

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,PESHAWAR
AT CAMP COURT, ABBOTTABAD

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**
FAREEHA PAUL ... **MEMBER(Executive)**

Service Appeal No.3248/2021

Date of presentation of Appeal.....01.03.2021
Date of Hearing.....26.09.2024
Date of Decision.....26.09.2024

Mr. Asad Iqbal Patwari, Halqa Talokar Tehsil and District Haripur.....(Appellant)

Versus

1. **The Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar.**
2. **The Commissioner Hazara Division, at Abbottabad.**
3. **The Deputy Commissioner, Haripur and Nine (09) other private respondents.....(Respondents)**

Present:

Syed Noman Ali Bukhari, Advocate.....For the appellant
Mr. Yasir Zahoor Abbasi, Advocate.....For private respondents
Mr. Asif Masood Ali Shah, Deputy District Attorney....For official respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED SENIORITY LIST DATED 31.12.2019, WHICH WAS NOT PREPARED ACCORDING TO LAW AND RULES AND AGAINST REJECTION ORDER DATED 15.12.2020 AND COMMUNICATION LETTER DATED 20.01.2020 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT WAS REJECTED FOR NO GOOD GROUNDS.

JUDGMENT

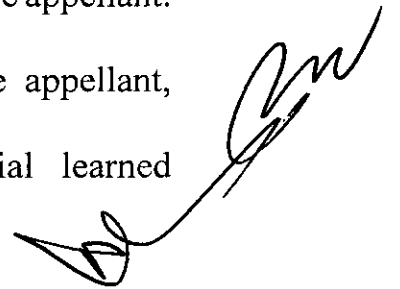
KALIM ARSHAD KHAN CHAIRMAN: Facts of the case of the appellant, gathered from memorandum and grounds of appeal are that the appellant was appointed as

Patwari vide order dated 24.11.2003; that in the said appointment order, private respondents were also mentioned, with the remarks that no candidate shall claim his seniority on the basis of this order sequence; that in the year 2018 a seniority list was issued, whereby, the seniority was issued in the same order as was in the appointment one; that a final seniority list, preceded by a tentative seniority list, was issued vide order dated 31.12.2019, whereby, his alleged juniors were placed senior to him; that feeling aggrieved, he filed representation to the Deputy Commissioner, Haripur, who after correspondence with the Board of Revenue, rejected the same vide order dated 20.01.2020, hence, the instant service appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned; who 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 Deputy District Attorney for official learned counsel for private respondents.

4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy District Attorney, assisted

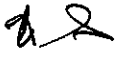



by the learned counsel for private respondents, controverted the same by supporting the impugned order(s).

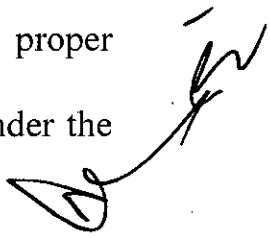
5. Record reflects that the appellant was appointed as Patwari on November 24, 2003, alongside several private respondents, with a clear directive that no candidate could claim seniority based on the order of appointment. In 2018, a seniority list was issued that followed the same sequence as the original appointment order. However, a subsequent final seniority list was released on December 31, 2019, which controversially placed the appellant's alleged juniors ahead of him. This prompted the appellant to file a representation to the Deputy Commissioner of Haripur. After discussions with the Board of Revenue, the Deputy Commissioner rejected the representation on January 20, 2020. Consequently, the appellant has filed the present service appeal, contesting the decision that allegedly undermined his seniority.

6. Although, the appellant ought to have filed the representation before the Commissioner Hazara Division, ~~instead~~ instead of the appropriate appellate authority (Commissioner Hazara), he filed departmental appeal to the Deputy Commissioner, Haripur and the Deputy Commissioner Haripur, vide letter dated 23.10.2023, sought advice from the Board of Revenue. The Board of Revenue vide letter dated 15.12.2020 sent advice and guidance to the

DC Haripur, who, in turn vide letter No.S.L/699/HCR/DC(E) dated 20.01.2021, conveyed the advice of the Board of Revenue to the appellant with the direction to knock at the door of competent court of law.

The impugned seniority list was issued by the office of DC Haripur and in case anybody is aggrieved from the impugned seniority list, he had to file objection/departmental appeal to the departmental appellate authority, who, in this case is the Commissioner Hazara Division, but as aforesaid, the appeal was filed before the DC and the DC vide letter dated 20.01.2021, as referred 

above, directed the appellant to knock at the door of the court. Neither the DC Haripur nor the Board of Revenue, in this case, are appellate authority. Therefore, they could not pass any order, rather the Commissioner Hazara was the ^{appellate} authority, who had to decide the departmental appeal of the appellant. 

7. The above situation indicates a procedural error. However, this should not negate his right to proper placement of his seniority, if that is permissible under the law and rules. 

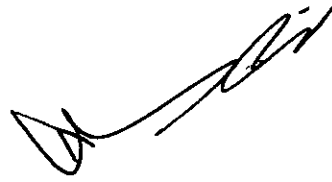
8. In view of the above, instant service appeal is accepted. The matter is remitted to the appellate authority i.e. Commissioner Hazara Division, Abbottabad with the direction to render a decision on the departmental appeal of

Service Appeal No.3248/2021 titled "Asad Iqbal Vs. The SMBR of the Revenue Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others" declared on 26.09.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Miss. Fareeha Paul, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, Abbottabad.

the appellant, within 60 days upon receipt of this judgment.

The issue of back benefits is deferred pending the outcome of the appellate order. Costs shall follow the event. Consign.

9. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 26th day of September, 2024.*



KALIM ARSHAD KHAN
Chairman



FAREEHA PAUL
Member (Executive)

Mutazem Shah