

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1184/2022

BEFORE: MRS. RASHIDA BANO ... **MEMBER (J)**
MISS. FAREEHA PAUL ... **MEMBER (M)**

Fida Hussain, Patwari (BPS-09), District Kurram.

.... (*Appellant*)

VERSUS

1. Government of Khyber Pakhtunkhwa through Senior Member Board of Revenue, Peshawar.
2. The Commissioner Kohat division at Kohat.
3. The Deputy Commissioner, District Kurram.
4. Jannat Khan S/o Nadir Khan, Patwari as acting FKGO, Daman Circle, Parachinar.
5. Muhammad Amin Khan S/o Baaz Khan, Patwari as acting FKGO, Shingak Circle, Parchinar.
6. Ashiq Ali S/o Ghulam Ali, Patwari as acting FKGO, Computerized Shublan Circle, Parachinar.
7. Alamgir Khan S/o Sardar Khan, PatwariHalqaPewar, Parachinar.
8. AsgharHussain S/o Mukhtiar Ali, PatwariHalqaKirman, Parachinar.
9. Syed Mumtaz Ali Shah S/o Said Muhammad Akbar, PatwariHalqaMandori, Tehsil Alizai, lower Kurram.

.... (*Respondents*)

Mr. Noor Muhammad Khattak
Advocate

... For appellant

Mr. Asif Hamid Qureshi

... For private respondents

Mr. Muhammad Jan
District Attorney

... For official respondents

Date of Institution.....19.07.2022

Date of Hearing.....19.04.2024

Date of Decision.....19.04.2024

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

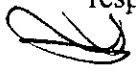
“That on acceptance of this appeal the impugned seniority list dated 18.01.2022 may kindly be set aside/modified to the extent of appellant and private respondents, and the appellant be placed senior to the private respondents with all back and

consequential benefits. Any other remedy which this august Service Tribunal deems fit may also be awarded in favor of the appellant.”

2. Brief facts of the case are that appellant after qualifying patwar examination and enlistment in the patwar register maintained by the respondents, was appointed as Patwari vide order dated 21.07.1996. Seniority list of erstwhile Kurram Agency for 2014-15 was circulated by the respondents and communicated to the appellant on 12.01.2017, where by private respondents junior to the appellant were shown senior without any cogent reason. The appellant filed departmental appeal on 23.01.2017, which was not responded. Thereafter, he filed service appeal bearing No. 603-2017 which was allowed by setting aside the impugned seniority list of 2014-15 with direction to issue fresh seniority list. Respondent No. 3 issued fresh seniority list on 18.01.2022 upon which appellant raised objection by filing departmental appeal before the appellate authority, which was disposed of with direction to implement the judgment dated 26.01.2019, hence the present service appeal.

3. Respondents were put on notice who submitted their reply/comments on the appeal. We have heard learned counsel for the appellant as well as learned Deputy District Attorney and perused the case file in detail.

4. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and rules and respondents violated Article 4 & 25 of the constitution of Pakistan, 1974; He further argued that the impugned seniority list dated 18.01.2022 is against the law, facts, norms of natural justice hence liable to be set aside; that respondents acted in arbitrary and malafidely manner by issuing the impugned seniority list which is violation of section 6, 7 & 8 of the civil servant Act 1973 read with rule 17 of the KP (APT) Rules, 1989; that action of the respondents is discriminatory in nature as the private respondents were illegally confirmed in the year 1998 and prior to that in the year 1988 and onward they were appointed on adhoc basis but until 1998 there is no order in black and white through which the private respondents could show their regular appointments.



5. Conversely, learned District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that appellant was appointed as Patwari on 21.07.1996 on purely temporary basis and his service was confirmed on 17.02.2006 while services of the private respondents were confirmed on 06.04.1998. He further contended that in compliance of the judgment dated 26.11.2019, was constituted a committee which scrutinized all the relevant service record of the appellant and private respondent as per observations recorded by this court and thereafter submitted comprehensive report to the answering respondents No. 3 on 02.12.2021 and in light of report seniority of the regular patwari of District Kuram was issued on 18.01.2022. He further contended that Departmental Promotion Committee meeting was held on 06.1.2.2022 to consider promotion case of the private respondent and who are senior to appellant and they were rightly promoted 17.12.2022.

6. Perusal of record reveals that it is second round of litigation in respect of determination of seniority of the parties because earlier appellant had also filed service appeal No.603/2017 which was decided on 26.11.2019 wherein it is held that:

“As a sequel to the above, impugned seniority list of the year 2014-15 is set aside and respondents are directed to draw fresh seniority list in the light of our observation referred to above. Resultantly, the instant appeal is disposed of in the above terms.”

Which was impugned by respondent, Jannat Khan in CPLA No.92/2020 before apex court of the country.

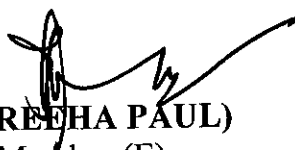
7. Appellant was initially appointed as Patwari vide order dated 21.07.1996. Although it was held in earlier judgment of this Tribunal that appellant's initial appointment was regular but perusal of order dated 21.07.1996 reveals that from the words “they will remain on probation for a period of one year”, it seems to be like regular appointment order but from reading “the appointments are purely on temporary basis and liable to termination without assigning any reason”, make it clear that in fact it was adhoc/temporary appointment order which was liable to be terminated without assigning any reason. If it was permanent regular appointment


order then after expiry of one year probation period, they will not be liable to termination without showing any reason. The other factor which make more clear that appellant was initially appointed on adhoc/temporary basis is that his service was regularized vide order dated 17.02.2006, if initially appellant's service was regular then there was no need to issue regularization of his service order dated 17.02.2006.

8. Appellant had not challenged regularization of his service order dated 17.02.2006 which means that he had accepted it, otherwise, he would have filed any representation or appeal against it. Respondent No.4 Jannat Khan was initially appointed on 14.09.1988, whose service was regularized on 06.04.1998 which is evident from the impugned seniority list. So, both appellant and respondents were confirmed after serving for long ten years. In our humble view impugned seniority list was rightly and properly prepared after scrutiny of the service record of all the concerned including parties to this appeal.

9. For what has been discussed above, we are unison to dismiss the appeal having no force in it. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 19th day April, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

12.02.2024 1. Learned counsel for the appell⁵ant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney alongwith Noor Saeed Khan, Superintendent for the official respondents present. Learned counsel for private respondent No.4 present.

2. Due to paucity of time, arguments could not be heard. Adjourned. To come up for arguments on 19.04.2024 before D.B.

P.P given to the parties.

(Fareeha Paul)
Member (E)

(Rashida Bano)
Member (J)

ORDER

19.04.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney for the respondents present.

2. Vide our detailed judgement of today placed on file, we are unison to dismiss the appeal having no force in it. Costs shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 19th day April, 2024.*

(FAREEHA PAUL)
Member (E)

(RASHIDA BANO)
Member (J)