

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

Service Appeal No. 591/2018

BEFORE: MRS RASHIDA BANO ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Jamshed Khan S/O Fazal Sarwar Khan R/O District Bannu, Driver,
Administration Department Civil Secretariat Peshawar (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary. Civil Secretariat
2. Secretary to Government of Khyber Pakhtunkhwa Administration Department Civil Secretariat Peshawar
3. Secretary to Government of Khyber Pakhtunkhwa Establishment Department Civil Secretariat Peshawar (Respondents)

Mian Muhammad Imran,
Advocate

...

For appellant

Mr. Muhammad Jan
District Attorney

...

For respondents

Date of Institution..... 27.04.2018
Date of Hearing..... 19.10.2023
Date of Decision..... 19.10.2023

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, for issuance of directions to place the appellant at the right place in the seniority list of the Drivers of the Civil Secretariat Peshawar and to treat him as a Senior Driver, keeping in view his promotion on 13.02.2013.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Driver (BPS -04) on 15.05.2006 in Frontier House/Pakhtunkhwa House Islamabad. On 08.09.2010, he was transferred from Pakhtunkhwa House, Islamabad to Driver's Pool of Administration



Department, Peshawar. He was further transferred to Communication & Works Department followed by transferring to Pakhtunkhwa House Islamabad on 01.06.2011. On 13.02.2013, on the recommendations of Departmental Promotion Committee, 57 Drivers of Civil Secretariat were promoted to the post of Senior Driver (BPS-06), including the appellant at Serial No. 32 of the promotion order. Respondent No. 2 issued a tentative seniority list of Senior Drivers (BPS-06) of Civil Secretariat on 29.10.2015, wherein the appellant was placed at Serial No. 55 out of 80 Senior Drivers. Despite the issuance of the promotion order as Senior Driver, the respondents showed reluctance and remained lethargic and adamant to provide perks and privileges of Senior Driver to the appellant but his other colleagues, who were promoted under the same order, were enjoying the promotion benefits and privileges since the date of promotion i.e 13.02.2013. The appellant was deprived from his seniority in the relevant list of Drivers of the Civil Secretariat. Aggrieved from the anomalies, irregularities and continuous violation of his fundamental rights, he preferred a departmental appeal to the respondent No. 2 which was declined on 05.04.2018 by referring that as per the opinion of the Establishment Department, the appellant being a house-hold staff, could not be enlisted in the seniority list of the Secretariat Drivers; hence the instant service appeal.

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



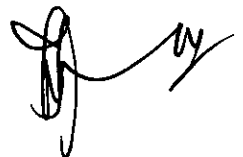
4. Learned counsel for the appellant, after presenting the case in detail, argued that the appellant was kept in the seniority list of Drivers and on the same basis, he was promoted as a Senior Driver on 13.02.2013. He further argued that the appellant was a permanent civil servant of the Administration Department and was appointed under the relevant rules i.e. Rule 10 (2) of APT Rules 1989 in BPS-04 as a Driver on 15.05.2006. He further argued that other class-IV employees of the Administration Department had also been appointed under the rules *ibid* against the post of Driver, had the same terms & conditions and they had been enlisted in the seniority list of the Drivers. According to him, it was clear violation of the right of the appellant because he had got his legitimate expectation to get promotion to the higher scale, and he was promoted, but denied the benefits of that promotion. It was further argued that vide letter dated 5.04.2018 the departmental appeal was rejected on the ground of being house-hold employee despite the fact that he was a permanent civil servant of Civil Secretariat working in the Administration Department. It was also a fact that a number of house-hold staff, including the Malis, for example, who were appointed in the government rest houses, were promoted to the ministerial cadre and currently performing their duties on the post of Assistants etc in the Civil Secretariat. He requested that the appeal might be accepted as prayed for.

5. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was a household Driver of the Administration Department specifically recruited in 2006 for Khyber Pakhtunkhwa House Islamabad. In 2013, his name was erroneously included in seniority list of Drivers of the Civil Secretariat which eventually led to his



promotion but due to the objections of the Establishment Department (Regulation Wing) his promotion could not be materialized. Later on, he submitted an application to the Secretary, Administration Department for back date promotion and for placing his name in the seniority list of Senior Drivers at original place. His case was referred to the Establishment Department for advice and in response, it was advised that he, being a household employee, could not be enlisted in the seniority list of Secretariat Drivers. He requested that the appeal might be dismissed.

6. Arguments and record presented before us transpires that the appellant was appointed as Driver in 2006 against an existing vacancy in Frontier House/Pakhtunkhwa House Islamabad under the Administration Department, Government of Khyber Pakhtunkhwa. In 2010, he was transferred/posted to the Driver's pool of Administration Department and later posted in the C&W Department. In 2011, he was transferred to Pakhtunkhwa House, Islamabad. Vide an order dated 13.02.2013, he was promoted as Senior Driver (BS-6). Later, an issue arose and it was declared that he, being a household staff, was not entitled to such promotion. A tentative seniority list of Senior Drivers attached with the appeal, as on 31.10.2015, shows him at Serial No.55. The minutes of Departmental Promotion Committee meeting held on 31.12.2012, in which the appellant was promoted, shows that the seniority list of drivers had been circulated and finalized and after doing the needful, the case of promotions was processed. Decision of the DPC clearly mentions that Drivers in BS-4 at Serial No. 59 to 144 of the Seniority List of Drivers are recommended for promotion to the post of Senior Driver (BS-6). Name of the appellant is at Serial No. 118,



according to those minutes. When confronted with the question that if his name was included in the seniority list and he was also given promotion based on that, then why at a later stage the respondents are denying it, the learned District Attorney stated that the appellant was not at the strength of the Civil Secretariat, rather he was a household staff of the Khyber Pakhtunkhwa House Islamabad and therefore could not be included in the seniority list of Drivers of the Civil Secretariat.

7. During the course of proceedings before this Tribunal, on 2nd March 2023, a point was highlighted regarding service structure of the household staff and the same was presented by the respondents before us. It was noted that the position of Driver was not mentioned in that structure. On that point, the learned District Attorney was of the view that the service structure of household staff was formulated on the directions of the honourable Peshawar High Court dated 21.02.2021 and COC No. 394/2022 and 395/2022 in case titled "Yasir Zeb and Aminul Haq Vs. Government of Khyber Pakhtunkhwa". As stated by him, the appellant was not the petitioner before the Honourable Peshawar High Court, therefore, his name was not included in the structure for household staff. The departmental representative was asked to clarify the post of Driver in the proposed structure, to which he frankly conceded that Drivers have not been included in it. When further confronted with the question that if the appellant was a household staff, then why he was transferred to Peshawar and placed in the Driver's Pool of the Administration Department, from where he was posted in the C&W Department also, the departmental representative could not respond.



8. The above discussion clearly shows that the Administration Department left the Drivers out of the structure proposed for the household staff which means that they are at the strength of Administration Department, Civil Secretariat Peshawar. The appellant was transferred to the drivers' pool of Administration Department in the same way as any other driver in the Secretariat is transferred. They included the name of the appellant in the seniority list of Drivers of Civil Secretariat and he was given promotion based on the same seniority list. In the light of all these facts, the right of the appellant as Senior Driver in the Civil Secretariat gets established, which cannot be denied to him at any later stage.

9. In view of the foregoing, the appeal in hand is allowed as prayed for. 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 19th day of October, 2023.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)


Fazle Subhan, P.S

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19th Oct. 2023 01. Mian Muhammad Imran, Advocate for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, the appeal in hand is allowed as prayed for. Costs shall follow the event. Consign. .

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 19th day of October, 2023.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

Fazal Subhan PS