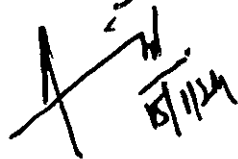


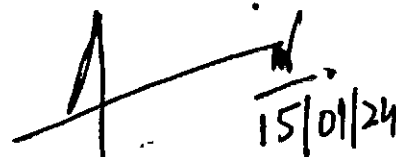
Cost of Rs. 2000/- received in Service Appeal No. 2005/2022

Titled M. Uzair Ali VS Education Deptt:

in the office of Assistant Registrar, Vide Order 13-12-2023,

submitted on 15/01/2024.

  
15/1/24

  
15/01/24

Assistant Registrar  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2005 /2022

Muhammad Uzair Ali .....Appellant

Versus

The Govt. of KPK and others ..... Respondents

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*Samina Altaf*  
Respondents No.7  
(Mst. Samina Altaf)

Through

*Khaled Rahnfan*  
Khaled Rahnfan  
ASC

&

*Muhammad Ghazanfar Ali*  
Muhammad Ghazanfar Ali  
Advocate, High Court

4-B, Haroon Mansion  
Khyber Bazar, Peshawar  
Off: Tel: 091-2592458  
Cell # 0345-9337312

Dated: 14 /01/2024

*S-*

## BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Khyber Pakhtunkhwa  
Service TribunalService Appeal No. 2005/2022Diary No. 10547Dated 15-1-2024

Muhammad Uzair Ali .....Appellant

Versus

The Govt. of KPK and others ..... Respondents

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**REPLY ON BEHALF OF RESPONDENTS NO.7 (Mst. Samina Altaf)**

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Respectfully Sheweth,

**Preliminary objections.**

- I. That under Section-4 of the Khyber Pakhtunkhwa Service Tribunals Act, 1974 read with Section-22 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, only a final order can be called in question through Departmental Appeal as well as Service Appeal. Since the Petitioner has called in question only a Tentative Seniority List forwarded by the Directorate of E&SE to the Section Officer (Schools), the Govt. of Khyber Pakhtunkhwa vide letter dated 16.03.2022 (Page-46 of the Appeal), therefore, the instant appeal is not entertainable and liable to be dismissed.
- II. That the Seniority List of DEOs/Additional Directors (BPS-19) has not yet been finalized and notified by the Competent Authority i.e. the Chief Secretary, Government of Khyber Pakhtunkhwa, therefore, the Appeal in hand is premature and is to be returned/dismissed without any further process.
- III. That it is a settled proposition of law as per the mandatory of Section-8 of the KP Civil Servants Act, 1973 that civil servant has got no vested right of seniority in any service, cadre or post as may be, thus the instant Appeal is not sustainable in the eye of law.
- IV. That the instant appeal is barred in view of the provisions contained in *Section-4(b)(i) of the Khyber Pakhtunkhwa Service Tribunals Act, 1974*, therefore, the Hon'ble Tribunal has got no jurisdiction in the instant case.
- V. That the appellant has got neither cause of action to file the instant appeal nor the appeal is maintainable under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974,

hence the same is liable to be dismissed on this ground also.

- VI. That the appellant is estopped by his own conduct to file the instant Appeal.
- VII. That the appellant has concealed material facts from the Hon'ble Tribunal and has not approached the Hon'ble Tribunal with clean hands, therefore, the instant appeal being devoid of merits needs dismissal.

**Reply to Facts:**

1. Para No.1 of the appeal needs no reply.
2. Para No.2 of the appeal is correct to the extent of Notification date 04.05.2009 whereby under the National Education Policy 2009 Management Cadre and Teaching Cadre were bifurcated from each other in the interest of efficient performance of both cadres. Moreover, the Senior Staff Association of the Education Department on eve of such bifurcation filed Writ Petition No.336/2009 before the Peshawar High Court, Peshawar, which was disposed of with directions that the rights of the employees of the Education Department must be safeguarded. Accordingly, 60% quota was earmarked for the employees of the Education Department in the Management Cadre whereas 40% quota was fixed from the open merit.
3. Para No.3 of the appeal is correct to the extent of Advertisement and subsequent appointments of the DEOs (BPS-19) on recommendations of the Khyber Pakhtunkhwa Public Service Commission. It is further added that a total 26 posts were advertised and at the ratio of 40% i.e. 10 posts were allocated to open merit quota while 60% posts i.e. 16 posts were reserved for Teaching Cadre quota. One post was subsequently added to the Teaching Cadre on creation of Torghar District.
4. Para No.4 of the appeal needs no reply.
5. Para No.5 of the appeal is correct to the extent of filing of the application and relieving of the appellant from the post of DEO enabling him to join the post of Associate Professor (BPS-19) in the HED which was allowed vide Notification dated 31.10.2011, however, the Notification does not reflect the lien against the post of DEO in E&SE Department.
6. Para No.6 of the appeal needs no reply.

Para No.7 of the appeal is correct to the extent that services of the appellant were requisitioned vide letter dated 16.09.2013 and posted as EDO (BPS-19) Management Cadre as is evident from the Notification dated 30.09.2013.

8. Para No.8 of the appeal is incorrect hence denied. As a matter of fact, the Commission issued recommendations separately for open merit quota officers and Teaching Cadre officers vide letter dated 10.02.2012. The name of the appellant is reflected at Serial No.8 of the open merit quota whereas the name of the Respondent No.7 is mentioned in the Teaching Cadre quota. In the light of result of the Commission, the Department forwarded a Summary to the worthy Chief Secretary for approval whereafter the Department notified Teaching Cadre employees as senior to Open Merit quota employees. Consequently, the final Seniority List was issued on 08.05.2012.
9. Para No.9 of the appeal is correct to the extent of notifying the final Seniority List on 08.05.2012 wherein the name of the appellant is missing due to his appointment as Associate Professor in the HED, however, his name would have been placed at Serial No.25 even if he was available in the Department and his name included in the list.
10. Para No.10 of the appeal is correct to the extent that after 2012, the final Seniority List has not been issued due to the reason that different Departmental Appeals by various Officers against the seniority are pending before the Competent Authority. Moreover, in the meanwhile 05 Officers at Serial No.1, 2, 4, 5 & 8, have been promoted to BPS-20 whereas 17 Officers have so far retired from service. The appellant in response to his Departmental Appeal has been informed while deciding his appeal that the issue of seniority is closed but he has concealed this important fact from the Tribunal.
11. Para No.11 of the appeal needs no comments.
12. Para No.12 of the appeal is correct to the extent of issuance of Tentative Seniority List dated 21.10.2021 where-against numerous officers have filed their observations before the Competent Authority which are pending adjudication for the purpose of finalizing the Seniority List, however, the Seniority List of Management Cadre Officers (BPS-19) as notified in 2012 is undisputed and final.
13. Para No.13 of the appeal is incorrect hence vehemently denied. The appellant has made his own analysis of the seniority positions of the DEOs/Additional Director (BPS-19). The seniority in question has not been finalized as yet, therefore, his assertion as to the

seniority is misconceived and hence not sustainable.

14. Para No.14 of the appeal is absolutely misleading as no final Seniority List has yet been issued by the Department. The appellant is confusing a letter dated 16.03.2022 issued by the Directorate E&SE to the Section Officer E&SE forwarded the Tentative Seniority List for finalization and approval of the Competent Authority which by no stretch of imagination can be termed as final order within the meaning of Section-4 of the Khyber Pakhtunkhwa Service Tribunals Act, 1974.
15. Para No.15 of the appeal is incorrect hence vehemently denied.
16. Para No.16 of the appeal is correct to the extent of advertisement/Corrigendum dated 21.06.2009 regarding allocation of quota at the ratio of 40% & 60% Open Merit and Teaching Cadre respectively.
17. Para No.17 of the appeal is correct to the extent that SDEOs (BPS-17) and DDEOs (BPS-18) who have been subsequently appointed through Commission in the Management Cadre and promoted to the next higher grades on the basis of their inter-se seniority, however, as far as the contention of the appellant regarding the inter-se seniority of DEOs/Additional Directors (BPS-19) is concerned, the same is yet to be finalized.
- 18 & 19. Paras No.18 & 19 of the appeal are incorrect hence denied. The appellant has wrongly filed departmental appeal against the Tentative Seniority List and similarly, the instant appeal is also not sustainable.

**Reply to Grounds:**

- A. Ground-A of the appeal is misconceived hence denied. No final Seniority List has yet been issued whereas no appeal is maintainable against the Tentative Seniority List, therefore, the appeal in hand being devoid of merits is liable to be dismissed.
- B&C. Grounds-B & C of the appeal are incorrect. The appellant has been treated in accordance with law and rules. He has not been treated in violation of Article-4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973.
- D. Ground-D of the appeal is incorrect hence denied. The Seniority List has not yet been finalized.

E&F. Grounds-E & F of the appeal are mere repetition of earlier paras and have been materially explained herein above.

G. Ground-G of the appeal needs no reply.


It is, therefore, humbly prayed that on acceptance of this reply, the appeal of appellant may graciously be dismissed with costs.

Through  
 Respondents No.7  
 (Mst. Samina Altaf)  
 Khaled Rahman,  
 ASC  
 &  
 Muhammad Ghazanfar Ali  
 Advocate, High Court

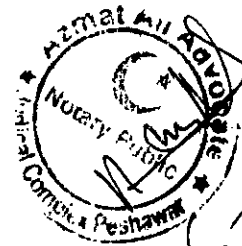
Dated: 14 /01/2024

Counter Affidavit

I, Mst. Samina Altaf (Respondent No.7), Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar, do hereby affirm and declare on oath that the contents of this reply are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

  
 Deponent

ATTESTE



15-01-2024