

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 1576/2019

**BEFORE: MR. AURANGZEB KHATTAK ... MEMBER (J)**  
**MRS. RASHIDA BANO ... MEMBER (J)**

Amjid Naeem S/O Muhammad Yaqoob Caste Khiyara presently working a  
Naib Tehsildar (OPS) Srira Roogha South Waziristan Tribal District.

... (Appellant)

**VERSUS**

1. The Government of Khyber Pakhtunkhwa through Chief Secretary  
Khyber Pakhtunkhwa, Peshawar.
2. The Senior Member Board of Revenue & Estate Department Khyber  
Pakhtunkhwa, Peshawar.
3. The Commissioner Dera Ismail Khan.
4. The Deputy Commissioner, Dera Ismail Khan.
5. The Deputy Commissioner, South Waziristan.
6. Atta Ullah Mehsud, Junior Clerk
7. Tufail Muhammad, Junior Clerk
8. Sheikh Allah Nawaz, Junior Clerk

.... (Respondents)

Ahmad Shahid Farooqi  
Advocate

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For appellant

Muhammad Yousaf  
Advocate

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For private respondents

Mr. Asif Masood Ali Shah,  
Deputy District Attorney

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For respondents

Date of Institution.....06.11.2019

Date of Hearing .....10.07.2024

Date of Decision .....10.07.2024

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**JUDGMENT**

**RASHIDA BANO, MEMBER (J):** The service appeal in hand has been  
instituted under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act,  
1974 with the following prayer:-

**“That on acceptance of instant appeal, the impugned seniority list and office order dated 18.07.2019 issued by respondent No.3 alongwith impugned office order dated 16.10.2019 issued by respondent No.2 may please be reversed and set aside and declare against the settled law, service laws and regulations in the best interest of justice and the seniority position of the appellant may please be restored according to the final seniority list dated 10.06.2016.”**

2. Brief facts of the case, are that the appellant was appointed as Junior Clerk in the ministerial establishment of Deputy Commissioner D.I.Khan vide order dated 05.11.1992. The appellant in pursuance of Government of NWFP Establishment & Administration Department Regulation, Peshawar vide letter No. SOR-I (S&GAD)1/200/98(VOL-I) dated 13.03.2001 adjusted against a vacant post of Political Moharrir of Khoi Bahara FR D.I.Khan in the office of Assistant Political Agent FR D.I.Khan vide order dated 26.07.2003. On 18.07.2019, respondent No. 3 issued final seniority list of political Moharrir/Junior Clerks in the Division vide which seniority position of the appellant was changed and juniors to the appellant were shown senior over the appellant. Feeling aggrieved, he filed departmental appeal on 22.07.2019 which was rejected vide order dated 16.10.2019, hence the instant service appeal.

3. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.



5. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned District Attorney controverted the same by supporting the impugned order(s).

6. Main contention of the appellant is that he was appointed by the Deputy Commissioner D.I.Khan as a Junior Clerk (BPS-5) on 05.11.1992 in his ministerial establishment and was posted as a Political Moharrir. Therefore, his seniority should be reckoned from the date of his initial regular appointment, and in the joint seniority list of Junior Clerks issued by the Deputy Commissioner of D.I.Khan, he should be placed senior to all subsequent appointees.

7. Perusal of the appellant's appointment order dated 05.11.1992 reveals that he was appointed as a Junior Clerk by the Deputy Commissioner of D.I.Khan on the settled side, in his capacity as Deputy Commissioner, not as a Political Moharrir on the FR side. Prior to the 18<sup>th</sup> Amendment, the Deputy Commissioner of D.I.Khan performed functions in dual capacity, one as Deputy Commissioner on the settled side and other as Political Agent in FATA. Had the appointment order been issued in the capacity of Political Agent on FATA side, the appellant would have been an employee of the Political Agent Establishment. It is established from the appointment order that the appellant was appointed by the Deputy Commissioner D.I.Khan and not by the Political Agent/Deputy Commissioner FR D.I.Khan. The appellant was declared surplus by the District Officer Revenue D.I.Khan on 03.09.2001, which further confirms that he was an employee on the settled side and not in FR. Additionally, the appellant's service was verified by the Revenue & Estate Department, D.I.Khan, as evident by his service book annexed with the appeal.

8. The appellant was absorbed against the vacant post of Political Moharrir Khoi Bahara in the office of the Political Agent FR D.I.Khan with immediate

effect vide order dated 26.07.2003 (Endst. No. 6195-6208/DCO (SP)) issued by the DCO D.I.Khan. A copy of this order was also send to the Assistant Political FR D.I.Khan. Vide order dated 29.07.2003, he was adjusted/posted as Naib Tehsil Accountant, Tehsil Darband, by the DOR/Collector, in light of the order dated 26.07.2003.

9. In our view, the adjustment order issued by the DCO D.I.Khan was infact order of absorption from the surplus pool into the office of the Assistant Political Agent FR D.I.Khan as a Political Moharrir Khoi Bahara. The order dated 29.07.2003 was merely an adjustment for the purpose of pay and was subordinate to the main order dated 26.07.2003. Furthermore, according to government policy, there was no provision for re-adjustment, as evidenced by the letter/order dated 08.11.2002 from the Establishment Department.

10. The service book contains an entry for order No. 6195-6208 DCO dated 26.07.2003, showing the appellant adjustment in the DOR Office D.I.Khan as Naib Tehsil Accountant. This entry contradicts the main order, which states that the appellant was adjusted/absorbed as Political Moharrir Khoi Bahara in the office of the Assistant Political Agent FR D.I.Khan. It is also important to mentioned here that once the appellant was adjusted/absorbed from the surplus pool on 26.07.2003, there was no need for an additional order dated 29.07.2003. The latter was only for pay adjustment purpose, as the appellant was directed to continue working as Political Moharrir Khoi Bahara in the Assistant Political Agent (FR) D.I.Khan.

11. The appellant claims seniority from the date of his initial appointment (05.11.1992) in the joint seniority list of junior clerks at the divisional level on the political agent/FR side. Seniority of a civil servant is determined according to



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:

*"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."*

*"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 maybe, 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;*

However, in this case, the appellant does not fall within the category of seniority determination based on initial appointment, as he was absorbed/adjusted from the surplus pool into the ministerial staff of Political Moharrir in the Assistant Political Agent's establishment per the order dated 26.07.2003. His seniority should be determined in accordance with para 6(b) of the Surplus Pool Policy, which is given for ready reference;

*"In case, however, he is adjusted in his respective cadre but in a Department other than his parent Department, he shall be placed at the bottom of seniority list of that cadre."*

12. The seniority of the appellant was determined in light of clause 6(b) as he was absorbed/adjusted into the hierarchy and establishment of the Political Agent FR D.I.Khan and not in his parent department. He should be placed at the bottom of the seniority list of junior clerks as it stood on 26.07.2003 at the divisional level. The respondents placed the appellant at serial No. 30 in the seniority list issued on 18.07.2019, while his absorption date incorrectly shown as 29.05.2013. An official appointed on 01.04.2013 was placed senior to him. As discussed earlier, the appellant was adjusted/absorbed from the surplus pool per the order dated 26.07.2003 in the Establishment of the Political Agent. Therefore, his seniority should be reckoned from 26.07.2003, not from 29.05.2013, as there is no concept of re-adjustment of a civil servant once adjusted from the surplus pool. The appellant's name should be placed in the seniority list between Tufail Muhammad, who was promoted on 29.08.2002, and Sheikh Allah Nawaz, whose promotion date was 05.08.2003. Respondent No. 6 was appointed on 29.01.1995. Tufail Muhammad's promotion occurred before the appellant's adjustment on 26.07.2003. Therefore, the appellant's seniority was not correctly determined.

13. The learned Counsel for the appellant argued that the appellant was adjusted from the surplus pool into his parent department. However, this argument is misconceived. The appellant was not adjusted into his parent department, rather into another establishment of the Political Agent, as per the order dated 26.07.2003. The Counsel referred to transfer/posting orders to the FR Political side, but a simple transfer/posting does not equate to absorption into another establishment.

14. For what has been discussed above, we partially accept the appeal and direct the respondents to place the appellant's name below Tufail Muhammad and above Sheikh Allah Nawaz in the seniority list. A correct seniority list should be issued accordingly. Costs shall follow the event.

15. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 10<sup>th</sup> day of July, 2024.*


  
(AURANGZEB KHATTAK)  
Member (J)

  
(RASHIDA BANO)  
Member (J)

**ORDER**

10.07.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, learned Deputy District alongwith Abdur Rasheed, Superintendent for the respondents present.
2. Vide our detailed judgment of today placed on file, we partially accept the appeal and direct the respondents to place the appellant's name below Tufail Muhammad and above Sheikh Allah Nawaz in the seniority list. A correct seniority list should be issued accordingly. Costs shall follow the event.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 10<sup>th</sup> day of July, 2024.*

  
(AURANGZEB KHATTAK)  
Member (J)

  
(RASHIDA BANO)  
Member (J)