

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No.1645/2023**

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

**Mr. Ijaz Ali, Village Secretary (BPS-9), Village Council Permoli North  
Tehsil Razzar, District Swabi. ... (Appellant)**

**VERSUS**

1. The Government of Khyber Pakhtunkhwa through Secretary Local Government and Rural Development Department, Civil Secretariat, Peshawar.
2. The Director General Local Government and Rural Development Department, Khyber Pakhtunkhwa, Peshawar.
3. The Assistant Director Local Government and Rural Development Department, District Swabi.

**... (Respondents)**

**Mr. Noor Muhammad Khattak  
Advocate ... For Appellant**

**Mr. Asif Masood Ali Shah  
Deputy District Attorney ... For Respondents**

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Date of Institution..... 10.08.2023  
Date of Hearing.....25.03.2024  
Date of Decision.....25.03.2024

**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:**

**“On acceptance of this appeal, the respondent may kindly be directed to grant seniority to the appellant against the post of Village Secretary w.e.f 14.01.2016 with all consequential back benefits. Any other remedy which this Tribunal deems fit that may also be awarded in favour of appellant.**



2. Brief facts of the case are that respondent department advertised posts of Secretary, Village/Neighbor Hood Council (BPS-07) and appellant being eligible applied for the same and after appearing in the written test, secured high marks, but despite better merit position, he was ignored. Feeling aggrieved, he filed writ petition No.589-P/2016 before Peshawar High Court, which was accepted vide judgment dated 21.02.2018. Respondents in compliance of judgment issued appointment order of the appellant on 31.07.2018, but with immediate effect and not from the date when his colleagues were appointed i.e. 14.01.2016. Feeling aggrieved, he filed departmental appeal which was not responded, hence the instant service appeal.

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

4. Learned counsel for the appellant argued that the appellant has not been treated in accordance with law and rules and respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973. He further argued that inaction of the respondents by not granting seniority to the appellant w.e.f 14.01.2016 i.e. the date of appointment of other colleagues is against the law, facts, norms of natural justice and material on record hence not tenable and liable to be set aside; that the act of respondents by not granting seniority to the appellant at par with his colleagues is also against the spirit of judgment dated 16.10.2017.

5. Conversely, learned Deputy District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that the appellant was appointed as per judgment of Peshawar High Court and there was



no mention of any back benefits including seniority etc hence appointment of the appellant was made with immediate effect.

6. Perusal of record reveals that respondent advertised certain posts of secretary village neighborhood/council in newspaper in-response of which appellant along with others applied for it, who appeared in test and secured high marks but appellant despite better merit position was ignored. Respondent department issued appointment orders of other candidates on 14.01.2016 by ignoring appellant. Appellant feeling aggrieved from inaction of the respondent by not appointing him despite being on top of the merit list, filed writ petition No.589-P/2016 before the Peshawar High Court, which was allowed vide order dated 21.02.2018. The private respondent in the ibid writ petition filed review petition No.56-P/2018 against the supra Judgment dated 21.02.2018 but same was dismissed in limine vide order dated 03.05.2018. The respondent department issued appointment order dated 31.07.2018 by implementing judgment of Peshawar High Court dated 21.02.2018, but same with immediate effect and not from the date when the other colleagues were issued appointment order dated 14.01.2016. Appellant feeling aggrieved and filed departmental appeal which was not responded.

7. Perusal of the worthy Peshawar high court dated 21/2/2018 reveals that appellant secured high marks than respondent no.5 of writ petition namely Safdar Ali Shah, therefore, respondents were directed to appoint appellant instead of safdar ali shah, who was appointed vide order dated 14.01.2016, having high merit position than said Safdar Ali Shah. Moreover other candidates of the process initiated as a consequence of advertisement of the respondent /department published in Daily newspaper, were appointed vide order dated 14/1/2016. Appellant was wrongly ignored by the respondent department and there was no fault on his part. In accordance with (Appointment, Promotion &



Transfer) Rules, seniority of a civil servant will have to be determined in accordance with Rule 17 Sub-Clause 1(a) which provide that

***"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;***

8. The appellant had been initially appointed, therefore, the official respondents were bound to determine his 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 interviewed in response to the advertisement of 2015, wherein the other recommendees of merit list of said advertisement of 2015, therefore, under the above provisions of law and rules, his 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 and well settled principle and doing that would also be a 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.*

9. For what has been discussed above, we are unison to accept <sup>his</sup> this appeal with direction to respondent to place appellant along with appointee of order dated 16.01.2016 in order of merit being selected of same selection process. 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 25<sup>th</sup> day of March, 2024.*

  
(FAREEHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

20<sup>th</sup> Dec. 2023

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Peshawar

01. Counsel for the appellant present. Mr. Asif Masood Ali Shah, DDA alongwith Abdul Manan, Focal Person for the respondents present.

02. Reply/comments on behalf of the respondents submitted, which is available on file. A copy of the same is handed over to the learned counsel for the appellant. To come up for rejoinder if any and arguments on 25.03.2024 before the D.B. Parcha Peshi given to the parties.

(FAREEHA PAUL)  
Member (E)

\*Fazle Sub... P.S\*

**ORDER**

25.03.2024

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

2. Vide our detailed judgement of today placed on file, we are unison to accept this appeal with direction to respondent to place appellant along with appointee of order dated 16.01.2016 in order of merit being selected of same selection process. 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 25<sup>th</sup> day of March, 2024.*

(FAREEHA PAUL)  
Member (E)

(RASHIDA BANO)  
Member (J)

SA 1645/23

04<sup>th</sup> Oct. 2023

01. Counsel for the appellant present. Mr. Asif Masood Ali Shah, IDDA alongwith Abdul Manan, Focal Person for the respondents present.

02. Reply/comments on behalf of the respondents not submitted and request for further time was made on their behalf. Final opportunity is granted. To come up for reply/comments on 15.11.2023 before the S.B. PP given to the parties.

[SCANNED]  
KPST  
Peshawar


  
(FAREEHA PAUL)  
Member (E)

*\*Fazle Subhan, PS\**

16<sup>th</sup> Nov. 2023

1. Learned counsel for the appellant present. Mr. Habib Anwar, Additional Advocate General for respondents present.

2. Reply submitted on behalf of respondents, wherein, there is no name under the signatures, besides no authority letter of the officers signing the comments or the one swearing in the affidavit are annexed. Therefore, the office shall return the comments to respondents for removal of deficiencies pointed out above and to resubmit within seven days. To come up for reply/comments on 20.12.2023 before S.B. P.P given to the parties.

  
(Kalim Arshad Khan)  
Chairman

*\*Muhammad Shah\**