

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

BEFORE: **KALIM ARSHAD KHAN ...CHAIRMAN**  
**RASHIDA BANO ...MEMBER (Judicial)**

*Service Appeal No.10748/2020*

Date of presentation of appeal.....14.09.2020  
Dates of Hearing.....13.09.2024  
Date of Decision.....13.09.2024

**Mr. Nauman Rafi**, Deputy Director IT (BPS-18), Capital City Police, Khyber Pakhtunkhwa, Peshawar. R/O No.1 Abshaar Colony, Warsak Road, Peshawar.....(*Appellant*)

Versus

1. **The Inspector General of Police**, Khyber Pakhtunkhwa, Peshawar.
2. **The Secretary Home & Tribal Affairs Department**, Khyber Pakhtunkhwa, Peshawar.
3. **The Capital City Police Officer**, Khyber Pakhtunkhwa, Peshawar.
4. **Mr. Muhammad Saleem Khan**, Deputy Director IT, Information Technology Group, Khyber Pakhtunkhwa Police, Peshawar  
.....(*Respondents*)

Present:

Mr. Noor Muhammad Khattak, Advocate.....For the appellant  
Mr. Muhammad Jan, District Attorney.....For official respondents  
Mr. Muhammad Amin Khattak Lachi, Advocate .....For private respondent No.4

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**APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED SENIORITY LIST DATED 27.04.2020 WHEREBY THE APPELLANT HAS BEEN SHOWN JUNIOR TO RESPONDENT NO.4 IN UTTER VIOLATION OF LAW AND RULES AND AGAINST THE APPELLATE ORDER DATED 07.09.2020 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED ON NO GOOD GROUNDS.**

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## **JUDGMENT**

**KALIM ARSHAD KHAN, CHAIRMAN:** Appellant's case in brief, as per the memo and grounds of appeal, is that he is employee of the respondent department and is working against the post of Deputy Director IT (BPS-18); that he initially joined the Information Department as project employee but his services were regularized under the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2018, w.e.f 07.03.2018 vide Notification dated 20.06.2018; that vide Notification dated 27.04.2020, seniority list was issued, wherein, name of appellant was shown at Serial No.5, below the name of private respondent No.4, allegedly junior to him; that feeling aggrieved, he filed departmental appeal on 18.05.2020, but the same was rejected on 07.09.2020, hence, he filed the instant service appeal.

2. 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.

3. We have heard learned counsel for the appellant and learned District Attorney for official respondents and learned counsel for private respondent No.4.

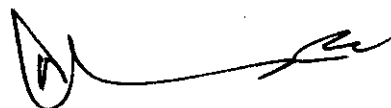
4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal

while the learned District Attorney, assisted by the learned counsel for private respondent No.4, controverted the same by supporting the impugned order.

5. The fact of regularization of Services of the appellant w.e.f 07.03.2018 vide Notification dated 20.06.2018 made in compliance of the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2018 is frankly and fairly conceded by the learned counsel for the private respondent at the bar more than once. The impugned order dated 03.09.2020 which has been passed in the following manner:

*"The perusal of record reveals that applicant Numan Rafi was appointed directly in BPS-18 through Regularization of Services Act, 2018 on 20.06.2018, while Saleem Ullah was appointed in regular basis in BPS-17 and was promoted to BPS-18 on Acting Charge Basis on 01.12.2015 due to less service in BPS-17 which was about 06 months, later on he was promoted on regular basis after DSB approval on 12.04.2019.*

*According to rule, Mr. Saleem Ullah was eligible for regular promotion after 06 months of his Acting Charge Basis promotion, but it was later due to not placing before next DSB, which was not his fault, the seniority list already prepared is correct and need not changes."*



6. In this particular case, there are specific rules framed which are named as "**The Khyber Pakhtunkhwa Police Department (Information Technology Group) Service Rules, 2014**". Rule-10 of the above rules is pertaining to seniority, which is as under:

**"10. Seniority.**—*The seniority inter se of the persons borne on the service shall be determined—*

*(a) in the case of persons appointed by initial recruitment, in accordance with the order of merit assigned by the Commission; provided that persons selected for appointment to a post in an earlier selections shall rank senior to the person selected on a later selection: and*

*(b) in the case of persons appointed otherwise, with reference to the date of their continuous regular appointment to the post; provided that the person 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."*

7. As stated above, there is no denial of the fact that private respondent No.4 was promoted to Grade-18 on 15.04.2019, while services of the appellant were regularized vide Notification dated 20.06.2018 i.e. prior to promotion of the private respondent. Therefore, the appellant had to rank senior and apparently the impugned order does not seem to be having any backing of law or rules.

8. We are fortified by the following judgments on the point:

- i. 2002 SCMR 889 titled "Government of NWFP through Secretary Irrigation and 4 others", wherein the august Supreme Court of Pakistan was pleased


*to have observed that Appointments made as a result of selection in one combined competitive examination would be deemed to be belonging to the same batch and notwithstanding recommendation made by the Public Service Commission in parts, the seniority inter se. the appointees, of the same batch, would be determined in the light of merit assigned to them by the Public Service Commission.*

- ii. *2002 PLC(CS) 780 titled "Shafiq Ahmad and others versus the Registrar Lahore High Court and others" wherein it was found that the If the civil servants despite having been declared successful earlier by the Commission, were not appointed at relevant time they could not be made to suffer-- Appointment and seniority were entirely two different things and delayed appointment of the civil servants could not affect their right to seniority in accordance with the rules."*
- iii. *The above judgment was affirmed by the august Supreme Court of Pakistan in PLJ 2002 SC 234 titled "Muhammad Amjid Ali and others versus Shafiq Ahmad and others" by holding that "Seniority. The seniority inter se of the members of the Service in the various grades thereof shall be determined-*

*(a) in the case of members appointed by initial recruitment, in accordance with the order of merit assigned by the Commission provided that persons selected for the Service in an earlier selection shall rank senior to the persons selected in a later selection;"*

*13. Respondents Nos. 1 to 5 were candidates in the Competitive Examinations held in 1988 and 1989 and were taken from the merit list prepared as a result of competitive examination, 1987, therefore, there can be no cavil with the proposition that they belong to 1988 batch and their seniority is to be determined accordingly. It will be pertinent to mention here that the appeal before the Tribunal was not seriously contested by the Appointing Authority, namely, the Lahore High Court in view of its stance taken at the stage of preparation of the seniority list of the parties by the Government of the Punjab that the contesting respondents apparently belonged to 1988 batch.*



14. Acceptance of the offer of appointment against future vacancies by the respondents being traceable to the observations made in the judgment passed in the Intra-Court Appeal can have no bearing on the question of their seniority. Similarly the matter had become past and closed only to the extent of appointment of the respondents as Civil Judges against future posts and the question of their seniority remained open.
- iv. PLC 1993 (CS) 116 titled *M. Tahir Rasheed versus Secretary Establishment Division, Islamabad and others*, wherein the Federal Service Tribunal held that *Inter se* seniority of candidates at one selection was to be determined on the basis of merit assigned to the candidates by the Public Service Commission/Selection Committee in pursuance of general principles of seniority and not the dates of joining duty.
- v. 1993 P L C (C.S.) 52 titled "*Muhammad Jafar Hussain versus Chairman, Central Board of Revenue, Islamabad and 4 other*", wherein it was held that Seniority of candidates selected in one batch was to be determined in accordance with the merit assigned by Public Service Commission and not on basis of joining assignments---Appellant's claim of seniority that although respondent had acquired higher position in merit list prepared by selection authority, yet he having joined assignment earlier, in time was to rank senior, was not sustainable.
- vi. 1998 SCMR 633 titled "*Zahid Arif versus Government of NWFP through Secretary S&GAD, Peshawar and 9 others*", wherein it was held that ---R. 17(a)---Constitution of Pakistan (1973), Art. 212(3)---Seniority-- Appointment of civil servant to post in later selection---Petitioner's name had been placed next to respondents although he had been placed higher on merit list than respondents---Civil servant's appeal against seniority list had been dismissed mainly on the ground that respondents being nominees for first batch were to rank higher than civil servant on account of their initial selection---Rule 17(a), North-West Frontier Province (Appointment, Promotion and Transfer) Rules, 1989, provided that person selected for appointment to post in earlier
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*selection would rank senior to person selected in later selection."*

9. The rationale behind it, is that admittedly, the appellant was appointee of a prior selection, while the appointment of the private respondent was made through promotion, later than the appellant.

10. Yes, there is some analogy regarding the consideration of the date of regularization, which according to Section-5 (IV) of the Regularization Act, 2018 which reads as under:

*"(IV). The services of such employees shall be deemed to have been regularized only on the publication of their names in the Official Gazette."*

11. The above provision of Act says that regularization of employees shall take effect from the date of publication of the names of the employees in the official gazette. For the purpose, we directed the Assistant Advocate General and Mr. Wisal Ahmad, S.P, representative of the official respondents, to produce gazette notification but they could not until recording of this judgment.

12. Therefore, we would like to decide this case in a manner that the case of the appellant has been made out his case and the appellant ought to have been allowed in view of Rule-10 of the Rules *ibid*. But simultaneously, we cannot skip the provision of Section-5 (IV) of the Regularization Act, therefore we direct the respondents to decide the case



afresh by ensuring the date of publication of the names of the employees in the official gazette and consider the same to be the date of regularization and if that is found to be prior to the promotion of private respondents, then the appellant shall be ranked senior. Costs shall follow the event. Consign.

14. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 13<sup>th</sup> day of September, 2024.*



**KALIM ARSHAD KHAN**  
Chairman



**RASHIDA BANO**  
Member (Judicial)

*\*Mutazem Shah\**