

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

Appeal No. 2543/2023.

Saeeda Naz, Deputy Director, Treasuries & Accounts, Directorate of Treasuries & Accounts, Khyber Pakhtunkhwa, Adjacent to Jamia Masjid, District Courts, Khyber Road, Peshawar,

Khyber Pakhtunkhwa
Service Tribunal
(Appellant)

Diary No. 15103

Dated 21/8/24

VERSUS

1. The Government of Khyber Pakhtunkhwa, through Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar
2. The Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar.
4. The Secretary to Government of Khyber Pakhtunkhwa, Finance Department, Civil Secretariat, Peshawar.
5. Qaiser Imad, District Accounts Officer, Kolai Palas.

(Respondents)

Rejoinder on behalf of Appellant

AS ON FACTS

1. No remarks.
2. Reply to Para 2, from Respondents confirmed/endorsed the issuance of seniority lists of Assistant Accounts Officers BPS-17, even after receipt of inter-se seniority/merit list from the Public Service Commission through letter dated 21.03.2011 and maintaining seniority position of the appellant during 2011 to 2020 with no any observations till 2020, which already attained finality. As regard application of Respondent No. 5 dated 25.03.2021, annexed by the Respondents at Annex-vii/page-13, reply is silent about fate of this appeal.
3. Reply is incorrect. As regard reservations of the Respondent No 5 during 2021, it may be clarified that the same was an appeal dated 25.03.2021 addressed to the Respondent No. 4, followed by letter dated 26.05.2021 (Annex-vii) and (x) of reply of the respondents. The same was forwarded to the addressee by the Director Treasuries and Accounts, who specifically declared the same as time barred vide letter dated 11.06.2021 (Annex-F of service appeal).

So far as period of limitation is concerned, there was neither any wrongful act towards issuance of seniority lists during 2011-2020 nor was the same declared as such, which necessitated correction. The seniority lists issued and maintained during 2011 to 2020 are still intact and hold good, therefore plea for correction of error is quite irrelevant and unfounded.

4. Reply is incorrect. On the one hand Respondents claimed that appeal/or reservations of Respondent No 5 was preferred on 26.05.2021 against seniority position of the appellant while on the other hand promotion cases of Assistant Treasury Officers BPS-17 to the post of District Accounts Officers BPS-18 was processed and finalized on the same seniority lists and promotion order issued on 09.08.2021 as evident from promotion order, copy of which is at Annex-G of appeal. Promotion to higher posts is only made when the seniority lists are certified as undisputed.

Furthermore the merit list of Public Service Commission mentioned in Para-4 (Annex-xi) was that of male candidates, wherein name of appellant was inadvertently included, which on application of appellant has already been separated as is evident from Annex-xii of reply thus it lost its strength/value. Further reply is silent as to how merit list of the male

and female candidates, recruited under different quotas were amalgamated and their seniority position ascertained.

Apart from the above it is important to bring before the Honourable Tribunal that the stated appeal/reservations of Respondent No.5, was addressed to and processed/decided by the Respondent No.4, who under Rule 4 of "The Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules 1989" was neither competent nor Appellate authority, to exercise such authority in cases of BPS-18 Officers and that also on a time barred application, therefore the decision was illegal.

The Plea that Respondent No.5 obtained merit list from Public Service Commission on 21.04.2021 and preferred application for correction on 26.05.2021 is incorrect and against the factual position as he earlier also made an application dated 25.03.2021, as evident from Annex-vii of reply from Respondents, therefore the appeal is time barred.

5. It is also worth to mention that tentative seniority list of District Account Officers (promotion post) was notified by the Respondent No 4 on 15.02.2022 (Annex-H of appeal) where name of the appellant was again appearing at its proper place i.e senior than Respondent No.5, but in the Final seniority list appellant was shown junior than Respondent No.5, through simple remarks in the remarks column without issuance of any proper order from the appellate authority or affording chance of hearing/defense. Even the requested documents were refused to be provided, hence condemned unheard. Non issuance of proper order and decision by the authority having no power or jurisdiction leads the decision invalid and illegal.
6. As stated at Para-7 of appeal, the appellant was refused to provide the desired documents relevant to the matter. Respondents admitted the non-provision of desired documents, required by the appellant to defend her case, which attributed to condemn the appellant unheard; therefore decision made in the matter is illegal.
- 7-9. Reply of the Respondents is incorrect. Factual position is that the Public Service Commission Khyber Pakhtunkhwa separately advertised under separate quota, one post of female Assistant Treasury Officer and 04 posts of Assistant Treasury Officers (Both Sexes) through advertisement at different S. No 35 & 36 of 06/2008 dated 18.06.2008, processed it separately and finalized the same accordingly, where after appointments were made and seniority lists issued by the Department accordingly. The Public Service Commission also sent merit lists of the candidates to the Administrative Department.

However during 2021 through a letter from Public Service Commission, addressed to the Respondent No.5 (Annex-xi/ Page 20-21 of the reply of respondents), name of the appellant was incorrectly included in the merit list of male candidates and shown at S.No.5 of the said list as is evident from Annex-xi of the Reply. The said irregularity was brought to the notice of Public Service Commission by the appellant, which in turn issued separate merit lists of appellant and other male candidates (Annex-xii of reply of respondents) with no justification for showing the name of appellant in merit list of male candidates or amalgamation of two separate merit lists under different quotas therefore the said joint seniority list lost its velocity/value and action taken on the same is also incorrect.

Further reply of the respondents is silent about the law under which two separate merit lists of male and female candidates under different quotas was amalgamated.

Beside above the reply is also silent about non-provision of desired documents requested through application dated 14.07.2023 and providing the chance of personal hearing.

10. The Departmental Appeal dated 18.08.2023 followed by another one dated 21.09.2023 were properly filed before the appellate authority, copies of which are at Annex-N and O of appeal).

AS ON GROUNDS

A. Reply is incorrect. The appellant was not treated in accordance with the relevant laws, rules and procedure and even denied the legal remedy/rights available under the law, as detailed below:-

- (i) A unilateral decision was made in the instant case without providing any chance of defense to the appellant.
- (ii) No opportunity of personal hearing or defense was afforded and a unilateral decision was made by Respondent No.4, who has no power or authority to make such decision in cases of BPS-18 officers.
- (iii) Seniority position of the appellant was changed/ modified through simple remarks, in remarks column of Seniority list, without any order of the competent appellate authority. Such practice is against the law/rules.
- (iv) Section 8(1) of the Khyber Pakhtunkhwa Civil Servant Act 1973 has been violated, where under the seniority list once issued cannot be revised.
- (v) Similarly Section 8(4) of the ibid rules also violated under which the employees who are promoted to higher post in one batch shall retain their inter-se-seniority as in the lower post. In the instant case, Seniority position of the appellant over Respondent No.5, remained intact for 10 long years as Assistant Treasury Officer BPS-17 and promoted to higher post carrying BPS-18 on the same inter se seniority position maintained against the lower post.
- (vi) Under Rule 2 of Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986 Respondent No 4 was not the competent or appellate authority for BPS-18 officers to process or accept appeal of the Respondent No 5 nor can he condone the delay so occurred.
- (vii) Under the Law of Locus Poenitentiae , once an order has been issued in good faith and without any fault or bad intention of the person concerned and acted upon, the same can't be withdrawn, reversed or recalled.
- (viii) Appellant was condemned unheard as the desired documents relevant with the case, requested twice, were denied as detailed at Para 6 and 7 of appeal. Respondents admitted this fact vide their reply at Para 6 of facts.

B-C. As against Para 2-5 of facts.

- D. Reply to this Para is incorrect. Actual position is that name of the appellant was incorrectly included in the merit list of male candidates, as evident from Annex-xi of the Respondent's reply and shown at S.No.5 of the said list. The said irregularity was brought to the notice of Public Service Commission by the appellant, which in turn issued separate merit lists of appellant and other male candidates (Annex-xii of reply of respondents) with no justification for amalgamation of 2 separate merit lists and showing name of appellant in merit list of male candidates, therefore the said merit list lost its strength/value and action taken on the same is incorrect.
- E. Reply against Para E is not correct as the actual matter is about accepting the appeal of Respondent No 5 by Respondent No.4 and modifying the final seniority list without any competency, under the Khyber Pakhtunkhwa Civil Servants (appeal) rules 1986. Furthermore Seniority position of the appellant was changed and modified through simple remarks, in remarks column of Seniority list, without any order of the competent appellate authority. Such practice is nowhere supported by the law.
- F. Reply of the Respondents against this Para is again incorrect. It is worth to mention that in violation of relevant rules, in the instant case neither any proper order about modifying seniority position of the appellant has been issued by the competent appellate authority

nor has it been conveyed to the appellant therefore such decision having no legal support in the eyes of law, is not tenable.


- G. As per Para 2-5 and 7-9 of facts. Furthermore final seniority lists issued under section 8(1) of the Khyber Pakhtunkhwa Civil Servant Act 1973 cannot be altered or changed in the manner as done by the Respondent.
- H. Judgment of the Punjab Service Tribunal, though not binding, however speaks about maximum period for challenging a seniority list within 6 years.
- I. As detailed at Para-I of appeal. This Para not replied or denied by the Respondents.
- J. Under the Law of Locus Poenitentiae, once an order has been issued in good faith and without any fault or bad intention of the person concerned and acted upon, the same can't be withdrawn, reversed or recalled.
- K. This important Para has not been replied, as per its contents.

In light of the above detailed submissions, it is certain that decision in the instant case was made in violation of all the relevant Laws and Rules, without any power or authority, therefore, the honourable tribunal is requested that such decision for altering/modifying seniority position of the appellant may graciously be set aside with cost and appellant given her due place of seniority.


APPELLANT

Through


Hidayatullah Khan
Advocate High Court, Peshawar


Abdur Rauf
Advocate High Court, Peshawar