

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.7436-P/2021

Niaz Gul Vs The Govt.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 9891

Dated 14-12-2023

ADDITIONAL POINTS

Brief History

The appellant has already submitted skeleton points in the case. These additional points are submitted in view of the consolidation of other appeals. The appellant Mr. Niaz Gul has filed two separate Service Appeals. In the first Appeal bearing No.7436-P/2021, he has called in question the promotion Notification of Mrs. Naveela Asim to the post of Director Library & Research (BPS-19) whereas in the second Appeal the appellant has called in question Notification dated 12.10.2022 whereby re-designation and consequential promotions have been allowed to 04 officers viz:

S.No.	Name with Designation & BPS	Post against which promoted
1.	Mr. Aziz-ur-Rahman, Senior Research Officer (BPS-19) (Personal)	Additional Director, (Research & Library) BPS-19
2.	Ms. Safia Sultana, Senior Research Officer (BPS-18)	Deputy Director, Research & Library (BPS-18)
3.	Mr. Abid Faheem, Research Officer (BPS-18) (Personal)	Assistant Director, Library & Research (BPS-17)
4.	Qazi Bashir Ahmad, Supervisor General Administration (BPS-17) (Personal)	Research Officer (BPS-17)

POINTS:

1. **First Service Appeal No.7436-P/2021**

This appeal was filed in peculiar circumstances wherein as per the Schedule, the only promotional post to the post of Director Library & Research (BPS-19) was the post of Librarian (BPS-18) held by the appellant. In absence of Seniority List which was mandatory requirement under the rules the promotion was effected and consequently it was challenged through the appeal in hand. During the pendency of appeal the other developments took place which admittedly is hit by the principle of lis pendence and hence will not affect the merits of the case. In the case of *WAPDA ..Vs.. Qazi Muhammad Feroz* reported in 2009 SCMR 396, the Supreme Court of Pakistan observed: *Petitioner/Department and other authorities particularly in service matter when lis was pending in the Court relating to the terms and conditions of the service, where rights of parties regarding seniority were under consideration and were still to be determined by the Court with a resultant consequence of effecting further promotion and other rights like Selection Grade, the Department should keep its hands off unless there was a specific order of the Court for further proceedings on the part of the Department/authority, in order to avoid further complications.* The appeal contains an independent claim and may be decided in isolation of other subsequent developments. (Copy of the Judgment is annexed)

2. **Second Service Appeal No.1303/2023**

During the pendency of the first appeal, the re-designations of the posts mentioned in the table ibid, were effected and the consequent promotions. This subsequent development has no retrospective effect and therefore, will not affect the merits of the case in the first appeal. In case the first appeal is allowed by the Tribunal then this second appeal may become infructuous and may be declared as such in that eventuality leaving the anomaly to be resolved by the Department who is responsible for creating the same.

3. **Service Appeal No.1370/2023 filed by Mrs. Naveela Asim challenging the viries of the Rules.**


Mrs. Naveela Asim had earlier challenged the viries of the Rules in Writ Petition No.1326/2011 but the same was withdrawn on 01.10.2014 (*Page-17 to 23 of the Paper Book*). She again chose to challenge the viries through this appeal sensing the foreseeable failure in the Service Appeal No.7436-P/2021 filed by the appellant against her promotion order. Be that as it may even if this appeal is allowed even then the Department will be directed to amend the Rules which will be a future event and will be having no retrospective effect and consequently the same will also not

affect the merits of the Service Appeal No.7436-P/2021 filed by the appellant against her promotion order.

4. **Service Rules still intact.**

The Schedule (*at Page-15 of the Service Appeal No.7436-P/2021*) wherein the post of Librarian (BPS-18) is channelized for promotion to the post of Director Library & Research (BPS-19) is still intact and has never been amended till date and admitted by the Department in its reply, therefore, in such an eventuality how the re-designation and consequential promotions were effected by the Department, is a question/anomaly which is yet to be resolved by the Department. On the basis of the same Schedule, previously two Librarians (BPS-18) namely Tilawat Khan (*Page-16 of the Paper Book*) and late Abdur Rehman have been promoted to the post of Director Library & Research (BPS-19) and stood retired.

Submitted by:


Khaled Rahman,
ASC

Dated: 14/12/2023

[Supreme Court of Pakistan]

Present: Mian Shakirullah Jan, Muhammad Qaim Jan Khan and Muhammad Farrukh Mahmud, JJ

WAPDA and others---Petitioners

Versus

Qari MUHAMMAD FEROUZE and others---Respondents

Civil Petitions Nos.1174 to 1177 of 2008, decided on 27th October, 2008.

(On appeal against the judgment, dated 26-6-2008 passed by Federal Service Tribunal, Islamabad, in Appeals Nos.26 to 29(P)(C.E.) of 2004).

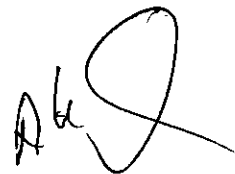
Constitution of Pakistan (1973)---

---Art. 212(3)---Seniority list, preparation of---Pendency of lis before Supreme Court---Effect---Petitioner department and other departments and authorities, particularly in service matter when lis was pending in the court relating to terms and conditions of service, where rights of parties regarding seniority were under consideration and were still to be determined by the Court with a resultant consequence of effecting further promotion and other rights like Selection Grade, the department should keep its hands off unless there was specific order of the court for further proceeding on the part of department/authority, in order to avoid further complications and which ought to have been visualized by the department---Petitioner department had, without visualizing such complications, had shown smartness by deciding the matter hurriedly without waiting for decision of court and if any difficulty had then arisen, it was for petitioner department to solve or to suffer for that---Service Tribunal had rightly passed judgment in favour of respondents and declined to interfere---Leave to appeal was refused.

Sheikh Zamir Hussain, Advocate Supreme Court and M.S. Khattak, Advocate-on-Record for Petitioners (in all cases).

M. Shoaib Shaheen, Advocate Supreme Court along with Tanveer Ahmed in person (pro forma respondent) for Respondent No.1 (in all cases).

Date of hearing: 27th October, 2008.



JUDGMENT

MIAN SHAKIRULLAH JAN, J.---The respondents, employees of the petitioner, WAPDA, are litigating for a long time since 1993 for their seniority on the plea that their seniority be determined on the basis of combined seniority list after the establishment of Tarbela Power Station No.2 consisting of Units Nos.11 to 14 in addition to the already existing Tarbela Power Station No.1 consisting of Units Nos.1 to 10. After several rounds of litigation, even up to this Court, the contesting respondents who are respondent No.1 in each case succeeded in getting an order from the Court with regard to the preparation of combined seniority list which was prepared and circulated on 10-3-2001. After the preparation of the new combined seniority list they again approached the Department for grant of Selection Grade as some of the employees who are junior to the said respondents had already been given Selection Grade but the petitioner/WAPDA did not agree to their said demand which ultimately gave rise to another round of litigation which resulted in the form of impugned judgment whereby they were held entitled to the grant of Selection Grade.

2. The petitioner, the WAPDA, being aggrieved of the said relief granted to the respondents approached this Court through instant petitions.

3. There is no controversy rather the parties are in agreement on final combined seniority list circulated on 10-3-2001, however, the petitioner's grievance about the impugned judgment is that the said respondents are not entitled to selection grade and the same had already been given to the employees on the basis of separate seniority list then in vogue at that time and on the ground that

selection grade can be granted only to 33% of the total strength and which had already been granted and the Department is not in a position to give it to other employees over and above 33%.

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4. Since the selection grade which had already been granted to other employees of the petitioner/Department was on the basis of separate seniority list of the two power stations which were under challenge since the very inception in the year 1993 well in time and which challenge of the respondent employees was accepted and which resulted in the combined seniority list dated 10-3-2001 in pursuance of the Court order and if the matter was delayed it was because of prolonged litigation in the Courts. The petitioner/Department and other departments and authority, particularly in a service matter when the lis is pending in the Court relating to the terms and conditions of service, like the instant one, where the rights of the parties regarding seniority is under consideration and was still to be determined by the Court with a resultant consequence of effecting further promotion and other rights like the selection grade, the department should keep its hands off, unless there is specific order of the Court for further proceeding on the part of the department/authority, in order to avoid further complications and which ought to have been visualized by the department. In the present case it is the department which without visualizing such complications has shown its smartness by deciding the matter hurriedly without waiting for the decision of the Court and if any difficulty now arises at this stage it is for the department to solve or to suffer for that. The Service Tribunal in the impugned judgment has very rightly and aptly observed that "... Seniority is an invaluable term and condition of service and cannot be interfered with without a valid and just cause. Circulation of the Final Combined Seniority List on the directions of the apex Court was not a perfunctory ritual without consequential benefits. Rights which have accrued as a result of the Combined Seniority List cannot be denied to the appellants. The appellants are entitled to all the service benefits including selection grade and promotion on the basis of seniority so determined."

5. We see no good reason to justify interference 'in the well-reasoned judgment of the Service Tribunal and resultantly we decline leave to appeal and these petitions are dismissed.

M.H./W-2/SC Petition dismissed.

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