


FORM OF ORDER SHEET

Court of _____

Review Petition No. 1368/2024

No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	11/11/2024	<p>The Review Petition in appeal no. 7302/2021 submitted today by Mr. Noor Muhammad Khattak Advocate. It is fixed for hearing before Division Bench at Peshawar on 18.11.2024. Original file be requisitioned. Parcha Peshi is given to the counsel for the petitioner.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR.

REVIEW PETITION No:- 1368 /2024

IN

SERVICE APPEAL No:- 7302/2021

HUMAYUN ZIA KHANZADA V/S ESTABLISHMENT DEPTT:

I N D E X

S.NO	DOCUMENTS	ANNEXURE	PAGE
1	Memo of Service Review Appeal	-----	1-9
2	Memo of Service Appeal & Affidavit	A	10-15
3	Comments of respondents	B	16-28
4	Rejoinder	C	29-32
5	Judgment dated 04/10/2024	D	33-35
6	Citation 2003 SCMR 333	E	36-39
7	Wakalat Nama	-----	40


APPELLANT

THROUGH:


NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT

(11)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR.

REVIEW PETITION No:- 1368 /2024

IN

SERVICE APPEAL No:- 7302/2021

Humayun Zia Khanzada, Daftari Finance Department, Civil Secretariat, Peshawar

..... PETITIONER

VERSUS

1. The Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Administration Department, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
4. The Special Secretary, Establishment Department, Khyber Pakhtunkhwa, Peshawar.
5. The Deputy Secretary (Admin) Administration Department, Khyber Pakhtunkhwa, Peshawar.
6. Iqbal Hussain s/o Muhammad Hussain, belongs to PBMC Staff, presently Posted in E & S E Department (Sr.No.4 of impugned seniority list.)
7. Muhammad Arshad Khan s/o Hammed Khan, Junior Class-IV staff presently posted in Information Department. (Sr.No.5 of impugned seniority list.)
8. Sartaj Ali Khan s/o Zafar Ali Khan, House Hold, E & AD Department. (Sr.No.9 of impugned seniority list.)
9. Imdad Ali s/o Noor Karim, House Hold staff, posted E & AD Department. (Sr.No.10 of impugned seniority list.)
10. Saeed Ahmad s/o Nazir Ahmad, Junior staff, presently posted in C & W Department. (Sr.No.11 of impugned seniority list.)
11. Munsif Ali s/o Wahid jamal, Junior Staff presently posted in E & AD Department.(Sr.No.12 of impugned seniority list.)
12. Rahat Gul s/o Khan Pur, House Hold presently posted in E & AD Department (Sr.No.15 of impugned seniority list.)
13. Akhtar Hussain S/O Muntaj Khan, House Hold staff, presently posted in E & AD Department. (Sr.No.16 of impugned seniority list.)
14. Muhammad Adnan Khan S/O Noor Afzal House Hold staff presently posted in E & AD Department. (Sr.No.17 of impugned seniority list.)

15. Muhammad S/o Saeed Ullah Junior Class-IV staff presently posted in E & AD (Department. Sr.No.19 of seniority list.)
16. Imdad Ullah s/o Ghulam Habib junior class-IV presently posted in Governor Secretariat. (Serial No.21 of impugned seniority list.)
17. Nawaz Khan s/o Wakil Khan House Hold staff presently posted in I P C department. (Sr.No.24 of impugned seniority list.)
18. Muhammad Umair S/o Hafiz Muhammad Sulaiman Junior Class-IV staff presently in E & AD Department. (Sr.No.26 of impugned seniority list.)
19. Mubashir Hassan s/o Abdul Ahad Junior staff presently posted in Health Department. (Sr.No.31 of impugned seniority list.)
20. Rooh Ul Amin s/o Muhabat Khan PBMC staff presently posted in E & SE Department. (Sr.No.32 of impugned seniority list.)
21. Umair Zulfiqar s/o Zulfiqar Ahmad, PBMC staff presently posted in E & SE Department. (Sr.No.58 of impugned seniority list.)
22. Kifayat Ullah S/o Naimat Ullah Junior Class-IV presently posted in CM Secretariat. (Sr.No.62 of impugned seniority list.)
23. Hazrat Ali s/o Mehboob Ali Junior class-IV presently posted in E & AD Department. (Sr.No.64 of impugned seniority list.)
24. Roman Khan S/o Samin Jan Junior Class-IV presently posted in Higher Education Department. (Sr.No.78 of impugned seniority list.)
25. Inam Ullah s/o Ahmad Khan PBMC staff presently posted in E & AD Department. (Sr.No.93 of impugned seniority list.)
26. Shah Hassan s/o Faqir Muhammad PBMC staff presently posted in Law Department. (Sr.No.94. of impugned seniority list.)
27. Naeem Abbas s/o Qadir Bakhsh PBMC staff presently posted in CM Secretariat. (Sr.No. 95 of impugned seniority list.)
28. Sajjad Ali s/o Noor Karim, PBMC staff presently posted in Finance Department (Sr.No. 96 of impugned seniority list.)
29. Asif Sadiq s/o Malak Muhammad Saeed PBMC staff presently posted in S T I Department. (Sr.No.97 of impugned seniority list.)
30. Aziz Khan s/o Sultan Khan PBMC staff presently posted in P H E Department. (Sr.No.99 of impugned seniority list.)
31. Amjid Hussain S/o Meher Muhammad, PBMC staff presently posted in ST & IT Department. (Sr.No.101 of impugned seniority list.)
32. Sifat Ullah S/o Awal Khan House Hold staff presently posted in E & AD (Sr.No.111 of impugned seniority list.)
33. Nadar Khan s/o Abdul Ghafar Khan, Junior Class-IV presently posted in Health Department. (Sr.No.117 of impugned seniority list.)

34. Sharafat Ali s/o muhammad Hanif , Junior Class-IV presently posted in Industries Department. (Sr.No.128 of impugned seniority list.)
35. Israil Khan s/o Ibrahim Khan, Junior Class-IV presently posted in Minerals Dev Department. (Serial No. 134 of impugned seniority list.)
36. Rehmat Ali s/o Bawar Khan, Junior Class-IV presently posted in E & AD Department. (Sr.No.150 of impugned seniority list.)
37. Fayaz Khan s/o Mumtaz Khan , Junior Class-IV presently posted in E & AD Department. (Sr.No.173 of impugned seniority list.)
38. Muhammad Ali s/o Lajbar, Junior Class-IV presently posted in Law department (Sr.No.176 of impugned seniority list.)

.....**RESPONDENTS**.....

REVIEW PETITION UNDER SECTION 114 READ WITH ORDER XLVII RULE 1 OF THE CODE OF CIVIL PROCEDURE, 1908 AND SECTION 7-A OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER & JUDGMENT OF THIS HONOURABLE TRIBUNAL DATED 04/10/2024 WHEREBY THE ABOVE TITLED SERVICE APPEAL OF THE PRESENT PETITIONER WAS DISMISSED WITH COSTS.

Respectfully Sheweth:

Brief facts giving rise to the present petition are as under:

1. That the above titled service appeal of the petitioner was pending adjudication in this Honorable Tribunal wherein the respondents have filed written statements. Memo of Service Appeal and comments of respondents are attached as annexure.....**A&B**
2. That on receipt of comments of the respondents the petitioner/appellant filed Rejoinder. Copy of Rejoinder is annexed at Annexure.....**C**
3. That the Service Appeal was finally fixed for hearing on 04/10/2024 which was argued by both the parties, however, the ibid service appeal was decided against the appellant and was dismissed with costs vide order/judgment dated

04/10/2024. Copy of judgment dated 04/10/2024 is attached as annexure.....D

4. That this august Service Tribunal vide the ibid judgment has decided/dismissed the plea of the petitioner merely for non-contesting of seniority list of 2017. Relevant portion of the judgment is reproduced below:-
"5. Final list annexed by the appellant himself with the appeal as Annexure-D" is on 18-05-2017 in which too, his seniority position was according to the claim of the appellant, relegated. Non challenging of the seniority list issued before the impugned seniority list is acquiescence on the part of appellant which amounts to acceptance of the seniority position in the earlier (unchallenged) seniority list.
6. In view of the above instant service appeal is dismissed with costs. Consign".
5. That from the thorough perusal of the ibid judgment, it came to light that there occurred some technical errors in the ibid judgment, hence to rectify these errors, needs second look, and merits to be reviewed on the grounds inter alia as under:-

Grounds:-

- A) That the order/judgment dated 04/10/2024 is against the law and facts, hence the judgment/order of this Honourable Court needs to be reviewed.
- B) That the impugned order and judgment dated 04/10/2024 is the result of mis-appreciation and mis-interpretation of available evidence on record, which amounts to be an error, and is liable to be reviewed, may kindly be reviewed.
- C) That it is a settled principal of law that the authority issuing an order shall be competent to review the same and to avoid miscarriage of justice.
- D) That the said order and judgment dated 04/10/2024 is not passed by proper reflection of available record.
- E) That it will be in the best interest of justice that if the impugned order & judgment is set aside and the case is decided on merits.
- F) That there are some technical errors in the impugned judgment that this Honourable Court while passing the impugned judgment in case in hand, ignored the facts and

5

grounds taken by the petitioner in the petition, so on this score also the impugned judgment is liable to be reviewed.

- G) That unless and until the order/judgment dated 04/10/2024 is reviewed the purpose of law would be defeated and serious miscarriage of justice would be caused to the petitioner.
- H) That valuable rights of the petitioner are attached to the petition in question.
- I) That it is settled principle of natural justice that no one should be condemned unheard but the impugned order is totally against the principle of natural justice.
- J) That it will be in the interest of justice, if the impugned order is reviewed and the service appeal is decided on merits in accordance with law.
- K) That the rights of petitioner guaranteed under the constitution, that every citizen shall be treated in accordance with law and their rights shall not be circumvented without any lawful justification.
- L) That in para 2 of the judgment it is mentioned that '*Private respondents No 6 to 38 were serving in different rest houses under the supervision of Government of Khyber Pakhtunkhwa.*'
In this context, it is humbly submitted that as evident from the list of respondents at pages 1-2 of service appeal these private respondents are not totally household staff rather there are three categories of staff i.e. PBMC staff, junior staff and household staff. **Page 1-2 of service appeal is referred.**
- M) That in Para 2 of the ibid judgment it is mentioned that 'in the year 2016, the private respondents were absorbed in the seniority list while appellant's name was already existed in the secretariat group Class-IV's.
In this context it is humbly submitted that not all the private respondents but only the household staff was absorbed at the bottom of seniority list 2016 i.e. at S.No 309 to 314 while the appellant's name was existed at the top of the list i.e. S No 177. **Annexure-C (Pages 24 to 34) of the service appeal**
- N) *That in para 2 of the judgment it is mentioned that 'in the year 2017 those household staff was brought at the top of seniority list and were given promotion on acting charge basis as Junior clerk (BPS-11).'*

6

In this context, it is humbly submitted that although the household staff were brought on the top of seniority list 2017 but were not promoted on acting charge basis as junior clerk in the year 2017 rather in the year 2019 i.e. 04/12/2019 they were given promotion as junior clerk on acting charge basis. **Seniority list 2017 is at Annexure-D(Pages 35-43) & Annexure-G(Pages 52-53 of service appeal is referred)**

- O) That in Para 2 of the ibid judgment it is mentioned that ' in the year 2019 appellant was again placed below the private respondents due to bifurcation between Daftari and matriculate'.

In this context, it is humbly submitted that since the appellant has already got promotion as Daftari in 2018 hence the seniority of the appellant remained intact and appellant was not placed below the private respondents.

- P) That in Para 2 of the ibid judgment it is mentioned that '*vide order dated 30-05-2019 junior matriculate Class-IV colleagues were promoted and the appellant was not*'.

In this context, it is humbly added that vide order dated 30/05/2019 , no junior matriculate colleagues were promoted rather only the PBMC staff were given promotion as Daftari on 30/05/2019 while the petitioner was much earlier i.e on 21/05/2018 was promoted as Daftari (S.No. 152 of the order) **(Annexure J page 76-78 & Annexure-F pages 46-51 of Service appeal are referred)**

- Q) That in para 2 of the ibid judgment it is mentioned that 'feeling aggrieved he filed objection over the tentative seniority list whereby household staff was included'.

In this context it is humbly submitted that the appellant being at the top of the list i.e. at S No.151 has put objection on the inclusion of the household staff while the PBMC and junior staff was yet at the bottom of the list. **Annexure-K pages 79 to 104 of the service appeal**

- R) That in Para 3 of the ibid judgment it is mentioned that *despite his longstanding service, the appellant position in the seniority list has allegedly been undermined particularly when in 2016 the private respondents were absorbed in the seniority list ahead of him*'.

It is humbly submitted that in the seniority list 2016 not all the private respondents were absorbed ahead of the appellant rather, only household staff for the first time was brought/accommodated at the bottom of the tentative

seniority list 2016 i.e. at S.No.309 to 314 while the appellant was at the top of that list i.e. Serial No.177.

Besides, the other private respondents i.e. PBMC & junior staff were neither at the top nor at bottom of the seniority lists 2016/2017. So when the petitioner was not aggrieved from that list, he was not required to put reservation/objection over the tentative seniority list 2016. As regards, seniority list 2017 the appellant has not received the list.

- S) That in Para 3 of the *ibid* judgment it is mentioned that 'subsequent promotion in 2017 & 2019 further marginalized the appellant'.

In this context, it is humbly clarified that no promotion of the private respondents was made in 2017 & 2019, however, the household staff as well as appellant were promoted in 2018 i.e. on 21/05/2018 while the other private respondents i.e. PBMC staff was promoted on 30/05/2019 as Daftari much later than the appellant while the junior staff without completion of 02 years length of service were promoted as junior clerk directly they have not remained on Daftari posts. It is further added that prior to 2017 final seniority list, tentative seniority list was issued in 2016 wherein the household staff were included for the first time at the bottom of the seniority list and the appellant was at the top of that list, the staff of PBMC and junior staff were neither available at the top or bottom of the tentative seniority list 2016 as such, the appellant was not aggrieved from that list so he was not required to put observation/objection on the tentative seniority list 2016. **Copy of the tentative list 2016 is at annexure-C pages 24-34 of the service appeal.**

- T) That in Para 3 of the *ibid* judgment it is mentioned that 'the issuance of the final seniority list on 26-05-2021 which favored the private respondents and facilitated their promotion, prompted the appellant to file this service appeal'

As a matter of fact being on record when the PBMC & junior staff were placed in the *impugned tentative seniority list 2021* the appellant put objection/reservation followed by service appeal within stipulated period. Astonishingly, when final seniority list was issued the PBMC staff and junior staff were mentioned at the top of the list. **Copy of objection application is at annexure-L Page 105 & 106 of the service appeal.**

Moreover, as evident from the Rejoinder, the seniority list 2021 was not issued on merit rather it fell prey to favoritism and nepotism for the reason that while admitting the guilt the staff of PBMC and household in collusion/collaboration with the official respondents have concluded an

inter-se illegal agreement tendering NOC to each other for convening of DPC stating therein that "in future no outsider will be entered in the list of employees of civil secretariat, on the basis of that illegal agreement DPC was held. **Agreement attached with Rejoinder is at annexure C Page 36 available in file.**

U) That in Para 5 of the ibid judgment, it is mentioned that not challenging of the seniority list issued before the impugned seniority list is acquiescence on the part of appellant which amounts to acceptance of the seniority position in the earlier (unchallenged)seniority list. In view of the above, instant service appeal is dismissed with costs. Consign.

In this context it is humbly submitted that the appellant has not received seniority list 2017, moreover, the fresh seniority list issued in 2021 would give fresh cause of action to the appellant to challenge the wrong position of seniority assigned to the appellant in the said seniority list and that the seniority list issued in 2017 would deem to be a tentative in nature, therefore, non-challenging the seniority of 2017 would not debar the appellant from challenging the subsequent seniority list .

Besides, there is no limitation regarding seniority as in the long run the same has recurring cause even in the cases of proforma promotion and anti-dated promotion, it is based on previous seniority list(s). In this respect, there are rulings of the superior courts.

V) That in a similar nature of seniority case titled "Din Muhammad...Vs...DG Post office" the august Supreme Court held that the seniority list published in 1987 remained unchallenged would be of no consequence as on publication of subsequent seniority list in the year 1999, there would be a fresh cause of action in favour of appellant, therefor, the appeal before the Tribunal was maintainable. We accordingly allow this appeal, set aside the judgment of Federal Service Tribunal. However, there will be no order as to costs. **Citation 2003 SCMR 333. Copy attached as annexure.....E**

W) That any other grounds will be raised at the time of arguments with kind permission of this Honourable Court.

It is, therefore, most humbly prayed that on acceptance of this Review Petition, the order dated 04/102024 of this Honourable Tribunal may

kindly be reviewed/recalled in the light of above submissions in the larger interest of justice and the Service Appeal may please be decided on merit as per facts and circumstance taken by the petitioner.


PETITIONER


THROUGH:

NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT

UMAR FAROOQ MOHMAND

WALEED ADNAN

&


KHANZAD GUL
ADVOCATES HIGH COURT

Certificate:-

It is hereby certified that the instant petition in hand is fit case for review and pertains to DB.

Advocate

AFFIDAVIT

I, Mr. Humayun Zia Khanzada, Daftari Finance Department, Civil Secretariat, Peshawar, do hereby solemnly affirm on oath that the contents of the above petition are true and correct to the best of my knowledge and believe and nothing has been concealed from this Honorable Tribunal.


DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL No. _____ / 2021

Hurnayun Zia Khanzada, Daftari (BPS-04),
Home & Tribal Affairs Department, Civil Secretariat,
Khyber Pakhtunkhwa, Peshawar.

.....APPELLANT

VERSUS

1. The Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Administration Department, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar..
4. The Special Secretary, Establishment Department, Khyber Pakhtunkhwa, Peshawar.
5. The Deputy Secretary (Admin) Administration Department, Khyber Pakhtunkhwa, Peshawar.
6. Iqbal Hussain s/o Muhammad Hussain, belongs to PBMC Staff, presently Posted in E & S E Department (Sr.No.4 of impugned seniority list.)
7. Muhammad Arshad Khan s/o Hammed Khan, Junior Class-IV staff Presently posted in Information Department. (Sr.No.5 of impugned seniority list.)
8. Sartaj Ali Khan s/o Zafar Ali Khan, House Hold, E & AD Department. (Sr.No.9 of impugned seniority list.)
9. Imdad Ali s/o-Noor Karim, House Hold staff, posted E & AD Department. (Sr.No.10 of impugned seniority list.)
10. Saeed Ahmad s/o Nazir Ahmad, Junior staff, presently posted in C & W Department. (Sr.No.11 of impugned seniority list.)
11. Munsif Ali s/o Wahid Jamal, Junior Staff presently posted in E & AD Department. (Sr.No.12 of impugned seniority list.)
12. Rahat Gul s/o Khan Pur, House Hold presently posted in E & AD Department (Sr.No.15 of impugned seniority list.)
13. Akhtar Hussain S/O Muntaj Khan, House Hold staff, presently posted in E & AD Department. (Sr.No.16 of impugned seniority list.)
14. Muhammad Adnan Khan S/O Noor Afzal House Hold staff presently posted in E & AD Department. (Sr.No.17 of impugned seniority list.)
15. Muhammad S/o Saeed Ullah Junior Class-IV staff presently posted in E & AD Department. Sr.No.19 of seniority list.)
16. Imdad Ullah s/o Ghulam Habib junior class-IV presently posted in Governor Secretariat. (Serial No.21 of impugned seniority list.)
17. Nawaz Khan s/o Wakil Khan House Hold staff presently posted in I P C department. (Sr.No.24 of impugned seniority list.)

18. Muhammad Umair S/o Hafiz Muhammad Sulaiman Junior Class-IV staff presently in E & AD Department. (Sr.No.26 of impugned seniority list.)
19. Mubashir Hassan s/o Abdul Ahad Junior staff presently posted in Health Department. (Sr.No.31 of impugned seniority list.)
20. Rooh Ul Amin s/o Muhabat Khan PBMC staff presently posted in E & SE Department. (Sr.No.32 of impugned seniority list.)
21. Umair Zulfiqar s/o Zulfiqar Ahmad, PBMC staff presently posted in E & SE Department. (Sr.No.58 of impugned seniority list.)
22. Kifayat Ullah S/o Naimat Ullah Junior Class-IV presently posted in CM Secretariat. (Sr.No.62 of impugned seniority list.)
23. Hazrat Ali s/o Mehboob Ali Junior class-IV presently posted in E & AD Department. (Sr.No.64 of impugned seniority list.)
24. Roman Khan S/o Samin Jan Junior Class-IV presently posted in Higher Education Department. (Sr.No.78 of impugned seniority list.)
25. Inam Ullah s/o Ahmad Khan PBMC staff presently posted in E & AD Department. (Sr.No.93 of impugned seniority list.)
26. Shah Hassan s/o Faqir Muhammad PBMC staff presently posted in Law Department. (Sr.No.94. of impugned seniority list.)
27. Naeem Abbas s/o Qadir Bakhsh PBMC staff presently posted in CM Secretariat. (Sr.No. 95 of impugned seniority list.)
28. Sajjad Ali s/o Noor Karim, PBMC staff presently posted in Finance Department (Sr.No. 96 of impugned seniority list.)
29. Asif Sadiq s/o Malak Muhammad Saeed PBMC staff presently posted in S T I Department. (Sr.No.97 of impugned seniority list.)
30. Aziz Khan s/o Sultan Khan PBMC staff presently posted in P H E Department. (Sr.No.99 of impugned seniority list.)
31. Amjid Hussain S/o Meher Muhammad, PBMC staff presently posted in ST & IT Department. (Sr.No.101 of impugned seniority list.)
32. Sifat Ullah S/o Awal Khan House Hold staff presently posted in E & AD (Sr.No.111 of impugned seniority list.)
33. Nadar Khan s/o Abdul Ghafar Khan, Junior Class-IV presently posted in Health Department. (Sr.No.117 of impugned seniority list.)
34. Sharafat Ali s/o Muhammad Hanif, Junior Class-IV presently posted in Industries Department. (Sr.No.128 of impugned seniority list.)
35. Israil Khan s/o Ibrahim Khan, Junior Class-IV presently posted in Minerals Dev Department. (Serial No. 134 of impugned seniority list.)
36. Rehmat Ali s/o Bawar Khan, Junior Class-IV presently posted in E & AD Department. (Sr.No.150 of impugned seniority list.)
37. Fayaz Khan s/o Mumtaz Khan, Junior Class-IV presently posted in E & AD Department. (Sr.No.173 of impugned seniority list.)
38. Muhammad Ali s/o Lajbar, Junior Class-IV presently posted in Law department (Sr.No.176 of impugned seniority list.)

.....RESPONDENTS

(12)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED SENIORITY LIST ISSUED VIDE LETTER NO. E&A (AD) 04 (17) 2020 DATED 26-05-2021 AND SUBSEQUENT HOLDING OF DPC VIDE WHICH THE OFFICIAL RESPONDENTS WITHOUT CARING TO THE OBJECTION OF APPELLANT ON TENTATIVE SENIORITY LIST ISSUED VIDE LETTER NO. E&A (AD) 04 (17) 2020 DATED 04-02-2021 HAS ABRUPTLY AND UNILATERALLY CONFIRMED THE SAME AS FINAL SENIORITY LIST INCORPORATING THEREIN THE HOUSE HOLD STAFF, PBMC STAFF AND SOME OTHER JUNIOR CLASS-IV PERSONS IN VIOLATION OF RULES/ REGULATIONS.

PRAYER:-

THAT ON ACCEPTANCE OF INSTANT APPEAL THE IMPUGNED SENIORITY LIST DATED 26-05-2021 MAY VERY KINDLY BE SET ASIDE AND THE RESPONDENTS MAY KINDLY BE DIRECTED TO PREPARE SEPARATE SENIORITY LIST FOR THE CLASS-IV STAFF OF THE SECRETARIAT AND EXCLUDE THE HOUSE HOLD STAFF, PBMC STAFF AND OTHER JUNIOR CLASS-IV STAFF. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT THAT MAY ALSO BE AWARDED IN FAVOUR OF THE APPELLANT.

RESPECTFULLY SHEWETH:
ON FACTS

1. That the appellant is an employee of the Civil Secretariat and having high qualification of Master was appointed as Chukidar vide order dated 11-08-2009 and was later on adjusted against the vacant post OF Naib Qasid vide order dated 14-07-2011. That appellant has rendered Twelve years spotless service at his credit as Naib Qasid/ Daftari while the respondents No.6 TO 38 are House Hold and PBMC staff. That job and duty of the respondents are in Houses i.e. Civil Officers Mess, Frontier House Abbottabad, Frontier House Islamabad, Shahi Mehman Khana Peshawar, and Chief Minister's House & Governor House etc. and has no right to be included in the seniority list of the Class-IV employees of the Civil Secretariat. Copies of the appointment order dated 11-08-2009 and dated 14-07-2011 are attached as annexureA.
2. That it is pertinent to mention here that till the year 2015 in the seniority list of the appellant there was no private respondents and it was correct and according to the prevailing rules and the appellant was on the serial No. 270 of that seniority list. Copy of the seniority list of the year 2015 is attached as annexureB.

3. That the official respondents in collaboration with House Hold, P BMC and some other junior persons have illegally been absorbed/ incorporated the private respondents in the seniority list of the appellant. That it is important to mention here that firstly the private respondents have no right to be adjusted/ incorporated in the seniority list of the secretariat class-iv secondly if they be brought so they should have been placed at the bottom of the seniority of the appellant and they be considered junior to the appellant but they keep them at bottom for one year and then they were made senior hence the valuable rights of the appellant have been disturbed through the impugned illegal action of the respondents. Copy of the seniority list of the year 2016 is attached as annexure C.
4. That in the year 2017 the private respondents of House Hold staff was brought on top of the seniority list, made them senior to the appellant and vide DPC held on 8-05-2018 the House Hold staff were promoted to the post of Daftari on an evasive ground that they are civil servants as such comes under the definition of general cadre of the Civil Secretariat and thus have all rights which the Secretariat employees enjoy. Copies of the 2017 seniority list, DPC minutes and promotion order are attached as annexureD, E & F.
5. That it is important to mention here that the mentioned house hold staff was later on promoted/ appointed on acting charge basis as junior clerk (BPS-11) vide order dated 4-12-2019. Copy of the order dated 4-12-2019 is attached as annexureG.
6. That it is worth to mention here that in the year 2019 the seniority of the Class-IV matriculate and the Daftari was bifurcated. That the appellant was placed in the seniority of Daftari but he was again placed junior to the house hold staff. Copy of the seniority list of the matriculate Class-IV and Daftari are attached as annexureH & I.
7. That vide order dated 30-05-2019 some juniors matriculate Class-IV were promoted to the post of Daftari and they were then placed at bottom/ junior to the appellant in upcoming tentative seniority list of the year 2021 issued on 04-02-2021. Copies of the promotion order dated 30-05-2019 and tentative seniority list of the year 2021 are attached as annexureJ & K.
8. That the appellant feeling aggrieved from the tentative seniority list on the reason that in the mentioned seniority the house hold staff were also included therein preferred an objection/ application. Copy of the objection/ application is attached as annexureL.

9. That vide impugned final seniority list notified on dated 26-05-2021 the house hold staff, PBMC and other junior impleaded as private respondents are brought on top of that seniority list illegally and unlawfully and violating the section 8 of K.P Civil Servant Act, 1973 and the K.P (APT) Rules, 1989. That it is further to mentions here that through the impugned seniority list the earlier bifurcated matriculate class-IV and Daftari are once again consolidated in one seniority list. Copy of the final seniority list dated 26-05-2021 is attached as annexureM.

10. That the appellant feeling aggrieved from the impugned seniority list preferred departmental appeal on 01-06-2021 but the same has not been decided within the stipulated period of ninety days. Copies of the departmental appeal is attached as annexureN.

11. That it is important to mention here that the respondents have convened a DPC for 30-08-2021 for considering the Daftari/ ministerial staff for promotion to the post of junior clerk on the basis of the impugned seniority list of 2021 vide letter dated 24-08-2021. Copy of the letter dated 24-08-2021 is attached as annexureO.

12. That feeling aggrieved from the action and inaction of the respondents and having no other remedy the appellant prefer the instant appeal on the following grounds amongst others.

GROUNDS

A- That the impugned seniority list dated 26-05-2021 whereby junior to the appellant i.e. private respondents have been placed senior to the appellant and are about to be promoted to the post of junior clerk (BPS-11) is against law, facts, norms of natural justice and material on record hence liable to be set aside.

B- That appellant has not been treated by the respondent department in accordance with law and rules on the subjected noted above and as such respondents violated the Article 4 and 25 of the Constitution of Islamic Republic of Pakistan.

C- That the appellant has been discriminated by the respondents while issuing the impugned seniority list dated 26-05-2021.

D- That by issuing the impugned seniority list dated 26-05-2021 the respondents have violated section-8 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 and Rule-17 of the Khyber Pakhtunkhwa (APT) Rules, 1989.


15

That the respondents acted in arbitrary and mala fide manner while issuing the impugned seniority list dated 26-05-2021.

F- That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

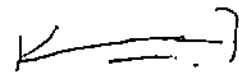
It is, therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.

APPELLANT

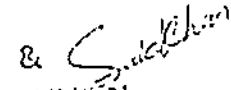

HUMAYUN ZIA KHANZADA

THROUGH:


NOOR MUHAMMAD KHATTAK


KAMRAN KHAN


UMAR FAROOQ

& 
SAID KHAN
ADVOCATES

House
No. 14

(16)

Annexure — "B"

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 7302/2021

Hamayun Zia

VS

Govt of KP.

REPLY ON BEHALF OF RESPONDENTS NO. 8, 9, 12, 13, 14, 17
& 32

PRELIMINARY OBJECTION:

1. The appeal is bad for non-joinder of necessary party.
2. The appeal is not maintainable in its present form.
3. The appeal of the appellant is not competent.
4. The appellant has no cause of action, so appeal is not maintainable.
5. The appellant has no locus standi.
6. The appellant concealed the material facts from this Honorable Tribunal.
7. That the appeal is time barred.
8. That the appellant has not come with clean hands.

RESPECTFULLY SHEWETH:

FACTS:

1. Incorrect and misleading. The appellant was initially appointed as Chowkidar on 11.08.2009 in the Public Safety Commission (PSC). The appellant was adjusted against the vacant post of Naib-Qasid in Civil Secretariat. The appellant was granted seniority from the date of adjustment in civil secretariat like the respondents, so there is no illegality done with the appellant. Moreover, the replying respondent was appointed by the administration deptt and all the houses come under the control of administration deptt. The administration deptt is attached deptt with Estab deptt and both are the same control under the Rule of Business. So the replying respondent have the right to be included in the seniority of Establishment deptt: of the civil secretariat. These point is already clear by the Tribunal in Musaddiq Shah Case. Copy attached.
2. Incorrect and misleading. The appellant is not aggrieved person.

17

2

3. Incorrect, hence denied. The seniority list prepared according to law and rules. The replying respondent have the right to be included in the seniority therefore included in proper place which is already clarified by the Tribunal In Musadiq Shah case. And the reply given by the official respondents.
4. Incorrect, hence denied. Already explained above. Moreover the replying respondent were given seniority according their right and the same is further clarified by the this Hon'ble Tribunal in appeal of Mussadiq Shah vs Estab Deptt. It is further added that the deptt included replying respondents after due consideration. Record attached.
5. Incorrect hence denied. The acting charge order of the replying respondent according to law and rules.
6. Incorrect, hence denied. Already explained above. Moreover the replying respondent were given seniority according their right and the same is further clarified by the this Hon'ble Tribunal in appeal of Mussadiq Shah vs Estab Deptt.
7. The contention of the appellant is incorrect and misleading. Moreover the tentative seniority list has no value in the eye of law and the tentative seniority is only issue for the purpose if someone has objection on the same, timely rectified. So the seniority list was corrected when final seniority list was issued. the replying respondent were given seniority according their right and the same is further clarified by the this Hon'ble Tribunal in appeal of Mussadiq Shah vs Estab Deptt..
8. The contention of the appellant is incorrect and misleading.
9. The contention of the appellant is incorrect and misleading. Moreover as explained above.
10. Denied for want of knowledge
11. Denied for want of knowledge.
12. No comments.

GROUNDS:

- A) Incorrect, hence denied. Moreover as explained in the above para.
- B) Incorrect and misconceived. The appellant is treated according to law and rules.


18
31

- C) Incorrect and misconceived. The appellant has not be discriminated.
- D) Incorrect and misconceived. Moreover, as explained in the above.
- E) Incorrect and misconceived. Moreover, as explained in the above para.
- F) legal.

It is, therefore, most humbly prayed that the appeal of the appellant may kindly be dismissed with costs throughout.

Respondents

Through:


(M. ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT


(SYED NOMAN ALI BUKHARI)
ADVOCATE, HIGH COURT.

(SHAHKAR KHAN YOUSAFZAI)
ADVOCATE PESHAWAR

AFFIDAVIT:

It is affirmed and declared that the contents of reply are true and correct to the best of my knowledge and belief and nothing has been concealed from Hon'able Tribunal.


Deponent

(19)

BEFORE THE KHYBER PAKHTUNKHWA,
SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 7302/2021

Hamayun Zia

VS

Govt of KP.

.....
REPLY ON BEHALF OF RESPONDENTS NO. 10, 15, 16
, 18, 22, 23, 24, 33, 34, 35, 36, 38

PRELIMINARY OBJECTION:

1. The appeal is bad for non-joinder of necessary party.
2. The appeal is not maintainable in its present form.
3. The appeal of the appellant is not competent.
4. The appellant has no cause of action, so appeal is not maintainable.
5. The appellant has no locus standi.
6. The appellant concealed the material facts from this Honorable Tribunal.
7. That the appeal is time barred.
8. That the appellant has not come with clean hands.

RESPECTFULLY SHEWETH:

FACTS:

1. Incorrect and misleading. The appellant was initially appointed as Chowkidar on 11.08.2009 In the Public Safety Commission (PSC). The appellant was adjusted against the vacant post of Naib Qasid in Civil Secretariat. The appellant was granted seniority from the date of adjustment in civil secretariat like the respondents, so there is no illegality done with the appellant. Moreover, the replying respondent was appointed by the administration deptt from time to time and administration deptt is part and parcel of the Establishment deptt under the Rule of Business 1985, therefore after passing matric examination they were included in the seniority list. The seniority given to appellant and replying respondent according to law and rules.

These point is already clear by the Tribunal in Musaddiq Shah Case. Copy attached. Further it is added that the respondent no 38 was appointed as naib qasid by the Federal Govt: on 11-07-2011. In the wake of 18th amendment. The respondent no.38 alongwith other such federal employees devolved to the Province of Khyber Pakhtunkhwa, were absorbed in the Provincial civil service as result of proper amendments made in the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2015 (Copy attached). This respondent no.38 was finally absorbed in the cadre of Naib Qasid. Respondent no.38 was granted seniority according to Section-8 of Civil Servant Act 1973 read with rule 17 of the APT rules 1989, from the date of regular appointment. Copy of relevant record is attached.

1. Incorrect and misleading. The appellant is not aggrieved person.
2. Incorrect, hence denied. The seniority list prepared according to law and rules. The replying respondent have the right to be included in the seniority therefore included in proper place which is already clarified by the Tribunal In Musadiq Shah case. And the reply given by the official respondents.
3. Incorrect, hence denied. Not related to replying respondent.
4. Incorrect hence denied. Not related to replying respondent. Moreover, That the respondent no.38 is neither on the sanctioned strength of Household Staff, PDMC Staff nor he is Junior Class-IV viz a viz the appellant (Humayun Khanzada). Thus he has tried to mislead the Hon' able Tribunal.
5. Incorrect, hence denied. Not related to replying respondent.
6. The contention of the appellant is incorrect and misleading. Moreover the tentative seniority list has no value in the eye of law and the tentative seniority is only issue for the purpose if someone has objection on the same, timely rectified. So the seniority list was corrected when final seniority list was issued. the replying respondent were given seniority according their right and the same is further clarified by the this Hon'ble Tribunal in appeal of Musaddiq Shah vs Estab Deptt.
7. The contention of the appellant is incorrect and misleading.

- 8. The contention of the appellant is incorrect and misleading. Moreover as explained above.
- 9. Denied for want of knowledge
- 10. Denied for want of knowledge.
- 11. No comments.

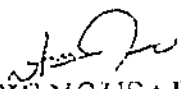
GROUNDS:

- A) Incorrect, hence denied. Moreover as explained in the above para.
- B) Incorrect and misconceived. The appellant is treated according to law and rules.
- C) Incorrect and misconceived. The appellant has not be discriminated.
- D) Incorrect and misconceived. Moreover, as explained in the above.
- E) Incorrect and misconceived. Moreover, as explained in the above para.
- F) legal.

It is, therefore, most humbly prayed that the appeal of the appellant may kindly be dismissed with costs throughout.

Respondents

Through:


 (M. ASIF YOUSAFZAI)
 ADVOCATE SUPREME COURT


 (SYED NOMAN ALI BUKHARI)
 ADVOCATE, HIGH COURT.

(SHAHKAR KHAN YOUSAFZAI)
 ADVOCATE PESHAWAR

JMC
Staff

BEFORE THE KHYBER PAKHTUNKHWA,
SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 7302/2021

Hamayun Zia

VS

Govt of KP.

REPLY ON BEHALF OF RESPONDENTS NO. 20, 25, 26, 27, 28,
29, 30, 31

PRELIMINARY OBJECTION:

1. The appeal is bad for non-joinder of necessary party.
2. The appeal is not maintainable in its present form.
3. The appeal of the appellant is not competent.
4. The appellant has no cause of action, so appeal is not maintainable.
5. The appellant has no locus standi.
6. The appellant concealed the material facts from this Honorable Tribunal.
7. That the appeal is time barred.
8. That the appellant has not come with clean hands.

RESPECTFULLY SHEWETH:

FACTS:

1. Incorrect and misleading. The appellant was initially appointed as Chowkidar on 11.08.2009 in the Public Safety Commission (PSC). The appellant was adjusted against the vacant post of Naib Qasid in Civil Secretariat. The appellant was granted seniority from the date of adjustment in civil secretariat like the respondents, so there is no illegality done with the appellant. Moreover, the replying respondent was appointed by the PMBC attached deptt of C&W deptt, the replying respondent in Chief Minister Secretariat w.e. from 01.07.2009, the cases of the replying respondent were sent to regulation wing, Establishment deptt: for advice which declared them employees of the civil secretariat Peshawar Copy may be requisition

from the deptt. Therefore, they were given seniority in civil secretariat from the date of adjustment like appellant according to Section-8 of Civil Servant Act 1973 read with rule 17 of the APT rules 1989. Copy of relevant record is attached.

1. Incorrect and misleading. The appellant is not aggrieved person.
2. Incorrect, hence denied. The seniority list prepared according to law and rules. The replying respondent have the right to be included in the seniority therefore included in proper place. And the reply given by the official respondents.
3. Incorrect, hence denied. Not related to replying respondent.
4. Incorrect hence denied. Not related to replying respondent..
5. Incorrect, hence denied. Not related to replying respondent.
6. The contention of the appellant is incorrect and misleading. Moreover the tentative seniority list has no value in the eye of law and the tentative seniority is only issue for the purpose if someone has objection on the same and timely rectified. So the replying respondent filed abjection on the tentative seniority list which was properly perused and seniority list was corrected and then issued final seniority list was issued. The replying respondent were given seniority according their rights.
7. The contention of the appellant is incorrect and misleading.
8. The contention of the appellant is incorrect and misleading. Moreover as explained above.
9. Denied for want of knowledge
10. Denied for want of knowledge.
11. No comments.

GROUNDS:

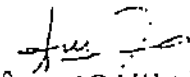
- A) Incorrect, hence denied. Moreover as explained in the above para.
- B) Incorrect and misconceived. The appellant is treated according to law and rules.
- C) Incorrect and misconceived. The appellant has not be discriminated.

- D) Incorrect and misconceived. Moreover, as explained in the above.
- E) Incorrect and misconceived. Moreover, as explained in the above para:
- F) legal.

It is, therefore, most humbly prayed that the appeal of the appellant may kindly be dismissed with costs throughout.

Respondents

Through:



(M. ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT


(SYED NOMAN ALI BUKHARI)
ADVOCATE, HIGH COURT.

(SHAHKAR KHAN YOUSAFZAI)
ADVOCATE PESHAWAR

AFFIDAVIT:

It is affirmed and declared that the contents of reply are true and correct to the best of my knowledge and belief and nothing has been concealed from Hon'able Tribunal.


[Signature]

25

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

SERVICE APPEAL NO. 7002/2021

Mr. Humayun Zia, Dattari (BS-4), Home & Tribal Affairs Department, Civil Secretariat, Khyber Pakhtunkhwa, Peshawar. (Appellant)

Versus

1. The Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Administration Department, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
4. The Special Secretary, Establishment Department, Khyber Pakhtunkhwa, Peshawar.
5. The Deputy Secretary (Admin), Administration Department, Khyber Pakhtunkhwa, Peshawar.
6. Mr. Iqbal Hussain s/o Muhammad Hussain Dattari and 32 other Class-IV employees..... (Respondents)

JOINT PARAWISE COMMENTS FOR / ON BEHALF OF THE RESPONDENT NO.1-5

Respectfully Sheweth,

PRELIMINARY OBJECTIONS.

- 1) The appellant has got no cause of action and locus standi
- 2) The appeal is not maintainable in the present form. As such this Honorable Tribunal has no jurisdiction to entertain the instant appeal
- 3) The appeal is not based on facts
- 4) The appellant has not come to the Tribunal with clean hands.
- 5) The appeal is bad for non-joinder and mis-joinder of necessary parties.
- 6) The appellant has concealed material facts from this Honorable Tribunal
- 7) That the appellant is estopped by his own conduct

RESPECTFULLY SUBMITTED:

1:- Incorrect as laid. As per record, the appellant was appointed as Chowkidar (BS-1) on 11-08-2009 in the *Public Safety Commission (PSC)*, which is an attached formation of Home & Tribal Affairs Department. From there, he was further adjusted as Naib Qasid on 1-7-2011 against a post in Home & TAs Department of Civil Secretariat. He had matriculated in 2006. He was granted seniority from the date of his adjustment in Civil Secretariat. The appellant has not come to the Court with clean hands rather with mala fied intentions. His adjustment / absorption from the strength of an attached formation to that of Home & TAs Department of Civil Secretariat is dubious and in violation of rules/ policy of the Provincial Government as he was neither surplusd nor absorbed / adjusted in a proper manner. Moreover, such adjustments fall in the category of cross-cadre adjustment which is a violation of Judgments of the superior courts. The factual position of the cases pertaining to respondent No 06 to 38 are explained in detail hereunder:

(i). RESPONDENTS NO. 8,9,12,13,14,17,32 : These respondents were earlier holding such common posts like Chowkidar / Farash /Malis. Such posts are basically not house-

Sl. No.	Id No.	Name	Post	Date of Appointment	Department	Seniority No.
1	1	Saraj Ali Khan	Chowkidar	11-07-2006	E&A Dept.	1011
2	9	Imdad Ali	Chowkidar	01-01-2006	E&A Dept.	1799
3	12	Rafiq Gul	Malis	10-01-2008	E&A Dept.	1951
4	13	Akhtar Hussain	Malis	29-01-2007	E&A Dept.	2052
5	14	Muhammad Akram	Malis	17-04-2007	E&A Dept.	2003
6	17	Nasir Khan	Malis	01-09-2018	E&A Dept.	1758
7	32	Sifu Ullah	Farash	01-11-2009	E&A Dept.	2019

specific and its holders can perform duty not only in the Houses but also in majority of administrative departments of Civil Secretariat, Peshawar i.e. PR-404 Finance Department, PR-442 Irrigation Department, PR-4127 Higher Education Department etc duly flagged Annex-I, II & III respectively. The right of seniority of these respondents was acknowledged by the DPC in its meeting held on 21-05-2019 (Annex-IV). Therefore, as per their entitlement these 7 employees were given seniority w.e.f date of

their appointment and subsequently promoted to the post of Daftari (BS-04) on 30-05-2019 (Annex-V). Later on, they were further promoted to the post of Junior Clerk. (BS-11) on acting-charge basis by the Establishment Department vide order 08-11-2019 (Annex-VI). However, the said order cannot be withdrawn or rescinded as it had taken legal effect and had created certain rights in favour of individuals.

(ii). RESPONDENTS NO. 20, 25, 26, 27, 28, 29, 30, 31: These eight (8) class-iv employees are basically the appointees of Provincial Building Maintenance Cell (PMBC) which is an attached formation of Communication & Works Department. They were adjusted in the Chief Minister's Secretariat w.e.f 01-07-2009 (Annex-VII). Their case for seniority was referred to Regulation Wing, Establishment Department for advice which declared them employees of Civil Secretariat, Peshawar. Therefore, they were given seniority for promotion. On the basis of the said seniority, they were promoted as Daftari (BS-4)

Sl. No.	Roll No.	Name	Designation	Date of Appointment	Department	Year
1	20	Rahim Amir	Clerk	10-01-1996	PMBC CAW	1997
1	31	Imamullah	Clerk	01-11-1997	PMBC CAW	1998
2	26	Shah Mehmood	Messenger	22-01-1993	PMBC CAW	1992
4	27	Naveed Abbas	Junior	11-05-1995	PMBC CAW	1997
3	30	Syed Ali	Sub	02-09-2003	PMBC CAW	2003
8	29	Araf Saad	Comptroller	11-04-2005	PMBC CAW	2005
1	25	Ajib Khan	Secretary	22-04-2004	PMBC CAW	2004
1	31	Amjad Hussain	Comptroller	20-04-2004	PMBC CAW	2004

on 30-05-2019 (Annex-V) and placed at the bottom in the tentative seniority list of Daftaris to which they objected. These objections were properly re-examined in consultation with Regulation Wing Establishment Department and consequently they were given seniority w.e.f date of their adjustment in Chief Minister Secretariat, which is a part and parcel of Civil Secretariat, w.e.f 01-07-2009. As such, no one has been promoted out of turn. All the promotions have been made on the basis of seniority-cum-fitness basis. As per *Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989*, the seniority is to be maintained with reference to date of appointment / adjustment of employees in the Civil Secretariat, Peshawar.

(iii). RESPONDENTS NO. 7, 10, 11, 15, 16, 18, 19, 21, 22, 23, 24, 33, 34, 35, 36, 37. These 16 class-iv employees, were appointed by various administrative departments from time to time (as per details in the margin) as all administrative departments are competent for recruitment to the posts in BS-01 to 05. All these respondents / employees have cleared their matric examination after appointment. The passing of Matric Examination is mandatory for promotion to the post of Daftari. Therefore, after passing matric, these respondents were granted seniority from the date of their appointment in line with provisions contained in service rules read with *Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989*.

Sl. No.	Roll No.	Name	Designation	Date of Appointment	Department	Year
1	7	Sayed Ahmad	Sub Clerk	01-01-2006	Admin Dept	2007
2	11	Muhammad Ali	Sub Clerk	13-12-2006	Admin Dept	2007
3	11	Muhammad Ali	Comptroller	27-04-2008	Admin Dept	2008
4	16	Imdadullah	Sub Clerk	14-08-2007	Admin Dept	2009
5	11	Muhammad Ali	Sub Clerk	12-04-2008	Admin Dept	2008
6	11	Muhammad Ali	Sub Clerk	22-04-2008	Admin Dept	2008
7	22	Muhammad Ali	Sub	10-02-2009	SPC Dept	2009
8	22	Muhammad Ali	Sub Clerk	14-02-2009	Admin Dept	2009
9	22	Muhammad Ali	Sub Clerk	22-02-2009	Admin Dept	2009
10	24	Muhammad Ali	Sub Clerk	10-03-2009	Admin Dept	2009
11	11	Muhammad Ali	Comptroller	10-01-2009	Admin Dept	2009
12	11	Muhammad Ali	Sub Clerk	22-01-2009	Admin Dept	2009
13	11	Muhammad Ali	Sub Clerk	27-01-2009	Admin Dept	2009
14	11	Muhammad Ali	Sub Clerk	14-01-2009	Admin Dept	2009
15	11	Muhammad Ali	Sub Clerk	14-01-2009	Admin Dept	2009
16	11	Muhammad Ali	Sub Clerk	14-01-2009	Admin Dept	2009

(iv). RESPONDENTS No. 38 (MUHAMMAD ALI): Muhammad Ali was appointed as Sub Clerk by the federal government on 11-07-2007. In the wake of 18th Amendment to Constitution of Pakistan, he amongst others was devolved in 2011 to Provincial Auqaf Department and was accordingly adjusted there. In light of Section-8 of *Khyber Pakhtunkhwa Civil Servants Act, 1971* read with *Rule-17(1)(b) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989*; he was granted seniority from the date of his regular appointment in Federal Government i.e w.e.f 11-7-2007. Approval of the competent authority was duly obtained in the matter.

(v). RESPONDENTS No 6 (IQBAL HUSSAIN): Mr. Iqbal Hussain was appointed as Mali on 21-01-2004 for Frontier House, Peshawar. On 30-06-2010, the said House was declared as defunct and all of its employees except Mr. Iqbal Hussain were declared

surplus and placed in the surplus pool of districts. He was retained / adjusted in the Chief Minister's Secretariat (PR-1012). He matriculated in 2013. He was enlisted in the seniority of matriculate class-iv in 2018 after due process and approval of the competent authority.

- 2:- Incorrect. The seniority lists in question issued by Administration Department were / are correct and in line with prevailing rules / policy of the Provincial Government. The appellant was and is at his due /rightful place in the seniority list.
- 3:- Incorrect as laid. Detail has already been shared vide Para 1 above. There was / is no private person in seniority and no one has been absorbed / incorporated in the seniority list(s). All were /are employees of Provincial Government. No one has been promoted on evasive ground. The seniority and promotions have been given as per rules / policy of the Provincial Government. Moreover, Section-8 of Khyber Pakhtunkhwa Civil Servants Act, 1973 provides: "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"
- 4:- Incorrect as laid. As in Para-3 above.
- 5:- Incorrect as laid. As in Para-3 above. Order dated 04-12-2019 is in line with existing rules /policy of the Provincial Government being issued on the recommendations of Departmental Promotion Committee
- 6:- Incorrect as laid. From perusal of Para 1-3 above, it is clear that the appellant has always been given seniority at his rightful place.
- 7:- Incorrect as laid. All the faults /deficiencies in the previous seniorities, if any, were rectified in subsequent final seniority list issued on 26-05-2021. All the matriculate Class-IV employees were granted seniority from the date of their appointment / adjustment in Civil Secretariat, Peshawar.
- 8:- Incorrect as laid. The objection /application of the appellant was duly processed and filed because of being untenable in the eyes of law.
- 9:- Incorrect as laid. All the errors / omissions etc in the previous seniorities, if any, were rectified in subsequent final seniority list issued on 26-05-2021. All the matriculate Class-IV employees, including the appellant, were granted due seniority from the date of their appointment / adjustment in Civil Secretariat, Peshawar, in line with existing rules / policy of the Provincial Government. Moreover, no violation whatsoever of Section-8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, has been committed. Furthermore, as per existing service rules for the post of Junior Clerk (BS-11) (Annex-VIII) , a joint seniority list of *Dafatras* and other matriculate Class-IV is to be maintained for the purpose of promotion to the post of Junior Clerk (BS-11). Therefore, the final seniority list issued on 26-05-2021 is well in line with existing service rules
- 10:- Incorrect as laid. The departmental appeal dated 01-06-2021 was duly processed and filed being untenable in the eyes of law. Before filing, the case was thoroughly discussed with Regulation Wing, Establishment Department. A briefing in the case was also presented to the Chief Secretary.
- 11:- Pertains to record.
- 12:- No comments.

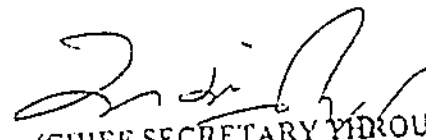
GROUNDS OF DEPARTMENTAL APPEAL:

- A:- Incorrect as laid. The impugned seniority list dated 26-05-2021 is in accordance with law, facts and material on record. All the matriculate Class-IV employees, including the appellant, were granted seniority from the date of their appointment / adjustment in Civil Secretariat, Peshawar, in line with existing rules / policy of the Provincial Government. Moreover, no violation whatsoever of Section-8 of the *Khyber Pakhtunkhwa Civil Servants Act, 1973*, or *Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989* or *Constitution of Islamic Republic of Pakistan* has been committed
- B:- Incorrect as laid. As stated in Para-A above and that the appellant has been treated in accordance with law and rules.
- C:- Incorrect as laid. As stated in Para-A above and that the appellant has not been discriminated against while issuing the impugned seniority list dated 26-05-2021.


D:- Incorrect of the Khyb. stated in Para-A above and that no violation whatsoever of Section-8 of the Khyb. Civil Servants Act, 1973, or Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 or Constitution of Islamic Republic of Pakistan has been committed by the respondents.

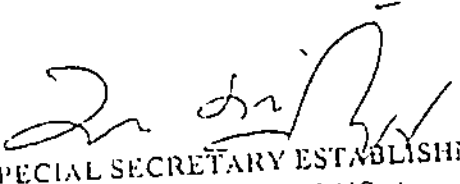
PRAYER


It is therefore, humbly prayed that the appeal in question may be dismissed with costs.


(CHIEF SECRETARY THROUGH
SECRETARY ESTABLISHMENT)
RESPONDENT NO. 1


(SECRETARY ADMINISTRATION)
RESPONDENTS NO. 2


(SECRETARY ESTABLISHMENT)
RESPONDENTS NO. 3


(SPECIAL SECRETARY ESTABLISHMENT)
RESPONDENTS NO. 4


(DEPUTY SECRETARY (ADMIN)
ADMINISTRATION DEPARTMENT.
RESPONDENTS NO. 5

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 7302/2021

HUMAYUN ZIA KHANZADA VS ESTABLISHMENT DEPARTMENT ETC.

REJOINDER ON BEHALF OF APPELLANT IN RESPONSE TO THE REPLY
SUBMITTED BY THE RESPONDENTS

B/SHEWETH:

PRELIMINARY OBJECTIONS:

(1 to 7):

All the preliminary objections raised by the respondents are incorrect and baseless and not in accordance with law and rules, rather the respondents are estopped due to their own conduct to raise any objection at this stage of the appeal. Furthermore the respondents are taking different stance on the same issues hence they are stopped under the law to do so.

ON FACTS:

- 1- Incorrect and misleading. The respondents are misleading this Honorable Tribunal on the issue of House Hold and PBMC staff because the respondents in their replies in Appeal No. 3936/2020 titled "Arshad Khan VS Govt. of KP" and in comments submitted before the August Peshawar High Court in W.P No. 6271-P/2019 titled "Amin-ul Haq and others vs Govt. of KP" had categorically mentioned that the employees of House Hold staff cannot be reflected in the seniority list of regular employees borne on the strength of Administration department so how could the official respondents now adjust the private respondents, some of them belongs to the PBMC staff and some of house hold, in the seniority of the secretariat staff. That similarly the rest of the private respondents mentioned at Para 1(iii) are junior to the appellant because they had passed their matriculation in the year 2018-2021 and as per the rules the matriculate Class-IV are required to be promoted to the post of Daftari from Nalb Qasid and then after serving for at least two years as Daftari are to be promoted to the post of Junior clerk but the private respondents mentioned in Para 1(iii) are directly promoted to the post of Junior Clerk without promoting them to the post of Daftari. That it is pertinent to mention here that if any employee of House Hold or PBMC was required to be adjusted in the Secretariat then as per law and rules he was supposed to be adjusted at the bottom of the seniority list. Similarly in the case WP No.6732-P/2019 titled Yasir Zeb VS Government of KPK, the respondents have taken the plea against house hold staff. Copies of the comments of the respondents and working papers for juniors promotion are attached as Annexure.....A&B.
- 2- Incorrect and misleading. The respondents have repeatedly violated section 8 of the KP Civil Servant Act 1973 read with Rule 17 of the APT Rules 1989.
- 3- Incorrect and not replied accordingly. That detailed reply has been given in Para 1 of the rejoinder.
- 4- Incorrect and not replied accordingly.
- 5- Incorrect and not replied accordingly.

(30) - 1 -

- 6- Incorrect and misleading. The seniority position of the appellant was repeatedly disturbed due to the unlawful and illegal adjustment of the private respondents on wrong position of the seniority.
- 7- Incorrect, para-7 of the appeal is correct.
- 8- Incorrect the objection of the appellant was not entertained irrespective of the fact that the appellant had highlighted all the illegality and irregularities.
- 9- Incorrect and misleading, the detail reply/answer to this Para has been given Para 1 above.
- 10- Incorrect the departmental appeal has not been decided within the statutory period of ninety days.
- 11- Incorrect the juniors and ineligible were promoted to the post of Junior Clerk.

GROUNDS:


(A TO F):

All the grounds of main appeal are correct and in accordance with law and prevailing rules and that of the respondent are incorrect and baseless hence denied. That the respondent Department has wrongly adjusted the private respondents in the seniority list of secretariat staff and illegally and unlawfully promoted the juniors to the appellant by violating Section 8 of the K.P Civil Servant Act read with Rule-17 of K.P APT rules 1989. Moreover, contrary to their reply to the instant appeal, the respondents have concluded an inter-se agreement with the private respondents tendering NOC to holding of DPC for promotion of house hold staff with the pledge to the effect that in future no outsider shall be entered in the seniority list of class-IV employees of civil secretariat. Copy of agreement is attached as AnnexureC.

It is therefore most humbly prayed that on acceptance of this rejoinder the appeal of the appellant may be accepted as prayed for.


APPELLANT

THROUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

AFFIDAVIT

I Hamaayun Zia Khanzada (the appellant), do hereby solemnly affirm that the contents of this Rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.


DEPONENT

GOVERNMENT OF KHYBER PAKHTUNKHWA
ADMINISTRATION DEPARTMENT

No SO(A)/AD/1-1/2021
Dated Peshawar 15-2-2021

The Secretary to Govt of Khyber Pakhtunkhwa,
Establishment Department

SUBJECT - MEETING ON RESOLUTION OF ISSUES IN THE SENIORITY OF CLASS-IV

Dear Sir

I am directed to refer to the subject noted above and to state a meeting on the subject is scheduled to be held on 20.02.2021 at 10:30 AM under the chairmanship of Deputy Secretary, Government of Khyber Pakhtunkhwa. I am therefore directed to inform that an officer may kindly be deputed to attend the meeting on the date, time and venue stated.

Yours faithfully,

SECTION OFFICER (ADMN)
SECTION OFFICER (ADMN)

Copy furnished to:

- 1. For the record, Establishment Department
- 2. For the record, Administration Department
- 3. For the record, Government of Khyber Pakhtunkhwa

SECTION OFFICER (ADMN)
15/2

MOST IMMEDIATE

31



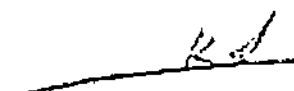
GOVERNMENT OF KHYBER PAKHTUNKHWA
ADMINISTRATION DEPARTMENT

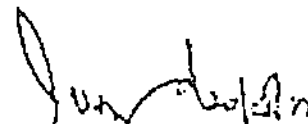
Subject: MEETING ON RESOLUTION OF ISSUES IN THE SENIORITY OF THE CLASS-IV EMPLOYEES.

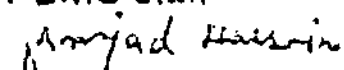
A meeting on the subject held on 20-08-2021 regarding issues of seniority of class-iv employees, Civil Secretariat, Peshawar under the chairmanship of Deputy Secretary (Admn). On the request of the forum, all the three parties mutually agreed to withdraw their earlier applications / objections submitted on seniority list of 2021 and DPC of class-iv employees of Civil Secretariat, Peshawar.


2- We also have no objection for holding the coming DPC for promotion of class-iv employees to the posts of Junior Clerks (BS-11), on the seniority list of 2021.


3- In future no outsider shall be entered in the seniority list of the class-IV employees of Civil Secretariat.

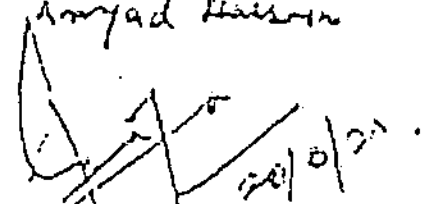

General Secretary
Class-IV Association
Khalid Javed


Representative of
Household
employees -
Includ A&E


Representative of
PBMC staff
Amjad Hussain
Date - 20/8/21
A&E & Forum
2021


Section Officer (P-1).
Establishment
Department


Section Officer
(Admn). E&A
Department 20/8/21

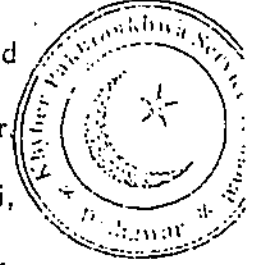

Deputy Secretary
(Admn). Admn
Department 20/8/21

Service Appeal No.7302/2021 titled "Hamayun Zia Khanzada versus Government of Khyber Pakhtunkhwa"

ORDER

4th Oct. 2024 Kalim Arshad Khan, Chairman: Mr. Noor Muhammad

Advocate, learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney alongwith Mr. Amjad Ali, Section Officer for official respondents present. Mr. Muhammad Asif Yousafzai, Advocate for private respondents present.



2. Appellant's case in brief, as per averments of appeal, is that he was serving as Naib Qasid in the Civil Secretariat Peshawar since 14.07.2011 and private respondents No.6 to 38 were serving in different rest houses of under the supervision of the Government of Khyber Pakhtunkhwa; that in the year 2016, the private respondents were absorbed in the seniority list while appellant's name was already existed in the Secretariat Group Class-IVs; that in the year 2017, those household staff was brought at the top of seniority list and were given promotion on acting charge basis, as Junior Clerk (BPS-11); that in the year 2019, appellant was again placed below the private respondents due to bifurcation between the Daftaris and Matriculate Class-IVs; that vide order dated 30.05.2019 junior matriculate Class-IV colleagues were promoted and the appellant was not; that feeling aggrieved, he filed objection over the tentative seniority list whereby household staff was included; that in the final seniority list

FILED
1-16-24

dated 26.05.2021, the household staff, PBMC and other junior colleagues (private respondents) were brought on top of seniority list, i.e. above the name of appellant and on the basis of that list, private respondents were granted promotions, therefore, he filed the instant service appeal.

3. Arguments heard. Record perused.

4. The appellant has been serving as Naib Qasid in the Civil Secretariat Peshawar since 14.07.2011, while private respondents No. 6 to 38 worked in various government rest houses as household staff. Despite his longstanding service, the appellant's position in the seniority list has allegedly been undermined, particularly when, in 2016, the private respondents were absorbed into the seniority list ahead of him. Subsequent promotions in 2017 and 2019 further marginalized the appellant, as he was consistently placed below the household staff due to administrative bifurcations and adjustments in the seniority rankings. The issuance of the final seniority list on 26.05.2021, which favored the private respondents and facilitated their promotions, prompted the appellant to file this service appeal.

FILED
BY
SANGH
ARMOURED
CORPORATION
PESHAWAR

09/11/21

5. Final list annexed by the appellant himself with the appeal as "Annexure-D" is on 18.05.2017 in which too, his seniority position was according to the claim of the appellant, relegated. Not challenging of the seniority list issued before the impugned seniority list is acquiescence on the part of

appellant which amounts to acceptance of the seniority position in the earlier (unchallenged) seniority lists.

6. In view of the above, instant service appeal is dismissed with costs. Consign.

7. Pronounced in open Court at Peshawar and given under our hands and seal of the Tribunal on this 4th day of October, 2024.

(Rashida Bano)
Member (J)

(Kalim Arshad Khan)
Chairman

Shah*

Filed to be true copy
EX-1074-118
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar
21-10-24

Khyber Pakhtunkhwa Service Tribunal, Peshawar

Application No.	222	Date	04-10-24
Name of Applicant	Hidayat		
Number of Words/ Pages	3-p		
Copying Fee	15/-		
Urgent/Ordinary			
Total	15/-		
Name & Sign of Clerk	200/hrs		
Date of Completion of	16-10-24		
Date of Delivery of	21-10-24		

2003 S C M R 333

[Supreme Court of Pakistan]

Present: Sh. Riaz Ahmed, C.J., Mian Muhammad Ajmal and Muhammad Nawaz Abbasi, JJ

DIN MUHAMMAD --- Appellant

Versus

DIRECTOR-GENERAL, PAKISTAN POST OFFICE, ISLAMABAD and 20
others---Respondents

Civil Appeal No. 1169 of 2001, decided on 8th May, 2002.

(On appeal from the judgment/order dated 22-9-2000 of the Federal Service Tribunal, Islamabad, passed in Appeal No. 1519 (R) of 1999).

(a) Civil Servants (Seniority) Rules, 1993---

---R. 4---Civil Servants Act (LXXI of 1973), S.8---Constitution of Pakistan (1973), Art.212(3)---Leave to appeal was granted by the Supreme Court to consider as to whether civil servant transferred from his original post without his option was entitled to seniority in the Department, where he was originally inducted and not in the Department where he was transferred without his consent/option.

(b) Civil Servants (Seniority) Rules, 1993---

---8. 4---Civil Servants Act (LXXI of 1973), S.8---Service Tribunals Act (LXX of 1973), S.4---Constitution of Pakistan (1973) Art.212(3)---Seniority on appointment by transfer---Civil servant was appointed in Railway Mail Service, from where he was transferred to Postmaster General's Office as Upper Division Clerk---Civil servant on 4-8-1978 joined transferee Department, where he was permanently absorbed on 1-1-1985---Civil servant on being shown junior to other respondents in seniority list of UDCs of transferee Department filed departmental appeal, which remained undecided within prescribed period, thus, he filed appeal before Service Tribunal, but same was dismissed---Validity---Persons appointed through transfer were to be assigned seniority in accordance with the provisions of Civil Servants Act, 1973 read with rules framed thereunder---Right of civil servant, who was initially sent to transferee Department on deputation and subsequently was permanently absorbed, would be governed in the matter of seniority under Civil Servants (Seniority) Rules, 1993---Seniority of civil servant in transferee Department would be reckoned from date of his transfer on 4-8-1978 and not from date of issue of order of absorption---Civil servant upon permanent absorption in transferee Department would become regular employee of such Department with effect from the date of initial induction as envisaged under R.4 of Civil Servants (Seniority) Rules, 1993 and not from any subsequent date---Service Tribunal had not considered the case in the light of rules relating to determination of seniority of civil servant in such circumstances---Supreme Court accepted the appeal and set aside judgment of Service Tribunal.

(c) Service Tribunals Act (LXX of 1973)-----

....S. 4---Civil Servants (Seniority) Rules, 1993, R.4---Civil Servants Act (LXXXI of 1973), S.8---Appeal before Service Tribunal only against subsequent seniority list---Maintainability---Civil servant after dismissal of his departmental appeal filed against seniority list issued in year 1987 did not further agitate the matter---Civil servant also being aggrieved with seniority list issued in year 1999, filed departmental appeal and thereafter filed appeal before, Service Tribunal---Objection of Department was that as seniority list published - in 1987 remained unchallenged, appeal preferred against subsequent seniority list was not maintainable---Such objection would be of no consequence as on publication of subsequent seniority list in year 1999, there would be a fresh cause of action in favour of civil servant---Appeal before Service Tribunal was maintainable.

Abdul Rashid Awan, Advocate Supreme Court and M.A. Zaidi, Advocate-on-Record for Appellant.

Sardar M. Asalm, Deputy Attorney-General and Mehr Khan Malik, advocate-on-Record for Respondents.

Date of hearing: 8th May, 2002.

JUDGMENT

MUHAMMAD NAWAZ ABBASI, J.—This appeal by way of leave of the Court is directed against the judgment dated 21-9-2000 passed by Federal Service Tribunal, Islamabad, in a service appeal involving dispute of seniority.

Leave was granted by this Court vide order dated 3-5-2001 as under:—

"Learned counsel submits that the petitioner had been transferred from his original post without his option and, therefore, he was entitled to seniority in the department where he was originally inducted and not in the department where he was transferred without his consent/option."

The appellant, was appointed as Sorter in Railway Mail Service, Rawalpindi on 14-7-1969 and later he was transferred as Upper Division Clerk (B-7) to the office of Post Master General, Northern Circle, Rawalpindi, vide order dated 2-8-1978 against 25 % reserved quota. The appellant joined in the above said office on 4-8-1978 and on 1-1-1985 he was permanently absorbed in the office of Post Master General, Northern Circle, Rawalpindi. In the seniority list of UDCs issued by the Office of Post Master General, Northern Circle, Rawalpindi on 13-5-1987, the appellant was placed at S.No.49 and respondents Nos.4 to 21 were shown senior to him in the said seniority list. The appellant being aggrieved of his position as junior to the private respondents, preferred a departmental appeal /representation and on dismissal of said appeal, he did not further agitate the matter. The department published another seniority list of UDCs of the Office of Post Master General, Northern Circle, Rawalpindi on 5-4-1999 in which the appellant was again junior to the private respondents, therefore, he filed a departmental appeal but same was not disposed of within the prescribed period, therefore, he approached the Federal Service Tribunal through a service appeal which was dismissed vide impugned judgment with the following observations:

"It is to observe that the notification issued by the Government of Pakistan,

10/23/2024, 2:22 PM

Ministry of Communications (Pakistan Post Offices), dated 25-3-77 regarding seniority to be counted from the date the incumbents were appointed/promoted on regular basis to the post of Clerks (B-7) in the Post Offices/Railway Mail Service/Return Letter Offices. This amendment was made effective from 1-3-1972 i.e. the date from which the grade and scale of pay of Time Scale Clerks have been equated with that of the Upper Division Clerks but this notification was recalled/withdrawn by the said Ministry of Communications by order 7th August, 1985 with effect from the date of its issuance and now its legal implication turns out and boils to the fact that no such notification was issued. Now presently the Civil Servants (Seniority) Rules, 1993, hold the field.

Pursuant to the aforesaid discussion, the relief sought for cannot be extended and granted to the appellant due to involvement of legal technicalities at the appropriate stage when the appellant for unknown reasons worked under the, newly-created office of the Postmaster General, Northern Circle, Rawalpindi, without prior settlement of his legal right. There is an Arabic maxim that meaning thereby that for every ailment there is a cure but, in the instant case, we have not been able to find a cure to the ailment of the appellant having not been properly assisted by both the learned counsel specially the counsel for the appellant and as such the judgment cannot be made in vacuum and darkness; resultantly this appeal fails and is hereby dismissed. We also have not been able to treat the appellant as deputationist for which there are fixed terms and conditions which conditions are not available. However, parties are, allowed to bear their own costs.

Learned counsel for the appellant has contended that the fresh seniority list published in the year 1999 would give fresh cause of action to the appellant to challenge the wrong position of seniority assigned to him in the said seniority list and that the seniority list issued in 1987 would deem to be a tentative in nature, therefore, non-filing of appeal before the Service Tribunal against dismissal of departmental appeal/representation preferred against seniority list of 1987 would not debar him from challenging the subsequent seniority list. The learned counsel with reference to rule 4 of Civil Servants (Seniority) Rules, 1993 contended that seniority of the appellant would be reckoned from the date of his regular appointment, notwithstanding his absorption as UDC in the Office of Post Master General Northern Circle, Rawalpindi on 1-1-1985 and in any case under the above referred rule, the appellant would be deemed to be absorbed permanently from the date of his transfer on 4-8-1978. The learned Deputy Attorney General appearing for the official respondents, has argued that the appellant having not challenged dismissal of departmental appeal filed by him against the seniority list published in 1987 was estopped from challenging the C subsequent seniority list published on the basis of said seniority list and thus the appeal preferred by him before the Tribunal was not maintainable. The learned Deputy Attorney-General, however, has not been able to show us any rule under which the seniority of the appellant would be counted from the date of absorption i.e. 1-1-1985 and not from the initial induction in service through transfer on 4-8-1978.

Rule 4 of Civil Servants (Seniority) Rules, 1993, provides as under:-

"4. Seniority on appointment by transfer.---Seniority in a service, cadre or

post to which a civil servant is appointed, by transfer shall take effect from the date of regular appointment to the service cadre or post:

Provided that--

- (a) persons belonging to the same service, cadre or post selected for appointment by transfer to a service cadre or post in one batch shall, on their appointment, take inter se seniority in the order of their date of regular appointment in their previous service, cadre or post; and
- (b) persons belonging to different services, cadre or posts selected for appointment by transfer in one batch shall take their inter se seniority in the order of the date of their regular appointment to the post which they were holding before such appointment and, where such date is the same, the person older in age shall rank senior."

The above-quoted rule explicitly mentions that the persons appointed through transfer were to be assigned seniority in accordance with the provisions of Civil Servants Act, 1973 read with the rules framed hereunder and, therefore, the right of the appellant who initially was sent to the department on deputation and subsequently was permanently absorbed would be governed in the matter of seniority under the *ibid* rules. We having carefully considered the contention raised by the learned Deputy Attorney-General find that crucial date for determination of the seniority of appellant would be the date of permanent absorption of appellant in the Office of Post Master General, Northern Circle, Rawalpindi and thus the seniority of the appellant in the transferee department would be reckoned from the date of his transfer and not from the date of issue of order of absorption. The appellant being on deputation was retained as permanent employee of the Office of Post Master General, Northern Circle, Rawalpindi and he has been performing his functions to the entire satisfaction of his superiors, therefore, upon permanent absorption in the Office of Post Master General, Northern circle, Rawalpindi, obviously he would become regular employee in the said department with effect from the date of initial induction as envisaged under rule 4 of *ibid* rules and not from any subsequent date. We find that the service Tribunal has not considered the case of appellant in the light of the rule relating to the determination of seniority of civil servant in such circumstances.

For the foregoing reasons, we hold that the seniority of appellant would be reckoned from the date of his induction as UDC in the Office of Post Master General, Northern Circle, Rawalpindi through transfer on 4-8-1978. The objection relating to maintainability of appeal raised by the learned Deputy Attorney-General on the ground that the seniority list published in 1987 remained unchallenged would be of no consequence as on publication of subsequent seniority list in the year 1999, there would be a fresh cause of action in favour of appellant, therefore, the appeal before the tribunal was maintainable. We accordingly, allow this appeal, set aside the judgment of Federal Service Tribunal. However, there will be no order as to costs.

S.A.K./D-28/S
allowed.

Appeal

40

VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Review NO: _____ OF 2024

Humayun Zia Khanzad

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Fezla depph & others

(RESPONDENT)
(DEFENDANT)

I/We Humayun Zia Khanzad

Do hereby appoint and constitute **Noor Mohammad Khattak Advocate Supreme Court** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/202


CLIENT

ACCEPTED

NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT
(BC-10-0853)
(15401-0705985-5)

UMAR FAROOQ MOHMAND

WALEED ADNAN

KHANZAD GUL

&

MUJEEB UR REHMAN
ADVOCATES

OFFICE:

Flat No. (TF) 291-292 3rd Floor,
Deans Trade Centre, Peshawar Cantt.
(0311-9314232)