KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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

Service Appeal No.1377/2022

Date of presentation of Appeal.....14.09.2022
Date of Hearing.....16.10.2024
Date of Decision.....16.10.2024

Nouman Shah, Junior Village Secretary (BPS-09), Village Council No.10, Maroof Zai, Surizai bala, Peshawar, Office of the Assistant Director, LG&RDD, Government of Khyber Pakhtunkhwa, District Peshawar.....***(Appellant)***

Versus

1. **The Assistant Director,** Local Government & Rural Development Department, District Peshawar.
2. **The Director General,** Local Government & Rural Development Department, Hayatabad, Peshawar.
3. **The Departmental Selection Committee,** through its Chairman, Deputy Commissioner, Peshawar.
4. **The Deputy Commissioner,** Peshawar.
5. **The Secretary** Government of Khyber Pakhtunkhwa Local Government & Rural Development Department Civil Secretariat, Peshawar.
6. **Ihsan Ur Rehman,** Senior Village Secretary (BPS-11) , Office of the Assistant Director, Local Government & Rural Development Department, Peshawar.
7. **Shafiq Ur Rehman,** Senior Village Secretary (BPS-11), Office of the Assistant Director, Local Government & Rural Development Department, Peshawar.
8. **Naseem Ullah,** Senior Village Secretary (BPS-11), Office of the Assistant Director, Local Government & Rural Development Department, Peshawar.
9. **Muhammad Rafaqat,** Senior Village Secretary (BPS-11), Office of the Assistant Director, Local Government & Rural Development Department, Peshawar.
10. **Iqbal Khan,** Senior Village Secretary (BPS-11), Office of the Assistant Director, Local Government & Rural Development Department, Peshawar.
11. **Waqar Aziz,** Senior Village Secretary (BPS-11), Office of the Assistant Director, Local Government & Rural Development Department, Peshawar.
12. **Syed Usman Ali Shah,** Senior Village Secretary (BPS-11), Office of the Assistant Director, Local Government & Rural Development Department, Peshawar.

13. **Ikhtiar Khan,** Senior Village Secretary (BPS-11), Office of the Assistant Director, Local Government & Rural Development Department, Peshawar.
14. **Khan Zaib,** Senior Village Secretary (BPS-11), Office of the Assistant Director, Local Government & Rural Development Department, Peshawar.
15. **Muhammad Rafiq,** Senior Village Secretary (BPS-11), Office of the Assistant Director, Local Government & Rural Development Department, Peshawar.
16. **Muhammad Jabir,** Senior Village Secretary (BPS-11), Office of the Assistant Director, Local Government & Rural Development Department, Peshawar.
17. **Muhammad Riaz,** Senior Village Secretary (BPS-11), Office of the Assistant Director, Local Government & Rural Development Department, Peshawar.
18. **Adnan Malik,** Senior Village Secretary (BPS-11), Office of the Assistant Director, Local Government & Rural Development Department, Peshawar.
19. **Muhammad Zakir Khan,** Senior Village Secretary (BPS-11), Office of the Assistant Director, Local Government & Rural Development Department, Peshawar.
20. **Abid Khan,** Senior Village Secretary (BPS-11), Office of the Assistant Director, Local Government & Rural Development Department, Peshawar.
21. **Ilham Hussain,** Senior Village Secretary (BPS-11), Office of the Assistant Director, Local Government & Rural Development Department, Peshawar.
22. **Tauseef Ahmad,** Senior Village Secretary (BPS-11), Office of the Assistant Director, Local Government & Rural Development Department, Peshawar.
23. **Kifayat Ullah,** Senior Village Secretary (BPS-11), Office of the Assistant Director, Local Government & Rural Development Department, Peshawar.
24. **Muhammad Ismail,** Senior Village Secretary (BPS-11), Office of the Assistant Director, Local Government & Rural Development Department, Peshawar.
25. **Mashal Khan,** Senior Village Secretary (BPS-11), Office of the Assistant Director, Local Government & Rural Development Department, Peshawar.
26. **Abdullah,** Senior Village Secretary (BPS-11), Office of the Assistant Director, Local Government & Rural Development Department, Peshawar.
27. **Khursheed Khan,** Senior Village Secretary (BPS-11), Office of the Assistant Director, Local Government & Rural Development Department, Peshawar.
28. **Sadaqat Ullah,** Senior Village Secretary (BPS-11), Office of the Assistant Director, Local Government & Rural Development Department, Peshawar.

MEMO OF COSTS
KHYBER PAKHTUNKHKWA SERVICE TRIBUNAL, PESHAWAR

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Nouman Shah, Junior Village Secretary (BPS-09), Village Council No.10, Maroof Zai, Surizai bala, Peshawar, Office of the Assistant Director, LG&RDD, Government of Khyber Pakhtunkhwa, District Peshawar.....(Appellant)

Versus

1. The Assistant Director, Local Government & Rural Development Department, District Peshawar.
2. The Director General, Local Government & Rural Development Department, Hayatabad, Peshawar.

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED FINAL SENIORITY LISTS IN RESPECT OF SENIOR VILLAGE SECRETARIES AND JUNIOR VILLAGE SECRETARIES OF VILLAGE COUNCILS, DISTRICT PESHAWAR ISSUED ON THE SAME ONE DATE 19.04.2022 THEREIN ASSIGNED/FIXED THE SENIORITY POSITION AMONGST THE APPELLANT AND OTHER INCUMBENTS OF BOTHT HE POSTS ON THE BASIS OF RESPECTIVE DATES OF BIRTH BEING AGAINST THE SECTION8(3) OF THE KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPOINTMENT, PROMOTION & TRANSFER) RULES, 1989, AGAINST WHICH APPELLANT FILED DEPARTMENTAL APPEAL ON 18.05.2022 WHICH HAS NOT BEEN DECIDED WITHIN STATUTORY PERIOD OF 90 DAYS.

PRESENT

1. Mr. Khushdil Khan, Advocate, for the Appellant
2. Mr. Muhammad Jan, District Attorney for official respondents.
3. Mr. Bilal Ahmad Kakazai, Advocate, for private respondents

Appellants	Amount	Respondent	Amount
1. Stamp for memorandum of appeal	Rs. Nil	1. Stamp for memorandum of appeal	Rs. Nil
2. Stamp for power	Rs. Nil	2. Stamp for power	Rs. Nil
3. Pleader's fee	Rs. Nil	4. Pleader's fee	Rs. Nil
4. Security Fee	Rs.100/-	4. Security Fee	Rs. Nil
5. Process Fee	Rs. Nil	5. Process Fee	Rs. Nil
6. Costs	Rs. Nil	6. Costs	Rs. Nil
Total	**Rs. 100/-**	**Total**	**Rs. Nil**

Note: Counsel Fee is not allowed as the required certificate has not been furnished.

Given under our hands and the seal of this Court, this 16th day of October 2024.

Rashida Bano
Member (Judicial)

Kalim Arshad Khan
Chairman

29. **Shah Khalid,** Senior Village Secretary (BPS-11), Office of the Assistant Director, Local Government & Rural Development Department, Peshawar.
30. **Khan Zali,** Senior Village Secretary (BPS-11), Office of the Assistant Director, Local Government & Rural Development Department, Peshawar.
31. **Khamran Ullah Khan,** Senior Village Secretary (BPS-11), Office of the Assistant Director, Local Government & Rural Development Department, Peshawar.
32. **Noor Saleem,** Senior Village Secretary (BPS-11), Office of the Assistant Director, Local Government & Rural Development Department, Peshawar.
33. **Abdullah Bashir,** Senior Village Secretary (BPS-11), Office of the Assistant Director, Local Government & Rural Development Department, Peshawar.
34. **Fawad Shah,** Senior Village Secretary (BPS-11), Office of the Assistant Director, Local Government & Rural Development Department, Peshawar.
35. **Zeeshan Parvez,** Senior Village Secretary (BPS-11), Office of the Assistant Director, Local Government & Rural Development Department, Peshawar.....(***Respondents***)

Present:
Mr. Khushdil Khan, Advocate .....For the appellant
Mr. Muhammad Jan, District Attorney.....For official respondents
Mr. Bilal Ahmad Kakazai, Advocate.....For private respondents

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SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED FINAL SENIORITY LISTS IN RESPECT OF SENIOR VILLAGE SECRETARIES AND JUNIOR VILLAGE SECRETARIES OF VILLAGE COUNCILS, DISTRICT PESHAWAR ISSUED ON THE SAME ONE DATE 19.04.2022 THEREIN ASSIGNED/FIXED THE SENIORITY POSITION AMONGST THE APPELLANT AND OTHER INCUMBENTS OF BOTHT HE POSTS ON THE BASIS OF RESPECTIVE DATES OF BIRTH BEING AGAINST THE SECTION8(3) OF THE Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, AGAINST WHICH APPELLANT FILED DEPARTMENTAL APPEAL ON 18.05.2022 WHICH HAS NOT BEEN DECIDED WITHIN STATUTORY PERIOD OF 90 DAYS.

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Appellant's case as reflected from the record, in brief is that he was appointed as Village Secretary (BPS-07) on 28.01.2016; that the services of employees of Local Government Department are governed and regulated under the recruitment rules Notified on 26.01.1978; that those rules were further amended vide Notification 03.12.2015, meanwhile, the post of Secretary Village/Neighborhood Council have been upgraded from BPS-07 to BPS-09 with the nomenclature of Junior Secretary Village/Neighborhood Council and from BPS-09 to 11 with the redesignation as Senior Secretaries Village/Neighborhood Council with the addition/creation of posts of Supervisor (BPS-09) with upgradation to BPS-14 vide letter of Finance Department dated 01.02.2018 in pursuance of the mentioned letter the respondent No.5 issued a Notification dated 05.04.2018 thereby necessary amendments have been made in the principal rules of 1978 which were further amended vide Notification dated 16.10.2019; that vide Notification dated 20.01.2020, final seniority list of Junior Village Secretaries (BPS-09) has been issued by respondent No.1 on the basis of date of birth and not in accordance with the order of merit assigned by the respondent No.3 (Departmental Selection Committee); that on the same day, another final seniority list dated 16.03.2021 of Junior Secretaries was issued by the respondent No.1 and fixed assigned the seniority on the basis of date of birth which was objected by the

appellant in written forum but not responded; that on the basis of above referred seniority list, private respondents were promoted to the post of Senior Secretaries Village Council (BPS-11) on the recommendation of the DPC meeting held on 03.05.2021; that two lists of the final seniority lists of the Senior Secretary Village/Neighborhood Council (BPS-11) and Junior Secretary Village Council (BPS-09) having the same date i.e. 19.04.2022 issued separately from the office of respondent No.1 which were objected by the appellant through departmental appeal dated 17.05.2022 , but the same was not responded, 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 for official respondents and 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 District Attorney, assisted by the learned counsel for private respondents, controverted the same by supporting the impugned order(s).

5. The appellant's case, as outlined in the records, highlights several key developments regarding his appointment and subsequent

promotions within the Local Government Department. Appointed as Village Secretary (BPS-07) on January 28, 2016, he asserts that his employment is governed by recruitment rules established in 1978, which were amended in December 2015. Notably, the positions of Village/Neighborhood Council Secretaries were upgraded from BPS-07 to BPS-09, and later to BPS-11, with additional roles introduced as per the Finance Department's directive in February 2018. Despite these changes, the appellant contends that the final seniority lists issued on January 20, 2020, and March 16, 2021, were compiled based on date of birth rather than merit, as determined by the Departmental Selection Committee. He objected to these lists in writing but received no response. Consequently, private respondents were promoted to Senior Secretaries (BPS-11) based on these seniority lists following a DPC meeting in May 2021. The appellant further challenged the seniority lists issued on April 19, 2022, through a departmental appeal dated May 17, 2022, which also went unanswered, prompting the current service appeal.

6. The impugned seniority list has been subject matters before this Tribunal in Service Appeal No.03/2022 filed on 23.12.2021 and decided on 29.05.2021 and another Appeal No.1645/2023 filed on 10.08.2023 and decided on 25.03.2024. Appeal No.03/2022 was instituted prioer to the instant appeal while Appeal No.1645/2023 was instituted during the pendency of the instant appeal. However, both were decided during the

pendency of this appeal and were allowed in the following manner:

In Appeal No.03/2022:

"As sequel to above discussion, we partially allow the appeal in hand with direction to respondents to place him in the seniority list at the relevant place alongwith his batch mates. Costs shall follow the event. Consign."

In Appeal No.1654/2023:

"For what has been discussed above, we are unison to accept this appeal with direction to respondents to place appellant alongwtih appointee of order dated 16.01.2016 in order of merit being selected of same selection process. Costs shall follow the event. Consign."

7. Therefore, the question of limitation would hardly come in a situation where more than one appeals are filed against the same order and one appeal is within time, while other was barred by limitation, the appeals which were filed beyond the period of limitation are deemed to have been filed within time. In this particular matter, the above said appeals were allowed and no question of limitation was there, therefore, this appeal cannot be outrightly dismissed on the sole question of limitation, rather it is deemed to have been filed within time.

8. Coming to the merits of the case, since this Tribunal has already accepted two appeals with the direction above produced, this appeal being similar to that and coupled with the fact that there is no other

provision or determination of seniority in the Khyber Pakhtunkhwa Civil Servants Act, 1973 and Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, except Section-8 of the former and Rule-17(1)(a) of the latter for determination of seniority of the persons appointed through initial recruitment to be the sole basis of merit order assigned by the selection authority which has to remain good till end. The Rule ibid is reproduced as under:

> *"In the case of persons appointed by initial recruitment in accordance with the order of merit assigned by the Commission [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."*

9. Besides, 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."

10. In view of the above, impugned seniority lists of 2020, 2021 and 2022, in respect of the appellant, are set aside and and the appeal in hand stands accepted. Costs shall follow the event. Consign.

11. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 16th day of October, 2024.

KALIM ARSHAD KHAN
Chairman

RASHIDA BANO
Member (Judicial)

**Mutazem Shah*2*

S.A #.1377/2022

ORDER

16th Oct. 2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for official respondents present. Private respondents present through counsel. Heard.

2. Vide our detailed judgment of today, placed on file, impugned seniority lists of 2020, 2021 and 2022, in respect of the appellant, are set aside and the appeal in hand stands accepted. 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 16th day of October, 2024.*

(Rashida Bano)
Member (J)

(Kalim Arshad Khan)
Chairman

Mutazem Shah