

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

SERVICE APPEAL NO. 246/2024

Usman Akhtar, Computer Assistant, Office of the Deputy, Office of the Commissioner, Haripur
(APPELLANT)

VERSUS

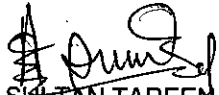
Senior Member Board of Revenue, Revenue & Estate Department, Khyber Pakhtunkhwa,
Peshawar and others
(RESPONDENTS)

I N D E X

Sr. No.	Brief Description of documents	Annexure	Page No.
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APPELLANT

Through:


AHMED SULTAN TAREEM
ADVOCATE HIGH COURT

MUDASSIR ALI
ADVOCATE HIGH COURT

SHAHBAZ KHAN SHINWARI
ADVOCATE

23-04-24

①

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
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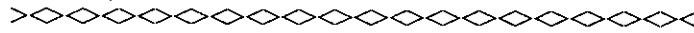
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Senior Member Board of Revenue, Revenue & Estate Department, Khyber
Pakhtunkhwa, Peshawar and others. Secretary, Board of Revenue, Peshawar.

(RESPONDENTS)



**REJOINDER OF JOINT PARAWISE COMMENTS OF RESPONDENTS NO. 1,
2 & 3.**

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 12347

Dated 23-04-2024

Respectfully Sheweth,

The Appellant seeks to rejoiner of parawise comments as follow:

REPLY OF PRELIMINARY OBJECTIONS

1. Para 1 of the objections is not correct. The appellant has got the cause of action under the facts and law.
2. Para 2 of the objections is not correct.
3. Para 3 of the objections is not correct.

FACTS:

1. Para 1 and 2 of comments need no reply.
2. Para 3 of appeal as laid is self-speaking while the same has been commented upon in a vague manner to mislead the Tribunal.
3. Para 4 of is not correct while that of the appeal is correct. Moreover, the comments of respondents in connection with para 4 of appeal are misleading. The joint seniority list under challenge is maintained to cater for the promotion to the post of Tehsildar in terms of allotted quota which previously included two cadres i.e. Assistants and Stenographers. The appellant got the right of Computer Assistant judicially established for promotion to the Tehsildar post like Assistants and Stenographers, which the official respondents did not challenge and orders of the Tribunal got finality under the facts and law. So, the official respondents acted upon the judicial verdicts in favor of appellant but in a wrong manner despite the facts that pre-implementation proposals were moved for determination of seniority of the

appellant and other computer assistants from the date of their regular appointment. Therefore, plea of different cadre taken in reply of para 4 of appeal against the appellant is absolutely wrong and injudicious when stenographers despite being a different cadre have been allocated with seniority position from the date of regular appointment in the joint seniority list with Assistants. Copy of the office note moved in connection with an application of appellant and that of a working Annexure R/1 and R/2 respectively.

4. Para 5 of comments is not correct while that of the appeal is correct.
5. Para 6 of the comments is not correct wherein, reference to the law is misleading.
6. Pare 7 of the comments is not correct.

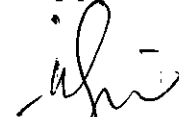
GROUND:-

Comments of the respondents upon grounds (a) to (f) are not correct while grounds of appeal are correct.

In light of foregoing rejoinder, It is requested that this comments of official respondents may graciously be rejected and appeal may be accepted as per prayer in the heading above.

Dated: 23-04-2024

Appellant,



(USMAN AKHTAR)

COMPUTER ASSISTANT

O/O THE DEPUTY COMMISSIONER, HARIPUR

THROUGH:



AHMED SULTAN TAREEN

ADVOCATE HIGH COURT

MUDASSIR ALI
ADVOCATE HIGH COURT

SHAHBAZ KHAN SHINWARI
ADVOCATE

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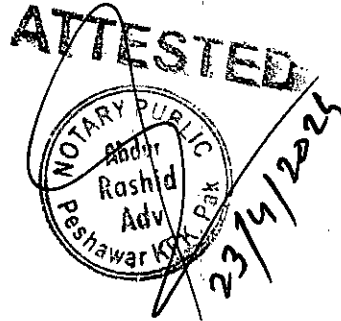
VERSUS

Senior Member Board of Revenue, Revenue & Estate Department, Khyber Pakhtunkhwa,
Peshawar and others
(RESPONDENTS)

AFFIDAVIT

I, Usman Akhtar, do hereby declare on solemn affirmation that contents of the accompanying rejoinder are true and correct to the best of my knowledge and belief and nothing has been kept concealed.


DEPONENT



BOARD OF REVENUE

Annexure ⁶⁰⁰ ~~23~~
R/L

Reference PUC.

The Private Secretary to Special Assistant to Chief Minister for Revenue & Estate has forwarded joint application (Flag- A) submitted by Mr. Azhar Iqbal Mughal and others Computer Assistants stating therein that Board of Revenue adjusted the applicants (13 in numbers) in the joint seniority list of Assistants and Senior Scale Stenographer vide Notification dated 01.07.2022 (Flag- B) with immediate effect rather than from the date of appointment. The applicants in their application requested that they may be adjusted (13 in numbers) in the joint seniority list of Assistants and Senior Scale Stenographer from the date of appointments.

Record of this office revealed that whenever a cadre was merged in the joint seniority list for the purpose of promotion to the post of Tehsildar, they were given seniority from date of their regular appointment.

The word "with immediate effect" mentioned in the Notification dated 01.07.2022 (Flag- B) means that their names will be included in the joint seniority list of Assistants/Senior Scale Stenographers offices of Commissioners and Deputy Commissioners from the date onwards.

However, their seniority position will be determined from their date of regular appointment as and when the joint seniority list for the year 2022 will be issued. *if approved.*

If agreed, we may inform the Private Secretary to Special Assistant to Chief Minister on Revenue & Estate accordingly. Draft is submitted for approval please.

[Signature]
Estt: 5/8/22

AS(E/II)

Self: I

Para 4/N for appropriate orders please.

5/8/22

MGR

[Signature]
5.8.22

Para 4/N is endorsed for approval please.

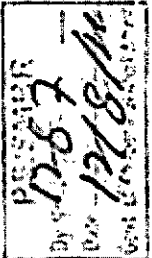
SMR

Ma. director

[Signature]
5/8/2022

As (Estt)

[Signature]
16.8.22 12/11



1/

2/

3/

4/


5/

6/

By

Estt: I

Annexure - 11
R/2

	GOVERNMENT OF KHYBER PAKHTUNKHWA, BOARD OF REVENUE, REVENUE & ESTATE DEPARTMENT.	
091-9212726	WORKING PAPER	091-9214208

CTC
[Signature]

SUBJECT: INCLUSION OF COMPUTER ASSISTANTS 13 IN NUMBERS IN JOINT SENIORITY LIST OF ASSISTANTS / SENIOR SCALE STENOGRAPHER FOR PROMOTION TO THE POST OF TEHSILDAR.

Brief facts of the case are that Mr. Azhar Iqbal and others were appointed in the offices of Deputy Commissioners against the sanctioned posts of Computer Assistant (BPS-11) in the year 2004/2006, which were merged with KPO BS-08, DEO BS-09 and Computer Operator BS-10 in the year 2010 and re-designated as Computer Operator and upgraded to (BPS-12) vide Finance Department Notification dated 12.07.2010 (Annexure-A). Later on Finance Department again upgraded the post of Computer Operator to (BPS-16) vide notification dated 29.07.2016 (Annexure-B). The applicant Azhar Iqbal Mughal and others filed Writ Petition No. 3087/2019 before Peshawar High Court with the plea that they are entitled to be declared and merged as office Assistants or be provided place in quota reserved for Assistants and Senior Scale Stenographers for promotion as Tehsildar. The instant Writ Petition was decided on 16.03.2022 (Annexure-C), and it has been held that "the respondent No.2 shall look into the petitioners' applications mentioned above and shall decide the same in accordance with law and rules on the subject within a period of two months positively". The Competent Authority is pleased to adjust names of the petitioners (13 in numbers) in the joint seniority list of Assistants and Senior Scale Stenographers offices of Commissioners and Deputy Commissioners at Provincial level with immediate effect. vide Notification dated 01.07.2022 (Annexure-D). Aggrieved with the same, the petitioner filed COC No. 474-P/2022. The Peshawar High Court passed order dated 08.12.2022 (Annexure-E) in COC No. 474-P/2022 that "the order of this court dated 16.03.2022 has been complied with by the respondent by issuing the desired Notification dated 01.07.2022 whereby names of the petitioners in the joint seniority list of Assistants and Senior Scale Stenographers working in the offices of the Commissioners and Deputy Commissioners at provincial level have been included, therefore, this petition has achieved its goal and is dismissed as such. However, if the petitioners are still aggrieved, they can approach the proper forum for the redressal of their grievance, if so advised". Thereafter, the petitioners filed Service Appeal before the Service Tribunal Khyber Pakhtunkhwa which is still pending for decision.


2. Establishment Department vide letter dated 16th January, 2023 (Annexure-F) forwarded the application of said applicants regarding their adjustment in joint seniority list of Assistants and Senior Scale Stenographer and stated that to dispose off the case at your own level under Section-8 of KP Civil Servant Act, 1973 read with Rule-17 of APT rules 1989. This department sought advice from Establishment Department as to whether Mr. Azhar Iqbal and others Computer Assistants (13 in numbers) will be adjusted in joint seniority list of Assistants and Senior Scale Stenographers at Provincial level from the date of their initial / regular

PC-1

CTC
A. Qureshi

appointment or with immediate effect vide letter dated 09.02.2023 (Annexure-G). Establishment Department vide letter dated 21.03.2023 (Annexure-H) advised to settle the issue at your own level under Section-8(3) of KP Civil Servant Act, 1973 read with Rule-17 of the Khyber Pakhtunkhwa Civil Servants, APT rules 1989; which is clear on the subject issue and leaves no ambiguity.

3. As per Civil Servant Act 1973, Section-8(3) "Seniority on initial appointment to a service, [cadre] or post shall be determined as may be prescribed".
4. Civil Servants Act, 1973 Section-8(4) states that "Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of their regular appointment to that post" (Annexure-I).
5. As per Appointment, Promotion & Transfer Rules, 1989, Section-17 (Annexure-J) seniority Explanation- iii para (2) "seniority in various cadres of civil servants appointed by initial recruitment vis-a-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".
6. It is submitted that the joint seniority list of Assistants / Senior Scale Stenographers for the purpose of promotion to the post of Tehsildar was prepared from the date of their regular appointment / promotion to the post of Senior Scale Stenographer / Assistant BS-16.


(NOOR KHAN)
Assistant Secretary (Estt)
Board of Revenue