

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,PESHAWAR

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

Service Appeal No.5919/2021

Date of presentation of Appeal.....03.06.2021

Date of Hearing.....30.09.2024

Date of Decision.....30.09.2024

Malik Amir Mehmood Patwari, District Haripur, Khyber
Pakhtunkhwa.....(**Appellant**)

Versus

1. Deputy Commissioner Haripur.
2. Ihsanullah, Patwari.
3. Dilfaraz Khan, Patwari.
4. Amjad Shehzad Patwari.
5. Azeem Ullah Khan, Patwari
6. Muhammad Farasat, Patwari, son of Malik Ghulam Muhammad.
7. Khazada Khan, Girdawar, Office of Kanungo, Haripur.
8. Hafeez Ur Rehman, Assistant District Kanungo (Girdawar Haripur).
9. Farman Khan, Patwari, Halqa Sarikat, Tehsil Ghazi.
10. Zahid Rasheed, Patwari, Halqa Haripur.
11. Muhammad Sajjad Patwari, Tehsil Office, Haripur.
12. Kamran Hassan Shah, Patwari, Halqa Mang, Haripur.
13. Muhammad Parvez, Patwari Halqa Qazi Pur, Tehsil Ghazi.....(**Respondents**)

Present:

Appellant (via video link from Abbottabad).....(In Person)

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
IMPUGNING THEREIN THE ORDER DATED
07.08.2020 IN PURUSANCE OF SENIORITY
LIST ISSUED IN THE YEAR 2019; WHEREIN
ENTRIES MADE INSOFAR APPELLANT
ARE DISCOUNTED BY RECORD;
CONTRARY TO THE LAW AND
JURISPRUDENCE.**

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 18.03.2004; that a seniority list was issued on 28.06.2007, wherein, the appellant was placed at Serial No.56 i.e. above the name of private respondent No.3 i.e. Dilfaraz Khan; that on 25.02.2019 a seniority list was issued, whereby, juniors to the appellant were placed senior to him; that feeling aggrieved, he filed departmental appeal to the Deputy Commissioner, Haripur, who filed the same on 07.08.2020, 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.

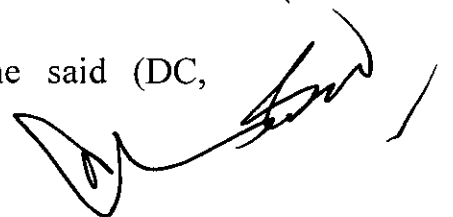
3. We have heard the appellant (in person), learned Deputy District Attorney for official learned counsel for private respondents.

4. 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. In the case at hand, the appellant was appointed as Patwari on March 18, 2004, and subsequently listed at Serial No. 56 in a seniority list issued on June 28, 2007, ranking above private respondent No. 3, Dilfaraz Khan. However, a new seniority list released on February 25, 2019, placed individual junior to the appellant above him, prompting the appellant to file a departmental appeal to the Deputy Commissioner of Haripur, who filed the same on August 7, 2020, forms the basis of the present service appeal, as the appellant seeks redress against the perceived unjust alteration of 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 same was filed by the Additional Deputy Commissioner Haripur, vide correspondence dated 07.08.2020. 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. The DC Haripur in this case was not the appellate authority. Therefore, the said (DC,



Haripur) could not pass any order, rather the Commissioner Hazara was the 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 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 Peshawar and given under our hands and the seal of the Tribunal on this 30th day of September, 2024.*



KALIM ARSHAD KHAN
Chairman



FAREEHA PAUL
Member (Executive)


Mutazem Shah


S.A #.5919/2021

ORDER

30th Sep. 2024

1. Appellant in person (via video link from Abbottabad) present. Mr. Asif Masood Ali Shah, Deputy District Attorney for official respondents present. Private respondents present through counsel. Heard.
2. Vide our detailed judgment of today placed on file 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 the appellant, within 60 days upon receipt of the judgment. The issue of back benefits is deferred pending the outcome of the appellate order. Costs shall follow the event. Consign.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 30th day of September, 2024.*


(Fareeha Paul)
Member (E)


(Kalim Arshad Khan)
Chairman

Mutazem Shah