

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 246/2024

BEFORE: MRS. RASHIDA BANO
MISS FAREEHA PAUL

... MEMBER (J)
... MEMBER (E)

Mr. Usman Akhtar, Computer Assistant, Office of the Deputy
Commissioner, Haripur.

.... (Appellant)

VERSUS

1. Senior Member Board of Revenue (SMBR), Civil Secretariat, Peshawar.
2. Secretary Board of Revenue, Peshawar.
3. Assistant Secretary (Establishment), Board of Revenue, Peshawar.
4. Muhammad Ghufraan, DC Office, Dera Ismail Khan & 514 other private respondents.

.... (Respondents)

Ahmad Sultan Tareen
Advocate

... For appellant

Muhammad Azeem Khan, Afridi
Advocate

... For Private Respondents

Nasir Mehmood
Advocate

... For Private Respondents

Mr. Asif Masood Ali Shah
Deputy District Attorney

... For respondents

Date of Institution.....01.02.2024

Date of Hearing.....12.06.2024

Date of Decision.....12.06.2024

CONSOLIDATED 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, decision of respondent No.1 in determining inter se seniority of the appellant and respondents No.04 to 516 may be declared as erroneous and wrong being against the facts and in violation of law and rules particularly in disregard to Section 8 of Khyber Pakhtunkhwa Civil Servants Act, 1973 and Rule-17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 (APT rules for short); and the respondent No.1.to 3 may kindly be required to determine appellant's seniority position from the date of his initial appointment i.e. 25.09.2006 instead of 01.07.2022 and to issue rectified final joint seniority list of Assistants and Senior Scale Stenographers placing the appellant's name in the said seniority list at Sr. No.22 up ahead of respondent No.4, or on appropriate place if Respondent No.509 to 516 do not acquiesce to their present seniority position. It may also be declared that if regular promotion of any of the private respondents to the post of Tehsildar takes place on the basis of disputed Final Seniority List, the same is liable to be reversed under the facts and law. Any other relief as deemed fit in favor of appellant may also be granted for the sake of justice.”

2. Through this single judgment, we intend to disposed of the instant service appeal as well as connected service appeals which are mentioned below, as in all these appeals common questions of law and facts are involved:

1. S.A No. 247/2024 titled “Azhar Iqbal Mughal”
2. S.A No. 292/2024 titled “Sajid Khan”
3. S.A No. 293/2024 titled “Zahir Shah”
4. S.A No. 294/2024 titled “Sanaullah”
5. S.A No. 295/2024 titled “Amjad Ali Shah”
6. S.A No. 296/2024 titled “Muhammad Arif”



7. S.A No. 297/2024 titled "Jamshaid Ali Shah"
8. S.A No. 298/2024 titled "Saifullah"
9. S.A No. 299/2024 titled "Khayal Muhammad"
10. S.A No. 300/2024 titled "Hameed Ullah"
11. S.A No.301/2024 titled "Salman Muhammad Khan"

3. Brief facts of the case, as given in the memoranda of appeals, are that the appellants are serving in the respondent department as Computer Assistant/Operator (BPS-16). On 08.12.2023 a notification was issued by respondent No.3 with the approval of competent authority (respondent No.1) whereby tentative joint seniority list of Assistants/Senior Scale Stenographers (BPS-16) offices of Divisional Commissioners and Deputy Commissioners in the province as it stood on 31.12.2022 was circulated amongst the concerned officials including the appellants through their immediate controlling offices, while name of the appellants were shown at different serial numbers mentioned in their respective appeals, whereas names of private respondents appeared at 22 to 516 respectively. In the column of remarks, a note against the name of the appellants alongwith others was given that in the light of Hon'ble Peshawar High Court order dated 16.03.2022 and Service Tribunal order dated 05.10.2023, the Computer Assistants/Operator were adjusted w.e.f 01.07.2022 in the joint seniority list as per notification dated 01.07.2022. The name of the appellants were not-shown at proper place in the tentative seniority list and in order to get a proper seniority position, they raised objections against the relegation of their seniority position to their due place and sought correction in the final seniority list by placing their name at appropriate place from the date of initial appointment. Their appeals were regretted vide order dated



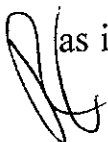
15.01.2024 and final joint seniority list as it stood on 31.12.2022 was issued on 15.01.2024, hence the instant service appeals.

4. Respondents were put on notice who submitted written replies/comments on the appeals. We have heard the learned counsel for the appellants, private respondents as well as the learned Deputy District Attorney for official respondents and perused the case files with connected documents in detail.

5. Learned counsel for the appellants argued that final seniority list is the continuation of tentative seniority list as both the seniority lists are same and there is no change in the both. He requested that instant appeal might be accepted as prayed for.

6. Conversely, Learned counsel for private respondents raised preliminary objection upon maintainability of appeals on the ground that no departmental appeal was preferred by the respondents challenging final seniority list issued on 15.01.2024 as stood on 31.12.2022, therefore, instant appeals are not maintainable. He requested that instant appeals might be dismissed.

7. Perusal of record reveals that appellants are in service under the Board of Revenue, Revenue & Estate Department, Khyber Pakhtunkhwa, as Computer Assistant/Operator (BPS-16) and presently posted in the office of Deputy Commissioner, Haripur. That vide notification dated 08.12.2023 issued by respondent No.3 with approval of competent authority (Respondent No.1), tentative joint seniority of Assistants and Senior Scale Stenographers (BPS-16) offices of Divisional Commissioners and Deputy Commissioners in the province as it stood on 31.12.2022 was circulated among the concerned officials including



the appellants through their immediate controlling offices. The name of the appellants appeared at Sr. No.534 of the said list. The names of private respondents respectively appeared at Sr. Nos. 22 to 516 in the tentative seniority list. In the remarks column #9 of the tentative seniority list, a note against the name of appellants and some others was given as hereinafter follow:

“In light of PHC order dated 16.03.2022 & Service Tribunal order dated 05.11.2023 this department adjusted Computer Assistant/Operators w.e.f. 01.07.2022 in the joint seniority as per notification dated 01.07.2022.”

8. The appellants were not shown at the right place in the tentative seniority list and in order to get a right seniority position, they raised objections against the relegation of their seniority position from their due place. Therefore, they through objections before the respondent No.1 sought correction of the same with prayer for insertion of appellants name in the final seniority list as appropriate place in light of their undisputed date of initial appointment i.e. 25.09.2006. Appellants objections/appeal was regretted by the respondent No.1 vide letter dated 15.01.2024 issued by the respondent No.3. Final joint seniority list of Assistants and Senior Scale Stenographers (BPS-16) offices of Divisional Commissioners and Deputy Commissioners of Province as it stood on 31.12.2022 was issued on 15.01.2024 by respondent No.3 under approval of respondent No.1 vide notification dated 15.01.2024.

9. It is admitted position on record that appellants filed objections upon tentative seniority list issued on 08.12.2023 as stood on 31.12.2022 which was regretted on 15.01.2024. Appeal in this Tribunal is filed under section 4 of

Khyber Pakhtunkhwa, Service Tribunal Act, 1974 which read as;



“Any civil servant aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him, prefer an appeal of the appeal having jurisdiction in the matter.”

So, for filing of appeal in this Tribunal final seniority list or appellate order is essential. Seniority list of the civil servants prepared and maintained in accordance with section-8 of Civil Servant Acts, 1973 clause (1) of it deals with preparation of seniority list which is tentative seniority list, and issued only for ascertaining the positions and considering objections if any raised by person 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 of conferring right of basis for cause of action.

10. Sub-Section-5 of the Section 8 refer to final seniority list, which is final order with reference to Section-4 of the Khyber Pakhtunkhwa, Service Tribunal Act, 1974 and will have to be challenged by filing departmental appeal. Reliance in this respect is placed on reported Judgment of Peshawar High Court Sub-Ordinate Tribunal, 2022 titled as Kalim Arshad Khan Vs. Peshawar High Court wherein it is held that;

“9. In order to ascertain the fact about the circulation of seniority list of the Additional District & Sessions Judges 'as it stood on 17.11.2009', we directed the representative namely Syed Shakir Hussain Shah, Litigation Assistant, Peshawar High Court, Peshawar for production of seniority list so circulated, which he produced accordingly. The record, so produced, transpires that the seniority list of the year, 2007 was a provisional seniority list and it



remained disputed, because, the record, so produced, contained numerous objections which remained undecided, while objections regarding circulation of seniority list of the year, 2004 are not applicable to the case in hand, because, by then, appellant was not in service, as he was appointed, pursuant to the judgment of the Hon'ble Peshawar High Court, on 22.02.2005. Thus, merely, because, certain tentative/provisional seniority lists were issued and not questioned before this Tribunal, at the relevant time, are not legally tenable, because, only a final seniority list can be questioned before the Tribunal in terms of Section 5 of the Khyber Pakhtunkhwa Subordinate Judiciary Service Tribunal Act, 1991."

Judgment of sub ordinate appellate Tribunal was up held by five member bench of apex court of the country vide judgment reported as 2024 PLC (C.S) 463.

11. It is also held by Supreme Court in PLD 1981, 612 that it is the final seniority list which was required to be challenged in departmental appeal. Same is reproduced here for ready reference;

a. Civil Servants Act (LXXI of 1973)

S.22-Service Tribunals Act (LXX of 1973), S.4-Civil Servants (Appeal)- Rules, 1977-Circular Letter of Establishment Division -No. 1/9/74 D.R.O. dated 12-9-1974 [as modified by Circular Letter 1/34/75.D.2 dated 1-9-1975].- Seniority List – Objections – Appeals--- First issue of gradation list provisional and to be finalized after inviting and considering objections-List though not marked as provisional, as required, yet covering letter making such aspect after of list (being provisional) abundantly clear-Respondent filing objection but bringing his claim before Service Tribunal before disposal of his objection and finalization of list-Held: Right of appeal conferred only against a "final order whether original or appellate"-Proviso (a) to sub section (1) of S. 4 of Service Tribunals Act, 1973-Has not slightest effect of detracting from finality of order to be appealed against and provides that even a final order be not brought before Service Tribunal if a right of appeal, review, or representation to a departmental authority provided under law-No final order having ever been passed on respondent's objection nor seniority list having been finalized,

respondent's appeal, held, not competent under S.4 of Service Tribunals Act, 1973.-[Appeal-Civil services].

(b) Service Tribunals Act (LXX of 1973)-

S.4-Words and phrase-Words "final order"-Connotation. [Words and phrases]. A final order has the distinction of determining the rights of the parties. Where any further step is necessary to perfect an order, in this case the disposal of the objections received or finalization of the provisional seniority list, the order cannot be taken to be final. An order may be final, if it determines the rights of the parties, concludes the controversy so far as a particular authority or forum is concerned notwithstanding that such an order may be open to challenge in appeal etc. This aspect of the concept of the finality of an order has been taken care of by adding the words "whether original or appellate" in the enacted law itself. [p. 515]C"

1998 PLC (C.S) 871 (b)

"Appellants' reliance on tentative seniority list was not warranted, for such list was issued only for ascertaining respective positions and objections, if any---Tentative seniority list, except inviting attention for seeking correction, would not create any legitimate basis for conferring right or ground for cause action---Service Tribunal having dilated upon main aspects of case, conclusions drawn by it in impugned judgment did not suffer from any striking error or legal infirmity."

2005 PLC (C.S) 811 (b)

(b) Police Rules, 1934---

---R.13.1---Punjab Service Tribunals Act (IX of 1974), S.4---Constitution of Pakistan (1973), Arts . 199 & 212 (2)---Constitutional petition---Competence---Tentative seniority list, issuance of---Impugned order being not a final order of the Authority, Constitutional petition was not competent against the same."


2011 PLC (C.S) 203 (d)

"(d) Service Tribunal Act (LXX of 1973)---

---Seniority list issued by competent authority being subject to objections list and clothed with mantle of "order" within contemplation of S.4 of the Act---In absence of constitutional petition would not be barred by Art.212 of the Constitution---Principles.

12. For what has been discussed above, we are unison to hold that the instant service appeal as well as connected service appeals are not maintainable as mandatory requirement of filing departmental appeal against final seniority list/final order was not complied with but in the interest of justice we convert this service appeal into departmental appeal/representation and send the same to the appellate authority for its decision, where-after the appellants may recourse to further legal action to seek redressal of grievances if any. Consign.

13. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 12th day of June, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

*M.Khan

ORDER
12.06.2024

- 1 Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney for official respondents present. Learned counsels for private respondents also present.
2. Vide our detailed judgement of today placed on file, we are unison to hold that the instant service appeal as well as connected service appeals are not maintainable as mandatory requirement of filing departmental appeal against final seniority list/final order was not complied with but in the interest of justice we convert this service appeal into departmental appeal/representation and send the same to the appellate authority for its decision, where-after the appellants may recourse to further legal action to seek redressal of grievances if any. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 12th day of June, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

*M.Khan