

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No. 5188/2021**

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

**Mr. Engineer Ishtiaq Ahmad, Assistant Engineer (E) BPS-17, MRS. Cell  
Communication & Works Department.**

.... (Appellant)

**VERSUS**

1. The Government: of Khyber Pakhtunkhwa through Chief Secretary, Peshawar
  2. The Secretary C&W Department, Khyber Pakhtunkhwa, Peshawar.
  3. The Chief Engineer (Center) C&W Department Khyber Pakhtunkhwa Peshawar.
- .... (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.....07.05.2021  
Date of Hearing.....03.05.2024  
Date of Decision.....03.05.2024

**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:

**“That on acceptance of this service appeal the impugned seniority list of Assistants Engineers / SDO’s / Juniors Engineer/ Assistant Research Officers BPS-17 dated 6.8.2020 communicated to the appellant on 21.1.2021 may kindly be rectified/modified and the respondents may be directed to place the name of the appellant at the proper position in the ibid seniority list dated 6.8.2020. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.**



2. Brief facts of the case are that appellant was initially appointed as Assistant Engineer (BPS-17) on contract basis in the project CSR Cell vide order dated 27.03.2015. Later on, services of the appellant have been regularized under Regularization Act, 2018 w.e.f. 02.03.2018. The post of the appellant has been adjusted in the C&W Department vide letter dated 01.10.2020 and respondent were directed to incorporate the name of appellant in the relevant seniority list. Respondents vide impugned notification dated 06.08.2020 issued seniority list, wherein the name of the appellant was not mentioned at all. Feeling aggrieved, he filed departmental appeal, which was not responded, hence the present service appeal.

3. On receipt of the appeal and its admission to full hearing, the respondents were summoned. 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.

4. We have heard learned counsel for the appellants and learned Deputy District Attorney for the respondents.

5. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy District Attorney controverted the same by supporting the impugned order(s).

6. Perusal of record reveals that appellant was initially appointed as Assistant Engineer BPS-17 on contract basis in the project named CSR Cell vide order dated 27.03.2015. That in the response the appellant submitted his arrival reports and started performing duty as Assistant Engineer in the department quite efficiently. That in the light of the Regularization Act, 2018, the services of the appellant has been regularized with effect from 02.03.2018 vide notification dated 30.04.2018. The post of the appellant has been adjusted in the C&W Department vide letter dated 01.10.2020, wherein the abide letter it was further directed to place the name of the appellant in the seniority list of the concern cadre. That vide impugned notification dated 06.08.2020 communicated to the appellant on 21.01.2021 the respondents issued seniority list

wherein the name of the appellant has totally being ignored.

7. Perusal of schedule attached to Khyber Pakhtunkhwa employees (Regularization of Service) Act 2018 reveals that MRS Cell in C&W Department was created and appellant was posted there by regularizing his service on 30.04.2018, Section 6 of the Regularization of Service Act, 2018 regulate seniority of all the employees vide this act, it says;

**“Whose services were regularized under this Act with in the same service or cadre, shall be determine on the basis of their continuous officiation in such service or cadre”**

For which Coordinator MRS Cell requested Chief Engineer vide letter dated 01.10.2020 C&W for enrolment of the appellant in the seniority list of the C&W Department but same was not considered.

8. Respondents in their reply have taken the plea that MRS was re-shifted to Finance Department by the approval of Chief Minister, Competent Authority. It is very astonishing that MRS Cell was created by the Act of Parliament and respondents, with simple approval of Chief Minister, re-shifted the MRS Cell to Finance Department. Act of Parliament is the Supreme Legislation and has preference upon any other order or approval of Chief Minister. Therefore re-shifting of MRS Cell to Finance Department from C&W Department upon orders of Chief Minister, has no legal effect and Act being Supreme Legislation will prevail upon all other orders of all authorities and name of the appellant will have to be included in the seniority of C&W Department.

9. As sequel to above discussion, we accept the appeal in hand as prayed for. 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 3<sup>th</sup> day May, 2024.*

  
(FARVEHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

29.04.2024 1. Learned counsel for the appellant present. Mr. Arshad Azam learned Assistant Advocate General alongwith Zahid Habib, Administrative Officer for the respondents present.

2. Learned counsel for the appellant requested for adjournment in order to further prepare the brief. Adjourned. To come up for arguments on 03.05.2024 before D.B. P.P given to parties.

(Muhammad Akbar Khan)  
Member (E)

(Rashida Bano)  
Member (J)

Kaleemullah

**ORDER**

03.05.2024 1. Learned counsel for the appellant present. Syed Asif Masood Ali Shah, learned Deputy District Attorney for the respondents present.

2. Vide our detailed judgment of today placed on file, we accept the appeal in hand as prayed for. 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 3<sup>rd</sup> day of May, 2024.*

(FARÉHA PAUL)  
Member (E)

(RASHIDA BANO)  
Member (J)

\*Kaleemullah