

*Service Appeal No. 8140/2020 titled "Akhtar Zaman -vs-the Chief Secretary, Khyber Pakhtunkhwa, Peshawar and others", Service Appeal No. 838/2021 titled "Khair Ullah-vs- the Chief Secretary, Khyber Pakhtunkhwa, Peshawar and others", Service Appeal No. 8141/2020 titled "Akhtar Zaman-vs- the Chief Secretary, Khyber Pakhtunkhwa, Peshawar and others," and Service Appeal No. 839/2021 titled "Khair Ullah-vs- the Chief Secretary, Khyber Pakhtunkhwa, Peshawar and others," decided on 02.04.2024 by Division Bench comprising of Kalim Arshad Khan, Chairman, and Ms. Rashida Bano, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.*

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR**

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**  
**RASHIDA BANO** ... **MEMBER (Judicial)**

***Service Appeal No. 8140/2020***

Date of presentation of Appeal.....01.07.2020  
Date of Hearing.....02.04.2024  
Date of Decision.....02.04.2024

**Mr. Akhtar Zaman**, Head Master (BPS-17), GHS Shukarullah Hussain Mandan, District Bannu. ....(**Appellant**)

Versus

1. **The Chief Secretary**, Khyber Pakhtunkhwa, Peshawar.
2. **The Secretary (E&SE) Department**, Khyber Pakhtunkhwa, Peshawar.
3. **The Director (E&SE) Department**, Khyber Pakhtunkhwa, Peshawar.
4. **Mr. Akbar Jan**, Principal (BS-18), GHS Behzadi, Chakar Kot, Kohat.
5. **Mr. Wali Ayaz**, Instructor (BPS-18), RITE (M) Ghoriwala, Bannu.
6. **Mr. Jamil-Ur-Rehman**, SS Islamiyat (BS-18), GHSS No. 4, D.I.Khan.
7. **Mr. Amin Ullah Khan**, Principal (BS-18) GHS Ghulam Jan Baka Khel, Bannu.
8. **Mr. Irfan Ali Shah**, SS Biology (BS-18), GHSS Hakim Havaid, Bannu.
9. **Mr. Hafiz Raza Ullah Khan**, Principal (BS-18), GHSS No. 4, Bannu.
10. **Noor Aslam**, SS Chemistry (BS-18) GHSS Darra Pezu, Lakki Marwat.
11. **Mr. Muhammad Faiz**, SS Economics (BS-18), GHSS Nurar, Bannu.
12. **Mr. Umar Shah**, SS Chemistry (BS-18), GHSS Tajazai, Lakki Marwat.
13. **Mr. Safi Ullah Khan**, SS Statistics (BS-18), GHSS Hakim Haved, Bannu.
14. **Mr. Hidayat Ullah Khan**, SS Statistics (BS-18), GHSS Nurar, Bannu.
15. **Mr. Muhammad Ishaq**, SS English (BS-18), GHSS Nurar, Bannu.
16. **Mr. Nijat Ullah Khan**, SS English (BS-18) GHSS Hakim Haved, Bannu.....(**Respondents**)

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***Service Appeal No.838/2021***

Date of presentation of Appeal.....08.01.2021  
Date of Hearing.....02.04.2024  
Date of Decision.....02.04.2024

**Mr. Khair Ullah**, Ex-Head Master (Retired) (BPS-17), GHS Mami Khel, District Karak.....(**Appellant**)

Versus

1. **The Chief Secretary**, Khyber Pakhtunkhwa, Peshawar.
2. **The Secretary (E&SE) Department**, Khyber Pakhtunkhwa, Peshawar.
3. **The Director (E&SE) Department**, Khyber Pakhtunkhwa, Peshawar.
4. **Mr. Akbar Jan**, Principal (BS-18), GHS Behzadi, Chakar Kot, Kohat.
5. **Mr. Wali Ayaz**, Instructor (BPS-18), RITE (M) Ghoriwala, Bannu.
6. **Mr. Jamil-Ur-Rehman**, SS Islamiyat (BS-18), GHSS No. 4, D.I.Khan.
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11. **Mr. Muhammad Faiz**, SS Economics (BS-18), GHSS Nurar, Bannu.
12. **Mr. Umar Shah**, SS Chemistry (BS-18), GHSS Tajazai, Lakki Marwat.
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14. **Mr. Hidayat Ullah Khan**, SS Statistics (BS-18), GHSS Nurar, Bannu.
15. **Mr. Muhammad Ishaq**, SS English (BS-18), GHSS Nurar, Bannu.
16. **Mr. Nijat Ullah Khan**, SS English (BS-18) GHSS Hakim Haved, Bannu.....(*Respondents*)

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**APPEALS UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED SENIORITY LIST DATED 13.12.2017 WHEREBY NAMES OF THE APPELLANTS HAVE WRONGLY BEEN MENTIONED AT SERIAL NO. 685 & 686 RESPECTIVELY INSTEAD OF SERIAL NO. 291 AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANTS WITHIN THE STATUTORY PERIOD OF NINETY DAYS.**  
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**Service Appeal No. 8141/2020**

Date of presentation of Appeal.....01.07.2020  
Date of Hearing.....02.04.2024  
Date of Decision.....02.04.2024

**Mr. Akhtar Zaman**, Head Master (BPS-17), GHS Shukarullah Hussain Mandan, District Bannu. ....(*Appellant*)

Versus

1. **The Chief Secretary**, Khyber Pakhtunkhwa, Peshawar.
2. **The Secretary (E&SE) Department**, Khyber Pakhtunkhwa, Peshawar.



*Service Appeal No. 8140/2020 titled "Akhtar Zaman -vs-the Chief Secretary, Khyber Pakhtunkhwa, Peshawar and others", Service Appeal No. 838/2021 titled "Khair Ullah-vs- the Chief Secretary, Khyber Pakhtunkhwa, Peshawar and others", Service Appeal No. 8141/2020 titled "Akhtar Zaman-vs- the Chief Secretary, Khyber Pakhtunkhwa, Peshawar and others," and Service Appeal No. 839/2021 titled "Khair Ullah-vs- the Chief Secretary, Khyber Pakhtunkhwa, Peshawar and others," decided on 02.04.2024 by Division Bench comprising of Kalim Arshad Khan, Chairman, and Ms. Rashida Bano, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.*

3. **The Director (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.**
4. **Mr. Akbar Jan, Principal (BS-18), GHS Behzadi, Chakar Kot, Kohat.**
5. **Mr. Wali Ayaz, Instructor (BPS-18), RITE (M) Ghoriwala, Bannu.**
6. **Mr. Jamil-Ur-Rehman, SS Islamiyat (BS-18), GHSS No. 4, D.I.Khan.**
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15. **Mr. Muhammad Ishaq, SS English (BS-18), GHSS Nurar, Bannu.**
16. **Mr. Nijat Ullah Khan, SS English (BS-18) GHSS Hakim Haved, Bannu.....(Respondents)**

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***APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION DATED 22.10.2018, 08.03.2019 AND 31.05.2019 COMMUNICATED TO THE APPELLANT ON 25.02.2020 WHEREBY JUNIORS TO THE APPELLANT HAVE BEEN PROMOTED TO POST OF SUBJECT SPECIALIST (BS-18) WHILE THE APPELLANT HAS BEEN IGNORED AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.***

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***Service Appeal No.839/2021***

Date of presentation of Appeal.....08.01.2021  
Date of Hearing.....02.04.2024  
Date of Decision.....02.04.2024

**Mr. Khair Ullah, Ex-Head Master (Retired) (BPS-17), GHS Mami Khel, District Karak.....(Appellant)**

Versus

1. **The Chief Secretary, Khyber Pakhtunkhwa, Peshawar.**
2. **The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.**
3. **The Director (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.**
4. **Mr. Akbar Jan, Principal (BS-18), GHS Behzadi, Chakar Kot, Kohat.**
5. **Mr. Wali Ayaz, Instructor (BPS-18), RITE (M) Ghoriwala, Bannu.**

6. **Mr. Jamil-Ur-Rehman**, SS Islamiyat (BS-18), GHSS No. 4, D.I.Khan.
7. **Mr. Amin Ullah Khan**, Principal (BS-18) GHS Ghulam Jan Baka Khel, Bannu.
8. **Mr. Irfan Ali Shah**, SS Biology (BS-18), GHSS Hakim Havaid, Bannu.
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10. **Noor Aslam**, SS Chemistry (BS-18) GHSS Darra Pezu, Lakki Marwat.
11. **Mr. Muhammad Faiz**, SS Economics (BS-18), GHSS Nurar, Bannu.
12. **Mr. Umar Shah**, SS Chemistry (BS-18), GHSS Tajazai, Lakki Marwat.
13. **Mr. Safi Ullah Khan**, SS Statistics (BS-18), GHSS Hakim Haved, Bannu.
14. **Mr. Hidayat Ullah Khan**, SS Statistics (BS-18), GHSS Nurar, Bannu.
15. **Mr. Muhammad Ishaq**, SS English (BS-18), GHSS Nurar, Bannu.
16. **Mr. Nijat Ullah Khan**, SS English (BS-18) GHSS Hakim Haved, Bannu.....(**Respondents**)

Present:

Mr. Noor Muhammad Khattak, Advocate.....For the appellants  
Mr. Muhammad Jan, District Attorney.....For official respondents  
Mr. Taimur Ali Khan, Advocate .....For private respondents.

**APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION DATED 22.10.2018, 08.03.2019 AND 31.05.2019 WHEREBY JUNIORS TO THE APPELLANT HAVE BEEN PROMOTED TO POST OF SUBJECT SPECIALIST (BS-18) WHILE THE APPELLANT HAS BEEN IGNORED AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.**

### **CONSOLIDATED JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** Through this single

judgment, the instant appeal and connected Appeal No. 838/2021

tilted "Khair Ullah-Vs- The Chief Secretary, Khyber Pakhtunkhwa,

Peshawar and others" are decided as both are against the same

impugned final seniority list of Head Masters/Subject Specialists

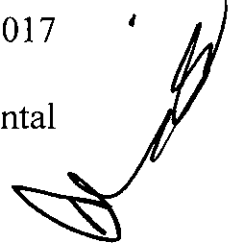
*Service Appeal No. 8140/2020 titled "Akhtar Zaman -vs-the Chief Secretary, Khyber Pakhtunkhwa, Peshawar and others", Service Appeal No. 838/2021 titled "Khair Ullah-vs- the Chief Secretary, Khyber Pakhtunkhwa, Peshawar and others", Service Appeal No. 8141/2020 titled "Akhtar Zaman-vs- the Chief Secretary, Khyber Pakhtunkhwa, Peshawar and others." and Service Appeal No. 839/2021, titled "Khair Ullah-vs- the Chief Secretary, Khyber Pakhtunkhwa, Peshawar and others," decided on 02.04.2024 by Division Bench comprising of Kalim Arshad Khan, Chairman, and Ms. Rashida Bano, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.*

(BPS-17) Elementary & Secondary Education Khyber Pakhtunkhwa as it stood on 13.12.2017 and notified on 01.01.2018.

2. This judgment shall also decide Appeal No. 8141/2020 titled "*Akhtar Zaman-Vs-The Chief Secretary, Khyber Pakhtunkhwa, Peshawar and others*" and Appeal No. 839/2021 titled "*Khair Ullah-Vs-The Chief Secretary, Khyber Pakhtunkhwa, Peshawar and others*" vide which the appellants are seeking promotion challenging the Notifications dated 22.10.2018, 08.03.2019 and 31.05.2019 by way of which private respondents were promoted. So all the above four appeals can be conveniently decided together.

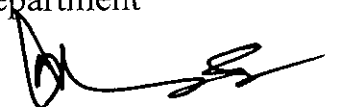
3. According to the facts of this appeal and Appeal No. 838/2021, the appellants were serving as Head Masters (BPS-17) at GHS Jani Khel, Bannu and GHS Mami Khel, Karak respectively; that according to the combined seniority list of Subject Specialists and Head Masters circulated on 25.05.2017, the appellants were placed as senior to their many colleagues but in the impugned seniority list of 13.12.2017, the appellants were relegated in the seniority and private respondents who were junior to the appellants in the list of 25.05.2017 were rendered senior to the appellants; that they filed departmental appeal but no reply was received, hence these appeals.

4. The connected Appeals No. 8141/2020 titled "*Akhtar Zaman-Vs-The Chief Secretary, Khyber Pakhtunkhwa, Peshawar and others*" and 839/2021 titled "*Khair Ullah-Vs-The Chief Secretary, Khyber Pakhtunkhwa, Peshawar and others*" are against the impugned Notifications dated 22.10.2018, 08.03.2019 and 31.05.2019 vide



which, according to the appellants, their juniors were promoted to the post of Subject Specialists (BPS-18) while they have been ignored. It would not be out of place to observe here that result of the instant appeal and connected appeal No. 838/2021 (both seniority) would determine the fate of appeals No. 8141/2020 and 839/2021 (both promotion appeals). In case seniority appeals are allowed, the promotion appeals would succeed and in case the seniority appeals are disallowed the promotions appeals would fail.

5. On receipt of the appeals and their admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeals by filing written replies raising therein numerous legal and factual objections. It is observed that official respondents have not submitted proper reply rather the replies of the official respondents in the seniority appeals are a bit evasive, however, the private respondents in the seniority appeals have mainly contended that they had appeared in the exam for recruitment to the post of Subject Specialists of various cadres advertised on 26.01.2009 and they were recommended by Khyber Pakhtunkhwa Public Service Commission on different dates i.e 27.06.2009, 30.07.2009, 20.08.2009, 25.08.2009, 03.11.2009, 10.11.2009, 16.03.2010, 27.03.2010, 01.04.2010, 16.04.2010, 05.05.2010, 06.05.2010 and 17.05.2010; that the Khyber Pakhtunkhwa Public Service Commission issued inter-se seniority of all the recommendees of different recommendations made from 27.06.2009 to 17.05.2010 in order of merit. It was further contended by them that the department



issued tentative seniority of the Subject Specialists/Head Masters as it stood on 31.12.2016 and then issued final seniority list as stood on 25.05.2017; that many officials filed appeals on the final seniority list on which appellate committee was constituted; that the appellate committee examined the appeals and given the final findings:-

*"1. Khyber Pakhtunkhwa Public Service Commission advertised 449 Male posts (for different subjects) in E&SED on 26.01.2009 i.e Adv: No. 01/2009 and appointments orders of Subject Specialist in different subjects were issued on the following dates:*

i. 12.01.2010	No of Candidates:-	118
ii. 16.08.2010	-do-	98
iii. 23.12.2010	-do-	49
iv. 16.01.2011	-do-	35
v. 10.01.2011	-do-	23
vi. 24.02.2011	-do-	48
vii. 25.02.2011	-do-	34

*The Inter-Se Seniority of Male Subject Specialists under Adv: No. 01/2009 was received by the E&SE Deptt: in combined form under SL 158 Annexure-II clause (1) C on page 228 of ESTA Code, although their appointment orders were issued on different dates mentioned above.*

*2. Departmental Promotion Committee recommended 43 HMs from BPS-16 to BPS-17 on the following dates:-*

i. 20.01.2010	-----43
ii. 27.03.2010	-----242

*The inquiry committee also given Conclusion:-*

*i. As under Adv: No. 01/2009, first appointment order of 118 Male Subject Specialists was issued on 12.01.2010, and last order was issued on 25.02.2011. In this regard the ESTA Code on Page 229, SL 158 Annexure-III, clause ii(b) states, when in a single reference the commission have been asked to recommend more than one person, and the recommendation of the commission is held up in respect of one or more of such persons for want of incomplete papers etc. Or for reasons beyond the control of persons concerned, the recommendation of the commission made subsequently will be deemed to*

*have been made by the Commission on the date when first recommendation was made.*

*ii. Seniority No. 331 (Badshah Zamin) to seniority No. 758 (Mian Ijaz Mustafa) final seniority list BPS-17 (M) Officers on 25.05.2017 may be ranked senior as per ESTA Code rules already mentioned on page-229 clause-II (b) than H/Masters promotions order issued on 20.01.2010 and 27.03.2010, respectively."*

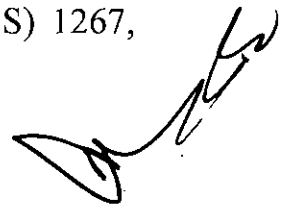
The appellate committee submitted its report on 17.10.2017 and on the basis of which revised final seniority list of Subject Specialists was issued as it stood on 13.12.2017, the impugned seniority list in which every official were given his right position and private respondents were shown senior to the appellants; that private respondents alongwith other officials were promoted on 22.10.2018, 08.03.2019 and 31.05.2019. It was further contended that according to the recommendations of the Khyber Pakhtunkhwa Public Service Commission private respondent No. 11 namely Muhammad Faiz was appointed on 12.01.2010 alongwith other Subject Specialists but his name was reflected at serial No. 445 of the final seniority list dated 13.12.2017 while private respondent No. 10 namely Noor Aslam was appointed after more than 08 months on 16.08.2010 and his name appeared at serial No. 437 of the seniority list dated 13.12.2017 because of inter-se seniority issued by Commission on 13.08.2011 in which Noor Aslam was shown at serial No. 263 and Muhammad Faiz at serial No. 271 so that all the appointees in pursuance of the advertisement shall be considered as single batch/unit and their seniority assign by the Commission irrespective of their different date of appointment.





6. We have heard learned counsel for the appellants, learned Deputy District Attorney for official respondents assisted by learned private counsel for private respondents and have gone through the record.

7. Learned counsel for the appellants submitted that the appellants were senior to the private respondents in the seniority list of 31.05.2017 but without assigning any reasons and without giving them, the appellants were relegated in the impugned seniority list of 13.12.2017. He also argued that the promotions of the appellants were prior to the appointment of the private respondents, therefore, too the appellants were to rank senior to the private respondents. He referred to Section-8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 and Rule-17 (2) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion, Transfer) Rules, 1989. He also relied on the judgments of this Tribunal passed in Service Appeal No. 126/2019 titled "*Siraj Khan-Vs-the Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar & 431 others*" decided on 17.11.2020 and Service Appeal No. 323/2017 titled "*Zahoorullah Khan-Vs-Government of NWFP through its Chief Secretary, Peshawar and 02 others*" decided on 02.10.2007. He also relied upon the judgments of Supreme Court of Pakistan reported in 1989 SCMR 1267, 1999 PLC (C.S) 510, 1996 SCMR 1185, 2022 PLC (C.S) 1388, 2003 SCMR 333, 2005 SCMR 1560, 2006 SCMR 1938, 2007 PLC (C.S) 1267,

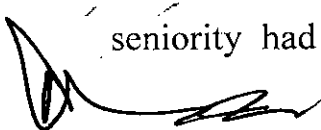


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2010 SCMR 1584, 2011 SCMR 389, 2014 PLC (C.S) 247, PLD-1994 Supreme Court 219 and 2022 SCMR 448.

8. Conversely, the learned District Attorney and learned counsel for the private respondents refuted the arguments of learned counsel for the appellants and argued that the judgment of this Tribunal dated 17.11.2020 passed in Service Appeal No. 126/2019 titled "*Siraj Khan-Vs-the Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar & 431 others*", was reversed by the Supreme Court of Pakistan in its judgment reported as 2022 SCMR 1471 titled "*Badshah Zamin and others Versus Siraj Khan and others*", so the learned counsel for the appellants could not rely on the judgment of the Tribunal in Service Appeal No. 126/2019. They argued that the judgment of the Supreme Court of Pakistan has settled the issue as in earlier matter before this Tribunal and before the Supreme Court of Pakistan was regarding the same seniority list dated 13.12.2017 and the judgment of the Supreme Court of Pakistan supports the version of the private respondents not the appellants.

9. There is no denial of the facts that the private respondents had been appointed, after their selection, in response to the advertisement dated 26.01.2009, for filling the posts of Subject Specialists of various cadres. The recommendations of the candidates, including the private respondents, selected in the same selection process, were made on different dates but all the persons were selected in one combined examination, therefore, they belong to the same batch and their seniority had to be determined in order of merit assigned by the



Service Appeal No. 8140/2020 titled "Akhtar Zaman -vs-the Chief Secretary, Khyber Pakhtunkhwa, Peshawar and others", Service Appeal No. 838/2021 titled "Khair Ullah-vs- the Chief Secretary, Khyber Pakhtunkhwa, Peshawar and others", Service Appeal No. 8141/2020 titled "Akhtar Zaman-vs- the Chief Secretary, Khyber Pakhtunkhwa, Peshawar and others," and Service Appeal No. 839/2021 titled "Khair Ullah-vs- the Chief Secretary, Khyber Pakhtunkhwa, Peshawar and others," decided on 02.04.2024 by Division Bench comprising of Kalim Arshad Khan, Chairman, and Ms. Rashida Bano, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

Selection Authority as required by Rule-17 (1) (a) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. There is provision in clause-a of sub-rule-1 of Rule-17 that persons selected for appointment to post in a earlier selection shall rank senior to the persons selected in the later selection. The provision of rules has to be read in juxtaposition with Regulation 32 of the Khyber Pakhtunkhwa Public Service Commission Regulations, 2017 (**the Regulations**). Rule-17 (1) (a) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 is reproduced as below:-

**“17. Seniority :-** (1) *the seniority inter se of civil servants (appointed to a service, cadre or post) shall be determined:-*

*(a) in the case of persons appointed by initial recruitment, in accordance with the order of merit assigned by the Commission [or as the case may be, the Departmental Selection Committee;] provided that persons selected for appointment to post in an earlier selection shall rank senior to the persons selected in a later selection;*

10. Similarly Regulation 32 of the Regulations is reproduced as below:-

**“Regulation 32. MERIT LIST.**

*(a) When all the eligible candidates called for interview for particular post have been interviewed, the Director Recruitment, Director Examination or any other authorized officer, as the case may be, shall prepare the merit list as per the marks recorded on the evaluation sheets and submit the case for the Commission's approval.*

*(b) Merit list shall be prepared keeping in view the aggregate marks secured by all the qualified candidates.*

(c) When two or more than two candidates have secured equal marks in aggregate the candidate who has secured higher marks in the interview shall be marked senior. In case the marks in aggregate and also the marks in the interview are the same, the candidate who is older in age shall be placed senior to the one who is younger. In case all the above-mentioned factors are the same, marks obtained in the final examination of the prescribed qualification for the post shall be the deciding factor.

(d) In the case of Competitive Examination the merit list shall be prepared in accordance with the laid down provisions of the syllabus of the respective service."

11. Similarly, Regulation 34 (a) of the Regulations is regarding recommendation which reads as under:-

**“Regulation 34. RECOMMENDATIONS**

(a) [A decision about recommendations to be made shall be approved by the Members of Interview Panel concerned, the Member incharge of the subject and the Chairman]. Merit list shall be uploaded on website of the Commission. After approval, the Director concerned shall also convey the recommendations to the concerned Department. If suitable candidates are not available then posts may be re-advertised at the earliest and Secretary of concerned Department, Chief Secretary, Principal Secretary to Chief Minister/Principal Secretary to Governor and Minister Incharge shall also be kept informed accordingly. The candidates recommended for appointment shall be informed of their selection within three days of the release of recommendations to the department. Non-adjusted and Non-marked candidates shall also be informed of their results.”

12. It is very manifestly provided in Regulation 32 of the Regulation that when **“all the eligible candidates”** called for interview of the different posts have been interviewed their merit list was to be prepared as per marks recorded on the evaluation sheets. Clause (b)



says that merit list shall be prepared keeping in view the aggregate marks secured by **"all the qualified candidates"**. Usage of the word **"all"** in clause (a) & (b) of Regulation 32 of the Regulations has excluded the possibility of preparing separate merit lists for the general seats and different quota rather it means that all the candidates, appearing in the examination advertised through a single advertisement, though applied against different quotas, would be considered jointly for the purposes of preparation of merit list under Regulation 32 of the Regulations and determination of seniority under Rule-17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989.

13. This Tribunal in Appeal No. 126/2019 titled *"Siraj Khan-Vs-the Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar & 431 others*, had earlier set-aside the seniority list of 13.12.2017 but the Supreme Court of Pakistan in its judgment reported as 2022 SCMR 1471 titled *"Badshah Zamin and others Versus Siraj Khan and others"* set-aside the judgment of the Tribunal in the following manner:-

*"5. Heard the learned counsel for the parties and have perused the record. The controversy between the parties revolves around sections 3 and 4 of the Act, which are reproduced herein below:*

*"3. Regularization of services of certain employees....."*

*4. Determination of seniority.---(1) The 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 made before the commencement of this Act, are to be appointed to 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:

Provided that if the date of continuous officiation in the case of two or more employees is the same, the employee older in age shall rank senior to the younger one," (Emphasis supplied)"

14. There is no denying the fact that for the selection process initiated in response to the advertisement of 26.01.2009, the Khyber Pakhtunkhwa Public Service Commission made recommendations on 27.06.2009, 30.07.2009, 20.08.2009, 25.08.2009, 03.11.2009, 10.11.2009, 16.03.2010, 27.03.2010, 01.04.2010, 16.04.2010, 05.05.2010, 06.05.2010 and 17.05.2010 and on the basis of the said recommendations, the recommendees were appointed on 12.01.2010, 16.08.2010, 23.12.2010, 06.01.2011, 24.02.1011 and 25.02.2011. The breakup of candidates appointed on different dates has been given in preceding paragraph No. 5. The first appointment on the basis of first recommendation from the selection process was made by the Khyber Pakhtunkhwa Public Service Commission on 12.01.2010, wherein private respondent No. 11 and some others were appointed. The appellants claim that they were senior because they were ranked as such in the seniority list of 25.05.2017. They further contended that the seniority list of 25.05.2017 shows that the appellants were promoted on 27.03.2010 to the post of Head Masters (BPS-17), therefore, they were to rank senior to the persons appointed after the



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date of their promotion. This contention is not tenable because the private respondents are all appointees of different dates though made on different dates but as a result of same selection process initiated on the basis of single advertisement made by the Khyber Pakhtunkhwa Public Service Commission on 27.06.2009, 30.07.2009, 20.08.2009, 25.08.2009, 03.11.2009, 10.11.2009, 16.03.2010, 27.03.2010, 01.04.2010, 16.04.2010, 05.05.2010, 06.05.2010 and 17.05.2010. The first appointment being made on 12.01.2010, therefore, irrespective of recommendations made of the selectees of the same selection process on different dates was to be considered to have been appointed on 12.01.2010 for the purpose of seniority. We also derive wisdom in this respect from the judgment of Supreme Court of Pakistan reported as 2015 SCMR 723 titled "*Dr. Azim-Ur-Rahim Khan Meo Versus Province of Sindh through Chief Secretary and 9 others*", relevant para of the judgment is reproduced as below:-

**"18. We are, thus, constrained to hold that the respondents for the purposes of Seniority must be deemed to have been regularly appointed vide said Notification dated 25-9-1991 on regular basis, specially as the learned counsel for the petitioner has been unable to show us any law or judgment of this Court whereby the appointments under Rule 5 of the Sindh Public Service Commission (Functions) Rules, 1990 have been held to be in any manner other than the regular appointments for the purposes of determining seniority. Since the respondents were initially appointed in the year 1991 prior to the appointment of the petitioner in the year 1992, therefore, their seniority must be reckoned on the basis of such appointments in terms of Rule 10 of the Sindh Civil Servants**



(Probation, Confirmation and Seniority) Rules, 1975 as well as the West Pakistan Secretariat (Section Officers) Service Rules, 1962. Therefore, the respondents having been initially appointed on regular basis prior to the petitioner have been correctly held senior to the petitioner in the Seniority List, which has not been set aside by the learned Service Tribunal by way of the impugned judgment."

15. The above judgment as well as Section 32 of the Khyber Pakhtunkhwa Public Service Commission Regulations, 2017 both negate the stance of learned counsel for the appellants that the case of the appellants was covered under sub-rule 2 of Rule-17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. The sub-rule 2 is reproduced as below:-

*"(2) Seniority in various cadres of civil servants appointed by initial recruitment vis-à-vis those appointed otherwise shall be determined with reference to the dates of their regular appointment to a post in that cadre; provided that if two dates are the same, the person appointed otherwise shall rank senior to the person appointed by initial recruitment."*

The reliance of learned counsel for the appellant on the above sub-rule is thus not worth consideration.

16. Not only because the list of 13.12.2017, impugned by the appellants in these appeals, was earlier upheld by the Supreme Court of Pakistan in judgment reported as 2022 SCMR 1471 but also because of the consistent view of the Supreme Court of Pakistan that persons appointed as a result of one combined competitive examination are belonging to the one and the same batch and their inter-se seniority has to be determined on the basis of merit order





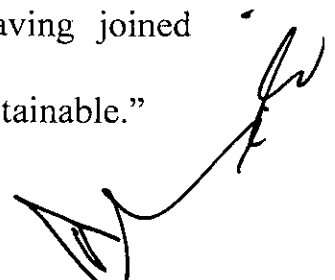
Service Appeal No. 8140/2020 titled "Akhtar Zaman -vs-the Chief Secretary, Khyber Pakhtunkhwa, Peshawar and others", Service Appeal No. 838/2021 titled "Khair Ullah-vs- the Chief Secretary, Khyber Pakhtunkhwa, Peshawar and others". Service Appeal No. 8141/2020 titled "Akhtar Zaman-vs- the Chief Secretary, Khyber Pakhtunkhwa, Peshawar and others," and Service Appeal No. 839/2021 titled "Khair Ullah-vs- the Chief Secretary, Khyber Pakhtunkhwa, Peshawar and others," decided on 02.04.2024 by Division Bench comprising of Kalim Arshad Khan, Chairman, and Ms. Rashida Bano, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

assigned by the competent authority irrespective of the dates of recommendations and or the dates of appointment.

17. The question involved in the instant appeals had also been the subject matter at different points of time before the august Supreme Court of Pakistan and other superior courts of the Country. In order to support the findings, we also rely on the following judgments of the honorable Superior Courts wherein the consistent view in almost similar matters was as under:

18. In 1984 SCMR 1459 titled "*Ch. Shaukat Ali and others Versus Muhammad Safdar Khan and others*", the august Supreme Court of Pakistan held that, "Merit assigned by Board of Revenue at time of making selection of petitioners and respondent as Tehsildars against initial recruitment--Held, to hold good for determining their inter se seniority as long as they remain in service in that grade and cadre".

19. Similarly in 1993 P L C (C.S.) 52 titled "Muhammad Jafar Hussain Versus Chairman, Central Board Of Revenue, Islamabad and 4 others" the worthy Federal Service Tribunal was of the view that, "Seniority of candidates selected in one batch was to be determined in accordance with the merit assigned by Public Service Commission and not on basis of joining assignments---Appellant's claim of seniority that although respondent had acquired higher position in merit list prepared by selection authority, yet he having joined assignment earlier, in time was to rank senior, was not sustainable."



20. In 1993 P L C (C.S.) 116 titled "M. Tahir Rasheed and 2 others versus Secretary, Establishment Division, Islamabad and others" the worthy Federal Service Tribunal held that, "Inter se seniority of candidates at one selection was to be determined on the basis of merit assigned to the candidates by the Public Service Commission/Selection Committee in pursuance of general principles of seniority and not the dates of joining duty."

21. In 2002 P L C (C.S.) 780 titled "Shafiq Ahmed and others versus Registrar, Lahore High Court and others", the honourable Subordinate Judiciary Service Tribunal, (Lahore High Court) found that "Civil servants who were selected with the officers of the first batch, were entitled to claim seniority alongwith said batch and were entitled to be placed above the officers of the second and third batches and not below them---If the civil servants despite having been declared successful earlier by the Commission, were not appointed at relevant time they could not be made to suffer--Appointment and seniority were entirely two different things and delayed appointment of the civil servants could not affect their right to seniority in accordance with the rules---Appeal of civil servants was allowed with the direction to correct their seniority by placing them immediately below the officers of the first batch and above the officers of second and third batch."This judgment was upheld by the august Supreme Court of Pakistan in PLJ 2002 SC 234."



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22. In 2002 SCMR 889 titled "Wazir Khan Versus Government of N.W.F.P. through Secretary Irrigation, Peshawar and 4 others", the august Supreme Court held that, "(b) Appointments made as a result of selection in one combined competitive examination would be deemed to be belonging to the same batch and notwithstanding recommendation made by the Public Service Commission in parts, the seniority inter se. the appointees, of the same batch, would be determined in the light of merit assigned to them by the Public Service Commission.


*(c) North-West Frontier Province Civil Servants Act (XVIII of 1973)-----*

*----S. 8---Seniority---Fixation---Past and closed transaction, principle of---Applicability--- e-agitating seniority list after 15 years---Civil servants party to the appeal were appointees of the same batch---Appellant was placed senior to the respondents in the list prepared in the year 1979, while in the subsequent list prepared in the year 1981, the appellant was placed junior-- Appellant did not object the seniority list issued periodically---Appellant; after lapse of 15 years, re-agitated the matter---Contention of the appellant was that incorrect publication of seniority lists periodically would be the continuous wrong and the same every time would give rise to fresh cause of action, hence the appeal was wrongly dismissed by the Service Tribunal as time-barred---Validity---Where the appellant did not raise any objection to the seniority list issued periodically in the intervening period, it would be deemed that the appellant had accepted the seniority assigned to him in the revised seniority list published in the year 1981---Matter relating to the seniority of the parties having attained finality would be deemed as past and closed transaction and the same could not be re-agitated after lapse of a period of about 15 years through a fresh representation---Seniority, in the present case, was neither determined in departure to the principle embodied in S.8 of the North-West Frontier Province Civil Servants Act, 1973, nor the same was in violation of any rule framed thereunder---Mere fact that the*

*appellant was placed senior to the respondents in the seniority list published in the year 1979 would not be a valid ground to declare him senior to the respondents by undoing the merits assigned to the parties by the Public Service Commission---Initial placement of the appellant senior to the respondents in the list published in the year 1979, being not in accordance with the order of merits assigned to them by the Commission, would not create any right in favour of the appellant to claim seniority over therespondents---Supreme Court repelled the contention of the appellant that incorrect publication of, seniority lists periodically would be the continuous wrong and every time the same would give rise to fresh cause of action to challenge the seniority list-- Appellant having accepted the junior position assigned to him in the revised seniority list published in the year 1981, would be estopped to re-open the same and agitate it at the belated stage in the year 1997---Appeal before the Service Tribunal was rightly dismissed as barred by time."*

23. In 2009 S C M R 82 titled "Fazal Muhammad Versus Government of N.-W.F.P. and others----Respondents" the august Supreme Court was pleased to hold that "Both the incumbents were selected and appointed in the same batch---Mere fact that one of them assumed the duties earlier would not adversely affect the seniority position of the one who assumed the duties later."

24. Besides the appellants have chosen to omit certain persons/appointees of the same selection process especially of those whose first appointment was made prior to the promotion of the appellants, therefore, if we accept the contention of the appellants we will be negating the provisions of Khyber Pakhtunkhwa Public Service Commission Regulations, 2017 Section-8 of the Khyber Pakhtunkhwa Civil Servants Act and Rule-17 (1) (a) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. In

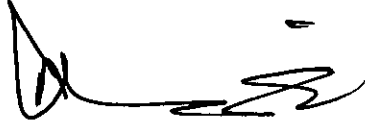


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that eventuality, the inter-se seniority of the batch mates would also be split. These seniority appeals have thus no merits and are dismissed.

25. The connected Appeals No. 8141/2020 and 839/2021 both are regarding challenging the promotion notifications of private respondents. As the fate of these two appeals is dependant upon the result of the seniority appeals, which have been dismissed, therefore, these are also dismissed accordingly. Costs of all appeals shall follow the events. Consign.

26. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 02<sup>nd</sup> day of April, 2024.*



**KALIM ARSHAD KHAN**  
Chairman



**RASHIDA BANO**  
Member (Judicial)

*\*Naeem Amin\**

**ORDER**

02<sup>nd</sup> April, 2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for official respondents and Mr. Taimur Ali Khan, Advocate for private respondents present. Arguments heard and record perused.
2. Vide our consolidated judgment of today placed on file, the instant service appeal is dismissed. Copy of this judgment be placed on files of connected Service Appeals. Cost shall follow the events. Consign.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 02<sup>nd</sup> day of April, 2024.*



(Rashida Bano)  
Member (Judicial)



(Kalim Arshad Khan)  
Chairman