

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

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

Service Appeal No.1910/2022

Date of presentation of Appeal.....16.12.2022
Date of Hearing.....12.06.2024
Date of Decision.....12.06.2024

Yar Qand S/o Meher Qand R/o Village Bunyadi, P.O Nahaqi, Tehsil & District Peshawar Presently working as Sweeper in District Youth Affairs, Peshawar.....(*Appellant*)

Versus

1. **Secretary to Government of Khyber Pakhtunkhwa Sports, Tourism, Archaeology, Museums & Youth Affairs Department, Civil Secretariat, Peshawar.**
2. **Directorate of Youth Affairs** Khyber Pakhtunkhwa, through its Director/DG, Plot No.28, Sector E-8, Phase-VII, Hayatabad, Peshawar.....(*Respondents*)

Present:

Mr. Ashfaq Daudzai, Advocate.....For the appellant
Mr. Muhammad Jan, District AttorneyFor respondents

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APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE NON-ENTERTAINING THE OBJECTION/APPEAL/REPRESENTATION FILED BY THE APPELLANT AGAINST SENIORITY LIST, WHEREBY, THE APPELLANT WAS PLACED AT SERIAL NO.76 INSTEAD OF SERIAL NO.39, BEFORE THE SECRETARY OF THE SPORTS, CULTURE, TOURISM, YOUTH AFFAIRS, ARCHAEOLOGY AND MUSEUMS DEPARTMENT, ON 29.08.2022.

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JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Brief facts of the case as alleged in the memo and grounds of appeal are that appellant was

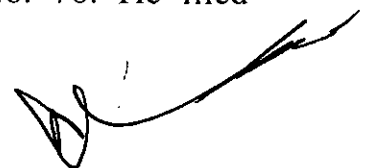
appointed as Sweeper (BPS-03) in the respondent department; that he was allegedly eligible for promotion to the post of Junior Clerk, therefore, placed at Serial No.39 in the tentative seniority list; that in the final seniority list, he was placed at Serial No.76, due to which his alleged junior colleagues were placed senior; that he filed departmental appeal on 29.08.2020, but the same was not responded and vide order dated 04.11.2022, his colleagues were promoted to the post of Junior Clerk and the appellant was not, therefore, he filed the instant service appeal.

02. 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.

03. We have heard learned counsel for the appellants and learned District Attorney for the respondents.

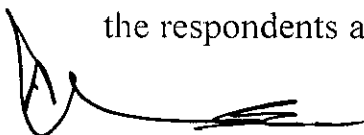
04. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned District Attorney controverted the same by supporting the impugned order(s).

05. In the tentative seniority list of 28.02.2022, the appellant was ranked at serial No. 39, while in the final seniority list impugned before this Tribunal, he was ranked at serial No. 76. He filed



departmental appeal against the same and then this appeal. There is no denying the fact that the appellant was at serial No. 39 in the tentative seniority list issued on 28.02.2022, while he was relegated in the final seniority list issued on the same date i.e. on 28.02.2022. The department contends that the appellant had not filed any objection on the tentative seniority list. This contention is neither well founded nor is sound because in the tentative seniority list the appellant was placed at serial No. 39, which, according to him, was his due place and the list shows that it was issued on 28.02.2022. Therefore, he was not to challenge the same because he was allegedly rightly placed in the provisional seniority list dated 28.02.2022 at Serial No.39. The department further contends in the reply that appellant was rightly relegated in the final seniority list as his position in the provisional seniority list was incorrect. There is nothing else supporting said by the department regarding this contention. We have also asked the representative of the department namely Iftikhar Ali Shah, Assistant Director as well as learned District Attorney as to why the appellant was relegated at serial No.76 in the final seniority list as he was placed at serial No.39 of the tentative seniority list but they could not utter a single word regarding relegation of the appellant in the final seniority list. In the absence of any reason the relegation of the appellant does not seem justified.

06. In view of the above, instant service appeal is accepted and the respondents are directed that the appellant be placed in the final



Service Appeal No.1910/2022 titled "Yar Qand versus Secretary to Government of Khyber Pakhtunkhwa Sports, Tourism, Archaeology, Museums & Youth Affairs Department, Civil Secretariat, Peshawar and others", decided on 12.06.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Muhammad Akbar Khan, Member (Executive), Khyber Pakhtunkhwa Service Tribunal, Peshawar.

seniority list, at the place where he was placed in the provisional seniority list. Costs shall follow the event. Consign.

07. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 12th day of June 2024.*



KALIM ARSHAD KHAN

Chairman



MUHAMMAD AKBAR KHAN

Member (Executive)

Mutazem Shah.

S.A No.1910/2022

ORDER

12th June. 2024

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

2. Vide our detailed judgment of today placed on file, instant service appeal is accepted and the respondents are directed that the appellant be placed in the final seniority list, at the place where he was placed in the provisional seniority list. 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 12th day of June, 2024.*



(Muhammad Akbar Khan)
Member (E)



(Kalim Arshad Khan)
Chairman