

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

**Service Appeal No. 7203/2021**

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

Gul Zaman S/O Muhammad Doran R/O Mullazai Tehsil and District Tank Ex-Family Welfare Assistant (M) BPS- 7 Family Welfare Centre Mullazai Tehsil and District Tank. ....(Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat Peshawar.
2. Secretary Government of Khyber Pakhtunkhwa Population Welfare Department, Civil Secretariat Peshawar.
3. Director General, Population Welfare, Peshawar.
4. Director Human Resource, Directorate General of Population Welfare, Peshawar. ....(Respondents)

Mr. Faridullah Kundi,  
Advocate

... For appellant

Mr. Muhammad Jan,  
District Attorney

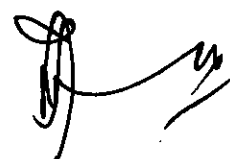
... For respondents

Date of Institution..... 30.07.2021  
Date of Hearing..... 30.05.2024  
Date of Decision..... 30.05.2024

**CONOLIDATED JUDGEMENT**

**FAREEHA PAUL, MEMBER (E):** Through this single judgment, we intend to dispose of instant service appeal as well as connected service appeal No. 7204/2021, titled "Gul Zaman Versus Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat Peshawar and others", as in both the appeals, common question of law and facts are involved.

2. The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated



18.02.2021 of respondent No. 3 whereby he illegally changed the seniority list and placed the appellant at serial no. 370 instead of serial no. 2 of joint seniority list of BPS- 7 for employees of Population Welfare Department Khyber Pakhtunkhwa, Peshawar. It has been prayed that on acceptance of the appeal, impugned order dated 18.02.2021 might be set aside and the appellant be placed at serial no. 2 of the seniority list of Family Welfare Assistant (Male) BPS- 7 of Population Welfare Department Khyber Pakhtunkhwa Peshawar.

3. Brief facts of the case, as given in the memorandum of appeal, are that the appellant joined the service in Agriculture Department NWFP Peshawar as Turner (BPS- 5) vide order dated 25.03.1990. He was regularized after completion of probation period and served the Agriculture Department for 13 years. In the year 2003, due to devolution of the department, his name was placed in the list of surplus pool employees and his services were handed over to the Deputy Commissioner Tank for further adjustment in other department with same cadre and scale. He performed duties as surplus pool staff under the subordination of the Deputy Commissioner Tank for ten years. In the year 2013, he was adjusted in the Population Welfare Department in the office of District Population Officer Tank against a vacant post in BPS- 5 where he was upgraded to BPS- 7 and performed his duty on the same Basic Pay Scale till his retirement on 24.04.2021 as Family Welfare Assistant (Male) BPS- 7 in Family Welfare Centre Mullazai District Tank. As per joint seniority list dated 26.12.2018, the appellant was at serial no. 5. The concerned authority asked for ACRs of the appellant for the last five years. The District Population Welfare Officer, Tank sent the ACRs for the period from 2014 to 2018 to the



Deputy Director Admn, Population Welfare Department Peshawar. The appellant was waiting for promotion when he came to know that respondents had prepared another tentative seniority list dated 03.02.2021 wherein his name was placed at serial no. 370 which was objected by the appellant through application dated 08.02.2021 sent by the District Population Welfare Officer Tank through letter dated 08.03.2021 to the high ups but they did not respond. Appellant came to know that his junior colleagues were promoted vide order dated 07.04.2021 and he was ignored. Feeling aggrieved, he filed departmental representation on 11.04.2021 to respondent No. 2 which was not responded within the statutory period of ninety days; hence the instant service appeal.

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

5. Learned counsel for the appellant, after presenting the case in detail, argued that the appellant was senior to all the employees in BPS- 7 of the Population Welfare Department Khyber Pakhtunkhwa but the respondent department, in flagrant violation of provision of Section 8 of Khyber Pakhtunkhwa Civil Servants Act, 1973 and Rule 17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, placed his name at serial no. 370 in the impugned seniority list, instead of serial no. 2. He further argued that seniority must be reckoned from the date of initial appointment and not from the date of subsequent adjustment in the present department from surplus pool. He further argued that all other



departments had prepared a joint seniority list according to law and placed the merged civil servants at proper place in the seniority list but the respondent department violated the legal provisions of law and discriminated the appellant. He requested that the appeal might be accepted as prayed for.

6. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that appellant was placed at serial no. 5 of the provisional seniority list of Family Welfare Assistants (M) but it had not attained finality. Final seniority list was issued keeping in view the surplus pool policy on 18.02.2021. He requested that the appeal might be dismissed.

7. In service appeal no. 7203/2021, the appellant has prayed for correction in the seniority list by placing his name at serial no. 2 instead of serial no. 370, whereas in service appeal no. 7204/2021 he has prayed for promotion to the post of Supervisor (BPS- 14). First we take up the matter of seniority of the appellant. Arguments and record presented before us show that he was initially appointed in 1990 in the Agriculture Department of the province and was declared surplus in 2003. Later on in 2013, he was adjusted from the surplus pool in the Population Welfare Department in District Tank. At the time of adjustment, he was in BS- 5 and was later on upgraded to BS- 7. A provisional seniority list dated 26.12.2018, produced before us, of Family Welfare Assistants (BS- 7) shows his name at serial no. 5. Later on, in 2021, a final seniority list of Family Welfare Assistants (BS- 7) as on 03.02.2021 was issued vide which, the appellant was placed at serial no. 370, and the same has been impugned before us.



8. The appellant was adjusted in the Population Welfare Department from the surplus pool. The policy for adjustment/absorption of government servants, declared surplus, issued by the government of Khyber Pakhtunkhwa on 08.06.2001 is extremely clear where it elaborates the fixation of seniority of a surplus employee. Serial no. 6 of the policy is reproduced as follows:-

“6. FIXATION OF SENIORITY.

*The inter-se seniority of the surplus employees after their adjustment in various Departments will be determined according to the following principles:-*

- (a) *In case a surplus employee could be adjusted in the respective cadre of his parent department, he shall regain his original seniority in that cadre.*
- (b) *In case, however, he is adjusted in his respective cadre, but in a Department other than his parent Department, he shall be placed at the bottom of seniority list of that cadre.*
- (c) *In case of his adjustment against a post in a corresponding basic pay scale with different designation/nomenclature of the post, either in his parent department or in any other department, he will be placed at the bottom of seniority list.”*

9. The appellant was placed at serial No. 370 of the seniority list in the light of the above mentioned principle. The appellant falls in the category mentioned at “(c)” above. A simple perusal of the seniority list as on 03.02.2021, issued on 18.02.2021, shows that the official at serial no. 369 was appointed as Family Welfare Assistant (BS- 7) in 2012 whereas the one at serial no. 371 was appointed on that position and grade in 2014. The appellant




was adjusted in 2013, therefore he was rightly placed at serial no. 370, which was the bottom of the seniority list in 2013.

10. In the other service appeal No. 7204/2021, the appellant has prayed for promotion and has impugned an order dated 07.04.2021 vide which certain Family Welfare Assistants (BS-7) have been promoted to the post of Supervisor (BS- 14). Those promotions were made on the basis of seniority list as on 02.03.2021 and all the six officials are at serial no. 1 to 6 of that seniority list and hence they were promoted on the basis of their seniority. The appellant has no match with them, being at serial no. 370 of the seniority list.

11. In view of the above discussion, both the appeals are dismissed being groundless. Cost shall follow the event. Consign.

12. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 30<sup>th</sup> day of May, 2024.*

  
(FAREEHA PAUL)  
Member (E)


  
(RASHIDA BANO)  
Member(J)

SA 7203/2021

30<sup>th</sup> May, 2024 01. Mr. Faridullah Kundi, Advocate for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, the appeal is dismissed being groundless. Costs shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 30<sup>th</sup> day of May, 2024.*

  
(FAREEHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member(J)

\*Fazal Subhan PS\*