

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR

Service Appeal No. 301/2024.

Salman Muhammad..... Appellant

VERSUS

Senior Member Board of Revenue and others..... Respondents.

I N D E X

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Through

Respondents

Nasir Mehmood

Advocate Supreme Court of Pakistan.

Office No.622 6th floor Pak-Medical Centre,
Khyber Bazar, Peshawar.

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BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR

Service Appeal No. 301/2024.

Salman Muhammad..... Appellant

Khyber Pakhtunkhwa
Service Tribunal

VERSUS

Diary No. 13199

Date 05-06-2024

SMBR and other..... Respondents.

REPLY ON BEHALF OF PRIVATE RESPONDENT NO.26,37,38,55 to 58,
90,91,94,132,167,471

RESPECTFULLY SHEWETH:

PRELIMINARY OBJECTIONS.

1. That the appellant has got no cause of action and or locus standi to file the instant appeal because no departmental appeal has been filed against the final order i.e. issuance of final joint seniority list while they have challenged the regrettable order passed on the objections filed against the tentative joint seniority list thus the appeal is liable to be dismissed on this score alone.
2. That the instant appeal is baseless, frivolous, vexatious and has been filed to harass the answering respondents. Although the appellant cadre was transferred\inserted\adjusted in the tentative joint seniority list to the cadre of the answering respondents but through SSRC rules were not amended for inclusion of the appellant cadre for promotion to the post of Tehsildar although meeting was held so the appeal is liable to dismissed summarily.
3. That the present appeal is not maintainable in its present form hence liable to be dismissed because the appellant has concealed the factum of dismissal of application of the appellant moved for adjustment of his name in the joint seniority list of the Assistants and senior scale stenographer of the offices of commissioners and deputy commissioner by the SMBR vide order dated 13.05.2022. Allegedly the name of the appellant was adjusted in the joint tentative seniority list on acceptance of his review petition but in fact there is no order or even note sheet of the SMBR on the basis of which notification dated 01.07.2022 was issued by Asst. Secretary (Estt) Board of Revenue. So the same notification is illegal and void.
4. That the appellant has not come to this Honourable Tribunal with clean hands and has suppressed material facts from this Honourable tribunal. The appellant was inducted into service as computer assistant in BPS 11. In the year 2010 Govt. of KPK through notification dated 12.07.2010 has upgraded all the existing post of key punch operator (BPS-8)/ data entry operator (BPS-9)/ computer assistant (BPS-11) and computer operators (BPS-10) of different pay scales to BPS-12 with the nomenclature of post of computer operator. Later on through notification dated

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29.07.2016 Government of KPK has upgraded and re-designated all existing posts of computer operator and data processing supervisor as computer operator BPS-16. The finance dept. merged all these posts because all these posts fall in the category of technical posts. The appellant cadre i.e. district ministerial cadre service rules give 40% quota to computer operator for promotion to the post of senior scale stenographer. Once they get promoted to the post of senior scale stenographer then they will get further promotion to the post of Private Secretary as well as Tehsildar. So the appellant cadre is having their own hierarchy of promotion that's why in SSRC meeting held on 30.05.2023 although Tehsildari and Naib Tehsildari Service Rules, 2008 were further amended but no hierarchy of promotion was given to the cadre of appellant because they are already having two pronged promotion hierarchy.

There are round about 300 Computer Operator working in the offices of D.Cs AND Commissioners but only 13 Computer Operators have been included in the Seniority List of Assistants and SSS (Senior Scale Stenographer). As stated above CO (Computer Operator) will first be promoted to SSS, as such his name will be included in the Seniority List of Assistants and SSS thus he will get promotion to the post of Tehsildar. It is further submitted if senior employee in computer operator (BPS-16) cadre whose name is not included in the List ibid (Seniority List of Assistants and SSS) is promoted to the post of senior scale stenographer (BPS-16) at this stage or later on then his name will be placed in the joint Seniority List of Assistants and SSS below the Computer Operator (Appellant herein).

The answering respondents are in the promotion zone of Tehsildari and Naib Tehsildari Service Rules, 1962 (which were later on amended from time to time) **from the beginning i.e. 1962 and still intact.** On 26.12.2008 through notification no.32\02\Adm:\135\SSRC previous rules were superseded by Tehsildari and Naib Tehsildari Service Rules, 2008, in which the answering respondents were also in the promotion zone. Once again on 23.01.2015 through notification previous rules were superseded by Tehsildari and Naib Tehsildari Service Rules, 2015, in which the answering respondents are also in the promotion zone.

5. That the appellant has filed the instant appeal malafidely and to waste precious time of this Honourable Court.
6. That appeal of the appellant is premature because through the instant appeal the appellant has challenged the order passed on the objections filed over tentative seniority list which is a step towards final proceeding i.e. issuance of final seniority list which was later on issued and notified by the department but was not challenged by the appellant. Tentative seniority list is issued only for ascertaining the position and considering objections, if any raised by the persons being affected so that a final list, which has element of reliability, be prepared and circulated. Tentative seniority list, except inviting attention for seeking correction, does not create any legitimate basis for conferring right or **basis for cause of action** thus the appeal being premature is not maintainable.

ON FACTS.

1. In reply to Para.1 it is submitted that the appellant was upgraded to BPS-16 on 29.07.2016 having their own two pronged promotion hierarchy while the answering respondents are in the promotion zone of Tehsildari and Naib Tehsildari Service Rules, 1962 **from the beginning i.e. 1962 and still intact in the rules of the year 2008 and 2015.**

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2. Para.2 needs no reply.
3. In reply to para.3 it is submitted that the tentative joint seniority list of Assistant/Senior Scale Stenographer of- the offices of the Commissioners and Deputy Commissioners as stood on 31.12.2023 was issued after incorporating the name of the appellant in the joint tentative seniority list in light of Notification dated 01.07.2022 which was issued illegally.
4. Para. 4 of the appeal is wrong and incorrect. Further submitted that the appellant raised objections over inclusion of his name in tentative joint seniority which is issued only for ascertaining the position and considering objections, if any raised by the persons being affected so that a final list, which has element of reliability, be prepared and circulated. The name of the appellant is included in the tentative joint seniority list of Assistant/Senior Scale Stenographer offices of the Commissioners and Deputy Commissioners as per Notification dated 01.07.22 which was issued illegally but is still intact. The cadre of the appellant is different cadre so he has no right for insertion in the tentative joint seniority list from the date of his initial appointment because there is neither merger nor restructuring of the department.
5. Para.5 of the appeal is wrong and incorrect hence denied. It is further submitted that objections of the appellant were rightly regretted by the Competent Authority being merit less and against the law/rules. The appellant has not challenged joint final seniority list so he is precluded from challenging the intermediate proceeding.
6. Para.6 of the appeal is also wrong, incorrect and is against the material facts. The cadre of the appellant is different and he was adjusted in the tentative joint seniority list of Assistant / Senior Scale Stenographer offices of the Commissioners and Deputy Commissioners from different cadre so section-8 of the Khyber Pakhtunkhwa Civil, Servants-Act. 1973. read with Rule-17 of the Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion & Transfer) Rules, 1989 is not applicable to the case of the appellant thus he has no legal right to disturb the seniority list of the answering respondents. Further section-8 of the Khyber Pakhtunkhwa Civil, Servants-Act. 1973 read with Rule-17 of the Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion & Transfer) Rules, 1989 is not applicable to the case of appellant because the department has although committed illegality by inserting\adjusting the name of the appellant in the joint tentative seniority list of the answering respondents cadre but has correctly placed the appellant in the bottom because the appellant cadre has neither been merged with answering respondents cadre nor the department has been restructured.
7. In reply to para.7 of the appeal it is submitted that appeal of the appellant is premature. The appellant has not challenged final joint seniority list so has waived his rights if any.

GROUNDS

- A. Ground-A of the appeal is wrong and incorrect. The appellant belong to different cadre and his name was included in the joint tentative seniority list of Assistant/Senior Scale Stenographer of the offices of the Commissioners and Deputy Commissioners on his own request from 01.07.2022 although issued illegally (From the date of Notification) because he has no right to disturb the seniority of the others employees in whose list he was inserted\adjusted. Further there is no merger nor restructuring of the department
- B. Grounds-B of the appeal is wrong, incorrect and is against the material facts. The department has although committed illegality by inserting\adjusting the name of the appellant in the joint seniority list of the answering respondents cadre but has correctly placed the appellant in the bottom because the appellant cadre has neither been merged with answering respondents cadre nor the department has been restructured so the law on the subject has strictly been followed and the objections of the appellant were rightly regretted however detail reply has been in reply to para-6 above.
- C. Ground-C of the appeal is also wrong and incorrect. It is further that the seniority of the appellant was determined in the light of the law on the subject. The appellant cadre being different cadre was inserted in the cadre of answering respondents on their own choice so he cannot claim seniority over answering respondents. Seniority amongst the same cadre is to be determined from the date of regular appointment. So section-8 of the Khyber Pakhtunkhwa Civil, Servants-Act. 1973 read with Rule-17 of the Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion & Transfer) Rules, 1989 is not applicable to the case of appellant because the department has although committed illegality by inserting\adjusting the name of the appellant in the joint seniority list of the answering respondents cadre but has correctly placed the appellant in the bottom because the appellant cadre has neither been merged with answering respondents cadre nor the department has been restructured. Further the Notification dated 01.07.2022 although issued illegally is still intact through which the name of the appellant was incorporated in the joint tentative/final seniority list of Assistant/Senior Scale Stenographer of the offices of the Commissioners and Deputy Commissioners. Very recently SSRC meeting was held on 08.08.2023 for deliberations over proposed amendments for inclusion of the HVC which is a different cadre for promotion to the post of Tehsildar wherein after threadbare discussion it was unanimously concluded to include HVC for promotion to the post of Tehsildar but would be placed at the bottom of seniority list.
- D. Ground-D of the appeal is wrong and incorrect. The appellant has not divulged complete facts. Under Tehsildari and Naib Tehsildari Service Rules, 1962 answering respondents are in promotion zone from the beginning and even in the rules of the year 2008 and 2015 the answering respondents are in promotion zone while in the case of the appellant although the appellant cadre was transferred\inserted\adjusted in the tentative joint seniority list to the cadre of the answering respondents but through SSRC rules were not amended although meeting was held so there is no case of discrimination of the appellant.

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- E. Ground-E of the appeal is incorrect. The appellant has been treated in accordance with law/rules on the subject.
- F. Ground-F of the appeal is wrong and incorrect. No rights of the appellant have been infringed.
- G. In reply to Ground-G it is submitted that the answering respondents may kindly be allowed to rebut any oral assertions if raised at the time of arguments.
- H. Ground-H of the appeal is wrong and incorrect. The appeal being premature is liable to be dismissed.

Keeping in view the above, the appeal of the appellant having no merits may very graciously be dismissed with costs.

Respondents

Through

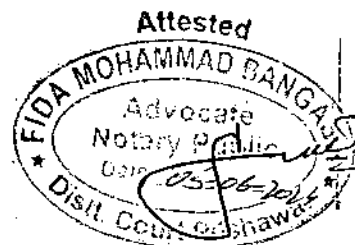
Nasir Mehmood

Advocate Supreme Court of Pakistan,
Office No.622 6th floor Pak-Medical
Centre, Khyber Bazar, Peshawar.

Affidavit:

I do hereby declare on oath that the contents of the reply are true and correct and nothing has been concealed from this honourable court.

Deponent



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BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR

Service Appeal No. 301/2024.

Salman Muhammad..... Appellant

VERSUS

SMBR and other..... Respondents.

REPLY TO THE APPLICATION FOR INTERIM INJUNCTION.

RESPECTFULLY SHEWETH:

PRELIMINARY OBJECTIONS.

1. That the applicant has got no cause of action and or locus standi to file the instant application because no departmental appeal has been filed against the final order i.e. issuance of final joint seniority list while they have challenged the regrettable order passed on the objections filed against the tentative joint seniority list thus the appeal is liable to be dismissed on this score alone.
2. That the instant application is baseless, frivolous, vexatious and has been filed to harass the answering respondents.
3. That the present application is not maintainable in its present form hence liable to be dismissed.
4. That the applicant has not come to this Honourable Tribunal with clean hands and has suppressed material facts from this Honourable tribunal.
5. That the appellant has filed the instant appeal malafidely and to waste precious time of this Honourable Court.

PARA WISE REPLY:

1. Para-1 of the application under reply is wrong and incorrect. Further submitted that applicant has got no cause of action and or locus standi to file the instant application because no departmental appeal has been filed against the final order i.e. issuance of final joint seniority list while they have challenged the regrettable order passed on the objections filed against the tentative joint seniority list thus the appeal is liable to be dismissed.
2. Para-2 of the application are wrong, incorrect and against the facts. Hence denied.
3. Para-3 of the application is wrong, incorrect, hence denied. Detailed reply has been given in reply to main appeal.

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4. Para-4 of the application is also wrong and incorrect, hence denied. Detailed reply has been given in reply to main appeal.

It is therefore, most humbly requested that on acceptance of this reply the application in hand may kindly be dismissed with costs.

Respondents

Through

Nasir Mehmood

Advocate Supreme Court of Pakistan.
Office No.622 6th floor Pak-Medical
Centre, Khyber Bazar, Peshawar.

Affidavit:

I do hereby declare on oath that the contents of the reply are true and correct and nothing has been concealed from this honourable court.

Deponent

