

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1282/2022

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

Mr. Furqan Shafi (PPS-BS-17), Planning Officer, ST & IT Department,
Khyber Pakhtunkhwa, Peshawar.

.... (*Appellant*)

VERSUS

1. The Government of Khyber Pakhtunkhwa, through Chief Secretary, Civil Secretariat, Peshawar.
2. The Establishment Department, Government of Khyber Pakhtunkhwa, through Secretary Establishment, Civil Secretariat, Peshawar.
3. The Planning & Development Department, Government of Khyber Pakhtunkhwa, through Secretary P & D, Civil Secretariat, Peshawar.
4. Engineer Nasir Khan (BSC Civil)
5. Mr. Faaiz Arbab (MBA)
6. Engineer Navced Ishtiaq (BS Civil Engineering, BA Law/Political Science)
7. Mr. Ejaz Ahmad (Msc. Hons Agriculture, MA Sociology).
8. Pir Muhammad Raza Shah (Msc. Hons Agriculture, P.G.D Project Management UK)
9. Ms. Shaista Qaiser (Msc Hons Agriculture)
10. Mr. Kamran Ali Khan (MBA Marketing).
11. Mr. Changez Alam Durrani (MBA HRM).
12. Mr. Khurshid Alam (MSc Hons Agriculture, MBA HR).
13. Engineer Arif Ullah Shah (Msc Electrical Engineering)
14. Mr. Ijaz Ali Shah (Msc Computer Science)
15. Engineer Muhammad Tariq (BS Civil Engineering)
16. Syed Shoaib Ali Shah (MBA HRM/MA)
17. Ms. Zainab Khatoon (Msc Economics, EMBA)
18. Mr. Asim Javed (MBA)
19. Mr. Tahir Aman (MBA)
20. Muhammad Irfan (MBA)
21. Mr. Ali Hussain (M.Com/MBA)
22. Pir Bilal Muhammad (BS IT)
23. Mr. Waqas Ghaus (MBA HR)
24. Mian Ayub Gul (MBA)
25. Arbab Muhammad Taimur (MS)
26. Muhammad Shoaib (MBA HR)
27. Mr. Shahbaz Khan (MBA)
28. Engineer Yasir Adnan (BS Electrical Engineering)
29. Mr. Junaid (BS Psychology)
30. Mr. Mukhtar Ahmad (Msc Hons Agriculture)
31. Muhammad Tariq (MBA)
32. Engineering Qazi Muhammad Zohaib (BSc Electrical Engineering, MS Electrical Engineering, MA IR/MBA)
33. Muhammad Khanan (BSc Civil Engineering)



34. Mr. Asrar Ahmad (BE Civil Engineering)
 35. Mr. Aftab Alam (MS GOE Technical Engineering, BSc Civil Engineering)
 36. Muhammad Adeel Khan (BSc Civil Engineering)
 37. Muhammad Yasir Mehsud (BSc Civil Engineering)
 38. Mr. Naveed Ullah (BSc Civil Engineering)
 39. Mr. Hisbullah Khan (MBA)
 40. Mr. Pir Tariq Shah (MBA Marketing)
 41. Mr. Amjad Ali Shah (MS/IT Networking)
 42. Mr. Tariq Ikram (MS Environment Sciences)
 43. Mr. Abdul Wadood Shah (MA Political Science)
 44. Mr. Hisbullah Khan (BE Chemical Engineering/MBA)
 45. Mr. Wajid Anwar (MS Computer Science)
 46. Mr. Khan Muhammad (Msc Statistics, MBA Finance & Accounting, MSc Economics).
 47. Engineer Pir Aimal (MSc Electrical Engineering)
 48. Engineer Waqas Ahmad (MSc Electrical Engineering)
 49. Engineer Muhammad Luqman Hakim Khan (MSc. Electrical Engineering)
 50. Engineer Muhammad Awais (BSc Civil Engineering)
 51. Mr. Arbab Wajid Khan (MBA)
 52. Mr. Ozair Rahim (MBA)
 53. Mr. Sami ullah (MA Environmental Sciences)
 54. Mr. Umar Hussain Khattak (MBA, Project Management/MCS Communication Engineering).
 55. Muhammad Shah Khan (MS Management Science, MPA)
 56. 22Dr. Sardar Ahmad (PhD Sociology)
 57. En2gineer Ubaid Khan (BSc Civil Engineering)
 58. Mr. 22Ijaz Ahmad Khan (BSc Civil Engineering)
 59. Mr. Mujahid Naseer (MSc Construction Engineering, BSc Civil Engineering)
 60. Mr. Zahid Gul (BSc Civil Engineering)
 61. Mr. Babar Nascem (Msc GEO Technical Engineering, BE Hons Civil Engineering)
 62. Muhammad Aamar Rafiq (BSc/ MSc Civil Engineering)
 63. Dr. Tahir Hassan (MBA Hons/ M.Phil/PhD in Management Science HR)
 64. Mr. Ubaid Ur Rehman (MPA/ MPA Project Management)
 65. Mr. Taj Muhammad Khan (Bachelors in Civil Technology Hons)
 66. Mr. Jamshed Akram (BSc Civil Engineering)
 67. Mr. Mubashar Muzaffar (BSc Civil Engineering)
 68. Mr. Kifayat Ullah Khan (MS Civil)
 69. Mr. Safi Ullah (BSc Civil Engineering)
 70. Mr. Jalal Ahmad (MBA/ MS Finance)
 71. Muhammad Ismail Mohmand (MBA/MS HRM)
 72. Mr. Alamgir Khan (BS Economics, MBA HRM)
 73. Mr. Haseebullah Khan (MSc Economics/ M.Phil Economics, PhD Development Economics)
 74. Muhammad Kamran (MBA Finance, MS Project Management)
- Respondents 4-74 are PPS BS-17 Officers of the planning & Development Department to the Government of Khyber Pakhtunkhwa.

.... (Respondents)

Mr. Ali Gohar Durrani
Advocate ... For appellant

Mr. Haris Iqbal
Advocate ... For private respondents

Mr. Asad Ali Khan
Assistant Advocate General ... For official respondents

Date of Institution.....18.07.2022
Date of Hearing.....13.11.2023
Date of Decision.....13.11.2023

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:

“In view of the above, it is humbly prayed that this honorable Court may graciously be pleased to:

- a) **Declare the final seniority list No.SO(E)P&D/3-4/PPS/SL/2020 dated 25-05-2022 to be arbitrary, illegal, unlawful and without any authority and that the Appellant be placed at seniority list above the respondents who were regularized into service as against regular appointment into service.**
- b) **Direct the respondents that the judgment of the Honorable Supreme Court reported in 2013 SCMR 1752 be implemented in letter and spirit in respect of the Khyber Pakhtunkhwa Provincial Planning Service Cadre and violation of the said judgment be strike down.**
- c) **Direct that the appellant be treated in accordance with the law and that all actions in negation of the law are to be strike down.**
- d) **Any other relief deemed appropriate in the circumstance of the case may also be granted.”**



2. Brief facts of the case, as given in the memorandum of appeal, are that appellant are part of the planning Service Cadre of the Government of Khyber Pakhtunkhwa who after getting the appointment in BPS-17 in the said cadre on 03.09.2018. The Government of Khyber Pakhtunkhwa Planning Service Rules 2018 was promulgated which provides to regulate the Planning service cadre and the service structure. The ibid rules were published in through Notification No.SO(E)P&D/6-1/SR/PPD/2018 dated 22.02.2018. Subsequently, the Khyber Pakhtunkhwa (Regularization of Services Act, 2018 was passed and after receiving assent of the Governor in the March, 2018 was promulgated. The said Act resulted in regularization of services of employees working against project post under the P&D Department of Government of Khyber Pakhtunkhwa. The department issued a tentative seniority list, wherein, the appellant already holding the post in regular service of the Planning Cadre and those other officers whose services were regularized on the strength of Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2018, were dealt with by the department in the common seniority list. In the tentative seniority list, so issued on 20.02.2020, the appellant was shown at Serial No.23 which according to him is not a proper place and he filed representation against the said seniority list on 04.03.2020. Subsequently, the respondents issued another seniority list on 23.10.2020 and the appellant, who was initially shown at serial No. 23 of the tentative seniority dated 20.02.2020 for employees in BPS-17, was suddenly sent to Serial No.105 of the subsequent seniority list. The appellant also filed representation against the subsequent seniority list on 29.10.2020 but no response was given from the department. Similarly another tentative seniority was also issued on 11.04.2020 with the similar placement of the appellant at serial No.105. Final seniority list was issued on 25.05.2022 whereby appellant was placed at serial No.101 in negation of the law and rules



on the subject. Appellant filed representation against the said final seniority on 08.06.2022, which was regretted on 04.07.2022. He believes that his seniority was disturbed due to encadrement of the outsiders. The appellant concluded factual part of his appeal with the submission in respect of the illegality committed by issuance of the final seniority list dated 25.05.2022 and encadrement of employees notified vide notification dated 09.01.2020 by including them in the Provincial Planning Service Cadre. The appellant has approached this Tribunal for the solicited relief described under the prayer part of his memorandum of appeal at its end.

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

4. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and respondents violated Article 4, 8, 9, 18 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973. He further argued that appellant under the law is required to be placed at serial No. 23 of the seniority list instead of serial No. 105 and private respondents have wrongly placed senior to the appellant and the appellant has been discriminated against by going in negation of the Khyber Pakhtunkhwa Provincial Planning Service Rules, 2018 and the said deviation and negation is unwarranted and not recognized by the law. He submitted that seniority of the appellant issued by the respondents are substantially against the Regularization of Employees Act, 2018 but also in violation of the Appointment, Promotion and Transfer Rules, 1989.

5. Conversely, learned counsel for private respondents assisted by learned Assistant Advocate General contended that the appellant has been treated in accordance with law and rules and no fundamental rights of the appellant have been violated and no illegal and unjust acts have been done by the respondents. He further contended that respondents by taking into account the PPS Service Rules and in light of the Provincial Cabinet decision made in its meeting held on 09.05.2019, all planning oriented posts in BPS-17 and above of newly regularized components/units of P&D Department and Planning Cells of Administration Departments, Civil Secretariat alongwith incumbents as well as left over posts were included in the Schedule-I of the PPS Service Rules vide Notification dated 09.01.2020. Since the regularized employees were included in the Schedule-I of the PPS Service Rules alongwith posts, therefore, they did not affect promotion quota of the appellant rather inclusion of posts widen/enhanced the promotion prospects of the PPS Officers.

6. Perusal of record reveals that appellant applied for the post of Planning Officer ST &IT Department in response of advertisement of Khyber Public Service Commission dated 29.12.2016, to which after recommendation by Public Service commission was appointed on 03.09.2018, The Khyber Pakhtunkhwa Provincial Planning Service Rules, 2018 provide method of initial recruitment, promotion and training of planning service cadre and entire service structure of Khyber Pakhtunkhwa Province. Beside these two no other mode and method of recruitment to a post is available/mention in these rules. Khyber Pakhtunkhwa Assembly passed Khyber Pakhtunkhwa Employees (Regularization of Service Act) 2018 which was accented by Governor on 7th March 2018. Section 3 and 4 of the Act provides for regularization of the adhoc and project employees which will take effect from the date of commencement of the Act both section are reproduce here for ready reference;




“3. Regularization of Service of Adhoc Employees:---

Notwithstanding anything contained in any law or rules, the employees at sub-clause (i) of clause (c) of sub-section (1) of section 2 of this Act, appointed on Adhoc basis against civil posts and holding such civil posts till the commencement of this Act, shall be deemed to have been validly appointed on regular basis, from the date of commencement of this Act, subject to verification of their qualifications and other credentials by the concerned Government Department.

4. Regularization of Service of Project Employees:---

Notwithstanding anything contained in any law or rules, the employees at sub-clause (e) of sub-section (1) of section 2 of this Act, appointed on contract basis against project posts and holding such project posts till the commencement of this Act, shall be deemed to have been validly appointed on regular basis from the date of commencement of this Act, subject to verification of their qualifications and other credentials by the concerned Government Department:

Provided that the terms and conditions of services of employees reflected at S.No.5 of the Schedule shall further be governed under the National Disaster Management Authority Act, 2010 (Act No.XXIV of 2010) and Regulations made thereunder; and the terms and conditions of services of employees reflected at S.No.6 & 7 of the Schedule shall be governed under the Khyber Pakhtunkhwa Emergency Rescue Services Act, 2012 (Khyber Pakhtunkhwa Act No.XV of 2012).”

 Protection is given to the service structure and seniority of in service civil

servant in section 6 which deals with the seniority which read as;

Seniority.---(1) Except the employees mentioned in the proviso to section 4 of this Act, whose services are to be regulated by their respective laws and rules, all other employees whose services are regularized under this Act or in the process of attaining service at the commencement of this Act, shall rank junior to all civil servants belonging to the same service or cadre, as the case may be, who are in service on regular basis on the commencement of this Act, and shall also rank junior to such other persons, if any, who, in pursuance of the recommendation of the Commission or Departmental Selection Committee, as the case may be, made before the commencement of this Act, are to be appointed in the respective service or cadre, irrespective of their actual date of appointment.

(2) The seniority inter-se of the employees, whose services are regularized under this Act within the same service or cadre, shall be determined on the basis of their continuous officiation in such service or cadre.

8. In accordance with section 6 civil servant whose services are regulated under this act shall rank junior to all civil servants belonging to same service or cadre. The matter of inter-se-seniority of the civil servants whose services were regularized as result of Act, 2018 is also dealt with in section 6 and which will be determined on the basis of their continuous officiation in such service or cadre. The most important factor is general condition for regularization of services of project/contract/adhoc employees which are prerequisite for regularization and are given in section 6 of the Act which are:

“5. General conditions for regularization:---For the purpose of regularization of the employees under this Act, the following general



conditions shall be observed:

- i) The service promotion quota of all service cadres shall not be affected;
- ii) The employees shall possess the same qualification and experience as required for a regular post;
- iii) The employees have not resigned from their services or terminated from service on account of misconduct, inefficiency or any other grounds before the commencement of this Act; and
- iv) The services of such employees shall be deemed to have been regularized only on the publication of their names in the Official Gazette.

9. Respondent after promulgation of this Act of 2018 issued notification dated 09.01.2020 whereby newly regularized components/units of Planning & Development Department and Planning Cell of Administrative Department were encadred in planning cadre of BPS-17 and above through addition to schedule 1 of Provincial Service Rules of 2018. The Government of Khyber Pakhtunkhwa vide letter dated 17.05.2019 issue direction to all Administrative Secretaries to the Government for provision of planning related post/officers in BPS-17 and above for assessment/suitability for its inclusion in schedule data of PPS cadre. Respondent after absorption of all the cadres issued seniority list dated 20.02.2020 wherein appellant was shown at serial No.23 of the seniority list upon which appellant filed his objection but instead of answering objection of the petitioner respondent again issued another seniority list on 23.10.2022 which is totally in negation of settled service rules and judgment of apex court reported in 2013 SCMR 1752 which was duly sent to Administrative Department by government of Khyber Pakhtunkhwa vide letter dated 31.01.2014. Appellant was placed at serial 105 from Serial No.23 in the

seniority list of BPS-17 issued on 23.10.2020 without any justification. Appellant also filed objection upon this tentative seniority list which was rejected in violation of law and rules which was not responded and final seniority list of BPS-17 was issued on 25.05.2022 upon which appellant filed objection 08.06.2022 which was regretted on 04.07.2022 without giving any reason.

10. For determination of controversy in issue there are three provisions i.e. section 3, 4 and 5 in the Khyber Pakhtunkhwa Employees (Regularization of Service, Act) 2018. Section 3 and 4 of the Act 2018 deals with considering the appointments of all the adhoc and project employees as validly appointed on regular post from the date of commencement of this Act which means post of project employee who hold it under project will be deem to have been regular post and its incumbent will be consider validly appointed on regular basis after commencement of the Act, 2018.

11. For regularization of a employees there are general conditions which will haveto be fulfilled before regularization of service of a project or adhoc employee out of which condition No.4 is;

(iv) The services of such employees shall be deemed to have been regularized only on the publication of their names in the official gazette.

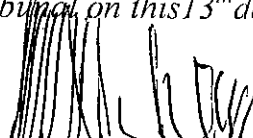
So publication of names of the regularized employees is condition pre-requisite for giving effect of regularization to the service of adhoc/project employees, until and unless names of the regularized employees are not published in official gazette, therefore, they will not be considered regularized in accordance with above mentioned condition. This condition is embodied in the statute which will have to be given preference upon all others decision or policy if any on the subject. Respondent names were published in the official gazette on 29th June, 2022 even after issuance of final seniority list on


25.05.2022. At the time of issuance of seniority list service of the project and adhoc employees were not considered as regularized, keeping in view condition No 4 mentioned in general condition of section 5 of the Act 2018, therefore in our humble view respondent are not senior to the appellant who came through passing competitive exam in year 2018 who in accordance with judgment of apex court will rank senior to the regularized employees.

12. It is also pertinent to mention here that appellant was appointed upon recommendation of Public Service Commission as a consequence of requisition of the same by the government in year 2016 because posts of the appellant were advertised vide advertisement No.6 of 2016 dated 29.12.2016 which means that government has sent requisition much earlier than promulgation of Khyber Pakhtunkhwa Employees Regularization of Service Act, 2018 which was promulgated on 07.03.2018. So in accordance with Rules 17 of (APT) Rules of 1989 appellant is senior from the respondents because process of their recruitment/appointment was initiated on 29.12.2016 and Act on the strength of which services of the respondent were regularized was promulgated on 07.03.2018.

13. For what has been discussed above, it is held that appellant is senior from private respondent No. 4 to 74 and final seniority list dated 25.05.2022 is not in accordance with rules on the subject, hence respondents are directed to place appellant at due and proper place in the seniority. Costs shall follow the event. Consign.

14. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 13th day of November, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)



(RASHIDA BANO)
Member (J)

ORDER

13.11.2023 1 Learned counsel for the appellant present. Mr. Mohammad Jan learned Asad Ali Khan learned Assistant Advocate General alongwith Mr. Asad Khan, S.O for the respondents present..

2. Vide our detailed judgement of today placed on file, the appeal in hand is allowed as prayed for. 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 13th day of November, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (I)


(RASHIDA BANO)
Member (J)