

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

BEFORE: SALAH-UD-DIN ... MEMBER (Judicial)
FAREEHA PAUL ... MEMBER (Executive)

Service Appeal No. 512/2014

Muhammad Asif, Inspector Legal No. B-23 presently posted at Special Branch Peshawar. (Appellant)

Versus

Provincial Police Officer Khyber Pakhtunkhwa Peshawar and 05 others. (Respondents)

Present:

Syed Noman Ali Bukhari, Advocate.....For the appellant
Mr. Asad Ali Khan, Assistant Advocate GeneralFor respondents
Ms. Uzma Syed, AdvocateFor private respondents.

Date of presentation of Appeal.....09.04.2014
Date of Hearing.....04.12.2023
Date of Decision.....04.12.2023

JUDGMENT

SALAH-UD-DIN, MEMBER: : The appellant has invoked the jurisdiction of this Tribunal through filing of the instant appeal with the prayer copied as below:-

“On acceptance of the service appeal the respondents may be directed to revise the impugned seniority list to the extent of placing the name of appellant above the names of private respondents No. 5 and 6 as appellant is senior the above mentioned private respondents in all respects. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of appellant.”

2. Precise averments as per memorandum of appeal are that the appellant alongwith private respondent No. 6 and others were appointed as Prosecuting Sub-Inspectors (BPS-14) vide appointment order dated 17.04.1993 of the Deputy Inspector



General of Police Bannu Range, Bannu, wherein the name of the appellant is at serial No. 02 in the order of merit, while the name of private respondent No. 6 exist at serial No. 04. The appellant successfully qualified basic PSI course as well as training and on completion of probation period, his name was brought on list-F with effect from 12.01.1997. The appellant was transferred to Special Branch Peshawar in the year 2002 and was promoted to the rank of Inspector Legal on adhoc basis vide order dated 18.02.2003, while private respondents No. 5 & 6 were permanently absorbed in the Prosecution Department with all rights of seniority and promotion etc alongwith budget, however after serving there for more than 03 years, they managed their transfer back to Police and their names were astonishingly shown above the name of the appellant in the impugned seniority list. The appellant submitted representation before the Provincial Police Officer Khyber Pakhtunkhwa Peshawar against the impugned seniority list, however the same was not responded within the statutory period of 90 days, hence the instant appeal.

3. On receipt of the appeal and its admission to regular hearing, respondents were summoned. Official respondents put appearance through their representative, while private respondents No. 5 & 6 appeared through counsel and contested the appeal by way of filing their respective replies/comments raising therein numerous legal as well as factual objections.

4. Learned counsel for the appellant contended that according to the appointment order, the appellant was placed senior to private

respondent No. 6 in order of merit; that on separation of Prosecution Department from Police, private respondents No. 5 & 6 willingly joined Prosecution Department in the year 2005 and were absorbed in the same, therefore, on their repatriation to Police Department, they were required to be placed at the bottom of the seniority list but they were wrongly placed senior to the appellant in the impugned seniority list of Inspectors Legal on list-F as it stood on 08.11.2013, circulated vide endorsement No. 28512-B/E-II dated 20.11.2013; that despite break in service of private respondents No. 5 & 6 due to their joining of Prosecution Department, they have been restored on their old positions in the impugned seniority list in contravention of the relevant rules; that the appellant while on deputation in Special Branch Peshawar was promoted as Prosecuting Inspector (BPS-16) on adhoc basis vide order dated 18.02.2003, therefore, his seniority as Inspector Legal is to be counted from the said date, however this fact has not been considered at the time of preparation of the impugned seniority list; that the impugned seniority list requires necessary correction by placing the name of the appellant above the names of private respondents No. 5 & 6.

5. On the other hand, learned Assistant Advocate General for official respondents has contended that names of the appellant as well as private respondents No. 5 and 6 were brought on promotion list-F through Notification dated 29.01.1997, wherein the name of the appellant was rightly recorded below the names of private respondents; that right from the date of their appointments, the

appellant was placed below private respondents in all the seniority lists issued in the years 2005, 2008, 2009 and 2013; that private respondents were though surrendered to Prosecution Department, however their lien remained intact in their parent department, therefore, on repatriation, they were placed on the same position in promotion list-F; that upon repatriation to his parent department, private respondent No. 6 had preferred Service Appeal No. 1056/2009 before this Tribunal, which was allowed vide judgment dated 16.10.2009 and thus his right of lien was even confirmed through the said judgment; that the judgment dated 16.10.2009 has attained finality and the impugned seniority list dated 20.11.2013 has been drawn in compliance with the said judgment as well as other judgments dated 12.01.2010, 01.03.2011 and 22.01.2013 passed by this Tribunal; that private respondents were repatriated to the Police Department within a period of three years, therefore, in light of the judgments reported as 1999 PLC (C.S) 1347, 2001 SCMR 1780, 1992 SCMR 435, 1990 SCMR 373 and 2005 SCMR 1212, their right of lien in parent department could not be terminated; that the seniority of the appellant as well as private respondents No. 5 & 6 has been correctly reflected in the impugned seniority list, therefore, the appeal in hand may be dismissed with costs.

6. Learned counsel for private respondents No. 5 & 6 adopted the arguments advanced by learned Assistant Advocate General.

7. A perusal of the record would show that the appellant as well as private respondent No. 6 namely Mir Faraz Khan were


appointed as Prosecuting Sub-Inspectors (BPS-14) vide order dated 17.04.1993, while private respondent No. 5 namely Abdul Sattar was enlisted prior to them on 23.01.1990. Vide Notification dated 29.01.1997, the names of the appellant as well as private respondents, who were serving as Prosecuting Sub-Inspectors, were brought on promotion list-F, wherein the names of private respondents No. 5 and 6 have been shown at serial No. 2 and 19 respectively, while the name of the appellant exist at serial No. 20. The appellant at that judgment did not challenge his seniority vis-à-vis private respondents No. 5 and 6. In the wake of Police Order 2002, the Prosecution Branch was separated from the police and private respondents No. 5 and 6 alongwith others were surrendered to Home and Tribal Affairs Department Peshawar vide order bearing No. 21063/E-II dated 22.11.2005. Later on, private respondents No. 5 & 6 were repatriated to Police Department vide orders dated 22.10.2007 and 04.11.2008 respectively. On repatriation, private respondent No. 6 namely Mir Faraz Khan had approached this Tribunal through filing of Service Appeal No. 1056/2009 seeking confirmation/regularization from the date of his first appointment. The said appeal was accepted vide judgment dated 16.10.2009 with the observations that the appellant shall be considered at par with his colleagues and shall not be discriminated. It was in light of the afore-said judgment as well as other judgments of this Tribunal dated 12.01.2010 and 01.03.2011 as well as 22.01.2013 that the impugned seniority list was issued. The seniority of private respondents No. 5 & 6 has been recorded in the

impugned seniority list in light of the judgment of this Tribunal dated 16.10.2009, which as per the available record is still intact.

8. The appellant during the course of his service was transferred to Special Branch Peshawar in the year 2002 and vide Notification dated 18.02.2003, he was promoted as Prosecuting Inspector (BPS-16) in Special Branch Peshawar. It is the contention of appellant that his seniority as Inspector Legal is to be counted from the date of above-mentioned promotion as Prosecuting Inspector (BPS-16) in Special Branch. The said contention of the appellant is misconceived for the reason that it has been categorically recorded in the afore-mentioned promotion order that the same was purely on temporary basis and that the appellant would not claim the benefits of the said promotion towards seniority maintained in his own Range/District.

9. Consequent upon the above discussion, the appeal in hand being without any merit stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
04.12.2023


(FAREEHA PAUL)
MEMBER (EXECUTIVE)

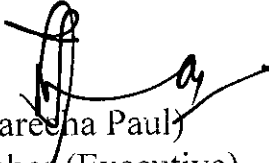

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

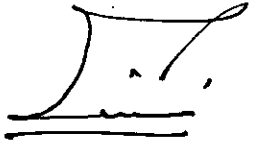
ORDER
04.12.2023

Learned counsel for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General for official respondents present. Learned counsel for private respondents No. 5 & 6 also present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand being without any merit stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
04.12.2023


(Fareeha Paul)
Member (Executive)


(Salah-Ud-Din)
Member (Judicial)