

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 11713

Service Appeal No. 158/2014 Dated 12-03-2024

Abdul Rahim, Superintending Engineer (BPS-19), PHE Khyber
Pakhtunkhwa. ~~~~~ (Appellant)

--- VERSUS ---

1. Government of Khyber Pakhtunkhwa through Secretary, Public Health Engineering Department, Civil Secretariat, Peshawar.
2. Chief engineer Public Health engineering Department, Khyber Pakhtunkhwa, and Peshawar.
3. Amil Muhammad, Superintending Engineer Public Health Engineering Division Kohat.
4. Shehzada Behram, Superintending Engineer Public Health Engineer Division Dir Upper.
5. Kifayat Ullah Khan, Superintending Engineer XEN Public Health Engineering Division Buner.

Reply on Behalf of the Private Respondent No.03.

Respectfully Sheweth:
Preliminary objections:

1. That the appellant has no cause of action to file the instant appeal.
2. That the appeal of the appellant is badly time barred.
3. That the instant appeal is hit by the provisions of section 11 of CPC read with Rule 23 of Service Tribunal Rules 1974.
4. That the appellant is estoppel by his own conduct to file the instant appeal.
5. That the instant is not maintainable in its present forum.
6. That the instant appeal is bad for misjoinder and non-joinder of parties.
7. That the instant appeal is based upon, malicious/vexatious and frivolous grounds.
8. That the judgment dated 16.03.2011 passed by the Supreme Court of Pakistan in C.P.438-Pand C.P.439-P/2009 (Civil Appeal No.33-P and 34-P of 2011) have been obtained by the present appellant and his accomplice

14-03-2024
Peshawar
D.B.

namely Khan Muhammad as a result of fraud and mis-representation at the back of the answering respondents.

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ON FACTS.

1. Pertains to record. Hence no comment.
2. Correct. Hence no comment.
3. Pertains to record.
4. It is submitted that on the said date respondents No.3 and 4 were recommended for promotion to BPS-17 against the quota reserved for in-service Graduate Sub-Engineers, however the case of Direct Graduate Sub-Engineers were deferred for re-examination as quoted in the corresponding para of the appeal.

Their case was accordingly considered on 13.03.2008 by the said internal Committee, Which supported their promotion on acting charge basis by the next D.P.C. furthermore the appellant has already instituted a **Service appeal No.1150/2012 titled Abdul Rahim vs Govt of KPK and others**, wherein the appellant has raised objection on seniority, issued by the respondent department, however the present appeal is not maintainable in the eyes of law, as the same is subjudice in this Honourable Tribunal and date of hearing is fixed on 14/03/2024. The present appeal being vexatious and devoid of merit may please be dismissed with cost. As the same issue of the circumstance is pending adjudication before this Honourable Tribunal. It is also worth to mention here that the tentative seniority list of Superintending Engineer (BPS-19) is not challenged by the appellant in the Honourable Peshawar High Court Peshawar.

5. Relates to the record.
6. As discussed in para-4 of the above.
7. In compliance with the direction of Honourable Supreme Court of Pakistan the appellant was promoted on regular basis and was placed in the seniority list of SDOs from the date of regular promotion in BPS-17 accordingly, hence the tentative seniority list of Superintending Engineering (BPS-19) issued by the respondent department is based on merit and as per rules and policy. the burden lies upon the appellant to prove the same before this Honourable Tribunal that where the appellant has been placed wrongly in

8. Incorrect and misconceived. As discussed in para-6 of the above.
9. Incorrect and misconceived. As discussed above.
10. It is clarified that Service appeal No. 1150/2012 titled Abdul Rahim VS Govt of KPK PHED and others having the same grievances of the seniority. It is worth mentioning that the case of seniority is subjudice before this Honourable Tribunal, wherein, date of hearing is fixed on 14/03/2024, then why the appellant instituted the present appeal having common question of law and facts. Hence the present appeal is not maintainable in the eyes of law and the appellant has no cause of action to file the present appeal where the same issue is pending adjudication before this Honourable Tribunal.
11. Incorrect and misconceived. As discussed above.
12. It is clarified before this Honourable Tribunal that the issue of the seniority raised by the appellant is pending adjudication, then what is the need of the present service appeal.
13. Incorrect and misconceived. The appellant has been placed rightly at S.No.11 in tentative seniority list of superintending Engineer (BPS-19) PHED. The burden lies upon the appellant to prove his claim before this Honourable Tribunal.
14. No comments.
15. The appellant is not an aggrieved person he has been treated as per rules and policy.


GROUND.

- A. No comments.
- B. Incorrect and misconceived. As discussed in the preceding paras.
- C. The respondent department issued seniority as per rules and policy.
- D. Incorrect and misconceived. Hence denied.
- E. The respondent department followed rules and regulation in the discharge of official business.
- F. Incorrect and misconceived. As discussed in the preceding paras.
- G. Incorrect and misconceived. It is clarified that the respondent department promoted the appellant from Sub Engineer (BPS-11) to the post of SDO (BPS-17) on acting charge basis on 16.09.2008. The appellant instituted Civil Petition No.438 & 439-P/2009 in the Honourable Supreme Court of Pakistan. In compliance with the judgment of the apex court the appellant was promoted on regular basis and reflected in seniority list of SDOs accordingly. It is also clarified that the civil petition filed by the appellant in the Supreme Court of Pakistan pertaining to his regular promotion of


SDO instead of seniority issue. The respondent department complied with the direction of Honorable Supreme Court of Pakistan in letter and spirit.

Prayers.

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

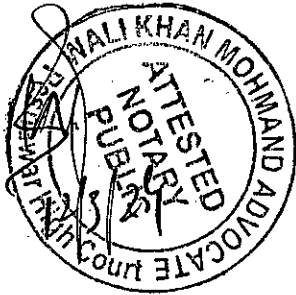

Respondent No. 3

Through


Hamed Khan Advocate
Supreme Court of Pakistan

Affidavit.

I Amil Muhammad (private respondent No.3), do hereby solemnly affirm 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 Honourable Court.




DEPONENT