

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 922/2024

BEFORE: MR. AURANGZEB KHATTAK... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Kamal Hussain Forester, Forest Department, District Orakzai S/O Malik
Mir Ashgar R/O Village Targhu P/O Ghiljo, Tehsil Upper District
Orakzai..... (*Appellant*)

VERSUS

1. The Chief Conservator of Forest, Central, Southern Forest Region-I,
Peshawar.
2. The Conservator of Forest, Kohat Forest Circle Peshawar.
3. The Divisional Forest Officer, Orakzai Forest Division, Hangu.
4. Syed Salam Syed, Forester, Forest Department District Orakzai S/O
Muhammad Sebtain R/O Mani Khel, Village Ahmad Khel, District
Orakzai..... (*Respondents*)

Mr. Muhammad Ilyas Orakzai,
Advocate

... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

... For official respondents

Mr. Ahmad Sultan Tareen,
Advocate

... For private respondent No. 4

Date of Institution..... 27.06.2024
Date of Hearing.....03.10.2024
Date of Decision..... 03.10.2024

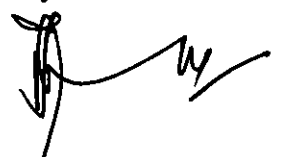
JUDGMENT

FAREEHA PAUL, MEMBER (E): The instant service appeal has been
instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act
1974 against the seniority lists of Foresters of District Orakzai dated
08.05.2024 and 29.05.2024 issued by respondent No. 3, whereby the



appellant was shown junior to private respondent No. 4. It has been prayed that on acceptance of the appeal, the impugned seniority lists dated 08.05.2024 and 29.05.2024 might be set aside and the appellant be placed senior to respondent No. 4 in accordance with law.

02. Brief facts of the case, as given in the memorandum of appeal, are that the appellant, upon the recommendation of Departmental Selection Committee, alongwith other candidates, was appointed as stipendiary Forester (BPS- 6) against the scheme Afforestation in Orakzai District under the ADP/SDP vide order dated 22.09.1990. Respondent No. 4 was appointed as Forester in BPS- 07 under the scheme titled "Watershed Management in Orakzai Agency" vide order dated 06.12.1994. Services of the appellant alongwith others were terminated and later on restored and lastly on the decision of the Khyber Pakhtunkhwa Service Tribunal, services of all developmental staff were converted to normal budget vide order dated 14.01.2003. Respondent department issued tentative seniority list of Foresters in respect of FATA Circle dated 30.04.2018, whereby the appellant was placed at serial no. 23 and private respondent No. 4 was shown at serial No. 43, upon which no objection was raised by respondent No. 4. Respondent No. 3 issued seniority lists of Forsters in respect of Orakzai Forest Division Hangu dated 31.03.2020, 30.06.2020, 30.09.2022, 31.10.2023, 30.11.2023 and 31.03.2024, whereby the appellant was shown senior than respondent No. 4. The meeting of Departmental Promotion Committee was held on 03.05.2024 for promotion of Foresters to the post of Deputy Ranger. The appellant, being senior, was considered for promotion but later on respondent No. 3 issued the impugned seniority list dated



08.05.2024, whereby the appellant was placed junior to respondent No. 4, due to which the promotion process, to the extent of appellant, was deferred/postponed despite the fact that his other colleagues were promoted to the post of Deputy Ranger. Feeling aggrieved, he filed departmental appeal on 09.05.2024, whereafter, the impugned seniority list dated 29.05.2024 was issued by respondent No. 3 by maintaining the previous position of the appellant; hence the instant service appeal.

03. Respondents were put on notice. They submitted their written reply/comments. We heard the learned counsel for the appellant, learned Deputy District Attorney for the official respondents and learned counsel for private respondent No. 4 and perused the case file with connected documents in detail.

04. Through the instant service appeal, the appellant has impugned the seniority list of Foresters as it stood on 08.05.2024 circulated on 08.05.2024 and seniority list of 15.05.2024 circulated on 29.05.2024. Arguments and record presented before us transpired that the appellant was initially appointed as Stipendiary Forester under the scheme "Afforestation in Orakzai Agency" under ADP/SDP in 1990. His services were regularized w.e.f. 01.07.2000 and accordingly he was placed at his appropriate position in the seniority list. According to him, in the seniority list issued before 08.05.2024, private respondent Syed Salam Syed was placed at serial number 4 whereas the appellant was at serial number 3. Perusal of the list impugned before us showed that both the appellant as well as private respondent were appointed/adjusted on regular basis on the same date i.e 01.07.2000. Here,



we refer to the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules 1989, Part VI of which dealt with the seniority and clearly mentions in the proviso of 17(4) that if the date of regular appointment of two or more civil servants in the lower post was the same, the civil servant older in age should be treated senior. In the present case, it was noted that date of birth of the private respondent No. 4 was 05.06.1971, whereas date of birth of the appellant was 02.04.1972 and based on the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules 1989, private respondent No. 4 had to be placed senior in the seniority list. If any error was made in the previous seniority list, it was rightly corrected by the respondent department in the list that was issued on 08.05.2024 and 29.05.2024. During the course of arguments learned Deputy District Attorney referred to annexure-X attached with the reply of the respondents, which was a final seniority list of Foresters in respect of Kohat Forest Circle, Peshawar as it stood on 06.06.2024, by stating that the list was not challenged by the appellant at any forum and that it had attained finality. When confronted with the question that why the seniority list of 06.06.2024 was not challenged by the appellant, despite having knowledge of the same through reply of the respondents, learned counsel for the appellant could not produce any arguments.

05. In view of the above discussion, we arrive at a conclusion that the seniority lists impugned by the appellant before us were prepared based on the rules. Moreover, after issuance of impugned seniority lists, another seniority list of 6.6.2024 had also been issued on 07.06.2024 and that list had not been challenged by the appellant before the competent authority which



shows that he had no reservation/objection on that.

06. In view of the above discussion, the appeal is dismissed being groundless. Cost shall follow the event. Consign.

07. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 3rd day of October, 2024.*


(FAREEHA PAUL)
Member (E)

 09/10
(AURANGZEB KHATTAK) 2024.
Member (J)

Fazle Subhan P.S

SA 922/2024

03.10.2024

01. Mr. Muhammad Ilyas Orakzai, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the official respondents and Mr. Ahmad Sultan Tareen, Advocate for private respondent No. 4 present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 05 pages, the appeal in hand is dismissed being groundless. Cost shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 03rd day of October, 2024.*


(FAREEHA PAUL)
Member (E)


(AURANGZEB KHATTAK)
Member (J)

Fazle Subhan, P.S