KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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

Service Appeal No.2543/2023

Date of presentation of Appeal.....05.12.2023
Date of Hearing.....14.10.2024
Date of Decision.....14.10.2024

Saeeda Naz, Deputy Director, Treasuries & Accounts, Directorate of Treasuries & Accounts, Khyber Pakhtunkhwa, Adjacent to Jamia Majid, District Courts, Khyber Road, Peshawar.....***(Appellant)***

Versus

1. **The Government of Khyber Pakhtunkhwa** through Chief Secretary, Khyber Pakhtunkhwa Peshawar.
2. **The Secretary to Government of Khyber Pakhtunkhwa** Establishment Department, Khyber Pakhtunkhwa, Peshawar.
3. **The Secretary to Government of Khyber Pakhtunkhwa,** Finance Department, Khyber Pakhtunkhwa, Peshawar.
4. **Mr. Qaiser Imad,** District Accounts officer, Kolai Palas.

.....(***Respondents***)

Present:
Mr. Hidayat Ullah Khan, Advocate .....For the appellant
Mr. Naseer Ud Din Shah, Assistant Advocate General...For official respondents
Private respondent in person present.

.....

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE FINAL SENIORITY LISTS OF DEPUTY DIRECTOR/DISTRICT ACCOUNTS OFFICER/TREASURY OFFICER (BPS-18) OF TREASURY ESTABLISHMENT KHYBER PAKHTUNKHWA AS IT STOOD ON 31.12.2021 ISSUED VIDE FINANCE DEPARTMENT KHYBER PAKHTUNKHWA NOTIFICATION NO.SO(ESTT)FD/1-45/2020 DATED 12.07.2023 FOLLOWED BY ANOTHER SENIORITY LIST BEARING NO.SO(ESTTT-I)FD/1-45/S.LIST/2022 DATED 07.09.2023 WHEREBY AN OFFICER JUNIOR THAN APPELLANT WAS DECLARED SENIOR.

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Appellant's case as reflected from the record, in brief is that she was appointed as Assistant Treasury Officer (BPS-17) on 28.10.2010; that a tentative seniority list of Assistant Treasury Officer was issued on 28.02.2011 wherein, appellant was placed at Serial No.38 i.e. at 4th position of seniority amongst 05 newly appointed Assistant Treasury Officers; that subsequently, final seniority list, followed by more lists, for ten years, wherein, the appellant remained figured at the same serial; that she alongwith other colleagues of the appellant, were promoted to the post of District Accounts Officers (BPS-18); that a tentative seniority list of Deputy Directors/District Accounts Officers (BPS-18) was issued, against which an alleged junior to the appellant objected to the same; that a final seniority list was issued on 12.07.2023, wherein, the said person was placed senior to the appellant; that another seniority list as stood on 31.12.2022 was issued, wherein, the position was the same as was in the seniority list dated 12.07.2023; that feeling aggrieved, she filed departmental appeal 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 Assistant Advocate General for respondents and private respondent (in person).

4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Assistant Advocate General, assisted by private respondent, controverted the same by supporting the impugned order(s).

5. In the case presented, the appellant, appointed as Assistant Treasury Officer (BPS-17) on October 28, 2010, consistently maintained her position in the seniority lists over a decade, being placed at Serial No. 38 among her peers. After her promotion to District Accounts Officer (BPS-18), a tentative seniority list was issued, which faced objections from a junior colleague. Ultimately, a final seniority list on July 12, 2023, controversially placed her alleged junior above the appellant, a status that was reiterated in a subsequent seniority list as of December 31, 2022. The appellant's grievances regarding this alteration led her to file a departmental appeal, which went unaddressed, prompting her to seek relief through the current service appeal.

6. There is no denial of the fact that after induction of the appellant and private respondent into service, seniority lists were prepared each year for ten (10) years, wherein, seniority of the appellant was, according to her, correctly assigned. But after more than ten (10) long years, the private respondent made an application for correction of seniority list, which, according to the department, was corrected, according to merit order assigned by the Khyber Pakhtunkhwa Public Service Commission.

From first seniority list, prepared after appointment of the appellant and private respondent, till the alleged correction made after more than ten (10) years, relegating the appellant and placing private respondent by the appellant, without hearing the appellant would not be a just act on the part of the respondents, especially when there is no order placed before us, which could show that any opportunity of hearing was provided to the appellant and why the private respondent was allowed seniority after ten years, which according to different judgments of the Apex Court i.e. 2002 SCMR 889 titled "Wazir Khan Vs. Government of NWFP through Secretary Irrigation, Peshawar, and 4 others" and 2009 SCMR 82 titled "Fazal Muhammad Vs. Government of NWPF & others", could not be corrected after such a long time and slumber of the private respondent as well as official respondents.

7. In view of the above, instant service appeal is allowed and the matter is remitted back to the official respondents. Both the parties would be heard in accordance with law and merits for redeciding the matter through detailed and speaking order. Costs shall follow the event. Consign.

8. 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
Chairman

RASHIDA BANO
Member (Judicial)

S.A #.2543/2023

ORDER

14th Oct. 2024

1. Learned counsel for the appellant present. Mr. Naseer Ud Din Shah, Assistant Advocate General for official respondents present. Private respondent in person present. Heard.

2. Vide our detailed judgment of today, placed on file, instant service appeal is allowed and the matter is remitted back to the official respondents. Both the parties would be heard in accordance with law and merits for redeciding the matter through detailed and speaking 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 14th day of October, 2024.

(Rashida Bano)
Member (J)

(Kalim Arshad Khan)
Chairman

Mutazem Shah

25.06.2024 1. Appellant alongwith his learned counsel present. Mr. Muhammad Jan learned District Attorney alongwith Qaisar Imad, DCA for the respondents present.

2. Learned counsel for the appellant requested for adjournment in order to further prepare the brief. Adjourned. To come up for arguments on 02.09.2024 before D.B. P.P given to the parties.

SCANNED
KPST
Peshawar
kaleem

(Muhammad Akbar Khan)
Member (E)

(Rashida Bano)
Member (J)

2.9.24
Due to summer vacation the bench is cancelled. The case is adjourned to 14/10/24. Reader.