

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 922/2024

Kamal Hussain Vs. Chief Conservator of Forest & others

REPLY TO SERVICE APPEAL TITLED ABOVE ON
BEHALF OF PRIVATE RESPONDENT NO. 4.

Respectfully Sheweth:

Respondent No. 4 seeks to submit the reply to above titled appeal with the submissions as follow:-

PRELIMINARY OBJECTIONS

1. That the appellant lacks the cause of action and *locus standi* to prefer this appeal.
2. That the appellant is estopped by his conduct to prefer this appeal.
3. That according to an admitted position by the appellant, two list as challenged by him were issued. He filed objection against the first list only and second list being final was not appealed against before the next higher authority. Hence, appellant's service appeal not maintainable under the facts and law.
4. That the departmental appeal as annexed with the memo of appeal does not conform to the requirements of Khyber Pakhtunkhwa Civil Servants Appeal Rules, 1986.
5. That seniority is a matter governed by law and rules and any seniority list giving a preference to a civil servant in violation of law and rules cannot perpetuate to protect a wrong.
6. That appointment of the appellant and of the respondent No. 4 prior to 01.07.2000 was not regular and as such, the same their service prior to

the said date is not countable for determination of *inter se* seniority under the facts and law.

7. That the appellant has preferred this appeal with unclean hands and malice only to satisfy his unfounded grudge against the private respondent as evident from the style and tenor of facts and grounds in memo of appeal.
8. That by a great stretch of imagination as obvious from spiral of facts and grounds, the appellant has not been able to make out a case of arbitrariness or violation of any law or rule on part of official respondents.
9. That bare factual account as given in the memo of appeal and so called grounds enumerated therein are nothing but a futile exercise, when the same are not fortified by an legal justification giving cause of action to the appellant for the so called grievance.
10. That this appeal is liable to be dismissed with cost.

REPLY OF FACTS

1. Para 01 of appeal as designed has no nexus with the matter in dispute. Hence, need no comments being irrelevant for invoking the jurisdiction of this Hon'ble Tribunal.
2. Para 02 is not denied but the same as designed is superfluous.
3. Para 03 as laid is highly misleading due to overlapping of different facts beyond their actual text and context. Hence, the same is not correct in its design and intent.
4. Para 04 as laid is not correct. Seniority of civil servants is governed under the law and rules and if any seniority list issued gave undue advantage to the appellant in seniority, the same could not perpetuate when found in violation of law and rules.
5. The same reply as given under para 04 above.
6. Para 06 pertains to official respondents. Hence, no comments.

7. Para 07 of appeal reveals that the appellant has not complied with requirements of Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986. Hence, denied.
8. As for as supposition of the appellant about the impugned list as to its being arbitrary and unwarranted is concerned, the same is random and baseless. No question as to arbitrariness of the impugned seniority list or of its being unwarranted arises when the same has been issued under the due process of law and in exercise of lawful authority.
9. Para 07 as designed is not correct and its workability for the purpose of this appeal is denied.
10. In reply to para 08, it is submitted that appellant lacks the cause of action and *locus standi* to prefer this appeal.

REPLY OF GROUNDS

- A. This ground having been conceived by the appellant is nothing more than his undue stretch of imagination, which otherwise lacks legal and factual foundation. Hence, the same is not correct and is ineffectual to justify the so-called grievance of the appellant.
- B. Ground "B" has no relevancy with the matter in issue. The impugned seniority list was not issued under a discretionary authority rather the same has been issued under a structured process after compliance with the due legal course and in lawful exercise of authority. So, the answering respondent is entitled under the facts and law to maintain his seniority as given to him in the impugned seniority list.
- C. Ground "C" is misconceived. Hence, denied.
- D. Ground "D" as pressed into service is not correct.
- E. Ground "E" and "F" as conceived by the appellant carry no substance to entitle him to impugn the seniority list issued under a structured process of law and in lawful exercise of authority leaving no room for a question of vires or arbitrariness. Hence, these ground as designed are not correct.
- F. Ground "G" is not correct.

G. Ground "H" is denied.

It is respectfully prayed that this service appeal may graciously be dismissed with costs.

S. Salem Syed
PRIVATE RESPONDENT No. 4

Through:

Ahmad Sultan Tareen
Ahmad Sultan Tareen
Advocate High Court

Mudassar Ali
Mudassar Ali
Advocate High Court

Shabaz Khan
Shabaz Khan,
Advocate High Court

Dated: 05/09/2024

VERIFICATION / *Affidavite*

I, Syed Salem Syed, Respondent No. 4, do hereby solemnly affirm and verify that contents of the foregoing written reply are true and correct to the best of my knowledge and belief and nothing has been kept concealed.

S. Salem Syed
RESPONDENT

ATTESTED
Syed Muhammad Raza Shah Adv.
Oath Commissioner
[Signature]

06 SEP 2024