

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

BEFORE: **AURANGZEB KHATTAK** ... MEMBER (Judicial)
RASHIDA BANO ... MEMBER (Judicial)

Service Appeal No. 7500/2021

Date of presentation of Appeal.....10.09.2021
Date of Hearing.....26.09.2024
Date of Decision.....26.09.2024

Bashir Ahmad, Waheed-ur-Rehman, Aftab Badshah , Muhammad Islam, Zaheer Ahmad, Muhammad Javed and Muhammad Dawood, Junior Clerks (s) Office of the Deputy Commissioner, Mardan.Appellant

Versus

1. Commissioner Mardan Division, Mardan.
2. Deputy Commissioner, Mardan.
3. Khalid Khan.
4. Hameed Ullah.
5. Muhammad Ayaz Junior Clerk (s) Office of the Deputy Commissioner, Mardan.....(Respondents)

Present:

Mr. Asad Ullah, AdvocateFor appellant
Mr. Asif Masood Ali Shah, Deputy District Attorney.....For official respondents
Mr. Noor-ul-Amin, AdvocateFor private respondents

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): This case involves an appeal jointly filed by Junior Clerks (the appellants) serving at the Deputy Commissioner Office, Mardan, challenging an amended seniority list that was issued on June 28, 2021. The revised list altered their relative seniority positions, giving what they perceived as undue advantage to certain other Junior Clerks who had been readjusted back into their roles following an earlier devolution plan. Feeling aggrieved, they filed joint departmental appeal, which

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was dismissed vide order dated 12.08.2021. The appellants have now approached this Tribunal through filing of joint instant appeal for redressal of their grievances.

2. The respondents were summoned, who contested the appeal by way of filing their respective written reply/comments.

3. Learned counsel for the appellants argued that the appellants were not given proper notice or relevant documents regarding the revision process and were not included as parties to the proceedings, arguing a significant flaw in due process. He next contended that the competent authority acted arbitrarily and failed to consider the well-settled laws regarding seniority, which contributed to a gross misjudgment. He further cited the *Suo Moto* Case No. 19 of 2016, that good governance is a right and should not be compromised by capricious official actions. He next argued that the appellants invoked several legal principles, including "Expressio Unis Est Exclusio Alterius" and "Ignorantia juris non excusat," to emphasize that the law's commands should be adhered to strictly. In the last, he argued that the appeal in hand may be accepted as prayed for.

4. On the other hand, learned Deputy District Attorney assisted by learned counsel for private respondents contended that Para 6(a) of the Surplus Pool Policy, 2001, justified the realignment as a means to restore the original seniority to employees previously considered surplus. This policy has been further endorsed by higher judgments, being legally binding. He next contended that the revision of the seniority list aligns with the Surplus Pool Policy, which stipulates that

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surplus employees should regain their original seniority when adjusted back to their respective cadre. He further contended that private respondents No. 3, 4 and 5 were originally Junior Clerks before being placed in a surplus pool post-devolution in 2001 and they were readjusted in 2018-19 based on policies that guided their seniority. He stated that the case of Hameed Akhtar Niazi vs. Secretary Establishment Division and other judicial pronouncements that lend legitimacy to their claims and the revised seniority. He next argued that private respondents longer tenure and rightful placement on the seniority list following the established policies, asserting that justice and equity necessitated their prioritization. He further argued that the service period of private respondents before and after their surplus status justified the revised seniority, therefore, their tenure allowed them precedence over the appellants per existing policy.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

6. The perusal of the record shows that the appellants, who are Junior Clerks in the Deputy Commissioner Office, Mardan, challenged an amended seniority list disseminated on June 28, 2021. The said seniority list modified their seniority stance, seemingly in favor of private respondents readjusted into their roles post the earlier devolution scheme. The matter before the court involves the private respondents, who were initially recruited in the office of the Deputy Commissioner in Mardan. Following the devolution process in 2001, these individuals were rendered surplus due to administrative


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restructuring. The surplus staff was subsequently adjusted into various governmental departments. Ultimately, the private respondents were readjusted into their original positions within the Deputy Commissioner Office in Mardan. This significant development reinstates their connection to their parent department and reinstates their roles as needed by the administrative requirements at the time. The private respondents formally requested recognition of their seniority based on the policy circulated by the government on June 8, 2001. The specified policy, along with paragraph 6 (a) of the Surplus Pool Policy, supports the claim for granting seniority to surplus staff who have been readjusted. The Surplus Pool Policy, 2001, is designed to guide the reintegration of surplus employees into their respective departments, ensuring that established norms and principles of seniority are upheld. Specifically, Paragraph 6 articulates the manner in which inter se seniority of surplus employees shall be determined post-readjustment. Paragraph 6 identifies several crucial tenets governing seniority and the Court's focus here is on Para (a), which states:

(a) "In case a surplus employee could be adjusted in the respective cadre of his parent department, he shall regain his original seniority in that cadre."


7. This clause is essential in establishing the fundamental rights of surplus employees regarding their position in the seniority hierarchy within their parent departments. It is unequivocal that surplus employees possess the legal right to reassume their original seniority when they are adjusted back into their respective cadres within their parent departments. The reinstatement of seniority is not

merely a procedural formality, it is a right that these employees are entitled to by virtue of their service and contributions. The parent department is bound by the Surplus Pool Policy to apply the provisions uniformly and without discretion. This non-discretionary application of the policy is crucial to ensuring fairness and equality among employees. Any deviation from this principle—such as selectively applying the rule—constitutes a violation of both the letter and the spirit of the Surplus Pool Policy. The principles underlying employment law, particularly concerning surplus employees, align with the broader concept of natural justice, which mandates equality. The equal treatment of all employees is paramount and the failure to recognize this principle could result in unjust outcomes that undermine the confidence of employees in the system. The case law, specifically citing Hameed Akhtar Niazi Vs Secretary Establishment Division, 1996 SCMR 1185, among other rulings, which aligns with the view that surplus employees must have their rights acknowledged similarly to those established in precedent. These judicial decisions reinforce the obligation of the employer to honor the principles outlined in the Surplus Pool Policy. Based on the provisions of the Surplus Pool Policy and the judicial principles enshrined in prior rulings, it is the conclusion that the private respondents in the case in hand are entitled to regain their seniority as per the rules applicable to surplus employees. The parent department must adhere to these directives without deviating from the prescribed policy.

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8. Consequently, the appeal in hand being meritless, is hereby, dismissed. Parties are left to bear their own costs. File be consigned to the record room.

9. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 26th day of September, 2024.*


AURANGZEB KHATTAK 26.09.2024.
Member (Judicial)



RASHIDA BANO
Member (Judicial)


Naeem Amin

ORDER

26th Sept, 2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for official respondents and learned counsel for private respondent are present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, the appeal in hand being meritless, is hereby, dismissed. Parties are left to bear their own costs. File be consigned to the record room.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 26th day of September, 2024.*


(Rashida Bano)
Member (Judicial)


(Aurangzeb Khattak)
Member (Judicial) 26/9/2024.