

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

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

*Service Appeal No.1205/2018*

Date of presentation of Appeal.....27.09.2018  
Date of Hearing.....16.05.2024  
Date of Decision.....16.05.2024

**Dr. Muhammad Zafar**, Veterinary Officer (H) Director General (Extension) Livestock and Dairy Development, Khyber Pakhtunkhwa, Peshawar.....(**Appellant**)

Versus

1. **Chief Secretary**, Government of Khyber Pakhtunkhwa, Peshawar.
2. **Secretary** to Government of Khyber Pakhtunkhwa, Peshawar Agricultural, Livestock, Fisheries and Cooperative Department, Peshawar.
3. **Director General**, (Extension Livestock and Dairy Development Department) Khyber Pakhtunkhwa, Peshawar.
4. **Director**, Khyber Pakhtunkhwa Public Service Commission.
5. **Khyber Pakhtunkhwa Public Service Commission** through its Chairman.
6. **Dr. Abbas Ali** son of Munawar Khan, Veterinary Officer (BPS-17), Civil Veterinary Hospital, Peshawar.
7. **Dr. Inam Ullah** son of Saad Ullah Khan, Assistant Director Livestock, District Kurram.....(**Respondents**)

Present:

Mr. Adnan Aman, Advocate .....For the appellant  
Mr. Arbab Saiful Kamal.....For private respondents  
Mr. Asif Masood Ali Shah, Deputy District Attorney...For official respondents

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**APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 WHEREBY THE COMBINED INTER-SE SENIORITY OF VETERINARY OFFICERS, INSTRUCTORS, SHEEP DEVELOPMENT INSPECTOR AND AGROSTOLOGIST ISSUED ON 02.11.2010 HAS BEEN KEPT INTACT VIDE LETTER NO.PSC/SR-1/09984 DATED 05.04.2018 ISSUED BY THE RESPONDENT NO.4 IS ILLEGAL BY ALL ASPECT AND REQUIRE TO RECTIFIED.**

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## **JUDGMENT**

**KALIM ARSHAD KHAN, CHAIRMAN:** Appellant's case in brief is that he was placed junior to the private respondents. Feeling aggrieved, he approached respondent No.4, but he was informed that he had rightly been adjusted in the seniority list. Therefore, he filed the instant service appeal.

2. 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.

3. We have heard learned counsel for the appellant, learned Deputy District Attorney and learned counsel for private respondents.

4. 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 learned counsel for private respondents, controverted the same by supporting the impugned order(s).

5. Appellant and private respondents had applied against different posts vide Advertisement No.03/2007, advertised by the Khyber Pakhtunkhwa Public Service Commission. After selection process, the appellant was recommended for appointment and his appointment was also made prior to the recommendation and appointment of private respondents. Alongwith recommendation of

the appellant and others for the post of Veterinary Officer (Research) a seniority list was also sent by the Khyber Pakhtunkhwa Public Service Commission, wherein, the appellant was placed at Serial No.4 but after recommendation of the private respondents, admittedly made after the appointment of the appellant, another joint merit and joint seniority list was issued by the Khyber Pakhtunkhwa Public Service Commission, wherein, the appellant was shown at Serial No.6, while the private respondents namely Dr. Abbas Ali and Dr. Inam Ullah were placed senior to him despite the fact that they were recommended and appointed after recommendation and appointment of the appellant.

6. The appellant, by way of additional documents, placed on record the service rules of the department, inter-se merit to the post of Veterinary Officer while the Khyber Pakhtunkhwa Public Service Commission also submitted reply. Paragraphs No.3 to 7 of the reply on facts and grounds while grounds G & H are reproduced as under:

*"(g) Khyber Pakhtunkhwa Public Service Commission had issued the combined seniority list vide letter date 02.11.2010, keeping in view the same nature posts of the Departmental Extension Wing of Directorate of Agriculture and Livestock as under Khyber Pakhtunkhwa Public Service Commission Regulations 2003. Hence, the illegal relief sought by the appellant may not be allowed by this Honorable Tribunal.*

*(h) As already replied in para-6, Agriculture, Livestock and Cooperative Department is comprised of two directorates i.e. of Directorate of Research and Directorate of Extension that is why the inter-se-seniority of posts concerned to any of the above wings is kept separate by the Khyber Pakhtunkhwa Public Service Commission. Para-5 of the recommendation of Veterinary Officers vide advertisement number 01/2014 clearly states:*

***"The inter-se-seniority of the recommendees is linked with other posts of the same advertisement and will be communicated later on. The serial chronological order will not confer any right of seniority."***

7. Similarly, service rules of the department notified vide Notification dated 8<sup>th</sup> July, 2009, annexed by the appellant himself by way of additional documents, show that promotion to the post of District Livestock Officer/Agency Livestock Officer/Deputy Directors/Senior Veterinary Officers/Senior Instructor/Deputy Epidemiological/Sheep Development Officer, was to be made on the basis of seniority-cum-fitness from amongst the Veterinary Officer (H)/Laboratory Manager/Soman Distribution Officer/Livestock Production Officer/Agrostological/Livestock Manager/Instructors/Programmers/Coordinators with five years service in BPS-17 and registered with Pakistan Veterinary Medical Council by initial recruitment. This shows that a joint seniority list of the appellant and private respondents as well as others mentioned in the above Rule was to be prepared under the service rules made by the Department for filling in the different posts. This being so, the appellant and private respondents both are selectees of the same selection process, initiated in response to advertisement No.03/2007, therefore, inter-se seniority has to be determined by the authority on the basis of merit order assigned by the Khyber Pakhtunkhwa Public Service Commission in view of Rule-17(1)(a) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. The seniority/merit order placed on file undisputedly shows the private respondents having secured more marks than the appellant

and are placed higher than the appellant in the merit list prepared by the Khyber Pakhtunkhwa Public Service Commission, therefore, their seniority was rightly determined.

8. We are fortified by the following judgments on the point:

- i. *2002 SCMR 889 titled "Government of NWFP through Secretary Irrigation and 4 others", wherein the august Supreme Court of Pakistan was pleased to have observed that 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.*
- ii. *2002 PLC(CS) 780 titled "Shafiq Ahmad and others versus the Registrar Lahore High Court and others" wherein it was found that the 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."*
- iii. *The above judgment was affirmed by the august Supreme Court of Pakistan in PLJ 2002 SC 234 titled "Muhammad Amjid Ali and others versus Shafiq Ahmad and others" by holding that "Seniority. The seniority inter se of the members of the Service in the various grades thereof shall be determined-*

*(a) in the case of members appointed by initial recruitment, in accordance with the order of merit assigned by the Commission provided that persons selected for the Service in an earlier selection shall rank senior to the persons selected in a later selection;"*

*13. Respondents Nos. 1 to 5 were candidates in the Competitive Examinations held in 1988 and 1989 and were taken from the merit list prepared as a result of competitive examination, 1987, therefore, there can be no cavil with the proposition that they*



*belong to 1988 batch and their seniority is to be determined accordingly. It will be pertinent to mention here that the appeal before the Tribunal was not seriously contested by the Appointing Authority, namely, the Lahore High Court in view of its stance taken at the stage of preparation of the seniority list of the parties by the Government of the Punjab that the contesting respondents apparently belonged to 1988 batch.*

*14. Acceptance of the offer of appointment against future vacancies by the respondents being traceable to the observations made in the judgment passed in the Intra-Court Appeal can have no bearing on the question of their seniority. Similarly the matter had become past and closed only to the extent of appointment of the respondents as Civil Judges against future posts and the question of their seniority remained open.*

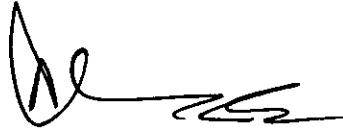
- iv. PLC 1993 (CS) 116 titled M. Tahir Rasheed versus Secretary Establishment Division, Islamabad and others, wherein the Federal Service Tribunal held that Inter se seniority of candidates at one selection was to be determined on the basis of merit assigned to the candidates by the Public Service Commission/Selection Committee in pursuance of general principles of seniority and not the dates of joining duty.*
- v. 1993 P L C (C.S.) 52 titled "Muhammad Jafar Hussain versus Chairman, Central Board of Revenue, Islamabad and 4 other", wherein it was held 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.*
- vi. 1998 SCMR 633 titled "Zahid Arif versus Government of NWFP through Secretary S&GAD Peshawar and 9 others", wherein it was held that ---R. 17(a)---Constitution of Pakistan (1973), Art. 212(3)---Seniority-- Appointment of civil servant to post in later selection---Petitioner's name had been placed next to respondents although he had been placed higher on merit list than respondents---Civil servant's appeal against seniority*



*list had been dismissed mainly on the ground that respondents being nominees for first batch were to rank higher than civil servant on account of their initial selection---Rule 17(a), North-West Frontier 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.*

9. In view of the above scenario, instant service appeal is dismissed. Costs shall follow the event. Consign.

10. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 16<sup>th</sup> day of May, 2024.*



**KALIM ARSHAD KHAN**  
Chairman



**RASHIDA BANO**  
Member (Judicial)

*\*Mutazem Shah\**

S.A #.1205/2018

ORDER

16<sup>th</sup> May. 2024 1. Learned counsel for the appellant present. Mr. Asif

Masood Ali Shah, Deputy District Attorney for official respondents present. Private respondents present through counsel.

2. Vide our detailed judgment of today placed on file, instant service appeal is dismissed. Costs shall follow the event.

Consign.

3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 16<sup>th</sup> day of May,*

2024.



(Rashida Bano)  
Member (J)



(Kalim Arshad Khan)  
Chairman