BEFORE THE DEPARTMENTAL PROMOTION COMMITTEE, DISTRICT AND SESSIONS COURTS, SHAHEED BENAZIRABAD

ORDER

In pursuance of the order dated 24.11.2021 whereby draft/proposed Seniority List of Ministerial/Para legal staff was circulated to invite objections, if any, with object of finalizing such list, a meeting of the Departmental Promotion Committee (the Committee) was held on 14.03.2024 at 02.00 p.m. presided by its Chairman, the District and Sessions Judge. It was principally agreed that the draft/proposed Seniority List shall be finalized step by step i.e. Cadre wise. It may be mentioned that the then Honourable District & Sessions Judge, Mr. Iqbal Ahmed Khwaja delegated powers of the Departmental Promotion Committee to Mr. Abdul Wahab Tunio, learned Additional District & Sessions Judge-I and assigned him the task of scrutinizing and deciding the objections and finalizing the seniority list. We have found that he further delegated such authority to Mr. Mashooq Ali Dahiri, learned Senior Civil Judge-II and sought his opinion. Such opinion was given but the matter could not be finalized and no seniority list was published. We are of the opinion that with the transfer of most of learned Judges who were members of the Departmental Promotion Committee, such Committee stood dissolved and had to be reconstituted. Therefore, opinion by learned Senior Civil Judge-II could not be binding on this Committee.

2. In the first instance, list of Stenographers was to be finalized and for that purpose meeting of the Committee was adjourned to 21.03.2024. Objections by Mr. Muhammad Tahir Soomro presently at Serial No.09 of the draft/proposed Seniority List against Uzair Gaznavi, at Serial No.07 and Sarfaraz Dahri at No.08 of draft/proposed Seniority List were taken up. All

of them were heard in detail. During the course of proceedings, it transpired that besides respondents Uzair Ali and Sarfaraz Hussain, seniority of Syed Majid Ali Shah presently at Serial No.06 might also be affected. Therefore, following the principles of safe administration of justice the Committee members found it just and proper to issue notice to Syed Majid Ali Shah.

3. Heard M/s. Tahir Hussain Soomro, Uzair Ali Ghaznavi, Sarfaraz Hussain and Syed Majid Ali Shah and perused the material available on record with the assistance of members of the Committee. It may be noted that objector Muhammad Tahir Soomro has raised objection over the draft/proposed Seniority List mainly on the ground that he along with Uzair Ali and Sarfaraz Dahri was appointed on 18.03.2019 and they joined their duties on 21.03.2019. It is the stance of objector that because he is older in age than both the stenographers named above, his name should be mentioned at Serial No.07 instead of Serial No.09. In support of his objection he had relied upon clause (d) of Section 11 of Sindh Civil Servants (Probation, Confirmation and Seniority) Rules, 1975. In response, Mr. Sarfaraz Dahri presently at Serial No.08 acquiesced and waived his right of defense and expressly submitted that he has no objection over the Seniority List that is to be finalized by Departmental Promotion Committee.

4. On the other hand, Mr. Uzair Ali being respondent in response to the objections submitted, that in view of section 11 of Sindh Judicial Staff Service Rules, 1992, there arises no question of determining seniority of an employee on the basis of age as provided under section 11 of Rules, 1975 ibid. He further submitted that seniority for newly appointed staff is reckoned on the basis of order of merit assigned by the appointing authority.

He lastly submitted that if the Seniority List is revised in accordance with the rules the same shall be beneficial for all the staff in cadre of Stenographers.

5. Though objector Muhammad Tahir Soomro has not specifically challenged seniority of Syed Majid Ali Shah, in order to arrive at a just and proper conclusion i.e. to finalize draft/proposed seniority list, Syed Majid Ali Shah, Stenographer was also called for his submissions. In response to notice given by the Committee he submitted his written arguments. It would be just and proper to discuss and determine the objections and written submissions step by step. As noted above, Mr. Sarfaraz Dahri waived his right of defence and extended no objection. So far as objections against Mr. Uzair Ali on behalf of the objector are concerned, it may be noted that under section 11 of the Rules, 1975 ibid mechanism to determine seniority is provided and for ready reference and understanding the same is reproduced as below: -

> 11. Inter-se-Seniority of civil servants appointed in a batch or on the same date shall be determined-
>
> (a) in the case of persons appointed by initial recruitment, in the order of merit assigned by the selection authority, and if such authority is either not competent to assign such order of merit or has omitted to do so and is unable to overcome the omission for reasons beyond its control, the seniority shall be determined by the appointing authority:
>
> Provided further that a person selected in earlier selection shall rank senior to a person selected in a later selection:
>
> (b) --------
>
> (c)---------
>
> (d) In the case of persons not covered by clauses (a) to (c), on the basis that persons older in age shall rank senior to persons younger in age.

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6. In view of above provision, suffice is to say that when order of merit is available, age of the member is of no consideration in determining the seniority. Even otherwise, under the Rules, 1975, age in consideration of seniority is only to be taken into account where the case of persons/staff is not covered by clause (a) to (c) of section 11 of said Rules. Therefore, we are of considered opinion that the case of objector and respondent is covered under clause (a) of Section 11 of Rules, 1975 read with Rules 1992 ibid. Hence age factor is of no help to the objector. However, there are other aspects that render the draft/proposed seniority list improper, which cannot be ignored and shall be discussed hereinafter.

7. Now taking up the written contentions/arguments of Syed Majid Ali Shah. The Committee does not agree with the arguments advanced by Mr. Shah when he says that no one has raised objection over his seniority, therefore, his name as available in draft/proposed seniority list may not be disturbed. The reason for the disagreement is that where a question of law has surfaced, it has to be resolved under the existing Rules and Law, and it makes no difference whether any person has specifically raised objections or not. In the circumstances highlighted above, the Committee found it in the best interest of justice that in finalization of draft/proposed seniority list, the current seniority of Syed Majid Ali Shah would be called in question and it might be affected. This was the very reason to issue him a notice so that he may advance his stance and defend his position. His second contention is that his current seniority may not be disturbed for the reason that he was appointed as Clerk in this department and on advertisement for post of Stenographer he applied through proper channel and was appointed by way of transfer from his previous cadre of Clerk. The Committee is of the

unanimous opinion that this argument of Mr. Shah too is misconceived for the reasons that he was appointed as Stenographer on the basis of initial appointment and was not transferred as claimed by him.

8. Furthermore, the Committee again does not agree with the argument of Mr. Shah when he says that his current seniority should not be disturbed because in his appointment order dated 18.03.2019 it has been provided that his seniority in the present post will be determined from the date of his joining. It is his stance that he joined his assignment on 19.03.2019, prior to other Stenographers appointed on their initial appointment in the same batch. The answer for the disagreement lies under section 11 of Sindh Civil Servants (Probation, Confirmation, Seniority) Rules 1975 already reproduced and discussed above that when order of merit is available no other consideration could be taken into account. In the present case the Selection Committee vide its order dated 18.03.2019 assigned the following order of merit to the batch in which the objector and the respondents were appointed:-

1. Muhammad Tahir son of Muhammad Moosa Soomro.
2. Mr. Uzair Ali Ghaznavi son of Abdul Latif.
3. Sarfaraz Hussain son of Morial Dhari.
4. Syed Majid Ali son of Amjad Ali Shah.

9. It may be noted that order dated 18.03.2019 is duly signed by the then Honourable District Judge as provided under Section 11 of the Rule 1992 ibid. Crux of the above discussion is that the staff/member in the cadre of Stenographers on their initial appointment were assigned merit order duly signed by the Selection Committee as well as by the then Honourable District Judge. So far as the condition No.2 provided in the appointment order supra

is concerned, the Committee is of unanimous opinion that where the statute has specifically provided a mechanism which is clear and unambiguous the same shall prevail over any other bye-law or sub-rule or as in the present case any condition in the appointment order. Even otherwise, the merit order dated 18.03.2019 is assigned on the applicable rules and on the basis of the examination/result. A perusal of the material available on record reveals that the order of merit dated 18.03.2019 was assigned on the basis of the total score/result of the candidates appeared for the post of Stenographer. For example, Mr. Muhammad Tahir who secured 59 Marks has been placed at Serial No.01, Mr. Uzair Ali with 58 Marks at Serial No.02, Mr. Sarfaraz Hussain having secured 55 Marks at Serial No.03 and in the same way Mr. Majid Ali Shah who obtained 52 Marks has been placed at Serial No.04. Therefore, if the arguments advanced by Mr. Shah with regard to condition No.02 of appointment order is taken into consideration it would be against the principles of natural justice that the person obtaining 52 Marks be given preference in seniority over a person who secured 59 Marks. Therefore, after giving consideration to the arguments advanced by objector and the respondents, material available on record and due consultation by members, the Departmental Promotion Committee is of the unanimous opinion that:-

(i) Appointments of the staff under the cadre of Stenographers including the objector, respondents and Syed Majid Ali shah was made in a single batch under the Sindh Judicial Staff Service Rules 1992 r/w Rules 1975;

(ii) All the appointment orders were also issued under the Sindh Judicial Staff Service Rules 1992 r/w Rules 1975 ibid;

(iii) The selection Committee including the appointing authority had also provided/assigned the order of merits.

Therefore, in presence of order of merit as provided under Section 11 of Sindh Judicial Staff Service Rules, 1992 read with Rules, 1975 the Committee is of the considered opinion that seniority for Cadre of Stenographers including above referred staff should be finalized strictly in view of the order of merit assigned by the Selection Committee including then honorable District and Sessions Judge. Therefore, to conclude the discussion for the Cadre of Stenographers it is held that the merits list/merit order dated 18.03.2019 will prevail hence the finalized seniority list for the cadre of Stenographers shall be as follows:-

Serial. No.06	Mr. Muhammad Tahir
Serial. No.07	Mr. Uzair Ali
Serial. No.08	Mr. Sarfaraz Hussain
Serial. No.09	Mr. Syed Majid Ali Shah

Let a copy of this order be pasted on the Court Notice Board for information. The Chief Ministerial Officer of the Court shall finalize the Seniority List for the Cadre of Stenographer in view of this order and shall paste a copy thereof only to that extent on the Notice Board.

Announced on 18.05.2024.

(Zaffar Hussain Leghari)
4th Additional District & Sessions Judge/Member, S.B.A

(Anwar Ahmed Jalbani)
1st Assistant Sessions Judge/
Member, S.B.A.

(Allah Bachayo Gabol)
District & Sessions Judge/
Chairman D.P.C
Shaheed Benazir Abad

OFFICE OF THE DISTRICT & SESSIONS JUDGE, SHAHEED BENAZIR ABAD.

NO.EB/DPC/SR. LIST/- 3818 OF 2024, Dated: 27.05.2024

In view of order dated 18.05.2024, passed by the Departmental Promotion Committee, District & Sessions Court, Shaheed Benazir Abad, headed by the undersigned being Chairman and two members viz. M/s. Zaffar Hussain Leghari, learned Additional District & Sessions Judge-IV, Shaheed Benazir Abad and Anwar Ahmed, learned Senior Civil Judge/ Assistant Sessions Judge-I, Shaheed Benazir Abad, the seniority list for the Cadre of Stenographer BPS-16 is finalized as under:-

S.1#	Name of Employees	Date of Birth	Date of appointment	Date of Retirement
1	Mr. Tahir Mehmood	23.03.1969	15.05.1993	22.03.2029.
2	Mr. Abdul Rasheed	08.09.1980	13.09.2004	07.09.2040
3	Mr. Shahid Ali **(Transferred from District Sanghar on 13.10.2011)**	03.02.1974.	16-09-1996	02-02-2034
4	Mr. Shahnawaz Channa	12-03-1984	21-12-2013	11-03-2044
5	Mr. Munwar Hussain Wagan	02-01-1995	08-02-2018	01-01-2055
6	Mr. Muhammad Tahir Soomro	05-01-1997	18-03-2019	04-01-2057
7.	Mr. Uzair Ali Ghaznavi	30-01-1997	18-03-2019	29-01-2057
8	Mr. Sarfraz Hussain Dahri	15-10-1997	18-03-2019	14-10-2057
9	Mr. Syed Majid Ali Shah	01-10-1991	18-03-2019	30-09-2051

Bachayo 27/5/2024

(Allah Bachayo Gabol)
District & Sessions Judge,
Shaheed Benazir Abad.

Copy to Notice board.