

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1502/2022

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MISS FAREEHA PAUL MEMBER (E)

Mr. Naqeeb Ullah S/o Abdur Rehman Khan, Senior Secretary, Village Council, Marmandi Azeem, Lakki Marwat.

.... (Appellant)

VERSUS

1. Director General, Local Government & Rural Development Department, Peshawar.
2. Secretary, Government of Khyber Pakhtunkhwa, Local Government & Rural Department, KP, Peshawar.
3. Assistant Director, Local Government & Rural Department, Lakki Marwat.
4. Allah Noor S/o Ghulam Sarwar, Secretary, VC Ahmad Khel, Lakki Marwat.

.... (Respondents)

Mr. Arbab Saiful Kamal
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

Date of Institution.....18.10.2022
Date of Hearing.....22.12.2023
Date of Decision.....22.12.2023

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 therefore most humbly prayed that on acceptance of the appeal, the impugned order dated 04/10/2022 of R.No.1 be set aside and final Seniority list dated 09.06.2022 be restored with all consequential benefits, with such other relief as may be deemed proper and just in the circumstances of the case.”



2. Brief facts of the case are that appellant was initially appointed as Secretary Union Council. That the private respondent was serving in Revenue Department as Junior Clerk and due to restructuring, his services were placed at the disposal of Assistant Director Local Government Department on 03.02.2002. That the Establishment Department tendered opinion that the surplus employees be given back dated seniority and be placed senior to the incumbents of the department. That one Hidayat Ullah was serving the Department as Secretary Union Council since 01.09.1979 who challenged the seniority list before this Tribunal in Service Appeal No.733/2016, wherein, he was placed junior to one Gul Zaman. The Tribunal remitted that case to the department for preparing seniority list in accordance with law and due codal formalities. Therefore, the department issued seniority list dated 15.05.2017, wherein the appellant was at Serial No.9 and private respondent No.4 was at Serial No.25. That the subsequent seniority list dated 01.12.2019 was not objected by either the appellant or private the respondent. That on 16.03.2021 the department issued final seniority list, wherein, private respondent was at Serial No.20 and the appellant was at Serial No.6, which was objected by the private respondent No.4 and he submitted representation before the Director General to recast seniority and he might be placed at serial No.1. That the appellant also submitted representation for maintaining the seniority list dated 16.03.2021. That on 09.05.2022 the department rejected the representation of private respondent No.4 being time barred. That on 12.05.2022, tentative seniority list was issued, wherein private respondent No.4 was placed at Serial No.1 while the appellant was placed at Serial No.4, which was objected by the appellant alongwith two other employees, being aggrieved, and they submitted representations which were accepted. That the appellant was placed at Serial No.2 and private respondent No.4 was placed at Serial No.15. The said

seniority list was again objected by private respondent No.4 by submitting representation to the DG Local Government. Resultantly, the DG issued office order on 04.10.2022, wherein private respondent No.4 was placed at the top of the list. Therefore, the appellant filed the instant service appeal by impugning the order dated 04.10.2022.

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 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. He further argued that impugned order dated 04.10.2022 of respondent No.1 is not as per the mandate of law. He further argued that respondent No.4 was initially appointed as Junior Clerk in Revenue Department in the year 1992 and was adjusted in Local Government Department on 03.02.2002, how he could be placed senior over appellant who was appointed in parent department as Secretary U/C on 30.04.1988 and respondent No.4 was adjusted in local government department on 03.02.2002.

5. Conversely, learned District Attorney for the respondents has contended that the appellant has been treated in accordance with law and rules. He further contended that respondent No. 4 was rightly placed at the top of seniority list because he was adjusted in a lower scale than his original scale in the respondent department. He further contended that in this respect surplus pool policy is clear. He requested for dismissal of instant service appeal.

6. Perusal of record reveals that appellant was initially appointed as Secretary Union Council on 30.04.1988 while respondent No.4 was

appointed as Junior Clerk in respondent department on 21.10.1992 but due to restructuring, services of respondent No.4 were placed at the disposal of Assistant Director Local Government Departments on 03.02.2022. On 23.12.2014 Establishment Department tendered opinion to Secretary Local Government about adjustment of surplus pool employees in other departments. Further they shall be given back dated seniority over incumbents of parent/department/cadre. One Mr. Hidayatullah was also serving the department as Secretary Union Council since 01.09.1979. Department issued seniority list where one Gul Zaman was placed senior to said Hidayatullah. Hidayatullah filed service appeal in this tribunal which was remitted to the department on 01.03.2017 for deciding the seniority matter in accordance with law and rules. As a result, respondent issued seniority list on 15.05.2017 wherein appellant was placed at Serial No.4 while respondent No.4 at serial No.25 and the position remained as such till 2021. Respondent No.4 submitted representation for revising/recasting seniority list with request to place him at serial No.1, on the ground that he was serving in BPS-7 in parent department and in local government he was adjusted in BPS-6. Appellant also filed application on 08.03.2022 for following/maintaining seniority list issued on 16.03.2021. Representation of respondent No. 4 was turned down being time barred. Appellate authority in this respect on 09.05.2022 wrote a letter to A.D LG&RDD that appeal of the appellant being time barred could not be considered.

7. Respondent issued tentative seniority list as stood on 12.05.2022 wherein respondent No.4 was placed at serial No.1 while appellant was at serial No.4. Appellant filed appeal to respondent as a result of which final seniority list was circulate on 09.06.2022 by placing appellant at S.No.2 and respondent No.4 at S.No.15. Respondent No.4 objected the said final list, and his appeal/objection was accepted by D.G LG&RDD Peshawar vide order



dated 04.10.2022, perusal of which reveals that D.G LG&RDD Peshawar decided to place respondent No.4 at the top of seniority list. He placed his reliance on surplus pool policy in accordance with which when a civil servant is adjusted against a lower post he will be placed at the top of seniority list of that cadre. Relevant para of surplus pool policy is reproduced as follow:

"In case of adjustment against a post lower than his original scale, he shall be placed at the top of the seniority list of that cadre, so as to save him from rendering surplus again & becoming junior or to be juniors."

8. Perusal of surplus pool policy reveals that the para 6(d) was inserted/added vide circular letter No. SOR.VI(E&AD)5-1/2005 dated 15.02.2006 and no retrospective effect was given to this legislation or sub-para. Admittedly, respondent No.4 was adjusted in Local Government Department on 03.02.2008^g much before insertion/addition of this para 6(d) of surplus pool policy. At the time of adjustment of respondent No.4 this para was not in field and he can't be benefited from it. Subsequent legislation or rules have no bearing on the case respondent No.4 who was already in service of Local Government Department on 15.02.2006 when circular/letter of 15.02.2006 was issued. It will be or help to the official who now after insertion of this para 6(d) was adjusted after 15.02.2006. Therefore, DG LG&RDD Peshawar has arrayed in wrong by placing respondent No.4 at the top of seniority list.

9. For what has been discussed above, we are unison to accept the appeal in hand as prayed for. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 22nd day of December, 2023.*


(FARZEHA PAUL)
Member (E)


(RASHIDA BAÑO)
Member (J)