

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR



APPEAL NO. 146 /2018

Muhammad Ayub, Computer Operator (BPS-16),
Governor House Peshawar.

Khyber Pakhtunkhwa
Service Tribunal

Case No. 1785

Dated 21-12-2018

(Appellant)

VERSUS

1. The Chief Secretary Khyber Pakhtunkhwa Peshawar.
2. The Secretary Establishment Department Government of Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Administration Department Government of Khyber Pakhtunkhwa Peshawar
4. The Secretary Finance Department, Government of Khyber Pakhtunkhwa, Peshawar.

(Respondents)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 27.11.2018, WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT FOR INCLUSION HIS NAME IN THE SENIORITY OF COMPUTER OPERATOR, BPS-16 AT PROPER PLACE HAS BEEN REJECTED FOR NO GOOD GROUND.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 27.11.2018 MAY BE SET ASIDE AND THE RESPONDENTS MAY PLEASE BE DIRECTED TO INCLUDE THE NAME OF THE APPELLANT THE SENIORITY LIST OF THE COMPUTER OPERATOR BPS-16 AT PROPER PLACE. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

ATTESTED

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

7/12/18
21/12/18
Registrar

RESPECTFULLY SHEWETH:

FACTS:

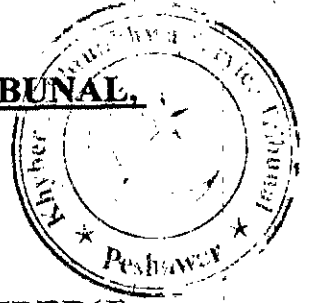
1. That different cadre of post in which the post of Key Punch Operator was also included were created in Governor's House Peshawar vide letter dated 28.04.2009 the appellant applied for the post of Key Punch Operator and was appointed as Key Punch Operator BPS-10 on 22.08.2009 and since then performing his duty with great devotion and honesty whatsoever assign to him. **Copy of order dated 22.08.2009 is attached as Annexure-A.**
2. That the KPK Finance Department upgraded the post of Computer Operator on 12.07.2010 and on the basis of that the post of appellant was also upgraded from BPS-10 to BPS-12 with the nomenclature as Computer Operator w.e.f 12.07.2010 vide order dated 05.08.2010. **Copy of order dated 05.08.2010 is attached as Annexure-B.**
3. That the KPK Finance Deptt: further the post of Computer Operator to BS-16 vide notification dated 29.07.2016 due to which the post of the appellant was also upgraded to BPS-16 issued by KP Finance Department. **Copy of notification dated 29.07.2016 is attached as Annexure-C.**
4. That the appellant since from the date of appointment was working as Computer Operator which was upgraded to BPS-12 and then to BPS-16, however the name of the appellant was not included in the seniority list of Computer Operator in BPS-16.
5. That the appellant was not included in the seniority list of Computer Operator, therefore he filed many applications and finally he filed departmental appeal which was rejected on 27.11.2018 for no good grounds. **(Copies of applications, departmental appeal & rejection order is attached as Annexure-D,E&F)**
6. That the appellant now comes to this august Tribunal on the following grounds amongst others.

GROUND:

- A. That the order dated 27.11.2018 and not including the name of the appellant in the seniority list of Computer Operator BPS-16 are against the law fact, norms of justice and fair play.
- B. That the appellant is a regular Civil Servant and as per section 8 of the Civil Servant Act 1973 and as per Rules 17 of APT Rules 1989 the appellant is entitled to be placed at proper place in the seniority list of Computer in BPS-16.

ATTENDED
BY
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR



Service Appeal No. 146/2019

BEFORE: RASHIDA BANO --- MEMBER(J)
MUHAMMAD AKBAR KHAN--- MEMBER(E)

Muhammad Ayub, Computer Operator (BPS-16), Governor House
Peshawar.....(*Appellant*)

Versus

1. The Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Establishment Department Government of Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Administration Department Government of Khyber Pakhtunkhwa, Peshawar.
4. The Secretary Finance Department, Government of Khyber Pakhtunkhwa, Peshawar.....(*Respondents*)

Present:

Mr. NOOR MUHAMMAD KHATTAK,
Mr. ASAD MEHMOOD & MAIN MUHAMMAD IMRAN
Advocates..... For appellant

Mr. MUHAMMAD JAN
District Attorney.....For respondents

Date of Institution.....21.12.2018
Date of Hearing.....27.09.2023
Date of Decision.....27.09.2023

CONSOLIDATED JUDGMENT

MUHAMMAD AKBAR KHAN, MEMBER(E):- Through this judgment this appeal and the connected service appeal bearing No. 147/2019 titled " Muhammad Haleem versus The Chief Secretary, Khyber Pakhtunkhwa Peshawar and others", are decided as both are the same and can conveniently be decided together.

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar


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02. According to the facts gathered from the record, the appellants were appointed as Key Punch Operators (BPS-10) on 22.08.2009 in the office of Governor House Peshawar; that the Khyber Pakhtunkhwa Finance Department upgraded the post of Key Punch Operators from (BPS-10 to BPS-12) with the nomenclature of Computer Operator w.e.f. 12.07.2010 vide order dated 05.08.2010; that the Finance Department Khyber Pakhtunkhwa further upgraded the post of Computer Operator from (BPS-12 to BPS-16) vide Notification dated 29.07.2016 due to which the post of the appellants were also upgraded; that since the date of appointment the appellants were working as Computer Operator which was up-graded from BPS-12 and then BPS-16 but the name of the appellants were not included in the seniority list of Computer Operator. Feeling aggrieved, the appellant filed departmental appeal which was rejected on 27.11.2018 hence preferred the instant service appeal on 21.12.2018.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellants and learned District Attorney and have gone through the record with their valuable assistance.

04. Learned counsels for the appellants contended that the order dated 27.11.2018 refusing inclusion of the names of the appellants in the seniority list of Computer Operator (BPS-16) are against the law fact, norms of justice; that the appellants are regular civil servants and as per Section 8 of the Khyber Pakhtunkhwa Civil Servants, Act, 1973 and rule 17 of the (Appointment Promotion & Transfer) Rules, 1989 the appellants are entitled

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 KHYBER PAKHTUNKHWA
 Khyber Pakhtunkhwa,
 Service Tribunal
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to be placed at proper place in the seniority list of Computer Operator (BPS-16); that the appellants are civil servants and can not be deprived from their legal right of seniority of Computer Operators as mandated in Section-8 of the civil servants Act, 1973; that the posts of the appellants were created by the Government of Khyber Pakhtunkhwa Finance Department with the approval of competent authority and all the arrangement for the recruitment of the appellants have been done by the provincial government which means that the appellants have also right of seniority of BPS-16 like other provincial government servants; that the appellants have not been treated in accordance with law and rules and deprived from their legal rights of seniority.

05. Learned District Attorney on the other hand contended that the appellants are not entitled to be included in the seniority list of I.T Cadre of Civil Secretariat being employee of Governor's House rather than Establishment Department; that the departmental appeal of the appellants were rejected on the ground that they were appointed as Key Punch Operator (BS-10) under the terms & conditions issued by Governors House in August 2009. Moreover, all such appointments in Civil Secretariat were being made under the Khyber Pakhtunkhwa (Provincial Information Technology Group) Service Rules, 2006 wherein the nomenclature of Key Punch Operator is not mentioned; that the appellants were not employees of Establishment Department, therefore, they have no rights of inclusion of their name in the seniority list as well as of promotion in the I.T cadre of Civil Secretariat.

06. It is admitted fact that the appellants are bonafide civil servants initially appointed as Key Punch Operator in BS-10 through proper

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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procedure by the Military Secretary to the Governor being appointing authority under the prevalent rules. There were two categories of employees in the Governor House i.e. one drawing Pay & Allowances from the budget provided by the Federal Government and the other from the Provincial consolidated fund duly authorized by the Provincial Assembly and allocated/released by the Provincial Finance Department. Admittedly the appellant belonged to the second category and as such are provincial civil servants borne on the cadre strength of Administration Department. A total 10 posts of various nomenclature and Basic Pay Scale including two posts of Key Punch Operator (BS-10) were created by the Finance Department for the Governor House on 28.04.2009 which were filled through prescribed manner. It is also not disputed that before 12.07.2010 computer related posts with different nomenclature and pay scale were in existence in various departments and offices of the Provincial Government. To do away with the anomaly and standardize related posts the Provincial Government of Khyber Pakhtunkhwa upgraded the posts of Key Punch Operator, Data Entry Operator, Computer Assistant and Computer Operator to BS-12 and changed their nomenclature to one standard nomenclature of Computer Operator vide Notification dated 12.07.2010. All the incumbents/beneficiaries of this Notification are on the way to their career progression in their respective cadres and departments who have now been placed in BS-16 vide Finance Department Notification dated 29.07.2016.

07. Admittedly the categories of employees other than the house hold staff of the Governor House either directly managed by the Establishment & Administration Department from the very first appointment or taken on the cadre strength of Civil Secretariat by maintaining joint seniority list. All the


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 Khyber Pakhtunkhwa
 Government
 Secretariat

regular employees who were recruited in the Governor House are working on the cadre strength of Civil Secretariat. Record available in the case file reveals that the following employees appointed by Governor/MS to the Governor were later on promoted on the cadre strength of Civil Secretariat:

Sr. No.	Name of Employees initially appointed by MS to Governor	Years of promotion encadrement in Civil Secretariat
1.	Muhammad Sabir S/o Abdur Rehman, Naib Qasid	13 th March, 2009 as Junior Clerk on acting charge basis
2.	Muhammad Latif S/o Nadir Khan, Bhishti,	30.05.2007 as Daftari
3.	Hazrat Ullah S/o Duwat Khan, Naib Qasid	31.01.2009 as Daftari
4.	Atiqur Rehman S/o Muhammad Ayub, Daftari	05.07.1997 as Junior Clerk

08. The case of the appellant is similar to the above mentioned employees as the appellant like similarly placed employees are civil servant governed by the Civil Servants Act, 1973 and rules made thereunder, validly appointed by the appointing authority in the prescribed manner and as such they are also eligible to be treated on equal footings. The only point to be determined for inclusion of the appellant in the cadre/seniority list of Computer Operators maintained by Establishment & Administration Department is whether the appellant meet the criteria prescribed for appointment of Computer Operator in accordance with the service rules. The respondents are, therefore, directed to scrutinize eligibility of the appellant in terms of their qualification for the post of Computer Operator and if they are found qualified then they shall be taken on the cadre strength of Computer Operator by including their name at the appropriate place in the seniority list of Computer Operators.

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 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

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09. The instant service appeal as well as connected service appeal bearing No. 147/2019 are allowed on the above terms. Parties are left to bear their own costs. File be consigned to the record room.

10. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 27th day of September, 2023.



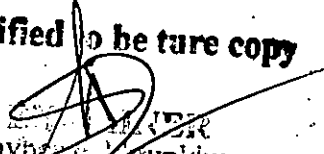
(RASHIDA BANO)
MEMBER (J)



(MUHAMMAD AKBAR KHAN)
MEMBER (E)

Kamranullah

Certified to be true copy



Kamranullah
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 20/11/23
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Copying Fee 30/-
Urgent 30/-
Total 30/-
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Date of Completion 28/11/23
Date of Delivery 28/11/23

ORDER

27/09.2023

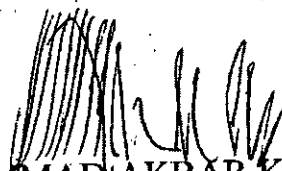
01 Learned counsel for the appellant present. Mr. Muhammad Jan, learned District Attorney alongwith Mr. Arshad Kamal, Section Officer for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment of today separately placed on file, consisting of (06) pages, the instant appeal is allowed on the terms specified in the judgment. Parties are left to bear their own costs. File be consigned to the record room.

03. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 27th day of September, 2023.*



(RASHIDA BANO)
MEMBER (J)



(MUHAMMAD AKBAR KHAN)
MEMBER (E)