

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT, ABBOTTABAD

Service Appeal No. 1127/2023

BEFORE: MR. AURANGZEB KHATTAK... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Noshad Zaib s/o Aurangzeb Khan R/o Village Shamlai, Tehsil and
District Battagram, Gallies Forest Division Abbottabad.

.... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Forest Khyber Pakhtunkhwa, Peshawar.
2. Chief Conservator of Forest, Northern Region, Abbottabad.
3. Conservator of Forest Hazara Circle, Mansehra.
4. Divisional Forest Officer, Hazara Tribal Forest Division, Battagram.
5. Saif Ullah S/o Rustam Khan, Surgai Block of Forest Sub Division Allai, Battagram.
6. Tariq Aziz S/o Gulbar Khan R/o Forest Public Prosecutor, Battagram.
....(Respondents)

Malik Shujaat Ali
Advocate

... For appellants

Mr. Asif Masood Ali Shah
District Attorney

... For Official respondents

Syed Waqas Naqvi
Advocate

... For Private respondents

Date of Institution.....18.05.2023
Date of Hearing.....27.06.2024
Date of Decision..... 27.06.2024

CONSOLIDATED JUDGMENT

FAREEHA PAUL, MEMBER (E): Through this single judgment, we intend
to dispose of instant service appeal as well as the following connected



service appeals as in all the appeals, common question of law and facts are involved:

1. Service Appeal No.1128/2023 Syed Hammad Ali Shah,
2. Service Appeal No.1129/2023 Atta Ullah
3. Service Appeal No.1130/2023 Fazal Rabi

Vs. Government of Khyber Pakhtunkhwa through Secretary Forest Khyber Pakhtunkhwa, Peshawar and others.”

02. The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 for declaration to the effect that the seniority list of Forest Guards, prepared by the respondent No. 4, dated 31.03.2023, was against Rule-17 (4) and against non-uniformity in seniority list of Forest Guard of different Forest Divisions of the Province with the prayer as follows:-

“On acceptance of instant service appeal the seniority list of Forest Guards in respect of Hazara Tribal Forest Division Battagram may kindly be revised according to Rule-17(4) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 in uniformity with other forest divisions of Khyber Pakhtunkhwa. Any other relief which this honorable tribunal deems fit and appropriate may also be granted to the appellant in the best interest of justice.”

03. Brief facts of the case are that appellant was appointed through office order dated 03.10.2016 as Forest Guard on regular basis in BPS-08. Respondent No.4 prepared a seniority list of Forest Guards according to their initial recruitment/appointment rather than Rule-17(4) of the Khyber

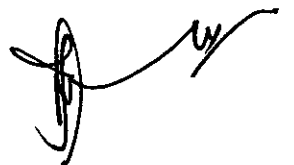


Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 through office order dated 31.03.2023. Feeling aggrieved from that seniority list of Forest Guards of Hazara Tribal Forest Division Battagram, the appellant filed departmental appeal which was turned down; hence, the instant service appeal.

04. Respondents were put on notice. Official respondents No.1 to 4 submitted written reply/comments while private respondents No.5 & 6 placed reliance on the reply of official respondents No.1 to 4. We heard the learned counsel for the appellants and learned Deputy District Attorney, assisted by the learned counsel for private respondents, and perused the case file with connected documents in detail.

05. Learned counsel for the appellant, after presenting the case in detail, argued that seniority list of Forest Guards in respect of Hazara Tribal Forest Division Battagram was illegal, unlawful, arbitrary and against the principles of natural justice, hence, liable to be set aside. He argued that all Forest Divisions in the Province prepared seniority lists of Forest Guards according to the Rule-17(4) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 and that the respondent No.4 prepared the same according to his own whims and wishes. He, therefore, requested for acceptance of the service appeal as prayed for.

06. Learned Deputy District Attorney, assisted by the learned counsel for private respondents, argued that Forest Guard was a Forest Divisional cadre post, therefore, respondent No.4, being appointing authority, prepared the seniority list of Forest Guards in accordance with law and rules on the



subject, specifically Section 8 (3) of the Civil Servants Act, 1973 and Rule-17(1)(a) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. He further argued that the appellant had concealed the facts and quoted wrong precedents of other Forest Divisions regarding preparation of seniority lists. He submitted that seniority list of Forest Guards was always prepared according to Rule-17 (1)(a) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, therefore, the plea of the appellants regarding fixation of their seniority in the light of Rule-17(4) was not applicable. He contended that Rule-17(4) related to seniority list of Civil Servants in a certain cadre to which promotion was made from different lower posts earning the same pay scale from the date of regular appointment or promotion of the Civil Servants in the lower posts. Lastly, he submitted that after the initial recruitment of Forest Guards, vide office order dated 03.10.2016, final seniority list was prepared in respect of Hazara Tribal Forest Division Battagram dated 14.12.2017 which was never challenged by the appellant before any forum, hence, the appeal, being devoid of any merits, was liable to be dismissed.

07. Through the instant service appeals, the appellants have impugned a seniority list as on 31.03.2023 of Forest Guards in respect of Hazara Tribal Forest Division, Battagram on the ground that it was not prepared in the light of Rule 17(4) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. Arguments and record presented before us show that the appellants were appointed as Forest Guards (BS-08) on 03.10.2016, after fulfilling all the codal formalities. The official



respondents, in their reply at Page-10 (Annexure-B), attached a final merit list of shortlisted candidates, which was prepared by taking into account their physical measurement, academic qualification and interview marks. According to that list, private respondents No.5 & 6 secured 111 and 107.5 marks and hence they were placed at Serial No.1 and 2, respectively. On the other hand, the appellants in Service Appeal No.1127/2023, 1128/2023, 1129/2023 and 1130/2023 secured 92, 100, 94, and 92 marks and were placed at serial No.13, 5, 9 and 12 of the merit list; respectively.

08. The Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 are extremely clear where rule no.17 (1)(a) states as follows:


*“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.”*


09. Contention of learned counsel for the appellants that seniority list was to be prepared in the light of Rule 17(4) did not hold ground as that rule was meant for the inter-se seniority of the civil servants in a certain cadre to which promotion was made from different lower posts, carrying the same

pay scale. In case of the appellants, their appointment was not made by promotion from some lower scale, rather it was a fresh appointment and hence their seniority was to be determined on the basis of merit assigned to them during their selection process.

10. In view of the above discussion, the appeals in hand are dismissed, being groundless. Costs shall follow the event. Consign.

11. *Pronounced in open court in Abbottabad and given under our hands and seal of the Tribunal on this 27th day of June, 2024.*


(FARYEHA PAUL)
Member (I)
(Camp Court, A/Abad)



(AURANGZEB KHATTAK)
Member (J)
(Camp Court, A/Abad)


SA 1127/23

27th June, 2024 01. Malik Shujaat Ali, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the official respondents and Syed Waqas Naqvi, Advocate for private respondents present. Arguments heard and record perused.

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

03. *Pronounced in open court in Abbottabad and given under our hands and seal of the Tribunal on this 27th day of June, 2024.*


(FARZEEN PAUL)
Member (E)
(Camp Court, A/Abad)


(AURANGZEB KHATTAK)
Member (J)
(Camp Court, A/Abad)