

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.7714/2021

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

Shams Ul Zaman, Patwari, Patwar Halqa Kharisha, Tehsil and District Hangu.
... (Appellant)

VERSUS

1. Commissioner, Kohat Division, Kohat
2. Deputy Commissioner, District Hangu
3. Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
4. Obaid Ullah Khan, Patwar, Patwar Halqa Tall District Hangu.
.... (Respondents)

Mr. Fazal Shah Mohmand
Advocate ... For appellant

Mr. Noor Badshah Bangash
Advocate ... For private respondents

Mr. Asif Masood Ali Shah
Deputy District Attorney ... For respondents

Date of Institution.....13.10.2021
Date of Hearing.....15.02.2024
Date of Decision.....15.02.2024

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 as copied below:

“On acceptance of this appeal the impugned order dated 07.09.2021 for respondent No.1, passed in departmental appeal No 14/2021, may kindly be set aside and the final seniority list of Patwari of District Hangu dated 26.08.2020 may kindly be ordered to be restored with consequential service benefits.”



2. Through this single judgment, we intend to dispose of the instant service appeal as well as connected service appeals, which are mentioned below as in all these appeals common questions of law and facts are involved:

1. Service Appeal No. 7715/2021
2. Service Appeal No. 7716/2021
3. Service Appeal No. 7717/2021

3. Brief facts leading to filing of the instant appeals are that appellants alongwith private respondent No.4 and 5 were appointed as Patwari on 01.09.2009. On 24.06.2020 tentative seniority list of Patwaris of District Hangu was issued, which was not objected to by anyone. Then final seniority list was issued on 26.08.2020. The respondent No.4 and 5 impugned the final seniority list before respondent No.1 wherein the official respondent No.2 accepted appeals of the respondent No.4 and 5 by setting aside the final seniority list of Patwari of District Hangu vide order dated 07.09.2021. Feeling aggrieved, appellants filed the instant service appeal.

3. Respondents were put on notice who submitted written reply/comments on the appeal. We have heard learned counsel for the appellants, private respondents and learned Deputy District Attorney for the respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Learned counsel for the appellants argued that the impugned order is illegal and void ab-initio hence liable to be set aside. He further argued that mandatory provisions of law have been violated by the respondents and the appellants have not been treated in accordance with law and rules. He further argued that appellants having better merit position than private respondents, as having more marks, are required to be placed senior to private respondents, hence the impugned order is liable to be struck down. He submitted that date of appointment of appellants and private respondents is same and the criteria determining the merit is the marks they

obtained, hence the appellant is senior to them and requires to be placed senior to him.

5. Conversely, learned Deputy District Attorney contended that appellants have been treated in accordance with law and rule. He further argued that although appellants had secured more marks than the respondent No.4 in the Patwar examination held in 2009 but the appellant has been registered two steps below the private respondent in the Patwar candidates register maintained in the office of defunct District Officer Revenue & Estate Hangu. He further argued that Rule 17 of the (Appointment, Promotion & Transfer) Rules, 1989 envisages that seniority in case of appointment by initial recruitment will be maintained in the order of merit, hence the appellant was placed senior to the respondent No.4 and 5 on the basis of being older in age as the appointment order was issued on the same date.

6. Perusal of record reveals that appellants were entered in patwar candidates register on 13.08.2009 and their dates of birth are 08.08.1986. 08.08.1986 and 02.04.1985. Appellants passed the Patwar School Examination in the year 2009 by securing 322 and 338 marks while private respondent No 4 was also appointed and passed patwar school examination along with appellants by securing 312 marks. Appellants and respondent No 4 and 5 were also appointed as Patwar on 01.09.2009. Respondents on 24.06.2020 issued first tentative seniority list of patwaris of District Hangu which was never objected by any employee and final seniority list was issued on 26.08.2020. Respondents No. 4/5 challenged the final seniority list before respondent No. 1 who accepted departmental representation of respondent No. 4 and 5 vide order dated 07.09.2021 wherein seniority of the appellants was disturbed and private respondent No.4/5 were placed senior to the appellants.

7. It is an admitted fact that appellants and private respondent No.4 appeared in Patwar Exam by securing 322 and 338 marks while private respondent No.4 secured 312 marks respectively, on the basis of which their names were entered in Patwar Candidate Register on 13.08.2009. So far as private respondent No. 5 is concerned he had already passed Patwar Exam in the year 2008. Appellants and private respondents No.4 and 5 alongwith other were appointed as Patwaris on 01.09.2009. Perusal of the order dated 07.09.2021 passed by the commissioner reveals that he placed respondent No.4 and 5 senior to the appellants on the basis of merit assigned by the Departmental Selection Committee. Respondents in their comments categorically stated that no written test or interview was conducted by the departmental selection committee then there was no merit list on the basis of which respondent No.4 would be placed senior to the appellants. When asked representative of respondent to produce merit list and even minutes of the meeting where merit was assigned upon which he stated that no merit list was prepared because no test and interview was conducted, even no minutes of DSC were drafted. So order of the Commissioner was not supported by any documentary proof, therefore, have no legal sanctity and force in it.

8. Moreover, seniority of the appellants as well as respondent No. 4/5 will have to be determined under Section 17 (4) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules 1989, according to which the inter-se-seniority of civil servants (appointed to a service, cadre or post) shall be determined;

"The inter-se-seniority of civil servants in a certain cadre to which promotion is made from different lower posts, carrying the same pay scale shall be determined from the date of regular appointment promotion of the civil servant in the lower post.

Provided that if the date of regular appointment of two or

more civil servant in the lower post is the same, the civil servant older in age, shall be treated senior."

When there is no order of merit, then civil servant older in age in accordance with Rules 17 (4) will be placed senior from the civil servant who is younger in age. In the instant case appellants date of birth is 08.08.1986 and 02.04.1985, while that of respondent No.4 and 5 is 06.01.1987 and 21.01.1989 which means appellants are older in age therefore, they will be placed senior than respondent No.4 and 5. Although respondent No.4 and 5 alleged that they were selectees of earlier selection process but in the instant case no process except patwar examination was conducted which is of the same date, therefore, their contention hold no ground.

9. For what has been discussed above, we are unison to accept the instant appeal as well as connected service appeals as prayed for with direction to respondents to place the appellants senior from respondent No. 4 and 5. Cost shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of this Tribunal on this 15th day of February, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)


22.11.2023

Appellant in person present. Mr. Muhammad Zahid, Assistant alongwith Mr. Muhammad Jan, District Attorney for official respondents present. Clerk of learned counsel for private respondents present.

Appellant requested for adjournment on the ground that his counsel is not available today due to strike of lawyers. Adjourned. To come up for arguments on 15.02.2024 before the D.B. Parcha Peshi given to the parties.

RECEIVED
 DISTRICT ATTORNEY
 PESHAWAR


 (Fareeha Paul)
 Member (E)


 (Salah-ud-Din)
 Member (J)

Nacem Amin

ORDER

15.02.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney alongwith Ghulam Shabir, Assistant Secretary for the respondents present. Learned counsel for private respondent present.
2. Vide our detailed judgment of today placed on file, we are unison to accept the instant appeal as prayed for with direction to respondents to place the appellant senior from private respondents. Cost shall follow the event. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of this Tribunal on this 15th day of February, 2024.*


 (FAREEHA PAUL)
 Member (E)


 (RASHIDA BANO)
 Member (J)

*Kaleemullah