KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,PESHAWAR

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

Service Appeal No.7315/2021

Date of presentation of Appeal.....11.08.2021
Date of Hearing.....03.10.2024
Date of Decision.....03.10.2024

Mr. Asfandyar Khan, Clinical Technician (Anesthesia) (BPS-16), Women & Children Teaching Hospital (MTI) Bannu .....***(Appellant)***

Versus

1. **The Government of Khyber Pakhtunkhwa** through Secretary Health, Peshawar.
2. **The Director General Health Services,** Khyber Pakhtunkhwa, Peshawar.
3. **The District Health Officer** District Bannu.
4. **Mr. Arbab Sikandar** son of Mir Ahmad, Medical Teaching Institution (MTI) Khyber Teaching Hospital Peshawar.
5. **Mr. Khurshid** son of Noor Khan, office of DHO Swabi.
6. **Mr. Shafiq Ur Rehman** son of Gul Rahman, office of DHQH, KDA Kohat.
7. **Mr. Muhammad Ajmal,** son of Muhammad Afzal office of HMC, Peshawar.
8. **Mr. Iqbal noor Khan son of Muhammad Noor Khan office of AHQ Bajaur.**
9. **Mr. Muhammad Atiq** son of Saif Ul Malook, office of DHQ Batkhela.
10. **Mr. Ibrar Ahmad** son of Saif ul Islam Saif, office of DHQ Nowshera.
11. **Mr. Idrees Khan** son of Nisar Muhammad, office of SGTH Swat.
12. **Mr. Gohar Ali** son of Sardar Ali, office of SGTH Swat.
13. **Mr. Zahoor Ahmad Shah** son of Bakht Zada, office of STH Swat.
14. **Mr. Hussain Akbar** son of Muhammad Akbar, office of AHQ Hospital Parachinar.
15. **Mr. Inayat Ullah** son of Muhammad Ismail, office of QHAMC Nowshera.
16. **Mr. Mustafa** son of Said Faqir, office of DHO, Dir Lower.
17. **Mr. Syed Roohul Amin** son of Syed Wilayat Shah, office of Services Hospital, Peshawar.....***(Respondents)***

Present:

Mr. Noor Muhammad Khattak, Advocate.....For the appellant
Mr. Naseer Ud Din Shah, Assistant Advocate General.....For official respondents
Mr. Taimur Ali Khan, Advocate.....For private respondents

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED SENIORITY LIST DATED 02.11.2017 WHEREBY JUNIORS/PRIVATE RESPONDENTS NO.4 TO 17 HAVE BEEN PLACED SENIOR TO THE APPELLANT AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEALS OF THE APPELLANT WITHIN THE STIPULATED PERIOD OF NINETY DAYS.

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 Anesthesia Assistant (BPS-06) in the respondent department vide order dated 04.05.1993 and presently serving as Chief Clinical Technician (Technician) BPS-16; that he obtained B.Sc (Anesthesia Technology) in the year 2007 under the Khyber Pakhtunkhwa Medical & Dental Degree Ordinance, 1982 alongwith B.S (Honours) Paramedical Science; that vide Notification dated 10.05.2006 eight stage paramedics services structure was approved and the post of Technologist was re-designated in BPS-17 and vide Notification dated 07.01.2008 method of appointments and promotion of different paramedics, was issued, wherein, vide serial No.4, the post of Technologist was placed and method of recruitment for this post was 50% by promotion and 50% by initial recruitment having Bachelor Degree from a recognized university/institution in

the relevant field; that on 02.11.2017 seniority list of the Degree Holder Clinical Technicians was issued and the appellant was placed at Serial No.15 irrespective of the fact that the appellant had acquired the said degree in the year 2007 prior to the private respondents as they had had acquired their degrees in the year 2011; that in the light an alleged erroneous seniority list, private respondent No.4 was promoted to the post Technologist (BPS-17) vide order dated 01.02.2018; that feeling aggrieved, he filed departmental appeal but the same was not responded, therefore, he filed Writ Petition No.406-B/2018 before the Hon'ble Peshawar and the Hon'ble High Court vide order dated 24.11.2020 directed the respondents to make decision on the seniority list within a month , in accordance with law and rules while the appellant was directed to approach proper forum if his grievance was not redressed, 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 learned counsel for the appellant, learned Assistant Advocate General for 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 Assistant Advocate General controverted the same by supporting the impugned order(s).

5. In the present case, the appellant has raised significant concerns regarding the seniority list and subsequent promotion decisions within the paramedic services. Appointed as an Anesthesia Assistant in 1993 and currently serving as Chief Clinical Technician (BPS-16), the appellant holds a B.Sc in Anesthesia Technology obtained in 2007. However, despite his earlier qualification, he was placed at Serial No. 15 on the seniority list issued on November 2, 2017, which erroneously ranked him below private respondents who acquired their degrees later in 2011. This misplacement directly impacted his eligibility for promotion, as evidenced by the promotion of private respondent No. 4 to the post of Technologist (BPS-17) on February 1, 2018. The appellant's attempts to seek redress through a departmental appeal were met with silence, prompting him to file Writ Petition No. 406-B/2018. The Hon'ble Peshawar High Court ordered the respondents to address the seniority list issue within a month, underscoring the procedural irregularities in the promotion process. The appellant's case raises critical questions regarding adherence to established promotion protocols and the

principles of fairness and meritocracy within the department, warranting thorough review and action to rectify the identified grievances.

6. This Tribunal in a similar nature Service Appeal No.6704/2021 titled "Ashraf Khan versus Government of Khyber Pakhtunkhwa" vide its consolidated judgment dated 29.09.2021 has held as under:

"06. Record reveals that the respondents brought amendments in service rules dated 17-02-2011 vide notification dated 25-06-2012, where provision for separate seniority of B-Tech Degree holders and Diploma holders have been given 8% and 15% quota respectively for their further promotion to the post of Sub-Divisional Officer and their seniority was to be reckoned from the date of their regular appointment to the post of Sub-Engineer. Record is silent as to whether such segregated seniority lists were prepared or not in the light of such amendments, but after amendments in service rules vide notification dated 10-07-2020, two seniority lists have been drawn in respect of degree holders and diploma/non diploma holders separately vide final seniority lists issued on 31-12-2020. The segregated seniority list of degree holders would suggest that such seniority has been drawn from the date of acquiring the prescribed qualification and those who had obtained such degree earlier has been placed senior to

those who has obtained such degree in later dates, thereby ignoring their seniority from the date of their regular appointment to that post, hence the respondents deviated from the set principle of determination of seniority. The correct course would have been to maintain their joint seniority as per their dates of regular appointments to that post and to make the condition of prescribed qualification as eligibility criteria for such promotion, which however was not done.

07. The appellants are mainly aggrieved of the above-mentioned amendments made in the service rules, which has made the prescribed qualification a condition for determination of seniority, which on the one hand would render the appellants junior to those, who had acquired the prescribed qualification earlier and on the other hand would keep the appellants deprived of further promotion due to their low position in the seniority list. we have observed that the previous service rules amended vide notification dated 25-02-2012 had correctly prescribed determination of seniority of the sub-engineers from the date of their regular appointment to that post, but the amended notification dated 10-07-2020 changed the criteria for determination of seniority from the date of acquiring the prescribed qualification, which is in total contravention to Section-8 of Civil Servant Act, 1973 and

Section-17 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, relevant provisions of which are reproduced as under for ready reference:

> *Section-8(4) of Civil Servants Act, 1973: Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post. Provided that civil servants who are selected for promotion to a higher post in one batch shall, on heir promotion to the higher post, retain their inter se seniority as in the lower post.*
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> *Section-17-1(b) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989: seniority in the case of civil servants appointed otherwise, with reference to the date of their continuous regular appointment in the post; provided that civil servants selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter se seniority as in the lower post.*

08. In view of the provision contained in the Act/Rules ibid and in light of the judgments of Supreme Court of Pakistan reported as 2015 PLC (CS) 1231, 2010 SCMR 1584 and 2019 SCMR 349, undoubtedly seniority reckons

from the date of regular appointment to a post, service or cadre and the reckoning/fixing seniority with acquiring the prescribed qualification is illegal, hence is liable to be set at naught, as statutory provisions regarding seniority would have overriding effect on such notification. Reliance is placed on 2010 SCMR 1584. It however is worth to mention that prescribed qualifications can be made a condition for promotion, but not for fixation of seniority.

09. We have observed that the appellant namely Ashraf Khan obtained the prescribed qualification on 21-07-2020 and is placed at the bottom of seniority list being the last one obtaining the prescribed qualification, thereby ignoring his seniority accrued to him by virtue of his first entry into the post of Sub-Engineer in 2004. The other appellant namely Syed Meher Ali Shah has not yet obtained the prescribed B-Tech Degree, hence he is placed in the seniority list of Diploma holders. It is also worth to mention that separate quota for promotion is fixed for degree holders and diploma holders, but the moot question before this Tribunal is as to whether the respondents made such amendments in conformity with the Act/Rules ibid or not. Available record and arguments of learned counsel for the parties would suggest that such amendments for determination of seniority from the date of acquiring the prescribed qualification are in clear violation of law and

rule and not sustainable in the eye of law. The question of jurisdiction as to whether such appeal challenging vires of rules/notification would be competent before this Tribunal, it is added that judgment of a larger bench of this Tribunal in Service Appeal No. 868/2019 announced on 14-01-2021 has categorically explained jurisdiction of this Tribunal in such cases and such judgment is based upon judgments of the superior courts reported in 1991 SCMR 1041, PLD 2004 SC 317, 2002 PLC (C.S) 94, 2012 PLC (C.S) 142, 2012 PLC (C.S) 1211, 2015 PLC (C.S) 215, 2018 PLC (C.S) 40, 2019 PLC (C.S) 995, PLD 1980 Supreme Court 153 and 1991 SCMR 1041. In almost all the aforementioned judgments it has been held that vires of any rule or law touching the terms and condition of civil servant can be decided by this tribunal, hence the issue of jurisdiction is holding no force.

10. In view of the foregoing discussion, the instant as well as connected appeal bearing No. 6703/2021 "titled Syed Meher Ali Shah Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar and four others", are accepted. Provisions of the impugned notification dated 10-07-2020 pertaining to amendments determining seniority from the date of acquiring prescribed qualification is declared null and void with direction to the respondents to draw the seniority list from the dates of regular appointment of the

incumbents to the post of Sub-Engineer. Parties are left to bear their own costs. File be consigned to record room.

7. Being similar in nature, instant service appeal is also accepted by setting aside the impugned seniority list dated 02.11.2017. 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 3rd day of October, 2024.

KALIM ARSHAD KHAN
Chairman

RASHIDA BANO
Member (Judicial)

Mutazem Shah

(11)

S.A #.7315/2021

ORDER

3rd Oct. 2024

1. Learned counsel for the appellant present. Mr. Naseer Ud Din Shah, Assistant Advocate General 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 by setting aside the impugned seniority list dated 02.11.2017. 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 3rd day of October, 2024.*

(Rashida Bano)
Member (J)

(Kalim Arshad Khan)
Chairman

Mutazem Shah