



30th April, 2024

1. Appellant in person present. Mr. Muhammad Jan, District Attorney for official respondents present.

2. Appellant seeks adjournment as senior counsel was busy in Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 22.05.2024 before the D.B. Parcha Peshi given to the parties.

SCANNED
KFST
Peshawar



(Muhammad Akbar Khan)
~~(Fareeha Patil)~~
Member (Executive)



(Kalim Arshad Khan)
Chairman

Naeem Amin

22nd May, 2024 1. Appellant in person present. Mr. Umair Azam, Additional Advocate General for the respondents present.

2. Former requested for adjournment on the ground that his counsel is not available today. Adjourned but as a last chance. To come up for arguments on 24.05.2024 before D.B. P.P given to the parties.


(Muhammad Akbar Khan)
Member(E)


(Kalim Arshad Khan)
Chairman

Adnan Shah, P.A

ORDER

24.05.2024 1. Learned counsel for the appellant present. Mr. Muhammad Jan, learned District Attorney for the respondents present. Arguments heard and record perused.

2. Vide our detailed judgment of today separately placed on file, the Tribunal cannot direct the Public Service Commission to make any changes in the merit list as that could be out of the scope of jurisdiction of the Tribunal, therefore, this appeal is returned. Costs shall follow the event. Consign.

3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 24th day of May, 2024.*



(KALIM ARSHAD KHAN)
CHAIRMAN



(MUHAMMAD AKBAR/KHAN)
MEMBER (E)

candidates wherein a query or an enquiry or a court case is pending shall be kept on record till final disposal of the query/enquiry/court case.

07. Through this appeal the appellant seeks correction in the merit list prepared and finalized by the Khyber Pakhtunkhwa Public Service Commission on the basis of which the department had prepared the seniority list. The Tribunal cannot direct the Public Service Commission to make any changes in the merit list as that could be out of the scope of jurisdiction of the Tribunal, therefore, this appeal is returned. Costs shall follow the event. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 24th day of May, 2024.*



(KALIM ARSHAD KHAN)
CHAIRMAN



(MUHAMMAD AKBAR KHAN)
MEMBER (E)

on 15.08.2018 wherein the appellant was shown at serial No.127. The claim of the appellant is that the merit list of Public Service Commission has not been communicated to him and when he got the knowledge of the same he submitted application on 13.10.2016 for revising the merit list by awarding two additional Marks on M.A (Pak Studies) which was regretted being time barred vide order dated 21.11.2016. Similarly the appellant made another application dated 15.05.2019 which was replied vide letter dated 11.07.2019. The stance of the respondents is that, at the time of submission of application form, the appellant has only mentioned/claimed M.A (Pushto) and M.Ed degree being higher qualification for which total three (03) marks have been given, two (02) marks for M.A Pashto and one (01) mark for ME.d on account of additional/higher qualification and no other degree has been claimed. As per the law prevailing at the relevant time the request of the appellant was entertainable in specified period only. Respondents in their reply annexed Notification of the Khyber Pakhtunkhwa Public Service Commission repealed Regulation 2003. Regulation 37(13) of the said Notification is reproduced below.

(i) Answer books of candidates will be retained in the office of KP PSC for one year after recommendations against the post are issued and thereafter these will be destroyed. Similarly, application forms/copies of documents of non-selected candidates shall also be destroyed after one year of the issuance of recommendations. Any query relating to their answer books or application forms should be made by the candidates within the specified period, thereafter, no request in this regard shall be entertained. However, answer books or applications forms/copies of documents of

Notification dated 15.12.2003 Rule 29 (K) he was entitled for 04 additional marks but despite that he was awarded only 02 marks hence the appellant has been treated illegally; that due to illegal merit list, in the impugned seniority list, the name of the appellant has been wrongly fixed which is liable to be set aside and both the impugned merit list as well as the seniority list are liable to be corrected; that the respondent department violated Article 25 of the Constitution of Islamic Republic of Pakistan, 1973.

05. On the other hand, learned District Attorney contended that the appellant has secured 61/38 marks only, therefore, was placed on merit order No. 144. No illegality of violation of rules can be attributed to Public Service Commission. No fundamental rights of the appellant has been violated by the respondents rather the law dictates the treatment on merit, thus he was awarded marks that he could secure; that the appellant is not genuinely aggrieved person by any act of Khyber Pakhtunkhwa, Public Service Commission, may not be allowed to raise further ground against Khyber Pakhtunkhwa Public Service Commission.

06. Scrutiny of record reveals that the Khyber Pakhtunkhwa Public Service Commission advertised two hundred forty one (241) posts of Male Assistant District Officers (BPS-16) in the Elementary and Secondary Education Department vide Advertisement No. 05/2009. The appellant alongwith other candidates applied to the post of ADO (BS-16) and the appellant had successfully qualified for the said post. On the recommendation of Public Service Commission a Notification 05.05.2011 has been issued wherein the appellant was shown at serial No. 144 of the merit list. Thereafter respondent No. 4 issued final seniority list of ADEOs & ASDEOS (BPS-16)

02. Brief facts of the case are that the appellant alongwith his others colleagues were appointed as ADO (BPS-16) on the recommendation of the Public Service Commission vide appointment Notification dated 05.05.2011; that a merit list was issued by the Public Service Commission wherein the appellant was shown at serial No. 144 by showing 61/38 marks. On the basis of merit list issued by Public Service Commission, a seniority list was issued by respondent No. 3 on 15.08.2018 wherein the appellant was shown at Serial No. 127; that the appellant was not awarded additional marks of M.A (Pak Studies), therefore, he approached to the respondents time and again for revising the merit list by awarding two additional marks of M.A (Pak Studies) and placed his name at proper place and correction of seniority list but in vain. The appellant filed departmental appeal on 15.05.2019 which was rejected vide order dated 26.08.2019, hence preferred the instant service appeal on 19.09.2019.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant, learned District Attorney for official respondents and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended the impugned merit list/seniority list and orders are against law, rules, principles of natural justice, void ab initio, hence liable to be set aside; that the appellant has mentioned M.A (Pushto) and M.A (Pak Studies) in his application to Public Service Commission and as per Khyber Pakhtunkhwa Public Service Commission

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR

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

Service Appeal No. 1335/2019

Date of presentation of Appeal.....19.09.2019
Date of Hearing.....24.05.2024
Date of Decision.....24.05.2024

Inamullah S/o Taj Muhammad, ADEO Establishment Office of the DEO (M)
Peshawar.....(Appellant)

VERSUS

The Chief Secretary, Khyber Pakhtunkhwa, Peshawar and
others.....(Respondents)

NAILA JAN,
Advocate

For appellant.

MUHAMMAD JAN,
District Attorney

For respondents

JUDGMENT

MUHAMMAD AKBAR KHAN, MEMBER (E):- The instant service
appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa
Service Tribunal, Act 1974 with the prayer copied as under;

*"That on acceptance of the instant, (I) the merit list
issued be respondent No. 4 may kindly be revised by
adding 2 additional marks of M.A Pak Studies and
Consequently (II) The appellant may kindly be placed at
serial No. 78 of the list and accordingly the impugned
seniority list may kindly be corrected by placing the
appellant at S.No. 67 instead of S.No. 127 with all
consequential benefits."*