

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1408/2022

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

Mst. Saadia Rehman Planning Officer (BPS-17), Presently serving as
Office of Commissioner, Peshawar Division, Khyber Pakhtunkhwa ,
Peshawar.

.... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa, through Chief Secretary, Civil Secretariat, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar.
3. Secretary to Government of Khyber Pakhtunkhwa, Planning & Development Department, Civil Secretariat, Peshawar.
4. Finance Department, through Secretary Finance, Civil Secretariat, Peshawar.
5. Kaleem Ullah, Senior Planning Officer (OPS) Sports Department, Peshawar.
6. Razaullah, Assistant Chief (OPS) SP&G Section, P & D Department, Nowshera.
7. Muhammad Umar, Research Officer, Industries Department, Peshawar.
8. Imran Zahoor, Deputy Director (Projects) M.As P&D Department, Mardan.
9. Waqas Ayub, P&D Department, Peshawar.
10. Muhammad Anwar, Research Officer (Edu Section) P&D Department, South Waziristan.
11. Engr. Nasir Khan, Assistant Chief (Roads) (OPS) P&D Department, Peshawar.
12. Faaiz Arbab, Assistant Chief (Power) (OPS), P&D Department, Peshawar.
13. Engineer Naveed Ishtiaq Assistant Chief (Infra) (Buildings) (OPS), P&D Department, Peshawar.
14. Ejaz Hamid, Dy. Director M&E (OPS)(M&C) M&E, P&D Department, Peshawar.
15. Pir Muhammad Raza Shah, Assistant Chief (Rule of Law Section) P&D Department, Mardan.
16. Shaista Qaisar, Assistant Director (Evaluation) M&E HO P&D Department, Karrak.
17. Kamran Ali Khan, Research Officer IDS Section P&D Department, Peshawar.
18. Changiz Alam Durrani, Research Officer, (Agn Section) P&D Department, Charsadda.



19. Khushid Alam, Planning Officer, Bajaur.
20. Engr. Arif Ullah Shah, Assistant Chief (OPS) (PP&H Section) P&D Department, Lakki Marwat.
21. Ijaz Ali Shah, Research Officer (Rule of Law), P&D Department, Lakki Marwat.
22. Engr. Muhammad Tariq, Research Officer (Rule of Law), P&D Department, Malakand
23. Syed Shoaib Ali Shah, Assistant Chief (OPS) (Agri) P&D Department, Peshawar.
24. Zainab Khatoon, Assistant Chief (OPS) (RD), P&D Department, Karrak.
25. Asim Javed, Planning Officer LG&RD, Department, Peshawar.
26. Tahir Amin, Research Officer, (IDS) P&D Department, Mardan.
27. Muhammad Irfan, DS-I/PD CBP-II (AC), P&D Department, Mardan.
28. Ali Hussain, Planning Officer, E&P Department, Kuram.
29. Pir Bilal Muhammad, Research Officer (Power) P&D Department, Mardan.
30. Waqas Ghaus, Assistant Chief (OPS) (Power Section) P&D Department Swabi.
31. Mian Ayub Gul, Assistant Chief (OPS) CPEC P&D Department. Charsada
32. Arbab Muhammad Taimur, Research Officer (Infra) P&D Department, Peshawar.
33. Muhammad Shoaib, Planning Officer, Malakand.
34. Shahbaz Khan, Planning Officer Transport Department, Mardan.
35. Yasir Adnan, M&E Officer (Tech) E&SE Department, Bannu.
36. Junaid, SPO, LSU, SDLR Newly Merged Districts, Dir Lower.
37. Mukhtar Ahmad, Assistant Chief (OPS) (Coord), P&D Department. Malakand.
38. Muhammad Tariq, BISE, KP Region. Mohmand
39. Engr. Qazi Muhammad Zohaib, Planning Officer Sports Department. Peshawar
40. Muhammad Khanan, M&E Officer (Tech) E&S Edu Department, Hangu.
41. Asrar Ahmad, Assistant Director (M&E) (Tech), Mardan.
42. Aftab Alam, Assistant Director M&E (Tech), Kohat.
43. Muhammad Adeel Khan, Peshawar Uplift-II Programme, Charsadda.
44. Muhammad Yasir Mehsud, XEN, Irrigation Department, South Waziristan.
45. Naveed Ullah, Assistant Director (M&E), Abbottabad.
46. Hizbullah Khan, Planning Officer Health Department, Charsadda.
47. Pir Tariq Shah, Assistant Director (M&E), P&D Department, Mardan.
48. Amjad Ali Shah, Assistant. Director (IT), M&E (HQ) Peshawar.
49. Tair Ikram, Assistant Director (M&E) Hazara Division ATD.()
50. Abdul Wadood Shah, Deputy Director (H)/Estate, PDA, Peshawar
51. Hizbullah Khan, Planning Officer D.I.Khan, FR Tank.
52. Wajid Anwar, Planning Officer ST&IT Department, Mardan.

53. Khan Muhammad, Planning Officer, Labour Department, Peshawar.
54. Engr. Pir Aimal Planning Officer, Energy & Power Department. Mardan.
55. Engr. Waqas Ahamd, Planning Officer, Energy & Power Department. Peshawar.
56. Engr. Muhamad Luqman Hakeem Khan, Planning Officer, Energy & Power Department, Peshawar.
57. Engr. Muhammad Awais, Deputy Director KDA, Mansehra.
58. Fahad Noor, SDO PHE Department, Peshawar
59. Arbab Wajid Khan, Planning Officer Sports Department, Peshawar
60. Ozair Rahim, Assistant Chief (OPS) IDS Section P&D Department, Peshawar.
61. Samiullah, Planning Officer, Home Department, Mardan.
62. Umair Hussain Khattak, Research Officer PSDP Section P&D Department, Nowshera.
63. Muhammad Shah Khan, Planning Officer Information & PRs Department, Peshawar.
64. Dr. Sardar Ahmad, Planning Officer, LG Department, Dir Lower.
65. Engr. Ubaid Khan M&E Officer (T) E&SE Department, Nowshera.
66. Ijaz Ahmad Khan, Assistant Director (M&E), Bannu.
67. Mujahid Naseer, Assistant Director (M&E) HQ South Region P&D Department, Peshawar.
68. Zahid Gul, Assistant Director (Tech), (M&E) Malakand.
69. Babar Naseem, Assistant Director (M&E), Peshawar Division, Peshawar.
70. Muhammad Aamar Rafiq DD, Jabba Dam Irrigation Department, FR Bannu
71. Dr. Tahir Hassan, Assistant Director (M&E), Mardan.
72. Ubaid Ur Rehman, Assistant Director (M&E) (General), Malakand.
73. Taj Muhammad Khan, Civil Engineer Food Department, Peshawar.
74. Jamshed Akram M&E Officer (T) E&SE Department, Tank.
75. Mubashar Muzaffar, C&W Department, Manshera.
76. Kifayat Ullah Khan AD(M&E) D.I.Khan Division, Bannu
77. Safi Ullah, Planning Officer Minerals Department, Nowshera.
78. Jalal Ahmad, Research Officer ID Section P&D Department, North Waziristan.
79. Muhammad Ismail Mohmand, Research Officer Excise Department, Mohmand.
80. Alamgir Khan, Planning Officer, Mardan.
81. Haseeb Ullah Khan, Senior Economist Development of Regional Accountant BOS, KPK, Charsadda
82. Muhammad Kamran, Research Officer (Indus), P&D Department, Peshawar.

.... (Respondents)



Mr. Mian Asif Aman Advocate	...	For appellant
Mr. Haris Iqbal Advocate	...	For private respondents
Mr. Asad Ali Khan Assistant Advocate General	...	For official respondents

Date of Institution.....13.09.2022
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:

“it is humbly prayed that to set aside the impugned final seniority list notification dated 25.05.2022 issued by respondent NO.2 is against the norms of service rules, liable to be set aside and respondents be directed to rectified/modified and issued the correct seniority list whereby the appellant be placed above regularized and absorbed employees at Serial No. 22 as earlier be placed in tentative seniority list dated 20.02.2022.”

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 29.10.2018. The Government of Khyber Pakhtunkhwa Planning Service Rules 2018 was promulgated which regulate the Planning Service Cadre and the service structure of its employees. 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 vide order 07.03.2018. Project as well as regularized employees of Earthswile FATA got encadred into PPS cadre through absorption/inclusion vide three different notifications dated 22.03.2021 09.01.2020 and 26.05.2021. 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.22 which according to her is a proper place. Subsequently, the respondents issued another seniority list on 23.10.2020 and the appellant, who was initially shown at serial No. 22 of the tentative seniority dated 20.02.2020 for employees in BPS-17, was suddenly sent to Serial No.104 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 11.04.2022 with the similar placement of the appellant at serial No.102. Final seniority list was issued on 25.05.2022 whereby appellant was placed at serial No.100 in negation of the law and rules on the subject. Appellant filed representation against the final seniority on 13.06.2022, which was not responded. She believes that her seniority was disturbed due to encadrement of 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. 22 of the seniority list instead of serial No. 104 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 BPS-17 in response of advertisement of Khyber Public Service Commission dated 29.12.2016, to which after recommendation by Public Service commission was appointed on 29.10.2018, 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. This Act regularized service of employees working against project post under the P&D Department of Government of Khyber Pakhtunkhwa and planning service cadre. Government after approval of Provincial Cabinet encadered all the officer and their post in one cadre with the name of PPS vide notification dated 09.05.2019. All the posts related to the planning cadre working in various departments of the Government of Khyber Pakhtunkhwa were made part of PPS alongwith its incumbents irrespective of the fact that their services were regularized before or at the strength of Regularization of services Act 2018. Appellant and respondents were encadered in PPS cadre.



7. Appellant contention is that she is senior from private respondent on the ground that initially she was regularly appointed through Public Service Commission prior to regularization and inclusion of private respondents into PPS Cadre. It is also pertinent to mention here that private respondent No.5 was regularly appointed on 13.03.2017, private respondent No.6 was regularly appointed on 04.10.2017, private respondent No. 7 was regularly appointed on 30.10.2017, private respondent No. 8 was regularly appointed on 13.03.2018, private respondent No. 9 was regularly appointed on 15.03.2018 and private respondent No. 10 was regularly appointed on 16.10.2018 upon the recommendation of Public Service Commission received on 21.12.2017 as a result of requisition sent by the government on 16.12.2013, which means that process of their appointment was initiated before initiation of the process of appointment of the appellant on 29.12.2016, while appellant was appointed on 29.10.2018 in BPS-17. Respondent No. 5 to 10 were regular employees serving in BPS-17 when they were encadred in PPS cadre, while their posts alongwith incumbents were included in Schedule-1 of the Khyber Pakhtunkhwa Provincial Planning Service Rules 2018 with effect from 22.02.2018 from the date of promulgation of Rules. These rules provided transitional passage to the officer seniority in basic pay scale who were brought on the strength of Provincial Planning Service. Rules 8 of the Rules provide transitional which read as;

The seniority position of the various officers appointed in planning cadres of various department and brought on the strength of the service on coming into force of these rules shall be considered from the date of their regular appointment to the posts in their present basic scales of pay.

Provided that where two or more civil servants have been appointed



to their present basic scale on the same day. The older in age shall be considered senior. So Rule 8 gave protection to the seniority of employees who were already in service.

8. Claim of the appellant is that she is senior to respondent No. 5 to 10 negated by above mentioned Rule 8 because appellant was selected by Public Service Commission in BPS-17 and was appointed on 29.10.2018, while respondent No. 5 to 10 were appointed on regular basis upon recommendation Public Service Commission before the appointment of appellant in BPS-17 and they were encadred in PPS cadre as regular civil servants in BPS-17. So it is held that respondent No. 5 to 10 were regular civil servants in BPS-17 before promulgation of Khyber Pakhtunkhwa Provincial Planning Service Rules, 2018 and their post alongwith its incumbents were included in planning service cadre are rightly placed senior to appellants as Rule 8 of PPS Rules, 2018 provide transitional and protection to their seniority in BPS-17 the pay scale in which they were encadred in PPS.

9. Now come towards private respondent No.11 to 82 whose services were regularized after promulgation of PPS Rules 2018 on the basis of Khyber Pakhtunkhwa Employees (Regularization of Service) Act 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 for 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 assented by the Governor on 7th March, 2018. Section 3 and 4 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 (e) 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 which the seniority and read as;

Seniority.---(1) Except the employees mentioned in the proviso to section 4 of his 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.

10. 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 who services are regularized as a result of Khyber Pakhtunkhwa Regularization 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 and adhoc employees which are prerequisite for regularization and are given in Section 5 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.

11. 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.22 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.22 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 objections, which was not responded to.

12. 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 appointment 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.

13. For regularization of a employees there are general conditions which will



have to 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.

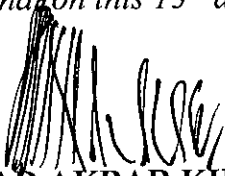
So publication of names of the regularized employees is condition pre-requisite for giving effect of regularization to the service of adhoc/project employees, until and unless names of the regularized employees are not published in official gazette, therefore, they will not be considered regularized 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.


14. 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.

15. For what has been discussed above, the appeal in hand is partially accepted and it is held that appellant is senior from private respondent No. 11 to 82 and final seniority list dated 25.05.2022 is not in accordance with rules on the subject, hence, respondents are directed to place the appellant at due and proper place in the seniority list. Costs shall follow the event. Consign.

16. *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)


*Kaleemullah

ORDER

13.11.2023 1 Learned counsel for the appellant present. Mr. Asad Ali Khan learned Assistant Advocate General alongwith Asad Khan, S.O and Hashmat Ullah, Superintendent for the official respondents present. Learned counsel for private respondents present.

2. Vide our detailed judgement of today placed on file, the appeal in hand is partially accepted and it is held that appellant is senior from private respondent No. 11 to 82 and final seniority list dated 25.05.2022 is not in accordance with rules on the subject, hence, respondents are directed to place the appellant at due and proper place in the seniority list. 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 (E)


(RASHIDA BANO)
Member (J)