

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
(SUBORDINATE JUDICIARY SERVICE TRIBUNAL)
JUDICIAL DEPARTMENT

Service Appeal No.06-P of 2021

Kalim Arshad Khan

Vs.

**Peshawar High Court, Peshawar through
Registrar and others**

Date of hearing	<u>18.12.2021</u>
Appellant(s) by:	M/s. Hamid Ali Shah, Advocate and Barrister Syed Mudassir Ameer.
Respondent(s) by:	Mr. Khalid Rehman, AAG alongwith Syed Shakir Hussain Shah, Litigation Assistant, Peshawar High Court, Peshawar.
Respondents by: (No.4, 9 and 10)	In person.

JUDGMENT

IJAZ ANWAR, J. This appeal has been filed under Section 5 of the Khyber Pakhtunkhwa Subordinate Judiciary Service Tribunal Act, 1991 against the letter bearing No.3784/Admn dated 13.03.2021 issued by the Registrar, Peshawar High Court, Peshawar, whereby, appellant was conveyed the decision of the Hon'ble Administration Committee regretting his application/departmental appeal for fixation of seniority amongst his batch-mates.

2. In essence, initially appellant was appointed against the post of Additional District & Sessions Judge vide Notification dated 22.02.2005, pursuant to the judgment of

the Hon'ble Peshawar High Court and now serving as District & Sessions Judge, however, is claiming seniority with effect from the date of Notification dated 19.09.2001 when his other colleagues/batch-mates were appointed in the same selection process, with all back benefits.

3. In view of the averments made in the instant appeal, comments were called from the respondents who furnished the same accordingly.

4. Learned counsel for the appellant argued that appellant was deprived of his appointment as Additional District & Sessions Judge with his batch-mates who were appointed vide Notification No.92-J dated 19.09.2001 and as such, on his appointment dated 22.02.2005 issued pursuant to the judgment of the Division Bench of the Hon'ble Peshawar High Court in W.P. No.1412-P/2001 dated 09.04.2004, he is entitled to be allowed seniority with his colleagues. He further contended that in terms of Section 8(3) of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (hereinafter to be referred as "the Act") read with Rule 10(a) of the Khyber Pakhtunkhwa Judicial Service Rules, 2001 (hereinafter to be referred as "the Rules"), the appellant having been appointed in a same selection process; as such, his seniority is to be determined in accordance with the order of merit, assigned by the Selection Committee. He further contended that though, his Service Appeal bearing No.14 of 2010 was dismissed by

this Tribunal vide judgment dated 08.12.2012 on the ground of limitation, however, in view of the judgment dated 19.12.2015, the matter of his seniority was reopened, because, this Tribunal has already struck down the seniority list dated 14.11.2009 in Service Appeal No.02 of 2009 etc which was maintained by the apex Court in Civil Appeals No.1171 to 1192 of 2013 dated 11.05.2015. It would be pertinent to note that the present appellant was also aggrieved of the said seniority list. He further argued that the recent rejection of his departmental appeal by the Hon'ble Administration Committee is a result of certain misconception and wrong opinion and as such, the order is liable to be set-aside. He next contended that since the issue of seniority of the appellant remained undecided throughout; as such, the principle of *res-judicata* is inapplicable to his case. He placed reliance on the cases titled “National Institutional Facilitation Technologies (Pvt) Limited Vs. The Federal Board of Revenue through Chairman and others (PLD 2020 Islamabad 378), Ibrar Hussain Vs. Collector Customs and others (1997 PLC(CS) 885), Adalat Khan Vs. Mst. Begum Bibi through Legal Heirs and another (1991 SCMR 1381), Shah Behram Vs. Akbar Khan and another (PLD 1992 Peshawar 18), Quetta Development Authority Vs. Abdul Basit (2021 SCMR 1313), Jamal Ali Vs. Engineer-in-Chief, GHQ, Rawalpindi (1998 SCMR 2472), Hameed Akhtar Niazi Vs. Secretary, Establishment Division, Government of Pakistan (1996 SCMR 1185), Government of Punjab through

Secretary Education, Civil Secretariat, Lahore and others Vs. Sameena Parveen (2009 SCMR 1), Rasool Khan Vs. Federation of Pakistan through Secretary, Ministry of Information and Technology (2021 PLC (CS) 14) and unreported judgment dated 16.10.2017 passed by the Division Bench of the Hon'ble Peshawar High Court in Writ Petition No.227-M/2014"

5. On the other hand, the learned AAG, representing the respondent-PHC, assisted by the added respondents in person, contended that appellant has not questioned the seniority list circulated in the year, 2004 and 2007; as such, his objection to the seniority list 'as it stood on 14.11.2009' was hopelessly time barred and was rightly dismissed by this Tribunal on 08.12.2012 and as such, this appeal is not maintainable. It was further contended that neither in the earlier writ petition questioning his non-appointment nor in the order of the Division Bench of the Hon'ble Peshawar High Court, any order pertaining to his seniority was passed, because, merely an order for his adjustment was issued; as such, his present prayer is not legally tenable. It was further argued that reference of the appellant to the order of the apex Court dated 11.05.2015 is of no help to him, because the appeal was conditionally withdrawn and as such, the matter has become past and closed matter. It was further contended that initial representation of the appellant to the seniority list was hopelessly barred by time, besides, under the law, seniority

cannot be conferred from a retrospective date to the appointment. It was contended that seniority is to take effect from the date of regular appointment while all the added respondents were appointed/promoted much before the appointment of the appellant and as such, appeal in hand is liable to be dismissed. In support of such contentions, reliance is placed on the cases titled “Sarosh Haider Vs. Muhammad Javed Chundrigar and others (PLD 2014 SC 338), Wazir Khan Vs. Government of NWFP through Secretary Irrigation, Peshawar and others (2002 SCMR 889), Fida Muhammad Sanai Vs. Chairman, Federal Service Tribunal, Islamabad and others (PLD 1996 SC 845) and Muhammad Tufail Mir and others Vs. Secretary Electricity Department, Azad Government of the State of Jammu and Kashmir and others (2017 PLC(CS) 1457)”.

6. Arguments heard and record perused.

7. During the course of hearing on 16.10.2021, the learned AAG has pointed out that the Judicial Officers, against whom the appellant is claiming seniority, have not been arrayed as respondents in the instant case and as such, on the directions of this Tribunal, appellant submitted amended memo of addresses of the parties and as well impleadment application containing the names of about 38 District & Sessions Judges, they were accordingly impleaded. The added respondents were served and out of which respondents No.5, 12, 15, 20, 21, 23, 26, 31, 32, 37 and 40 have submitted their cognovit, whereas, respondents No.4, 6

to 10, 22 and 28 intended to contest the appeal in hand; while, respondents No.11, 13, 14, 16 to 19, 24, 25, 27, 29, 30, 33 to 36, 38 and 39, despite service, were not in attendance; as such, were placed ex-parte; while respondent No.3 has retired from service; similarly, respondents No.6 to 8 as well as their counsel, despite service, failed to enter appearance.

8. The following questions have arisen out of the arguments of learned counsel for the parties; which require resolution:-

1. Whether the instant Service Appeal is barred by limitation/being past and closed matter?
2. Whether the instant appeal is hit by principle of res-judicata?
3. Whether the appellant can claim seniority with his batch mates when there was no direction of the Hon'ble Peshawar High Court for allowing him seniority and that seniority to be given effect from regular appointment?

1. **Whether the instant Service Appeal is barred by limitation/being past and closed matter?**

9. In order to ascertain the fact about the circulation of seniority list of the Additional District & Sessions Judges 'as it stood on 17.11.2009', we directed the representative namely Syed Shakir Hussain Shah, Litigation Assistant, Peshawar High Court, Peshawar for production of seniority list so circulated, which he produced accordingly. The record, so produced, transpires that the seniority list of the year, 2007 was a provisional seniority list and it remained disputed, because, the record, so produced, contained

numerous objections which remained undecided, while objections regarding circulation of seniority list of the year, 2004 are not applicable to the case in hand, because, by then, appellant was not in service, as he was appointed, pursuant to the judgment of the Hon'ble Peshawar High Court, on 22.02.2005. Thus, merely, because, certain tentative/provisional seniority lists were issued and not questioned before this Tribunal, at the relevant time, are not legally tenable, because, only a final seniority list can be questioned before the Tribunal in terms of Section 5 of the Khyber Pakhtunkhwa Subordinate Judiciary Service Tribunal Act, 1991. Reference can be made to the case titled "*S.H.M Rizvi and 05 others Vs. Maqsood Ahmad and 05 others (PLD 1981 SC 612)*".

10. The record further transpires that the appellant submitted representation for the first time against the seniority list 'as it stood on 14.11.2009' on 14.01.2010. The reason, so advanced for condonation of delay before the Tribunal regarding delay in submission of the departmental appeal, was that at the time when the said seniority list was circulated, he was already granted study leave on 04.11.2009 and he relinquished his charge on 11.11.2009 and that he was never communicated the final seniority list, albeit, this Tribunal vide its judgment dated 08.12.2012 dismissed his Service Appeal. The reason for delay in filing departmental

appeal was duly reflected in the leave granting order of the apex Court in CPLA No.382 of 2013 dated 15.05.2013.

11. It is pertinent to mention here that on the circulation of the seniority list dated 14.11.2009, the seniority of numerous Judicial Officers was disturbed and about 21 Service Appeals were filed before this Tribunal. This Tribunal vide consolidated judgment dated 26.08.2013 in Service Appeal No.02 of 2009 struck down the orders of the Hon'ble Chief Justice dated 13.08.2009 and the subsequent seniority lists so issued. The order of this Tribunal was assailed before the apex Court and it was duly maintained vide order dated 11.05.2015 in Civil Appeals No.1171 to 1192 of 2013 titled "the Registrar, Peshawar High Court, Peshawar Vs. Shafique Ahmad Tanoli and others". It will not be out of place to mention here that in the above judgments, an order of the Hon'ble Chief Justice dated 13.08.2009 was questioned which was the basis of adversely affecting the seniority of the Judicial Officers and this Tribunal and as well the apex Court held that the decision about the terms and conditions of the service of the Judicial Officers could only be made by the Hon'ble High Court and not the Hon'ble Chief Justice alone. Thus, on the decision of the apex Court maintaining the judgment of this Tribunal, the seniority list, so issued, was struck down and the Judicial Officers who have questioned the orders adversely affecting their seniority,

their representations were deemed as pending before the Hon'ble Administration Committee of the Hon'ble Peshawar High Court.

12. Thus, when Civil Appeal No.521 of 2013 filed by the appellant against the judgment of this Tribunal dated 08.12.2012 came up for hearing before the apex Court, there was nothing left for adjudication before the apex Court and that's why, it was conveyed to the apex Court in the same manner. For reference, the order of the apex Court is reproduced as under, because, much has been said about this judgment.

“MIAN SAQIB NISAR, J. Learned counsel for the appellant states that in the light of the judgment passed in Civil Appeals No.1171 to 1192/2013 titled Registrar, Peshawar High Court Versus Shafique Ahmed Tanoli etc dated 11.05.2015, the present appeal is rendered infructuous. However, if any relief has been granted on account of the said judgment, the appellant may apply to the concerned authority for redressal of his grievance. Disposed of accordingly.

*Mian Saqib Nisar, J
Sh. Azmat Saeed, J
Qazi Faez Isa, J”*

13. The order of the apex Court, in no manner, has tied the hands of the appellant from agitating his matter of seniority rather has given new life to the matter of seniority to the appellant. Infact, appellant was allowed to apply the concerned competent authority for the redressal of his grievances, in case, any order regarding seniority is passed in favour of the Judicial Officers, pursuant to the order passed

by the apex Court vide dated 11.05.2015 in Civil Appeals No.1171 to 1192 of 2013. It being relevant at this stage to bring this fact that before the above judgment of the apex Court in the case of appellant, the question of seniority was discussed in the meeting of the Hon'ble Administration Committee held on 07.05.2014 and the Hon'ble Administration Committee decided that seniority of the appellant will be re-fixed in the light of the judgment of the Hon'ble Supreme Court of Pakistan (underline provided for emphasis). Again, when the issue regarding the seniority of the appellant was not decided, he approached this Tribunal in Service Appeal No.06 of 2016, however, during the pendency of that appeal, the case, pertaining to his promotion, came up for hearing before the apex Court on 16.11.2020 and the apex Court disposed of his appeals with the following observations:-

“The only grievance of the appellant is that his case for consideration of his seniority is pending before the Administration Committee of the High Court and requests that observation may be made that such case of the seniority of the appellant may be considered at any early date and decide by the Administrative Committee in accordance with law.

2. The appeals are disposed of accordingly”.

14. In the light of the order of the apex Court, Service Appeal No.06 of 2016 of the appellant was disposed of in the same manner by this Tribunal vide order dated 23.01.2021 and the Hon'ble Administration Committee of the

Hon'ble Peshawar High Court was requested to decide the case of seniority of the appellant in the light of the judgment of the apex Court within a period of two months. This is how, the Hon'ble Administration Committee considered the case of appellant for seniority and it was regretted duly conveyed to him vide the impugned letter dated 13.03.2021. Thus, the above facts clearly suggest that the question of seniority of the appellant never decided nor attained finality at any stage nor it can be termed as 'past and closed matter'. The judgment of this Tribunal dated 08.12.2012 cannot be made a hurdle in the case of the appellant, because, it was duly questioned before the apex Court and when the impugned seniority list was held to be issued without lawful authority, the question of seniority of the appellant was, thus, required to be re-determined.

15. In view of the above, this Tribunal is of the firm view that appeal of the appellant before this Tribunal is within time against the final order/letter dated 13.03.2021. The law on the point is clear that he has either to file Service Appeal after completion of ninety days of filing his departmental appeal or to wait till the final outcome of his departmental appeal. Reference can be made to the cases titled "Syed Firdos Ali Vs. Secretary, Establishment Division, Islamabad and 02 others (1997 SCMR 1160), Muhammad Jan Marwat and another Vs. Nazir Muhammad and 17 others (1997 SCMR 287), Mir Ajab Khan and another Vs. Deputy Postmaster

General, SRP, Dera Ismail Khan and others (2013 SCMR 1053), Anwar Muhammad Vs. General Manager, Pakistan Railways, Lahore and another (1995 SCMR 950) and Muhammad Aslam Javed Vs. Government of Pakistan through Secretary, Establishment Division, Islamabad and others (2002 SCMR 1383)”.

2. Whether the instant appeal is hit by principle of res-judicata?

16. We have noted that the Division Bench of the Hon’ble Peshawar High Court, while hearing Writ petition of the appellant against the denial of his appointment, has allowed the same as prayed for with directions to the Competent Authority to appoint/adjust and accommodate him as Additional District & Sessions Judge on the available seat vide order dated 09.04.2004. Similar is the order of this Tribunal pertaining to the seniority which was decided and dismissed on 08.12.2012 on the ground of limitation, however, we are of the view that at the time of his appointment, it was specifically held by the Division Bench of the Hon’ble Peshawar High Court that he remained on the top of the merit list alongwith his colleagues. Thus, it has not given any findings denying or restraining the appellant from agitating the matter of his seniority. Similar is the case of this Tribunal dated 08.12.2012, as discussed in the above paras, that judgment has never attained finality as it was duly questioned before the apex Court and when once the seniority

list, so questioned, the judgment of this Tribunal no more remained in the field, because, the apex Court in its judgment has again allowed the appellant to re-agitate his grievances of seniority. Thus, the *lis* between the parties has never been finalized nor taken to the logical end rather throughout remained disputed, as such, the principle of *res-judicata*, as argued, is inapplicable to the case in hand.

2. Whether the appellant can claim seniority with his batch mates when there was no direction of the Hon'ble Peshawar High Court for allowing him seniority and that seniority to be given effect from regular appointment?

17. The unfortunate aspect of the case is that despite the fact that appellant secured first position in the written test and as well in the selection process for appointment against the post of Additional District & Sessions Judge, was deprived of his appointment and instead, four Judicial Officers, presently none of them in service, were appointed vide Notification dated 28.08.2001. It is pertinent to mention here that Writ Petition No.1412 of 2001 filed against the denial of his appointment was decided in his favour with the following directions:-

“As a sequel to above discussion, we are constrained to allow the writ petition No.1412/2001 filed by Kaleem Arshad Khan petitioner as prayed for with the direction to the competent authority to appoint/adjust and accommodate the petitioner Kaleem Arshad Khan as Additional District & Sessions Judge on the available seat while the connected Writ Petition No.645/2002

filed by Muhammad Saeed petitioner is hereby dis-allowed”.

18. The memo of Writ Petition, annexed with the reply, depicts that it was one of the prayer of the appellant as “respondents No.1, 2 and 3 be kindly directed to issue appointment order to the petitioner and other candidates in accordance with the merit list duly made and finalized by the Selection Committee”. This fact was duly considered by the Division Bench of the Hon’ble Peshawar High Court in para-22 of its judgment which is reproduced as under:-

“The record reveals that the petitioner secured 119 marks in the written test held on 21.4.2001 while Muhammad Saeed secured 114, Tariq Yousafzai 113, Sardar Muhammad Irshad 111, Jamaluddin 110, Muhammad Zubair 108, Muhammad Muqtada 107, Mah Talaat 107 and Shaiber Khan 105 out of 68 candidates appeared in the written test. Total 20 candidates were qualified including Kaleem Arshad Khan and Muhammad Saeed Khan petitioners for interview. In the comments, respondent No.3 admitted as correct vide Para 8 that the petitioner ranked at top in the test and interview. It is astonishing to note that result of viva/interview is missing and not available on the relevant record”.

19. We have been informed that the judgment of the Hon’ble Peshawar High Court was assailed before the apex Court in CPLA No.1418 of 2004 but was dismissed for non-prosecution on 30.11.2004. Application for its restoration was filed, however, the said application was subsequently withdrawn on 10.02.2005, and thereafter, vide Notification dated 22.02.2005, appellant was appointed against the post of Additional District & Sessions Judge.

20. Thus, from the very order of the Hon'ble Peshawar High Court, it is clear that in the selection process, appellant has topped the overall merit; albeit, for the reasons best known to the Appointing Authority, he was denied appointment, however, the Division Bench of the Hon'ble Peshawar High Court found that the appellant has not been treated in accordance with law and that's why direction was issued for his appointment against any of the existing vacancies. Section 8(3) of "the Act" deals with the matter of seniority and its fixation; similarly, Rule 10 of "the Rules" further elaborates fixation of seniority inter-se, the members of the Judicial Service. Both these provisions, being relevant, are reproduced as under:-

"Khyber Pakhtunkhwa Civil Servants Act, 1973

8. Seniority:

(1).....

(2).....

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

Khyber Pakhtunkhwa Judicial Service Rules, 2001

10. Seniority:-

The seniority inter-se of the members of the service in the various Pay Scales thereof shall be determined by the High Court, subject to the conditions that:

(a) in case of member appointed by initial recruitment, in accordance with the order of merit assigned by the Selection Authority as mentioned in Rule-5;

Provided that persons selected for the service in an earlier selection shall rank senior to the persons selected in a later selection.

(b) in the case of members appointed by promotion, seniority in a post, service or cadre to which a Civil Servant is promoted, shall take effect from the date of regular appointment to that post; Provided that Civil Servants who are selected for promotion to a higher post in one batch shall, on their promotion to

the higher post, retain their enter-se seniority as in the lower post.

Explanation-I If a Jr. Officer in a lower grade is promoted temporarily to a higher grade in the public interest, even though continuing later permanently in the higher grade, it would not adversely affect in the interest his/her senior officer in the fixation of his/her seniority in the higher grade.

Explanation-II If a Jr. Officer in a lower grade is promoted to higher grade by superseding a senior officer and subsequently that officer is also promoted, the officer promoted first shall rank senior to the officer promoted subsequently”.

21. Till date, no effort was made for the determination of seniority of the appellant, because, in the first instance, after exhausting the departmental remedies, his service appeal was dismissed on the ground that his departmental appeal was barred by time against which he filed CPLA, in which, leave was granted and during the pendency of appeal, the matter was again taken up by the Hon'ble Administration Committee of the Hon'ble Peshawar High Court but as pointed above, the Hon'ble Administration Committee in its meeting held on 07.05.2014 deferred fixation of his seniority and decided that seniority of the Officer will be re-fixed in the light of the judgment of the apex Court. It is pertinent to mention here that before the said decision, the Hon'ble Administration Committee of the Hon'ble Peshawar High Court in compliance with the judgment of this Tribunal dated 26.08.2013 while deciding the representations of M/s. Jehanzeb and Shoaib Khan and other Judicial Officers, besides, other decisions, also directed that revise seniority list shall be prepared/recast and uploaded

on the official website of the Peshawar High Court. Similarly, after the decision of the apex Court, the matter of his seniority was referred to the Hon'ble Administration Committee, still the matter of his seniority was not discussed nor decided on merit and again was declined any relief without any plausible and convincing reasons.

22. Section 8 of “the Act” read with Rule 10 of “the Rules” deals with the matter of seniority. Section 8(2) of “the Act” provides that “seniority of a civil servant shall be reckoned in relation to other civil servants belonging to the same service or cadre in the same department or office or not, as may be prescribed”. Similarly, sub-section (3) of Section 8 provides that “seniority on initial appointment to a service, cadre or post shall be determined as may be prescribed”, while Rule 10(a) of “the Rules” prescribes that “in case of members appointed by initial recruitment, in accordance with the order of merit assigned by the Selection Authority as mentioned in Rule-5; provided that persons selected for the service in an earlier selection shall rank senior to the persons selected in a later selection”.

23. Admittedly, the appellant has applied for appointment against the post of Additional District & Sessions Judge and appeared in the same selection process whereby, four Judicial Officers were appointed vide Notification dated 28.08.2001, depriving him of his

appointment, while this process/selection was held by the Division Bench of the Hon'ble Peshawar High Court as violative of his rights and specific direction for his appointment was issued. Meaning thereby that when he was appointed pursuant to the same selection process, as such, for the determination of his seniority in terms of Rule 10(a) of "the Rules", his seniority shall be determined in accordance with the order of merit assigned by the Selection Committee. The mere fact that the appointment orders were issued belatedly will not deprive the appellant of his seniority particularly when the Division Bench of the Hon'ble Peshawar High Court has raised eyebrow on the selection process. Moreover, the respondents appointed/promoted in the later selection, prior to the appointment of the appellant, have no right whatsoever to claim seniority over the appellant.

24. The Hon'ble Supreme Court of Pakistan in the case titled "Wazir Khan Vs. Government of NWFP through Secretary Irrigation, Peshawar and others (2002 SCMR 889)", while dealing with somewhat similar situation, held that "it is well-settled proposition of law that the appointments made as a result of the selection in one combined competitive examination would be deemed to be belonging to the same batch and notwithstanding recommendation made by the Public Service Commission in parts, the seniority intense, the

appointees of the same batch, would be determined in the light of merit assigned to them by the Public Service Commission". Similar view was earlier given by the Provincial Service Tribunal in the case titled "Musa Wazir Vs. NWFP Public Service Commission (1993 PLC(C.S) 1188)", wherein, it is held that "when the selection is made out of one competitive examination, it cannot be bifurcated into two or more. The competitive examination being one, the selection has to be one and it cannot be said that any number of selections can be made out of the same competitive examination. Such a practice cannot stand scrutiny or the test of law applicable to the case".

25. The above propositions of law propounded by the Hon'ble Supreme Court of Pakistan in the light of Section 8 of "the Act" read with Rule 17 of the Khyber Pakhtunkhwa (Appointment, Promotion and Transfer) Rules, 1989 (*pari materia* with Rule 10 of "the Rules") clearly demonstrate that seniority of the civil servants appointed pursuant to a same selection process, is to be determined in the light of the merit assigned by the Selection Committee. In the instant case, the appointment of the appellant was though made on 22.02.2005; albeit, his seniority will be determined alongwith his batch-mates appointed on 19.09.2001. Reference can be made to the cases titled "Fazal Muhammad Vs. Government of NWFP and others (2009 SCMR 82) and Nadir Shah, S.D.O., Minor Canal Cell, Irrigation Sub-Division, Dera Murad Jamali

and 2 others Vs. Secretary, Irrigation and Power Department, Balochistan, Quetta and 7 others (2003 PLC(CS) 961)”.

26. The judgment relied upon by the respondents on the case titled “*Muhammad Tufail Mir and others Vs. Secretary Electricity Department, Azad Government of the State of Jammu and Kashmir and others (2017 PLC(CS) 1457)*” has its own facts and circumstances and in that case, only determination was seniority to take effect from the date of regular appointment and there was no contest regarding the same selection process. Same is the case titled “*Sarosh Haider Vs. Muhammad Javed Chundrigar and others (PLD 2014 SC 338)*”.

In that case, the principle of estoppel was applied and the contest was between two civil servants appointed on the same date and one of a civil servant was declared ‘senior’ on the ground of age which was never challenged for continuously ten years, which is completely distinguishable; being not applicable to the facts of the instant case. While the case titled “*Wazir Khan Vs. Government of NWFP through Secretary Irrigation, Peshawar and others (2002 SCMR 889)*”, relied upon by the respondents, favours the case of the appellant and is also relied upon by this Tribunal in the above paras. Similarly, the case titled “*Chairman, FBR through Member Administration Vs. Muhammad Asfandyar Janjua and other (2019 SCMR 349)*” is also distinguishable, wherein, the principle of estoppel was applied and the determination of seniority was in respect of the civil servants where there was

no question of determination of seniority of the same batch in terms of the merit position assigned by the Selection Committee.

27. For the reasons stated above, this Tribunal finds that the appellant has not been assigned his correct seniority alongwith his batch-mates, thus, the mere fact that he was appointed vide order dated 22.02.2005 would not deprive him of his seniority in terms of Rule 5(c)(ii) read with Rule 10 of “the Rules”. As such, this Tribunal holds that the appellant be assigned seniority with effect from the date, his batch-mates of the same selection process were appointed.

28. This Service Appeal is allowed in the above terms.

Announced
Dt:18.12.2021

Member

Member

Hon'ble Mr. Justice Ijaz Anwar and Hon'ble Mr. Justice Sved Muhammad Attique Shah