

Service Appeal No.1439/2023 titled "Muhammad Safdar Awan Vs. Government of Khyber Pakhtunkhwa"

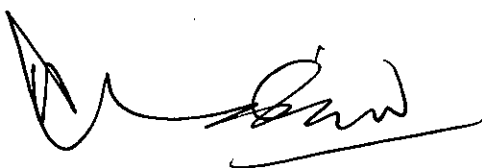
ORDER

22nd Nov. 2023 **Kalim Arshad Khan, Chairman:** Learned counsel for the appellant


present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the official respondents present. Private respondents already placed ex-parte.

02. The point involved in this appeal is quite simple, so simple as hardly to be added with any amount of further complex arguments. It is the case of the appellant that he was appointed on regular basis on 12.12.2009, while the private respondents (already placed ex-parte) were appointed on different dates but, after the date of appointment of the appellant. His claim is that as the private respondents being appointees of different dates after the appointment of the appellant, they were to rank junior to the appellant. As against that, the stance of the department is that appellant and private respondents were selectees of the same selection process and their seniority had been determined by the department on the basis of merit order as assigned by the Selection Committee.

03. It is to be pointed out here that seniority list as prepared by the respondents, does not seem to be in accordance with the law and rules because that does not appear to be in the order of merit and as such disturbance of merit order regarding the appointments of the persons of the same selection process and recommendations made in parts, is totally incomprehensible, nor that fact has been explained by the respondents in their reply. The respondents, however, annexed with





their reply the minutes of the Departmental Selection Committee. The minutes of the DSC show that though recommendation of 16 persons including the appellant and private respondents, was made but there is no merit order provided in the minutes, nor that had been annexed therewith, so that seniority of the persons appointed through initial recruitment could be determined in accordance with the provisions of Section-8 of the Khyber Pakhtunkhwa Civil Servants Act, 1974 read with Rule17-A of the Khyber Pakhtunkhwa Civil Servants (Appointment Promotion & Transfer) Rules, 1989. Be that as it may, the only criterion for determination of seniority of the persons appointed through initial recruitment is merit order assigned by the selection authority. As in this case, the merit order is not on the file. Besides, the contention of the respondents that inter-se seniority would be from the date of regular appointments, we find the contention of the respondents to be in complete derogation of the relevant rules, determining the seniority of the persons appointed through initial recruitment, because determination of seniority from the date of regular appointment is provided in Clause-(b) (1) of Rule-17 of the above rules, which is regarding the civil servants appointed otherwise, that is not, that made by way of initial recruitment. The fact remains the same that the seniority on initial recruitment is determined on the basis of merit order assigned by the selection authority, therefore, we direct that respondents shall determine the seniority of the appellant and others in accordance with Rule-17 (a)(i) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 by also


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confronting the appellant and others with the merit order so prepared and finalized by the selection committee. Disposed of accordingly. Consign.

04. *Pronounced in open Court at D.I.Khan and given under our hands and seal of the Tribunal on this 22nd day of November, 2023.*


(Muhammad Akbar Khan)
Member (E)


(Kalim Arshad Khan)
Chairman
Camp Court, D.I.Khan

Mutazem Shah