

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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

Service Appeal No.1301/2023

Date of presentation of Appeal.....31.05.2023
Date of Hearing.....14.10.2024
Date of Decision.....14.10.2024

Muhammad Haroon, (Junior Clerk, BPS-11) at District Courts, Khyber.....(***Appellant***)

Versus

1. **The Registrar**, Peshawar High Court, Peshawar.
2. **District & Sessions Judge**, at District Courts, Khyber.
3. **Hamayun Khan**, (Junior Clerk, BPS-11) at District Courts, Khyber.
4. **Muhammad Arif**, (Junior Clerk, BPS-11) at District Courts, Khyber.
5. **Shah Saud**, (Junior Clerk, BPS-11) at District Courts, Khyber.
.....(***Respondents***)

Service Appeal No.1302/2023

Date of presentation of Appeal.....31.05.2023
Date of Hearing.....14.10.2024
Date of Decision.....14.10.2024

Asif Samad, (Junior Clerk, BPS-11) at District Courts, Khyber.....(***Appellant***)

Versus

1. **The Registrar**, Peshawar High Court, Peshawar.
2. **District & Sessions Judge**, at District Courts, Khyber.
3. **Hamayun Khan**, (Junior Clerk, BPS-11) at District Courts, Khyber.
4. **Muhammad Arif**, (Junior Clerk, BPS-11) at District Courts, Khyber.
5. **Shah Saud**, (Junior Clerk, BPS-11) at District Courts, Khyber.
.....(***Respondents***)

Present: .

Mr. Yar Muhammad, Junior to Javid Iqbal Gulbela, Advocate....For the appellants
Mr. Muhammad Jan, District Attorney.....For respondents
Private respondents have been placed ex-parte on 01.01.2024

APPEALS UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE FINAL IMPUGNED SENIORITY LIST OF JUNIOR CLERK (BPS-11)

**VIDE LETTER NO.337/DSJ 08.04.2023
MAINTAINED BY THE LEARNED DISTRICT &
SESSIONS JUDGE, DISTRICT KHYBER
WHEREBY THE APPELLANTS WERE
DECLARED JUNIOR IN THE IMPUGNED
SENIORITY LIST, AND DEPARTMENTAL
APPEALS WERE REGRETTED IN A CLASSICAL
AND WHIMSICAL MANNER.**

CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Through this single judgment, the above two appeals, are jointly taken up, as both are similar in nature and almost with the same contentions, therefore, can be conveniently decided together.

02. Appellants' cases in brief, as per averments of appeals are that they were serving the as Junior Clerks (BPS-11) since 05.03.2020; that in respect of promotions to the post of Senior Clerk, the respondent No.2 issued tentative seniority list of Junior Clerks (BPS-11) wherein, they were placed at Serial No.4 & 5 i.e. below the names of private respondents which were objected by them; that a final seniority list was issued, wherein, appellant Muhammad Haroon was placed at Serial No.4 and Asif Samad was at Serial No.5; that feeling aggrieved, they filed departmental appeals but the same were turned down, hence, the instant service appeals.

03. On receipt of the appeals and their admission to full hearing, the respondents were summoned who put appearance and contested the appeals by filing replies. The defense setup was a total denial of the claim of the appellants.

04. We have heard learned counsel for the appellants and learned District Attorney for respondents.

06 The learned counsel for the appellants reiterated the facts and grounds detailed in the memo and grounds of the appeals while the learned District Attorney District Attorney controverted the same by supporting the impugned order(s).

07. In examining the appeals of the appellants, who have been serving as Junior Clerks (BPS-11) since March 5, 2020, the primary contention revolves around their placement in a tentative seniority list issued for promotions to the position of Senior Clerk. Both appellants objected to their positions, which placed them at Serial No. 4 and 5, below certain private respondents. Following their objections, a final seniority list was released, maintaining their placements at Serial No. 4 for Muhammad Haroon and Serial No. 5 for Asif Samad. Dissatisfied with this outcome, they filed departmental appeals challenging their seniority, but these were subsequently rejected. Therefore, they preferred the instant service appeals.

08. For determination of seniority of civil servants, Rule-17(1)(a) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, suits to be followed. The same is reproduced as under:

17. Seniority :- (1) the seniority inter se of civil servants (appointed to a service, cadre or post) shall be determined:-

(a) in the case of persons appointed by initial recruitment, in accordance with the order of merit assigned by the Commission 48[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;

09. Besides, we are fortified by the following judgments on the point:

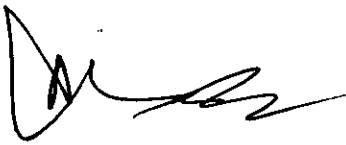
- i. *2002 SCMR 889 titled "Government of NWFP through Secretary Irrigation and 4 others", wherein the august Supreme Court of Pakistan was pleased to have observed that Appointments made as a result of selection in one combined competitive examination would be deemed to be belonging to the same batch 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."*



10. In view the above, instant service appeals are accepted and the matters are remitted to the District & Sessions Judge, Khyber with direction to prepare and issue seniority list in accordance with the provisions of Section-8, read with Rule-17(1) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989. Copy of this judgment be placed on file of connected appeal. 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 14th day of October, 2024.*


KALIM ARSHAD KHAN 14/10/24
Chairman


RASHIDA BANO
Member (Judicial)

Mutazem Shih
14/10/24

S.A #.1301/2023

ORDER

14th Oct. 2024

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

2. Vide our consolidated judgment of today, placed on file, instant service appeal is accepted and the matter is remitted to the District & Sessions Judge, Khyber with direction to prepare and issue seniority list in accordance with the provisions of Section-8, read with Rule-17(1) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989. Copy of the judgment be placed on file of connected appeal. 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 14th day of October, 2024.*



(Rashida Bano)
Member (J)



(Kalim Arshad Khan)
Chairman