

1042/2018

28.08.2019

Nemo for appellant.

Instant matter was adjourned on previous six occasions upon request on behalf of appellant. On 12.04.2019 and 21.05.2019 last chance was extended to the appellant for preliminary hearing of the appeal. Even today learned counsel for the appellant is not in attendance at the time of last call at 3.15 P.M.

Dismissed for non-prosecution. File be consigned to the record room.


Chairman

Announced:
28.08.2019

12.04.2019

Appellant in person present.


Appellant requests for adjournment on account of non-availability of his learned counsel.

Instant matter has been adjourned on so many previous occasions, therefore, this time it is adjourned to 21.05.2019 but as a last chance.


Chairman

21.05.2019

Junior to counsel for the appellant present and submitted application for adjournment. In the interest of justice, against last chance is granted. Adjourn. To come up for preliminary hearing on 05.07.2019 before S.B.


Member

05.07.2019

Junior to counsel for the appellant present and seeks adjournment as learned senior counsel is not in attendance. Adjourn. To come up for preliminary hearing on 28.08.2019 before S.B.


Member

20.12.2018


Clerk to counsel for the appellant present and seeks adjournment as learned counsel for the appellant is not in attendance. Adjourn. To come up for preliminary hearing on 06.02.2019 before S.B


Member

06.2.2019

Mr. Fida Yousaf, Advocate for appellant present.

Requests for adjournment in view of general strike on the call of Khyber Pakhtunkhwa Bar Council. Adjourned to 08.03.2019 before S.B.


Chairman

08.03.2019

Appellant absent. Learned counsel for the appellant absent. Adjourn. To come up for preliminary hearing on ¹²06.04.2019 before S.B.


Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1042/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	20/08/2018 24-8-2018	<p>The appeal of Mr. Muhammad Saleem, presented today by Mr. Asad Zeb Khan Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>1-10-2018</u>.</p> <p style="text-align: right;"><i>[Signature]</i> MEMBER</p>
2	01.10.2018	<p>Counsel for the appellant present and requested for adjournment. Adjourned. To come up for preliminary hearing on 02.11.2018 before S.B.</p> <p style="text-align: right;"><i>[Signature]</i> (Muhammad Amin Khan Kund) Member</p>
3	02.11.2018	<p>Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 20.12.2018.</p> <p style="text-align: right;"><i>[Signature]</i> READER</p>

20.12.2018

Clerk to counsel for the appellant present. Written reply not received. No one present on behalf of respondent department. Notice be issued to the respondent department for 06.02.2019 adjourn. To come up for written reply/comments on the date fixed before S.B.

Member

[Handwritten signature]

BEFORE KHYBER PAKHTUN KHWA, SERVICE TRIABUNAL,
PESHAWAR

Service Appeal No. 1042 /2018

Muhammad Saleem, Computer Operator, Excise, Taxation and Narcotics
Control Department, Khyber Pakhtun Khwa, District Nowshera.

Appellant

Versus

Govt. of Khyber Pakhtun Khwa through Chief Secretary and others

Respondents

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Appellant

Through

Dated: 20/08/2018


ASAD ZEB KHAN

Advocate High Court, Peshawar.
Al-haaj Plaza, Yousaf Abad,
Dalazak Road, Peshawar
0346-9800565

①

BEFORE KHYBER PAKHTUN KHWA, SERVICE TRIBUNAL,
PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No. 1042 /2018

Diary No. 1307

Dated 20/8/2018

Muhammad Saleem, Computer Operator, Excise, Taxation and Narcotics
Control Department, Khyber Pakhtun Khwa, District Nowshera.

Appellant

Versus

1. Govt. of Khyber Pakhtun Khwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Secretary to Govt. of Khyber Pakhtun Khwa, Excise, Taxation and Narcotics Control Department, Khyber Pakhtun khwa, Peshawar.
3. Secretary to Govt. of Khyber Pakhtun Khwa, Establishment Department, Peshawar.
4. Secretary to Govt. of Khyber Pakhtun Khwa, Finance Department, Peshawar.
5. Director General, Excise, Taxation and Narcotics Control Department, Khyber Pakhtun khwa, Peshawar.

Respondents

SERVICE APPEAL UNDER SECTION-4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST THE ACT OF THE RESPONDENT NO. 2 WHO ISSUED IMPUGNED NOTIFICATION DATED: 19-02-2018, VIDE WHICH THE APPELLANT HAS BEEN REFUSED EQUAL OPPORTUNITY OF PROMOTION TO THE POST OF ASSISTANT EXCISE & TAXATION OFFICER AND ONWARD AND AGAINST THE RESPONDENT No. 1 WHO FAILED TO DECIDE THE DEPARTMENTAL APPEAL OF THE APPELLANT.

Filed to
Registrar
20/8/18

PRAYER IN APPEAL:

ON ACCEPTANCE OF THIS APPEAL, THE IMPUGNED NOTIFICATION DATED: 19-02-2018, MAY KINDLY BE SET ASIDE AND THE APPELLANT MAY BE KINDLY BE GIVEN EQUAL OPPORTUNITY OF PROMOTION TO THE POST OF ASSISTANT EXCISE & TAXATION OFFICER AND ONWARDS WHICH HAS BEEN

(2)

**PROVIDED TO INSPECTORS AND OTHER STAFF OF
THE DEPARTMENT BY AMENDING THE IMPUGNED
RULES OF DEPARTMENT.**

Respectfully Sheweth!

The appellant most humbly submits as under:-

1. **That** the present appellant was appointed as Assistant Industrial Development Officer (BPS-11) on 01-12-1992 which is an executive nature of job description.
2. **That** the appellant along with others was rendered surplus in down-sizing process and was later on adjusted in Excise & Taxation Department on the post of key Punch Operator (BPS-11) and thereby the job description of appellant was changed from executive to technical. It would be relevant to mention that the appellant served the department for more than 25 years but even a single step promotion has not been given to him.
3. **That** recently the respondents was gracious enough to upgrade the post of computer Operator from BPS-12 to BPS-16 by issuing notification 29-07-2016 and under the umbrella of this notification, the appellant was upgraded to the BPS-16.
{True copy of order dated: 29-07-2016 is attached, marked as Annex-A}
4. **That** the Excise, Taxation and Narcotics Control Department have two types of technical staff, i.e.
 - i. **Computer Operators,**
 - ii. **Junior Scale Stenographers.**Both of the above type of staff has same nature of job description but in case of initial recruitment, computer operators are required to be a bachelor degree holder while in case of junior scale stenographer, he must possess intermediate certificate.
5. **That** under NWFP Excise & Taxation Rules, 2002 chain of promotion was given to both types of technical staff. Computer Operator/Key Punch

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Operator was given one step promotion to the post of Data Processing Supervisor (BPS-14) while Junior Scale Stenographer was provided two step promotion, i.e. Senior scale stenographer (BPS-14) and then Superintendent (BPS-16).

6. **That** service rules of Excise and Taxation Department were changed with new set of rules in 2010 when amended NWFP Excise & Taxation Department Service Rules 2010 were notified through Official Gazette vide notification dated: 30-03-2010. Through the newly amended set of rules, the respondent/department was pleased to give higher chances of promotion to the Junior Scale Stenographers/Senior Scale Stenographers/Superintendents by giving a chance to get promotion upto Deputy Director level. But strangely, the other type of technical staff i.e. Computer Operators were discriminated and they have been denied equal chance of promotion like Stenographers. It would be relevant to state that the stenographers and computer operators are considered to be technical persons while superintendent, Excise & Taxation Officer and Deputy Director are executive nature of job description.

7. **That** the respondents were again pleased to amend the service rules for the excise and taxation department by issuing notification in official gazette vide notification dated: 19-02-2018 and through this notification, Govt. of Khyber Pakhtunkhwa Excise, Taxation & Narcotics Control Department service rules 2018 came into field.

{True copy of impugned service rules, 2018 are attached, marked as Annex-B}

8. **That** through the impugned service rules, 2018 class-IV employees of the department were given almost 8 step promotion chances starting from chowkidar/Mali/Sweeper up to Director level. The technical staff of the department i.e. Junior Scale Stenographers (BPS-14) were given several chances of promotion from technical to executive type of job description, i.e. Senior Scale Stenographers, Superintendents, Assistant Excise & Taxation Officer, Excise & Taxation Officer and Director while on the other hand, the present appellant (other component of technical staff) who is working as computer operator was denied equal chances of promotion

from technical to executive type of job and he has been denied promotion to the post of Excise & Taxation Officer and Assistant Excise & Taxation officer etc.

9. **That** after notification dated: 19-02-2018, the present appellant being aggrieved of the said notification, made departmental appeal to the competent authority on 22-04-2018. But to no avail.

{Copy of Departmental appeal is attached as Annex-C}

10. **That** the appellant being aggrieved and having no other efficacies remedy except to file the instant appeal for the redressal of his grievances before this Hon'ble Tribunal on the following amongst other grounds.

GROUNDS:

- A. **Because** the impugned notification dated: 19-02-2018 issued by respondent No. 2 is discriminatory, against law, facts, hence liable to be set-aside.
- B. **Because** the respondent No. 2 in utter disregard to the principles of the fairness, merit and transparency passed/issued the impugned notification dated: 19-02-2018, hence the impugned notification of the respondent No. 2 is against the law, illegal, unlawful and void ab initio and liable to be turned down.
- C. **Because** the appellant has been treated unfairly, discriminatory and the initiative of the respondents is based on malafide. Through the impugned service rules, 2018 class-IV employees of the department were given almost 8 step promotion chances starting from chowkidar/Mali/Sweeper up to Director level, but the appellant and other computer operators have been treated with different yardstick.
- D. **Because** on component of technical staff i.e. Stenographers have been given chance of promotion to switch to executive staff of the department as Assistant Excise & Taxation Officer, Excise & Taxation Officer, Deputy Director, and Director while on the other hand, the another component of technical staff, i.e. computer operators have been denied promotion and switching to executive group/staff of department and they have been refused

promotion chances to the post of Assistant Excise & Taxation Officer, Excise & Taxation Officer, Deputy Director, and Director, hence the impugned rules are liable to be set at naught on this score alone.

- E. **Because** the basic qualification for appointment to the post of computer operator and Assistant Excise & Taxation Officer are Bachelor degree, but the chances of promotion in case of Assistant Excise & Taxation officer are much higher than the computer operators.
- F. **Because** in other departments of provincial Govt. technical cadre staff has also right to switch to executive cadre and the said departments have promoted technical staff and placed/posted them on executive cadre posts, so the appellant who worked almost more than 25 years has the right to be given fair and equal right of promotion like other incumbents of excise and taxation department.
- G. **Because** the recruitment/promotion criteria promulgated through the impugned notification is issued with ulterior motive just to accommodate the blue eyed, therefore, the same are illegal and such practice adversely affects efficiency of incumbents and also reduces the confidence and faith of the appellant, hence the impugned notification referred above is liable to be struck down on this score also.
- H. **Because** the appellant had been made victim of discrimination, demerits, partiality and favoritism without any just and reasonable cause thereby offending the fundamental rights of the appellant as provided by the constitution of 1973, hence the impugned notification detailed above is liable to be set at naught.
- I. **Because** the appellant was condemned unheard, his departmental appeal was not adjudicated. Further no chance of personal hearing was given to the present appellant in order to redress his grievances which shows the malafide of the Respondents, hence needs interference of this Hon'ble Tribunal.

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- J. **Because** the present impugned notification is illegal, illogical, against facts, without jurisdiction and suffering from material irregularity, hence the same is untenable and liable to be struck down.
- K. **Because** the Respondents erroneously exercised their powers against judicial principle, and have passed the impugned notification and opened a new pandora box in clear violation of Service law, hence, the said impugned notification is liable to be declared as illegal and unlawful and liable to be struck down.
- L. **The** appellant crave for leave of the Hon'ble Tribunal to raise additional grounds at the time of arguments.

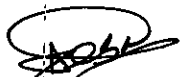
IT IS, THEREFORE, most respectfully prayed that on acceptance of this appeal this Hon'ble tribunal may very graciously be pleased to:

- i. DECLARE THE IMPUGNED NOTIFICATION DATED: 19-02-2018 AS ILLEGAL, UNLAWFUL, VOID AB INITIO AND NULLITY IN THE EYES OF LAW.
- ii. DIRECT THE RESPONDENTS TO GIVE EQUAL RIGHT OF PROMOTION TO THE APPELLANT FOR THE POSTS OF ASSISTANT EXCISE & TAXATION OFFICER, EXCISE & TAXATION OFFICER, DIRECTOR ETC.
- iii. ANY OTHER RELIEF, THOUGH NOT SPECIFICALLY ASKED FOR, DEEMS APPROPRIATE MAY ALSO BE GRANTED.

Appellant

Through:

Dated: 20/08/2018


ASAD ZEB KHAN
Advocate High Court, Peshawar.

VERIFICATION:

It is verified that all the contents of the instant appeal are true and correct and nothing has been concealed intentionally from this Hon'ble Tribunal.

Deponent

Note: That no such like petition / Appeal on this subject matter has earlier been filed before this Hon'ble Tribunal.

(7)

**BEFORE KHYBER PAKHTUN KHWA, SERVICE
TRIABUNAL, PESHAWAR**

Service Appeal No. _____/2018

**Muhammad Saleem, Computer Operator, Excise, Taxation and Narcotics
Control Department, Khyber Pakhtun Khwa, District Nowshera.**

Appellant

Versus

Govt. of Khyber Pakhtun Khwa through Chief Secretary and others

Respondents

**Application for and on behalf of appellant/applicant for
restraining the respondents from filling posts of Assistant
Excise & Taxation Officer, Excise & Taxation officer etc
till final disposal of main appeal.**

Respectfully Sheweth:

1. That the appellant/applicant filed the accompanied service appeal in which no date of hearing is yet fixed.
2. That at the time disposal of this application, the appeal and its supportive documents may be considered as integral part of this application.
3. That the impugned notification has been passed in blatant violation of service laws, so the applicant has a genuine prima facie case in his hand and he is sanguine in respect of his success.
4. That there is no legal cavil in passing of restraining order for filling posts of Assistant Excise & Taxation Officer, Excise & Taxation officer etc through promotion until the rules are changed and if the respondents are not restrained and status quo is not ordered, the accompanying appeal would become infructuous and meaningless.

It is, therefore, most respectfully prayed that the respondents may kindly be restrained from filling posts of Assistant Excise & Taxation Officer, Excise & Taxation officer etc through promotion and status quo be maintained till final disposal of main service appeal.

Appellant

Through

ASAD ZEB KHAN
Advocate High Court, Peshawar

Dated: 20/08/2018

(8)

**BEFORE KHYBER PAKHTUN KHWA, SERVICE
TRIABUNAL, PESHAWAR**

Service Appeal No. _____/2018

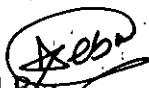
**Muhammad Saleem, Computer Operator, Excise, Taxation and Narcotics
Control Department, Khyber Pakhtun Khwa, District Nowshera.**
Appellant


Versus

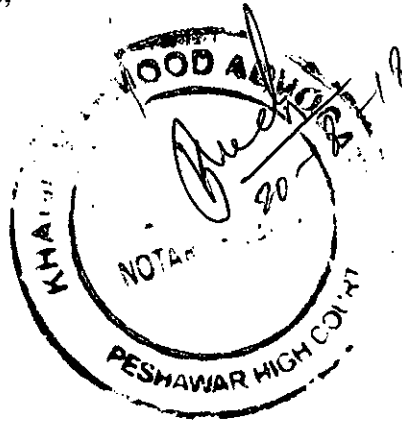
Govt. of Khyber Pakhtun Khwa through Chief Secretary and others
Respondents

AFFIDAVIT

I, Muhammad Saleem, Computer Operator, Excise, Taxation and Narcotics Control Department, Khyber Pakhtun Khwa, District Nowshera, do hereby solemnly affirm and declare upon oath that the contents of the appeal are true and correct to the best of my knowledge & belief and nothing has been concealed or withheld from this Honourable Tribunal.

Identified By: 
Asad Zeb Khan,
Advocate, High Court,
Peshawar.


Deponent
Muhammad Saleem
CNIC: 11201-0371006-7





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GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

A

Dated Peshawar, the 29-07-2016

NOTIFICATION

NO.KC/FD/SO(FR)/7-3/2015-16. The Competent Authority has been pleased to upgrade and re-designate all the existing posts of Computer Operator and Data Processing Supervisor as Computer Operator (BPS-16) in all the Departments / Offices of the Government of Khyber Pakhtunkhwa with immediate effect as per details given below: -

S.No	Existing Nomenclature	Present BPS	Up-graded to BPS
1	Computer Operator	12	16
2	Data Processing Supervisor	14	16

- i) The pay of the existing incumbents of the posts shall be fixed in higher pay scales at a stage next above the pay in the lower pay scale.
- ii) All the concerned Departments will amend their respective service rules to the same effect in the prescribed manner.

SECRETARY TO GOVT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

Endst No. & Date even.

Copy of the above is forwarded for information and necessary action to the:

1. PS to Additional Chief Secretary, FATA.
2. All Administrative Secretaries Government of Khyber Pakhtunkhwa.
3. Senior Member, Board of Revenue, Khyber Pakhtunkhwa Peshawar.
4. Accountant General, Khyber Pakhtunkhwa, Peshawar.
5. Secretary to Governor, Khyber Pakhtunkhwa, Peshawar
6. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
7. Secretary Provincial Assembly, Khyber Pakhtunkhwa.
8. All Heads of Attached Departments in Khyber Pakhtunkhwa.
9. Registrar, Peshawar High Court, Peshawar.
10. All Deputy Commissioners, Political Agents, District & Sessions Judges/Executive District Officers in Khyber Pakhtunkhwa.
11. Chairman, Khyber Pakhtunkhwa, Public Service Commission, Peshawar.
12. Registrar, Service Tribunal Khyber Pakhtunkhwa.
13. All the Autonomous and Semi Autonomous Bodies in Khyber Pakhtunkhwa.
14. Secretary to Govt; of Punjab, Sindh and Baluchistan, Finance Deptt: Lahore, Karachi and Quetta.
15. The District Comptroller of Accts, Pesh, Mardan, Kohat, Bannu, Abbottabad, Swat and D.I. Khan.
16. The Senior Distt Accts Officer Nowshera, Swabi, Charsadda, Haripur, Mansehra and Dir Lower.
17. The Treasury Officer, Peshawar.
18. All District/Agency Accounts Officers in Khyber Pakhtunkhwa / FATA.
19. PS to Minister for Finance, Khyber Pakhtunkhwa.
20. PSO to Chief Secretary, Khyber Pakhtunkhwa.
21. Director Local Fund Audit, Khyber Pakhtunkhwa Peshawar.
22. PS to Finance Secretary.
23. PAs to All Additional Secretaries/ Deputy Secretaries in Finance Department.
24. All Section Officers/Budget Officers in Finance Department.
25. Director FMIU/All Budget Officer Finance Department to take effect in the budget books.
26. Syed Habibullah, President of Information Technology Staff Association (ITSA), Civil Secretariat, Khyber Pakhtunkhwa.

Attested

SECTION OFFICER (FR)

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EXTRAORDINARY
GOVERNMENT



REGISTERED NO. PII
GAZETTE

KEYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, FRIDAY, 16TH FEBRUARY, 2018

GOVERNMENT OF KHYBER PAKHTUNKHWA
EXCISE, TAXATION AND NARCOTICS CONTROL DEPARTMENT

NOTIFICATION

Peshawar, Dated the 19th February, 2018.

No. SO(Admn)/ET&NC/1-41/2018: —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, and in supersession of all previous rules, issued in this behalf, the Excise, Taxation & Narcotics Control Department in consultation with the Establishment and Finance Departments hereby lays down the method of recruitment, qualifications and other conditions specified in column 3 to 5 of the Appendix to this Notification, which shall be applicable to posts in the Directorate General Excise, Taxation and Narcotics Control Department specified in column 2 of the said Appendix.

APPENDIX

S.No.	Nomenclature of the post	Minimum qualification for appointment by Initial recruitment.	Age limit.	Method of recruitment.
1	2	3	4	5
1	Director General (BPS-20).	---	---	By transfer from amongst the officers of APUG/PAS/PCS-SG/PCS-EG/PMS.
2	Director (Administration) (BPS-19).	---	---	By transfer from amongst the officers of APUG/PAS/PCS-SG/PCS-EG/PMS.

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Attested

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1095 (HYDERABAD) GOVERNMENT GAZETTE, EXTRAORDINARY, 20th FEBRUARY, 2018


3	Director (Revenue) (BPS-19).	---	---	By Promotion, on the basis of seniority cum fitness, from amongst the Excise and Taxation Officers with at least twelve years service in BPS-17 and above.
4	Director (BS-19).	---	---	(a) Seventy five percent by promotion, on the basis of seniority-cum-fitness, from amongst the Excise and Taxation Officers with at least twelve years service in BPS-17 and above; and (b) twenty five percent by transfer from amongst the officers of APUG/PAS/PMS.
5	Deputy Director (Audit and Accounts) (BPS-18).	---	---	By promotion, on the basis of seniority-cum-fitness, from amongst the Assistant Directors (Audit and Accounts), with at least five years service as such: Provided that if no suitable person is available for promotion then by transfer from amongst the Government officers.
6	Deputy Director Operation-IT (BPS-18).	At least Second Class Master's Degree in Computer Science/IT/Software Engineering/ Electrical Engineering or equivalent qualification from a recognized University with at least three years experience in relevant field.	25 to 32 years.	By promotion, on the basis of seniority-cum-fitness, from amongst the Computer Programmers, Network Engineers and Web Developers having at least five years service as such: Provided that if no suitable person is available for promotion then by initial recruitment.
7	Deputy Director (GIS) (BS-18).	(i) At least Second Class Master's Degree in GIS from recognized University with three years experience in the field of GIS; or (ii) at least Second Class Master's Degree in Computer Science / IT / Urban Development /Geography or equivalent qualification in the field of Computer Science from a recognized University / Institute with Post Graduate Diploma in GIS from a recognized Institute with three years experience in the field of GIS.	25 to 32 years.	By initial recruitment.

Attested

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(12)

HYDERABAD GOVERNMENT GAZETTE, EXTRAORDINARY, 20th FEBRUARY, 2018. 1083

		Note: Preference will be given to those who have rich experience in open source web-based software related with GIS.		
8	Taxation Analyst (BS-18).	(i) At least Second Class MBA with Finance or M.Com, from a recognized University; (ii) computer literate with certificate in MS-Office (MS-Word, MS-Excel, MS-Access); and (iii) three years experience in field relating to Taxation in public / private sector, Autonomous / Semi-autonomous bodies.	25-32 years.	By initial recruitment.
9	System Analyst (BS-18).	(i) 1 st Class Master's Degree in Computer Science or equivalent qualification from a recognized University; and (ii) Three years experience in field of Electronic Data Processing with system designing and programming skills.	25-32 years.	By initial recruitment. 
10	Excise and Taxation Officer (BS-18).	---	---	By promotion, on the basis of seniority-cum-fitness, from amongst the Assistant Excise and Taxation Officers with at least five years service as such who have passed Departmental Examination in higher grade.
11	Assistant Director (Audit and Accounts) (BPS-17).	At least Second Class Master's Degree in Commerce with Accounting as one of the subject from a recognized University	22-32 years.	(a) Thirty percent by promotion, on the basis of seniority-cum-fitness, from amongst the Audit and Accounts Assistants; and (b) seventy percent by initial recruitment.

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1087 MINYER PACHUNGWA GOVERNMENT GAZETTE, EXTRAORDINARY, 20th FEBRUARY, 2018

12	Computer Programmer (BS-17).	At least Second Class Master's Degree in Computer Science (BCS, BSCS, BE(CE), BS(IT) or equivalent qualification from a recognized University having good programming skills.	22-32 years.	By promotion, on the basis of seniority-cum-fitness, from amongst the Computer Operators with at least seven years service as such: Provided that if no suitable person is available for promotion then by initial recruitment.
13	Network Engineer (BPS-17).	At least Second Class Master's Degree in Computer Science (BCS, BSCS, BE(CE), BS(IT) and MCS or equivalent qualification from a recognized University. Note: Preference will be given to those having certificate in Computer Networking like MCSE/CCNA/any other latest certification in Networks from recognized Institute.	22-32 years.	By initial recruitment.
14	Web Developer (BPS-17).	At least Second Class Master's Degree in Computer Science (BCS, BSCS, BE(CE), BS(IT) and MCS or Equivalent qualification from a recognized University. Note: Preference will be given to those having Certificate in web programming like PHP, ASP, Net, C#, or any other latest technology certification in web-dev: and additional working knowledge of CSS, JQuery and web development frame work like Laravel. etc.	22-32 years.	By initial recruitment. 
15	Assistant Excise and Taxation Officer (BPS-17).	At least Second Class Bachelor's Degree from a recognized University.	20-32 years.	(a) Six percent by promotion, on the basis of seniority-cum-fitness, from amongst the Superintendents with at least five years service as Superintendent and Stenographers, who have passed the Departmental Examination in higher grade;

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KHYBER PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 20th FEBRUARY, 2018. 1082

				(b) fifty four percent by promotion, on the basis of seniority-cum-fitness, from amongst holder of the post of Inspectors, with at least five years service as such who have passed Departmental Examination in higher grade; and (c) forty percent by initial recruitment.
16	Superintendent (BPS-17).	---	---	By promotion, on the basis of seniority-cum-fitness, from amongst the Senior Scale Stenographers with at least five years service as such, or ten years service in the Department as Junior Scale Stenographer and Senior Scale Stenographer.
17	Inspector (BPS-16).	(i) At least Second Class Bachelor's Degree, from a recognized University; and (ii) (Height...5' 7") (Chest...33" with expansion of 1 ½ inches).	20-32 years.	(a) Fifty percent by promotion, on the basis of seniority-cum-fitness, from amongst Sub Inspectors with at least five years service as such who have passed the Departmental Examination in lower grade; and (b) fifty percent by initial recruitment.
18	Assistant Data base Administrator (BPS-16).	At least Second Class Bachelor's Degree in Computer Science or equivalent qualification from a recognized University.	20-32 years.	By initial recruitment.
19	Senior Scale Stenographer (BPS-16).	(i) At least Second Class Bachelor's Degree from recognized University; (ii) a speed of hundred words per minute in English shorthand and Forty words per minute in typing; and (iii) one year Diploma in Computer Science from the Board of Technical Education.	20-32 years.	By promotion, on the basis of seniority-cum-fitness, from amongst Junior Scale Stenographers with at least five years service as such: Provided that if no suitable candidate is available for promotion, then by initial recruitment

Attested

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3089 KHYBER PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 20th FEBRUARY, 2016

20	Computer Operator (BPS-16).	(i) At least Second Class Bachelor's Degree in Computer Science/Information Technology (BCS/BIT four years) from a recognized University; or (ii) at least Second Class Bachelor's Degree from a recognized University with one year Diploma in Information Technology from a recognized Board of Technical Education; and (iii) Minimum speed of ten thousand key depressions per hour for punching / data entry/ verification	20-32 years.	By initial recruitment.
21	Audit and Accounts Assistant (BPS-14).	At least 2nd Class Bachelor's Degree in Commerce (B.Com, BBA, etc) or equivalent qualification from a recognized University having good knowledge of Computer Technology.	20-32 years.	By initial recruitment.
22	Junior Scale Stenographer (BPS-14).	(i) At least Second Class Intermediate or equivalent qualification from a recognized Board; and (ii) a speed of fifty words per minute in English Shorthand and thirty five words per minute in typing and knowledge of Computer in using MS-Word & MS-Excel.	18-32 years.	By initial recruitment.


Attested

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KHYBER PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 20th FEBRUARY, 2018. 1090

23	Sub-Inspector (BPS-14).	---	---	By promotion, on the basis of seniority cum-fitness, from amongst the Assistant Sub Inspectors with at least five years service as such.
24	Assistant Sub-Inspector (BPS-11).	(i) At least Second Class Intermediate or equivalent qualification from a recognized Board; and (ii) (Height...5'7") (Chest...33" with expansion of 1½ inches).	18-32 years.	(a) Forty per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Excise and Taxation Constables having Secondary School Certificate from a recognized Board with at least five years service as such, and (b) sixty per cent by initial recruitment.
25	Excise and Taxation Constable (BPS-07).	(i) At least Second Class Secondary School Certificate from a recognized Board; and (ii) (Height.....5'7") (Chest.....33 with expansion of 1 ½ inches).	18-30 years.	(a) Twelve percent by promotion, on the basis of seniority-cum-fitness, from amongst the Class-IV employees having SSC qualification with at least seven years service; (b) three percent by promotion, on the basis of seniority-cum-fitness, from amongst the Drivers having SSC qualification with at least seven years service; (c) eighty five percent by initial recruitment.
26	Wireless Operator (BPS-07).	(i) At least Second Class Secondary School Certificate from a recognized Board; and (ii) Certificate in Telecommunication from a recognized Polytechnic / Vocational Institution or equivalent qualification from a recognized institute.	18-30 years.	By initial recruitment.
27	Driver (BPS-06).	At least Second Class Secondary School Certificate from a recognized Board and possessing a valid Light Transport Vehicle license, with at least three years experience of practical driving.	18-32 years.	By initial recruitment.

Attested

To

The Worthy Chief Secretary,
Govt. of Khyber Pakhtunkhwa,
Peshawar.

Subject: DEPARTMENTAL APPEAL

Prayer in Appeal:

By accepting this appeal, the Khyber Pakhtunkhwa ET&NC Department Service Rules, 2018, may graciously be amended by providing equal opportunity of service structure through promotion to the Computer Operator alike Excise & Taxation Inspector in order to remove the sense of deprivation, discrimination and frustration of the said employees and also to maintain equilibrium in the Department.

Respected Sir,

That the appellant files this Departmental Appeal before the Hon'ble Appellate Authority inter-alia on the following grounds:-

1. That the appellant was upgraded to Computer Operator (BPS-16) vide Notification No. KKC/FD/SO(FR)/7-3/2015-16, issued by Govt. of Khyber Pakhtunkhwa, Finance Department, Regulation wing, dated 29-07-2016. **(Annexure-A)**.
2. That presently there are 97 sanctioned posts of Computer Operator (BPS-16).
3. That, it is pertinent to mention here that a large No. of highly qualified Senior Assistant (BPS-15) / Junior Scale Stenographer (BPS-12) / Assistant Industrial Development Officer (BPS-11) at that time), having been rendered Surplus in other Departments, were adjusted against technical post of the then Key Punch Operator (BPS-11) now Computer Operator (BPS-16) in the Excise, Taxation & Narcotics Control Department Khyber Pakhtunkhwa.
4. That, the Appellant joined Industries Department as Assistant Industrial Development Officer (BPS-11) on **01-12-1992**, was rendered surplus and adjusted against the Technical post Key Punch Operator (BPS-11) i.e. **Executive cadre rendered surplus in other department adjusted against technical post** in Excise, Taxation & Narcotics Control Department.

Attested

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Copy of Service Book entry of Assistant Industrial Development Officer (BPS-11) attached. (**Annexure-B**). Since joining i.e. **more than 25 years continuous service**, the appellant has not got a single step promotion and was working in the same scale until recently upgraded by the orders of Honorable Supreme Court.

5. That there are two categories of technical staff in the Excise, Taxation & Narcotics Control, Department. Their Nomenclature of post is highlighted herein for facility of reference.

First Category of Technical Post:-

- Computer Operator

Second Category of Technical Post:-


- Junior Scale Stenographer

6. That under the Khyber Pakhtunkhwa Excise & Taxation Rules 2002, the incumbent of the post of Junior Scale Stenographer (BPS-12) was entitled to get two steps promotion i.e. (Senior Scale stenographer BPS-14 & Superintendent BPS-16), Similarly, the holder of post of the then Key Punch Operator (BPS-12) now Computer Operator before up-gradation vide No. KC/FD/SO(FR)/7-3/2015-16 dated: 29-07-2016, was also facilitated by promotion to the post of Data processing supervisor. (**Annexure-C**).
7. That the above Rules were amended by subsequent Rules 2010, through which **three (03)** steps of promotion in respect of 2nd Category (Junior Scale Stenographer) were enhanced by providing them a beneficial structure of service through promotion to the post of executive cadre i.e. (Assistant Excise & Taxation Officer, Excise & Taxation Officer, Deputy Director) in addition to the existing **two (02)** steps promotion i.e. (Senior Scale Stenographer, Superintendent) Copy of Rules 2010 is appended as (**Annexure-C**).
8. That the above Rules are now amended by subsequent Rules 2018, through which the step / channel of promotion in respect of 2nd Category were enhanced by providing them a **02%** increased quota in the beneficial executive cadre i.e. (Assistant Excise & Taxation Officer, Excise & Taxation Officer, Director) Copy of Rules, 2018 is appended as (**Annexure-D**).


Attested

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9. That according to departmental Rules 2018, Chowkidars/Mali/Sweeper (BPS-03), Naib Qasid (BPS-03), Daftri/Qasid (BPS-04), Distillery Security Guard (BPS-03), Driver (BPS-06) (**Class-IV employees**) have also been provided **eight (08)** steps of promotion to the post of executive cadre i.e. (Constable, Assistant Sub-Inspector, Sub-Inspector, Inspector, Assistant Excise & Taxation Officer, Excise & Taxation Officer, Director) copy of Departmental Rules 2018 is appended as (**Annexure-D**).
10. That at this stage, there is no chance of promotion of Appellant because there were five posts of Data Processing Supervisor (BPS-14) to which Computer Operator (BPS-12) was to be promoted, which were merged vide Notification issued on 29-07-2016. (**Annexure-A**)
11. That, now presently, the post of Inspector is upgraded from (BPS-15) to (BPS-16) and the post of Assistant Excise & Taxation Officer is upgraded from (BPS-16) to (BPS-17) vide Notification No. SO (FR) FD/7-10/2017/E&T/17419 dated 20-11-2017. (Annexure-E).
12. In the present circumstances, both the post of Computer Operator and Inspector are in the same scale i.e. (BPS-16) having basic criteria (i.e. Second class Bachelor Degree from a recognized university) and additional qualification of Computer Operator (i.e. Diploma in Information Technology)
13. That there are many Precedents of various departments in which proportionate quota has been allocated for the Technical posts in promotion to the Executive Cadre. Some of these are as follow:
 - i. The Establishment department has allocated quota for Private Secretaries and Personal Assistant (being promoted from Junior Scale Stenographer, which is a technical post) to the post of Provincial Management Service PMS Officer (Executive Post). (Annexure-F)
 - ii. The Collectorate of Customs & Central Excise has already allocated quota for Data Entry Operator (Technical Post) in promotion to the post of Inspector (Executive cadre post). Order is appended as (**Annexure-G**).


Attested

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14. That, it is worth mentioning that non provision of equal opportunity of service structure through promotion to the Computer Operator (BPS-16) alike Inspector (BPS-16) without cogent and valid reasons will be great injustice. Which is disparity, anomaly and is also violation of article 25 of the Constitution of Islamic Republic of Pakistan 1973 which has unequivocally laid down that all citizens placed in similar circumstances are entitled to equal treatment and protection of law. The Hon'ble Supreme Court of Pakistan through various judgments has maintained that equal treatment is fundamental right of every citizen. Reliance can be placed on 2007-SCMR-40(d) & 2011-PLC(C.S)7(b). The relevant citations are reproduced herein for facility of reference.

2007-SCMR-110(d)

(d) Constitution of Pakistan (1973)

--Art. 25--Equal protection of law -
Principles -Concept of equal
protection of law envisages that a person
or class of person should not be denied the
rights, which are enjoyed by other persons
in the same situation.

2011-PLC(C.S)/(b)

(B) CONSTITUTION OF PAKISTAN

----Art, 25-Equality before law---
Principals--Equality before law, was the
basic concept of Islam and that concept
had been borrowed by English, American
and European Constitutions from Islam-
Two similarly placed persons could not be
treated differently ---Principle of equality
before law and prohibition of discrimination
between the similarly placed persons, was
the essence of rule of law-Even selective,
discriminatory and distinctive, treatment by
the Government was also prohibited-Two
similarly and equally placed persons, could
not be traded differently.



Attested

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In view of the above narrated facts, it is humbly prayed that while amending the Khyber Pakhtunkhwa, Excise, & Taxation & Narcotics Control Department Service Rules 2018, the appellant (Computer Operator BPS-16) may graciously be provided equal opportunity of service structure through promotion alike Inspector according to the ratio of sanctioned strength and to get equal chances of promotion to the post of Assistant Excise & Taxation Officer (BPS-17) in order to remove the sense of deprivation, discrimination and frustration of the Computer Operator and also to maintain equilibrium in the Department and to meet the ends of Justice.

Dated: 22-11-2018

Yours Obediently,


MUHAMMAD SALEEM
(Computer Operator)
Excise, Taxation &
Narcotics Control Department
Khyber Pakhtunkhwa


Attested

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50 روپے			
ایڈویکٹ: اسد زبیر خان		پشاور بار ایسوسی ایشن، خیبر پختونخوا	
بار کونسل ایسوسی ایشن نمبر: BC-09-1517			
رابطہ نمبر: 0348-9800565			

بعدالت جناب: حنیف پختونخوا سروسز ٹریبیونل پشاور

مخانب: سائل / Appellant	دعویٰ:
	علت نمبر:
محمد سلیم بنام حکومت و غیرہ	مورخہ:
	جرم:
	تھانہ:
بابت تحریر آنگہ	

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ...
 آن مقام... اسد زبیر خان ایڈویکٹ...
 کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو
 راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
 زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری کی طرف سے یا اپیل کی برآمدگی اور منسوخی، نیز
 دائر کرنے اپیل نگرانی و نظرتانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ 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 وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داخستہ منظور و قبول ہوگا
 دوران مقدمہ میں جو خرچہ ہر جانب اتوائے مقدمہ کے سبب سے ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے
 باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے
 رقم: 20-08-2018

JESHAWAR BAR SOCIETY
KHYBER

مقام پشاور

Accepted by

نوٹ: اس وکالت نامہ کی نوٹو کاپی ناقابل قبول ہوگی۔



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Before the honorable Service Tribunal Peshwar

21.5.2018

M Saleem
vs

Govt

Applicants for adjournment due to non
availability of the Senior counsel

Respectfully Shewt..

"It is the instant appeal adjudicated
before this honorable Tribunal and fixed for
today."

a) It is due to month of Ramadan and
non availability of the Senior case
may adjourned to some other date
it is therefore humbly prayed
on certificate this application may
kindly adjourn the case

Date 21/5/18

Applicant
through

Fida M Yousaf Adv