023

JUDGMENT

MUHAMMAD ALI MAZHAR, J:- This Civil Petition for leave to appeal is directed against the judgment dated 24.04.2020 passed by the Peshawar High Court in W.P.No.4181-P/2018 whereby the writ petition filed by the respondent No.7 was allowed.

2. The transient facts of the case are that the respondent No. 07 was appointed as Patwari on Adhoc basis on 14.09.1988 by respondent No. 06 with the condition that the appointment would be made regular after qualifying the Patwar Training Course from a Patwar Training School. According to the petitioner, the respondent No.7 appeared in the Patwar Course Examination in November, 1996, without possessing the Intermediate Qualification, whereas the petitioner was appointed as Patwari on regular basis on 21.07 1996. Actually, the dispute cropped up between the petitioner and respondent No. 07 with regard to the inter-se seniority as Patwari. The petitioner filed Service Appeal No. 603/2017 before the learned Khyber Pakhtunkhwa Service Tribunal, Peshawar ("**Tribunal**") which was allowed vide its Judgment dated 26.11.2019. During the pendency of the Appeal, the petitioner on the basis of some documents came to discover some irregularities in the appointment of respondent No. 07, therefore, he filed a complaint to the Chief Secretary, KPK, Peshawar. A fact finding inquiry

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Senior Court Associate
Supreme Court of Pakistan
Islamabad

(3)

was conducted and as a result thereof, the Inquiry Officer found the appointment of respondent No. 07 illegal and recommended disciplinary action. The report was forwarded to the respondent No. 06 but, after due consideration, no action was initiated and the respondent No.6 filed the Inquiry Report on the basis that the matter of inter-se seniority between the parties was pending adjudication before the learned Tribunal. The respondent No. 2 directed the respondent No. 6 to comply with recommendation of the Inquiry Officer and conduct *de novo* inquiry. The respondent No. 07, being aggrieved of the order of conducting *de novo* inquiry, filed Writ Petition No. 4181-P/2018 in the learned Peshawar High Court which was allowed vide impugned Judgment dated 24.04.2020 with the observation that direction of conducting *de novo* inquiry resulted in a miscarriage of justice.

3. The petitioner in person argued that the High Court has wrongly held that the petitioner filed the first application dated 21.03.2018, and the second application on the same facts, but as a matter of fact, the petitioner in his service appeal before the Tribunal only questioned the seniority list published in 2017, whereas the second application was for the implementation of the fact finding inquiry report. The administrative order passed by the respondent No. 02 for conducting the fact finding inquiry was in accordance with law. In the revenue hierarchy the ultimate authority is the Senior Member of the Board of Revenue ("**BOR**"), then come the Members BOR, the Director (Land Record Manual), the Commissioners and the Deputy Commissioners in their respective capacities as provided in the Land Revenue Act, 1967. He further argued that the respondent No.06 was not justified in filing the Fact Finding Inquiry Report instead of taking action on it.

4. Heard the arguments. In fact the bone of contention in the matter was with regard to the eligibility of respondent No.7 to be appointed as a Patwari. The fact finding inquiry was conducted but the competent authority was dissatisfied with the outcome of the inquiry, hence it was filed. After the filing of the report, another application was submitted to the respondent No.2, whereby the respondent No. 6 was directed to take action in view of the recommendations made by the Inquiry Officer. The respondent No.7 (petitioner before the High Court), being aggrieved by the initiation of the second round of disciplinary action, challenged it in the High Court. The predominant disagreement between the petitioner and respondent No.7 was in essence

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intertwined with the fixation of inter se seniority which is also reflected in the impugned judgment, that when the recommendations of the Inquiry Officer were submitted to the Deputy Commissioner, he concluded that the claim of Fida Hussain, Patwari (present petitioner) is not sustainable, and may be filed because he and the other Patwaris have filed service appeals which are pending in the Tribunal. The High Court further observed in the impugned judgment that the order of filing the Inquiry was passed on 03.07.2018 by the Deputy Commissioner which was never challenged by the respondent No.7 (petitioner before the High Court), but on 17.07.2018 he moved another application before the respondent No.2 with the same allegations and, on his application, *vide* office order dated 08.08.2018, the respondent No.6 was directed to initiate further steps in the light of the recommendations of the Inquiry Officer. The competent authority was not bound to accept the recommendations of the Inquiry Officer and the respondent No.6, after considering the facts and circumstances of the case and providing an opportunity of hearing, filed the report. The Authorized officer could not impose any condition or issue directions to the competent authority to decide the matter in a particular manner, therefore the direction of proposed *de novo* inquiry was rightly not approved by the High Court. In our view also, the holding of inquiry under Civil Servant Laws on the allegation of misconduct is a routine affair and a common phenomenon which is triggered after the issuance of a show cause notice and statement of allegations, and when Inquiry Report is submitted to the competent authority then it is their domain, with proper sense of duty, to impose the penalty keeping in mind the gravity of charges, if proved, during the inquiry. It is not mandatory that, in all circumstances, the competent authority should agree with the recommendations of the Inquiry Officer or Inquiry Committee, but in case the competent authority decides to impose a penalty greater than that recommended by the Inquiry Officer, then obviously some reasons are to be assigned with proper application of mind, after providing a right of personal hearing to the accused, and in case the competent authority decides to file the Inquiry Report without taking any action thereon, with proper reasoning, then obviously in this second limb there would be no justification to expect a *de novo* inquiry to start from scratch in each and every case without any lawful justification.

5. The respondent No.7 has also filed C.M.A. No.5231/2022, which reflects that the petitioner had filed Execution Petition No.57/2020 in

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his Service Appeal No.603/2017 before the Tribunal for the implementation of the order, which was disposed of on 15.07.2022 with the observation that, in the Tribunal's judgment dated 26.11.2019, the impugned seniority list of the year 2014-15 was set aside and the respondents were directed to draw a fresh seniority list and, as a consequence thereof, the respondent-department, while following the procedure laid down in Section 8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule 17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, issued the seniority list on 18.01.2022 with which the petitioner was not satisfied at all. The learned Tribunal held that the judgment dated 26.11.2019 has been implemented by the respondents according to its spirit and if the petitioner is aggrieved by the seniority list dated 18.01.2022, it gives a fresh cause of action to the petitioner, who is at liberty to approach the competent forum, if he is so advised.

6. After arguing at some length, the petitioner admitted that his Service Appeal No.1184/2022 is pending before the Tribunal with regard to the fixation of inter se seniority, so he submits that he would be satisfied if some directions are issued to the learned Tribunal to decide his pending appeal expeditiously to which the respondent No.7 and his learned counsel also concede.

7. In the wake of the above discussion, although we do not find any irregularity or perversity in the impugned judgment passed by the learned High Court, but at the same time we feel it is appropriate to dispose of this Civil Petition with the direction to the learned Khyber Pakhtunkhwa Service Tribunal to decide the pending appeal of the petitioner within a period of two months after receiving a copy of this judgment. The petition is disposed of accordingly.

SCJ/HCJ
SCJ-T

Certified to be True Copy

Senior Court Associate
Supreme Court of Pakistan
Islamabad

SEAL OF THE SUPREME COURT PAKISTAN

Islamabad, the
7th April, 2023
Khalid

Approved for reporting