

THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Faqir Muhammad Khokhar

Mr. Justice M. Javed Buttar

Mr. Justice Mohammad Qaim Jan Khan

Civil Petition No 316-P of 2007

(On appeal from the judgment dated 28.2.2007 of the NWFP Service Tribunal, Peshawar passed in Appeal No.224 of 1996)

Fazal Muhammad ... Petitioner
Versus
Govt. of NWFP, etc. ... Respondents

For the petitioner: Mr. Siddiq Haider Qureshi, ASC

For the respondents: N. R.

Date of hearing: 25.08.2008

JUDGMENT

Faqir Muhammad Khokhar, J.- The petitioner and the respondent No.3 (Azmatullah) were selected by the Selection Committee and were appointed as Auditor (BPS-11) in Local Fund Audit Department, NWFP. However, respondent No.3 could not assume the charge of the post as sanction of relaxation in age limit was awaited. Therefore, he joined his duties ten days later than the petitioner. Initially the petitioner was shown senior to the respondent No.3 in the seniority lists. However, the seniority dispute was resolved by the departmental authorities in favour of the respondent No.3 who was found senior to the petitioner both in order of merit and age. In the final seniority list as it stood on 31.12.1995, the respondent No.3 was shown at serial No.33 and the petitioner next below him. The petitioner, therefore, filed appeal No.224 of 1996 which was dismissed by the N.W.F.P Service Tribunal. The case was earlier remanded by this Court. The Tribunal, by impugned judgment dated 28.2.2007, dismissed the service appeal of the petitioner. Hence, this petition for leave to appeal.

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Islamabad

2. The learned counsel vehemently argued that the petitioner and respondent No.3 were selected from Zones 1 and 2 respectively. Moreover, the petitioner had joined his duties in the department earlier than the respondent No.3. Therefore, in terms of sub-rule (b) of rule 17 of the NWFP Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, the seniority of both parties was required to be determined with reference to the date of regular appointment to the post and the respondent No.3 could not be declared to be senior to the petitioner by any stretch of imagination.

3. We have heard the learned counsel at length and have also perused the available record. We find that the petitioner as well as the respondent No.3 were selected and appointed in the same batch. Admittedly, the respondent No.3 is older in age than the petitioner. The mere fact that the petitioner assumed the duties earlier would not adversely affect the seniority position of the respondent No.3. In our view, the impugned judgment of the Tribunal is plainly correct to which no exception can be taken. Moreover, no question of public importance is involved as contemplated in Article 212(3) of the Constitution of Islamic Republic of Pakistan so as to warrant interference by this Court.

4. For the foregoing reasons, we do not find any merit in this petition which is dismissed and leave to appeal is refused accordingly.

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