

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
MUHAMMAD AKBAR KHAN ... MEMBER (Executive)

Service Appeal No.184/2017

Date of presentation of Appeal.....02.02.2017

Date of Hearing.....08.05.2024

Date of Decision.....08.05.2024

Muhammad Yaqoob son of Maaz Ullah Khan Village Isk Khel, Tehsil and District Lakki Marwat Presently TRA Revenue Department District Lakki Marwat.....(*Appellant*)

Versus

1. **Government of Khyber Pakhtunkhwa** through Chief Secretary Peshawar.
2. **Senior Member Board of Revenue**, Khyber Pakhtunkhwa, Peshawar.
3. **Commissioner Bannu Division Bannu**.
4. **Deputy Commissioner**, Lakki Marwat.
5. **District Accounts Officer**, Lakki Marwat.
6. **Naik Nawaz** presently DRA Revenue, District Lakki Marwat.....(*Respondents*)

Present:

Mr. Zahir Shah Marwat, AdvocateFor the appellant

Mr. Asif Masood Ali Shah, Deputy District Attorney....For official respondent

Mr. Aman Ullah Marwat, Advocate.....For private respondent No.6

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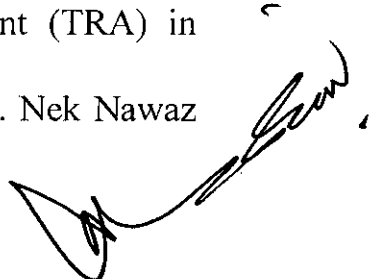
APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST ORDER OF COMMISSIONER BANNU DATED 17.01.2017 VIS-À-VIS TO THE IMPUGNED PROMOTION ORDER OF NAIK NAWAZ AND ABOUT SENIORITY LIST OF TRA TO DRA.

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Appellant's case in brief

is that he was serving as Tehsil Revenue Accountant (TRA) in

Revenue Department in District Lakki Marwat; that Mr. Nek Nawaz



(private respondent No.6) was appointed as TRA on 07.12.2005 and allegedly, being junior to the appellant and was serving in BPS-05, whereas, the appellant was drawing salary in BPS-07; that the seniority list notified by the official respondents has shown Mr. Nek Nawaz senior to the appellant.


2. Feeling aggrieved, he filed departmental appeal before the Commissioner Bannu on 01.12.2016, which was rejected on 17.01.2017. Therefore, the appellant filed the instant service appeal.

3. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

4. We have heard learned counsel for the appellant, learned Deputy District Attorney for official respondents and learned counsel for private respondent No.6.

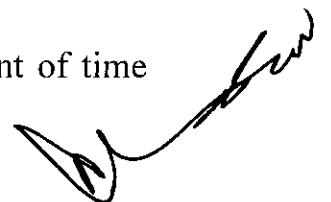
5. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy District Attorney assisted by the learned counsel for private respondent No.6 controverted the same by supporting the impugned order(s).

6. The only ground for consideration before us is the appellant's claim, that he was appointed as Tehsil Revenue Accountant on 06.07.2004, whereas, private respondent was so appointed on 07.12.2005, but in the seniority list, the private respondent was



placed senior to him and was promoted to the post of District Revenue Accountant while the appellant was ignored. It is the contention of the official respondents that nomenclature of the post of WASIL BAQI NAVEES in BPS-05 was changed as Tehsil Revenue Accountant (BPS-07) in 2001, therefore, the nomenclature of post of private respondent was also changed to Tehsil Revenue Accountant but his scale was not changed to from BPS-05 to BPS-07 and Nek Nawaz was appointed on 07.05.2005 and is still working as Tehsil Revenue Accountant in BPS-07 (11.11.2006).


7. It appears that because of not granting BPS-07 to private respondent at the relevant point of time i.e. at the time of changing the nomenclature of WASIL BAQI NAVEES to Tehsil Accountant in the year 2001, the official respondents have considered him senior to the appellant but when we asked for the relevant rules as to how this could be done? There was nobody from the office of Deputy Commissioner, Lakki Marwat or Commissioner Bannu and only an Assistant Secretary from Board of Revenue had put appearance, who had nothing to say in this regard. The matter being of 2017 and the fact that the appellant had retired, therefore, only pensionary benefits could at the most, have been granted to the appellant in case his contention is found correct but in the absence of any rules provided to the Tribunal or referred, we are constrained to allow this appeal and remit the matter back to the department to pass a detailed order regarding fixation of seniority of the appellant and private respondent, quoting the rules prevalent at the relevant point of time



and in case, the earlier seniority list was found to be correct having prepared in accordance with the rules (which rules should be quoted in express terms), the appellant would have no case and in case after consideration, the contention of the appellant that is found to be correct and he is held senior to the private respondent, then his promotion may be considered and given effect from the date the private respondent was promoted for the purposes of extending him financial benefits, which he could have got if he had been promoted at the appropriate time. Consign.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 8th day of May, 2024.*


KALIM ARSHAD KHAN
Chairman


MUHAMMAD AKBAR KHAN
Member (Executive)

Mutazem Shah

S.A #.184/2017


ORDER


8th May. 2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for official respondents present. Private respondent No.6 present through counsel.

2. Vide our detailed judgment of today placed on file, we are constrained to allow this appeal and remit the matter back to the department to pass a detailed order regarding fixation of seniority of the appellant and private respondent, quoting the rules prevalent at the relevant point of time and in case, the earlier seniority list was found to be correct having prepared in accordance with the rules (which rules should be quoted in express terms), the appellant would have no case and in case after consideration, the contention of the appellant that is found to be correct and he is held senior to the private respondent, then his promotion may be considered and given effect from the date the private respondent was promoted for the purposes of extending him financial benefits, which he could have got if he had been promoted at the appropriate time. Consign.

3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 8th day of May, 2024.*


(Muhammad Akbar Khan)
Member (E)


(Kalim Arshad Khan)
Chairman