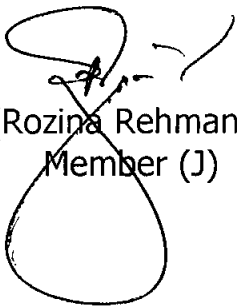


11.04.2021

Appellant present through counsel. Preliminary arguments heard. Record perused.

Points raised need consideration. Instant appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notice be issued to respondents for submission of written reply/comments. To come up for reply/comments on 14.07.2022 before S.B.

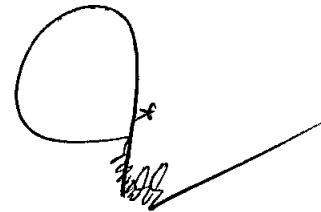
Rs-500/-
Appellant Deposited
Security & Process Fee
A. M. Butt
12/07/22


(Rozina Rehman)
Member (J)

14.07.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Written reply/comments on behalf of respondents not submitted. Learned Additional Advocate General requested for adjournment to contact the respondents for submission of written reply/comments. Adjourned. To come up for written reply/comments on 05.08.2022 before S.B.



(MIAN MUHAMMAD)
MEMBER (E)

The appeal of Mr. Muhammad Idrees S/O Muhammad Iqbal (late) Junior Scale Stenographer (BPS-14), O/O The DC Lakki Marwat, Bannu Division, KPK received today i.e. on 30.03.2022 is incomplete on the following score is hereby returned to the counsel for the appellant for completion and resubmission within 15 days.

1. Index of the appeal attached with the appeal may be signed.
2. Checklist is not attached with the appeal.
3. Appeal has not been flagged/marked with annexure marks.
4. Annexures of the appeal may be attested.
5. Copy of original impugned order mentioned in the memo of the appeal is not attached with the appeal which may be placed on it.
6. Copy of impugned order dated 11-07-2019 mentioned in the heading of the appeal is not attached with the appeal which may be placed on it.
7. Copy of departmental appeal dated 09-07-2019 mentioned in the heading of the appeal is not attached with the appeal which may be placed on it.
8. Copies of page no. 8, 13, 14 & 22 attached with the appeal are illegible which may be replaced by legible/better one.
9. One more copy/set of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 824 /S.T,

Dt. 31-3- /2022

SW

Mr. Muhammad Sharif Marwat
Advocate High Court Peshawar.

[Signature]
REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Respected Sir,

Deficiencies removed. Resubmitted please

SW

Dated 11-04-2022

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
CHECKLIST**

Case Title: M. Idrees vs Chief Secretary

S.#	Contents	Yes	No
1.	This appeal has been presented by: _____		
2.	Whether Counsel / Appellant / Respondent / Deponent have signed the requisite documents?	✓	
3.	Whether Appeal is within time?	✓	
4.	Whether the enactment under which the appeal is filed mentioned?		
5.	Whether the enactment under which the appeal is filed is correct?		
6.	Whether affidavit is appended?	✓	
7.	Whether affidavit is duly attested by competent oath commissioner?	✓	
8.	Whether appeal/annexures are properly paged?	✓	
9.	Whether certificate regarding filing any earlier appeal on the subject, furnished?		
10.	Whether annexures are legible?	✓	
11.	Whether annexures are attested?	✓	
12.	Whether copies of annexures are readable/clear?	✓	
13.	Whether copy of appeal is delivered to A.G/D.A.G?	✓	
14.	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	✓	
15.	Whether numbers of referred cases given are correct?		✓
16.	Whether appeal contains cuttings/overwriting?		✓
17.	Whether list of books has been provided at the end of the appeal?		
18.	Whether case relate to this Court?	✓	
19.	Whether requisite number of spare copies attached?	✓	
20.	Whether complete spare copy is filed in separate file cover?	✓	
21.	Whether addresses of parties given are complete?	✓	
22.	Whether index filed?	✓	
23.	Whether index is correct?	✓	
24.	Whether Security and Process Fee deposited? on		
25.	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? on		✓
26.	Whether copies of comments/reply/rejoinder submitted? on		✓
27.	Whether copies of comments/reply/rejoinder provided to opposite party? on		✓

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name:

M. Charif Marwat

Signature:

[Signature]

Dated:

11-4-22

BEFPRE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal.No. 547 /2022

Muhammad Idrees S/O Muhammad Iqbal (late) Junior Scale Stenographer BPS-14 office of
the Deputy Commissioner Lakki Marwat Bannu Division KPK [Appellant]

VERSUS

1. Provincial Govt. through Chief Secretary Khyber Pakhtunkhwa Peshawar
 2. Senior Member Board of Revenue Khyber Pakhtunkhwa Peshawar
 3. Secretary to Govt. of KPK, Revenue & Estate Department KP Peshawar
- [Respondents]

SERVICE APPEAL U/S-4 OF KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER
DATE 07-02-2022 OF BOARD OF REVENUE KPK, PESHAWAR WHEREBY APPELLANT'S
DEPARTMENTAL APPEAL DATED 10-01-2022 FOR PROMOTION AS NAIB TEHSILDAR
HAS BEEN REJECTED AND NOTIFICATION DATED 13-05-2019 WHEREBY 15% RESERVED
QUOTA OF MINISTERIAL STAFF FOR PROMOTION AS NAIB TEHSILDAR HAS BEEN
DELETED FROM THE RULES.

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S.N	Description	Pages
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3.	Annexure-B	6
4.	Annexure-C	7
5.	Annexure-D	8
6.	Annexure-E-1 to E-4	9, 10, 11, 12
7.	Annexure-F-1 to F-7	13-19
8.	Annexure-G-1 to G-5	20-24
9.	Affidavit/Deponent	25
10.	Order dated 07-02-2022 of Board of Revenue KP Peshawar	26
11.	Vakalat Nama's	27

M. Sharif marwat

S K

Appellant

Service Appeal

1

BEPRE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 547 /2022

Muhammad Idrees S/O Muhammad Iqbal (late) Junior Scale Stenographer BPS-14 office of the Deputy Commissioner Lakki Marwat Bannu Division KPK [Appellant]

VERSUS

1. Provincial Govt. through Chief Secretary Khyber Pakhtunkhwa
 2. Senior Member Board of Revenue Khyber Pakhtunkhwa Peshawar
 3. Secretary to Govt. of KPK, Revenue & Estate Department KP Peshawar
- [Respondents]

SERVICE APPEAL U/S-4 OF KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER DATE 07-02-2022 OF BOARD OF REVENUE KPK, PESHAWAR WHEREBY APPELLANT'S DEPARTMENTAL APPEAL DATED 10-01-2022 FOR PROMOTION AS NAIB TEHSILDAR HAS BEEN REJECTED AND NOTIFICATION DATED 13-05-2019 WHEREBY 15% RESERVED QUOTA OF MINISTERIAL STAFF FOR PROMOTION AS NAIB TEHSILDAR HAS BEEN DELETED FROM THE RULES.

PRAYER:

ON ACCEPTANCE OF INSTANT SERVICE APPEAL, ORDER DATED 13-05-2019 WHEREBY 15% RESERVED QUOTA OF MINISTERIAL STAFF FOR PROMOTION TO THE POST OF NAIB TEHSILDAR HAD BEEN DELETED MAY BE DECLARED AS ILLEGAL, UNLAWFUL, PERVERSE AND INEFFECTIVE TO APPELLANT'S RIGHT OF PROMOTION AND THE APPELLANT MAY BE PROMOTED AS NAIB TEHSILDAR FROM THE DATE HE BECAME ELIGIBLE AND POST HAD FALLEN VACANT IN BANNU DIVISION WITH ALL CONSEQUENTIAL SERVICE BACK BENEFITS.

Respectfully Sheweth:

FACTS:

1. That appellant was initially appointed as Junior Scale Stenographer BPS-14 on 26-02-2004 in Revenue Department and due to slow process of promotion being 17 years qualifying/entire service, the appellant could not get any further promotion in the entire service. Appellant has unblemished service record and there is no complaint against him during entire service.
2. That the appellant since his appointment, always performed his assigned duties to the entire satisfaction of superiors and there is no complaint against him.
3. That on 30-06-2016 vide Notification No.6032-42/Estt:I/SSRC/Vol-II/2016, 15% quota reserved at Divisional level for ministerial staff i.e. Senior Clerks + Junior Scale Stenographers of Board of Revenue, all Commissioners and Deputy Commissioner Offices in KPK enabling no such promotion of ministerial staff at Divisional level made by the Board of Revenue during the period from 2016 to 2019.[Copy of Notification as annexure-A].
4. That Board of Revenue Peshawar conveyed a letter to all Commissioners in KPK (Except Hazara Division) bearing No.Estt:V/seniority list/2018/9864-70 dated

①

BEFPRE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. _____/2022

Muhammad Idrees S/O Muhammad Iqbal (late) Junior Scale Stenographer BPS-14 office of
the Deputy Commissioner Lakki Marwat Bannu Division KPK [Appellant]

VERSUS

1. Provincial Govt. through Chief Secretary Khyber Pakhtunkhwa
 2. Senior Member Board of Revenue Khyber Pakhtunkhwa Peshawar
 3. Secretary to Govt. of KPK, Revenue & Estate Department KP Peshawar
- [Respondents]

SERVICE APPEAL U/S-4 OF KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER DATE 11-07-2019 OF BOARD OF REVENUE KPK, PESHAWAR WHEREBY APPELLANT'S DEPARTMENTAL APPEAL DATED 09-07-2019 FOR PROMOTION AS NAIB TEHSILDAR HAS BEEN REJECTED AND NOTIFICATION DATED 13-05-2019 WHEREBY 15% RESERVED QUOTA OF MINISTERIAL STAFF FOR PROMOTION AS NAIB TEHSILDAR HAS BEEN DELETED FROM THE RULES.

PRAYER:

ON ACCEPTANCE OF INSTANT SERVICE APPEAL, ORDER DATED 13-05-2019 WHEREBY 15% RESERVED QUOTA OF MINISTERIAL STAFF FOR PROMOTION TO THE POST OF NAIB TEHSILDAR HAD BEEN DELETED MAY BE DECLARED AS ILLEGAL, UNLAWFUL, PERVERSE AND INEFFECTIVE TO APPELLANT'S RIGHT OF PROMOTION AND THE APPELLANT MAY BE PROMOTED AS NAIB TEHSILDAR FROM THE DATE HE BECAME ELIGIBLE AND POST HAD FALLEN VACANT IN BANNU DIVISION WITH ALL CONSEQUENTIAL SERVICE BACK BENEFITS.

Respectfully Sheweth:

FACTS:

1. That appellant was initially appointed as Junior Scale Stenographer BPS-14 on 26-02-2004 in Revenue Department and due to slow process of promotion being 17 years qualifying/entire service, the appellant could not get any further promotion in the entire service. Appellant has unblemished service record and there is no complaint against him during entire service.
2. That the appellant since his appointment, always performed his assigned duties to the entire satisfaction of superiors and there is no complaint against him.
3. That on 30-06-2016 vide Notification No.6032-42/Estt:I/SSRC/Vol-II/2016, 15% quota reserved at Divisional level for ministerial staff i.e. Senior Clerks + Junior Scale Stenographers of Board of Revenue, all Commissioners and Deputy Commissioner Offices in KPK enabling no such promotion of ministerial staff at Divisional level made by the Board of Revenue during the period from 2016 to 2019. [Copy of Notification as annexure-A].
4. That Board of Revenue Peshawar conveyed a letter to all Commissioners in KPK (Except Hazara Division) bearing No.Estt:V/seniority list/2018/9864-70 dated

21-03-2019, wherein demanded final/undisputed joint seniority list of Senior Clerks + Junior Scale Stenographers along with working papers, synopsis, ACRs, non-involvement certificates etc of top ten (10) Senior Clerks/Junior Scale Stenographers at divisional (Commissioner Bannu Division) in connection with promotion to Naib Tehsildars for conduction of Departmental Promotion Committee meeting. **[Copy of letter as Annexure-B].**

5. That after compilation of all codal formalities, all required documents furnished by Worthy Commissioner Bannu Division through special messenger to Assistant Secretary (Estt:) Board of Revenue Peshawar vide letter No.2186-90/AG-I/Estab: dated 22-03-2019. **[Copy of letter as Annexure-C].**
6. That in the meanwhile vide Notification dated 13-05-2019 amended the service rules by Board of Revenue Khyber Pakhtunkhwa Peshawar and deleted the reserved quota of 15% for promotion of ministerial staff i.e. Senior Clerks/Junior Scale Stenographers to the post of Naib Tehsildar. **[Copy of Notification is annexed as annexure-D]**
7. That even in the aforesaid situation, the concerned departmental authorities adopted the lethargic attitude toward the finalization of appellant's promotion case which could not be handled till further amendment in Tehsildar/Naib Tehsildar Rules introduced by the department vide Notification dated 13-05-2019 deleting the reserved quota of 15% of the ministerial staff to the post of Naib Tehsildar.
8. That after, feeling aggrieved some Senior Clerks etc of Hazara Division were filed Service Appeals vide No.1021/2019, which was accepted by this Hon'ble Tribunal at Camp Court Abbottabad vide Judgment dated 22-09-2021 **"appellants are held entitled for promotion to the post of Naib Tehsildar from the dates, when they became eligible for promotion"** [Copy Judgment dated 22-09-2021 as Annexure-E-1 to E-4].
9. That according to the opinion of Additional Advocate General Khyber Pakhtunkhwa Peshawar in consultation with Law, Parliamentary Affairs & Human Rights Department Govt. of Khyber Pakhtunkhwa Peshawar that **"If a Tribunal or the Supreme Court decides a point of law relating to the terms and condition of a Civil Servant who litigated, and there were other civil servants, who may not have taken any legal proceedings, in such case, the dictates of justice and rule of good governance demand that the benefit of the said decision be extended to other civil servants also, who may not be parties to that litigation, instead of compelling them to approach the Tribunal or any other legal forum---All citizens**

are equal before law and entitled to equal protection of law as per Article-25 of the Constitution". [Copy of letters as annexure-F-1 to F-7].

10. That the appellant in pursuance to the Hon'ble Service Tribunal Judgement dated 22-09-2022 submitted Departmental Appeal before the Senior Member Board of Revenue Khyber Pakhtunkhwa Peshawar through Deputy Commissioner Lakki Marwat vide letter No.118/Reader/LA/Departmental Appeal dated 13-01-2022 in connection with promotion to the post of Naib Tehsildar but respondents filed the said appeal due to pending CPLA before the Apex Su preme Court of Pakistan against judgment dated 22-09-2021 in case titled Abdul Qayyum Tahir versus Govt. of KPK and others. [Copy of Departmental Appeal is annexed as G-1 to G-9].

GROUND:

1. That Notification dated 13-05-2019 of the Board of Revenue Peshawar whereby 15% quota reserved for promotion of ministerial staff to the post of Naib Tehsildar was deleted, is illegal, unlawful, perverse, arbitrary against the law and principal of natural justice and ineffective upon appellant's rights of promotion which were/are governed under Tehsildar/Naib Tehsildar Rules-2016.
2. That the Board of Revenue Peshawar vide letter 21-03-2019 demanded the required documents of Senior Clerks + Junior Scale Stenographers for promotion to Naib Tehsildar through special messenger within no time which were also furnished vide letter No.529-34/AG-I dated 18-01-2019 but this time too there was no action taken like past on the part of departmental authorities. The appellant has been deprived of his legitimate right of promotion by the departmental authorities and caused tremendous loss in his service career without any fault on his part.
3. That in the light of judgment of the superior courts of the country any change in the terms and conditions of service of the civil servant with retrospective effect by depriving him of his vested right cannot be done while the appellant remained eligible for promotion for a considerable period of 17 years but through impugned notification dated 13-05-2019, his right of promotion has been taken away which is not sustainable in the eyes of law but the concerned authorities have ignored this aspect of the case.
4. That the respondents have not treated appellant in accordance with law, departmental rules, regulations and policy on the subject and have acted in violation of Article-4 of the constitution of Islamic Republic of Pakistan 1973 & unlawfully issued the impugned order and notifications, which are unjust, unfair, hence are liable to be set aside/declared as ineffective to the extent appellant's promotion as Naib Tehsildar.

5. That respondents have failed to abide by the law and even did not take into consideration the grounds adduced by appellant in the memo of departmental appeal for his promotion as Naib Tehsildar against the 15% quota reserved for ministerial staff under Rules-2016. Thus the impugned Notification dated 13-05-2019 of respondents are contrary to Tehsildar/Naib Tehsildar Rules 2016, other Departmental Rules regulations read with section 24-A of General Clause Act-1897 and Article 10-A of the Constitution of Islamic Republic of Pakistan 1973.
6. That the appellant being qualified and fulfilling all requirements was eligible for promotion as Naib Tehsildar since 2016 but has been deliberately deprived of his legitimate promotion despite availability of posts without any reason, justification against the law, departmental rules and regulation. Petitioner deserves to be promoted as Naib Tehsildar since the date he became eligible and the post fallen vacant with all consequential service back benefits.
7. That instant appeal is well within time and this Hon'ble Service Tribunal has got every jurisdiction to entertain and adjudicate upon the same.

PRAYERS:

It is therefore, humbly prayed that on acceptance of instant Service Appeal, this Hon'ble Tribunal may please be gracious enough to grant relief and Notification dated 13-05-2019 may be declared as illegal, void ab-initio and ineffective upon appellant's promotion rights and the appellant may graciously be promoted as Naib Tehsildar against the 15% quota reserved under Rules-2016 for ministerial staff from the date the appellant became eligible and the post had fallen vacant with all consequential service back benefits. Any other relief which this Hon'ble Tribunal deems fit may be granted.

Appellant

Muhammad Idrees Jr.S.Stenographer
Deputy Commissioner Lakki Marwat

Through

(Muhammad Sharif Marwat)
Advocate High Court
Peshawar

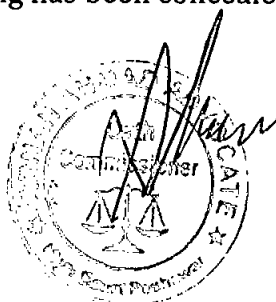
(Matiullah Khan Marwat)
Advocate High Court
Peshawar

Dated ___/03/2022

VERIFICATION:

It is verified that contents of instant Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed thereof.

Dated: 29/03/2022



Appellant

Annexure 'A'

EXTRAORDINARY
GOVERNMENT



REGISTERED NO. PIII
GAZETTE

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, THURSDAY, 30th JUNE, 2016.

GOVERNMENT OF THE KHYBER PAKHTUNKHWA
BOARD OF REVENUE, REVENUE AND ESTATE DEPARTMENT.

NOTIFICATION

Dated: 25th January, 2016.

No. 6032-42/Estt-I/SSRC/Vol-II/2016.— In pursuance of the provisions contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Revenue and Estate Department in consultation with Establishment and Finance Departments, hereby directs that in this Department's Notification No. 32102/Admn-I/SSRC, dated 26.12.2008, the following further amendments shall be made, namely:

AMENDMENTS

In the Appendix,-

(a) against serial No. 1, in column No. 7,-

(i) In clause (b), the word "and" appearing at the end shall be deleted;

(ii) For clause (c), the following shall be substituted, namely:

"(c) sixteen (16) percent by promotion, on the basis of seniority-cum-fitness, from amongst Assistants and Senior Scale Stenographers of the offices of Commissioners, Deputy Commissioners and Political Agents having five years service as such; and"; and

(iii) after clause (c), as so amended, the following shall be added, namely:

"(d) four (4) percent by promotion, on the basis of seniority-cum-fitness, from amongst Assistants and Senior Scale Stenographers of the Board of Revenue having five years service as such."; and

(b) against serial No. 2, in column No. 7,-

(i) for clause (c), the following shall be substituted, namely:

"(c) twelve (12) percent by promotion, on the basis of seniority-cum-fitness, from amongst Senior Clerks and Stenographers of the offices of Commissioners and Deputy Commissioner in the division concerned;"; and

(ii) In clause (d), the fullstop appearing at end shall be replaced by semi colon and the word "and" and thereafter the following shall be added, namely:

"(e) three (3) percent by promotion, on the basis of seniority-cum-fitness, from amongst the Senior Clerks and Stenographers of the Board of Revenue.".

Attested

LITIGATION OFFICER
Deputy Commission
Office Lakki Marwat

Sd/-xxx
Secretary to Government of the
Khyber Pakhtunkhwa,
Revenue and Estate Department.

' B ' 6

GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT

No.Estt:V/PF/Seniority List/2018/1864-7c

Dated Peshawar the 21/03/2019


To

All Commissioners,
in Khyber Pakhtunkhwa
(Except Commissioner Hazara Division).

**SUBJECT: PROVISION OF FINAL / UNDISPUTED SENIORITY LIST OF
SENIOR CLERK.**

Dear Sir,

I am directed to refer to the subject and to request you to provide final / undisputed joint seniority list for the year - 2018 of Senior Clerks and Junior Scale Stenographers alongwith original ACRs, Synopsis and non-involvement certificate of the top ten officials of your respective Division through special messenger by tomorrow positively please.


Assistant Secretary (Estt)

Attested


LITIGATION OFFICER
Deputy Commission
Office Lakki Marwat



GOVT: OF KHYBER PAKHTUNKHWA

OFFICE OF
COMMISSIONER
BANNU DIVISION

P.O. Box. 12, Postal Code 28100, Bannu-
Phone: 0928-9270044 & 621144
Fax: 0928-9270041
E-mail: acr.bannu@yahoo.com

No. 2186-30/AG.1/Estt

Dated: 22-03-2019

Assistant Secretary (Estt.),
Board of Revenue,
Peshawar.

Subject: PROVISION OF FINAL/UNDISPUTED SENIORITY LIST OF SENIOR CLERK.

I am directed to refer your letter No.Esst:V/Seniority list/2018/9864-70, dated 21/03/2019 and to enclose herewith a copy of Final joint seniority list of Senior Clerks/Junior Scale Stenographers of Bannu Division ^{as returned 31-12-2018} for information and further necessary action, please.

Rk 22/03/2019
Secretary to Commissioner
Bannu Division

Even No & Date
Copy for information to the:-

1. Deputy Commissioner, Bannu.
2. Deputy Commissioner, Lakki Marwat.
3. Deputy Commissioner, North Waziristan.
4. PS to Commissioner Bannu Division.

With the request to furnish original ACRs, Synopsis and non-involvement certificate of all the officials as per the seniority list through special messenger direct to the quarter concerned.

Rk 22/03/2019
Secretary to Commissioner
Bannu Division

Attested

RECEIVED	
No.	<u>1203</u>
Date	<u>29/3/19</u>
Return Date	
Action	<u>Asst. Secy</u>

Circulate to officials concerned for their understanding.
29/3/19

J
LITIGATION OFFICER
Deputy Commission
Office Lakki Marwat

GOVERNMENT OF KHYBER PAKHTUNKHWA,
BOARD OF REVENUE,
REVENUE & ESTATE DEPARTMENT
Peshawar Dated the 13th 5/2019

NOTIFICATION

No. Estt./SSRC/2019/_____ In pursuance of provisions contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Revenue and Estate Department in consultation with Establishment Department and Finance Department, hereby directs that in this Department's Notification No. 32102-61/Admn./135/SSRC, dated: 26.12.2008, the following further amendments shall be made, namely:

AMENDMENTS

In the APPENDIX:-

(a) against Serial No. 1, in column No. 7, for clauses (c) and (d), the following shall be substituted, namely:

(c) fifteen percent by promotion, on the basis of seniority - cum - fitness, from amongst Assistants and Senior Scale Stenographers of the offices of Commissioner and Deputy Commissioner, having five years services as such;

Note: Joint seniority list shall be maintained at Provincial level for the purpose of promotion; and

(d) five percent by promotion, on the basis of seniority-cum-fitness, from amongst Assistants and Senior Scale Stenographers of the Board of Revenue and Director Land Records Office having five years' service as such.

Note:- Joint seniority list shall be maintained for the purpose of promotion."

(b) against Serial No. 2, in column No. 7.-

(i) for clause (b), the following shall be substituted, namely:

(b) forty percent by promotion, on the basis of seniority -cum- fitness, from amongst the Kanungos with at least five years service as such, who have passed the Departmental Examination of Naib Tehsildar;" and

(ii) clauses (c) and (e) shall be deleted.

(c) against Serial No. 3, in column No. 7, for the existing entry, the following shall be substituted, namely:

"by transfer from amongst Naib Tehsildars."

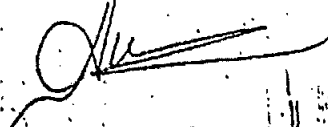
(d) against Serial No. 9, in column No. 7, the following Note to the existing entry shall be added, namely:

"Note:- The posts of Naib Tehsil Accountants and Naib Tehsil office Kanungo shall be deemed as Dying Cadre. On vacation of the above posts by retirement or promotion of the incumbents, no person shall be appointed by transfer to the same and shall forthwith to take up with the Finance Department for their abolition."

Sd/-

SECRETARY TO GOVERNMENT OF
KHYBER PAKHTUNKHWA
REVENUE & ESTATE DEPARTMENT

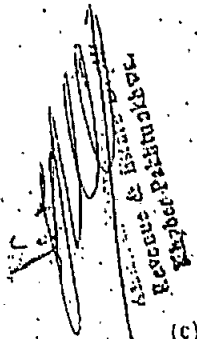
Attested



Attested

LITIGATION OFFICER
Deputy Commission
Office Lakkimaruwal

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Revenue & Estate
Khyber Pakhtunkhwa

D

8
11

E-1 to E-4

9

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT ABBOTTABAD.**

Service Appeal No. 1021/2019

Date of Institution ... 05.08.2019

Date of Decision ... 22.09.2021

Abdul Qayyum Tahir S/O Qari Aziz-ur-Rehman, Senior Clerk,
Office of the Commissioner Hazara Division, Abbottabad.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat,
Peshawar and two others.

... (Respondents)

MR. MOHAMMAD ASLAM TANOLI,
Advocate

... For Appellant

MR. RIAZ AHMED PAINDAKHEL
Assistant Advocate General

... For Respondents

SALAH-UD-DIN ...
ATIQU-UR-REHMAN WAZIR ...

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)


JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):- This single judgment shall dispose of the instant service appeal as well as the connected Service Appeal No 1022/2019 titled "Munir Akhtar Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", as common question of law and facts are involved therein.

2. Brief facts of the case are that the appellants namely Abdul Qayyum Tahir and Munir Akhtar initially joined the Revenue Department as Junior Clerks and subsequently were elevated to the post of Senior Clerk on 02-02-1983 and

Allested

Scanned with CamScanner


LITIGATION OFFICER
Deputy Commission
Office Lakki Marwat

29-06-2010 respectively. As per service rules, notified on 23-01-2015, 15% quota was reserved for promotion on the basis of joint seniority cum fitness from amongst the Senior Clerks of the office of Board of Revenue, Commissioners and Deputy Commissioners offices, for their further promotion to the post of Naib Tehsildar. Cases of promotion of the appellants were under process for quite some time, but could not materialize well in time and in the meanwhile, the respondents vide another notification dated 13-05-2019 amended the service rules and deleted the reserved quota of 15% for promotion of ministerial staff to the post of Naib Tehsildar. Feeling aggrieved, the appellants filed departmental appeals, which were filed without any consideration vide order dated 11-07-2019, hence the instant service appeals with prayers that the impugned order dated 11-07-2019 may be set aside and notification dated 13-05-2019, may be declared as illegal, void ab-initio and ineffective upon the appellants promotion rights and the appellants may be promoted to the post of Naib Tehsildar against the 15% quota reserved for ministerial staff, from the date when the appellants became eligible for such promotion and posts had fallen vacant in Hazara Division with all consequential benefits.

3. Learned counsel for the appellant has contended that the appellants were fully eligible for promotion to the post of Naib Tehsildar based on seniority cum fitness, but it was due to the lethargic and reckless attitude of the respondents that cases of promotion of the appellants lingered for years in the offices of respondents, which finally were refused under the pretext that the respondents has brought amendments in service rules vide notification dated 13-05-2019, thereby deleting the 15% quota reserved for ministerial staff; that by virtue of issuance of impugned notification dated 13-05-2019, the amendments has been made in Rules, 2008, whereas after issuance of Rules, 2015 in supersession of all previous rules, the rules, 2008 stands non-existent, therefore has no legal impact on the already accrued rights of promotion of appellants nor on the basis of such amendments in the non-existent rules; any reserved quota for promotion of ministerial staff can be deleted; that posts of Naib Tehsildar were lying vacant in Hazara Division, working paper for which were also submitted and cases of promotion in respect of the appellants were also included, which were also placed before the Departmental Promotion Committee(DPC); that again In 2015 cases of promotion in respect of the appellants came under consideration of the DPC, but were again ignored by the respondents due to their lethargic

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behaviour; that in 2019, the Commissioner Hazara Division vide letter dated 27-02-2019, requested the board of revenue for promotion of the senior clerks to the post of Naib Tehsildar and in response, the board of revenue demanded for requisite documents of the senior clerks concerned, which were also provided, but in the meanwhile rules were amended and the appellants were not promoted, which was illegal unlawful and contrary to the norms of natural justice; that in the light of judgments of the superior courts, any change in the terms and condition of service of the civil servant with retrospective effect by depriving them of their vested rights cannot be done while the appellants remained eligible for considerable period of 20 years, but through impugned notification dated 13-05-2019, their right of promotion has been taken away which is not sustainable in the eye of law; that the respondents have not treated the appellants in accordance with law, departmental rules, regulation and policy on the subject and have acted in violation of Article-4 of the constitution and unlawfully issued the impugned order and notifications, which are unjust, unfair and are liable to be set at naught.

4. Learned counsel for respondents has contended that in 2015, under 15% quota reserved for senior clerks, cases of the appellants were placed before the DPC, but their cases were not considered for such promotion due to non-availability of post of Naib Tehsildar in their share at that time; that it is correct that the appellants were otherwise eligible for promotion on the basis of seniority cum fitness for promotion to the post of Naib Tehsildar, but in the meanwhile amendments were brought in the service rules and 15% quota reserved for their promotion was deleted.
5. We have heard learned counsel for the parties and have perused the record.
6. Record reveals that the appellants were otherwise fit for promotion based on seniority cum fitness and their cases were submitted for promotion more than once, but were not considered. Stance of the respondents to the effect that the appellants were not considered due to non-availability of posts is not correct, as record reveals that Commissioner Hazara vide letter dated 27-02-2019 had submitted cases of the appellants for convening meeting of DPC, as well as mentioned that there are many vacancies available in the division to be filled in through promotion from amongst the senior clerks at the ratio of 15%, but the

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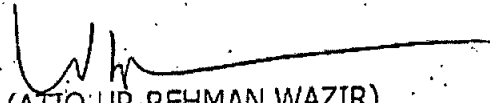
respondents as usual lingered the cases and finally refused on the grounds of amendments in service rules, which was not warranted. We are of the considered opinion that the appellants were fit for promotion in every respect and vacancies to that effect were also available, but it was due to malafide of the respondents that the appellants were kept deprived of their right of promotion. The amendments in service rules at a later stage, cannot deprive the appellants of their right of promotion already accrued to them as making the relevant amended rules applicable to the appellants would be against the law and natural justice.

7. In view of the foregoing discussion, the instant appeals are accepted. The appellants are held entitled for promotion to the post of Naib Tehsildar from the dates, when they became eligible for promotion. Parties are left to bear their own costs. File be consigned to record room.

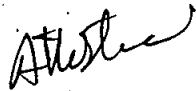
ANNOUNCED
22.09.2021



(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT ABBOTTABAD



(ATTIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)
CAMP COURT ABBOTTABAD




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Deputy Commission
Office Lakki Marwat

F-1 to F-7

13

Before imparting my opinion it would be very important to mention here the case of Hameed Akhtar Niazi reported in 1996 S C M R 1185, wherein the Supreme Court of Pakistan held that:

If the Service Tribunal or Supreme Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings, in such a case, the dictates and rule of good governance demand that the benefit of such judgment by Service Tribunal/Supreme Court be extended to other civil servants, who may not be parties to the litigation instead of compelling them to approach the Service Tribunal or any other forum.

In Sameena Parveen case reported in 2009 SCMR 1, The Supreme Court observed as:

If a Tribunal or the Supreme Court decides a point of law relating to the terms and conditions of a civil servant who litigated, and there were other civil servants, who may not have taken any legal proceedings, in such a case, the dictates of justice and rule of good governance demand that the benefit of the said decision be extended to other civil servants also, who may, not be parties to that litigation, instead of compelling them to approach the Tribunal or any other legal forum---All citizens are equal before law and entitled to equal protection of law as per Art.25 of the Constitution.

In Anita Turah case reported as Syed Mahmood Akhtar Naqvi Versus Federation Of Pakistan and others P L D 2013 Supreme Court 195, the supreme court of Pakistan relying on Hameed Akhtar Niazi case holding that:

Decision given by the Supreme Court on a point of law would be binding on concerned departmental functionaries who would be obliged to apply such legal principle in other similar cases regardless of whether or not a civil servant had litigated the matter in his own case---In view of Art.189 and 190 of the Constitution, a civil servant would be entitled to make a departmental representation or initiate legal proceedings before a competent forum to enforce a legal principle enunciated by the Supreme Court---Failure of a State functionary to apply a legal principle which was clearly and unambiguously attracted to a case, might expose him to proceedings under Art.204(2)(a) of the Constitution.

In a latest case reported in 2019 SCMR 998 the august Court again reaffirm the said view, reproduced as:

Where a Tribunal or Court decided a point of law relating to terms and conditions of service of civil servants which governed not only those who litigated but also those who had not resorted to any legal proceedings, then irrespective of this they (non-litigating civil servants) too became entitled to the same benefit.

Now it is very important to mention here a similar nature case Titled as Bibi Mussarat, Librarian and others versus Province of NWFP (Civil Appeal No. 1114 to 1116 of 2006). The Supreme Court of Pakistan directed that:

In view of judgments cited above favouring the present appellants and because of the provisions of 1995, if no follow-up would discriminate the present appellants. These appellants are directed to grant BPS-17 to the appellants with effect from the date of their Master Degree or any higher qualification. However, there is no order as to cost.

Attested


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Now it is very important to mention here a similar nature case Titled as **Bibi Mussarat, Librarian and others versus Province of NWFP (Civil Appeal No. 1114 to 1116 of 2006)**. The Supreme Court of Pakistan directed that:

In view of judgments cited above favouring the present appellants and because of notification of 1995, if not followed would discriminate the present appellants. These appeals are therefore, allowed. The judgment of the NWFP Service Tribunal is set aside and the respondents are directed to grant BPS-17 to the appellants with effect from the date of their Master Degree acquiring higher qualification. However, there is no order as to cost.

I have thoroughly examined the whole file and the available records including the judgments placed on file. Now I am of considered opinion that all other civil servants not party to proceedings (i.e. others 21 Teachers of Special Education Centres subject to their acquiring higher qualifications) are entitled to same relief as are already granted to one Mr. Muhammad Tabir.


Syed Qaisar Ali Shah
Additional Advocate-General,
Khyber Pakhtunkhwa, Peshawar.

Advocate-General,
Khyber Pakhtunkhwa,
Peshawar.

Secretary,
Government of Khyber Pakhtunkhwa,
Law, Parliamentary Affairs &
Human Rights Department.


Attested


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Deputy Commission
Office Lakki Marwat

HAMEED AKHTAR NIAZI Versus SECRETARY, ESTABLISHMENT DIVISION GOVERNMENT
OF PAKISTAN

April 24, 1996 — SUPREME COURT — Honorable Justice AJMAL MIAN & MUKHATAR AHMAD
JUNEJO — — 1996 SCMR 1185

Attended

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Deputy Commission
Office Lakki Marwat

JUDGMENT

AJMAL MIAN, J.---This is an appeal with the leave of this Court against the judgment dated 11-12-1986 passed by the Federal Service Tribunal, Islamabad, hereinafter referred to as the Tribunal, passed in Appeal No.124(1)

of 1980, filed by the appellant, praying for the following reliefs:--

"16. In view of the above, the appellant (who was eventually promoted with effect from 28-8-1980) humbly prays that this honourable Tribunal may kindly direct the respondent No. 1 to proceed in accordance with law and to declare him to have been promoted before the ineligible and junior officers promoted in August, 1979 and February and May, 1980. It is further prayed that full salary and all other benefits may also kindly be allowed to the appellant from the date on which he would have been promoted if his name had been put up for the consideration of the C.S.B. according to his seniority. Cost tray also graciously be allowed,"

dismissing the same for the reasons recorded in Appeal NO. I 16(R) of 1981, filed by one M. Ramizul Haq.

2. Leave to appeal was granted to consider inter alia the following questions:--

- (a) Whether the seniority list of 1979 was properly prepared in accordance with law and what is the effect of the reliance from the Government side in the Supreme Court in another appeal on the list of 1976?
- (b) Whether when preparing the list of 1979, section 8(4) of the Civil Servants Act, 1973 and other related provisions of law, have been kept in view?
- (c) Whether a civil servant can be allowed to count his seniority in a post from a date earlier than the one of his actual regular continuous officiation in that post; if not, whether the fact that the respondents belonged to the defunct Civil Service of Pakistan will make any difference?
- (d) Whether one uniform principle of seniority will apply to all members of the Secretariat Group or the officers joining the Group from different source/cadres would have to be treated differently; if so, whether such treatment whether with or without the support of statutory rules or directions would not be in contravention of the relevant provisions of the Civil Servants Act, 1973. and in this context what is that effect of the abolition of the C.S.P. Cadre? and

accordance with the prescribed procedure and whether in this context a civil servant belonging to ex-C.S.P cadre is entitled to automatic promotion to the post of Deputy Secretary if he completes eight years of service but without the aforementioned requirement of being actually selected/promoted or appointed? and

(f) What is the effect on this case of the judgment of this Court in Khizar Haider Malik and others v. Muhammad Rafiq Malik and another 1987 SCMR 78.?

3. It may be observed that the order of granting leave was recalled on 10-2-1992, but upon review, the same was set aside through an order dated 14-2-1994 and thereby the aforesaid leave granting order was restored.

4. The brief facts are that the appellant joined Pakistan Military Lands and Cantonments Service on the basis of the results of competitive examination held in June, 1960. It is the case of the appellant that in 1967, he proceeded to U.S.A. on study leave and obtained a Master's Degree in Public Administration from the Maxwell School of Public Affairs and Citizenship, Syracuse University. It is also his case that in June/July, 1972, the Planning Division recommended him for promotion to the post of Deputy Secretary to the Government of Pakistan. It is his further case that pending approval of the Establishment Division, Planning Division promoted him as Deputy Secretary by an order dated 9-8-1972. The above order reads as follows:--

It has been decided that Mr. Hameed Akhtar Niazi, PML & CS will look after the work of Deputy Secretary (Administration) with immediate effect. He will be designated as Officer on Special Duty (Administration).

Mr. Zafar Iqbal is posted as Deputy Secretary, Programming."

It has also been averred by the appellant that he was promoted as Deputy Secretary on regular basis on 9-4-1973 and posted in the Establishment Division.

5. It seems that in August, 1973, C.S.P. and P.S.P. cadres were merged into All Pakistan Unified Grades, hereinafter referred to as APUG. It further seems that after the aforesaid merger, four occupational groups were created, namely, Tribal Areas Group, District Management Group, Secretariat Group and Police Group. The appellant opted for the Secretariat Group. It is the case of the appellant that the Gradation List of Deputy Secretaries i.e. of the Secretariat Group was prepared in accordance with the provision of section 8(4) of the Civil Servants Act, 1973, hereinafter referred to as the Act, which provides that "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". According to the appellant, the above Gradation List was circulated in June, 1976, wherein the appellant's name appeared at Serial No. 69. However, the appellant learnt in August, 1979, that civil servants belonging to erstwhile Civil Service of Pakistan (C.S.P.), whose names appeared much below the appellant in the aforesaid Gradation Lists of 1976, were being promoted to the rank of Joint Secretary (Grade-20) and his name had not been put up for promotion to the General Selection Board for consideration. He first made efforts to get redress from the department, but eventually, he filed the aforementioned service appeal in the Tribunal, which was dismissed as stated above. After that he filed a petition for leave to appeal in this Court, which was granted to consider the above questions.

6. It may be pertinent to observe that in the above appeal, besides the Federation, 14 civil servants were arrayed as respondents. It may further be observed that, in addition to the above respondents, 7 other civil servants were impleaded pursuant to an application dated 4-1-1988.

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Mr. Zahoor Akhtar, has also appeared though he had not filed any application for getting himself impleaded in the aforesaid appeal.

Be that as it may, in support of the above appeal, Mr. M. Bilal, learned Sr. A.S.C. for the appellant, has vehemently contended that after the merger of the two cadres, namely, C. S. P. and P. S. P. and creation of APUG, the Gradation List of the Deputy Secretaries prepared in 1976 could not have been disturbed and that certain civil servants could not have been given seniority over the appellant from a date prior to their regular appointments as the Deputy Secretaries in the above cadre. To reinforce the above submission, reliance has been placed by him inter alia on section 8(4) of the Act and para. 8 of ESTACODE, 1989 Edition, under the caption "Secretariat Group" at Serial No. 19 incorporated on the authority of O.M.No.2/2/75-ACR, dated 12-4-1976.

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The aforementioned newly added respondent supports Mr. Bilal's contention.

On the other hand, Mr. Raja Muhammad Bashir, learned Deputy Attorney-General, has contended that seniority inter se of the civil servants belonging to C.S.P. cadre obtaining prior to its merger could not have been distorted to the detriment of any of the above civil servants and, therefore, if C.S.P. officers, who were not actually posted as Deputy Secretaries but were deputed to various Provinces on account of public exigencies, could not have been made junior to civil servants who were junior to them prior to the merger of aforesaid two cadres and who were working as Deputy Secretaries and were senior inter alia to the appellant.

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Deputy Commissioner
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8. It appears that the Tribunal proceeded on the premises as urged by learned Deputy Attorney-General. It may be advantageous to reproduce the relevant portion of the impugned judgment, which reads as follows:--

"It appears that the question of seniority was not examined when persons not being Members of the Service were appointed to APU J with the approval of the President vide Notification No.1/1/73-ARC, dated 14-9-1973. Nevertheless, the seniority lists were prepared of the Deputy Secretaries and Joint Secretaries, etc. and they included only those officers of the former C.S.P. who at the relevant time were serving against these posts. At that time, the Rule for appointment of the Deputy Secretaries was that a C.S.P. Officer who had completed 8 years' service could be appointed as Deputy Secretary. No doubt, subsequently by Office Memo. No.3/7/74-AR.II, dated the 20th May, 1974, 12 years period was provided for Grade-19 and for horizontal movement of Grade-18 Officers to the post of Deputy Secretary vide para. 3 of Office Memo. No. 2/2/75-ARC, dated 21-2-1975, but this deviation in the length of service is immaterial as far as C.S.P. Officers are concerned. Their names already existed as Members of C.S.P. and subsequently of APUG. Their seniority was to be changed in accordance with some principle and not by making any rule affecting their vested right. All Rules made under the Civil Servants Act or the Civil Servants Ordinance have to be construed with prospective operation and not with retrospective operation. All those Rules which affect the former Officers of the C.S.P. have to be applied for the situations existing after the enactment of the Civil Servants Ordinance, 1973, and the Rules made thereunder. The seniority of the C.S.P. Officers in APUG could not, therefore, be distorted. Any seniority to which a Member of the Cadre was entitled before the constitution of Secretariat Group, could not be affected by the provisions of section 8(4) of the Civil Servants Act, 1973. In other words, the seniority of such a person cannot be destroyed by any subsequent change in the principles of seniority. By making a provision in the relevant Officer Memorandum that seniority shall count from the date when an officer becomes Deputy Secretary or is promoted to Grade-19, whichever is earlier, the distortion in the seniority of other Federal Services was removed, but in case of C.S.P. Officers

Secretary was never a promotion post in the cadre. Thus, in our opinion, if after the coming into force of the Civil Servants Act, an officer of former C.S.P. who was senior to his colleagues working as Deputy Secretary in the Secretariat, but an officer who was working, in the Province or elsewhere would, when brought to the Secretariat later, retain his seniority vis-a-vis his own colleagues. In other words, if an officer of the former C.S.P. is appointed as Deputy Secretary in the Secretariat Sub-Group, within APUG, he would count his seniority from the date he completes 8 years of service if any of his colleagues junior to him had already been promoted. It is this principle, which the Establishment Division has applied and we think that this is a proper course by which the distortion in the seniority can be removed."

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9. In this regard, it may be pertinent to refer to page 1014 of the ESTACODE 1989 Edition, in which under the caption "Reorganisation of APUG in to four Occupational Groups Seniority of members of the Group" at Serial No. 17 has provided as under on the basis of Establishment Secretary's D.O. Letter No.2/4/75-AVI, dated 2-10-1975:--

"Sl. No. 17:

Kindly refer to Establishment Secretary's Circular D.O. Nos.5/1/73 ARC, dated the 7th September, 1973, 2/2/73-AVI, dated the 26th November, 1973, and 2/1/74-AVI, dated the 10th May, 1974, alongwith which the combined seniority lists of officers of All-Pakistan Unified Grades in various grades were circulated.

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2. In the meantime, the All-Pakistan Unified Grades has been organised into four Occupational Groups---the Secretariat Group, the District Management Group, the Police Group and the Tribal Areas Group. The rules and procedures etc. governing the administration of each of these Groups have already been issued and sent to you vide the Establishment Division's Office Memoranda No.2/2/75-ARC, dated 21st February, 1975 (Secretariat Group) No.2/2/74-ARC, dated 23rd February, 1974 (District Management Group), No.3/2/75-ARC, dated 31st May, 1975 (Police Group) and D.O. No. 1/6/73-ARC, dated 20th October, 1973 (Tribal Areas Group). Consequently the seniority lists have now been drawn up separately in respect of each Group.

3. As already indicated, each group will henceforth be managed under the respective rules quoted above. A member of a particular Group will be governed by prospects of promotion and advancement available within the Group. While entry into other Groups by horizontal movement is possible with the approval of Central Selection Board, there will be no automatic mobility from one Group to the other. In other words, officers shown in any particular Group will now belong to that Group once for all unless specifically selected and approved for movement to another Group.

4. You may now kindly inform the officers under your administrative control accordingly. Officers shown in the Secretariat Group but belonging originally to some other Group may let this Division know finally as to whether they would like to remain in the Secretariat Group or go back to their parent Group. Option once exercised will- be final. Such option should reach us not later than 31st October, 1975. Failure to exercise option by that date will be presumed to be an option for the Group where the name appears presently.

5. In the meantime, these lists may be treated as provisional and in case there are any omissions or discrepancies, these may please be communicated to us immediately for rectification."

10. Reference may also be made to paras. 3 and 8 of the ESTOCODE, 1989 Edition, at pages 1096 and 1097 thereof under the caption "Secretariat Group" at Serial No. 19 and which read as

- (i) By promotion of Grade-18 Officers of Office Management Group and the Secretariat Group on the recommendations of the Central Selection Board.
- (ii) By horizontal movement from other Occupational Groups of Grade 19 Officers who have been recommended by the Ministries/Divisions, Departments or Provincial Governments and have been found fit by the Central Selection Board.
- (iii) By direct appointment or the recommendations of the Federal Public Service Commission of persons possessing such qualifications and experience etc., as may be prescribed.

Para. 8 of the ESTACODE: 8. Deputy Secretary.--Seniority would be determined from the date of continuous regular . officiation as Deputy Secretary, or in a post in Grade-19, whichever is earlier."

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11. We may observe that in the present case, section 8(4) of the Act is relevant as it will be covered by the rules framed for. regulating APUG. It is evident from afore-quoted para. 4 of ESTACODE, 1989 Edition, at page 1014 that after the creation of Secretariat Group, the civil servants were given the option to opt the above Group or any other Group by 31-10-1975. Whereas above quoted para. 3 of the ESTACODE at page 1006 under the caption " Secretariat Group" at Serial No.19, indicates as to how the appointment to the post of Deputy Secretary will be made i.e. by promotion of Grade-18 Officers by horizontal movement and by direct appointment on the recommendation of the Federal Public Service Commission.

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Deputy Commission
Office Lakki Marwat

12. It may further be noticed that para. 8 of the above ESTACODE at page 1097 provides that seniority would be determined from the date of continuous regular officiation as Deputy Secretary or in a post in Grade-19, whichever is earlier.

13. The Tribunal has not taken into consideration that above relevant provisions of the ESTACODE while dilating upon the controversy in issue. It should have decided, whether the respondents had exercised the options in terms of aforesaid para. 4 of the above ESTACODE at page 1014, by 31-10-1975 and whether the seniority list was prepared as per aforequoted para. 8 of the ESTACODE, i.e. from the date of continuous regular officiation as Deputy Secretary or in a post in Grade-19, whichever is earlier.

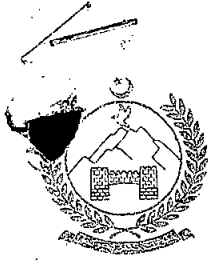
14. There is no doubt that the seniority of an officer, who is working in a Province or elsewhere, cannot be distorted/disturbed to his detriment on account of the merger of above two cadres of C.S.P. and P.S.P. and creation of APUG. His junior cannot be made senior to him nor a junior to his junior can be made senior to him. But, this is to be done within the framework of the rules of reorganisation as given in the above ESTACODE. If the case of any civil servant does not fall within the ambit of the above rules, section 23 of the Act can be pressed into service by the President to oblivate the inequitable and unjust result arising out of the above reorganisation in respect of seniority of any of the civil servants.

15. It was also contended by Mr. Raja Muhammad Bashir, learned Deputy Attorney-General, that since that appellant has already been promoted to Grade-20, the above appeal has become in fructuous. However, this contention was refuted by Mr. Bilal and it was urged by him that the appellant is entitled to get his seniority restored according to the rules.

16. In our view, it will be just and proper to remand the case to the Tribunal with the direction to re-examine the above case after notice to the affected persons and to decide the same afresh in the light of above observations. We may observe that if the Tribunal or this Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of the civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings; in such a case, the dictates of justice and rule of good governance demand that the benefit of the above judgment be extended to other civil servants, who may not be parties to the above litigation instead of compelling them to approach the Tribunal or any other legal forum.

17. The above appeal stands disposed of in the above terms, with no order as to costs.

(Sd.)
Ajmal Mian, J.
(Sd.)
Saiduzzaman Siddiqui, J.



OFFICE OF THE
DEPUTY COMMISSIONER

LAKKI MARWAT (KHYBER PAKHTUNKHWA) Ph# 0969-538330-31 Fax# 538333
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G-2 + G-5

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No. 118 /Reader/LA/Departmental Appeal

Dated 13 /01/2022

Attested

To The Senior Member Board of Revenue
Govt. of Khyber Pakhtunkhwa
Revenue & Estate Department
Peshawar

LITIGATION OFFICER
Deputy Commission
Office Lakki Marwat

Subject: DEPARTMENTAL APPEAL FOR PROMOTION TO THE POST OF NAIB
TEHSILDAR IN PURSUANCE OF JUDGMENT DATED 22-09-2021 PASSED BY
HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR AT
CAMP COURT ABBOTABAD

Memo:

Enclosed please find herewith a copy departmental appeal along with its relevant documents containing (18 pages respectively) submitted by Muhammad Idrees Junior Scale Stenographer BPS-14 of this office for kind perusal please.

Encl: A.A.

Deputy Commissioner
Lakki Marwat

Even No. & Date:

Copy forwarded to the Commissioner Bannu Division for information please.

Deputy Commissioner
Lakki Marwat

BEFORE THE SENIOR MEMBER BOARD OF REVENUE, GOVT. OF KHYBER
PAKHTUNKHWA REVENUE & ESTATE DEPARTMENT PESHAWAR

21

Attested

THROUGH: PROPER CHANNEL { 1. Worthy Commissioner Bannu Division
2. Worthy Deputy Commissioner Lakki Marwat

DEPARTMENTAL APPEAL FOR PROMOTION TO THE POST OF NAIB
TEHSILDAR IN PURSUANCE OF JUDGMENT DATED 22-09-2021 PASSED
BY HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR AT
CAMP COURT ABBOTABAD

LITIGATION OFFICER
Deputy Commissioner
Office Lakki Marwat

Respected Sir,

With due respect it is stated that I am serving as Junior Scale Stenographers BPS-14 in the Deputy Commissioner's office Lakki Marwat being eligible for promotion to the post of Naib Tehsildar from 2019 and submit the following:

1. That Assistant Secretary (Estt:) Board of Revenue Peshawar conveyed a letter to Commissioner Bannu Division bearing No.Estt:V/Seniority List/2018/40181 dated 21-12-2018 in connection with provision of seniority list of Senior Clerk BPS-14 and Junior Scale Stenographer BPS-14 at divisional level for the year 2017 within a week time positively. Copy annexed as [F/A].
2. That after compilation of all codal formalities, joint final seniority list of Senior Clerks/Junior Scale Stenographers of the offices of Commissioner Bannu and Deputy Commissioner Bannu, Lakki Marwat & North Waziristan at divisional level for the year 2017 was furnished by the office of Commissioner Bannu Division to Assistant Secretary (Estt:) Board of Revenue Peshawar vide letter No.529-34/AG-I dated 18-01-2019. Copy annexed as [F/B].
3. That Assistant Secretary (Estt:) Board of Revenue Peshawar forwarded a letter to all Commissioners in Khyber Pakhtunkhwa (Except Commissioner Hazara Division) bearing No.Estt:V/PF/Seniority List/2018/9864-70 dated 21-03-2019 regarding provision of final/undisputed joint seniority list of Senior Clerks & Junior Scale Stenographers along with original ACRs, Synopsis, and non-involvement certificates of the top ten (10) officials of Bannu Division through special messenger by tomorrow positively. Copy annexed as [F/C].
4. That in the meanwhile vide Notification dated 13-05-2019, amended the service rules by Board of Revenue Khyber Pakhtunkhwa Peshawar and deleted the reserved quota of 15% for promotion of ministerial staff i.e. Senior Clerks/Junior Scale Stenographers to the post of Naib Tehsildar. Copy annexed as [F/D].
5. That feeling aggrieved, some Senior Clerks etc were filed Service Appeals vide No.1021 & 1022/2019 which was accepted by the Khyber Pakhtunkhwa Service Tribunal Peshawar at Camp Court Abbottabad vide Judgment dated 22-09-2021 "appellants are held entitled for promotion to the post of Naib Tehsildar from the dates, when they became eligible for promotion". Copy of judgment annexed as [F/E].
6. According to the opinion made by the Additional Advocate General Khyber Pakhtunkhwa Peshawar in consultation with Law, Parliamentary Affairs & Human Rights Department Govt. of Khyber Pakhtunkhwa Peshawar that "If a Tribunal or the Supreme Court decides a point of law relating to the terms and condition of a Civil Servant who litigated, and there were other civil servants, who may not have taken any legal proceedings, in such case, the dictates of justice and rule of good governance demand that the benefit of the said decision be extended to other civil servants also, who may not be parties to that litigation, instead of compelling them to approach the Tribunal or any other legal forum---All citizens are equal before law and entitled to equal protection of law as per Article-25 of the Constitution". Copy annexed as [F/F].

It is therefore, humbly requested that keeping to the above facts into accounts, I may very kindly be promoted to the post of Naib Tehsildar in pursuance of the decision dated 22-09-2021 of Khyber Pakhtunkhwa Service Tribunal Peshawar at Camp Court Abbottabad. We shall be very thankful to you for this act of kindness.

Dated: 10-01-2022

No	111
Date	10-01-2022
Return Date	
Action	Read/LA

Yours Obedient Servant

[Muhammad Idrees]

Junior Scale Stenographer BPS-14



OFFICE OF THE
COMMISSIONER
BANNU DIVISION

P.O. Box, 12, Postal Code 28100, Bannu.
Phone: 0928-9270044 & 621144
Fax: 0928-9270041
E-mail: est.bannu@pwa1999.gov.pk

22

No. 6310-14/AG-UP-SENIC

Dated: 24-12-18

Attested

1. Deputy Commissioner, Bannu.
2. Deputy Commissioner, Lakki Marwat.
3. Deputy Commissioner, North Waziristan Tribal District.

LITIGATION OFFICER
Deputy Commissioner
Office Lakki Marwat

Subject: PROVISION OF SENIORITY LIST OF SENIOR CLERK AND JUNIOR SCALE STENOGRAPHER AT DIVISIONAL LEVEL FOR THE YEAR 2017-18.

I am directed to enclose herewith a copy letter No. Estt:V/Seniorty List/2018/40181, dated 31-12-2018 on the subject noted above, and to request you to provide the final/undisputed seniority list of Senior Clerks/Junior Scale Stenographer working in your offices for the year 2017-18 within 3 days for onward submission to the quarter concerned, please.

Secretary to Commissioner
Bannu Division

Even no & date:

Copy forwarded to:-

1. Asstt Secretary (Estt) Govt of Khyber Pakhtunkhwa Board of Revenue, Peshawar for information.
2. PS to Commissioner Bannu.

Secretary to Commissioner
Bannu Division

RECEIVED	
No.	5166
Date	24-12-18
Return Date	AS/PS
Action	

Attested

LITIGATION OFFICER
 Deputy Commission
 Office - Lakki Marwat


JOINT FINAL SENIORITY LIST OF SENIOR CLERKS/JUNIOR SCALE STENOGRAPHERS OF THE OFFICES OF COMMISSIONER BANNU DIVISION AND DEPUTY COMMISSIONER BANNU AND LAKKI MARWAT AND NORTH WAZIRISTAN OF BANNU DIVISION.

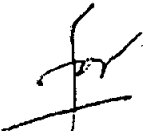
S.No	Name	Designation	BPS	D.O.B.	Qualification	Date of entry into Govt. Service	Date of appointment/promotion to present post	Method of appointment	Establishment/Office to which belongs
1.	Shakib Khan	JSS	14	01/01/1964	B.A	21/10/1989	28/08/1990	Direct	DC, Bannu
2.	Muhammad Sajjid	JSS	14	15-03-1969	B.Com	01-11-1992	01-11-1992	Direct	DC, LM
3.	Amir Bayan	JSS	14	11-04-1965	M.Sc	18-11-1992	18-11-1992	Direct	DC, LM
4.	Muhammad Idrees	JSS	14	12-05-1983	M.A.	26-02-2004	26-02-2004	Direct	DC, LM
5.	Naseem Ullah Khan	JSS	14	04/02/1991	M.A+D.Com	06/01/2010	06/01/2010	Direct	DC, Bannu
6.	Shahid Naseem	S/C	14	08-05-1964		01-12-1982	17/05/2011	By Promotion	DC, NW ✓
7.	Rehmat Ali	S/C	14	13-02-1966		01-12-1983	09/05/2012	By Promotion	DC, NW ✓

Rt 1/2

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8.	Mir Abass Khan	S/C	14	11-12-1964		08-05-1984	15-05-2015	By Promotion	DC, NW ✓
9.	Muhammad Yaquab Khan	S/C	14	20-04-1963		01-09-1984	15-05-2015	By Promotion	DC, NW ✓
10.	Hakim Khan	S/C	14	30-03-1962		01-07-1985	15-05-2015	By Promotion	DC, NW ✓
11.	Rasool Khan	S/C	14	07-09-1963		01-07-1985	19-06-2017	By Promotion	DC, NW ✓
12.	Mir Sadey Khan	S/C	14	21-11-1961		02/07-1985	19-06-2017	By Promotion	DC, NW /
13.	Ghaffar Ali	S/C	14	2-04-1968	B.A	30-05-1991	02-11-2017	By Promotion	DC, Bannu P
14.	Saeed Ur Rehman	JSS	14	15/04/1989	M.Com	11/04/2018	10/04/2018	Direct	DC, Bannu ✓
15.	Ihsan Ullah	S/C	14	5-2-1971	M.A	1-1-1992	29-05-2018	By Promotion	DC, Bannu ✓
16.	Jamshed Khan	S/C	14	1-1-1966	B.A	1-9-1992	29-05-2018	By Promotion	DC, Bannu ✓
17.	Nawab Khan	S/C	14	08-04-1970	F.A	08-10-1992	20-08-2018	By Promotion	DC, LM ✓

Attested

LITIGATION OFFICER
 Deputy Commission
 Office Lakki Marwat

Rt 15/02

COMMISSIONER
BANNU DIVISION

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24

(27)

BEFPRE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. _____/2022

Muhammad Idrees S/O Muhammad Iqbal (late) Junior Scale Stenographer BPS-14 office of
the Deputy Commissioner Lakki Marwat Bannu Division KPK [Appellant]

VERSUS

1. Provincial Govt. through Chief Secretary Khyber Pakhtunkhwa
2. Senior Member Board of Revenue Khyber Pakhtunkhwa Peshawar
3. Secretary to Govt. of KPK, Revenue & Estate Department KP Peshawar

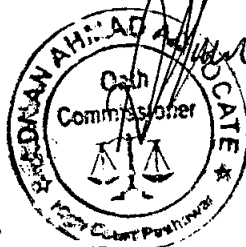
[Respondents]

SERVICE APPEAL U/S-4 OF KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER
DATE 11-07-2019 OF BOARD OF REVENUE KPK, PESHAWAR WHEREBY APPELLANT'S
DEPARTMENTAL APPEAL DATED 09-07-2019 FOR PROMOTION AS NAIB TEHSILDAR HAS
BEEN REJECTED AND NOTIFICATION DATED 13-05-2019 WHEREBY 15% RESERVED
QUOTA OF MINISTERIAL STAFF FOR PROMOTION AS NAIB TEHSILDAR HAS BEEN
DELETED FROM THE RULES.

AFFIDAVIT

Muhammad Idrees Junior Scale Stenographer BPS-14 office of the Deputy
Commissioner Lakki Marwat do hereby solemnly affirm and declare that all the contents of
these **Service Appeal** is true and correct to the best of my knowledge and belief and
nothing has been concealed from this Honourable Tribunal.


Deponent



28/3/2022

Order

26

	GOVERNMENT OF KHYBER PAKHTUNKHWA, BOARD OF REVENUE, REVENUE & ESTATE DEPARTMENT.	
091-9213989	No. Estt: V/PF/M.Idrees/JSC/Lakki Marwat/ Peshawar Dated the 7/02/2022 7175-77	091-9214208

To

Muhammad Idress
Junior Scale Stenographer,
Deputy Commissioner's office,
Lakki Marwat.

**SUBJECT: DEPARTMENTAL APPEAL FOR PROMOTION TO THE POST OF NAIB
TEHSILDAR IN PURSUANCE OF JUDGMENT DATED 22.09.2021
PASSED BY HON'ABLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR CAMP COURT ABBOTTABAD.**

Your application dated 10.01.2021 has been filed by Competent Authority due to pending CPLA before the Supreme Court of Pakistan against judgment dated 22.9.2021 in case titled Abdul Qayyum Tahir versus Government of Khyber Pakhtunkhwa and others.


Assistant Secretary (Estt)

No. & dated Even:

Copy forwarded to the:-

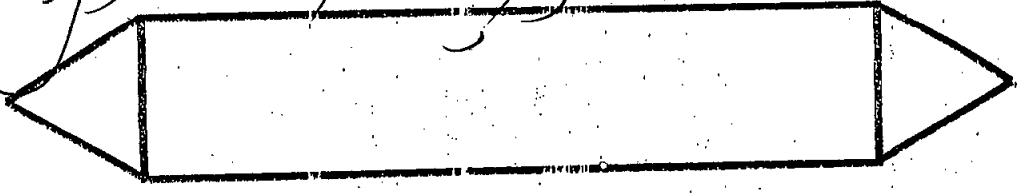
1. The Commissioner Bannu Division for information.
2. The Deputy Commissioner Lakki Marwat with reference to his letter No. 118/Reader/LA/Department Appeal dated 13.01.2021 for information.

Assistant Secretary (Estt)

RECEIVED	
No	1358
Date	14/03/2022
Recd Date	
Action	HCR
DC LAKKI MARWAT	

lit / Branch
11

بعدالت صرہ کس سروس ڈیپارٹمنٹ



2022 منجانب

مورخہ

بنام صرہ کس سروس ڈیپارٹمنٹ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطہ پیروی و جواب دہی وکل کارروائی متعلقہ
 آن مقام صرہ کس سروس ڈیپارٹمنٹ کے لیے محمد شریف پر مشتمل درخواستی اور
 مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب سروس ڈیپارٹمنٹ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
 وکیل صاحب کو راضی نامہ کرنے ق تقرر ثالث، فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور
 بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
 زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی
 اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا محتاج ہوگا۔ از بصورت ضرورت
 مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
 تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکور با اختیارات حاصل ہوں گے
 اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ ہوں گے
 سب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔
 کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

Shahid
30/3/2022

Slr
ماہ

المرقوم

العبد د گ واہ العبد د

صرہ کس سروس ڈیپارٹمنٹ

مقام

“B”

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD S.B
PESHAWAR.

No.

Appeal No. SL7 of 20 22

Muhammad Idrees Appellant/Petitioner

Versus

Govt. of KPK through Chief Secy. Respondent

Respondent No. 1

Notice to: — Govt. of KPK through Chief Secretary
Peshawar.

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 14/7/2022 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No.....dated.....

Given under my hand and the seal of this Court, at Peshawar this 17th

Day of..... June 20 22

for Reply
ISSUED BY
CHIEF SECRETARY
GOVT. OF KHYBER PAKHTUNKHWA
[Signature]

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
 JUDICIAL COMPLEX (OLD), KHYBER ROAD, S.B
 PESHAWAR.

No.

Appeal No. 547 of 20 22

Muhammad Idrees Appellant/Petitioner

Versus

Govt. of KPK through Chief Secy Respondent

Respondent No. 3

Notice to: —

Secretary to Govt. of KPK Revenue & Estate
Deptt. KPK Peshawar.

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 14/7/2022 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

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Copy of appeal is attached. ~~Copy of appeal has already been sent to you vide this office Notice No. dated~~

Given under my hand and the seal of this Court, at Peshawar this 17th

Day of June 20 22

for Reply

Registrar,
 Khyber Pakhtunkhwa Service Tribunal,
 Peshawar.

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR. S.B

No.

Appeal No. 547 of 20 22

Muhammad Idrees Appellant/Petitioner

Versus

Govt of KPK through Chief Secy Respondent

Respondent No. 2

Notice to: — Senior Member Board of Revenue KPK
Peshawar.

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 14/7/2022 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

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Copy of appeal is attached. Copy of appeal has already been sent to you vide this

office Notice No.....dated.....

Given under my hand and the seal of this Court, at Peshawar this 17 12

Day of June 2022

for Reply

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.