

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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

Service Appeal No. 1174/2023

Date of Presentation of Appeal.....25.05.2023
Date of Hearing.....08.11.2024
Date of Decision.....08.11.2024

Muhammad Rafiq Assistant Director (BPS-17) Mine & Minerals Department, Khyber Pakhtunkhwa, Peshawar
.....(*Appellant*).

Versus

1. The Government of Khyber Pakhtunkhwa, through Chief Secretary, at Civil Secretariat, Peshawar.
 2. The Secretary Mines & Minerals Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
 3. The Director General, Mines & Minerals Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
 4. The Secretary Finance, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
 5. Mr. Muhammad Farooq, Chief Draftsman, Mines & Minerals Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.....(*Respondents*)
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Present:

Mr. Amanullah Marwat, Advocate.....For the appellants
Mr. Naseer ud Din Shah, Assistant Advocate General...For respondents

JUDGMENT

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

“ON ACCEPTANCE OF THIS APPEAL, THE IMPUGNED SENIORITY LIST DATED 31.05.2022 ALLEGEDLY TREATED AS

FINAL AFTER ISSUANCE OF PROMOTION ORDER DATED 13.12.2022 (ALREADY CHALLENGED BEFORE SERVICE TRIBUNAL IN APPEAL NO. 351/2023) MAY PLEASE BE SET ASIDE AND APPELLANT MAY PLEASE BE PLACED SENIOR TO RESPONDENT NO.5 IN SENIORITY LIST."

02. Brief facts of the case, as per contents of the appeal, the appellant was appointed as "Surveyor (BPS-11)" in the Mines & Minerals department on 15.10.1986, has consistently performed well, leading to promotions to BPS-16 (Survey & Drawing Officer) on 04.12.2013 and BPS-17 (Assistant Director) on 18.05.2022. In contrast, respondent No.5, appointed on 04.02.1991, was promoted to Chief Draftsman (BPS-17). A tentative seniority list issued on 31.05.2022 placed the appellant junior to respondent No.5, which he was informed of on 16.06.2022. The appellant filed a Departmental Appeal on 14.07.2022, but the final seniority list is still pending. On 13.12.2022, respondent No.2 promoted respondent No.5 to Deputy Director (BPS-18) based on the tentative list. The appellant objected to the tentative seniority list on 14.07.2022 and was surprised to find that respondent No.4 was also promoted to Deputy Director based on the same list. This decision is currently being challenged in appeal No.351/2023 before the Service Tribunal. The appellant also filed writ petition No.826/2023 for the final seniority list, which was dismissed on

29.03.2023, due to lack of jurisdiction. Additionally, he requested the final seniority list on 17.02.2023 and complained about the non-provision of necessary documents. Aggrieved by the actions of the official respondents, the appellant has challenged the seniority list dated 31.05.2022 before this Tribunal.

03. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeals by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claims of the appellant.

04. We have heard learned counsel for the appellant and learned Assistant Advocate General for the respondents.

05. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal, while the learned Assistant Advocate General controverted the same by supporting the impugned order(s).

06. The perusal of record reveals that appellant in instant service appeal impugned seniority list, which is tentative seniority list, which cannot be challenged in service appeal, because same was prepared for the purpose of respondent department for information of its employees.

07. It is admitted position on record that appellants filed objections upon tentative seniority list issued on 31.05.2022. The appellant objected to the tentative seniority list on 14.07.2022,



which was not responded till date. Service Appeal in this Tribunal is filed under Section 4 of Khyber Pakhtunkhwa, Service Tribunal Act, 1974 which read as;

“Any civil servant aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him, prefer an appeal of the appeal having jurisdiction in the matter.”

So, for filing of appeal in this Tribunal, final seniority list or appellate order is essential. Seniority list of the civil servants prepared and maintained in accordance with Section-8 of Khyber Pakhtunkhwa, Civil Servant Acts, 1973, Clause (1) of it deals with preparation of seniority list, which is tentative seniority list, and issued only for ascertaining the positions and considering objections, if any raised by person being affected, so that a final list, which has element of reliability, be prepared and circulated. Tentative seniority list except inviting attention for seeking correction does not create any legitimate basis of conferring right or basis for cause of action.

08. It is also held by Supreme Court in PLD 1981, 612 that it is the final seniority list which was required to be challenged in

departmental appeal. Same is reproduced here for, ready reference;

a. Civil Servants Act (LXXI of 1973)

S.22-Service Tribunals Act (LXX of 1973), S.4-Civil Servants (Appeal)- Rules, 1977-Circular Letter of Establishment Division -No. 1/9/74 D.R.O. dated 12-9-1974 [as modified by Circular Letter 1/34/75.D.2 dated 1-9-1975].- Seniority List - Objections - Appeals--- First issue of gradation list provisional and to be finalized after inviting and considering objections-List though not marked as provisional, as required, yet covering letter making such aspect after of list (being provisional) abundantly clear- Respondent filing objection but bringing his claim before Service Tribunal before disposal of his objection and finalization of list-Held: Right of appeal conferred only against a "final order whether original or appellate"-Proviso (a) to sub section (1) of S. 4 of Service Tribunals Act, 1973- Has not slightest effect of detracting from finality of order to be appealed against and provides that even a final order be not brought before Service Tribunal if a right of appeal, review, or representation to a departmental authority provided under law-No final



order having ever been passed on respondent's objection nor seniority list having been finalized, respondent's appeal, held, not competent under S.4 of Service Tribunals Act, 1973.-[Appeal-Civil services].

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

*S.4-Words and phrase-Words "final order"-
Connotation. [Words and phrases]. A final order has*

the distinction of determining the rights of the parties. Where any further step is necessary to

perfect an order, in this case the disposal of the

objections received or finalization of the provisional

seniority list, the order cannot be taken to be final.

An order may be final, if it determines the rights of

the parties, concludes the controversy so far as a

particular authority or forum is concerned

notwithstanding that such an order may be open to

challenge in appeal etc. This aspect of the concept of

the finality of an order has been taken care of by

adding the words "whether original or appellate" in

the enacted law itself. [p. 515]C"

1998 PLC (C.S) 871 (b)

"Appellants' reliance on tentative seniority list was

not warranted, for such list was issued only for

ascertaining respective positions and objections, if any---Tentative seniority list, except inviting attention for seeking correction, would not create any legitimate basis for conferring right or ground for cause action---Service Tribunal having dilated upon main aspects of case, conclusions drawn by it in impugned judgment did not suffer from any striking error or legal infirmity."

2005 PLC (C.S) 811 (b)

(b) Police Rules, 1934---

---R.13.1---Punjab Service Tribunals Act (IX of 1974), S.4---Constitution of Pakistan (1973), Arts . 199 & 212 (2)---Constitutional petition---Competence---Tentative seniority list, issuance of---Impugned order being not a final order of the Authority, Constitutional petition was not competent against the same."

2011 PLC (C.S) 203 (d)

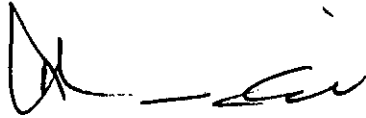
"(d) Service Tribunal Act (LXX of 1973)---

---Seniority list issued by competent authority being subject to objections list and clothed with mantle of "order" within contemplation of S.4 of the Act---In absence of constitutional petition would not be barred by Art.212 of the Constitution---Principles.



09. For what has been discussed above, it is held that appeal filed by the appellant is not competent as there was no final or appellate order available on record. Thus, in view of the above, the appeal in hand is hereby dismissed. Costs shall follow the event. Consign.

10. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 08th day of November, 2024.*



KALIM ARSHAD KHAN
CHAIRMAN



RASHIDA BANO
Member (Judicial)

M.Khan



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1174/2023

Muhamamd Rafiq

Versus

Govt. of Khyber Pakhtunkhwa

S.No. of Order & Date of proceeding	Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary
<p><u>Order-15</u> 8th November, 2024.</p>	<p>Present:</p> <ol style="list-style-type: none">1. Mr. Aman Ullah Marwat, Advocate, for appellant present.2. Mr. Naseer ud Din Shah, Assistant Advocate General, for the respondents present.3. Vide our detailed judgment of today placed on file, it is held that appeal filed by the appellant is not competent, as there was no final or appellate order available on record. Thus, in view of the above, the appeal in hand is hereby dismissed. Costs shall follow the event. Consign.4. <i>Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 8th day of November, 2024.</i> <p> (KALIM ARSHAD KHAN) CHAIRMAN</p> <p> (RASHIDA BANO) MEMBER (J)</p> <p>*M.KHAN*</p>


19th July, 2024




SCANNED
KIST
Peshawar

Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for official respondents present. Mr. Taimur Ali Khan, Advocate for private respondent No. 5 is also present.

Learned counsel for the appellant seeks some time for preparation of brief. Granted. To come up for arguments on 03.10.2024 before the D.B. Parcha Peshi given to the parties.


(Fareeha Paul)
Member (Executive)


(Aurangzeb Khattak)
Member (Judicial)


Naeem Amin


03rd Oct, 2024

Learned counsel for the appellant present. Mr. Said Muhammad, Superintendent alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Rejoinder on behalf of the appellant received through office. Copy of which handed over to learned Deputy District Attorney. Learned counsel for the appellant seeks further time for preparation of brief. Granted. To come up for arguments on 08/11/2024 before the D.B. Parcha Peshi given to the parties.

SCANNED
KIST
Peshawar


(Fareeha Paul)
Member (Executive)


(Aurangzeb Khattak)
Member (Judicial)

Naeem Amin

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.1174/2023

Date of presentation of Appeal 25.05.2023
Date of hearing 08.11.2024
Date of Decision 08.11.2024

Muhammad Rafiq Assistant Director (BPS-17) Mine & Minerals Department, Khyber Pakhtunkhwa, Peshawar. ... (Appellant)

Versus

1. The Government of Khyber Pakhtunkhwa, through Chief Secretary, at Civil Secretariat, Peshawar.
2. The Secretary Mines & Minerals Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Director General, Mines & Minerals Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
4. The Secretary Finance, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
5. Mr. Muhammad Farooq, Chief Draftsman, Mines & Minerals Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar

... (Respondents)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST THE IMPUGNED SENIORITY LIST DATED 31.05.2022 ALLEGEDLY TREATED AS FINAL AFTER ISSUANCE OF PROMOTION ORDER DATED 13.12.2022 (ALREADY CHALLENGED BEFORE SERVICE TRIBUNAL IN APPEAL NO. 351/2023) MAY PLEASE BE SET ASIDE AND APPELLANT MAY PLEASE BE PLACED SENIOR TO RESPONDENT NO.5 IN SENIORITY LIST.”

PRESENT

1. Mr. Aman Ullah Marwat, Advocate for the appellant
2. Mr. Naseer ud Din Shah, Assistant Advocate General for the respondents.

Appellants	Amount	Respondent	Amount
1. Stamp for memorandum of appeal	Rs. Nil	1. Stamp for memorandum of appeal	Rs. Nil
2. Stamp for power	Rs. Nil	2. Stamp for power	Rs. Nil
3. Pleader's fee	Rs. Nil	4. Pleader's fee	Rs. Nil
4. Security Fee	Rs.100/-	4. Security Fee	Rs. Nil
5. Process Fee	Rs. Nil	5. Process Fee	Rs. Nil
6. Costs	Rs. Nil	6. Costs	Rs. Nil
Total	Rs. 100	Total	Rs. Nil

Note: Counsel Fee is not allowed as the required certificate has not been furnished.

Given under our hands and the seal of this Court, this 8th day of November. 2024.


(KALAM ARSHAD KHAN)
CHAIRMAN


(RASHIDA BANO)
Member (J)