

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.**

Service Appeal No. 1103/2024

**Gulab Gul, Village Secretary, Village Council, Bar Kemal, Mamund District
Bajaur Appellant**

VERSUS


1. Director LG&RDD Khyber Pakhtunkhwa, Peshawar.,
2. Government of KP through Secretary LGE&RDD Civil Secretariat Peshawar.
3. AD LG&RDD Bajaur

(Respondents)

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Respondent


(Zeeshan Ali Shah)
Assistant Director (Sp)
LG&RDD District Bajaur
Assistant Director
Local Govt. & Rural Development
Department Bajaur

(7)

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
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PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO.1,2 & 3

Preliminary Objections:

- i. The Appellant has no locus standi.
- ii. The Appellant has not come to the Service Tribunal with clean hands.
- iii. The Appellant has concealed the facts & truth from the Service Tribunal.
- iv. The Appeal is not maintainable.

ON FACTS:

1. Pertains to Record.
2. Pertains to Record.
3. Pertains to Record.
4. Pertains to Record. Moreover, Village Council Bar Kemal was reserved for observance of Minority Quota.
5. Incorrect. Writ petition No.4945-P/2022 titled "Fazal Janan & Others VS Government of Khyber Pakhtunkhwa" was allowed with the direction to Respondent No. 02 i.e; Director LG&RD Khyber Pakhtunkhwa Peshawar for decision in accordance with Law, Rules & Policy.
6. Pertains to Record.
7. Pertains to Record.
8. Incorrect. Hence denied that the Appointment Order of Appellant was issued on 07-08-2023 in compliance of Peshawar High Court Peshawar directions in COC No. 76-P/2023.

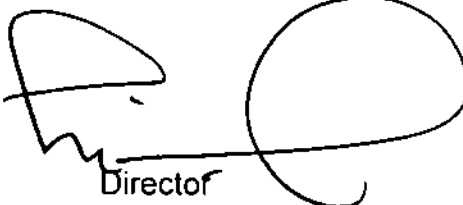
ON GROUNDS:

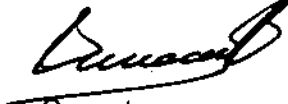
- A. Incorrect. As explained in reply to Para-08 of Facts.
- B. Incorrect. The Appellant is treated in accordance with Law & Rules.

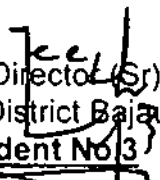
- C. Incorrect. Peshawar High Court Peshawar Order Sheet dated 21-12-2022 in Writ Petition No. 4945-P/2022, the case was sent to Respondent No. 02 i.e; Director LG&RD Khyber Pakhtunkhwa Peshawar for decision in accordance with Law, Rules & Policy. Furthermore, the Appellant was duly appointed in light of directions of PHC Peshawar in COC No. 76-P/ 2023.
- D. Incorrect. The Appellant is rightly placed at serial No. 28 of final Seniority list of Junior Village Secretaries LG&RDD Bajaur (**Annexure-A**) as per Rule 17(1)(a) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 (**Annexure-B**) & Khyber Pakhtunkhwa Service Tribunal Judgments dated 25-03-2024 & 29-05-2024 in Service Appeal No 1645/2023 & Service Appeal No. 03/2022 (**Annexure- C & D**). Furthermore, the appellant cannot claim arrears of period for which he has not performed any official duty in light of Supreme Court Judgment in Case Titled "Syed Niaž Hussain Shah Bukhari VS Oil & Gas Development Corporation Limited through Chairman OGDC Head Office, Islamabad" wherein it is clearly stated that when there was no work, there was no pay (**Annexure-E**).
- E. Incorrect. The Appellant is treated in accordance with Law & Rules.
- F. Incorrect.
- G. No Comments.

PRAYER:

It is humbly prayed that the instant Service Appeal is baseless and not based on facts, therefore, it is requested that the same may please be dismissed with cost.


 Director
 LG&RDD KP Peshawar
Respondent No. 1
 (Riaz Ahmad)


 Secretary
 LGE&RDD KP Peshawar
Respondent No.2
 (Dawood Khan)


 Assistant Director (Sr)
 LG&RDD District Bajaur
Respondent No.3
 Assistant Director
 Local Govt & Rural Development
 Department Bajaur
 (Zeeshan Ali Shah)

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 1103/2024

Gulab Gul, Village Secretary, Village Council, Bar Kemal, Mamund District Bajaur Appellant

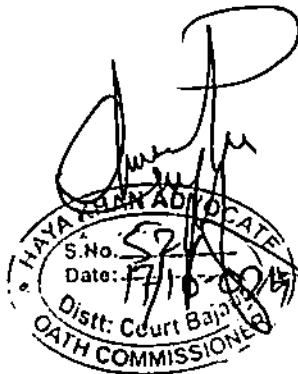
VERSUS

- 1. Director LG&RDD Khyber Pakhtunkhwa, Peshawar.,
- 2. Government of KP through Secretary LGE&RDD Civil Secretariat Peshawar.
- 3. AD LG&RDD Bajaur

(Respondents)

AFFIDAVIT

I, **Zeeshan Ali Shah** Assistant Director (Sr) LG&RDD Bajaur District do hereby solemnly affirm and declare on oath that Para wise Comments in **Service Appeal No.1103/2024 Gulab Gul, Village Secretary, Village Council, Bar Kemal, Mamund District Bajaur** are true and correct to the best of my knowledge & belief and nothing has been intentionally concealed from this Honorable Service Tribunal. It is further stated on oath that in this appeal, the answering respondent neither has been placed ex-parte nor their defence has been struck Off/Cost.



Identified By

Deponent

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**CNIC #.11101-49789067
Cell #.0333-9722349**

**Assistant Director
Local Govt. & Rural Development
Department Bajaur**

**Additional Advocate General
Khyber Pakhtunkhwa**



OFFICE OF THE
ASSISTANT DIRECTOR (Sr)
LOCAL GOVT: & RURAL DEV: DEPARTMENT
TRIBAL DISTRICT BAJAUR.
No. 6113-17 /AD LG & RDD (B)
Dated: 30 / 08 /2024.

To

All Village Secretaries
LG&RDD District Bajaur

Subject:- FINAL SENIORITY LIST OF JUNIOR VILLAGE SECRETARIES (BPS-09)
LG&RDD DISTRICT BAJAUR.

Reference to the subject cited above & to enclose herewith final Seniority List of Junior Village Secretaries (BPS-09) LG&RDD District Bajaur for information, record & further necessary action.

Assistant Director (Sr)
Local Govt: & Rural Dev: Department
Tribal District Bajaur

Copy of the above is forwarded to: -

1. Director General LG&RD Khyber Pakhtunkhwa Peshawar.
2. Deputy Commissioner District Bajaur
3. Assistant Director (Admin/HR) Directorate General LG&RD Khyber Pakhtunkhwa.
4. Accountant LG&RDD District Bajaur.

Assistant Director (Sr)
Local Govt: & Rural Dev: Department
Tribal District Bajaur

Assistant Director (Sr)
Local Govt: & Rural Dev: Department
Tribal District Bajaur

(4)

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Final Seniority List of Junior Village Secretaries (BPS-09) LG&RDD District Bajaur as stood on 30-08-2024

S.No	Name of Official	Father Name	Qualification	Domicile	Date of 1st Entry into Govt Service	Date of Regular Appointment to Present Post	Method of Appointment/ Recruitment	Date of Birth	BPS	Total Marks	Name of VC/NC
1	Faridullah Khan	Ghulam Farooq	Master	Bajaur	10.12.2021	10.12.2021	Initial Appointment	02.03.1995	9	166	V/C Bara Banda
2	Shaukat Mahmood	Gul Zada	BS	-do-	10.12.2021	10.12.2021	-do-	02.05.1995	9	155	V/C Ali Jan Kallai
3	Hidayat Ullah	Abdullah	Master	-do-	10.12.2021	10.12.2021	-do-	04.02.1994	9	150	NC Sadiq Abad 1
4	Muhammad Abbas	Dost Muhammad Khan	BS	-do-	10.12.2021	10.12.2021	-do-	10.03.1996	9	150	V/C Marano Shah-1
5	Sajad Iqbal	Siraj Iqbal	MS	-do-	10.12.2021	10.12.2021	-do-	01.04.1997	9	149	V/C Nawa
6	Muhammad Idrees	Asad Khan	Master	-do-	10.12.2021	10.12.2021	-do-	21.04.1990	9	148	V/C Tangi charmang
7	Arshad Khan	Mustafa	BS	-do-	10.12.2021	10.12.2021	-do-	26.03.1994	9	147	V/C Sheikh kallai
8	Abdul Wahab	Abdul Muhammad	MBA	-do-	10.12.2021	10.12.2021	-do-	01.05.1988	9	146	V/C Marosa
9	Mursalin Khan	Ghulam Qadir Khan	M.Phil	-do-	10.12.2021	10.12.2021	-do-	16.09.1992	9	146	V/C Bara Nawagai
10	Ashfaq Ahmad	Said Ahmad Noor	BS	-do-	10.12.2021	10.12.2021	-do-	02.02.1995	9	146	NC Wali Ahad koroon
11	Muhammad Riaz	Baz Muhammad	MBA	-do-	23.09.2022	23.09.2022	-do-	30.04.1988	9	145	V/C Kulala Tangai
12	Israr Ud Din	Ghulam Muhammad	BS	-do-	10.12.2021	10.12.2021	-do-	05.02.1997	9	145	V/C Haji Laung
13	Abdul Majeed	Abdul Hanan	MSC	-do-	07.08.2023	07.08.2023	-do-	02.02.1996	9	143	V/C Tank Khatta
14	Muhammad Taimoor Shah Khan	Alam Shah	BS	-do-	10.12.2021	10.12.2021	-do-	05.03.1996	9	143	V/C Azghar Kandaro
15	Shamsul Haq	Shahabudin	MBA	-do-	10.12.2021	10.12.2021	-do-	02.02.1993	9	142	V/C Manogai
16	Anayat Ur Rahman	Rahmat Rabi	MBA	-do-	10.12.2021	10.12.2021	-do-	20.03.1993	9	142	V/C Yousaf Abad
17	Fazal Wahab	Sher Khan	Master	-do-	10.12.2021	10.12.2021	-do-	03.05.1993	9	142	V/C Loi Kallai Tangai
18	Aziz Ur Rahman	Sahib Zada	MSC	-do-	10.12.2021	10.12.2021	-do-	02.01.1994	9	142	V/C Sharif Khana 2
19	Muhammad Sadiq	Farooq Shah	MS	-do-	07.08.2023	07.08.2023	-do-	04.01.1989	9	141	V/C Bara Sewai-1
20	Miraj Ud Din	Abdul Hamid	Master	-do-	10.12.2021	10.12.2021	-do-	01.06.1990	9	141	V/C Gardai
21	Muhammad Kamran Khan	Aurang Zeb Khan	MBA	-do-	10.12.2021	10.12.2021	-do-	04.03.1992	9	141	V/C Bataee Alizai
22	Waqar Ahmad	Lal Badshah	MA	-do-	10.12.2021	10.12.2021	-do-	02.05.1990	9	140	V/C Rashakai
23	Habib Ur Rahman	Nowsher Khan	MBA	-do-	07.08.2023	07.08.2023	-do-	01.03.1991	9	140	V/C Lara Mukha

Asst. Director
Local Govt. LG&RDD/Development
District Bajaur

24	Amjad Ali	Gul Zaman Khan	M.Phil	-do-	10.12.2021	10.12.2021	-do-	15.08.1992	9	140	V/C Tanai
25	Taj Muhammad	Namus Khan	Master	-do-	10.12.2021	10.12.2021	-do-	12.08.1993	9	140	V/C Dabarai
26	Muhib Ullah	Shams Ur Rahman	BS	-do-	10.12.2021	10.12.2021	-do-	10.03.1995	9	140	V/C Damadola
27	Fazal Ahmad	Muhammad Razaq	BS	-do-	10.12.2021	10.12.2021	-do-	07.06.1997	9	140	V/C Ghazi Baba
28	Gulab Gul	Samand Khan	BS	-do-	07.08.2023	07.08.2023	-do-	10.01.1992	9	139	V/C Bar Kemal
29	Irfan Ullah	Talib	M.Phil	-do-	10.12.2021	10.12.2021	-do-	19.02.1993	9	139	V/C Bar Galkai-1
30	Khan Muhammad	Lal Muhammad	Master	-do-	10.12.2021	10.12.2021	-do-	07.02.1994	9	139	V/C Inamkhauro Chinagai-2
31	Siraj Ud Din	Said Arif Khan	Master	-do-	10.12.2021	10.12.2021	-do-	28.02.1995	9	139	V/C Mato Chinagai
32	Inzimam Saeed	Seed Ullah Jan	BS	-do-	10.12.2021	10.12.2021	-do-	14.08.1996		139	Faja
33	Saeed Ullah	Zahir Shah	MSC	-do-	10.12.2021	10.12.2021	-do-	09.10.1996	9	139	V/C Nawai kallai 1
34	Riaz Akbar Khan	Faqir Muhammad	Master	-do-	29.12.2021	29.12.2021	-do-	02.12.1990	9	138	V/C Sheikh Baba
35	Ihsan Ullah	Sher Gulab	M.Phil	-do-	10.12.2021	10.12.2021	-do-	03.03.1993	9	138	V/C Batwar
36	Hazrat Yar	Muhammad Shahri yar	Master	-do-	10.12.2021	10.12.2021	-do-	01.03.1997	9	138	V/C Talai 1
37	Waqar Ullah	Said Badshah	M.Phil	-do-	10.12.2021	10.12.2021	-do-	25.06.1990	9	137	NC Mir Ali Qilla Khar
38	Zahid Ahmad	Lal Muhammad	MBA	-do-	10.12.2021	10.12.2021	-do-	01.01.1995	9	137	V/C Loi Sam/Khanano Kallai
39	Haider Ali	Jaifoor Khan	Master	-do-	10.12.2021	10.12.2021	-do-	18.04.1996	9	137	V/C Bar Kholozo Bar Cham
40	Jamshid Khan	Khan Khel	Master	-do-	10.12.2021	10.12.2021	-do-	08.12.1988	9	136	V/C Shago
41	Izhar Ud Din	Alam Zeb Khan	BS	-do-	10.12.2021	10.12.2021	-do-	12.08.1989	9	136	V/C Nazakai
42	Dawood Khan	Gul Saz	Master	-do-	10.12.2021	10.12.2021	-do-	01.03.1992	9	136	V/C Miamool
43	Abdur Rehman	Munir Khan	MA	-do-	07.08.2023	07.08.2023	-do-	16.04.1995	9	136	V/C Manai
44	Gouhar Rahman	Masihullah	BS	-do-	10.12.2021	10.12.2021	-do-	01.04.1997	9	136	V/C Dehra Kai
45	Israr Ud Din	Wali Khan	BS	-do-	06.09.2023	06.09.2023	-do-	03.04.1997	9	136	V/C Dabar 1
46	Sher Ali	Mir Alam Khan	Master	-do-	01.03.2023	01.03.2023	-do-	03.04.1984	9	135	V/C Kooka
47	Sajjad Khan	Sher Muhammad	Master	-do-	10.12.2021	10.12.2021	-do-	12.02.1992	9	135	V/C Tarala
48	Anwar Ul Haq	Muhammad Samar	Master	-do-	07.08.2023	07.08.2023	-do-	01.05.1994	9	135	V/C Mohalla Lal Karim

Assistant Director
Local Area Development

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49	Shakir Ullah	Abdur Rauf	BS (Elect. Eng)	-do-	10.12.2021	10.12.2021	-do-	12.09.1994	9	135	V/C Lar Kholozo
50	Muhammad Zahid	Abdur Rashid Khan	Master	-do-	10.12.2021	10.12.2021	-do-	20.04.1996	9	135	V/C Shinkai
51	Amir Sohail	Sultan Muhammad	FSC	-do-	10.12.2021	10.12.2021	-do-	03.05.1999	9	135	NC Lar Raghagan
52	Sarfaraz Khan	Gul Zaman	BBA Hons	-do-	10.12.2021	10.12.2021	-do-	02.03.1988	9	134	V/C Smasai
53	Zakir Ullah	Meera Jan	BS	-do-	10.12.2021	10.12.2021	-do-	15.04.1993	9	134	V/C Bar Safarai
54	Ihsan Ullah	Bazarg Jamil	Master	-do-	10.12.2021	10.12.2021	-do-	01.02.1994	9	134	V/C Badan Bar Kallai-1
55	Sabir Hussain	Shah Jehan	BS	-do-	10.12.2021	10.12.2021	-do-	01.03.1994	9	134	V/C Sharbatai Koz Kallai
56	Dilaram Khan	Said Wali	MSC	-do-	03.03.2022	03.03.2022	-do-	04.03.1998	9	134	V/C Letai
57	Riaz Ud Din	Dawood Jan	M.Phil	-do-	10.12.2021	10.12.2021	-do-	05.05.1988	9	133	V/C Hayatai
58	Shams Ud Din	Nizam Ud Din	Master	-do-	10.12.2021	10.12.2021	-do-	18.02.1994	9	133	V/C Tarkho-1
59	Safoor Khan	Bakht Rawan	Master	-do-	10.12.2021	10.12.2021	-do-	02.02.1995	9	133	V/C Bado Bagh Arang
60	Syed Tariq Hasan	Habib Ul Hasan	Master	-do-	25.01.2022	25.01.2022	-do-	20.03.1992	9	132	V/C Warokai Kharkai
61	Bahadar Munir	Bakhtyar Gul	MSC	-do-	07.08.2023	07.08.2023	-do-	11.03.1996	9	132	V/C Dabbar-1
62	Muhammad Riaz	Bakhtawar	Master	-do-	10.12.2021	10.12.2021	-do-	02.02.1998	9	132	V/C Ghakhai
63	Israr Ud Din	Salman Khan	BA	-do-	10.12.2021	10.12.2021	-do-	01.03.1999	9	132	V/C Kohai 1
64	Khurshid Ahmad	Mutabar Khan	BS	-do-	06.01.2022	06.01.2022	-do-	15.03.2000	9	132	V/C Swal Qilla
65	Ihtesham	Muhammad Ismail	BA	-do-	10.12.2021	10.12.2021	-do-	01.04.2000	9	132	V/C Bad-e-Samoor 1
66	Muhammad Zahid	Abid Khan	MBA	-do-	10.12.2021	10.12.2021	-do-	01.04.1989	9	131	V/C Badan Lar Kallai
67	Muhammad Sajid	Shah Pervez	Master	-do-	10.12.2021	10.12.2021	-do-	14.04.1994	9	131	V/C Dehrago
68	Najib Ullah	Ajab Khan	Master	-do-	10.12.2021	10.12.2021	-do-	07.10.1991	9	130	V/C Shinkoti
69	Mohammad Abbas	Sher Mahmood	Master	-do-	10.12.2021	10.12.2021	-do-	30.04.1993	9	130	V/C Mor Dara
70	Mubarak Zeb	Aurang Zeb	MSC	-do-	10.12.2021	10.12.2021	-do-	03.04.1997	9	130	V/C Sikandaro
71	Nasrullah	Muhammad Sadiq	MSC	-do-	10.12.2021	10.12.2021	-do-	13.02.1998	9	130	V/C Lar Molasaaid 1
72	Zakir Ullah	Shah Pur Khan	BS	-do-	10.12.2021	10.12.2021	-do-	01.03.1998	9	130	V/C Cheenagai
73	Muhammad Shoaib	Khaista Rahman	Master	-do-	04.03.2022	04.03.2022	-do-	10.03.1998	9	130	V/C Ghundo
74	Muhammad Sajid	Sher Alam	Master	-do-	10.12.2021	10.12.2021	-do-	05.02.1992	9	129	V/C 1 Bat Shah/Bakar Shah
75	Israr Khan	Sher Muhammad	Master	-do-	10.12.2021	10.12.2021	-do-	17.06.1992	9	129	V/C Mano

Assistant Director
Lower Cost Rural Development
Faisalabad

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Assistant Director
 Local Govt. & Rural Development
 District Council
 Dera Ismail Khan

[Handwritten Signature]
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76	Sami Ullah	Muhammad Idress	Master	-do-	10.12.2021	10.12.2021	-do-	05.05.1994	9	129	V/C Shah Narai
77	Fazal Rahman	Khaista Rahman	BS	-do-	10.12.2021	10.12.2021	-do-	01.01.1996	9	129	V/C Qambar
78	Haneef Ullah	Said Karim Khan	Master	-do-	07.08.2023	07.08.2023	-do-	11.04.1996	9	129	V/C Lara Ghundai
79	Sher Hayat	Akhun Zada	M.Phil	-do-	10.12.2021	10.12.2021	-do-	08.04.1992	9	128	V/C Naranj-1
80	Imran Khan	Abdul Rauf Khan	MPA	-do-	10.12.2021	10.12.2021	-do-	12.02.1994	9	128	V/C Sahibabad/Babarshah
81	Najamudin	Said Hakeem Khan	MBA	-do-	10.10.2023	10.10.2023	-do-	17.03.1994	9	128	V/C Sara Mina Alizai
82	Tasbih Ullah	Hakim Said	Master	-do-	07.08.2023	07.08.2023	-do-	02.04.1994	9	128	V/C Kharai Kamar
83	Saliman Khan	Abdullah Jan	MSC	-do-	07.08.2023	07.08.2023	-do-	03.02.1996	9	128	V/C Chorai
84	Habib Ur Rhaman	Abdul Hakeem	FSC	-do-	10.12.2021	10.12.2021	-do-	05.01.2000	9	128	V/C Topan Shah
85	Fazal Wahab	Bakht Sardar	Master	-do-	05.01.2022	05.01.2022	-do-	16.07.1989	9	127	V/C Lar Lako
86	Abdul Ghafar	Khan Badshah	MSC	-do-	07.08.2023	07.08.2023	-do-	22.02.1991	9	127	V/C Saparai
87	Arshad Ali	Amir Zaman	M.Phil	-do-	16.02.2022	16.02.2022	-do-	15.01.1992	9	127	V/C Bar Targhau
88	Shafi Ur Rahman	Abdur Rahman	M.Phil	-do-	10.12.2021	10.12.2021	-do-	10.11.1992	9	127	V/C Lara Mina-1
89	Rafiullah	Muhammad Sher	M.Phil	-do-	10.12.2021	10.12.2021	-do-	03.07.1994	9	127	V/C Lara Dandokai
90	Muhammad Idrees	Sher Badshah	BS	-do-	23.02.2022	23.02.2022	-do-	10.02.1995	9	127	NC Trass Nawagai
91	Sami Ullah	Misal Khan	MSC	-do-	23.02.2022	23.02.2022	-do-	10.03.1995	9	127	V/C Bar Chamarkand i
92	Ali Zaman	Muhammad Ullah Khan	Master	-do-	10.12.2021	10.12.2021	-do-	11.09.1996	9	127	V/C Nazar Mina
93	Fazal Hadi	Qari Sami Ullah	Master	-do-	10.12.2021	10.12.2021	-do-	04.05.1997	9	127	V/C Gillai
94	Razamin	Shah Zarin Khan	BS	-do-	06.09.2023	06.09.2023	-do-	04.01.1998	9	127	V/C Batmalai-II
95	Muhammad Iqbal	Sher Bahadar	BS	-do-	10.12.2021	10.12.2021	-do-	10.11.1989	9	126	V/C Tangai-1
96	Fazal Amin	Fazal Khaliq	MS	-do-	10.12.2021	10.12.2021	-do-	02.05.1990	9	126	V/C Tandoka
97	Yar Muhammad	Shah Jehan Khan	Master	-do-	09.02.2022	09.02.2022	-do-	11.01.1994	9	125	V/C Agra-1
98	Zia Uddeen	Muhammad	MA	-do-	07.08.2023	07.08.2023	-do-	18.07.1994	9	125	V/C Lar Gambat
99	Shakir Ullah	Habib Ahmad	BS	-do-	23.08.2023	23.08.2023	-do-	03.03.1997	9	125	V/C Chorak
100	Islam Gul	Rahman Gul	Master	-do-	10.12.2021	10.12.2021	-do-	05.03.1997	9	125	NC Pashat Khan Kallai
101	Faridullah	Izat Ullah	Master	-do-	10.12.2021	10.12.2021	-do-	14.12.1997	9	125	V/C Loi Kharkai
102	Muhammad Jan	Mulang Jan	BS	-do-	07.08.2023	07.08.2023	-do-	18.04.1998	9	125	V/C Malkana
103	Ihsan Ullah	Molana Mian Jan	Master	-do-	31.12.2021	31.12.2021	-do-	15.01.1990	9	124	V/C Irab Kallai-1

104	Ruh ullah	Abdul Manan	Master	-do-	07.08.2023	07.08.2023	-do-	16.01.1985	9	123	V/C Nakhtar Bala
105	Ghulam Habib	Rafaat Khan	Master	-do-	10.12.2021	10.12.2021	-do-	25.02.1986	9	123	NC Inayat Killi/Miagano Koroona
106	Fazal Subhan	Mudam Said	BS	-do-	04.09.2023	04.09.2023	-do-	01.01.1998	9	123	V/C Chinargo
107	Muhammad Shahid	Dost Muhammad Khan	M.Phil	-do-	14.09.2023	14.09.2023	-do-	20.05.1987	9	122	V/C Serai Mir Khan
108	Naseem Gul	Ziarat Gul	BSC	-do-	07.08.2023	07.08.2023	-do-	01.06.1999	9	122	V/C Kitkoot-1
109	Nisar Ahmad	Musafar Khan	BSC (Hons)	-do-	23.09.2016	10.12.2021	-do-	12.02.1985	9	121	V/C Lagharai
110	Khan Shahzada	Shah Wazir	Master	-do-	10.12.2021	10.12.2021	-do-	27.11.1989	9	120	V/C Iakiano
111	Khan Bahadar	Alif Muhammad	MBA	-do-	10.12.2021	10.12.2021	-do-	20.04.1992	9	120	V/C Ghajjo Kamangara
112	Muhammad Ibrahim	Ghazi Khan	Master	-do-	10.12.2021	10.12.2021	-do-	01.05.1992	9	120	V/C Hilal Khel Charmang-1
113	Ihsan Ullah	Mira Jan	B.Tech	-do-	10.12.2021	10.12.2021	-do-	14.03.1991	9	119	V/C Tar
114	Tahir Ullah	Abdullah Jan	BSC	-do-	10.12.2021	10.12.2021	-do-	07.10.1998	9	119	V/C Top
115	Ali Rahman	Gul Rahman	BS	-do-	10.12.2021	10.12.2021	-do-	12.11.1992	9	116	V/C Kaga Khas
116	Nasrullah	Bacha Zada	BS	-do-	10.12.2021	10.12.2021	-do-	31.03.1997	9	116	V/C Shakro
117	Ziarat Gul	Fardol Khan	BS	-do-	10.12.2021	10.12.2021	-do-	04.05.1999	9	115	V/C Chachagai
118	Fazal Amin	Zafar Khan	MBA	-do-	10.12.2021	10.12.2021	-do-	05.04.1989	9	114	V/C Kasai
119	Fazale Mula	Fazle Rahman	Master	-do-	10.12.2021	10.12.2021	-do-	21.11.1996	9	113	V/C Lar Kallai Gabarai
120	Muhammad Shafi	Fazal Rahim	Master	-do-	31.12.2021	31.12.2021	-do-	06.03.1998	9	111	V/C Mina Suleman Khel
121	Muhammad Qasim	Muhammad Tahir	Master	-do-	10.12.2021	10.12.2021	-do-	10.09.1994	9	110	V/C Lar Kalan
122	Khaista Rahman	Badshah Muhammad	Master	-do-	10.12.2021	10.12.2021	-do-	03.03.1991	9	109	V/C Manogai
123	Muntazir Shah	Sheikh	MA	-do-	18-02-2020	31.03.2023	-do-	18.06.1996	9	109	V/C Panjkora
124	Aman Ullah	Abdur Rahman	BS	-do-	10.12.2021	10.12.2021	-do-	23.02.1990	9	101	V/C Loi Kallai
125	Zia Ul Haq	Abdul Haq	FSC	-do-	10.12.2021	10.12.2021	-do-	03.03.1996	9	94	V/C Gagra Gardi Bagh

Assistant Director (Sr)
LG&RDD Bajaur

PART-VI
SENIORITY

17. Seniority :- (1) the seniority inter se of civil servants ⁴⁷(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; and
- (b) 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.

Explanation-I:- If a junior person in a lower post is promoted to a higher post temporarily in the public interest, even though continuing later permanently in the higher post, it would not adversely effect the interest of his seniors in fixation of his seniority in the higher post.

Explanation-II:- If a junior person in a lower post is promoted to a higher post by superseding a senior person and subsequently that senior person is also promoted the person promoted first shall rank senior to the person promoted subsequently; provided that junior person shall not be deemed to have superseded a senior person if the case of the senior person is deferred for the time being for want of certain information or for incomplete record or for any other reason not attributing to his fault or demerit.

Explanation-III:- A junior person shall be deemed to have superseded a senior person only if both the junior and the senior persons were considered for the higher post and the junior person was appointed in preference to the senior person.

(2) Seniority in various cadres of civil servants appointed by initial recruitment vis-à-vis those appointed otherwise shall be determined with reference to the dates of their regular appointment to a post in that cadre; provided that if two dates are the same, the person appointed otherwise shall rank senior to the person appointed by initial recruitment.

⁴⁹(3) In the event of merger/restructuring of the Departments, Attached Departments or Subordinate Offices, the inter se seniority of civil servants affected by the merger/restructuring as aforesaid shall be determined in accordance with the date of their regular appointment to a cadre or post.

⁵⁰(4) The inter-se-seniority of civil servants in a certain cadre to which promotion is made from different lower posts, carrying the same pay scale shall be determined from the date of regular appointment/promotion of the civil servants in the lower post.

Provided that if the date of regular appointment of two or more civil servants in the

⁴⁷ Substituted for the words appointment to a post in the same basic pay scale in a cadre by Notification No. SOR-I(S&GAD)4-1/80, dated 17-05-1989.

⁴⁸ The words inserted by Notification No. SOR-I(S&GAD)4-1/80/II, dated 04-02-1996.

⁴⁹ Sub-rule (3) of Rule 17 added vide Notification No. SOR-I(E&AD)4-1/80/IV, dated 28-5-2002.

⁵⁰ Sub-rule (4) of Rule 17 added vide Notification No. SOR-VI (E&AD) 1-3/2008 dated 19-11-2009.

Asst. Secy.
In-charge
Dept. of
[Signature]

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1645/2023

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Mr. Ijaz Ali, Village Secretary (BPS-9), Village Council Permoti North
Tehsil Razzar, District Swabi. ... (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary Local Government and Rural Development Department, Civil Secretariat, Peshawar.
2. The Director General Local Government and Rural Development Department, Khyber Pakhtunkhwa, Peshawar.
3. The Assistant Director Local Government and Rural Development Department, District Swabi.

... (Respondents)

Mr. Noor Muhammad Khattak
Advocate ... For Appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney ... For Respondents

Date of Institution..... 10.08.2023
Date of Hearing.....25.03.2024
Date of Decision.....25.03.2024

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of this appeal, the respondent may kindly be directed to grant seniority to the appellant against the post of Village Secretary w.e.f 14.01.2016 with all consequential back benefits. Any other remedy which this Tribunal deems fit that may also be awarded in favour of appellant.

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Local Govt. & Rural Development
Department Swabi

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2. Brief facts of the case are that respondent department advertised posts of Secretary, Village/Neighbor Hood Council (BPS-07) and appellant being eligible applied for the same and after appearing in the written test, secured high marks, but despite better merit position, he was ignored. Feeling aggrieved, he filed writ petition No.589-P/2016 before Peshawar High Court, which was accepted vide judgment dated 21.02.2018. Respondents in compliance of judgment issued appointment order of the appellant on 31.07.2018, but with immediate effect and not from the date when his colleagues were appointed i.e. 14.01.2016. Feeling aggrieved, he filed departmental appeal which was not responded, hence the instant service appeal.

3. Respondents were put on notice, who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that the appellant has not been treated in accordance with law and rules and respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973. He further argued that inaction of the respondents by not granting seniority to the appellant w.e.f 14.01.2016 i.e. the date of appointment of other colleagues is against the law, facts, norms of natural justice and material on record hence not tenable and liable to be set aside; that the act of respondents by not granting seniority to the appellant at par with his colleagues is also against the spirit of judgment dated 16.10.2017.

5. Conversely, learned Deputy District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that the appellant was appointed as per judgment of Peshawar High Court and there was

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Department Bahawalpur

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no mention of any back benefits including seniority etc hence appointment of the appellant was made with immediate effect.

6. Perusal of record reveals that respondent advertised certain posts of secretary village neighborhood/council in newspaper in-response of which appellant along with others applied for it, who appeared in test and secured high marks but appellant despite better merit position was ignored. Respondent department issued appointment orders of other candidates on 14.01.2016 by ignoring appellant. Appellant feeling aggrieved from inaction of the respondent by not appointing him despite being on top of the merit list. filed writ petition No.589-P/2016 before the Peshawar High Court, which was allowed vide order dated 21.02.2018. The private respondent in the ibid writ petition filed review petition No.56-P/2018 against the supra Judgment dated 21.02.2018 but same was dismissed in limine vide order dated 03.05.2018. The respondent department issued appointment order dated 31.07.2018 by implementing judgment of Peshawar High Court dated 21.02.2018, but same with immediate effect and not from the date when the other colleagues were issued appointment order dated 14.01.2016. Appellant feeling aggrieved and filed departmental appeal which was not responded.

7. Perusal of the worthy Peshawar high court dated 21/2/2018 reveals that appellant secured high marks than respondent no.5 of writ petition namely Safdar Ali Shah, therefore, respondents were directed to appoint appellant instead of safdar ali shah, who was appointed vide order dated 14.01.2016, having high merit position than said Safdar Ali Shah. Moreover other candidates of the process initiated as a consequence of advertisement of the respondent /department published in Daily newspaper, were appointed vide order dated 14/1/2016. Appellant was wrongly ignored by the respondent department and there was no fault on his part. In accordance with (Appointment, Promotion &

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Transfer) Rules, seniority of a civil servant will have to be determined in accordance with Rule 17 Sub-Clause I(a) which provide that

"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 [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;

8. The appellant had been initially appointed, therefore, the official respondents were bound to determine his seniority by following the provisions of section 8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 and Rule 17 (1) (a) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, which, as the record reflects or/and the facts and circumstances brought before us, was never done. From every stretch of imagination, the appellant was selected in the same selection process having appeared in the examination and interviewed in response to the advertisement of 2015, wherein the other recommendees of merit list of said advertisement of 2015, therefore, under the above provisions of law and rules, his seniority had to be determined accordingly as the determination and fixation of seniority other than the above two provisions would be totally contrary to the law & rules as well as against this long and well settled principle and doing that would also be a self-designed novel introduction of determination of seniority on initial appointment. Such an exercise having no place in the law cannot sustain. We are fortified by the following pronouncements.

- 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*

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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. *PLC 1993 (CS) 116 titled M. Tahir Rasheed Establishment Secretary 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.*

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

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 25th day of March, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

M. Khan

Assistant Director
Local Govt. & Rural Development
Department Bahawalpur

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20th Dec. 2023

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 20/12/2023
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01. Counsel for the appellant present. Mr. Asif Masood Ali Shah, DDA alongwith Abdul Manan, Focal Person for the respondents present.

02. Reply/comments on behalf of the respondents submitted, which is available on file. A copy of the same is handed over to the learned counsel for the appellant. To come up for rejoinder if any and arguments on 25.03.2024 before the D.B. Parcha Peshi given to the parties.

(FAREEHA PAUL)
 Member (E)

Fazle Sub... P.5

ORDER
 25.03.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney for the respondents present.

2. Vide our detailed judgement of today placed on file, we are unison to accept this appeal with direction to respondent to place appellant along with appointee of order dated 16.01.2016 in order of merit being selected of same selection process. Costs shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 25th day of March, 2024.*

(FAREEHA PAUL)
 Member (E)

(RASHIDA BANO)
 Member (J)

*M Khan

Assistant Director
 Local Govt. & Rural Development
 Department Bajaur

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SA 1645/23

04th Oct. 2023

01. Counsel for the appellant present. Mr. Asif Masood Ali Shah, DDA alongwith Abdul Manan, Focal Person for the respondents present.

02. Reply/comments on behalf of the respondents not submitted and request for further time was made on their behalf. Final opportunity is granted. To come up for reply/comments on 15.11.2023 before the S.B. PP given to the parties.

SCANNED
KPST
Peshawar

(FAREEHA PAUL)
Member (E)

Fazle Subhan, PS

16th Nov. 2023

1. Learned counsel for the appellant present. Mr. Habib Anwar, Additional Advocate General for respondents present.

2. Reply submitted on behalf of respondents, wherein, there is no name under the signatures, besides no authority letter of the officers signing the comments or the one swearing in the affidavit are annexed. Therefore, the office shall return the comments to respondents for removal of deficiencies pointed out above and to resubmit within seven days. To come up for reply/comments on 20.12.2023 before S.B. P.P given to the parties.

(Kalim Arshad Khan)
Chairman

*Munir Shah**

Assistant Director
Local Govt. & Rural Development
Department Labour

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.03/2022

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Kifayat Ullah, Junior Village Secretary (BPS-09), Local Government &
Rural Development Department, Peshawar. ... (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary Local Government and Rural Development Department, Civil Secretariat, Peshawar.
2. The Director General Local Government and Rural Development Department, Khyber Pakhtunkhwa, Peshawar.
3. The Assistant Director Local Government and Rural Development Department, District Swabi. & 191 Others
4. Kamran Ullah Khan S/o Ihsan Ullah, Junior Village Secretary (BPS-09), LG & RDD, Peshawar & 191 Others.

... (Respondents)

Muhammad Asif Yousafzai
Advocate ... For Appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney ... For Respondents

Date of Institution.....23.12.2021

Date of Hearing.....29.05.2024

Date of Decision.....29.05.2024

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of this appeal, the rejection order dated 29.11.2021 and final seniority list dated 16.03.2021 may please be set aside and the respondents may be directed to place the appellant's name at serial

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Department Peshawar

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No.26 instead of serial No.218 by modifying the final seniority list. Any other remedy which this august tribunal deems fit and appropriate that may also be awarded in favour of the appellant. ”.

2. Brief facts of the case are that the appellant is a permanent resident of Muhalla Garhi Khel Ahmad Khel, Tehsil & District Peshawar. The respondent department advertised the post of Village Secretary (BPS-07) and appellant being eligible applied for the said post through a written test duly conducted through NTS by the respondent department. The appellant was declared a successful candidate in merit list in Union Council 49, Bazid Khel, Village Council 144, Ahmad Khel. The Union Council Bazid Khel 49 consists of four Village Councils namely: i. VC 142 Kande Malakana ii. VC 143 Scheme Chowk iii. VC 144 Ahmad Khel iv. VC 145 Marozai. The appellant belongs to VC 144 Ahmad Khel and was declared a successful candidate for the said VC, but astonishingly another candidate namely Manzoor Khan belonging to another VC was appointed in the said VC. Feeling aggrieved, he filed writ petition No.4362-P/2016 before Peshawar High Court, which was accepted vide judgment dated 22.05.2018. Respondents in compliance of judgment issued appointment order of the appellant on 30.11.2018. On 16.03.2021 respondents issued final seniority list wherein name of the appellant was placed at serial No. 218 instead of serial No. 26. Feeling aggrieved, he filed departmental appeal which was rejected, hence the instant service appeal.

3. Respondents were put on notice, who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that the appellant has not been treated in accordance with law and rules and respondents violated Article 4 and

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Department Bazar

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25 of the Constitution of Islamic Republic of Pakistan, 1973. He further argued that inaction of the respondents by not granting seniority to the appellant from the date of appointment of other colleagues is against the law, facts, norms of natural justice and material on record; that being the selectee of the same selection process, the appellant's name was required to be placed at serial No. 26 (on the basis of date of birth) because the respondents have not maintained the list on the basis of merit list; that the appellant has been discriminated by not treating him on the principles as they treated the other selectees despite the fact that appellant was also a candidate of the same selection process. He requested that instant appeal might be accepted as prayed for.

5. Conversely, learned Deputy District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that the appellant was appointed on 30.11.2018, and his seniority will be fixed/counted from his date of appointment not from the date of advertisement of the post. Moreover, the Hon'ble Peshawar High Court has not given any direction regarding his seniority. He further contended that departmental appeal of the appellant is barred by time, therefore, he requested that instant appeal might be dismissed.

6. Perusal of record reveals that on 27.06.2015 respondent/department advertised some posts of Village Secretary BPS-07. Appellant being eligible and qualified, applied for the same post. Written test was conducted by the NTS, which was declared by the appellant. After conducting test and interview by respondent/department appellant was declared successful candidate for Village Council 144 Ahmad Khel, Private respondent namely Manzoor Khan was appointed by transfer as Secretary at Village Council 144 who belongs to other Village Council instead of the appellant who is permanent resident of Village Council 144. Feeling aggrieved by the appointment by transfer of private

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Department Barakot

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respondent appellant time and again approached the respondent department but in vain.

7. Appellant approached worthy Peshawar High Court, Peshawar in writ jurisdiction which was allowed vide judgment and order dated 22.05.2018, where after appellant was appointed vide order dated 30.11.2018 with immediate effect. Appellant now through instant appeal seeks his seniority alongwith his batch mates i.e. respondents who were appointed on the basis of same test and interview which was qualified by the appellant but he was dropped by respondents and was later on appointed upon direction of worthy Peshawar High Court, Peshawar. Respondent department issued tentative seniority list for the year 2021 on 10.08.2020 upon which appellant filed objection but same was not considered and respondents issued final seniority list on 16.03.2021 where name of the appellant was placed at Serial No.26.

8. Admittedly appellant was not appointed in the year 2016, and was appointed later, which means he had not performed duties, therefore, on the principle of no work no pay, he is not entitled for financial benefits, but as regards the question of determination of seniority of the appellant or for that matter the persons selected in one combined competitive examination, they will squarely be belonging to the same batch and their inter se seniority was necessarily to be determined in accordance with their respective orders of merit prepared by the selection authority, as required by section-8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 and rule 17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Transfer and Promotion) Rules, 1989. Both the provisions are reproduced as under:

Khyber Pakhtunkhwa, Civil Servant Act, 1973:

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Department Bahawalpur

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"8. Seniority:- (1) For proper administration of a service, cadre or [post], the appointing authority shall cause a seniority list of the members for the time being of such service, cadre or [post] to be prepared, but nothing herein contained shall be construed to confer any vested right to a particular seniority in such service, cadre or [post] as the case may be.

(2) Subject to the provisions of sub-section (1), the seniority of a civil servant shall be reckoned in relation to other civil servants belonging to the same service or 6 [cadre] whether serving the same department or office or not, as may be prescribed.

(3) Seniority on initial appointment to a service, [cadre] or post shall be determined as may be prescribed.

(4) 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 their promotion to the higher post, retain their inter-se-seniority as in the lower post.

(5) The seniority lists prepared under sub-section(1), shall be revised and notified in the official Gazette at least once in a calendar year, preferably in the month of January.

Khyber Pakhtunkhwa, Civil Servants (Appointment, Promotion & Transfer)

Rules, 1989:

"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 [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;"

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Local Govt. & Rural Development
Department Bajaur

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9. The appellant had been initially appointed, therefore, the official respondents were bound to determine his seniority by following the provisions of Section 8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 and Rule 17 (1) (a) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, which, as the record reflects or/and the facts and circumstances brought before us, was never done. From every stretch of imagination, the appellant was selected in the same selection process having appeared in the examination and interview in response to the advertisement of 2015, wherein the other recommendees of merit list of 2016 had been selected, therefore, under the above provisions of law and rules, their seniority had to be determined accordingly as the determination and fixation of seniority other than the above two provisions would be totally contrary to the law & rules as well as against this long practice and well settled principle and doing that would also be a sort of self-designed novel introduction of determination of seniority on initial appointment. Such an exercise having no place in the law cannot sustain. We are fortified by the following pronouncements.

- 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.*

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Local Govt. & Rural Development
Department Bannu


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- 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. PLC 1993 (CS) 116 titled M. Tahir Rasheed Establishment Secretary 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.

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

11. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 29th day of May, 2024.


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

*M Khan


Assistant Director
Local Govt & Rural Development
Department, Peshawar

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[Supreme Court of Pakistan]

Present: Syed Deedar Hussain Shah and Tanvir Ahmed Khan, JJ

Syed NIAZ HUSSAIN SHAH BUKHARI, TECHNICIAN (PROCESS)---Petitioner

versus

OIL AND GAS DEVELOPMENT CORPORATION LIMITED through Chairman,
OGDC Head Office, Islamabad---Respondent

Civil Petition For. Leave to Appeal No-51 of 2002, decided on 11th September, 2002.

(On appeal from judgment dated 2-11-2001 passed by the Federal service Tribunal,
Islamabad, in Appeal No. 1076(R)CE of 2000)

(a) Civil service-

---Pay. entitlement to---When there is no work, there is in no pay.

(b) Civil service-

--- Salary, refund of---Civil servant after obtaining stay order against his transfer was allowed to continue his duties at original place, where he was paid salary for about three years. ---Authority deducted from salary of civil servant the amount paid to him as salary for the period when he remained absent from duty---Service Tribunal dismissed appeal of civil servant- Validity---Civil servant had not performed his duties either at original place or at transferred place, thus, was not entitled to salary---Period for which refund of salary was effected from civil servant was the period for which, he had not worked---When there was no work, there was no pay---Recovery had rightly been effected from civil servant---Impugned judgment was not open to exception as there was no jurisdictional error or misconstruction of facts and law---No substantial question of law of public importance as envisaged under Art. 212(3) of the Constitution was made

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out---Supreme Court dismissed petition for leave to appeal in
circumstances---Constitution of Pakistan (1973), Art. 212(3).

Sadiq Muhammad Warriach, Advocate Supreme Court and Ejaz Muhammad Khan,
Advocate-on-Record (absent) for Petitioner.

Sardar Muhammad Aslam, Dy. A.G. and M.S. Khattak, Advocate-on-Record for
Respondent.

Date of hearing: 11th September, 2002.

JUDGMENT

SYED DEEDAR HUSSAIN SHAH, J.---Petitioner seeks leave to appeal against that judgment of the Federal Service Tribunal, Islamabad (hereinafter referred to as the Tribunal) passed in Appeal No. 1076(R)CE of 2000 dated 2-11-2001, whereby appeal filed by the petitioner was dismissed.

2. Briefly stated that facts of the case are that on 4-7-1994, the petitioner was transferred from Missa Kiswal to Peer Koh. He felt that transfer order so issued was mala fide and he was punished being the Union Official of the respondent/Corporation, therefore, he approached the NIRC for restraining the order under Regulation 32 of NIRC Procedure and Functions and Regulations, 1974 and a stay order against his transfer to Peer Koh was granted and he was allowed to continue and perform his duties at Missa Kiswal and also paid his salary that after about 3 years the respondent started deductions from the salary of the petitioner i.e. the amount which had been paid to him as salary, during the period he worked at Missa Kiswal on the strength of the stay order of NIRC.

3. Feeling aggrieved, the petitioner approached the Tribunal by way of appeal, which was dismissed. Hence, this petition.

4. We have heard Ch. Sadiq Mohammad Warriach, learned counsel for the petitioner, who, inter alia, contended that that petitioner's absence from duty from 2-7-1994 to 8-8-1994 and 5-10-1994 to 10-9-1996 was wrongly treated as Extra Ordinary Leave (EOL) and the Office Memorandum dated 13-2-1999 issued by the respondent/Head Office may be cancelled; that the Tribunal had not exercised its jurisdiction fairly and the recovery/deduction of the amount already drawn by the petitioner from the respondent is unwarranted.

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5. Sardar Muhammad Aslam, learned Dy.A.G. vehemently controverted the contention of the learned counsel for the petitioner and pointed out that no doubt NIRC issued an injunction to the petitioner but the same was re-called by the Tribunal on 18-8-1996. He has also referred to the appeal of the petitioner which is at page 57 of the paper book, in which he has stated as under:

"I had reported for duty at Pirkoh Gas Field. Therefore, regularizing the period of stay, ordered by the Court as E.O.I. is injustice with me."

On his application office submitted summary to the Chief Personnel Officer of the respondent/Corporation, which reads as under:

"(70) Reference para-180/N, it is submitted that as per message No.MK.1331 dated 26-11-1999 (PR244/Cor.) O.M.(F), Missa Kiswal, Mr. Niaz Hussain Shah was relieved from Missa Kiswal Oil Field, for Pirkoh Gas Field. He neither reported at Pirkoh nor at Missa Kiswal Oil Field, after getting stay order from NIRC. O.K(F), Missa Kiswal Oil Field, did not confirm whether he performed any official duty during his stay (off & on) at Missa Kiswal. Mr. Niaz Hussain neither claimed any field benefit like messing/D.A. and Rota facilities nor paid by the Location Incharge due to his non-performance of any duty.

"(71) In view of above, if approved by Manager (Personnel), his request may be regretted in the light of earlier decision as per para. 141-A, please."

The perusal of the above document shows that the petitioner did not perform his usual duties and was not entitled to salary as claimed by him.

6. Sardar Muhammad Aslam, learned Dy.A.G. further pointed out that recovery was already been effected from the petitioner and that Office Memorandum referred to hereinabove was entirely in accordance with the O.G.D.C. Service Regulations, 1974. It was also pointed out by him that the petitioner in due course of service has already been promoted, to his Managerial post.

7. We have considered the arguments of the learned counsel for the parties and have carefully examined the record, which shows that the period for which recovery of refund of the salary was effected from the petitioner was the period for which he did not work. By now, it is settled law that when there is no work there is no pay. The petitioner did not perform his duties as mentioned hereinabove and recovery was rightly effected from him; thereafter, he was promoted to the post of Manager. The impugned judgment is entirely based on proper appreciation of the material available with the Tribunal. We further find that there is no jurisdictional error or misconstruction of facts and law. The impugned judgment is not open to exception.

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8. Moreover, a substantial question of law of public importance, as envisaged under Article 212(3) of the Constitution, is not made out.

9. For the facts, circumstances and reasons stated hereinabove, we are of the considered opinion that this petition is without merit and substance, which is hereby dismissed and leave to appeal declined.

S.A.K./N-100/S

Petition dismissed.

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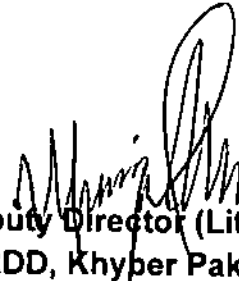
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**DIRECTORATE GENERAL
LOCAL GOVERNMENT & RURAL DEVELOPMENT
DEPARTMENT KHYBER PAKHTUNKHWA**

AUTHORITY LETTER

Mr. Zeeshan Ali Shah, Assistant Director (Senior) Local Government & Rural Development Department, Bajaur is hereby authorized to submit Joint Parawise Comments in **Service Appeal No. 1103/2024 Gulab Gul VS Government of Khyber Pakhtunkhwa etc.** in the Khyber Pakhtunkhwa Service Tribunal, Peshawar on behalf of respondent No.1, 2 and 3.


Deputy Director (Litigation)
LG&RDD, Khyber Pakhtunkhwa
Deputy Director (Litigation)
Directorate General Local Govt: &RDD
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