

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 1198/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	02/08/2022	<p>The appeal of Mr. Mukarram Khan presented today by Syed Nouman Ali Bukhari Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on . Notices be issued to appellant and his counsel for the date fixed.</p> <p style="text-align: right;">By the order of Chairman</p> <p style="text-align: right;">REGISTRAR</p>

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 1198 /2022

Mukaram Khan

V/S

Govt Of KP

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APPELLANT
Mukaram Khan

THROUGH:

(SYED NOMAN ALI BUKAHRI)
ADVOCATE, HIGH COURT

S. Khan &
(SHAHKAR KHAN YOUSAFZAI)
ADVOCATE PESHAWAR

Cell No: 03065109438

OFFICE ADDRESS:

4TH Floor, Room No Fr #8
Bilour Plaza, sadar Bazar
Peshawar.

Date: 01/08/2022

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR. (1)

APPEAL NO. _____/2022

Mr. Mukaram Khan Ex-Section officer (litigation)
Establishment deptt: Presently, Section officer Finance Deptt.

(Appellant)

VERSUS

1. The Provincial Govt: through Chief Secretary KPK, Peshawar.
2. The Chief Secretary Govt of KPK, Peshawar.
3. The Secretary Establishment, KPK, Civil Secretariat Peshawar.

(Respondents)

=====

APPEAL UNDER SEC- 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974, APPEAL AGAINST THE ORDER NOTIFICATION DATED 18/05/2018 WHERE BY THE APPELLANT WAS PROMOTION TO THE POST OF PMS OFFICER (BS-17) WITH IMMEDIATE EFFECT INSTEAD OF THE DATE OF ELIGIBILITY OR OCCURRENCE OF THE VACANCY ETC AND AGAINST NOT DECIDING THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN STATUTORY PERIOD OF 90 DAYS.

PRAYER:

THAT ON ACCEPTANCE OF THIS APPEAL, THE ORDER NOTIFICATION DATED 18/05/2018 MAY KINDLY BE PARTIALLY MODIFIED AND RESPONDENTS MAY BE DIRECTED TO CONSIDER THE APPELLANT FOR ANTI-DATE PROMOTION TO THE POST OF PMS OFFICER (BS-17) WITH EFFECT FROM THE DATE OF ELIGIBILITY I.E 09/12/2016 AND/OR THE DATE OF OCCURRENCE OF VACANCY I.E 01/09/2017 ALONG WITH ALL BACK AND

CONSEQUENTIAL BENEFITS ACCRUING THEREFROM.
ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL
DEEMS FIT AND PROPER THAT MAY ALSO BE GRANTED
IN FAVOUR OF THE APPELLANT.

2

RESPECTFULLY SHEWETH:

FACTS:

1. That, during the course of service the appellant was appointed as Assistant on 21 March 1998 through Khyber Pakhtunkhwa Public Service Commission vide order No. SOS. IV (S&GAD) 2-222/94 dated 28/05/1998 and even since appointment the service record of the appellant has all along been good and unblemished throughout.
2. That as the **PSB meeting hold on 08.11.2017** for promotion to the post of Superintendent thereon. The penal placed before the PSB, also included the appellant. **Copy of the PSB Meeting is attached as annexure-A.**
3. That out of the said 07 vacant posts 04 posts were filed by promotion of Mr. Taj Muhammad, Mr. Abdul Wahab Khalil, Mr. Syed Waqar Hussain, and Mr. Saeed Khan. while the remaining three (3) vacant posts were kept reserved for three (3) incumbents (i.e Mr. Ajmal Khan, Moeen Ud Din & Abdul Awal despite the fact that there was also a fourth one namely Mr. Abid Hussain who was also attendance of the mandatory training as STI alongwith the incumbents mentioned herein before but ironically no post was reserved for him. The posts were reserved for the said 03 incumbents perhaps on the presumption that they were senior to the appellant who was not despite having eligibility for promotion ever since completion of mandatory training on 09.12.2016. In other words secondary issue of senior was given preference over the **primary issue of Promotion** notwithstanding the fact that the issue lying before the PSB was promotion not seniority. **Copy of promotion order is attached as annexure-B**
4. That with a view to filling the aforementioned three reserved vacancies alongwith a fourth one falling vacant on 20.12.2017, the second **PSB meeting was held on 28.12.2017**. In the said meeting the three incumbents (Mr. Ajmal Khan, Moeen ud Din & Abdul Awal) alongwith the fourth one (Mr. Abid Hussain) were cleared for promotion. Notwithstanding the fact that the degree (s) acquired by the three incumbents (i.e Mr. Ajmal Kha, Moeen ud Din & Abdul Awal)

way after the lapse of 07 year grace period (2007 to 2014) were not formally verified. Copy of the promotion order is attached as annexure-C. 3

5. That fitness for promotion in respect of Mr. Abid Hussain, who after having been removed from service on 04.01.2016 in the wake of corruption case followed by this reinstatement on 10.08.2017, sequel to Service tribunal's, judgment was determined in absence of latest performance Report (PER) on the period between his reinstatement into service i.e 10/08/2017 and PSB meeting on 28/12/2017 hardly comes to four and half months. This period is insufficient even for earning a part let alone a full PER. The reason For making hurry in this case is beyond comprehension and something indicative malafide.
6. That the appellant was promoted vide order dated 18/05/2018 to the post of PMS but with immediate effect not from the date of occurrence of vacancy, therefore the appellant filed Departmental appeal but respondents was failed to taking any action on the departmental appeal of the appellant within statutory period of 90 days. Copy of the departmental appeal is attached as Annexure-D.
7. That now the appellant comes to this august Tribunal on the following grounds amongst the others.

GROUND:

- A) That order dated 18.05.2018 and not taking action on the departmental appeal of the appellant within statutory period of 90 days is against the law, fact, norm of justice and material on record.
- B) That the promotion and the seniority are two different phenomena governed under different provision of law i.e Section 9 and 8 of the civil servant Act 1973 and Rules-7 and 17 of the (Appointment, Promotion and Transfer) Rules 1989 read with Promotion Policy 2009.
- C) That the appellant alongwith other civil servant was considered for promotion to the post of PMS (BS-17) and was duly cleared by the PSB during the course of preparation of Minutes and consequent process of finalization of the recommendation of PSB the result decisions of the PSB were practically changed for reason unknown to the them dealing hands and this practice ultimately ended up in

reservation of certain posts for those Civil Servants who were still in the process of receiving 09 weeks mandatory training in STI and were ineligible for promotion. 4

- D) That the whole process of Promotion was deliberately dragged on to extend the undue benefit of promotion to those employees who had just obtained BS degrees way along after the grace period of 07 years (i.e 2007 to 2014) provided by the PMS Rules and who remained ineligible due to non attendance of nine weeks mandatory training course despite the fact that the posts for promotion (7 in number) had fallen vacant two to three months before the PSB meeting. The detail are vacant posts are available in departmental appeal.
- E) That from perusal from the vacancy position, it is Crystal that the vacancy at S.No. 5 had inter alia fallan vacant on 01.09.2017 and the process of promotion of deliberately dragged on and on to provide an undue opportunity to the non-eligible candidates to become duly eligible for promotion despite the fact that the appellant had already attend 09 weeks Advance Mandatory Training w.e.f 10.10.2016 to 09.12.2016 and was awaiting promotion for the last one year.
- F) That the appellant was not promoted not with doing the fact that the post (s) had fallen vacant much before the eligibility of the blue eyed person. Ironically, certain junior of the wrongly promotion persons name Mr. Abdul Shakoor, Mr. Anwar Akbar & Inayat Ullah Superintendent were promoted 04 months before promotion of the blue eyed (i.e on 31th May, 2017 copy enclosed as Annex-IV) but no such posts were reserved for the blue eyed officials then and there. This clearly shows doubled standard and malafide in the part of the then dealing hands associated with the process of promotion. So much so that the otherwise quick promotion drive initiated by the then Chief Secretary, Mr. Azeem Khan was slowed down by issuing fresh future schedule for PSB meetings due to internal pressures. Further it is added that according to superior court judgment the post cannot be reserved for any incumbent for any reason, so the deptt violated the superior court judgment. So, The reservation of posts for ineligible incumbents at the cost of eligible ones is , a travesty of justice and is thus a blatant violation of law/Rules on the subject. Section 9 (1) of the Civil Servant Act 1973 states a Civil Servant possessing such minimum qualification as may be prescribed shall be eligible for promotion to a higher post for time being reserved under Rule for Departmental promotion in service or cadre to which he belongs" while in the instant case the said Civil Servant had not

successfully completed their mandatory training thus they were ineligible for promotion and their consideration by the PSB and reservations of post for them was not covered under the law.

- G) That the non reservations of post for the fourth incumbents i.e Mr. Abid Hussain on the said PSB meeting and the ensuring benefits of promotion to the next incumbents falling in the line of promotion clearly exposes non observance of law and malafide intent.
- H) That after the end of 07 years grace period (2007 to 2014) provided by the PMS Rules for acquiring degree(s) by the willing incumbents to get promoted to the post(s) of PMS Officers there is no formal policy in the field governing obtainability of such degree(s) and subsequent issuing relating to or arising out of Promotion Seniority etc. viz-a-viz other incumbents already holding the requires degrees. The dictate of common sense is that it is they who should be made to suffer for their failures. The act of obtaining degrees on the part of the blue eyed for the take of promotion at the verge of retirement should not be allowed to damage legitimate interests of the Appellant.
- I) That three Superintendent namely Mr. Abdul Shakoor, Anwar Akbar Khan, and Inayat Ullah who also had received mandatory training with the appellant, have also been promoted in the PSB meeting(s) held earlier to the impugned one notwithstanding the fact that they all were junior to the wrongly promoted incumbents. But no posts were reserved for the holder of impugned promotion in that PSB meeting (s) despite of their being seniors to the incumbents mentioned hereinbefore. This clearly points at a pick and-non-choose approach.
- J) That the appellant was promoted to the post of PMS Officer (BS-17) on 18.05.2018 with immediate effect not withstanding the fact that according to the judgment of Superior Court (cited as 1985 SCMR 1158, 2010 PLC C.S 760 and the service Tribunal Judgment in appeal No. 1564/2010 a civil servant should be promoted on regular basis from the dates become eligible if vacancies are available in his quota of promotion.
- K) That the appellant was eligible for promotion w.e.f 09/12/2016 alongwith his erstwhile colleagues and that the 5th vacancy occurred on 01.09.2017 due to retirement of Muhammad Tayyeb, but the appellant was not promoted w.e.f 17.11.2017 rather he was promoted 06 months later i.e 18.05.2018, one and half year after eligibility.

- 6
- L) That the department delayed the case of promotion of the appellant without any reason. The vacancies of PMS (BS-17) were laying vacant which is evident from the PSB Minutes. the appellant also file applications from time to time for promotion but quite astonishingly matter was delayed and the appellant was promoted as PMS (BS-17) vide order dated 18/05/2018 with immediate effect not from the date vacancies was available in his quota and appellant was eligible, which is against the superior court judgments and its really damage the seniority of the appellant.
- M) That Valuable rights of the appellant have been affected by not granting him, his due promotion from the date of his actual entitlement.
- N) That the appellant was ignored and deprived from the date when the eligible and entitle for promotion and in illegal manner. Which is such action is part of respondent department is not sustainable in eyes of law.
- O) That according to Superior Court Judgment reported as *1997 SCMR 515* in which it is held that delay in making promotion had entirely due to reason that officer of that department not carry out fairly simple exercise with reasonable period so the appellant is entitled to the promotion from back date.
- P) That it is well settled principle of justice that no one should be suffered from the arbitrary acts of public functionaries and the public functionaries are required to act in accordance with rules and law with fair means. But in case of appellant such principle has been violated.
- Q) That the Supreme Court held in many cases that though the Civil Servant could not claim promotion as matter of right but it was incumbent upon the department/Authority. That when they grant promotion, then in that case the promotion should be granted from the due date of Civil Servant / Availability of post. Thus the appellant is entitled to antedated promotion.
- R) That the appellant was deprived from his legal right by giving promotion to him from immediate effect, not from the date vacancies were available his quota which also suffered appellant's seniority.

S) That the appellant seeks permission to advance other grounds and proofs at the time hearing.

It is, therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.

7

Mukaram Khan
APPELLANT
Mukaram Khan

THROUGH:

Syed Noman Ali Bukhari
(SYED NOMAN ALI BUKAHRI)
ADVOCATE, HIGH COURT

S. Khan &
(SHAHKAR KHAN YOUSAFZAI)
ADVOCATE PESHAWAR

BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

APPEAL NO. _____/2022

9

Mukaram Khan

V/S

Govt Of KP

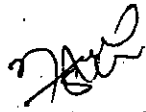
CERTIFICATE:

It is certified that no other service appeal earlier has been filed between the present parties in this Tribunal, except the present one.


DEPONENT

LIT OF BOOKS:

1. Constitution of the Islamic Republic of Pakistan, 1973.
2. The ESTA CODE.
3. Any other case law as per need.


(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT

BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

APPEAL NO. _____/2022

9

Mukaram Khan

V/S

Govt Of KP

AFFIDAVIT

I, Mukaram Khan, (Appellant) do hereby affirm that the contents of this service appeal are true and correct, and nothing has been concealed from this honorable Tribunal.


DEPONENT



(10)

Annex-I A


**GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT**

No. SO (PSB) ED/1-1/2018/KC-268
Dated Peshawar, the 02.02.2018

To
The Section Officer (HRD-II)
Government of Khyber Pakhtunkhwa,
Establishment Department

Subject: - **REQUEST FOR PROVISION OF COPY OF THE MINUTES OF PSB
MEETINGS HELD ON 08.11.2017 AND 28.12.2017 UNDER RTI
ACT, 2013**

I am directed to refer to your office letter, No. SO (HRD-II)/ED/1-10/2014 (RTI)/ Wazir Zada dated 29.01.2018 on the subject and to forward herewith attested copies of the minutes of PSB meetings held on 08.11.2017 and 28.12.2017 regarding promotion of Superintendent to PMS BS-17 as desired.


(DAULAT KHAN)
SECTION OFFICER (PSB)

ESTABLISHMENT DEPARTMENT
(Meeting of PSB held on 08.11.2017)

SUBJECT: **PROMOTION OF SUPERINTENDENTS BS-17 TO THE POST OF PMS BS-17.**

Secretary Establishment apprised the Board that 84 posts of PMS BS-17 are falling to the share of promotion of Superintendents where 77 officials are already working. Hence seven (07) posts are lying vacant.

2. According to service rules, PMS BS-17 post is required to be filled as under:-

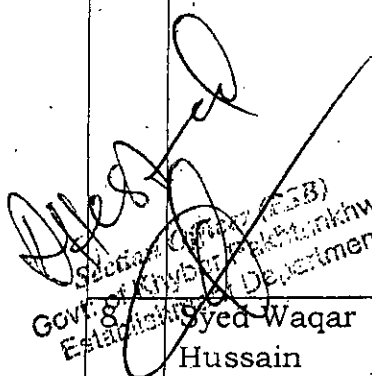
“Twelve per cent on the basis of Seniority cum-fitness, from amongst Superintendents, who are graduate having three years service as Superintendent or Assistant and have under-gone training course of nine (9) weeks at the Pakistan Provincial Services Academy or Staff Training Institute.

3. The service record of the officers included in the panel was discussed as follows:-

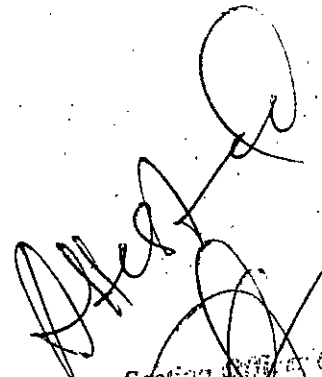
S. NO	NAME OF OFFICER	RECOMMENDATIONS OF THE BOARD
1.	Mr. Ajmal Khan BA	His date of birth is 09.09.1960. He joined government service on 09.09.1982. He was promoted as Superintendent BS-17 on 23.06.2014. He has not undergone nine weeks training mandatory for promotion. No enquiry is pending against him. His PERs for the year 2015 and 2016 are not available. The Board recommended to defer his promotion.
2.	Mr. Shakeel Ahmad M.Sc	His date of birth is 10.05.1963. He joined government service on 09.04.1992. He was promoted as Superintendent BS-17 on 28.05.2013. The Board in its meeting held on 07.10.2015, 18.02.2016, 29.06.2016, 27.07.2016, 30.01.2017 and 19.05.2017 did not consider his promotion as he was on EOL from 09.06.2014 to 16.09.2017. Now his PERs for the year 2013 and 2014 (P) are not available. The Board recommended to defer his promotion.
3.	Mr. Moin Ud Din BA	His date of birth is 27.10.1963. He joined government service on 07.12.1981. He was promoted as Superintendent BS-17 on 28.05.2013. The Board in its meeting held on 19.05.2017 recommended to defer his promotion as he had not undergone

Section Officer (PSB)
Govt. of Khyber Pakhtunkhwa
Establishment Department

		<p>nine weeks training mandatory for promotion and his PERs for the year 2012 to 2016 were also not available. Position is still the same.</p> <p>The Board recommended to defer his promotion.</p>
4.	Mr. Abdul Awal B.A	<p>His date of birth is 10.02.1965. He joined government service on 20.08.1985. He was promoted as Superintendent BS-17 on 28.05.2013. The Board in its meeting held on 19.05.2017 recommended to defer his promotion as he had not undergone nine weeks training mandatory for promotion. Position is still the same.</p> <p>The Board recommended to defer his promotion.</p>
5.	Mr. Amin Jan M.A	<p>His date of birth is 24.05.1964. He joined government service on 09.07.1987. He was promoted as Superintendent BS-17 on 12.02.2014. The Board in its meeting held on 30.01.2017 and 19.05.2017 recommended to defer his promotion as he had not undergone nine weeks training mandatory for promotion and also opted not to be promoted. Position is still the same.</p> <p>The Board recommended to defer his promotion</p>
6.	Mr. Taj Muhmmad BA	<p>His date of birth is 08.03.1967. He joined government service on 06.07.1987. He was promoted as Superintendent BS-17 on 28.05.2013. He has undergone nine weeks training mandatory for promotion. No enquiry is pending against him. His service record upto 2016 is generally good</p> <p>The Board recommended the officer for promotion to the post of PMS BS-17 on regular basis. He will be on probation for a period of one year.</p>
7.	Mr. Abdul Wahab Khalil M.A	<p>His date of birth is 04.04.1973. He joined government service on 05.03.1998. He was promoted as Superintendent BS-17 on 28.05.2013. He has undergone nine weeks training mandatory for promotion. No enquiry is pending against him. His service record upto 2016 is generally good.</p> <p>The Board recommended the officer for promotion to the post of PMS BS-17 on regular basis. He will be on probation for a period of one year.</p>
	Syed Waqar Hussain M.Sc	<p>His date of birth is 11.02.1970. He joined government service on 21.03.1998. He was promoted as Superintendent BS-17 on 28.05.2013. He has undergone nine weeks training mandatory</p>


 Section Officer (S.O.)
 Govt. of Punjab (P.S.B.)
 Establishment Department
 Lahore

		<p>for promotion. No enquiry is pending against him. His service record upto 2016 is generally good</p> <p>The Board recommended the officer for promotion to the post of PMS BS-17 on regular basis. He will be on probation for a period of one year.</p>
9.	Mr. Saeed Ahmad Khan M.A, LLB	<p>His date of birth is 12.01.1972. He joined government service on 01.08.1991. He was promoted as Superintendent BS-17 on 28.05.2013. He has undergone nine weeks training mandatory for promotion. No enquiry is pending against him. His service record upto 2016 is generally good</p> <p>The Board recommended the officer for promotion to the post of PMS BS-17 on regular basis. He will be on probation for a period of one year.</p>


Section Officer (PSB)
Govt. of Punjab, Pakistan
Establishment Department



**GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT**

Amra II

*B
14*

Dated Peshawar, 11th November, 2017

NOTIFICATION

NO. SOE-II(ED)3(45)/2017 (Supd): The Provincial Government on recommendations of the Provincial Selection Board in its meeting held on 08.11.2017 is pleased to promote the following Superintendents (BS-17) and Personal Assistants (BS-16) to the post of Provincial Management Service (PMS BS-17) on regular basis with immediate effect.

2. Consequent upon their promotion to PMS BS-17, they are allowed to remain posted on their existing posts in the departments mentioned against each.

S.No.	Name of Candidates	Present Position
1.	Mr. Taj Muhammad	Section Officer (Budget) Administration Department
2.	Mr. Abdul Wahab Khalil	Section Officer (Chief Ministers Secretariat)
3.	Syed Waqar Hussain	Section Officer (Audit) Department
4.	Mr. Saeed Ahmad Khan	Section Officer (Finance) Department
5.	Mr. Noor Rehman	Section Officer (Chief Ministers Secretariat)

The officers on promotion shall remain on probation for one year, extendable for another year in terms of Section 2(20) of the Provincial Civil Services Act, 1973, read with Rule 5(1) of the Khyber Pakhtunkhwa Civil Services (Appointment, Promotion & Transfer) Rules, 1989.

CHIEF SECRETARY
ESTABLISHMENT DEPARTMENT

ENDS: NO. & DATE EVEN

Copy is forwarded to:
 1. Principal Secretary (Chief Minister), Khyber Pakhtunkhwa
 2. Secretaries to Govt. of Khyber Pakhtunkhwa Administration, Finance and Supply Department
 3. Accountant General, Khyber Pakhtunkhwa
 4. Joint Secretaries (Chief Ministers Secretariat) and
 5. Joint Secretaries (Audit) Department
 6. Joint Secretaries (Finance) Department
 7. Joint Secretaries (Establishment) Department
 8. Joint Secretaries (Chief Ministers Secretariat) Department
 9. Joint Secretaries (Establishment) Department
 10. Chief Secretary



**GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT**

Dated Peshawar, 11th November, 2017

NOTIFICATION

NO. SOE-II(ED)3(45)/2017 (Supd): The Provincial Government on recommendations of the Provincial Selection Board in its meeting held on 08.11.2017 is pleased to promote the following Superintendents (BS-17) and Personal Assistants (BS-16) to the post of Provincial Management Service (PMS BS-17) on regular basis with immediate effect.

2. Consequent upon their promotion to PMS BS-17, they are allowed to remain posted on their existing posts in the departments mentioned against each.

ESTABLISHMENT DEPARTMENT
(Meeting of PSB held on 28.12.2017)

SUBJECT: PROMOTION OF SUPERINTENDENTS BS-17 TO THE POST OF PMS BS-17.

Secretary Establishment apprised the Board that 84 posts of PMS BS-17 are falling to the share of promotion of Superintendents where 80 officials are already working. Hence four (04) posts are lying vacant.

2. According to service rules, PMS BS-17 post is required to be filled as under:-

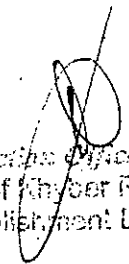
"Twelve per cent on the basis of Seniority cum-fitness, from amongst Superintendents, who are graduate having three years service as Superintendent or Assistant and have under-gone training course of nine (9) weeks at the Pakistan Provincial Services Academy or Staff Training Institute.

3. The service record of the officers included in the panel was discussed as follows: -

S. NO	NAME OF OFFICER	RECOMMENDATIONS OF THE BOARD
1.	Mr. Ajmal Khan BA	His date of birth is 09.09.1960. He joined government service on 24.04.1982. He was promoted as Superintendent BS-17 on 23.06.2014. The Board in its meeting held on 08.11.2017 recommended to defer his promotion as he had not undergone training. Now he has undergone nine weeks training mandatory for promotion. No enquiry is pending against him. His service record upto 2016 is generally good The Board recommended the officer for promotion to the post of PMS BS-17 on regular basis. He will be on probation for a period of one year.
2.	Mr. Moin Ud Din BA	His date of birth is 27.10.1963. He joined government service on 07.12.1981. He was promoted as Superintendent BS-17 on 28.05.2013. The Board in its meeting 19.05.2017 recommended to defer his promotion as he had not undergone training. Now he has undergone nine weeks training mandatory for promotion and produced his missing PERs. No enquiry is pending against him. His service record upto 2016 is generally good The Board recommended the officer for promotion to the post

Section Officer (PSE)
Govt. of Khyber Pakhtunkhwa
Establishment Department

3.	Mr. Abdul Awal B.A.	<p>of PMS BS-17 on regular basis. He will be on probation for a period of one year.</p> <p>His date of birth is 10.02.1965. He joined government service on 20.08.1985. He was promoted as Superintendent BS-17 on 28.05.2013. The Board in its meeting 19.05.2017 recommended to defer his promotion as he had not undergone training. Now he has undergone nine weeks training mandatory for promotion. No enquiry is pending against him. His service record upto 2016 is generally good</p> <p>The Board recommended the officer for promotion to the post of PMS BS-17 on regular basis. He will be on probation for a period of one year.</p>
4.	Mr. Amin Jan M.A	<p>His date of birth is 24.05.1964. He joined government service on 09.07.1987. He was promoted as Superintendent BS-17 on 12.02.2014. The Board in its meeting held on 30.01.2017 and 19.05.2017 recommended to defer his promotion as he had not undergone nine weeks training mandatory for promotion and also opted not to be promoted. Position is still the same.</p> <p>The Board recommended to defer his promotion</p>
5.	Mr. Abid Hussain B.A	<p>His date of birth is 07.07.1987. He joined government service on 07.07.1987. He was promoted as Superintendent BS-17 on 28.05.2013. He has undergone nine weeks training mandatory for promotion. No enquiry is pending against him. His service record upto 2016 is generally good</p> <p>The Board recommended the officer for promotion to the post of PMS BS-17 on regular basis. He will be on probation for a period of one year.</p>


 Section Officer (PSE)
 Govt. of Jharkhand
 Establishment Department



GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Annex - IV

D
(17)

Dated Peshawar, May 31, 2017

NOTIFICATION

NO.SO(E-II)ED/2(192)/2017. Government of Khyber Pakhtunkhwa on the recommendations of the Provincial Selection Board is pleased to promote the following Superintendent (BS-17)/Personal Assistant (BS-16) to Provincial Management Service (PMS) BS-17, on regular basis with immediate effect:-

S. #.	NAMES OF OFFICERS
1.	Mr. Noor Wazir Superintendent
2.	Mr. Abdul Shakoor Superintendent
3.	Mr. Anwar Akbar Superintendent
4.	Mr. Inayat Ullah Superintendent
5.	Mr. Mujahid Khan Personal Assistant

2. The officers on promotion will remain on probation for a period of one year in terms of Section 6(2) of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule-15(1) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, or till their retirement, whichever is earlier.

3. Posting/transfer of the above officers will be issued separately.

CHIEF SECRETARY
GOVERNMENT OF KHYBER PAKHTUNKHWA

ENDST. OF EVEN NO. & DATE

Copy forwarded to the:-

1. Senior Member Board of Revenue, Khyber Pakhtunkhwa.
2. Additional Chief Secretary, P&D Department.
3. Additional Chief Secretary (FATA), FATA Secretariat.
4. Principal Secretary to Governor, Khyber Pakhtunkhwa.
5. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
6. All Administrative Secretaries in Khyber Pakhtunkhwa.
7. All Divisional Commissioners in Khyber Pakhtunkhwa.
8. Accountant General, Khyber Pakhtunkhwa.
9. Deputy Commissioner, Chitral, Charsadda, Battagram, Bannu, Swabi, Swat, Hangu and Haripur.
10. Settlement Officer, Chitral.
11. District Accounts Officers, Chitral, Charsadda, Battagram, Bannu, Swabi, Swat, Hangu and Haripur.
12. PS to Chief Secretary, Khyber Pakhtunkhwa.
13. PS to Secretary to Govt. of Pakistan, Ministry of Interior, Islamabad.
14. PS to Secretary Establishment/PS to SS(E)/SS (Reg)/PA, AS(HRD)/AS(E)/DS(E.)/D.S(HRD Wing) SO(E.II), SO(HRD.I) SO(HRD.II) E&AD.
15. PS to Secretary (Admn.)/D.S(A)/SO(Secret)/Estate Officer/ACSO Cypher/Dy. Director (IT) and Director Protocol Administration Department.
16. Officers concerned.
17. Controller, Govt. Printing Press, Peshawar.

(HIKMATULLAH WAZIR)
SECTION OFFICER (ESTT. II)
PHONE & FAX # 091-9210551



GOVERNMENT OF Annex - V
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT (18)

Dated Peshawar the May 18, 2018

NOTIFICATION

NO.SOE-II(ED)3(45)/2017:- The Provincial Government on recommendations of the Provincial Selection Board in its meeting held on 03.05.2018 is pleased to promote the following Superintendents (BS-17) to the post of Provincial Management Service (PMS BS-17) on regular basis with immediate effect:-

1. Mr. Hukmat Khan.
2. Mr. Mukaram Khan.
3. Mr. Muhammad Azhar.
4. Mr. Murtaza Khan.
5. Mr. Hameedur Rehman.
6. Mr. Muhammad Yasin.
7. Mr. Murad Ahmad
8. Mr. Ijaz Khan.

2. Consequent upon their promotion to PMS BS-17 on regular basis, the officers will be retained on their already-occupied posts except the officer at Sr. No. 8 i.e. Mr. Ijaz Khan.

3. The officers on promotion shall remain on probation for a period of one year, in terms of Section 6(2) of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule 15(1) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 and extendable for another year with the specific orders of appointing authority within two months of the expiry of first year of probation period as specified in Rule-15(2) of rules ibid.

**CHIEF SECRETARY
KHYBER PAKHTUNKHWA**

ENDST: NO & DATE EVEN

A copy is forwarded to:-

1. Additional Chief Secretary (FATA) FATA Secretariat.
2. Secretaries to Govt. of Khyber Pakhtunkhwa, Auqaf/ Finance/E&SE/Industries/Law/Relief Department.
3. Director General, Provincial Disaster Management Authority.
4. Accountant General, Khyber Pakhtunkhwa, Peshawar.
5. Deputy Director (IT) Administration Department with the request to upload the notification on the official website.
6. Estate Officer/SO (Admn)/SO(Secret)/Librarian E&AD.
7. PS to Chief Secretary, Khyber Pakhtunkhwa.
8. Officers concerned.
9. PS to Secretary Establishment.
10. PS to Special Secretary (Estt), Establishment Department.
11. PA to DS(E) Establishment Department.
12. Office order file.

Anam Latif
18.5.2018
(ANAM LATIF)
SECTION OFFICER (E-II)

To

The Chief Secretary,
Khyber Pakhtunkhwa.

F(19)

Through:

Proper Channel.

Subject:

APPEAL AGAINST THE ORDER/ NOTIFICATION DATED 18.05.2018 WHEREBY THE APPELLANT WAS PROMOTED TO THE POST OF PMS OFFICER (BS-17) WITH IMMEDIATE EFFECT INSTEAD OF THE DATE OF ELIGIBILITY OR OCCURRENCE OF THE VACANCY ETC.

Prayer:

THAT ON ACCEPTANCE OF THIS DEPARTMENTAL APPEAL THE ORDER/ NOTIFICATION DATED 18.05.2018 MAY KINDLY BE PARTIALLY MODIFIED AND THE RESPONDENTS BE ASKED TO CONSIDER THE APPELLANT FOR PROMOTION TO THE POST OF PMS OFFICER (BS-17) WITH EFFECT FROM THE DATE OF ELIGIBILITY I.E. 09.12.2016 AND/ OR THE DATE OF OCCURRENCE OF VACANCY I.E. 01.09.2017 ALONGWITH ALL BACK AND CONSEQUENTIAL BENEFITS ACCRUING THEREFROM.

Dear Sir,

FACTS:

1. That during the course of service, the appellant was appointed as Assistant on 21st March, 1998 through Khyber Pakhtunkhwa Public Service Commission vide Order No. SOS.IV(S&GAD)2-222/94 dated 28.05.1998 and ever since appointment the service record of the appellant has all along been good and unblemished throughout.
2. That in the PSB meeting held on 08.11.2017 (Minutes at Annex-I) seven (07) vacant posts of PMS Officers (BS-17) were available for promotion of Superintendents thereon. The panel placed before the PSB also included the appellant.
3. That out of the said 07 vacant posts 04 posts were filled by promotion of Mr. Taj Muhammad, Mr. Abdul Wahab Khalil, Mr. Syed Waqar Hussain and Mr. Saeed Ahmad Khan (Annex-II) while the remaining three (03) vacant posts were kept reserved for three (03) incumbents (i.e. Mr. Ajmal Khan, Moeen ud din & Abdul Awal) despite the fact that there was also a fourth one namely Mr. Abid Hussain who was also in attendance of the mandatory training at STI alongwith the incumbents mentioned hereinbefore but ironically no post was reserved for him. The posts were reserved for the said 03 incumbents perhaps on the presumption that they were senior to the appellant who was not promoted despite having eligibility for promotion ever since completion of mandatory training on 09.12.2016. In other words, the secondary issue of seniority was given preference over the primary issue of promotion notwithstanding the fact that the issue lying before the PSB was promotion not seniority.
4. That with a view to filling the aforementioned three reserved vacancies alongwith a fourth one falling vacant on 20.12.2017, the second PSB meeting was held on 28.12.2017. In the said meeting the three incumbents (i.e. Mr. Ajmal Khan, Moeen ud Din & Abdul Awal) alongwith the fourth one (Mr. Abid Hussain) were cleared for promotion (Annex-III) notwithstanding the fact that the Degree(s) acquired by the three incumbents (i.e. Mr. Ajmal Khan, Moeen ud Din & Abdul Awal) way after the lapse of 07 year grace period (2007 to 2014) were not formally verified.
5. That the fitness for promotion in respect of Mr. Abid Hussain, who after having been removed from service on 04.01.2016 in the wake of corruption case followed by his reinstatement on 10.08.2017 sequel to service tribunal's judgment, was determined in absence of latest

Performance Evaluation Report (PER) as the period between his reinstatement into service i.e. 10.08.2017 and PSB meeting on 28.12.2017 hardly comes to four and half months. This period is insufficient even for earning a part let alone a full PER. The reason for making hurry in this case is beyond comprehension and something indicative of malafide intent. (20)

Hence, the present Departmental Appeal/ representation is inter alia made out on the following grounds:-

GROUND:

1. That promotion and seniority are two different phenomena governed under different provisions of law i.e. Sections 9 and 8 of the Civil Servant Act, 1973 and Rule-7 & 17 of the (Appointment, Promotion & Transfer) Rules, 1989 read with Promotion Policy, 2009.
2. That the appellant alongwith other Civil Servants was considered for promotion to the post of PMS (BS-17) and was duly cleared by the PSB but during the course of preparation of Minutes and subsequent process of finalization of the recommendations of PSB, the results/ decisions of the PSB were practically changed for reasons known to the then dealing hands and this practice ultimately ended up in reservation of certain posts for those Civil Servants who were still in the process of receiving 09 weeks mandatory training in STI and were thus ineligible for promotion.
3. That the whole process of promotion was deliberately dragged on to extend the undue benefit of promotion to those employees who had just obtained BA degrees way long after the grace period of 07 years (i.e. 2007 to 2014) provided by the PMS Rules and who remained ineligible due to non-attendance of 09 weeks Mandatory Training Course despite the fact that the posts for promotion (07 in number) had fallen vacant two to three months before the PSB meeting. The details of vacant posts are:-

Sr. N	Date of occurrence	Due to Retirement of
1	30.05.2017	Mr. Zahir Shah
2	17.07.2017	Mr. Meer Bashir
3	20.08.2017	Mr. Iqbal Ahmad
4	27.08.2017	Mr. Mufarrah Shah
5	01.09.2017	Muhammad Tayyab
6	07.09.2017	Mr. Alamgir
7	14.10.2017	Mr. Anwar Shah

4. That from perusal of the vacancy position, it is crystal clear that the vacancy at Sr. No. 05 had inter alia fallen vacant on 01.09.2017 and the process of promotion was deliberately dragged on and on to provide an undue opportunity to the non-eligible candidates to become duly eligible for promotion despite the fact that the appellant had already attended 09 week Advance Mandatory Training w.e.f 10.10.2016 to 09.12.2016 and was awaiting promotion for the last one year.
5. That the Appellant was not promoted notwithstanding the fact that the post(s) had fallen vacant much before the eligibility of the blue eyed persons. Ironically, certain juniors of the wrongly promoted persons namely **Mr. Abdul Shakoor, Anwar Akbar and Inayat-Ullah Superintendents** were promoted 04 months before promotion of the blue eyed (i.e. on **May 31, 2017** copy enclosed as **Annex-IV**) but no such posts were reserved for the blue eyed officials then & there. This clearly shows double standard and malafide on the part of the then dealing hands associated with the process of promotion. So much-so that the otherwise quick promotion-drive initiated by the then Chief Secretary, Mr. Azam Khan was slowed down by issuing fresh future schedules for PSB meetings due to internal pressures.
6. That reservation of posts for ineligible incumbents at the cost of eligible ones is a travesty of justice and is thus, a blatant violation of Law/ Rules on the subject. **Section 9(1) of the Civil**

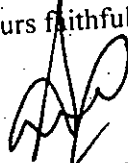
(21)

Servant Act, 1973 states, "A civil servant possessing such minimum qualifications as may be prescribed shall be eligible for promotion to a higher post for time being reserved under rule for departmental promotion in service or cadre to which he belongs". While in the instant case the said Civil Servants had not successfully completed their mandatory training thus they were ineligible for promotion and their consideration by the PSB and reservation of posts for them was not covered under the rules.

7. That the non-reservation of post for the fourth incumbent i.e. **Mr. Abid Hussain** in the said PSB meeting and the ensuing benefit of promotion to the next incumbent falling in the line of promotion clearly exposes non-observance of Law and mala fide intent.
8. That after the end of 07-year grace period (2007 to 2014) provided by the PMS Rules for acquiring Degree(s) by the willing incumbents to get promoted to the post(s) of PMS Officer(s), there is no formal policy in the field governing obtainability of such Degree(s) and subsequent issues relating to or arising out of Promotion/ Seniority etc. viz-a-viz other incumbents already holding the required Degrees. The dictate of common sense is that it is they who should be made to suffer for their personal failures, not others. The Appellant cannot be punished for individual's failures. The act of obtaining degrees on the part of the blue eyed for the sake of promotion at the verge of retirement should not be allowed to damage legitimate interests of the Appellant.
9. That three superintendents, namely, **Mr. Abdul Shakoor, Anwar Akbar Khan & Inayat Ullah**, who had also received mandatory training with the appellant, have also been promoted in the PSB meeting(s) held earlier to the impugned one notwithstanding the fact that they all were junior to the wrongly promoted incumbents. But no posts whatsoever were reserved for the holders of impugned promotions in that PSB meeting(s) despite of their being seniors to the incumbents mentioned hereinbefore. This clearly points at a pick-and-choose approach.
10. That the Appellant was promoted to the post of PMS Officer BS-17 on **18.05.2018** with immediate effect (Annex-V) notwithstanding the fact that according to the Judgments of Superior Courts (cited as 1985 SCMR 1158, 2010 PLC C.S 760 and the Service Tribunal Judgment in Appeal No. 1564/2010) a civil servant should be promoted on regular basis from the date he becomes eligible, if vacancies are available in his quota of promotion.
11. That the appellant was eligible for promotion w.e.f **09.12.2016** alongwith his erstwhile colleagues and that the **05th vacancy occurred on 01.09.2017** due to retirement of **Muhammad Tayyab**, but the Appellant was not promoted w.e.f 17.11.2017 rather he was promoted 06 months later i.e. on 18.05.2018, one and half year after eligibility.
12. That the Appellant was punished for personal failures of others.

Hence, in light of above facts, it is humbly requested that the departmental appeal of the appellant may kindly be accepted and the impugned Notification dated 18.05.2018 may be modified by anti-dating the promotion of appellant to the post of PMS Officer (BS-17) w.e.f 17.11.2017 against the 05th vacancy occurring on 01.09.2017 due to retirement of Muhammad Tayyab, please.

Yours faithfully,


(MUKARAM KHAN)
 Section Officer (Lit-I)
 Establishment Department
 11/04/2022

VAKALATNAMA

NO. _____/20

IN THE COURT OF 1st Service Tribunal, Peshawar

Mukarram Khan

Appellant (s)
Petitioner (s)
Plaintiff (s)

VERSUS

Govt of KP

Respondent (s)
Defendants (s)

I/WE Mukarram Khan

do hereby appoint and constitute the **SYED NOMAN ALI BUKHARI ADVOCATE, HIGH COURT** for the aforesaid Appellant(s), Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party to commence and prosecute / to appear and defend this action / appeal / petition / reference on my / our behalf and al proceedings that may be taken in respect of any application connected with the same including proceeding in taxation and application for review, to draw and deposit money, to file and take documents, to accept the process of the court, to appoint and instruct council, to represent the aforesaid Appellant(s), Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party agree(s) ratify all the acts done by the aforesaid.

DATE _____/20

[Signature]
(CLIENT)

ACCEPTED

[Signature]
SYED NOMAN ALI BUKHARI
ADVOCATE HIGH COURT
S. Khan &
SHAHKAR KHAN YOUSAFZAI
ADVOCATE, PESHAWAR