

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Khyber Pakhtukhwa
Service Tribunal

Service Appeal No. 1664/2022 Diary No. 9844

Dated 12-12-2023

Muhammad Naeem Jan VS

HED & Others

REJOINDER ON BEHALF OF APPELLANT

RESPECTFULLY SUBMITTED:

PRELIMINARY OBJECTIONS:

- (1-9) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

1. Para No.1 needs no comments, as endorsed by the respondent department in Para-1 of Para-wise comments as correct.
2. Para No.2 needs no comments, as endorsed by the respondent department in Para-2 of Para-wise comments as correct.
3. Incorrect, the appellant was recommended on 27.3.13 and his appointment order was issued on 5.6.13 along with others colleagues, it is necessary to mention here that Appellant i.e. Shamsa Afridi was first recomendee, recommended on 08.10.2012 in the Adv.No. 02/2011 in which the Appellant Shamsa Afridi and other colleague were appointed and on the basis of that, in the said Adv.No.02/2011 inter-se-seniority was issued in which the appellant was on Serial No.07, and as per the judgment Apex Court the date of recommendation of first batch for appointment shall be considered as the date recommendation for all and as such the appellant recommendation shall also be considered as 08.10.2012.
4. Para No.4 is Incorrect; Moreover the Notification dated 31.12.2012 was issued on the compliance of judgment dated 08.03.2012 in WP No.1289-P/2010 and that regularization was challenged by some private respondents and claimed regularization w.e.f 01.01.2009 before this Hon'ble Service Tribunal, which was dismissed on 25.04.2019 and the said judgment is also kept maintained by the Apex Court as well, dismissed & refused the leaves, meaning hereby that the private respondent were regularized w.e.f 31.12.2012, whereas

the colleague/batch-mate i.e. Shamsa Afridi on 08.10.2012 and as per the judgment of Apex Court appellant shall be ranked senior to the private respondents from 04 to 26.

5. Para No.5 is admitted and correct & needs no comments.
6. That the first portion of Para No.6 of reply is admitted correct, hence needs no comments, while the rest of the Para is incorrect, hence denied, as colleague of the appellant i.e. Shamsa Afridi was recommended on 08.10.2012 prior to the regularization of private respondents No.04 to 26 and according to judgment of the Apex Court that the date of recommendation of first batch to the competent authority for appointment, shall be considered as the batch of recommendation for all, meaning hereby that appellant along with his batch-mate shall be considered on 08.10.2012, however a committee did not considered the judgment of the Apex Court and rendered incorrect opinion about the determination of the seniority of the Appellant and private respondents as well.
7. Para No.7 is incorrect as replied in Para No.6 above.
8. Para No.8 is incorrect. More so representation and Appeal of the Appellant are well in time.
9. Para No.9 is incorrect. Appellant is aggrieved by the Act of the officials respondents by placing his name below the private respondents in impugned seniority list dated 27.06.2022 which is liable to be rectified on the following grounds;

GROUND:

- A. Incorrect. While Para-A of grounds of the appeal is correct. Moreover, impugned seniority list is against the law, facts and violative of the Apex Court judgment, which is liable to be rectified by placing the appellant at his place in seniority list, above the private respondents.
- B. Incorrect and misconceived by mentioning the recommendation of Shamsa Afridi on 04.04.2013, actually Shamsa Afridi was recommended on 08.10.2012 prior to the regularization of private respondents, more so Apex Court also held in judgment that the date of recommendation of first batch to the competent authority for appointment, shall be considered as the batch of recommendation for all, meaning hereby that appellant along with his batch-mate shall be considered on 08.10.2012.
- C. Incorrect. While Para-C of grounds of the appeal is correct as mention in the main appeal of the appellant.
- D. Incorrect. Already explained in ground B and Para-D of grounds of the appeal is correct as mention in the main appeal of the appellant.
- E. Incorrect. The committee did not follow KP-PSC regulations 2003 and Sec-04 of the Regularization Act 2009 the committee also did not follow the judgment of Apex Court

and rendered incorrect opinion regarding the seniority of the Appellant and private respondents as well. More so Para-E of grounds of the appeal is correct as mention in the main appeal of the appellant.

- F. Incorrect. While Para-F of grounds of the appeal is correct as mention in the main appeal of the appellant.
- G. Incorrect. While Para-G of grounds of the appeal is correct as mention in the main appeal of the appellant.
- H. Incorrect. While Para-H of grounds of the appeal is correct as mention in the main appeal of the appellant.
- I. Legal.

It is, therefore, most humbly prayed that the appeal of appellant may kindly be accepted as prayed for.

Jam
APPELLANT

Through:

(MANSOOR SALAM)
& *Jam*
(TAIMUR ALI KHAN)
ADVOCATES PESHAWAR.

AFFIDAVIT:

It is affirmed and declared that the contents of rejoinder and appeal are true and correct to the best of my knowledge and belief and nothing has been withheld from Hon'able Tribunal.

Jam
DEPONENT

