


FORM OF ORDER SHEET

Court of _____

Review Petition No. 1381/2024

No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	15/11/2024	<p>The Review Petition in 12(2) CPC petition no. 1071/2024(A-3936/2020) submitted today by Mr. Noor Muhammad Khattak Advocate. It is fixed for hearing before Division Bench at Peshawar on 20.11.2024. 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:- 1381 /2024
IN
CM 12(2) PETITION No:- 1071/2024
IN
SERVICE APPEAL No:- 3936/2020

HUMAYUN ZIA KHANZADA V/S THE GOVT: OF KP & others


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Dated: 15-11-2024


PETITIONER

THROUGH:


NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR.

REVIEW PETITION No:- 138 /2024

IN

CM 12(2) PETITION No:- 1071/2024

IN

SERVICE APPEAL No:- 3936/2020

Humayun Zia Khanzada (BPS-04)
Daftari, Finance Department
Civil Secretariat, Peshawar.PETITIONER

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Establishment Civil Secretariat, Peshawar.
2. The Secretary to Governor, Governor House Khyber Pakhtunkhwa, Peshawar.
3. Special Secretary Establishment Government of Khyber Pakhtunkhwa, Peshawar.
4. Section Officer to Military Secretary to Governor, Governor House Khyber Pakhtunkhwa, Peshawar.
5. Secretary Administration, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
6. Arshad Khan S/o Toor Muhammad, Naib Qasid Governor House Khyber Pakhtunkhwa, Peshawar R/o Fatu Abdur Rahima, District Peshawar.(SA No.3936/2020)
7. Mr. Sagheer Ali Naib Qasid Governor's House (SA No. 3935/2020)
8. Mr. Maqball Khan s/o Rasool Khan (SA No.3937/2020)
9. Mr. Muhammad Imran s/o Muhammad Rafiq Khan (SA No.3938/2020)
10. Mr. Ashfaq s/o Abdul Sattar Khan(SA No.3939/2020)
11. Mr. Ayaz s/o Tamaz Khan (SA No.3940/2020)

..... RESPONDENTS

REVIEW PETITION UNDER SECTION 114 READ WITH ORDER XLVII RULE 1 OF THE CODE OF CIVIL PROCEDURE CODE, 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 IN 12(2) PETITION WHEREBY THE PETITION OF THE PRESENT APPELLANT WAS DISMISSED WITH COSTS.

Respectfully Sheweth:

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

1. That the above titled 12(2) CPC petition in Service Appeal No. 3936/2020 was pending adjudication in this Honorable Tribunal which was dismissed, Relevant provision of the judgment is reproduced below:-

"4. We have perused the judgment vide which the appeals were accepted with the direction to department to determine seniority of the appellants like employees of other houses and include their names in the seniority list of Class-IV employees.

*5. The above sentence in the judgment has not affected anybody as the above judgment, especially the paragraph has not granted the appellants of the said appeal any seniority, rather the department was directed to determine seniority which has to be determined in accordance with law and rules, therefore we see no force in this petition which dismissed with costs. Consign." Copy of memo of 12(2) petition & Judgment dated 4/10/2024 are attached as annexure.....**A&B.***

2. It is pertinent to mention here that earlier Service Appeal No 3936/2020 titled "Arshad Khan...Versus...Govt" alongwith 05 clubbed cases were pending adjudication before this Honourable Tribunal, which was accepted vide judgment dated 18/07/2024 with the directions to the respondents to determine seniority of the household staff. Relevant provision of the judgment is reproduced below:-

9. "Respondents were directed several times to produce rules and on previous date Mr. Muhammad Shakeel, Deputy Secretary Administration present on the previous date i.e on 09-07-2024, who sought time to assist the Tribunal in light of judgment in Service appeal No 149/2015 titled "Ayub Khan...Vs...Chief Secretary" on 27-09-2023. He was directed to produce four copies of Rules of 1970 but today he did not bother to attend this Tribunal what to say about assistance of Tribunal. This attitude of the Deputy Secretary is not of a good civil servant and needs strict action by the authorities. When respondents are not interested to defend and safeguard their interest by providing proper assistance to this Tribunal. Then in such a situation they only way left with us is to accept the

appeal on the ground that appellants should not be discriminated and be treated equally with employees of other governor Houses

10. For what has been discussed above, we accept the instant service appeal as well as connected service appeals with direction to respondents to determine seniority of the appellant like employees of other houses and include their names in seniority list of class-IV employees, cost shall follow the event, consign". Copy of memo service Appeal No.3936/2020 & comments of appellant & judgment dated 18/07/2024 are attached as annexure.....C,D & E.

- 3: That from the perusal of the ibid judgment, it can be presumed that although directions were issued to the respondent for determination of seniority of the appellants, meaning thereby in the hierarchy of house hold staff in the Governor House being a separate entity covered under the Terms & Conditions of Appointment, Confirmation, Discharge and Retirement of the Governor Household Garden and Garage Establishment Rules 1970. "Copy of Rules, 1970 are available at **Annex"B"** page **No. 14 to 20 of the 12(2) petition.**
4. That moreover, the appeal as prayed for was accepted, so in order to rectify the judgment as explained above, needs second look, and merits to be reviewed and need modification to the extent of change of wording 'accepted' with the wording 'disposed off' on the grounds inter alia as under:-

Grounds:-

- A) That as a matter of fact, normally in an accepted case, execution petition is filed for implementation. So in order to avoid filing of execution petition for implementation of the accepted service appeal by the appellant it will be expedient and in the interest of justice if the wordings 'accepted' be replaced with the wordings "disposed off". By doing so there will be no harm to any person.

- B) That it is pertinent to mention here that there is a conflict of interest between the employees of Civil Secretariat and Household Staff of Governor House, so there needs separate seniority list of the Household Staff to be maintained in the hierarchy of household staff.
- C) That it will be in the best interest of justice that In case the impugned order & judgment is modified to the extent of replacement of the words "accepted" with the words "disposed off" so that the end of justice could be made.
- D) That unless and until the order/judgment dated 04/10/2024 is not reviewed and modified, the purpose of law would be defeated and serious miscarriage of justice would be caused to the petitioner.
- E) That valuable rights of the petitioner are attached to the petition in question.
- F) that there is no bar if the above said judgment is reviewed and modified rather there is a clear provision of law as envisaged in Section 7(1) of the KP Service Tribunal Act 1974 and Rule 27 of the KP Service Tribunal Rules, 1974.
- G) 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 04/10/2024 of this Honourable Tribunal may kindly be reviewed/recalled in the light of above submissions in the larger interest of justice and wordings "accepted" be replaced with the wordings "disposed of"

Dated: 14-11-2024

THROUGH:


PETITIONER

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.


Advocate

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR.

REVIEW PETITION No:- _____/2024

IN

CM 12(2) PETITION No:- 1071/2024

IN

SERVICE APPEAL No:- 3936/2020

HUMAYUN ZIA KHANZADA V/S THE GOVT: OF KP & others

AFFIDAVIT

I, Mr. Humayun Zia Khanzada (BPS-04) Daftari, Finance Department Civil Secretariat, Peshawar, do hereby solemnly affirm on oath that the contents of the above review petition are true and correct to the best of my knowledge and believe and nothing has been concealed from this Honorable Tribunal.


DEPONENT

(6)

(A)

Amner - "A"

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

C.M. 12 (2) CPC PETITION No. _____/2024

IN

SERVICE APPEAL NO 3936/2020

Humayun Zia Khanzada (BPS-04)

Daftari, Finance Department

Civil Secretariat, Peshawar.PETITIONER

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Establishment Civil Secretariat, Peshawar.
2. The Secretary to Governor, Governor House Khyber Pakhtunkhwa, Peshawar.
3. Special Secretary Establishment Government of Khyber Pakhtunkhwa, Peshawar.
4. Section Officer to Military Secretary to Governor, Governor House Khyber Pakhtunkhwa, Peshawar.
5. Secretary Administration, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
6. Arshad Khan S/o Toor Muhammad, Naib Qasid Governor House Khyber Pakhtunkhwa, Peshawar R/o Fatu Abdur Rahima, District Peshawar.(SA No.3936/2020)
7. Mr. Sagheer Ali Naib Qasid Governor's House (SA No. 3935/2020)
8. Mr. Maqbali Khan s/o Rasool Khan (SA No.3937/2020)
9. Mr. Muhammad Imran s/o Muhammad Rafiq Khan (SA No.3938/2020)
10. Mr. Ashfaq s/o Abdul Sattar Khan(SA No.3939/2020)
11. Mr. Ayaz s/o Tamaz Khan (SA No.3940/2020)

..... RESPONDENTS

PETITION UNDER 12(2) OF C.P.C FOR SETTING ASIDE ORDER & JUDGMENT DATED 18/07/2024 PASSED BY THIS HONOURABLE TRIBUNAL IN SERVICE APPEAL NO 3936/2020 ALONGWITH CONNECTED SERVICE APPEALS NO 3935/2020, 3937/2020, 3938/2020, 3939/2020 & 3940/2020 ON THE BASIS OF FRAUD AND MISREPRESENTATION VIDE WHICH THE APPEAL OF THE PRIVATE RESPONDENT(S) ALONGWITH THE CLUBBED APPEALS WERE ACCEPTED MERELY AND MAINLY FOR NON-SUBMISSION OF RULES CALLED TERMS & CONDITIONS OF

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APPOINTMENT, CONFIRMATION, DISCHARGE AND RETIREMENT OF THE GOVERNOR HOUSEHOLD GARDEN AND GARAGE ESTABLISHMENT RULES 1970 BY THE OFFICIAL RESPONDENTS ON HEARING DATE.

R/SHEWETH:
ON FACTS:

- 1) That the private respondent received a judgment dated 18/07/2024 in his favour and has misrepresented the present petitioner and has also committed fraud with the present petitioner. Copy of judgment dated 18/7/2024 is attached as annexure.....A
- 2) That the official respondents have time and again negated the stance of household staff and has defended the cases against these staff vigorously with the plea that the household staff of the Governor's House are not regulated under Appointment, Promotion & Transfer Rules, 1989 rather it is dealt with under the Terms & Conditions of appointment, Confirmation, Discharge and Retirement of the Governor Household Garden and Garage Establishment, hereinafter the Household Staff Rules, 1970 which is still in the filed/operative. Copy of Household Staff Rules dated 30/03/1970 are attached as annexure.....B
- 3) That as evident from Para 9 of the aforesaid judgment dated 18/07/2024, due to failure on the part of official respondent on hearing date for non-submission of a document "Terms & Conditions of appointment, Confirmation, Discharge and Retirement of the Governor Household Garden and Garage Establishment Rules 1970", the appeal of the private respondent was accepted. Relevant portion of judgment is reproduced below:
"Respondents were directed several times to produce rules and on previous date Mr. Muhammad Shakeel, Deputy Secretary Administration present on the previous date i.e on 09-07-2024, who sought time to assist the Tribunal in light of judgment in Service appeal No 149/2015 titled "Ayub Khan...Vs...Chief Secretary" on 27-09-2023. He was directed to produce four copies of Rules of 1970 but today he did not bother to attend this Tribunal what to say about assistance of Tribunal. This attitude of the Deputy Secretary is not of a good civil servant and needs strict action by the authorities. When respondents are not interested to defend

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and safeguard their interest by providing proper assistance to this Tribunal. Then in such a situation the only way left with us is to accept the appeal on the ground that appellants should not be discriminated and be treated equally with employees of other Governor Houses".

- 4) That a service appeal bearing No 7302/21 titled Humayun Zia Khanzada is pending adjudication in this Honourable Tribunal which is fixed for 20/09/2024 and there is a conflict of interest in these service appeals as such these appeals need to have been clubbed in order to arrive at a common conclusion.
- 5) That it is pertinent to mention here that the present private respondent despite having knowledge of pendency of Service Appeal No 7302/21 filed by the petitioner, did not ever dare to bring the material facts before this Honourable Tribunal with malafide intention to get gain.
- 6) That the impugned Judgment dated 18/07/2024 passed in Service Appeal No. 3936/2020 along with other 05 appeals is based on misrepresentation on the part of the private respondent, hence the petitioner is left with no other remedy but to file the instant petition u/s 12(2) CPC on the following grounds amongst the others.

GROUND:-

- A) That the impugned Judgment dated 18/07/2024 is obtained by the private respondent on the basis of misrepresentation and collusion by the respondents hence, liable to be set aside.
- B) That the private respondents i.e. household staff of Governor's house is a separate entity which cannot be treated like the regular employees of the Civil Secretariat as the authorities have never bothered to endorse the appointment orders to Administration department.
- C) That certain employees household staff of Governor's House have been appointed on contract/temporary basis even for a month or so section 8 of civil servant Act 1973 and rule-17 of Appointment, Promotion & Transfer Rules 1989.

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- D) That the staff appointed by the Governor's House is neither termed as regular employees of the Secretariat nor can be placed on the seniority list meant for the regular employees of the Secretariat. With context to a precedent, it was also questioned as to how the name of an employee of Governor's House who was not regular employee of Secretariat was included in the seniority list of meant for regular employees of the Secretariat. Copy of letter of Establishment department dated 04/04/2020 is enclosed as annexure.....C
- E) That with reference to Service Appeal No 3936 to 3940/2020 being annoyed from the induction of house hold staff & other staff from attached department, Administration Department has initiated a fact-finding inquiry to dig out the responsible officers. Copy of minutes of meeting dated 12/07/2024 is attached as annexure.....D
- F) That moreover, even in a decided case of an employee of Governor's House, the Secretary Establishment vide its verdict dated 24/01/2024 has categorically added that by inclusion of the official in the seniority list of Civil Secretariat the rights of more than 300 employees will be infringed, beside a floodgate of ~~offending~~ and unnecessary litigations for the provincial government will be opened. Copy of order dated 24/01/2024 is enclosed as annexure.....E
- G) That private respondents malafidely did not brought the material available on record regarding actual position.
- H) That impugned judgment is violative of article 4 & 10-A of the Constitution of Pakistan, 1973.
- I) That in case of implementation of the impugned judgment dated 18/07/2024 in favour of private respondent, then the petitioner will suffer irreparable loss in terms of seniority and promotion.
- J) That the petitioner of the instant application/petition seek permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that on acceptance of this 12 (2) petition the impugned Judgment dated 18/07/2024 passed by this Honorable Tribunal in

(10) (5)
Service Appeal No. 3936/2020 may very kindly be set aside and the case may kindly be decided on real and factual facts/documents and other materials available on record to meet the ends of justice.

Any other remedy which this august Court deems fit that may also be awarded in favor of the petitioner.

Dated: 19-09-2024

THROUGH:

PETITIONER

NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT

UMAR FAROOQ MOHMAND

WALEED ADNAN

KHANZAD GUL
ADVOCATES HIGH COURT

CERTIFICATE:

No such like application is pending or filed between the parties on the subject matter before this Honorable Tribunal.

Advocate

AFFIDAVIT

I, Humayun Zia Khanzada (BPS-04) Daftari, Finance Department Civil Secretariat, Peshawar, do hereby solemnly affirm and declare on oath that the contents of this **application under section 12(2) CPC** are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble tribunal.

DEPONENT

(11)

Annex - "B"

Petition U/S 12(2) CPC, 1908 in Service Appeal No.3936/2020 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 petitioner 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. Petitioner's case in brief, as per averments of appeal, is that on 18.07.2024 this Tribunal in Service Appeal No.3936/2020 passed a consolidated judgment, allowing the appeals of the appellants; that the said judgment has been claimed by the petitioner that the appellants of those appeals have fraudulently obtained the judgment dated 18.07.2024, therefore, he has approached this Tribunal through the instant 12(2) petition.

3. The only ground agitated, in this petition, by the petitioner, is to get the judgment of this Tribunal, dated 18.07.2024, set aside, is that the petitioner was not made party in the Appeal No.3936/2020 & others, decided on 18.07.2024.


4. We have perused the judgment vide which the appeals were accepted with the direction to department to determine seniority of the appellants like employees of other Houses and include their names in the seniority list of Class-IV employees.

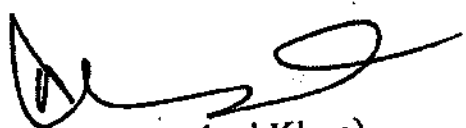
5. The above sentence in the judgment has not affected anybody as the above judgment, especially the paragraph has not granted the appellants of the said appeal any seniority, rather the department was directed to

FILE

determine seniority, which has to be determined in accordance with law and rules, therefore, we see no force in this petition which is dismissed with costs. Consign.

6. 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

Mutazem Shah

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Annex "C"

BEFORE THE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR

Service Appeal No. 3936/2020

Arshad Khan S/o Toor Muhammad
Naib Qasid, Governor House, Peshawar, R/o Fatu Abdur
Rahima, District Peshawar. **APPELLANT**

VERSUS

1. Govt. of Khyber Pakhtunkhwa, through Secretary Establishment, Civil Secretariat, Peshawar.
2. Secretary to Governor Khyber Pakhtunkhwa, Governor House, Peshawar.
3. Special Secretary Establishment, Civil Secretariat, Peshawar.
4. Section Officer to Military Secretary to Governor, Governor House, Peshawar. **RESPONDENTS**

SERVICE APPEAL U/S 4 OF THE
KHYBER PAKHTUNKHWA SERVICES
TRIBUNAL ACT, 1974.

PRAYER:

On acceptance of this Service Appeal,
the respondents may please be directed
to include the name of the appellant in
the seniority list from the date of his
appointment and be promoted on his
turn according to the seniority list.

Printed and Published by the Government of Khyber Pakhtunkhwa, Peshawar.

(14)

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Respectfully Sheweth:

1. That appellant is working in Governor House, Khyber Pakhtunkhwa Peshawar, since his appointment.. (COPY OF APPOINTMENT ORDER IS ANNEX "A").
2. That the appellant is a civil servant and as per the Government Policy and Service Structure, the appellant has the right to be promoted/ upgraded with the passage of time of his services.
3. That some of the colleagues of the appellant were promoted, while having the same qualification and service as the appellant had, therefore, the appellant approached the respondents and they regretted that the name of the appellant is not in the seniority list as such he has not been promoted and for that purpose, the establishment department and the Secretary to Governor Khyber Pakhtunkhwa communicated through letters but the matter could not resolve. (COPY OF THE LETTER IS ANNEX "B").
4. That in the meanwhile another seniority list was issued in 2015, through notification No.E&A(AD)04 (17)2015 in which again the name of the appellant was missing. (COPY OF THE NOTIFICATION IS ANNEX "C").

5. That the appellant having no other adequate way/ remedy approached the Peshawar High Court, Peshawar in Writ Petition No.789-P/2016 for the inclusion of his name in the seniority list, but that was dismissed on the ground of jurisdiction/ maintainability. (COPY OF THE ORDER IS ANNEX "D").
6. That in the year 2018, a notification No.E&A(AD)04(17) 2015, dated 26.01.2018 was issued in which the name of petitioner was missing and again another seniority list was prepared through notification No.E&A(AD)04 (17)2019 in the year 2019 for promotion in which the name of the appellant was again not included. (COPY OF NOTIFICATIONS ARE ANNEX "E" & "F").
7. That the appellant aggrieved of the same filed a departmental appeal/ representation, which is still pending disposal after three long months. (COPY OF THE REPRESENTATION IS ANNEX "G").
8. That the employees of the Civil Secretariat, Chief Minister Secretariat and Governor Secretariat has a Joint Seniority List and in the notification No.E&A(AD)04(17)2019 the names of the Class-IV of Chief Minister Secretariat, Civil Secretariat and some of the Governor Secretariat have been included while the appellant's name is not in the list issued on 24.04.2019 (Referred above as annex "F").

Being aggrieved and having no other adequate remedy, the appellant submit the instant Service Appeal in this Honourable Tribunal, on the following grounds, inter alia;

GROUNDS:-

- A. That the appellant is the Government Servant, properly appointed and performing his duties without any stigma as such has the right to be promoted/ upgraded according to the Service Rules/ Regulations and not doing so is violation of basic service rights of the appellant, also illegal, unlawful and beyond jurisdiction.
- B. That other similarly placed employees/ persons working the Governor Secretariat as well as in the Chief Minister Secretariat have been promoted and also the seniority list of the whole Class-IV employees is prepared while the appellant is neither promoted nor his name is in the seniority list, which is against the service laws, void-ab-initio, beyond jurisdiction and fair play.
- C. That not including the name of the appellant in the seniority list means not promoting the appellant at his

turn is based on mala fide intention and ulterior motives and also discriminatory which needs to be corrected by this Hon'ble Tribunal.

D. That the appellant has no stigma in his career and is a qualified person as such has a fundamental right to be treated according to the law and not doing so is unlawful, without lawful authority and jurisdiction which is tantamount to the violation of the lawful rights of the appellant.

It is, therefore most humbly prayed that on acceptance of this Service Appeal, the respondents may please be directed to include the name of the appellant in the seniority list from the date of his appointment as per the rules/policy and be promoted to the next post on his turn in the seniority list from the date of his appointment with cost throughout.

Any other relief, which this Honourable Tribunal deems appropriate, may kindly be awarded to meet the ends of justice.

Appellant
Through

HAZRAT SAID KHAN
HAZRAT SAID KHAN
Advocate Supreme Court

Dated: 16.03.2020

Copy to:

[Handwritten signature]
Secretary
Personnel

Date of Pre. ... 24/7/2020
By ...
Copy ...
To ...
No. ...
By ...
Date ...

SERVICE APPEAL NO: 3936 / 2020

Arshad KhanAppellant

Versus

Govt. of Khyber Pakhtunkhwa & others Respondents

JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENTS 1 & 3

Respectfully Sheweth,

PRELIMINARY OBJECTIONS.

- i. That Appellant has got no cause of action and locus standi.
- ii. That Appeal is not maintainable in the present form.
- iii. That Appeal is not based on facts.
- iv. That Appellant has not come to this Tribunal with clean hands.
- v. That Appeal is bad for mis-joinder and non-joinder of necessary parties.
- vi. That appellant has concealed material facts from this Honorable Tribunal.
- vii. That Appellant is estopped by his own conduct to file the instant Appeal.
- viii. That Appeal is hit by laches.

RESPECTFULLY SUBMITTED:

1. Pertains to record of Governor's House, hence no comments.
2. No comments.
3. Incorrect, hence denied. It is submitted that the appointment of the appellant is not regulated under APT Rules, 1989 (Annex-I) as is also evident from the terms and conditions of the service of the appellant which is reflected in his appointment order (Annex-II). Since the appellant is the household employee of the Governor House, therefore, the name of the appellant cannot be reflected on the seniority list which is solely meant for regular employees borne on the cadre strength of the Administration Department.

It is further added that the House Hold Staff is recruited separately by three different entities or authorities i.e. Administration Department, Governor's House and Chief Minister's House for working in Rest Houses under their respective administrative control. Administration Department has framed and formally notified separate Service Rules for House Hold Employees working under their administrative control (Annex-III). Hence, it is also open for the other two entities viz, the Governor House and the Chief Minister's House to frame similar service structure for their respective employees.
4. Name of the appellant was rightly missing from the seniority list of Secretariat employees borne on cadre strength of Administration Department Issued in 2015 as he was not appointed against the post borne on cadre strength of Administration Department, under the prevailing rules.
5. No comments.
6. Reply as per Para-4 above.

Amir Ali
Aj...
Advocate-on-Record
Supreme Court of Pakistan
Govt. of Khyber Pakhtunkhwa
Peshawar.

Page 1 of 2

7. Incorrect. Departmental Appeal / representation of the appellant was duly processed and regretted by the Competent Authority (Annex-IV).

8. Incorrect; hence denied. In fact, the appellant has tried to gain undue favour from this Hon'ble Tribunal and, therefore, has misled it by quoting the seniority of the employees he has nothing to do with. From appointment order of the appellant it is amply clear that he is an employee of the Governor's House, Peshawar and, moreover, not even a copy of the appointment order of the appellant was endorsed to the Administration Department/ Civil Secretariat by his appointing authority which clearly indicates that he is wholly solely the employee of the Governor's House and not of Administration Department. House Hold Employees of the Governor's House constitute separate cadre/ service borne purely on cadre strength of the said entity hence, legally he cannot share seniority with Civil Servants borne on the cadre strength of Administration Department.

GROUNDS:

- A. Incorrect. Appellant has been treated according to law. No right of appellant whatsoever, has therefore, been violated.
- B. Reply as per Para-3 of facts.
- C. Incorrect. Appellant has no legal right of promotion or seniority against an alien cadre or entity other than his own cadre or sanctioned strength on which he is borne i.e. Governor House.
- D. Subject to proof. No. fundamental right of appellant has been violated. As against this, it is the appellant who actually seeks to violate fundamental/ legal rights of countless employees borne on the cadre strength of Administration Department.

It is therefore, humbly prayed that on acceptance of these comments the instant Appeal being devoid of merit may graciously be turned down / dismissed with cost

RESPONDENT NO. 1

RESPONDENTS NO. 3

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Annex E

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 3936/2020

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MRS. RASHIDA BANO ... MEMBER (J)

Mr. Arshad Khan S/o Toor Muhammad, NalbQasid, Governor House,
Peshawar, R/o FatuAbdurRahima, District Peshawar.

.... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa, through Secretary Establishment, Civil Secretariat, Peshawar.
2. Secretary to Governor, Khyber Pakhtunkhwa, Governor House, Peshawar.
3. Special Secretary Establishment, Civil Secretariat, Peshawar.
4. Section Officer to Military Secretary to Governor, Peshawar.
5. Secretary Administration, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

... (Respondents)

Mr. Hazrat Said Khan
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

Date of Institution.....19.03.2020
Date of Hearing.....18.07.2024
Date of Decslon.....18.07.2024

CONSOLIDATED JUDGMENT

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

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"On acceptance of this service appeal, the respondents may please be directed to include the name of the appellant in the seniority list from the date of his appointment and be promoted on his turn according to the seniority list."

2. Through this single judgment, we intend to disposed of the instant service appeal as well as connected service appeals which are mentioned below, as in all these appeals common questions of law and facts are involved:

1. Service Appeal No. 3935/2020
2. Service Appeal No. 3937/2020
3. Service Appeal No. 3938/2020
4. Service Appeal No. 3939/2020
5. Service Appeal No. 3940/2020

3. Brief facts of the case are that appellants are working in the Governor House, Khyber Pakhtunkhwa Peshawar since their appointment. During service, seniority list of matriculate Class-IV employees was issued vide notification dated 24.07.2015 in which names of the appellant were missing. They file writ petition before the Hon'ble Peshawar High Court, Peshawar bearing No. 789-P/2016 for inclusion their names in the seniority list but was dismissed on the ground of jurisdiction. That in the year 2018-19 impugned seniority lists were issued in which again names of the appellants were missing. Feeling aggrieved, he filed departmental appeal, which was not responded to, hence the present service appeal.

4. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the

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appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

5. We have heard learned counsel for the appellants and learned District Attorney for the respondents.

6. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned District Attorney controverted the same by supporting the impugned order(s).

7. Perusal of record reveals that appellants are working in the Governor House, Peshawar who were appointed in accordance with proviso to Rule 10 of (Appointment, Promotion & Transfer) Rules, 1989. Appellants contended that they are civil servants and their names ought to have been included in the seniority list of the Class-IV employees of the respondent/department. Admittedly there is no separate Service Rules for the employees of the Governor House as is stated by the respondents in their reply. Under Section-5 of the Khyber Pakhtunkhwa, Civil Servants Act, 1973 the Governor is the overall head of the provincial government and all appointments had to be made by the Governor himself or anyone else authorized on his behalf. When Governor is head actual authority and all appointments of civil servants is made by him or on his name by his delegates and that persons are treated civil servant, then equality demands that any one appointed by his military secretary to whom too he delegated powers of appointment be also treated as civil servant. Details of Class-IV employees of Chief Minister House Secretariat promoted as Daftari (BPS-04) on the recommendation of DPC vide order dated 21.05.2018.

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S.No	Name	Designation	Department
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28	Rizwan Ahmad	Naib Qasid	Chief Minister Secretariat
39	Syed Ayaz Hussain Shah	Naib Qasid	-do-
42	Fazle Amin	Naib Qasid	-do-
54	Riaz Khan	Naib Qasid	-do-
71	Sajid Khan	Naib Qasid	-do-
72	Naseemullah	Naib Qasid	-do-
78	Bakht Billoid	Naib Qasid	-do-
81	Arshad Khan	Chowkidar	-do-
87	Roohullah	Naib Qasid	-do-
123	Murad Khan	Naib Qasid	-do-
184	Tanveer Ghulam	Sweeper	-do-
208	Sher Taj	Chowkidar	-do-
230	Saifullah	Farash	-do-
231	Tariq Jani	Mali	-do-
232	Najeeb	Chowkidar	-do-
236	Syed Zafar Ali Jafri	Naib Qasid	-do-
246	Yousaf Ali Shah	Naib Qasid	-do-
247	Gohar Ali	Naib Qasid	-do-

8. Appellants alleged that many employees of Chief Minister House Secretariat are also included in the list and were promoted as Daftari BPS-04 on regular basis vide order dated 21.05.2018. So, from it, it is clearly established that employees working in the Houses were not only included in the seniority list by respondent rather they were promoted too. Appellants being a civil servants also entitled for some treatment like employees of all others Houses, must be given equal and fair chance of career progress, if their name were not included in any seniority list, they will be deprived from legitimate expectation of promotion and will remain as Class-IV for their entire service period which is injustice.

9. Respondents were directed several time to produce rules and on previous date Mr. Muhammad Shakeel, Deputy Secretary Administration was present on the previous date i.e. on 09.07.2024, who sought time to assist the Tribunal in light of Judgment in Service Appeal No.149/2015 titled "Ayub Khan Vs Chief Secretary" on 27.09.2023. He was directed to produce four

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copies of Rules of 1970 but today he did not bother to attend this Tribunal what to say about assistance of Tribunal. This attitude of the Deputy Secretary is not of a good civil servant and needs strict action by the authorities. When respondents are not interested to defend and safeguard their interest by providing proper assistance to this Tribunal. Then in such a situation the only way left with us is to accept the appeal on the ground that appellants should not be discriminated and be treated equally with employees of other Governor Houses.

10. For what has been discussed above, we accept the instant service appeal as well as connected service appeals with direction to respondents to determine seniority of the appellants like employees of other Houses and include their names in seniority list of Class-IV employees. Costs shall follow the event. Consign.

11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 19th day of July, 2024.*


(KALIM ARSHAD KHAN)
Chairman


(RASHIDA BANO)
Member (I)

ORDER

18.07.2024


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1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney alongwith Aimal Khan, Section Officer to Military Secretary and Azmat Shah, Section Officer to Principal Secretary to the Governor Khyber Pakhtunkhwa for the respondents present.

2. Vide our detailed judgment of today placed on file, we accept the instant service appeal as well as connected service appeals with direction to respondents to determine seniority of the appellants like employees of other Houses and include their names in seniority list of Class-IV employees. Costs shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 18th day of July, 2024.*


(KALIM ARSHAD KHAN)
Chairman


(RASHIDA BANO)
Member (J)

*Kalsamulh

VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Review NO: _____ OF 2024

Hunaysh Zia Khanzadi

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Govt

(RESPONDENT)
(DEFENDANT)

I/We Hunaysh Zia Khanzadi
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. 15 / 11 / 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