

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 5701/2020

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)  
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

Muhammad Hanif, Chief Clinical Technician (BPS-16) Lady Reading  
Hospital, Peshawar.

.... (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary Health,  
Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
3. The Director General Health Services, Khyber Pakhtunkhwa Warsak  
Road, Peshawar.

.... (Respondents)

Mr. Noor Muhammad Khattak  
Advocate ... For appellant

Mr. Muhammad Jan  
District Attorney ... For respondents

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Date of Institution.....11.06.2020  
Date of Hearing.....27.11.2023  
Date of Decision.....27.11.2023

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been  
instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal,  
Act 1974 with the prayer copied as below:

“That on acceptance of this appeal the impugned seniority  
list prepared on the basis of acquiring the prescribed  
qualification for the post of Technologist (BPS-17) may  
kindly be set aside and the appellant may kindly be  
considered for promotion/proforma promotion to the post  
of Technologist (BPS-17) on the basis of seniority list



**issued on 27.06.2019 in light of Section 8 of the Civil Servant Act, 1973 read with Rule 17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 with all consequential benefits.”**

2. Brief facts of the case, as given in the memorandum of appeal, are that, the appellant was initially appointed as Laboratory Assistant (BPS-5) vide order dated 11.06.1981 in the respondent department He was then promoted to the post of Blood Bank Technician (BPS-9) vide order dated 31.05.1992 and was further promoted to the post of Clinical Technician (Pathology) (BPS-12) vide order dated 20.05.2010 which was upgraded to BPS-16 w.e.f. 02.08.2012. He was recommended for four year B.Sc (Hons) course vide order dated 09.08.2007 and completed his degree in the year 2012. According to the seniority list issued by the respondent department on 27.06.2019 of the Chief Clinical Technician (BPS-16), the appellant stood at S. No. 9. It is important to mention here that in the mentioned seniority list the candidate at Serial No. 1, 3 are retired and the candidate at S. No. 5 had died, so in the revised seniority list the position of the appellant was supposed to be at Serial No. 6. Requirement for promotion to the post of Technologist has been revised in the service structure of the paramedical staff in the Health Department vide notification dated 10.05.2016. The Chief Clinical Technician was to be promoted to the post of Technologist on the basis of seniority-cum-fitness and having three years service in the relevant technology. Astonishingly the respondent department issued final seniority list in October, 2019, wherein the appellant was superseded by his juniors without any cogent and justifiable reasons and his name was placed at Serial No. 29 which was the utter violation of Paramedics Rules and service structure notified by the respondent department. Feeling aggrieved from the



impugned seniority list, the appellant preferred a departmental appeal on 06.03.2020 but no response has been given by the respondent department; hence the instant service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that the appellant has not been treated in accordance with law and rules and the respondents violated Article 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973. He further argued that the impugned seniority list of October 2019 was issued on the basis of malafide and arbitrary intentions and as such the same is the utter violation of Section 8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 and Rule 17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. He further argued that as per seniority list of 27.06.2019, the appellant was entitled for promotion but has not been promoted due to malafide intentions. He requested that the appeal may be accepted as prayed for.

5. Learned District Attorney on the other hand contended that the appellant was initially appointed as Laboratory Assistant in BPS-05 and then appointed as Blood Bank Technician BPS-09 on 18.07.1992 and not promoted to the post of Blood Bank Technician. He was promoted to the post of Clinical Technician Pathology BPS-12 and then upgraded to the post in BPS- 16 on 02.08.2012. He further contended that the seniority list of degree holder paramedics has been prepared in the light of the approved service rules of Paramedics notified on 10.05.2016 from the date of acquiring the




degree and all the 25 officials were senior to the appellant. He requested that the appeal might be dismissed with cost.

6. Perusal of record reveals that appellant through instant appeal seeks his seniority from the date of his first appointment on the basis of acquiring the prescribed qualification for the post of Technologist (BPS-17). The prescribed qualification for promotion to the post of Technologist is B.Sc. (Hons.) which the appellant acquired on 09.07.2012 while the other incumbents have acquired the said degree earlier than the appellant. and according to rule 17(b) of the Khyber Pakhtunkhwa (Appointment, Promotion and Transfer) Rules, 1989 he has rightly been assigned seniority position in the seniority list. It is an admitted fact that the appellant at the time of appointment was not holding the prescribed qualification of B.Sc (H), which he acquired on 09.07.2012 therefore, his stance of granting him seniority with effect from the date of his initial appointment holds no force. Furthermore, the appellant has not arrayed any person as respondent who now stands senior to the appellant in the seniority list and the appeal is bad for non-rejoinder and mis-joinder of the necessary parties.

8. As a sequel to above discussion, the appeal in hand is dismissed being devoid of merits. Costs shall follow the events. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 27<sup>th</sup> day of November, 2023.*


  
(MUHAMMAD AKBAR KAHAN)  
Member (E)

  
(RASHIDA BANO)  
Member (J)


**ORDER**

27.11.2023

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney for alongwith Laeq Ahmad, Computer Operator respondents present.
2. Vide our detailed judgement of today placed on file, the appeal in hand is dismissed being devoid of merits. Costs shall follow the event. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 27<sup>th</sup> day of November, 2023.*



(Muhammad Akbar Khan)  
Member (E)



(Rashida Bano)  
Member (J)