

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1616/2022

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

Mufti Latifullah, Arabic Teacher (BPS-15) GSWIHSS Tarkha Tehsil
Pabbi, District Nowshera.

..... (Appellant)

Versus

1. DEO (M) Nowshera Office, Opposite Nowshera Bus Terminal.
2. Director Elementary & Secondary Education, Khyber Pakhtunkhwa,
Peshawar.
3. Secretary Elementary & Secondary Education, Civil Secretariat,
Peshawar.

.....(Respondents)

Mr. Shah Faisal Ilyas,
Advocate

... For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney

... For respondents

Date of Institution.....	11.11.2022
Date of Hearing.....	07.03.2024
Date of Decision.....	07.03.2024

JUDGEMENT

RASHIDA BANO, MEMBER (J): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the following prayer:-

“On acceptance of this Service Appeal, the respondents be directed to grant all back benefits, including past salaries and inclusion of name of the appellant in the seniority list from the date when his other colleagues were appointed.”



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant applied for the post of Arabic Teacher under the disable quota but he was not appointed and his other colleagues applied as result of the said advertisement were appointed. The appellant being aggrieved challenged the said recruitment process, before the Hon'ble Peshawar High Court, Peshawar through Writ Petition No. 2697-P/2020 which was allowed and consequently appellant was appointed as Arabic Teacher vide order dated 28.03.2022. The appellant after joining the service and receiving the salaries, moved an application to the DEO (M) with copies to the respondents No.2 & 3 that during the whole period from apply till appointment, the appellant remained jobless and his rights established as per court verdict and the appellant was considered eligible/fit to be appointed by that time as his other colleagues were appointed in the same selection process. He requested for allowing back benefits i.e. salaries and seniority, but no heed was paid to his request. Feeling aggrieved, the appellant filed departmental appeal before respondent No. 2 on 18.07.2022 but in vain; hence the instant service appeal.

3. Respondents were put on notice who submitted their joint parawise comments on the appeal. We heard the learned counsel for the appellant as well as learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that acts and omissions on the part of respondents were illegal and

unlawful. He further argued that vide order/judgment dated 14.12.2021, passed by the Hon'ble Peshawar High Court Peshawar, the appellant was held entitled and legible to be appointed against the concerned post, therefore, he was entitled for all back benefits from the date when his colleagues were appointed. He further argued that the appellant was penalized for the wrong, which he had not done. He further argued that act of the respondents was based on malafide intention and in arbitrary manner as they had ignored the relevant law and facts on the subject. 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 respondent department advertised certain posts of Arabic Teacher but no seat was available under the disable quota against which the appellant could be appointed. He further argued that Hon'ble Peshawar High Court vide judgment dated 14.12.2021 directed that the appellant be appointed as Arabic Teacher without any specific directions of appointment with retrospective effect with back benefits etc. He requested that the appeal might be dismissed.

6. Perusal of record reveals that appellant applied for the post of Arabic Teacher under the disable quota but he was not appointed and his other colleagues applied alongwith him as result of one and the same advertisement were appointed. The appellant challenged the said recruitment process, before Peshawar High Court Peshawar through writ petition No.2697-P/2020 which was allowed and consequently appellant was appointed as Arabic Teacher vide order dated 28.03.2022. Appellant



took charge of his post and receiving salaries. Appellant later on, moved an application to the DEO (M), wherein he requested for allowing back benefits i.e. salaries and seniority. Appellants filed departmental appeal to respondent for claimed relief in instant appeal but same was not decided within statutory period.

7. Respondents contended that appellant was not appointed in year 2020, therefore, he is not entitled for desire relief, they further contended that appointment will always be made with immediate effect and Condition No.14 of the appellant's appointment order is very much clear in this respect. It is the case of appellant that he should be extended same benefits which were extended to other colleagues of appellant.

8. The question of determination of seniority of all the appellant or for that matter the persons selected in one combined competitive examination, they will squarely be belonging to the same batch and their inter se seniority was necessarily to be determined in accordance with their respective orders of merit prepared by the selection authority, as required by section-8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 and rule 17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Transfer and Promotion) Rules, 1989. Both the provisions are reproduced as under:

Khyber Pakhtunkhwa, Civil Servant Act, 1973:

"8. Seniority:- (1) For proper administration of a service, cadre or [post], the appointing authority shall cause a seniority list of the members for the time being of such service, cadre or [post] to be prepared, but nothing herein contained shall be construed to confer any vested right to a



particular seniority in such service, cadre or [post] as the case may be.

(2) Subject to the provisions of sub-section (1), the seniority of a civil servant shall be reckoned in relation to other civil servants belonging to the same service or 6 [cadre] whether serving the same department or office or not, as may be prescribed.

(3) Seniority on initial appointment to a service, [cadre] or post shall be determined as may be prescribed.

(4) 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; Provided that civil servants who are selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter-se-seniority as in the lower post.

(5) The seniority lists prepared under sub-section(1), shall be revised and notified in the official Gazette at least once in a calendar year, preferably in the month of January.

Khyber Pakhtunkhwa, Civil Servants (Appointment, Promotion & Transfer) Rules, 1989:P

*"17. Seniority :- (1) the seniority inter se of civil servants (appointed to a service, cadre or post) shall be determined:-
(a) in the case of persons appointed by initial recruitment, in accordance with the order of merit assigned by the Commission [or as the case may be, the Departmental Selection Committee;] provided that persons selected for appointment to post in an earlier selection shall rank senior to the persons selected in a later selection;"*

9. The appellant has been initially appointed, therefore, the official respondents were bound to determine their seniority by following the provisions of section 8 of the Khyber Pakhtunkhwa Civil Servants Act,

1973 and Rule 17 (1) (a) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, which, as the record reflects or/and the facts and circumstances brought before us, was never done. From every stretch of imagination, the appellant was selected in the same selection process having appeared in the examination and interview in response to the advertisement of 2019, wherein the other recommendees of merit list of 2019 had been selected, therefore, under the above provisions of law and rules, their seniority had to be determined accordingly as the determination and fixation of seniority other than the above two provisions would be totally contrary to the law & rules as well as against this long practice and well settled principle and doing that would also be a sort of self-designed novel introduction of determination of seniority on initial appointment. Such an exercise having no place in the law cannot sustain. We are fortified by the following pronouncements.

- 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."

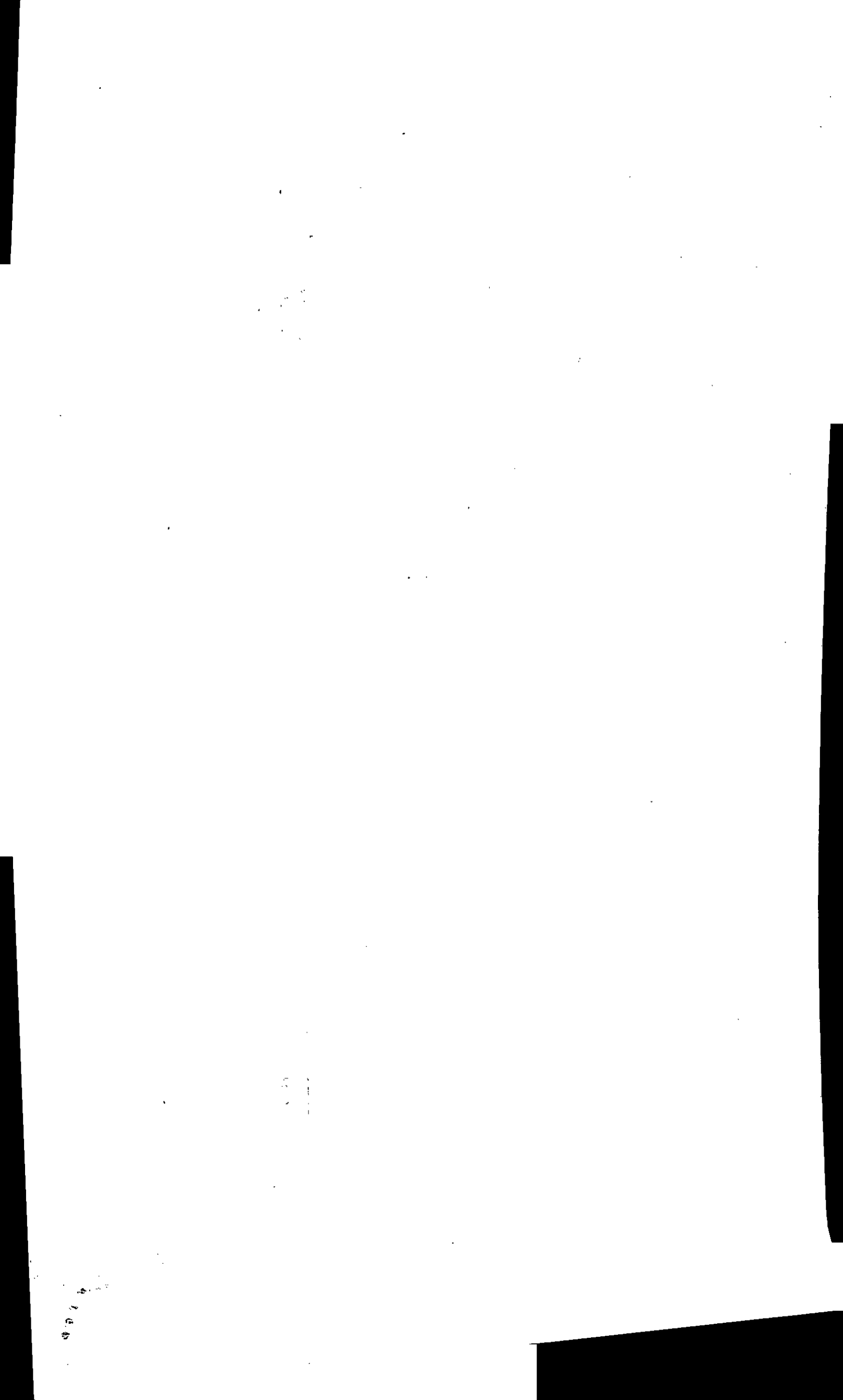
- iii. *PLC 1993 (CS) 116 titled M. Tahir Rasheed Establishment Secretary Division, Islamabad and others, wherein the Federal Service Tribunal held that Inter se seniority of candidates at one selection was to be determined on the basis of merit assigned to the candidates by the Public Service Commission/Selection Committee in pursuance of general principles of seniority and not the dates of joining duty.*

10. As a sequel to above discussion, the appeal in hand is partially allowed and respondents are directed to fix the seniority of the appellant in accordance with respective merit order as assigned by the selection authority in the year 2020. Appellant is not entitled for arrears of pay and back benefits. Costs shall follow the event. Consign.

11. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 7th day of March, 2024.*


(MUHAMMAD AKBAR KHAN)
Member (E)



(RASHIDA BANO)
Member (J)




14.12.2023 1. Clerk to counsel for the appellant present. Mr. Muhammad Jan learned District Attorney for the respondent present.

2. Lawyers are on strike, therefore, the case is adjourned. To come up for arguments on 07.03.2024 before D.B. P.P given to the parties.

SCANNED
KFST
Peshawar,


Muhammad Akbar Khan
Member (E)



Rashida Bano
Member (J)


ORDER
07.03.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney for the respondents present.

2. Vide our detailed judgment of today placed on file, the appeal in hand is partially allowed and respondents are directed to fix the seniority of the appellant in accordance with respective merit order as assigned by the selection authority in the year 2020. Appellant is not entitled for arrears of pay and back benefits. Costs shall follow the event. Consign.

3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 7th day of March, 2024.*



(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

26th May, 2023

1. Appellant in person present. Mr. Fazal Shah Mohmand, Additional Advocate General alongwith Mr. Irfan Khan ADEO for respondents present.
2. Appellant made a request for adjournment as his counsel is not available today. Adjourned. To come up for arguments on 22.08.2023 before D.B. P.P given to the parties.

SCANNED
KPST
Peshawar


(Fareeha Paul)
Member (E)

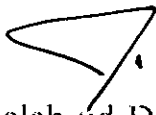

(Kalim Arshad Khan)
Chairman


*Mutazem Shah *

22nd August, 2023

1. Junior of learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney alongwith Mr. Irfan-ul-Haq, ADEO for the respondents present.
2. Junior of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy before the Hon'ble Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 14.12.2023 before the D.B. Parcha Peshi given to the parties.

SCANNED
KPST
Peshawar


(Salah-ud-Din)
Member (Judicial)


(Kalim Arshad Khan)
Chairman

Naeem Amin