

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
RASHIDA BANO ... MEMBER (Judicial)

Service Appeal No.428/2019

Date of presentation of Appeal.....24.08.2018
Date of Hearing.....02.07.2024
Date of Decision.....02.07.2024

Mutahir Khan, Junior Clerk, District Police Office,
Swabi.....(*Appellant*)

Versus

1. **The Provincial Police Officer**, Khyber Pakhtunkhwa, Peshawar
2. **The Regional Police Officer**, Mardan Region, Mardan.
3. **The District Police Officer**, Dir Lower.
4. **Faisal Khan**, Junior Clerk, Office of DPO, Mardan.
5. **Mian Muhammad Umar**, Junior Clerk, Office of DPO, Mardan
6. **Haroon**, Junior Clerk, Office of DPO, Mardan.
7. **Muhammad Jamal**, Junior Clerk, Office of DPO Mardan.
8. **Muhammad Noman Khan**, Junior Clerk, Office of DPO, Mardan.
9. **Hilal**, Senior Clerk/Pay Officer, AIG Traffic Gulbahar Peshawar

Ex-Parte

(*Respondents*)

Present:

Mr. Fazal Elahi Khan, AdvocateFor the appellant

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

Nemo for private respondents

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APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED SENIORITY LIST DATED 31.12.2017 ISSUED ON 30.03.2018, WHEREBY, THE APPELLANT HAS NOT BEEN ASSISGNEED HIS PROPER POSITION IN THE IMPUGNED SENIORITY LIST ALONG WITH HIS BATCH MATES SELECTEE OF ADVERTISEMENT DATED 16.08.2008 AND NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL

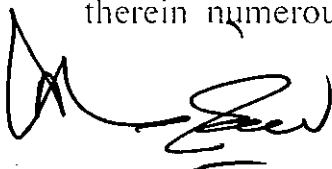
OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Brief facts of the case, as per averment of the appeal, are that the official respondents published advertisement for recruitment of Junior Clerks; that the appellant applied for the same but the official respondents appointed the private respondents and ignored the appellant; that the appellant alongwith other candidates filed Writ Petition No.1808/2009 before the Hon'ble Peshawar High Court, Peshawar and the Hon'ble High Court vide judgment dated 31.07.2012 issued directions to the official respondents to appoint the appellant alongwith other petitioners, within one month; that in compliance to the judgment of the Peshawar High Court, the official respondents appointed the appellant vide order dated 29.08.2012; that the official respondents issued seniority list dated 31.12.2017 but the appellant was placed junior to the private respondents.

02. Feeling aggrieved, he filed departmental appeal on 25.04.2018, but the same was not responded, hence, the instant service appeal.

03. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Official 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. While the private respondents were placed ex-parte.

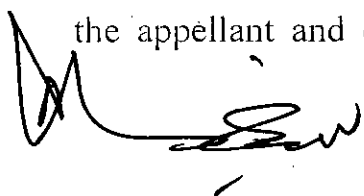
04. We have heard learned counsel for the appellant and learned Deputy District Attorney for the respondents.

05. Learned counsel for the appellant submitted that the impugned seniority list dated 31.07.2018 was against law, facts and norms of justice. He submitted that the appellant had appeared in the test/interview for the post of the same advertisement and the private respondents were appointed on 11.06.2009, therefore, the appellant was also entitled to be appointed in the year 2009. Further submitted that the appellant was entitled for appointment from 2009 and giving seniority from the year 2012 was malafide. Lastly, he concluded that wrongly placing the appellant's name in the impugned seniority list would affect his promotion in future, therefore, requested for acceptance of the instant service appeal.

06. As against that learned Deputy District Attorney submitted that the impugned seniority list dated 30.03.2018 was quite legal and as per law/rules. Further submitted that the appellant had not been appointed/selected as Junior Clerk by the Departmental Selection Committee vide order dated 11.06.2009 rather appointed later on, i.e. on the directions of the Hon'ble Peshawar High Court, Peshawar. Lastly, he concluded that the appellant had rightly been placed junior to the private respondents and had been treated in accordance with law and rules. Therefore, he requested for dismissal of the instant service appeal.

07. Perusal of record reveals that the respondent department advertised the posts of Junior Clerks, against which the appellant, private respondents and other candidates applied and participated in the process of selection. The private respondents and others were appointed and the appellant was left from appointment despite being on the select list. Where-after, the appellant approached the Hon'ble Peshawar High Court, Peshawar in Writ Petition No.1808/2009. The Peshawar High Court, vide order dated 31.07.2012, allowed the writ petition and ordered the official respondents to consider the appellant for appointment within a month. On the basis of the order of the Peshawar High Court, the respondents appointed the appellant vide order dated 29.08.2012. Where-after, seniority list was prepared and issued on 31.12.2017, wherein, the appellant was placed junior to the private respondents. Although, the appellant was appointed later than the private respondents. He filed representation but the same was not responded.

08. There is no denial of the fact that the appellant and private respondents were part of the same selection process and the appellant, despite being on better position of the select list, was denied appointment just on the pretext that the appellant and two others could not qualify the computer test. This stance of the official respondents was not accepted by the Ho'ble Peshawar High Court, Peshawar in the judgment passed in the writ petition, wherein, direction was made to the respondents to consider appointment of the appellant and other petitioners, it was then the appellant was



appointed but on the basis of the same selection process in which the private respondents and others were selected and appointed.

09. We asked the learned Deputy District Attorney to produce the relevant rules. Mr. Wisal Khan, Superintendent of Police, produced copy of the Khyber Pakhtunkhwa Police Department Ministerial Service Rules, 1974. Rule 10 of the above rules pertains to seniority. Relevant portion i.e. Rule-10(1)(a) is reproduced below:

"10. Seniority:

(1) The seniority inter se of the members of the Service in the various grades thereof shall be determined-

(a) in the case of members appointed by initial recruitment, in accordance with the order of merit assigned by the Selection Board, if the appointment is made on the recommendation of the Selection Board, and in other cases in accordance with the order of merit assigned by the appointing authority; provided that persons selected for the service in an earlier selection shall rank senior to the persons selected in a later selection."

10. The above rule requires that seniority list of the appellant and private respondents as well as others mentioned in the above Rule was to be prepared under the service rules of the Department. The appellant and private respondents both are selectees of the same selection process, initiated in response to same advertisement, therefore, inter-se seniority was to be determined by the authority on the basis of merit order as assigned by the selection Authority in view of Rule-10(1)(a) of the above Rules. The respondents as well as appellant were appointed against the same advertisement, however, the appellant was not appointed alongwith the private respondents in the year 2009 but was appointed on acceptance of his

writ petition in 2012. The appellant through appointed later, cannot be relegated in seniority in accordance with the rules, because appointment and seniority are entirely different things and the delayed appointment cannot take away right of seniority of the appellant in accordance with the above Rules. The principle of merit is a fundamental principle in recruitment to government posts. The fixation of seniority of the appellant is thus not fixed in accordance with rules and merit.

11. We are fortified by the following judgments on the point:

- 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. *The above judgment was affirmed by the august Supreme Court of Pakistan in PLJ 2002 SC 234 titled "Muhammad Amjid Ali and others versus Shafiq Ahmad and others" by holding that "Seniority. The seniority inter se of the members of the Service in the various grades thereof shall be determined-*



(a) in the case of members appointed by initial recruitment, in accordance with the order of merit assigned by the Commission provided that persons selected for the Service in an earlier selection shall rank senior to the persons selected in a later selection;"

13. Respondents Nos. 1 to 5 were candidates in the Competitive Examinations held in 1988 and 1989 and were taken from the merit list prepared as a result of competitive examination, 1987, therefore, there can be no cavil with the proposition that they belong to 1988 batch and their seniority is to be determined accordingly. It will be pertinent to mention here that the appeal before the Tribunal was not seriously contested by the Appointing Authority, namely, the Lahore High Court in view of its stance taken at the stage of preparation of the seniority list of the parties by the Government of the Punjab that the contesting respondents apparently belonged to 1988 batch.

14. Acceptance of the offer of appointment against future vacancies by the respondents being traceable to the observations made in the judgment passed in the Intra-Court Appeal can have no bearing on the question of their seniority. Similarly the matter had become past and closed only to the extent of appointment of the respondents as Civil Judges against future posts and the question of their seniority remained open.

- iv. PLC 1993 (CS) 116 titled M. Tahir Rasheed versus Secretary Establishment 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.
- v. 1993 P L C (C.S.) 52 titled "Muhammad Jafar Hussain versus Chairman, Central Board of Revenue, Islamabad and 4 other", wherein it was held that Seniority of candidates selected in one batch was to be determined in accordance with the merit assigned by Public Service Commission and not on basis of joining assignments---Appellant's claim of seniority that although respondent had

acquired higher position in merit list prepared by selection authority, yet he having joined assignment earlier, in time was to rank senior, was not sustainable.

- vi. 1998 SCMR 633 titled "Zahid Arif versus Government of NWFP through Secretary S&GAD Peshawar and 9 others", wherein it was held that ---R. 17(a)---Constitution of Pakistan (1973), Art. 212(3)---Seniority-- Appointment of civil servant to post in later selection---Petitioner's name had been placed next to respondents although he had been placed higher on merit list than respondents---Civil servant's appeal against seniority list had been dismissed mainly on the ground that respondents being nominees for first batch were to rank higher than civil servant on account of their initial selection---Rule 17(a), North-West Frontier Province (Appointment, Promotion and Transfer) Rules, 1989, provided that person selected for appointment to post in earlier selection would rank senior to person selected in later selection.

12. In view of the above scenario, instant service appeal is accepted and the respondents are directed to fix the seniority of the appellant from the date, private respondents were appointed in accordance with merit order prepared by the selection authority. Costs shall follow the event. Consign.

13. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 2nd day of July, 2024.



KALIM ARSHAD KHAN
Chairman



RASHIDA BANO
Member (Judicial)