

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR

Service Appeal No. 7361/2021

BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN  
MISS FAREEHA PAUL ... MEMBER(E)

Naheed Ullah Khan, Assistant, Bannu Public Library, Bannu.  
.....(Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Higher Education, Archives & Libraries, Peshawar.
2. Director Archives & Libraries, Khyber Pakhtunkhwa, Peshawar.
3. Nascem Sikandar, Assistant (BPS-16) Molana Muhammad Ishaq Library, Abbottabad. ....(Respondents)

Mr. Muhammad Zafar Tahirkheli,  
Advocate ... For appellant

Mr. Asif Masood Ali Shah,  
Deputy District Attorney. ... For official respondents

Mr. Mir Zaman Safi,  
Advocate ... For respondent No. 3.

Date of Institution..... 06.08.2021  
Date of Hearing..... 05.06.2024  
Date of Decision..... 05.06.2024

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned combined seniority list of Assistants (BPS- 16), record Assistant (BPS- 16) and Senior Scale Stenographer (BPS- 16), Directorate of Archives & Libraries as it stood on 16.03.2021, communicated vide letter dated 17.03.2021, against which the departmental appeal of the appellant dated 13.04.2021 was not



decided till the lapse of statutory period of limitation. It has been prayed that the impugned seniority list dated 16.03.2021 be set aside and the same be amended by placing the appellant at its serial No. 09, alongwith any other relief which the Tribunal deemed appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was selected and appointed as Naib Qasid on 10.08.1991. He was granted promotion vide different orders/notifications till his last promotion as Assistant (BPS- 16) dated 10.04.2017. He was serving as Assistant (BS- 16) Bannu Library, Bannu. The department circulated the revised/updated combined seniority list of holders of post of Assistant (BPS- 16), Record Assistant (BPS- 16) and Senior Scale Stenographer (BPS- 16), Directorate of Archives & Libraries as it stood on 16.03.2021 vide letter dated 17.03.2021. Appellant was placed at serial no. 10 of the impugned seniority list instead of his actual place of seniority at serial no. 09 and one, Mst. Naseem Sikandar, Assistant (BPS- 16) Abbottabad, was arbitrarily placed senior to him at serial no. 08. Previously, vide combined seniority list of the Directorate of Archives & Libraries in respect of Assistant, Record Assistant and Senior Scale Stenographer (BPS- 16), as it stood on 15.01.2021, the appellant was rightly placed at his proper place of seniority at serial no. 10 of the list. Mst. Naseem Sikandar, respondent No. 3, was not even promoted at the time of the issuance of seniority list dated 15.01.2021. She was later on appointed on acting charge on 11.10.2018. The department, without any prior notice or intimation to the appellant,



arbitrarily placed respondent No. 3 at serial no. 8 of the revised seniority list which adversely affected and changed his seniority position. Feeling aggrieved, he challenged the impugned seniority list through his departmental appeal dated 13.04.2021 which was not decided till the end of statutory period; hence the instant service appeal.

3. Respondents were put on notice who submitted written reply/comments on the appeal. We heard the learned counsel for the appellant, learned Deputy District Attorney for the official respondents, as well as learned counsel for private respondent No. 3, and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that the department acted in the most arbitrary manner while placing respondent No. 3 above him without any prior notice or plausible explanation. One Mutabar Khan, Assistant (BPS- 16), placed at serial no. 2 of the seniority list dated 15.01.2021, passed away during his service and consequently the appellant was required to be placed at serial no. 9 of the list, which was not done and respondent No. 3 was arbitrarily placed above the appellant in the impugned revised seniority list as it stood on 16.03.2021. He argued that private respondent No. 3 was removed from service when she was serving as Junior Clerk, APL, Abbottabad, as a result of departmental proceedings but later on reinstated into service upon decision of the Honourable Peshawar High Court, Abbottabad Bench. She was asked her opinion to avail promotion as Senior Clerk vide letter dated 13.06.2013 and 28.06.2013, but she



declined to avail the option of promotion vide letter dated 08.07.2013. She was once again served with letter dated 14.11.2014 asking for her willingness for promotion to next higher scale as Senior Clerk (BPS- 14) but she declined to avail the opportunity of promotion for the second time. She was later on promoted as Senior Clerk (BPS- 14) on 22.08.2017, whereas the appellant was promoted as Senior Clerk on 16.06.2014. Similarly respondent No. 3 was promoted as Assistant on 15.03.2021, whereas the appellant was promoted as Assistant (BPS- 16) on 10.04.2017, hence the appellant was lawfully entitled to be placed at serial no. 9 of the impugned seniority list dated 16.03.2021. Learned counsel for the appellant further argued that according to Section 8 sub-section 4 of the Khyber Pakhtunkhwa Civil Servants Act 1973, seniority in a post, service or cadre to which a civil servant was promoted, should take effect from the date of regular appointment to that post. Private respondent No. 3 was allowed regular promotion as an Assistant (BPS- 16) on 15.03.2021 and on the very next day she was placed at serial no. 8 of the impugned seniority list as it stood on 16.03.2021. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the instant appeal was the outcome of seniority dispute that cropped up between (Late) Muhammad Noor Ul Basar and respondent No. 3, who were appointed as Junior Clerks in Directorate of Archives & Libraries on 24.07.1994. After inquiring into the matter, respondent No. 3, then Senior Clerk, was



placed senior to (Late) Muhammad Noor Ul Basar, Assistant from the date of their first joint appointment order dated 24.07.1994 vide order dated 10.05.2018. After getting regular promotion as Assistant on 15.03.2021, respondent No. 3 was accordingly determined senior to Mr. Muhammad Yousaf, Assistant and the appellant in the revised seniority list of Assistants dated 16.03.2021 because of her earlier appointment to the post of Junior Clerk on 24.07.1994 as compared to promotion of the later as Junior Clerks on 29.02.1996 and 27.04.2005 respectively. Thus she was placed at serial no. 8 of the revised seniority list of Assistant dated 16.03.2021. He requested that the appeal might be dismissed.

6. Learned counsel for private respondent No. 3 relied on the arguments advanced by the learned Deputy District Attorney and requested that the appeal might be dismissed.

7. Through the instant service appeal, the appellant has impugned the seniority list of Assistant (BPS- 16), Record Assistant (BPS- 16) and Senior Scale Stenographer (BPS- 16) as on 16.03.2021 vide which he had been placed at serial No. 10 and the private respondent, Mst. Naseem Sikandar, at serial No. 8. From the arguments and record presented before us, it transpires that the appellant was promoted as Senior Clerk (BS- 14) in June 2014. He was later promoted as Assistant (BS- 16) on 10.04.2017. The learned Deputy District Attorney as well as the departmental representative present before us were asked to provide the final seniority lists of Junior Clerks and Senior Clerks based on which promotions to the post of Senior Clerk and Assistants were made.



They presented a Revised/updated combined seniority list of holders of posts of Assistant (BS- 16), Record Assistant (BS- 16) and Senior Scale Stenographer (BS- 16, Directorate of Archives and Libraries as it stood on 20.1.2022 before us by stating that it was the latest seniority list available with the Directorate. A simple perusal of that list shows the appellant at serial No. 9 and the private respondent No. 3 at serial No. 7. The seniority list further shows that private respondent was promoted as Senior Clerk (BS- 14) on 22.08.2017. The appellant, on the other hand, had already been promoted as Assistant (BS- 16) on 10.04.2017. One fails to understand how the private respondent, who was a Senior Clerk, was placed senior to the appellant, who was an Assistant and why the Directorate of Archives and Libraries never issued a separate seniority list of Assistants at that time. The seniority list produced before us further shows that the private respondent was promoted as Assistant (BS- 16) on 15.03.2021. Keeping in view her promotion as Senior Clerk and then Assistant, which both were at later dates as compared to the appellant, one fails to understand why the private respondent was placed senior to the appellant. Here we refer to Section 8 (4) of the Khyber Pakhtunkhwa Civil Servant Act, 1973, according to which "seniority in a post, service or cadre to which a civil servant is promoted, shall take effect from the date of regular appointment to that post."

8. In view of the above discussion, we are satisfied that the appellant is senior to the private respondent no. 3 and eligible to be placed at his appropriate place in the seniority list. The appeal in hand is, therefore,



allowed and respondents are directed to issue a fresh seniority list by placing the appellant senior to the private respondent No. 3. Cost shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 05<sup>th</sup> day of June, 2024.*

  
(FARZANA PAUL)  
Member (E)

  
(KALIM ARSHAD KHAN)  
Chairman


*\*FazleSubhan, P.S\**


SA 7361/21

05<sup>th</sup> June, 2024 01. Mr. Muhammad Zafar Tahirkheli, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the official respondents and Mr. Mir Zaman Safi, Advocate for private respondent No. 3 present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 07 pages, we are satisfied that the appellant is senior to the private respondent no. 3 and eligible to be placed at his appropriate place in the seniority list. The appeal in hand is, therefore, allowed and respondents are directed to issue a fresh seniority list by placing the appellant senior to the private respondent No. 3. Cost shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 05<sup>th</sup> day of June, 2024.*

  
(FAREEHA PAUL)  
Member (E)

  
(KALIM ARSHAD KHAN)  
Chairman

\*Fazal Subhan PS\*