

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

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

***Service Appeal No.1649/2022***

Date of presentation of Appeal.....21.11.2022  
Date of Hearing.....19.09.2024  
Date of Decision.....19.09.2024

**Arbab Muhammad Ahtisham S/O Arbab Muhammad Jehanzeb,**  
**Assistant Public Prosecutor (BPS-17).....(*Appellant*)**

Versus

- 1. Government of Khyber Pakhtunkhwa through Chief Secretary.**
- 2. Khyber Pakhtunkhwa Home & Tribal Affairs Department through Secretary.**
- 3. Director General Prosecution, Khyber Pakhtunkhwa, Peshawar.**
- 4. Director Administration, Khyber Pakhtunkhwa, Prosecution Department, Peshawar.**
- 5. Assistant Director, Khyber Pakhtunkhwa, Prosecution Department, Peshawar.**
- 6. Chairman, Khyber Pakhtunkhwa Public Service Commission, Peshawar and three other private respondents.....(*Respondents*)**

----

Present:

Mr. Saghir Iqbal Gulbela, Advocate .....For the appellant  
Mr. Muhammad Jan, District Attorney.....For respondents

.....

**APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED FINAL SENIORITY LIST OF ASSISTANT PUBLIC PROSECUTORS (BPS-17 VIDE NOTIFICATION NO. SO(PROSECUTION) HD/SENIORITY LIST APPS/1-27/2022 DATED 1, SEPTEMBER 2022 CIRCULATED THROUGH OFFICE ORDER NO.DP/E&A/1-27/2022KC DATED 07.11.2022 WHEREBY DEPARTMENTAL APPEAL OF THE APPELLANT WAS REGRETTEED IN A CLASSICAL, CURSORY AND WHIMSICAL MANNER WHILE JUNIORS FROM THE APPELLANT HAS BEEN ADJUSTED AS SENIOR IN AN ILLEGAL AND UNLAWFUL MANNER AND LIABLE TO BE MODIFIED BY GIVING RESPECTIVE CORRECT POSITION TO THE APPELLANT IN THE IMPUGNED SENIORITY LIST.**



-----  
**JUDGMENT**

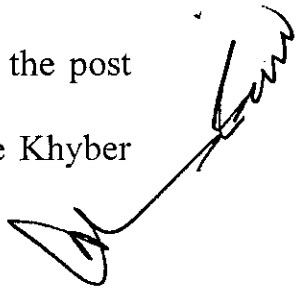
**KALIM ARSHAD KHAN, CHAIRMAN:** Appellant's case as reflected from the record, in brief is that he was appointed as Assistant Public Prosecutor (BPS-17) through Khyber Pakhtunkhwa Public Service Commission vide order dated 03.11.2016; that a seniority list was issued by the Khyber Pakhtunkhwa Home & Tribal Affairs Department in the year 2022, wherein, disabled, minority and quota seats' Assistant Public Prosecutors were jointly placed; that feeling aggrieved of the said final seniority list, he filed departmental appeal but the same was regretted vide order dated 07.11.2022, hence, 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, learned District Attorney.

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, controverted the same by supporting the impugned order(s).

5. Appellant and private respondents had applied for the post of Assistant Public Prosecutor (BPS-17), advertised by the Khyber



Pakhtunkhwa Public Service Commission. After selection process, the appellant was recommended for appointment and his appointment. Alongwith recommendation of the appellant and others for the post of Assistant Public Prosecutor a seniority list was also sent by the Khyber Pakhtunkhwa Public Service Commission, wherein, the appellant was placed at Serial No.73. The department issued seniority list, wherein, the appellant was placed at Serial No.76 while the private respondents Miss. Uzma Nasir was placed at Serial No.31, Miss. Andaleeb Shabeer was placed at Serial No.39 and Miss. Huma Farid at Serial No.53. Main grievance of the appellant is that officers who had applied for the said post, all the quotas have jointly been placed in the seniority list as the private respondents ought to have been placed in a separate seniority list of female.

6. Undisputedly, the appellant and private respondents both are selectees of the same selection process, therefore, their inter-se seniority has to be determined by the authority on the basis of merit order assigned by the Khyber Pakhtunkhwa Public Service Commission as mandated by Section-8 of the Government of Khyber Pakhtunkhwa Civil Servants Act, 1974 read with Rule-17(1)(a) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. The same is reproduced as under:

*"In the case of persons appointed by initial recruitment in accordance with the order of merit*

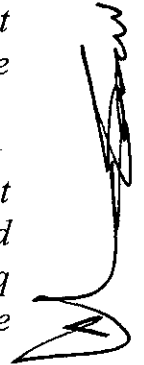


*assigned by the Commission 2[or as the case may be, the Departmental Selection Committee;] provided that persons selected for appointment to post in an earlier selection shall rank senior to the persons selected in a later selection."*

7. The seniority/merit order placed on file undisputedly shows the private respondents having secured more marks than the appellant and are placed higher than the appellant in the merit list prepared by the Khyber Pakhtunkhwa Public Service Commission, therefore, their seniority was rightly determined.

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*



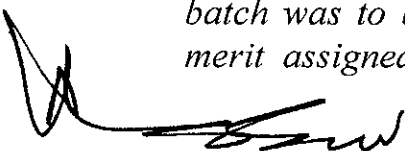
*seniority inter se of the members of the Service in the various grades thereof shall be determined-*

*(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 selection would rank senior to person selected in later selection.

9. The merit assigned by the Khyber Pakhtunkhwa Public Service Commission/Selection Authority, therefore, we see no merit in this case, which is dismissed with costs. Costs shall follow the event. Consign.

10. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 19<sup>th</sup> day of September, 2024.



**KALIM ARSHAD KHAN**  
Chairman



**RASHIDA BANO**  
Member (Judicial)

S.A #.1649/2022

**ORDER**

19<sup>th</sup> Sep. 2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Heard.
2. Vide our detailed judgment of today placed on file, instant service appeal is dismissed with costs. Consign.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 19<sup>th</sup> day of September, 2024.*



(Rashida Bano)  
Member (J)



(Kalim Arshad Khan)  
Chairman