

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**  
**AT CAMP COURT, ABBOTTABAD**

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

*Service Appeal No.7312/2021*

Date of presentation of Appeal.....24.08.2021  
Date of Hearing.....24.09.2024  
Date of Decision.....24.09.2024

**Muhammad Waseem** son of Ghulam Nabi, Resident of Village Jama, Post Office, Kalabat township, Tehsil and District Haripur.....(*Appellant*)

Versus

1. **Secretary** Local Government, Elections and Rural Development Department, Khyber Pakhtunkhwa, Peshawar.
2. **Director General** Local Government, Elections and Rural Development Department, Khyber Pakhtunkhwa, Peshawar.
3. **Assistant Director** Local Government, Elections and Rural Development Department, Khyber Pakhtunkhwa, Peshawar.
4. **Deputy Commissioner, Haripur and 14 other private respondents**.....(*Respondents*)

Present:

Mr. Jehangir Khan, Advocate .....For the appellant  
Mr. Asif Masood Ali Shah, Deputy District Attorney...For official respondents  
(Right of defense of private respondents has been struck off on 15.12.2022)

.....

**APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED SENIORITY LIST VIDE LETTER NO.AD(LG-H)1-15/VCS-NCS/2018/3928-23, DATED 30.08.2019 AND PROMOTION ORDER DATED 11.12.2019 ARE ILLEGAL AND AGAINST THE LAW, WHEREAS, THE JUNIORS, IN TERMS OF THEIR LENGTH OF SERVICE HAVE BEEN PROMOTED BY VIOLATING THE LAWS, RULES, POLICY AND PROCEDURE OF PROMOTION AND PROMOTION ORDER OF THE PETITIONER DATED 02.05.2019 TO BE IMPLEMENTED IN ITS TRUE LETTER AND SPIRIT.**

.....

## **JUDGMENT**

**KALIM ARSHAD KHAN, CHAIRMAN:** Appellant's case in brief, as per memo and grounds of appeal, is that he was placed junior to the private respondents. Feeling aggrieved, he filed departmental appeal but the same was not responded. Therefore, he filed the instant service appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Official respondents filed reply, however, private respondents failed to submit the same, therefore, their right for submission of reply was struck off vide order dated 15.12.2022. The defense setup of official respondents 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 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 controverted the same by supporting the impugned order(s).


5. Appellant and private respondents were appointed against the post of Village Secretary (BPS-07). Alongwith recommendation of the appellant and others for the said post a seniority list dated 26.12.2016 was prepared by the selection authority, wherein, the appellant was placed at Serial No.37 followed by another seniority list dated 03.04.2019, whereby the seniority of appellant was kept as that was. Meeting of Departmental Promotion Committee was held on

02.05.2019, whereby appellant alongwith some other officials were promoted to BPS-11 and on 30.08.2019, seniority list was issued wherein name of appellant was reflected at Serial No.28, from which, appellant felt aggrieved; that vide order dated 11.12.2019 private respondents No.5 to 18 were granted promotion and the said order was challenged through departmental representation by the appellant but no heed was given to his representation.

6. This being so, the appellant and private respondents both are selectees of the same selection process, therefore, inter-se seniority has to be determined by the authority on the basis of merit order assigned by the Khyber Pakhtunkhwa Public Service Commission in view of Rule-17(1)(a) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. The seniority/merit order placed on file undisputedly shows the private respondents 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. Nothing otherwise could be shown or proved by the appellant, therefore, find no merit in the instant appeal which is dismissed with costs. Consign.

10. Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 24<sup>th</sup> day of September, 2024.



**KALIM ARSHAD KHAN**  
Chairman



**FAREEHA PAUL**  
Member (Executive)