

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 268/2023

BEFORE: **MR. KALIM ARSHAD KHAN** ... **CHAIRMAN**
MRS. RASHIDA BANO ... **MEMBER(J)**

Sher Ali, Assistant /Accountant Sessions Court (BPS-16) S/O Shams-Ul-Qamar R/O Mohalla Panj Paoo, Tehsil Topi, District Swabi.
... **(Appellant)**

VERSUS

1. Registrar Peshawar High Court, Peshawar.
2. District and Sessions Judge, Swabi at Judicial Complex, Shah Mansoor, Swabi.
3. Departmental Provincial Committee/Departmental Selection Committee for Subordinate Staff of District Judiciary Swabi through its Chairman/District and Sessions Judge, Swabi at Judicial Complex Shah Mansoor, Swabi.
4. Riaz Muhammad, Assistant / Reader (BPS-16), District Judiciary Swabi at Judicial Complex Shah Mansoor, Swabi.
5. Mr. Sajjad Ali, Assistant / Reader (BPS-16), District Judiciary Swabi at Judicial Complex Shah Mansoor, Swabi.
6. Mr. Mian Nadir Shah, Assistant / Reader (BPS-16), District Judiciary Swabi at Judicial Complex Shah Mansoor, Swabi.
7. Mr. Khair-Ur-Abrar, Assistant / Reader (BPS-16), District Judiciary Swabi at Judicial Complex Shah Mansoor, Swabi.
8. Mr. Sana Ullah, Assistant / Reader (BPS-16), District Judiciary Swabi at Judicial Complex Shah Mansoor, Swabi.

.... **(Respondents)**

Mr. Muhammad Hassan Adil
Advocate ... For Appellant

Mr. Tajdar Faisal Khan Marwat
Advocate ... For Private Respondent No.4

Mr. Asad Ali Khan
Assistant Advocate General ... For Official Respondents

Date of Institution.....02.02.2023
Date of Hearing.....05.07.2023
Date of Decision.....05.07.2023

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:

“That on acceptance of the instant service appeal, the Hon’ble Tribunal may graciously be pleased to declare the impugned appointment order dated 20.05.2014 as illegal, without lawful authority, void abinitio, and coram non iudice by restoring the original order dated 10.02.2013 with respect to respondent No. 4 by keeping him as a Key Punch Operator.”

2. Brief facts of the case are that the appellant was appointed as Assistant/Accountant (BPS-14) in the respondent department vide order dated 14.03.2013. That the post of Assistant /Accountant was upgraded from (BPS-14) to (BPS-15) vide order dated 30.06.2015 and later on the post was again upgraded from (BPS-15) to (BPS-16) vide order dated 23.11.2018. Service of the employees in the respondent department is regulated by the Peshawar High Court (Subordinate Courts Staff) Recruitment Rules 2003, wherein the method of recruitment for the post of Superintendent has been provided. As per rules of 2003, criteria for filling the post of Assistant /Reader (BPS-11) is 25% by initial recruitment and 75% by promotion from amongst the holders of the post of Senior Clerks (BPS-07) with at least three year service. That one Riaz Muhammad (Private respondent No. 4) was appointed as junior clerk vide order dated 21.11.2001 and later on he was appointed as Key Punch Operator (BPS-10) in the year 2003. Private Respondent No. 4 submitted application for appointment by transfer from the post of Computer Operator (BPS-14) to that of Assistant /Reader (BPS-14), which was rejected by the Departmental Promotion Committee (DPC) vide order dated 15.02.2013. Against the said order he filed departmental appeal before respondent No. 2, which was forwarded to the Hon’ble Peshawar High, Peshawar for guidance. Without following the due procedure DSC/DPC appointed respondent No. 4 issued order 20.05.2014 and granted



him ante-dated promotion w.e.f 15.02.2013, placing him above the appellant in the seniority list. Tentative seniority lists were issued in the year 2016, 2019, 2020 and 2022 wherein the name and seniority list of the appellant and private respondent has been kept separate from Assistants /Readers, although it has clearly been provided by the law that for the post of Superintendent (BPS-17), there shall be a common seniority list of the Assistant /Reader, Assistants/Clerk of court, Assistant/Accountant and Assistant/Civil Nazir. Appellant objected against all the above said seniority lists, in consequence to which the final seniority list of the year 2019 was sent by respondent No.2 to respondent No. 1 for guidance, which was not responded. Final seniority list was issued on 21.01.2022 of the paralegal staff for the year 2022 with the observation therein that objection regarding the tentative seniority was disposed of. Feeling aggrieved he submitted application/representation on 04.10.2022 before the competent authority, which was not responded, hence, the present 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 Assistant Advocate General for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that the appellant had been discriminated, which went against the provisions of Articles 25 & 27 of the Constitution of Islamic Republic of Pakistan, 1973. He contended that order dated 20.05.2016 was not only illegal but also against the norms of justice, hence, liable to be set aside. He further argued that the appointment of the post of respondent No. 4 against the post which was reserved for initial



recruitment and was not reserved for appointment by transfer, therefore, such appointment was not only against the law but also affecting the rights of other civil servants in the seniority. He contended that seniority lists issued by respondent No. 2, expressly went against the mandate of Judicial Estacode, wherein it had been provided that for promotion to the post of Superintendent there should be a common seniority of the Assistant/Reader, Assistants/Clerk of court, Assistant/Accountant and Assistant/Civil Nazir.

5. Learned Assistant Advocate General contended the post of B&A Assistant was sanctioned by the Hon'ble Peshawar High Court, Peshawar vide order dated 30.03.2010 besides other posts and the appellant was appointed was appointed was appointed vide order dated 14.03.2013. Initially the appellant submitted objection regarding his seniority in the year 2016, which was accordingly decided vide order dated 02.05.2017 on the recommendations of Management Committee dated 14.04.2017 which is reproduced for ready reference:

“Mr. Riaz Muhammad will since be deemed to be selected in earlier selection (10.02.2013) and that too against vacant sanctioned post and Mr. Sher Ali late in point of time. Therefore, Mr. Sher Ali Budget & Accounts Assistant being appointed later on 14.03.2013 is to be placed below him in the seniority list.”

He submitted that DPC District Swabi vide letter dated 20.05.2014 recommended respondent No. 4 to the post of Assistant/Reader by appointing him through transfer vide order dated 20.05.2014 and give him ante-dated promotion w.e.f 10.02.2013. He further contended that name of the appellant was not included for reasons that the post of Budget &



Accounts Assistant was separate cadre and needed separate seniority list, which had already been issued and maintained.

6. The appellant brought instant appeal for correction of seniority list and for placing him at serial No. 3 of the seniority list below Mr. Sher Afsar Khan for the purpose of promotion to the post of Superintendent BPS-17 in the respondent department. Appellant was appointed on ^{14.03.2013} 14.03.2022 as Assistant/Account BPS-14 having qualification of BBA (HONS) Finance. The post of Assistant/Accountant and was upgraded to BPS-15 from BPS-14 vide No FD/SO(FR)7-20/2015 dated 30.06.2015 and from BPS-15 to BPS-16 vide order No 606975/B&A dated 23.11.2018 services of the employees in the respondent/department are regulated by Peshawar High Court (Subordinate courts staff recruitment Rules, 2011, in accordance with these rules, the post of Superintendent (BPS-17) was to be filled by promotion on the basis of seniority-cum-fitness, from amongst the holders of post of Senior Clerks. So, as per appellant's contention, he possessed required qualification to be promoted to the post of Superintendent being Assistant/Accountant and senior to respondent No 4 whose appointment to the post of Assistant in BPS-16 is not in accordance with rules/law and learned counsel for the appellant requested to declare the very appointment of respondent No 4 illegal and against the rules because he was appointed by transfer to the post, which was to be filled by direct recruitment (Assistant/Reader) BPS-14.

7. On 16.06.2016, the appellant requested the competent authority for correction in the seniority list by mentioning that he had joined the post of Budget & Accounts Assistant with effect from 14.03.2013 with request to

place him at serial No.5 of the list below Mr. Phool Bacha above Mr. Riaz Muhammad. This objection/representation upon seniority list for year 2015/2016 was decided on 02.05.2017 wherein it was held that Mr. Riaz Muhammad was Senior to the petitioner namely Sher Ali as he was deemed selected on ~~10.03~~ 2013 while Mr. Sher Ali was appointed on 14.3.2013, Therefore, ^{the} appellant was placed below Mr. Riaz Mohammad by relying on Rule 7(1)(a) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotions and Transfer) Rules, 1989 and thereafter final seniority list was issued. It was on 02.05.2017, when question of seniority of appellant and private respondent No. 4 was determined by the competent authority, which he was required to have challenged in a departmental appeal/representation with in a period of 30 days after 02.05.2017 but the appellant failed to challenge the same within statutory period. He again on 22.01.2019 placed his request for correction of seniority list issued on 22.01.2019, said representation was taken up on 28.05.2019 and dealt with by the management committee to seek guidance in the matter from worthy Peshawar High Court, Peshawar. It is pertinent to mention here that, the appellant also filed writ petition bearing No. 1688-P/2022, which was decided on 28.09.2022 in the following manner:

“At the very outset, the Worthy AAG produced copy of the final seniority list issued on 21.01.2022, which is placed on record. As such, without dilating upon the issue as to whether the tentative seniority list can be challenged the Court or not, we deemed it appropriate to dismiss the petition, however, the petitioner would be at liberty to raise his voice against the final seniority list, if aggrieved, before the proper forum.”


The Worthy Registrar, Peshawar High Court, Peshawar informed the competent authority, District & Sessions Judge Swabi, to proceed further in the light of verdict of Hon'ble Peshawar High Court, Peshawar given in writ petition no. 1688/P dated 28.09.2022 mentioned above. It will not be out of place to mention here that final seniority list was issued on 22.01.2022, upon which no objection was raised by the appellant, which is evident from the column of signature put by the appellant on 25.01.2022. However, departmental appeal was preferred against the said seniority list by the appellant on 04.10.2022.

8. Admittedly for the first time seniority of the appellant and respondent No 4 was determined vide order dated 02.05.2017 by the competent authority, which order was never challenged by the appellant. He filed his departmental appeal on 04.10.2022, which is hopelessly barred by time. Otherwise too, if for the sake of arguments, it is presumed that seniority of the appellant is determined vide seniority list issued on 21.01.2022 and signed by the appellant on 25.01.2022, then ~~too~~⁸ he had to file departmental appeal within 30 days from 25.01.2022 but he filed departmental appeal on 04.10.2022 with the considerable delay of seven months, which he had to file within 30 days, in accordance with Rule-3 of Khyber Pakhtunkhwa Civil Servant Appeal Rules, 1986, because it says that a civil servant aggrieved by an order passed or penalty imposed by the competent authority relating to the terms & conditions of his service may file departmental appeal within 30 days but the appellant filed departmental appeal with a considerable and unexplained delay of almost 5 years. It is well entrenched legal proposition that where appeal before departmental authority is time barred, the appeal before service Tribunal would

be incompetent. In this regard reference be made to case titled Anwarul Haq Vs. Federation of Pakistan 1995 SCMR, 1505, Chairman, PIAC Vs. Nasim Malik PLD 1990 SC 951 and State Bank of Pakistan Vs. Khyber Zaman & others 2004 SCMR 1426. Departmental appeal as well as instant appeal filed on 02.02.2023 after considerable delay of more than eight years from determination of seniority on 02.05.2017 and after one year of issuance and signing of the final seniority list for the year 2022, are hopelessly bared by time. Besides the appellant has not challenged the seniority lists since his appointment.

9. So far as arguments of learned counsel for appellant about declaring the very appointment of private respondents No 4 against the rules and law is concerned, private respondent No 4 was appointed by transfer by the competent authority vide order bearing No 944(53) (F-1)/D&SJ dated 20.05.2014, but as stated earlier, ^athat same was not challenge^d by the appellant in accordance with Rule 3 of Civil Servant Appeal Rules, 1986, therefore, he cannot challenge it now being barred by time.

10. Now coming towards the arguments of the Learned counsel for appellant that appellant is Assistant/Accountant and is not Budget and Accounts Assistant. In our view, it involves question of change in the rules and if appellant is aggrieved from any rules he may challenge those before the competent forum in accordance with law. While he has not challenged these in the instant appeal.



11. As a sequel the above discussion, it is held that departmental appeal as well as this service appeal are hopelessly bared by time, hence, dismissed with costs. Consign.

12. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 5th day of June, 2023.*



(RASHIDA BANO)
Member (J)



(KALIM ARSHAD KHAN)
Chairman