

1335/13

16.1.2015

Appellant in person present. Mr. Muhammad Jan, GP with Faizul Haq, Assistant for the official respondents and clerk for counsel for private respondent No. 4 present. Appellant requested for withdrawal of the appeal. The learned GP has no objection. Signature of the appellant obtained in the margin of order sheet ^{of the previous page}. As such the appeal is dismissed as withdrawn. File be consigned to the record.

ANNOUNCED

16.1.2015

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above the word 'MEMBER'.

MEMBER

24.2.2014

Appellant in person and Mr. Muhammad Adeel Butt, AAG with Haidullah Admin Officer for the official respondents, present and reply filed. Private respondent No. 4 in person present and requested for time. To come up for written reply of private respondent No. 4 on 4.4.2014.

MEMBER 

4.4.2014.

Appellant in person and Mr. Muhammad Jan, GP with Haidullah Shah, A.O for official respondents and counsel for private respondent present and reply filed. Copy handed over to appellant. To come up for rejoinder on 6.6.2014.

MEMBER 

MEMBER 

6.6.2014

Counsel for the appellant and AAG with Haidullah Shah, A.O for the official respondents and counsel for private respondent present. Counsel for the appellant needs time to file rejoinder. To come up for rejoinder on 22.9.2014.

MEMBER 

MEMBER 

14202-6578/29-3
Hayat Khan
16/1/2015

16.1.2015

Counsel for the appellant and Mr. Muhammad Adeel Butt, AAG for the respondents present. Counsel for the appellant does not want to file rejoinder. To come up for arguments on 16.1.2015.


MEMBER

Appeal No. 1335/2013.
Mr. Hayat Khan.

3, 18.11.2013

Appellant with counsel present and heard on preliminary. Contended that the appellant has not been treated in accordance with the law/rules. The appellant is senior to the private respondents and he filed departmental appeal on 10.06.2013 against the final seniority list circulated on 15.05.2013 which has not been responded within the statutory period of 90 days, hence the present appeal on 12.09.2013. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, notice be issued to the respondents. Case adjourned to 14.01.2014 for submission of written reply.

Appellant deposited
of process fee & security
Rs. 2000/- Bank Receipt
attached with file.

Member.

4, 18.11.2013

This case be put before the Final Bench 11 for further proceedings.

Chairman

15.1.2014



Since 14th January, 2014 has been declared as public holiday, therefore, case to come up for the same on 24.2.2014.

READER

Form-A
FORM OF ORDER SHEET

Court of _____

Case No. 1335/2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	12/09/2013	<p>The appeal of Mr. Hayat Khan presented today by Mr. Rizwanullah Advocate, may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	25-9-2013	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>18-11-2013</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. 1335 /2013

Hayat Khan
Circle Head Draftsman,
O/O the Superintending Engineer,
Bannu Irrigation Circle, Bannu..

APPELLANT

VERSUS

1. The Government of Khyber Pakhtunkhwa, through its
Chief Secretary and others.

RESPONDENTS

I N D E X

S.No	Particulars	Annexure	Pages #
1	Service Appeal	-	1-7
2	Affidavit	-	8
3	Appointment order of appellant.	A	9-10
4	Promotion order of appellant as Circle Head Draftsman.	B	11-12
5	Departmental Appeal	C	13
6	Tentative Seniority List	D	14
7	Application dated 5-4-2013	E	15
8	Final Seniority List	F	16
9	Departmental Appeal	G	17-19
10	Judgment of Supreme Court of Pakistan dated 22-7-2011	H	20-24
11	Wakalatnama	-	25

Hayat Khan
Appellant

Through

Rizwanullah
Rizwanullah
M.A. LL.B
Advocate High Court,
Peshawar

Dated: 12-9-2013

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. 1335 /2013

Hayat Khan
Circle Head Draftsman,
O/O the Superintending Engineer,
Bannu Irrigation Circle, Bannu.

~~1335~~
1339
12-9-13

APPELLANT

VERSUS

1. Secretary Government of Khyber Pakhtunkhwa, Irrigation & Power Department, Peshawar.
2. Chief Engineer (south) Irrigation & Power Department Khyber Pakhtunkhwa, Peshawar.
3. Superintending Engineer (HQ) Irrigation and Power Department (South) Khyber Pakhtunkhwa, Peshawar.
4. Mr. Saeedullah Head Draftsman Irrigation Department C/O respondent No.3 .

RESPONDENTS

**APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE
FINAL SENIORITY LIST OF CIRCLE
HEAD DRAFTSMAN NOTIFIED BY
THE RESPONDENT NO.3 VIDE
ENDORSEMENT NO. 7688-91/IB/A/39-E
DATED 15-5-2013 .**

~~1335~~
12/9/13

Prayer in Appeal

By accepting of this appeal, the impugned final seniority list of Head Circle Draftsman notified by the respondent No.3 vide endorsement No. 7688-91/IB/A/39-E dated 15-5-2013 may graciously be modified and the appellant

may kindly be held rank senior than Saeedullah private respondent on the basis of his initial recruitment which was made earlier than the latter.

Any other relief deemed appropriate in the circumstances of the case, not specifically asked for, may also be granted to the appellant.

Respectfully Sheweth,

Short facts giving rise to the present appeal are as under:-

1. That the appellant was appointed as Tracer in the Irrigation Department on 31-12-1973 vide order No. 19299-19300/IB/A/11-E dated 29-12-1973 (Copy Annex-A). Similarly, Saeedullah respondent No.4 (hereinafter referred to as Private Respondent) was also inducted as Tracer in the said department with effect from 29-4-1974.
2. That the private respondent qualified the departmental examinations earlier than the appellant and rose to the post of Circle Head Draftsman. Thereafter, the appellant also passed the departmental examinations conducted for various posts and ultimately elevated as Circle Head Draftsman on 26-2-2009 vide order No. SO(F)IRR:/3/91 dated 26-2-2009 (copy Annex-B).
3. That the appellant came to know from reliable sources that the Competent Authority was going to notify a wrong seniority list of Circle Head Draftsman in which the private respondent will be made senior than appellant in utter violation of law. Therefore, the appellant filed a departmental appeal with the Chief Engineer (South) Irrigation Department, Peshawar on 8-3-2013 praying therein that the seniority of the said employees may kindly be reckoned from the date of their initial recruitment and then the seniority list may be notified accordingly (Copy Annex-C).
4. That in the meanwhile, the Administrative Officer of the Irrigation Department vide Endst No.4266-69/IB/IA/39-E dated 15-3-2013

notified the Tentative Seniority List of the Circle Head Draftsman and the concerned employees were provided opportunity to file appeal / representation if any within 30 days **(Copy Annex-D)**.

5. That the appellant felt aggrieved by the said Tentative Seniority List, moved an application to the Competent Authority on 5-4-2013 wherein he prayed that his earlier departmental appeal which was addressed to him may kindly be considered sympathetically and the disputed seniority list may be rectified accordingly **(Copy Annex-E)**.
6. That the request of the appellant for rectification of the said seniority list was not considered in accordance with law and the respondent No.3 vide Endst No. 7688-91/IB/A/39-E dated 15-5-2013 notified the final seniority list of Circle Head Draftsman in which the private respondent was shown senior than the appellant **(Copy Annex-F)**.
7. That the appellant felt aggrieved by the aforesaid Final Seniority List, filed a departmental appeal with respondent No.2 on 10-6-2013 wherein he has prayed that the above seniority list may kindly be rectified and the appellant may graciously be declared as senior than the private respondent on basis of his initial recruitment **(Copy Annex-G)**.
8. That the above departmental appeal was neither decided within the statutory period of law with cogent reasons nor any information whatsoever was given to the appellant as required under **Article 19-A of the Constitution of Islamic Republic of Pakistan 1973**. Thus, the Appellate Authority has blatantly violated the provision of law as well as Constitution and the Principle laid down by **August Supreme Court of Pakistan** in case reported in **2011 SCMR 1 (Citation -B)**. The relevant citation is reproduced herein for facility of reference:-

(b) General Clauses Act (X of 1897)---

**----S. 24-A ---Speaking order- Public
functionaries are bound to decide cases of their
subordinates after application of mind with
cogent reasons within reasonable time.**

It is well settled law that the decision of August Supreme Court of Pakistan is binding on each and every organ of the State by virtue of Article 189 and 190 of the Constitution of Islamic Republic of Pakistan, 1973. Reliance can be placed on the judgment reported in **1996-SCMR-Page-284 (Citation-C)**. The relevant citation is as under:-

(c) Constitution of Pakistan (1973)

**Arts. 189 & 190--- Decision of
Supreme Court Binding, effect of---
Extent—Law declared by Supreme
Court would bind all Courts,
Tribunals and bureaucratic set-up in
Pakistan**

7. That the appellant now files this appeal before this Hon'ble Tribunal inter-alia on the following grounds within the statutory period of law.

GROUND OF APPEAL

- A. That the Competent Authority was under statutory obligation to determine the seniority of the appellant and private respondent from the date of their initial recruitment in accordance with the provision of Section 8(4) of the Khyber Pakhtunkhwa Civil Servant Act, 1973 read with Rule 7 of the Khyber Pakhtunkhwa (Civil Servants Appointment, Promotion and Transfer) Rules 1989. But he failed to do so and made the private respondent rank senior than the appellant on the basis of passing departmental examination and acquiring of higher grade

earlier than appellant. Thus, the Competent Authority has blatantly violated the law. Therefore, the impugned seniority list is not sustainable in the eye of law.

B. That the controversy in respect of similar seniority has already been set at naught by this Hon'ble Tribunal while deciding the following appeals and it was held that seniority of civil servant is to be reckoned from the date of his initial recruitment and not from the date of passing departmental examination or award of selection grade. It was further held that **" there may be a pre-requisite of passing of departmental examination for grant of selection grade, but passing of departmental examination and grant of selection grade cannot confer a right to seniority on those who succeeded in the departmental examination, as selection grade is a financial benefit having nothing to do with the seniority, which is governed by the afore-mentioned provision of law "**.

1. Appeal No. 206/1989 titled
"Alamgir Shah VS Chief Engineer Irrigation etc"
Decided on 21-7-1992
2. Appeal No. 31/1995 titled
"Gulma Khan VS Secretary Irrigation etc "
Decided on 3-6-1996
3. Appeal No.1150/1997 titled
"Hajji Zaram Jan VS Secretary Irrigation etc"
Decided on 4-6-2003
4. Appeal No. 164/Neem/2004 titled
" Waheed-ur-Rehman VS Chief Engineer Irrigation etc"
Decided on 11-3-2006.
5. Appeal No. 611/2004 titled
"Fareed Gul VS Secretary Irrigation etc"
Decided on 3-6-2011

C. That Abdur Rahim and others, private respondents in appeals No.164/Neem/2004, No.263/Neem/2004, No.493/Neem/2004, No.610/Neem/2004 and No.611/Neem/2004, dissatisfied with the order of this Hon'ble Tribunal dated 3-6-2011 and preferred separate appeals

before the August Supreme Court of Pakistan which were dismissed vide order dated 22-7-2011 (Copy Annex-H) . It is well settled principle of law that when the Tribunal or the Supreme Court decides a point of law pertaining to the terms and conditions of civil servant, other similarly placed employees who had not litigated may not be compelled to approach the Tribunal or any other legal forum for same relief. But justice demands that these employees may also be provided such benefit. Reliance in this respect can be placed on the judgment of August Supreme Court of Pakistan reported in 2009 SCMR- Page 1 citation (a). The relevant citation is reproduced herein for facility of reference:-

Civil Service

---Administration of justice---If a Tribunal or the Supreme Court decides a point of law relating to the terms and conditions of a civil servant who litigated, and there were other civil servants, who may not have taken any legal proceedings, in such a case, the dictates of justice and rule of good governance demand that the benefit of the said decision be extended to other civil servants also, who may, not be parties to that litigation, instead of compelling them to approach the Tribunal or any other legal forum---All citizens are equal before law and entitled to equal protection of law as per Art.25 of the Constitution.

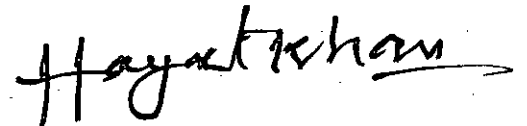
But the Competent Authority has blatantly violated the above decisions of the Superior Courts. Therefore, the impugned seniority list is against the spirit of law.

- D.** That the respondents did not point out any provision of law authorizing him to count the seniority of the appellant and the private respondent on the basis of passing departmental examination and award of selection grade. Thus, the impugned seniority list is against the legal norms of justice.

- E. That the Competent Authority has acted in derogation of clear law on the subject and the judgments passed by this Hon'ble Tribunal and August Supreme Court of Pakistan, therefore the above seniority list is not tenable in the eyes of law .
- F. That the impugned seniority list suffers from legal infirmities and as such caused grave miscarriage of justice to the appellant.
- G. That the seniority list in question is against law, facts of the case and norms of natural justice. Therefore, the same are untenable under the law.
- H. That the disputed seniority list is the result of misreading and non-reading of relevant documents. Hence, it is liable to be set aside.
- I. That the impugned seniority list is based on surmises and conjectures. Hence, the same has no sanctity under the law.

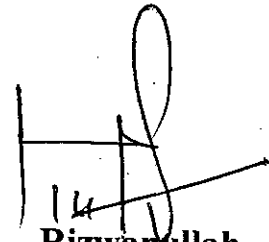
In view of the above narrated facts and grounds, it is, therefore, humbly prayed that the final seniority list of Head Circle Draftsman notified by the respondent No.3 vide endorsement No. 7688-91/IB/A/39-E dated 15-5-2013 may graciously be modified and the appellant may kindly be held rank senior than Saeedullah private respondent on the basis of his initial recruitment which was made earlier than the latter.

Any other relief deemed proper and just in the circumstances of the case, may also be granted.



Appellant

Through



Rizwanullah

M.A. LL.B

Advocate High Court,
Peshawar

RIZWANULLAH
M.A. LL.B

Advocate High Court / Federal
Shariat Court of Pakistan, Peshawar

Dated: 11-9-2013

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. _____/2013

Hayat Khan
Circle Head Draftsman,
O/O the Superintending Engineer,
Bannu Irrigation Circle, Bannu.

APPELLANT

VERSUS

- Secretary Government of Khyber Pakhtunkhwa, Irrigation & Power Department, Peshawar and others.

RESPONDENTS

AFFIDAVIT

I, Mr. Hayat Khan , Circle Head Draftsman O/O the Superintending Engineer, Bannu Irrigation Circle, Bannu , do hereby solemnly affirm and declare that the contents of the accompanied Service Appeal are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.

Hayat Khan
Deponent

Attested

HAYAT KHAN ADVOCATE
NOTARY PUBLIC
No.
Date... 12... 29... 2013
Distt. Courts Peshawar

29/12

(9)

No. 19299-193 / IB/A/11-E, Dated Peshawar, the 1 / 1973

From

The Chief Engineer,
Irrigation Department, NWFP.,
Peshawar.

To

Mr. Hayat Khan s/o Sheraz Gul,
Village Kial Toor Adm. Banda P.O.
Dist: Yeshu. & Dist: Kaseek.

Subject: APPOINTMENT OF TRACER.

1. You are hereby offered a post of an officiating Temporary Tracer on Rs. 150/-p.m. in the National Pay Scale of Rs. 150-0-180/N-220/10-260, on the conditions of service in this Department.
2. Your employment in this department is purely temporary and your services may be terminated at 15 days notice without any reasons being assigned at any time irrespective of the fact that you are holding a post other than the one to which you were originally recruited or on the payment of 15 days salary in lieu of the notice.
3. You have to join duty at your own expenses.
4. You will have to produce a Medical Certificate of fitness if your services continue beyond six months.
5. You will have to produce -
 - i/ A certificate of fitness.
 - ii/ A certificate to be given by you that you are not a dismissed Government Servant.
 - iii/ Return the enclosed form of declaration duly signed by you.
6. You will be governed by such rules and orders relating to leave, T.A., Medical Attendance, Pay, Pension and discipline etc; as exist and as may be issued by Government for the category of Government servants to which you belong.
7. If you accept the post on the above mentioned conditions, you should report yourself for duty to the Executive Engineer Marwat Canal 147: Division Baran as soon as possible and produce all the required original certificates in connection with your qualifications, domicile and age.
8. Your services in this Department will be subject to the West Pakistan Essential Services (Maintenance) Act, 1958.
9. The offer will be considered as cancelled if no reply is received from you by 10.1.1974. or if you fail to report for duty upto the above date at the latest.

Attestd
[Signature]

RIZWANULLAH
M.A.L.L.B
Advocate High Court Federal
Shariat Court of Pakistan Peshawar.

[Signature]
SENIOR STAFF OFFICER,
Office of the Chief Engineer, Irrigation
Department N.W.F.P., Peshawar

No. 1130 / IB/A/11-E,

Copy forwarded to the :-

- 1. Executive Engineer - Maximal Canal
III: DIVISION BANNU
- 2. ~~Executive Engineer~~ _____

for information and necessary action.

The following particulars and documents in respect of the candidate may be furnished to this office in due course:-

- 1. Date of Birth.
- 2. Date of arrival.
- 3. Home District.
- 4. Educational Certificate.
- 5. Domicile Certificate.
- 6. Character and antecedents certification certificate (in latest revised form).

Sd/- SENIOR STAFF OFFICER,
Office of the Chief Engineer, Irrigation
Department, NWFP., Peshawar.

Saadat
26.12.1973.

Attas
H
RIZWANULLAH
M.A.L.L.B
Advocate High Court / Federal
Shariat Court of Pakistan, Peshawar

11
Annex-B (11)

GOVERNMENT OF NWFP
IRRIGATION DEPARTMENT

Dated Peshawar the 26th February, 2009

ORDER

NO SO(E)IRR/4-3/91: Consequent upon the recommendations of the Departmental Promotion Committee of the Irrigation Department, the Competent Authority is pleased to promote the following Divisional Head Draftsman BS-13 to Circle Head Draftsman BS-16, in the Irrigation Department, on regular basis, with immediate effect, in the public interest:-

1. Mr. Niamat Ali
2. Mr. Hayat Khan.
3. Mr. Arzoomand.

2. On regular promotion the officers will be on probation for a period of one year in terms of Section 6(?) of NWFP Civil Servants Act, 1973 read with Rule 15(I) of NWFP Civil Servants (Appointment, Promotion and Transfer) Rules, 1989.

3. On their regular promotion, the following adjustments amongst the Circle Head Draftsman BS-16 against the vacant posts are hereby ordered with immediate effect, in the public interest.

S.No.	Name & Designation	From	To	Remarks
1.	Mr. Niamat Ali, Circle Head Draftsman BS-16	Circle Head Draftsman o/o Chief Engineer (Dev), Irrigation Department (OPS)	Circle Head Draftsman o/o Chief Engineer (Dev), Irrigation Department Peshawar	Against the vacant post
2.	Mr. Hayat Khan, Circle Head Draftsman BS-16	Circle Head Draftsman o/o Chief Engineer (O&M), Irrigation Department (OPS)	Circle Head Draftsman o/o Chief Engineer (O&M), Irrigation Department Peshawar	Against the vacant post.

Attended
H.T.

RIZWANULLAH
M.A.L.L.B
Advocate High Court / Federal
Shariat Court of Pakistan, Peshawar.

2/3/09

809

A.M.

12


3	Mr. Arzoomand, Circle Head Draftsman BS-16	Circle Head Draftsman o/o Superintending Engineer, Northern Irrigation Circle Mardan (OPS)	Circle Head Draftsman o/o Superintending Engineer, Northern Irrigation Circle Mardan.	Against the vacant post.
---	--	--	---	--------------------------


Secretary to Govt of NWFP
Irrigation Department

Endst: No. & date as above.

Copy of the above is forwarded to:

1. The Accountant General, NWFP, Peshawar
2. The Chief Engineer (O&M), Irrigation Department, Peshawar.
3. The Chief Engineer (Dev), Irrigation Department, Peshawar.
4. The Director General, Small Dams Organization, Peshawar.
5. All Superintending Engineers of Irrigation Department.
6. The District Accounts Officer Mardan.
7. PS to Minister for Irrigation NWFP
8. PS to Secretary, Irrigation Department, Peshawar.
9. PA to Additional Secretary, Irrigation Department, Peshawar.
10. Officers concerned.


Section Officer (Establishment)
Irrigation Department

Attested

RIZWANULLAH
M.A.L.L.B
Advocate High Court / Federal
Shariat Court of Pakistan, Peshawar.

To

Annex-C (13)

The Chief Engineer (South)
Irrigation Deptt: Peshawar.

Subject:- APPEAL OF REJOINING THE INTER-SE SENIORITY/FIXING OF SENIORITY ON THE BASIS OF THE 1ST APPOINTMENT.

Sir,

Respectfully it is stated that I have joined the Irrigation Department on 31-12-1973 and Mr. Saeedullah Circle Head Draftsman has joined the Department on 1-5-1974 but his name was incorporated in the seniority list senior to me which is totally violation of the judgment of service tribunal as well as Supreme Court of Pakistan in case titled Waheed-ur-Rehman Sub Engineer V/S Govt: of Khyber Pakhtunkhwa and other.

The position of Saeedullah and the undersigned is tabulated as under:-

S.No.	Name	Date of appointment	Date of promotion as Draftsman	Date of promotion as Head Draftsman	Date of promotion as Circle Head Draftsman
1	Mr. Saeedullah	1-5-1974	26-12-1979	31-7-1991	23-9-2006
2	Mr. Hayat Khan	31-12-1973	11-10-1986	24-1-1995	26-2-2009

In view of the position explained above I am senior to Mr. Saeedullah Circle Head Draftsman on the basis of 1st entry into Govt: service and my seniority may kindly be fixed on the basis of 1st entry into service so as to enable me to region my inter-se seniority in upper scale please.

Encls:

- 1) Two Nos page of the Civil servants (Seniority) Rules, 1993 (attached)
- 2) 7 Nos copy of Service Tribunal Decision dated 11-3-2006 (attached)

Yours obediently
Hayat Khan C.H.D.
Hayat Khan Circle Head Draftsman
O/O Chief Engineer (South) Irrigation
Department Peshawar. 8/3/2013

Copy to the Secretary to Govt: of Khyber Pakhtunkhwa Irrigation Deptt: Peshawar for information.

GOVERNMENT OF KHYBER PAKHTUNKHWA IRRIGATION DEPARTMENT.

Seniority list of Circle Head Draftsman

In pursuance of Section -8 of Civil Servants Act, 1973 the tentative Seniority List as Stood on 31-12-2012 of Circle Head Draftsman is hereby published for information of all concerned.

S.No.	Name, Father Name and qualification	Domicile	Date of Birth	Date of 1st Appointment	Date of promotion as DIID	Date of Promotion as CHD	BPS	Remarks
1	2	3	4	5	6	7	8	9
1.	Mir. Saeedullah S/O Nawabzar Ali Khan Matric GM 5/91	Bannu	1/2/1955	29/4/1974	31/7/91	23/9/2006	16	By Promotion
2	Syed Zainoor Shah S/O Fazli Khaliq F.A G.M 05/1991	Swat	6/9/1953	29/12/1973	19/8/92	29/5/2008	16	By Promotion
3	Niamat Ali S/O Muhammad Ali B.A G.M.10/92	Bannu	2/04/1953	29/12/1973	24/1/95	26/2/2009	16	By Promotion
4	Hayat Khan S/O Sheraz Gul Matric G.M.10/92	Karak	14/8/1954	29/12/1973	24/1/95	26/2/2009	16	By Promotion
5	Arzomand S/O Bhamand Matric G.M.10/92	MKD Agency	4/02/1955	1/7/1975	24/1/1995	26/2/2009	16	By promotion
6	S. Tanweer Hussain S/O Feroz Hussain Matric G.M.4/2003	DIKhan	15-1-1955	20-5-79	31-1-2004	27-6-2012	16	By promotion
7	Anisul Hussain S/O Faiz Mohad Matric G.M.6/2002	DIKhan	3/4/1958	20/12/80	31-1-2004	27-6-2012	16	By promotion
8	Muhammad Rashid S/O Mohd Yousof BA G.M.7/97	Mardan	8/3/1958	8/3/1981	31-1-2004	27-6-2012	16	By promotion

No 4266-67 /IB/A/39-E

Copy forwarded to the:-

1. Chief Engineer (North) Irrigation Deptt: Khyber Pakhtunkhwa Peshawar.
2. All Superintending Engineers in Irrigation Department,
3. Director General Small Dams Organization Peshawar.

They are requested to get note the seniority list from all the Circle Head Draftsman and appeal/representation if any may be submitted to this office within 30 days, failing which the seniority will be published as final.

Administrative Officer

Attested

RIZWANULLAH
Advocate High Court / Fiqh
Shariat Court of Pakistan Peshawar

Syed ul Haq Natt

Administrative Officer

Annex-D

To

The Chief Engineer (South),
Irrigation Deptt: Peshawar.

Subject:- APPEAL AGAINST THE TENTATIVE SENIORITY LIST ISSUED
VIDE NO.4266-69/IB/A/39-E DATED 15-3-2013.

Sir,

It is submitted that I have already been submitted appeal (coy enclosed)
which may kindly be considered and restore my seniority please.

Yours obediently

Hayat Khan
Hayat Khan * 5/4/2013
Circle Head Draftsman
office of the Chief Engineer
(South) Irr: Deptt: Peshawar.

GOVERNMENT OF KHYBER PAKHTUNKHWA IRRIGATION DEPARTMENT.

Seniority list of Circle Head Draftsman

In pursuance of Section -8 of Civil Servants Act, 1973 the Final Seniority List as Stood on 31-12-2012 of Circle Head Draftsman is hereby published for informaton of all concerned.

S.No.	Name, Father Name and qualification	Domicile	Date of Birth	Date of Ist Appointment	Date of promotioin as DHD	Date of Promotion as CHD	BPS	Remarks
1	2	3	4	5	6	7	8	9
1	Mir. Saeedullah S/O Nawabzar Ali Khan Matric GM 5/91	Bannu	1/2/1955	29/4/1974	31/7/91	23/9/2006	16	By Promotion
2	Syed Zainoor Shah S/O Fazli Khaliq F.A G.M 05/1991	Swat	6/9/1953	29/12/1973	19/8/92	29/5/2008	16	By Promotion
3	Niamat Ali S/O Muhammad Ali B.A G.M.10/92	Bannu.	02/04/1953	29/12/1973	24/1/95	26/2/2009	16	By Promotion
4	Hayat Khan S/O Sheraz Gul Matric G.M.10/92	Karak	14/8/1954	29/12/1973	24/1/95	26/2/2009	16	By Promotion
5	Arzomand S/O Bharmand Matric G.M.10/92	MKD Agency	4/02/1955	1/7/1975	24/1/1995	26/2/2009	16	By promotion
6	S.Tanweez Hussain S/O Feroz Hussain Matric G.M.4/2003	DIKhan	15-1-1955	20-5-79	31-1-2004	27-6-2012	16	By promotion
7	Anisul Hussain S/O Faiz Mohad Matric G.M.6/2002	DIKhan	3/4/1958	20/12/80	31-1-2004	27-6-2012	16	By promotion
8	Muhammad Rashid S/O Mohd Yousaf. BA G.M.7/97	Mardan	8/3/1958	8/3/1981	31-1-2004	27-6-2012	16	By promotion

Supertending Engineer (H/A)

No. 7688-91 /IB/A/39-E

Copy forwarded to the:-

- 1 Chief Engineer (North) Irrigation Deptt: Khyber Pakhtunkhwa Peshawar.
- 2 All Superintendeng Engineers in Irrigation Department.
- 3 Director General Small Dams Organization Peshawar.

15/05/2013

Fadgulhaq ASSH

Supertending Engineer (H/O)

To

The Chief Engineer (South),
Irrigation Department,
Government of Khyber Pakhtunkhwa, Peshawar.


Subject:-

DEPARTMENTAL APPEAL AGAINST THE FINAL SENIORITY LIST OF THE CIRCLE HEAD DRAFTSMAN NOTIFIED AND PUBLISHED BY THE SUPERINTENDING ENGINEER (I.O) IRRIGATION DEPARTMENT KPK VIDE ENDST: NO 7688- 91/IB/IA/39-E DATED 15-5-2013.

Respected Sir,

With great veneration I beg to state that I was appointed as Tracer in the Irrigation Department on 31-12-1973 vide order No. 19299-19300/IB/A/11-E dated 29-12-1973 and necessary entry was duly made in the service book of the appellant in this respect (copy Annex-A). Similarly, one Saeedullah S/O Nawabzar Ali Khan was also inducted as Tracer in the said department with effect from 29-4-1974. He qualified the departmental examinations earlier than the appellant and rose to the post of Circle Head Draftsman. Thereafter, the appellant also passed the departmental examinations conducted for various posts and ultimately elevated as Circle Head Draftsman on 26-2-2009 vide order No. SO(I)IRR:/3/91 dated 26-2-2009 (Copy Annex- B).

The appellant came to know from reliable sources that the Competent Authority was going to notify a wrong seniority list of Circle Head Draftsman in which Saeedullah will be made senior than appellant in utter violation of law. Therefore, the appellant filed a departmental appeal with the Chief Engineer (South) Irrigation Department, Peshawar on 8-3-2013 praying therein that the seniority of the said employees may kindly be reckoned from the date of their initial recruitment and then the seniority list may be notified accordingly (Copy Annex- C). In the meanwhile, the Administrative Officer of the Irrigation Department vide Endst: No. 4266-69/IB/IA/39-E dated 15-3-2013 notified the Tentative Seniority List of the Circle Head Draftsman and the concerned employees were provided opportunity to file appeal/representation if any within 30 days (Copy Annex- D). The appellant


RIZWANULLAH
M.A.L.L.B
Advocate High Court / Federal
Shariat Court of Pakistan, Peshawar.

felt aggrieved by the said tentative seniority list, submitted an application to the Competent Authority on 5-4-2013 wherein he prayed that his earlier departmental appeal which was addressed to him may kindly be considered sympathetically and the disputed seniority list may be rectified vide application (Annex-E).

The request of the appellant for rectification of the said seniority list was not considered in accordance with law and the department notified the Final Seniority List of Circle Head Draftsman on 15-5-2013 in which Saeedullah Circle Head Draftsman was shown senior than the appellant (Copy Annex-F). It is pertinent to mention here that the appellant was selected earlier than Saeedullah. Therefore, he was to rank higher than the latter on account of his initial selection. Rule 17(a) of the KPK Province (Appointment, Promotion and Transfer) Rules 1989 provided that person selected for appointment to post in earlier selection would rank senior to person selected in later selection. Reliance in this respect can be placed on the judgment of August Supreme Court of Pakistan reported in 1998 SCMR page 633. It is well settled law that when a statute prescribes a particular mode of doing an act it must be done in that way alone to gain validity. It is also celebrated principle of law that seniority is to be determined / reckoned with reference to the date of initial appointment of civil servant to a particular post by virtue of Section 8(3) of Khyber Pakhtunkhwa Province Civil Servants Act 1973.

Mere passing of departmental examinations and then acquired higher grades before appellant would not entitle the disputed civil servant to become senior than appellant who had also qualified the said departmental examinations later and got the same status / grade. There may be a pre-requisite of passing departmental examination for grant of selection grade etc, but passing of departmental examinations and grant of selection grade cannot confer a right to seniority on those who succeeded in departmental examinations, as selection grade / higher grade is a benefit having nothing to do with seniority. Thus, the plea of passing departmental examination is immaterial and seniority of civil servant will only be determined from the date of his regular appointment as per decision of the Hon'ble KPK Service Tribunal and August Supreme Court of Pakistan (Copies Annex-C & D).

In view of the above narrated facts and grounds, it is, therefore, humbly prayed that the Final Seniority List of the Circle Head Draftsman may

Att. Secy
RIZWANULLAH
M.A. L. Q. J.
Advocate High Court / Federal
Shariat Court of Pakistan, Peshawar

Kindly be rectified and the appellant may graciously be declared as senior than Saeedullah Circle Head Draftsman so as to secure the ends of justice.

Yours obediently,

Hayat Khan

(Hayat Khan)

Circle Head Draftsman

O/O the Superintending

Engineer, Bannu Irrigation Circle,

Bannu.

Dated 10.6.2013.

Att. Secy
[Signature]

RIZWANULLAH
M.A.L.L.B
Advocate High Court / Federal
Shariat Court of Pakistan, Peshawar.

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8
10-9

PRESENT

MR. JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY, C.J.
MR. JUSTICE GHULAM RAHBANI.

CIVIL PETITION NO. 1042, 1091 & 1092 OF 2011
(On appeal from the judgment dated 03.06.2011 in S.A.
No. 164/NEEM/2004, No. 610/2004 & 611/2004,
passed by the KPK Service Tribunal, Peshawar)

Abdul Rahim & others

Petitioners
(in all cases)

VERSUS

Govt. of KPK through Secretary
Irrigation & Power Department,
Peshawar and others

Respondents
(in all cases)

For the petitioner:

Mr. Abdul Rehman Siddiqui, ASC

For the respondents

N.R.

Date of hearing:

22.7.2011.

JUDGMENT

IFTIKHAR MUHAMMAD CHAUDHRY, C.J.- These petitions

have been filed for leave to appeal against the judgment dated 3.6.2011 in
Service Appeals No. 164/Neem/2004, No.363/Neem/2004,
No.493/Neem/2004, No. 610/Neem/2004 and No. 611/Neem/2004,
passed by the Khyber Pakhtoon Khawa Service Tribunal, Peshawar.

2. In the instant case the private respondents in these petitions
feeling dissatisfied from the departmental seniority list approached the
Service Tribunal on 28.2.2004 with the prayer that the petitioners
(respondents before the Service Tribunal) are junior in service but they
have illegally been shown senior in the seniority list dated 31.12.2002. In

ATTESTED

Superintendent
Supreme Court of Pakistan
ISLAMABAD

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264

the earlier round of litigation the Service Tribunal's appeals were allowed by the Tribunal vide judgment dated 11.3.2006 which judgment was challenged in C.As. No. 525 to 529 & 901 to 905 of 2006 and with consent of the parties cases were remanded to the Tribunal vide order dated 24.2.2010. The said order being relevant for disposal of the instant petitions is reproduced hereinbelow:

"By consent of the parties, these appeals are accepted, judgment impugned set aside and cases remanded to learned Service Tribunal for deciding the same afresh after affording proper opportunity of hearing to all concerned. All the contentions agitated today can be raised conveniently before the learned Service Tribunal including the question of limitation which shall be dilated upon and decided in accordance with law and on merits."

In post remand proceedings Service Tribunal accepted the appeals filed by the respondents declaring them senior to the petitioners. As such instant petitions have been filed for leave to appeal.

3. Learned counsel contended that an undated departmental representation against the seniority list dated 31.12.2002 was filed which was rejected on 4.3.2004, whereas prior to its rejection the respondents have filed appeal before the Service Tribunal on 28.2.2004 without challenging the departmental order which was pronounced after the institution of the appeals, therefore, according to him the appeals were not competent.

4. It is to be noted that Service Tribunal had attended to this aspect of the case in the following para:

"9. Adverting to the question of limitation in accordance with the direction contained in the order dated 24.2.2010 of the august Supreme Court of Pakistan, it may be pointed out that departmental appeals of Waheed-ur-Rehman, Hidayatullah and Ida Jan were rejected vide letter dated 14/2/2004, while Waheed-ur-

ATTESTED

[Signature]
Secretary to the Tribunal
Islamabad

Rehman lodged appeal on 28.2.2004, Hidayatullah alleged non-receipt of rejection order within the statutory period of 90 days, and lodged appeal after expiry of the statutory period on 9.6.2004 and Idris Jan alleged receipt of the rejection order on 26.3.2004 and lodged the appeal on 26.4.2003. Like-wise, both Farid Gul and Nasir-ud-din, appellants, preferred departmental appeals on 11.2.2004 and 16.2.2004, respectively, and when received no response within the statutory period, they jointly lodged appeal on 5.6.2004, which was withdrawn vide order dated 5.8.2004 with permission to file fresh appeals separately within 30 days. Separate appeals were accordingly lodged on 9.8.2004. It may not be out of place to point out here that departmental appeals of three appellants, mentioned above, were rejected on merits, meaning thereby that delay, if any, in preferring departmental appeals, was impliedly condoned by the appellate authority. There can be no cavil about the legal proposition that each and every seniority list accrues a fresh cause of action in favour of a government servant aggrieved of such seniority list. The department has also acted in derogation of clear law on the subject and judgments of the Tribunal, not yet reversed by the august Supreme Court of Pakistan, therefore, even otherwise, limitation would not run against void orders. As such, the appeals are held to be within time."

It is true that the appeals were required to be filed only against the original appellate order but in the instant case, rejection order, which was available on record, was passed on 4.3.2004, whereas the appeals were submitted on 28.2.2004. There could be two situations under the law, namely, either the respondents (appellants before the Tribunal) have to wait for 90 days after filing of representation; and if no reply is given then within 30 days appeal is competent. Learned counsel emphasized that this argument could have been available to the respondents if they had mentioned the date of departmental representation. Admittedly, this is a

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question of fact which is required to be probed, but so far as this Court is concerned, it has jurisdiction which is to be exercised under Article 212 of the Constitution. It is the prerogative and jurisdiction of the Service Tribunal to condone the delay or deal with the situation. Since in the instant case after having taken into consideration all aspects of the case, as is evident from the para reproduced hereinabove, the learned Tribunal has exercised its jurisdiction, we are not inclined to interfere on the question of limitation.

5. On merits learned counsel candidly admitted that the petitioner Abdur Rahim joined the service as Sub Engineer on 1.6.1985 whereas one of the respondents Wahid ur Rehman (appellant before the Service Tribunal) joined the service on 29.6.1981 and admittedly the service of both the sides are governed under the NWFP Irrigation and PHE Department (Recruitment and Appointment) Rules 1979. On our repeated demands learned counsel could not show any provision from the said Rules that in such like cases the seniority could not be reckoned from the date of appointment but from the date of awarding selection grade. It is to be noted that the petitioners essentially were not in the service when the respondents joined the same, therefore, they should have brought on record the above material to the effect that when they entered into the service of the department they would have been entitled to reckon their seniority.

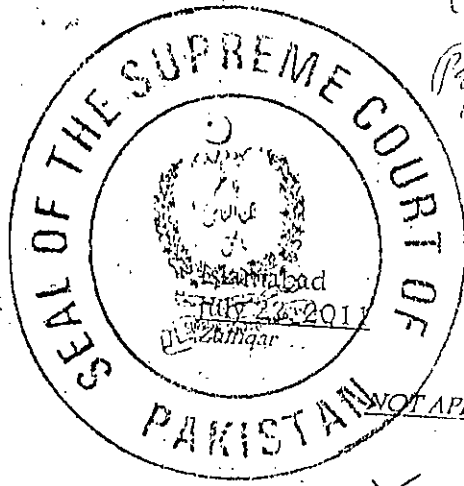
6. So far as the question of grant of selection grade is concerned, this has rightly been dealt with by the Tribunal because it is only for the purpose of fiscal benefit in the selection grade and it cannot confer a right to seniority on those who succeeded in the departmental examination. No other point has been argued by the learned counsel.

ATTESTED

Superintendent
Supreme Court of Pakistan
ISLAMABAD

Thus, for the foregoing reasons all the three petitions are dismissed and leave is refused. —

*W/ Petitioner: Muhammad Chaudry CJ
P/gy: Khulam Rabbani J*



Certified to be True Copy

[Signature]
Superintendent
Supreme Court of Pakistan
ISLAMABAD

NOT APPROVED FOR REPORTING

[Signature]
6-8-11

7782/4

Case no.	7782/4	Civil/Criminal
Date of Institution	20-8-11	
No. of Charges	15	1500
No. of folios		
Requisition Fee Rs.	5.00	
Copy Fee in:	9.50	
Court Fee stamps	14.30	
Date of Completion of Copy:	22-8-2011	
Date of delivery of Copy:	22-8-2011	
Compared by:	<i>[Signature]</i>	
Received by:	<i>[Signature]</i>	

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA

Appeal No. 1335/2013

Mr. Hayat Khan Circle Head Draftsman

Appellant

VERSUS

- 1) Secretary to Govt: of Khyber Pakhtunkhwa
Irrigation Department Peshawar.
- 2) Chief Engineer (South) Irrigation Department
Khyber Pakhtunkhwa Peshawar.
- 3) Superintending Engineer (H/Q) Irrigation Department
Khyber Pakhtunkhwa Peshawar.

Respondents

Subject: **JOINT PARA-WISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1 TO 3.**

Respectfully Sheweth

Preliminary objection.

- 1) That the appeal is barred by law.
- 2) That the appeal is bad for misjoinder and non joinder of necessary parties
- 3) That the appellant has no locus standi.
- 4) That the appellant not come to the Court with clean hand.

FACTS

1. Para-1 pertains to record hence no comments.
2. In para-2, the appellant himself admits that he has been promoted as Circle Head Draftsman in 2009, while as per seniority list, the private respondent has been promoted as Circle Head Draftsman in 2006 (Seniority List attached).
3. Incorrect. The appellant claims his seniority from his initial appointments while the seniority is maintained for the appointment/promotion at each category separately.
4. Para-4 relates to the record and need no comments.
5. As per para-4 above.
6. Para-6 is not based on facts and is incorrect as the seniority of Circle Head Draftsman notified vide No.7688-91/IB/A/39-E dated 15-5-2013 is fully covered under the prevailing rules.
7. As per standing Appointment, Promotion and Transfer Rules 1989, the official promoted in one batch shall retain his inter-se seniority in the upper scale, while in the instant case, the appellant was not eligible at the time of promotion of private respondent, and after passing the prescribed departmental examinations he was promoted and was placed junior in the seniority list from the private respondent.

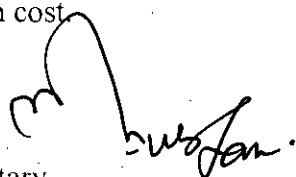
8. The departmental appeal of the appellant was thoroughly examined by respondents and after due application of mind, it was regretted on cogent reasons. More over the appellant has not challenged the earlier seniority list issued vide this office letter No.2190-92/IB/A/39-E dated 1-2-2011 and No.91-93/IB/A/39-E dated 3-1-2012 by the department. At this belated stage, the appellant cannot challenge the same and his departmental appeal was rightly regretted. (Order annexed)

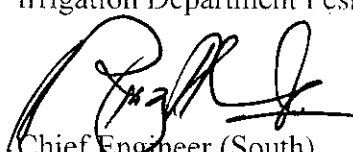
That the appeal of the appellant is not maintainable on the following grounds.

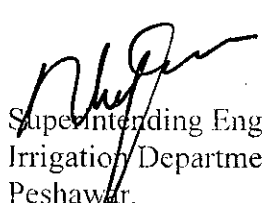
GROUNDS

- A. Incorrect. That the seniority of the appellant together with others notified in light of prevailing rules/instructions and he has rendered more than three years service in the present capacity during which the 2 No seniority list as stood on 31-12-2010 and 31-12-2011 have circulated but he has not preferred any appeal/representation against them except the present appeal.
- B. Incorrect. All the decisions quoted by the appellant in different types of cadres which ~~does~~^{are} not applicable in the instant case.
- C. As per para B above.
- D. Incorrect. As explained in para-7 of the fact finding that Appointment, Promotion & Transfer Rules 1989 in this regard is quite clear which clearly state that the official promoted earlier shall rank senior from the official who promoted later on.
- E. Incorrect. The seniority list of these categories of Drawing Establishment is also based on prevailing rules/regulation.
- F. Incorrect. As per para E above.
- G. Incorrect. As per para E above.
- H. Incorrect. The seniority list of the appellant as well as other concerned were notified in light of rules/regulations and no violation was occurred in this regard.
- I. As per para H above.

It is very humbly prayed to dismiss the appeal with cost.


Secretary
Govt. of Khyber Pakhtunkhwa
Irrigation Department Peshawar


Chief Engineer (South)
Irrigation Department
Peshawar.



Superintending Engineer (H/Q)
Irrigation Department,
Peshawar.

Power of Attorney

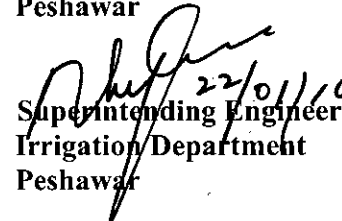
Mr. Hidullah Shah, Administrative Officer (North) Irrigation Department Peshawar is hereby authorized to attend the Khyber Pukhtunkhwa Service Tribunal Peshawar in Connection with Service appeal No. 1335/2013 filled by Mr. Hayat Khan Circle Head Draftsman on behalf of respondents 1 & 3.



Secretary
Govt: Khyber Pukhtunkhwa
Irrigation Department Peshawar



Chief Engineer (South)
Irrigation Department
Peshawar



Superintending Engineer (H/Q)
Irrigation Department
Peshawar

BEFORE THE SERVICE TRIBUNAL KHYBER PUKHTUNKHWA

Appeal No. 1335/2013

Mr. Hayat Khan Circle Head Draftsman

(Appellant)

VERSUS

- 1) Secretary to Govt: of Khyber Pukhtunkhwa
Irrigation Department Peshawar.
- 2) Chief Engineer (South),
Irrigation Department Peshawar.
- 3) Superintending Engineer (H/Q)
Irrigation Department Peshawar.

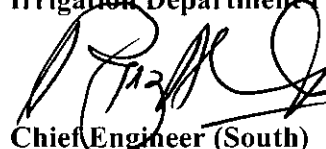
(Respondents)

COUNTER AFFIDAVIT

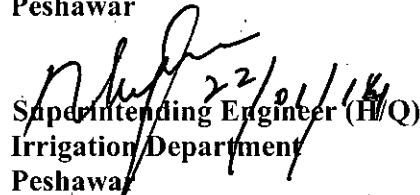
We do hereby solemnly affirm and declare that para-wise comments given in appeal No. 1335/2013 filled by Mr. Hayat Khan Circle Head Draftsman are correct to the best of our knowledge and nothing has been concealed from August Service Tribunal.



Secretary
Govt: Khyber Pukhtunkhwa
Irrigation Department Peshawar



Chief Engineer (South)
Irrigation Department
Peshawar



Superintending Engineer (H/Q)
Irrigation Department
Peshawar

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Annex F

GOVERNMENT OF KHYBER PAKHTUNKHWA IRRIGATION DEPARTMENT

Seniority List of Circle Head Draftsman

In pursuance of Section -8 of Civil Servants Act, 1973 the Final Seniority List as Stood on 31-12-2012 of Circle Head Draftsman is hereby published for information of all concerned.

S.No.	Name, Father Name and qualification	Domicile	Date of Birth	Date of 1st Appointment	Date of promotion as DIID	Date of Promotion as CHD	BPS	Remarks
1	2	3	4	5	6	7	8	9
1	Mir- Saëedullah S/O Nawabzar Ali Khan Matric GM 5/91	Bannu	1/2/1955	29/4/1974	31/7/91	23/9/2006	16	By Promotion
2	Syed Zainoor Shah S/O Fazli Khaliq F.A G.M 05/1991	Swat	6/9/1953	29/12/1973	19/8/92	29/5/2008	16	By Promotion
3	Niamat Ali S/O Muhammad Ali B.A G.M.10/92	Bannu	02/04/1953	29/12/1973	24/1/95	26/2/2009	16	By Promotion
4	Hayat Khan S/O Sheraz Gul Matric G.M.10/92	Karak	14/8/1954	29/12/1973	24/1/95	26/2/2009	16	By Promotion
5	Arzomand S/O Bharmand Matric G.M.10/92	MKD Agency	4/02/1955	1/7/1975	24/1/1995	26/2/2009	16	By promotion
6	S.Tanwee Hussain S/O Feroz Hussain Matric G.M.4/2003	DIKhan	15-1-1955	20-5-79	31-1-2004	27-6-2012	16	By promotion
7	Anisul Hussain S/O Faiz Mohad Matric G.M.6/2002	DIKhan	3/4/1958	20/12/80	31-1-2004	27-6-2012	16	By promotion
8	Muhammad Rashid S/O Mohd Yousaf BA G.M.7/97	Mardan	8/3/1958	8/3/1981	31-1-2004	27-6-2012	16	By promotion

No 7688-91 /III/A/39-E

Copy forwarded to:-

- 1 Chief Engineer (North) Irrigation Deptt: Khyber Pakhtunkhwa Peshawar.
- 2 All Superintending Engineers in Irrigation Department.
- 3 Director General Small Dams Organization Peshawar.

15/05/2013

Fazgulhaq Nss H

Superintending Engineer (HQ)

Superintending Engineer (HQ)

30

GOVERNMENT OF KHYBER PAKHTUNKHWA IRRIGATION DEPARTMENT.
Seniority list of Circle Head Draftsman

In pursuance of Section -8 of NWFP, Civil Servants Act, 1973 the Tentative Seniority List as Stood on 31-12-2010 of Circle Head Draftsman is hereby published for informaton of all concerned.

S.No.	Name, Father Name and qualification	Domicile	Date of Birth	Date of Ist Appointment	Date of Promotion	BPS	Remarks
1	2	3	4	5	6	7	9
1	Inayatullah Matric GM 5/91	Bannu	15/3/1953	2/5/1974	23/9/2006	16	By Promotion
2	Mr. Saeedullah S/O Nawabzar Ali Khan Matric GM 5/91	Bannu	1/2/1955	1/5/1974	23/9/2006	16	By Promotion
3	Mr. Zubair Shah S/O Rasool Shah F.A G.M 05/1991	MKD Agency	2/02/1951	29/4/1971	29/5/2008	16	By Promotion
4	Syed Zainoor Shah S/O Fazli Khaliq F.A G.M 05/1991	Swat	6/9/1953	8/1/1974	29/5/2008	16	By Promotion
5	Niamat Ali S/O Mohd Ali F.A G.M.10/92	Bannu	2/04/1953	31-12-1973	26/2/2009	16	By Promotion
6	Hayat Khan S/O Sheraz Gul Matric G.M.10/92	Karak	14/8/1954	31-12-1973	26/2/2009	16	By Promotion
7	Arzomand S/O Bharmand Matric G.M.10/92	MKD Agency	4/02/1955	8/07/1975	26/2/2009	16	By promotion

Administrative Officer

No 2190-92 /IB/A/39-E

01/10/2011

Copy forwarded to the:-

- 1 Chief Engineer (Dev.) Irrigation & Power Deptt: Peshawar.
- 2 All Superintending engineers in Irrigation Department,
- 3 Director General Small Dams Organization Peshawar.

They are directed to get note the seniority list from all the Circle Head Draftsman working in their offices and furnished acknowledgement certificates to this office accordingly.

Administrative Officer

GOVERNMENT OF KHYBER PAKHTUNKHWA IRRIGATION DEPARTMENT.

Seniority list of Circle Head Draftsman

In pursuance of Section -8 of NWFP. Civil Servants Act, 1973 the Tentative Seniority List as stood on 31-12-2011 of Circle Head Draftsman is hereby published for information of all concerned.

S.No.	Name, Father Name and qualification	Domicile	Date of Birth	Date of 1st Appointment	Date of Promotion	BPS	Remarks
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4	Niamat Ali S/O Mohd Ali. B.A.G.M.10/92	Bannu	2/04/1953	31-12-1973	26/2/2009	16	By Promotion
5	Hayat Khan S/O Sheraz Gul Matric G.M.10/92	Karak	14/8/1954	31-12-1973	26/2/2009	16	By Promotion
6	Arzomand S/O Bhamand Matric G.M.10/92	MKD Agency	4/02/1955	8/07/1975	26/2/2009	16	By promotion

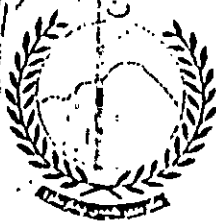
Administrative Officer

No 91-93 /IB/A/39-E

Copy forwarded to the:-

- 1 Chief Engineer (North) Irrigation Deptt: Khyber Pakhtunkhwa Peshawar.
 - 2 All Superintending Engineers in Irrigation Department,
 - 3 Director General Small Dams Organization Peshawar.
- They are directed to get note the seniority list from all the Circle Head Draftsman working in their offices and furnished acknowledgement certificates to this office accordingly.

Administrative Officer



OFFICE OF THE CHIEF ENGINEER (SOUTH)
IRRIGATION DEPARTMENT, KHYBER PAKHTUNKHWA,
PESHAWAR.

Phone No. 091-9212116 Fax No. 091-9212652

No. 11278 /IB/ A/39-E

Dated 8 /07/2013

To

The Secretary to Govt. of Khyber Pakhtunkhwa,
Irrigation Department Peshawar.

Subject:

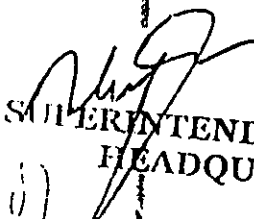
DEPARTMENTAL APPEAL AGAINST THE FINAL SENIORITY LIST
OF THE CIRCLE HEAD DRAFTSMAN NOTIFIED AND PUBLISHED BY
THE SUPERINTENDING ENGINEER (H/O) IRRIGATION
DEPARTMENT VIDE ENDST. NO.7688-99/IB/A/39-E DATED 15-5-2013

Ref, nce:

Your letter No. SO(E)/IRR/A-1/94/Vol-II dated 18-06-2013.

I am directed to refer to the above and to state that the appeal in respect of Mr. Hayat Khan, Circle Head Draftsman is time barred at this stage. The promotion on the same seniority list to Draftsman and Divisional Head Draftsman took place but the appellant did not objected to it.

In view of the position explained above the appeal of appellant may be filed please.


SUPERINTENDING ENGINEER
HEADQUARTER

5/7

N
1/1/3
S

WAKALATNAMA

1335/13

IN THE COURT OF Before The Khyber Pakhtunkhwa Service Tribunal.

In Re Hajat Khan

Regd. No.

Accused / Petitioner / Plaintiff

VERSUS

Govt. of K.P.K. etc.

Respondent / Defendant / Complainant

KNOW ALL to whom these presents shall come that it be undersigned appoint **MUHAMMAD ARIF KHAN Advocate Supreme Court of Pakistan** in the above mentioned case, to do all the following acts, deeds and things or any of them, that is to say:

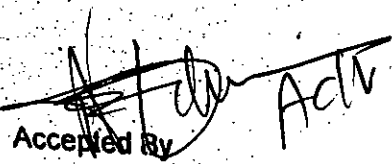
1. To act and plead in the above mentioned case in this court or any other court in which the same may be tried or heard in the first instance or in appeal or review or execution or in any other stage of its progress until its final decision.
2. To sign, verify and present pleadings, appeals, cross - objections, petitions for execution, review, revision, withdrawal, compromise or other Petition or affidavits or other documents as shall be deemed necessary or advisable for the prosecution of said case in all its stages.
3. To withdraw or compromise in the said case or submit to arbitration any difference or dispute that shall arise touching or in any manner relating to the said case.
4. To receive money and grant receipts therefore and to do all other acts and things which may be necessary to be done for the progress and the course of the prosecution of the said case.
5. To engage any other Legal Practitioner authorizing him to exercise the power and authorities hereby conferred on the Advocate whenever he may think fit to do so.

AND I hereby agree to ratify whatever the Advocate or his substitute shall do in the promises.

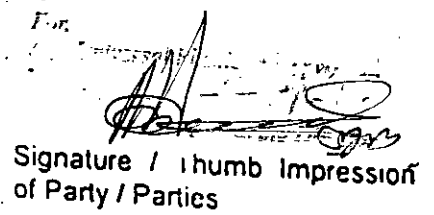
AND I hereby agree not to hold the Advocate or its substitute responsible for the result of the said case in consequence of his absence from the court when the said case is called up for hearing.

AND I hereby that in the event of the whole or any part of the fee agreed by me to be paid to the Advocate remaining unpaid, He shall be entitled to withdraw from the prosecution of the said case until the same is paid.

IN WITNESS WHEREOF I herunto set my hand to these presents the contents of which have been explained to and understood by me. this _____ day of _____ 2011.


Accepted By

Muhammad Arif Khan
Advocate Supreme Court of Pakistan


Signature / Thumb Impression
of Party / Parties

[Faint handwritten notes and stamps]

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR.

Appeal No.1335/2013

Hayat KhanAppellant

Versus

Secretary to Govt. of KPK and others..... Respondents

COMMENTS ON BEHALF OF RESPONDENT NO.4

Respectfully Sheweth;

Preliminary objections.

- 1) That the appellant has got no locus standi to file the instant appeal.
- 2) That the appellant has not come to the court with clean hands.
- 3) That the appellant was offered a post of officiating (temporary tracer) the terms and conditions of officiating official are not determined so he cannot claim seniority as per Annexure "A".
already annexed with the appeal.
- 4) That the appellant has impugned the seniority of respondent No. 4 while the seniority of Mr.Bakht Rawan (2) Inayatullah (3) Mr.Khalid Jang has never been challenged which are on the same footing with replying respondent. So the instant appeal is not maintainable on this ground independently.
- 5) That the appellant has himself admitted the seniority of the replying respondent.

Parawise comments on facts:

- 1-2) It is correct that the appellant joined irrigation department as Tracer BPS-05 on 31.12.1973 while the respondent No.4 on 29.04.1974 and

their inter seniority was fixed as per their appointment and provision of rules but it is worth mentioning that departmental examination which are pre-requisite for promotion of Draftsman and Divisional Head Draftsman (i.e. higher grade/ posts) are conducted under para 84-C and para 84-D of the PWD Code (Annexure-I).

The position of appointment/ promotion as well as passing of departmental examination as referred above of the appellant/ the respondent and 3 No. other officials where are also recruited later and not been challenged by the appellant at any stage of promotion. (Attached as Annexure-II).

The position tabulated above, indicates that though the appellant join the department earlier than the respondent and other 3 Nos. officials tabulated as Annexure - , but he did not succeeded to pass the departmental examination while the respondent and the other 3 No. officials given in the table are passed the departmental examination for promotion of Draftsman and Divisional Head Draftsman and as such promoted to higher post/ grade.

3-8) Not relates to the respondent therefore, no comments.

9) As per comments against para 1 and 2.

Parawise comments on grounds

- A) The seniority list has been maintained according to Rules and Regulation in vogue as per Esta Code Chapter-2 page 21 and 22 para 84-C and 84-D. (Copy attached as Annexure-I).
- B) The appeals referred are of the Sub Engineers B S-11 against the seniority of selection grade Sub Engineers BS-16 who were actually not promoted to higher posts but were granted selection grade on the basis of passing departmental examination which as clarified by this Hon'ble Tribunal/ August Supreme Court of Pakistan is a financial benefit having nothing to do with the seniority, are too different

from the present appeal and therefore not required to be quoted as precedent.

In the present case the respondent has been promoted to higher posts (i.e. Draftsman, Divisional Head Draftsman, Circle Head Draftsman and Chief Draftsman) on the basis of eligibility superseding the appellant due to not qualifying the prescribed departmental examination which were pre-requisite for promotion.

- C) No comments.
- D) As per comments against "B" above. *Para.*
- E) No comments.
- F) As explained above, the appellant has been superseded from initial stage of appointment due to not qualifying the prescribed departmental examination exhibited in the table.


G,H&I) The seniority list is according to law, fact of the case and norms of natural justice and as such tenable.

In view of the foregoing position the appeal being unjustified and is based on discrimination and malafide which may very kindly be dismissed with cost of the appellant.

Any other relief deemed proper and just in the circumstances of the case may very kindly be also granted.

Respondent No.4

Through


Muhammad Arif
Advocate Supreme Court.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

PESHAWAR.

Appeal No.1335/2013

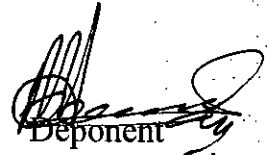
Hayat KhanAppellant

Versus


Secretary to Govt. of KPK and others..... Respondents

AFFIDAVIT

I, Saeed Ullah, Chief Draftsman Irrigation Department (respondent No.4), do hereby affirm and declare on Oath that the contents of the accompanying **Comments** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.


Deponent




24-3-2014

Comparative Statement of Officials

Annexure- II

S.No	Name of Official	Date of 1 st appointment	Date of passing Departmental examination for eligibility to promotion		(Date of 1 st step)	(Date of 2 nd step)	(Date of 3 rd step)	(Date of 4 th step)	Remarks
			Draftsman	Divisional Head Draftsman	Draftsman	promotion as Divnl: Head Draftsman	promotion as Circle Head Draftsman	promotion as Chief Draftsman	
1	Mr. Hayat Khan (Appellant)	29-12-1973	7/1984	10/1992	10/1986	01/1995	02/2009	Not Yet	In Service
2	Mr. Bakht Rawan	01-01-1974	3/1977	11/1984	11/1978	09/1986	10/2000	5/2008	Retired on 10/2012.
3	Mr. Saecdullah (Respondent)	29-4-1974	4/1979	06/1988	12/1979	07/1991	09/2006	08/2013	In Service
4	Mr. Inayat Ullah	29-4-1974	3/1977	5/1991	10/1978	07/1991	09/2006	12/2012	Retired in 3/2013.
5	Mr. Khalid Jang	22-2-1975	4/1979	06/1988	4/1980	05/1987	9/2000	9/2009	In service

Attested
