

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

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

Service Appeal No. 7272/2021

Muhammad Tariq Khan Tareen S/O Sakhi Sultan Khan, R/O Dingi Tehsil & District Haripur Presently Working as Deputy District Attorney (OPS), Office of District Attorney Swabi. (*Appellant*)

Versus

Province of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and 09 others. (*Respondents*)

Present:

Muhammad Tariq Khan Tareen, Appellant*Pro-se.*
Mr. Asad Ali Khan, Assistant Advocate GeneralFor official respondents
Mr. Amjid Khan, Private Respondent No. 7*Pro-se.*
Mr. Inayat Ullah Khan, AdvocateFor private respondent No. 8.

Date of presentation of Appeal.....09.08.2021
Date of Hearing.....15.11.2023
Date of Decision.....15.11.2023

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 instant service appeal, directions may please be issued to respondents # 1 to 4 to place the appellant at serial # 34 of the seniority list of BPS-18 of 2021 by giving ante-dated promotion from 24.05.2019 alongwith all back/running monetary benefits. Any other relief which this Hon’able Tribunal deem proper may also be given to the appellant.”

2. Precise averments as per memo of appeal are that appellant is serving as Deputy District Attorney (BPS-18) in his own pay

and scale at the office of District Attorney Swabi; that he joined Law Department as Additional Government Pleader (BPS-17) upon the recommendations of Khyber Pakhtunkhwa Public Service Commission, wherein the appellant was assigned 05th position in merit order; that being confidential matter, the merit order was not communicated to the appellant and his seniority position was wrongly fixed on the basis of serial number instead of merit order assigned by the Khyber Pakhtunkhwa Public Service Commission; that upon completion of five years service as Additional Government Pleaders (BPS-17), promotion case of Additional Government Pleaders to the post of Deputy District Attorney was placed before the PSB, in which private respondents No. 7 & 8 were wrongly promoted by ignoring the appellant, who was senior to them; that the appointment of private respondent No. 9 was declared as without lawful Authority by the Supreme Court of Pakistan in its judgment passed in C.P No. 636 of 2014 reported as 2013 SCMR 890 but his name is still present at serial No. 29 of seniority list of BPS-18 pertaining to the year 2021; that the appellant managed to obtain the copy of recommendations of Khyber Pakhtunkhwa Public Service Commission and there-after filed departmental appeal before the Chief Secretary Khyber Pakhtunkhwa Peshawar, however the same was not responded within the statutory period.

3. On receipt of the appeal and its admission to regular hearing, respondents were summoned. Private respondents No. 7



to 9 as well as official respondents contested the appeal by way of filing of their respective para-wise comments raising therein numerous legal as well as factual objections.

4. It is pertinent to mention here that on 05.06.2023, the appellant had submitted an application that for the time being he does not want to proceed against private respondent No. 9 in the instant appeal and reserves his right for raising objections against him at proper forum.

5. Appellant addressed his arguments supporting the grounds agitated by him in his service appeal. On the other hand, learned Assistant Advocate General as well as private respondents No. 7 & 8 have controverted the arguments of the appellant and have supported the para-wise comments submitted by them.

6. We have heard the arguments of learned counsel for the parties and have perused the record.

7. The appellant at the time of filing of the instant appeal was Additional Government Pleader (BPS-17) and as per the prayer made in the appeal, he sought his placement at serial No. 34 of the seniority list of BPS-18 by giving him ante-dated promotion with effect from 24.05.2019 alongwith all back benefits. During pendency of the appeal in hand, certain developments took place in the shape of promotion of the appellant to the post of Deputy District Attorney (BPS-18) vide Notification dated 03.08.2022. Similarly, minutes of the meeting held regarding determination of seniority position of the appellant are also available on the

record. Para-3 (a) & (b) of the said minutes are reproduced as below:-

“a. Vide letter dated 17.01.2014, the Khyber Pakhtunkhwa Public Service Commission forwarded recommendations in respect of 12 candidates against the post of Additional Govt: Pleader BS-17 (now Assistant District Attorney F/B). After approval by the Competent Authority (Chief Secretary) they were accordingly appointed vide Notification dated 23.05.2014 (F/C). However, out of 12 officers, presently the following four officers are working at the strength of Law Department while the rest of the officers left the said post due to appointment in other departments. Their Merit Order are reproduced in verbatim as under as conveyed by the Commission vide letter dated 17.01.2014 (F/B):

4th Block

S #	Vacancy Rotation	Allocation	Merit Order	Name officer with Father's Name	Domicile/ Adjustment
i.	6 th	Zone-4	8	Mr. Amjad Khan S/o Yaqoob Khan	Bannu/ Own Quota
ii.	12 th	Zone-4	10	Mr. Sajid Wali Khan S/o Nek Wali Khan	Bannu/ Own Quota
iii	13 th	Merit	4	Mr. Abdul Waheed S/o Haider Zaman	Haripur/ Merit
iv	14 th	Zone-5	5	Mr. Muhammad Tariq Khan Tareen S/o Sakhi Sultan	Haripur/O wn Quota

“b. In view of foregoing and in terms of rule 17 (1) (a) of the Khyber Pakhtunkhwa Civil Servants (APT) Rules, 1989, the plea of the appellant seemed justifiable; he is senior to the officers at S. No. (i) and S.No. (ii) i.e Mr. Amjad Khan and Mr. Sajid Wali Khan. In this context, amongst the above four officers, the officer at S.No. (iii) namely Mr. Abdul Waheed was also required to be placed senior in the seniority list.”

8. Similarly, para-4 of the said minutes of the meeting is as below:-

“After threadbare discussion and deliberation, the forum unanimously agreed that the seniority position of the appellant as well as his other batchmates may be corrected as follow in the seniority list of Deputy District Attorney (BS-18), to

be issued tentatively this year in terms of Section-8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read Rule 17 (1) (a) of the Khyber Pakhtunkhwa Civil Servants (APT) Rules, 1986:

<i>Proposed Seniority in the Tentative Seniority list of Deputy District Attorney (BS-18), 2022</i>	<i>Name of Officers with Father's Name</i>
<i>11</i>	<i>Mr. Abdul Waheed S/O Haider Zaman;</i>
<i>12</i>	<i>Mr. Muhammad Tariq Khan Tareen S/O Sakhi Sultan</i>
<i>13</i>	<i>Mr. Amjad Khan S/O Yaqoob Khan;</i>
<i>14</i>	<i>Mr. Sajid Wali Khan S/O Nek Wali Khan</i>

9. Moreover, the appellant has also produced copy of tentative seniority list of Deputy District Attorneys (BPS-18) of Law Department in Khyber Pakhtunkhwa as it stood on 02.09.2022, wherein his name has been mentioned at serial No. 12 i.e above the names of private respondents No. 7 & 8. The said seniority list has, however been impugned by private respondents No. 7 & 8 through filing of departmental representations, which as per the available record have not yet been decided. In these circumstances, when the issue of seniority of the appellant is still impugned at department level, the request for ante-dation of his promotion with effect from 24.05.2019 with all back benefits could not be adjudicated effectively prior to settlement of issue of his seniority conclusively. We would, therefore, refrain from giving any findings at this stage lest it may not prejudice the case of either side.


10. In view of the above discussion, it is held that once the seniority of the appellant is conclusively determined, he may

seek relief of ante-dation of his promotion alongwith back benefits by making representation before the departmental Authority which of course would be adjudicated in accordance with law/rules. The appeal in hand stands disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

15.11.2023


(FAREEHA PAUL)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)


Naeem Amin


ORDER
15.11.2023

Appellant in person present. Mr. Asad Ali Khan, Assistant Advocate General for official respondents present. Private respondent No. 7 in person, while private respondent No. 8 alongwith his counsel also present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, it is held that once the seniority of the appellant is conclusively determined, he may seek relief of ante-dation of his promotion alongwith back benefits by making representation before the departmental Authority which of course would be adjudicated in accordance with law/rules. The appeal in hand stands disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
15.11.2023


(Farzeha Paul)
Member (Judicial)


(Salah-Ud-Din)
Member (Judicial)