

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.03/2022

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

Kifayat Ullah, Junior Village Secretary (BPS-09), Local Government &
Rural Development Department, Peshawar.

... (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. & 191 Others
4. **Kamran Ullah Khan S/o Ihsan Ullah, Junior Village Secretary (BPS-09), LG & RDD, Peshawar & 191 Others.**

... (Respondents)

Muhammad Asif Yousafzai
Advocate

... For Appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

... For Respondents

Date of Institution.....23.12.2021
Date of Hearing.....29.05.2024
Date of Decision.....29.05.2024

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:

“On acceptance of this appeal, the rejection order dated 29.11.2021 and final seniority list dated 16.03.2021 may please be set aside and the respondents may be directed to place the appellant’s name at serial



No.26 instead of serial No.218 by modifying the final seniority list. Any other remedy which this august tribunal deems fit and appropriate that may also be awarded in favour of the apppellant. “.

2. Brief facts of the case are that the appellant is a permanent resident of Muhalla Garhi Khel Ahmad Khel, Tehsil & District Peshawar. The respondent department advertised the post of Village Secretary (BPS-07) and appellant being eligible applied for the said post through a written test duly conducted through NTS by the respondent department. The appellant was declared a successful candidate in merit list in Union Council 49, Bazid Khel, Vilalge Council 144, Ahmad Khel. The Union Council Bazid Khel 49 consists of four Village Councils namely: i. VC 142 Kande Malakana ii. VC 143 Scheme Chowk iii. VC 144 Ahmad Khel iv. VC 145 Marozai. The appellant belongs to VC 144 Ahmad Khel and was declared a successful candidate for the said VC, but astonishingly another candidate namely Manzoor Khan belonging to another VC was appointed in the said VC. Feeling aggrieved, he filed writ petition No.4362-P/2016 before Peshawar High Court, which was accepted vide judgment dated 22.05.2018. Respondents in compliance of judgment issued appointment order of the appellant on 30.11.2018. On 16.03.2021 respondents issued final seniority list wherein name of the appellant was placed at serial No. 218 instead of serial No. 26. Feeling aggrieved, he filed departmental appeal which was rejected, 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

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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 from the date of appointment of other colleagues is against the law, facts, norms of natural justice and material on record; that being the selectee of the same selection process, the appellant's name was required to be placed at serial No. 26 (on the basis of date of birth) because the respondents have not maintained the list on the basis of merit list; that the appellant has been discriminated by not treating him on the principles as they treated the other selectees despite the fact that appellant was also a candidate of the same selection process. He requested that instant appeal might be accepted as prayed for.

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 on 30.11.2018, and his seniority will be fixed/counted from his date of appointment not from the date of advertisement of the post. Moreover, the Hon'ble Peshawar High Court has not given any direction regarding his seniority. He further contended that departmental appeal of the appellant is barred by time, therefore, he requested that instant appeal might be dismissed.

6. Perusal of record reveals that on 27.06.2015 respondent/department advertised some posts of Village Secretary BPS-07. Appellant being eligible and qualified, applied for the same post. Written test was conducted by the NTS, which was declared by the appellant. After conducting test and interview by respondent/department appellant was declared successful candidate for Village Council 144 Ahmad Khel, Private respondent namely Manzoor Khan was appointed by transfer as Secretary at Village Council 144 who belongs to other Village Council instead of the appellant who is permanent resident of Village Council 144. Feeling aggrieved by the appointment by transfer of private



respondent appellant time and again approached the respondent department but in vain.

7. Appellant approached worthy Peshawar High Court, Peshawar in writ jurisdiction which was allowed vide judgment and order dated 22.05.2018, where after appellant was appointed vide order dated 30.11.2018 with immediate effect. Appellant now through instant appeal seeks his seniority alongwith his batch mates i.e. respondents who were appointed on the basis of same test and interview which was qualified by the appellant but he was dropped by respondents and was letter on appointed upon direction of worthy Peshawar High Court, Peshawar. Respondent department issued tentative seniority list for the year 2021 on 10.08.2020 upon which appellant filed objection but same was not considered and respondents issued final seniority list on 16.03.2021 where name of the appellant was placed at Serial No.26.

8. Admittedly appellant was not appointed in the year 2016, and was appointed later, which means he had not performed duties, therefore, on the principle of no work no pay, he is not entitled for financial benefits, but as regards the question of determination of seniority of the appellant or for that matter the persons selected in one combined competitive examination, they will squarely be belonging to the same batch and their inter se seniority was necessarily to be determined in accordance with their respective orders of merit prepared by the selection authority, as required by section-8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 and rule 17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Transfer and Promotion) Rules, 1989. Both the provisions are reproduced as under:

Khyber Pakhtunkhwa, Civil Servant Act, 1973:



"8. Seniority:- (1) For proper administration of a service, cadre or [post], the appointing authority shall cause a seniority list of the members for the time being of such service, cadre or [post] to be prepared, but nothing herein contained shall be construed to confer any vested right to a particular seniority in such service, cadre or [post] as the case may be.

(2) Subject to the provisions of sub-section (1), the seniority of a civil servant shall be reckoned in relation to other civil servants belonging to the same service or 6 [cadre] whether serving the same department or office or not, as may be prescribed.

(3) Seniority on initial appointment to a service, [cadre] or post shall be determined as may be prescribed.

(4) Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post; Provided that civil servants who are selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter-se-seniority as in the lower post.

(5) The seniority lists prepared under sub-section(1), shall be revised and notified in the official Gazette at least once in a calendar year, preferably in the month of January.

Khyber Pakhtunkhwa, Civil Servants (Appointment, Promotion & Transfer) Rules, 1989:

"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;"



9. 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 interview in response to the advertisement of 2015, wherein the other recommendees of merit list of 2016 had been selected, therefore, under the above provisions of law and rules, their 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 practice and well settled principle and doing that would also be a sort of 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.*

10. As sequel to above discussion, we partially allow the appeal in hand with direction to respondents to place him in the seniority at the relevant place alongwith his batch mates. Costs shall follow the event. Consign.

11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 29th day of May, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)