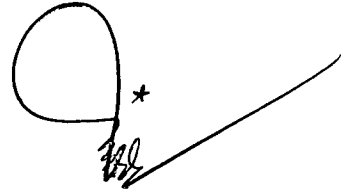


20.07.2022

Learned counsel for the appellant present. Preliminary arguments heard.

Points raised need consideration. The appeal is admitted to regular hearing, subject to all just and legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments. To come up for reply/comments before the S.B on 30.08.2022.

RS
Appellant Deposited
Security & Process Fee
25/7



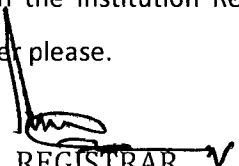

(Mian Muhammad)
Member (E)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. - 649/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	28/04/2022	<p>The appeal of Mr. Muhammad Ismail presented today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR,</p>
2-	23/8/22	<p>This case is entrusted to Single Bench at Peshawar for preliminary hearing to be put there on <u>20-7-22</u>. Notices be issued to appellant and his counsel for the date fixed.</p> <p> CHAIRMAN</p>

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
CHECK LIST**

CASE TITLE: *M. Ismail vs Govt of KP & others*

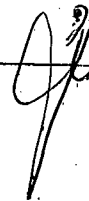
S#	CONTENTS	YES	NO
1	This Appeal has been presented by:	✓	
2	Whether Counsel/Appellant/Respondent/Deponents have signed the requisite documents?	✓	
3	Whether appeal is within time?	✓	
4	Whether the enactment under which the appeal is filed mentioned?	✓	
5	Whether the enactment under which the appeal 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?	x	✓
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 AG/DAG?	✓	
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 cutting/overwriting?	x	✓
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: *NDOX MOHD KTK*

Signature: _____

Dated: _____



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. 649 /2022

MUHAMMAD ISMAIL

V/S

**GOVT: OF K.P.&
OTHERS**

INDEX

S.N	DOCUMENTS	ANNEXURE	PAGE
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4	Sanction order dt: 04.09.2012	A	7
5	Promotion order dt: 29.01.2013	B	8-9
6	Abolition order dt: 18.05.2015	C	10
7	Service rules	D	11-13
8	Judgment dt: 19.11.2019	E	14-25
9	Promotion & posting orders	F & G	26-27
10	Departmental appeal	H	28-29
11	Wakalat Nama	30

Dated: /04./2022

APPELLANT

Through:

NOOR MOHAMMAD KHATTAK
ADVOCATE
0345-9383141

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. _____/2021

Mr. Muhammad Ismail, Assistant (BPS-16),
Office of the District Attorney at Service Tribunal Peshawar

..... **APPELLANT**

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat, Peshawar.
- 2- The Secretary Establishment Department, Civil Secretariat, Peshawar.
- 3- The Secretary Law, Parliamentary Affairs & Human Rights Department, Civil Secretariat Peshawar.
- 4- The Director General of Law & Parliamentary Affairs & Human Rights Department, Civil Secretariat Peshawar.

..... **RESPONDENTS**

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 10-12-2020 OF THE RESPONDENTS WHEREBY THE APPELLANT WAS PROMOTED TO THE POST OF ASSISTANT (BPS-16) ON REGUALR BASIS WITH IMMEDIATE EFFECT AND NOT W.E.F. 30-01-2013 I.E. WHEN THE POST OF ASSISTANT WAS SANCTIONED/CREATED AND ALSO AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

PRAYER:

That on acceptance of this appeal the impugned order dated 10-12-2020 may kindly be modified/rectified to the extent that the appellant may very kindly be promoted to the post of Assistant (BPS-16) with effect from the date when the post Assistant BPS-16 was sanctioned/created i.e. w.e.f. 30-01-2013 with all back benefits including seniority. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.

R/SHEWETH:

- 1- That the appellant is the employee of the respondent Department and is serving the respondent Department quite efficiently and up to the entire satisfaction of his superiors.
- 2- That earlier on strengthening of Law, Parliamentary Affairs & Human Rights Department and its lower formations, 28 posts of office Assistant were sanctioned/ created by Finance Department in the office of Government Pleader (renamed/redesigned as District Attorneys) in various department of the Khyber Pakhtunkhwa.
Copy of sanction order 04-09-2012 is attached as annexure.....
- 3- That on promotion of 19 office Assistants to the post of Superintendents in various offices of District Attorneys in Khyber Pakhtunkhwa, resultantly 19 posts of Assistants (BPS-16) fall vacant.
Copy of promotion order dated 19-01-2013 is attached as annexure.....
- 4- That it is pertinent to mention here that the senior clerks including the appellant who were entitled for promotion on these vacant posts of office Assistant were not considered rather 19 out of 28 posts of office Assistants were abolished and only 09 posts were left behind.
Copy of abolition order dated 18-05-2015 is attached as annexure.....
- 5- That as per Service Rules, 75% quota was fixed for promotion on the basis of seniority-cum-fitness amongst the Senior Clerks with at least five years' experience as Junior Clerk and 25 % quota for initial recruitment . However, this time the relevant rules were ignored and the Law department has ultimately advertised 08 posts of Assistant without observing 75% promotion quota .
Copy of Service Rules dated 26-04-2017 is attached as annexure.....
- 6- That being aggrieved from the above action of the respondent department, the Senior Clerks filed a writ petition before the Honorable Peshawar High Court which yielded fruit. The august court while accepting the writ petition has issued directions to the respondents for action in accordance with law/rules on the subject, relevant portion of its verdict is reproduced below:

petitioners for promotion strictly in accordance with law and rules on the subject".

Copy of judgment dated 19-11-2019 is attached as annexure..... E.

- 7- That in light of the ibid judgment the respondents issued the impugned order dated 10.12.2020 whereby the appellant has been promoted to the post of Assistant (BPS-16) with immediate effect and not from the due date i.e. 30.1.2013. That as a matter of fact the posts of Assistant remained vacant for more than 07 years as such the appellant(s) was entitled to back benefits due from 30-01-2013, however, the same was not given to the appellant at the time of promotion and thus the appellant deprived of this established and un-alienated right. Copies of the promotion and posting orders are attached as annexure *F & G.*
- 8- That felling aggrieved appellant preferred departmental appeal before the respondent No.3 but no response has been given till the expiry of statutory period of ninety days. **Copy of the departmental appeal is attached as annexure** *H.*
- 9- That after being highly aggrieved from the act of the respondents and having no other remedy the appellant filed this appeal on the ground inter alia as under:-

GROUNDS:

- A- That the impugned order dated 10-12-2020 of the respondent department by promoting the appellant with immediate effect and by not promoting the appellant from the dates when the said posts were sanctioned/created is against law, facts, and norms of natural justice, hence not tenable and liable to be rectified/modified.
- B- That the appellant has not been treated in accordance with law and rules by the respondent Department on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the respondents acted in arbitrary and malafide manner by promoting the appellant with immediate effect and not promoting the appellant from the dates when the said posts

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. _____/2022

MUHAMMAD ISMAIL

V/S

GOVT: OF K.P DEPTT:

AFFIDAVIT

Stated on oath that the contents of the accompanying service appeal are correct to best of my knowledge and belief and nothing has been concealed from this Honorable Service Tribunal.

Ismail
DEPONENT

CERTIFICATE:

Certify that no earlier service appeal has been filed by the appellant in the instant matter before this Honorable Service Tribunal.

Ismail
CERTIFICATION

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

APPEAL NO. _____/2022

MUHAMMAD ISMAIL

VS

GOVT: OF K.P & OTHERS

APPLICATION FOR CONDONATION OF
DELAY IN FILING THE ABOVE NOTED
APPEAL

R.SHEWETH:

- 1- That the appellant has filed an appeal along with this application in which no date has been fixed so far.
- 2- That the appellant prays for the condonation of delay in filing the above noted appeal inter alia on the following grounds:

GROUND OF APPLICATION:

- A- That valuable rights of the appellant are involved in the case hence the appeal deserve to decide on merit.
- B- That it has been the consistent view of the Superior Courts that cases should be decided on merit rather on technicalities including the limitation. The same is reported in 2004 PLC (CS) 1014 and 2003 PLC (CS) 76.

It is therefore prayed that on acceptance of this application the delay in filing the above noted appeal may please be condoned.

Dated: 04.02.2022

APPELLANT
Ismael
MUHAMMAD ISMAIL

ANNEX Aⁿ

7



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

No. BO.II/FD/3-2/LD/SNE/2012-13
Dated Peshawar the 04.09.2012

9739
6/9/12

To

The Secretary to Govt. of Khyber Pakhtunkhwa,
Law Department.

SUBJECT: STRENGTHENING OF LAW, PARLIAMENTARY AFFAIRS & HUMAN RIGHTS
DEPARTMENT AND ITS ATTACHED OFFICES.

Dear Sir,

I am directed to refer to your letters No.SO(G)(LD)(19-2)/2012 dated 13.08.2012 &
No. SO(G)(LD)(19-2)/2012/14335-37 dated 31.08.2012 on the subject noted above and to say that
in pursuance of the approval of the competent authority (Chief Minister), Finance Department
agrees to the creation of 152 posts of various categories, with immediate effect, as per following
breakup:-

Law Department:

S.No.	Name of posts.	BPS	No. of post
1.	Naib Qasid.	01	12
TOTAL:			12

Advocate General's office.

S.No.	Name of posts.	BPS	No. of post
1.	Senior Clerk.	09	03
2.	Junior Clerk.	07	03
3.	Driver.	04	01
4.	Naib Qasid.	01	04
TOTAL:			11

Directorate of Human Rights.

S.No.	Name of posts.	BPS	No. of post
1.	Administrative Officer.	17	01
2.	Junior Clerk.	07	04
3.	Naib Qasid.	01	05
4.	Chowkidar.	01	02
TOTAL:			12

Government Pleaders offices.

S.No.	Name of posts.	BPS	No. of post
1.	Office Superintendent.	16	20
2.	Assistant.	14	03
3.	Senior Clerk.	09	20
4.	Junior Clerk.	07	20
5.	Naib Qasid.	01	30
6.	Chowkidar.	01	24
TOTAL:			117
G:TOTAL:			152

As (G)
please send
audit copies
06/9/12

2. The Administrative Department may prepare audit copy(s) alongwith breakup in
respect of Govt. Pleaders offices under the relevant DDO code and submit the same to this
department for authentication.

Yours faithfully,

(SYED NOOR AHMAD SHAH)
BUDGET OFFICER-II

self
Pudup
please send
audit copies
so (G)
05/9/12
PTO

ANNEX B

8



GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS
& HUMAN RIGHTS DEPARTMENT

NOTIFICATION

Dated the Pesh: 29/01/2013

No. E&A/LD/2-77/2012:-

On the recommendations of the Departmental Promotion Committee, the competent authority is pleased to promote the following Assistants (BPS-14) of the Government Pleader Offices in Khyber Pakhtunkhwa to the post of Superintendent (BPS-16) on regular basis with immediate effect:

S.NO	NAME OF THE OFFICIAL / OFFICER
1.	Mr. Akbar Ali
2.	Mr. Muhammad Bilal
3.	Mr. Afzal Haider Zahid
4.	Mr. Rizwan Ullah
5.	Mr. Saleh Shah
6.	Mr. Muhammad Arif
7.	Mr. Mushtaq Ahmad
8.	Mr. Akhtar Zaman
9.	Mr. Jehanzeb
10.	Mr. Asif Khan
11.	Mr. Khalid Mehmood
12.	Mr. Syed Mateen Abid Gillani
13.	Mr. Muhammad Qaiser
14.	Mr. Shuja-ud-Din
15.	Mr. Muhammad Imran
16.	Mr. Misal Shah
17.	Mr. Meshkat Ullah
18.	Mr. Jan Ali
19.	Mr. Asad Ullah Khan

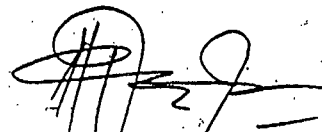
- The above officers on their promotion will remain on probation for an initial period of one year in term of Rules 15 of Civil Servant (Appointment, Promotion & Transfer) Rules, 1989, automatically extendable to another year, if not terminated through a specific order.
- Consequent upon their promotion as Superintendent (BPS-16) on regular basis, the following Postings / Transfers are hereby order in the public interest with immediate effect.

S. No	Name	From	To
1.	Mr. Akbar Ali	Office of the Government Pleader Bunner	Office of the Governmen Pleader Khyber Pakhtunkhwa, Service Tribunal Peshawar
2.	Mr. Muhammad Bilal	Office of the Director Human Rights Peshawar	Office of the Governmen Pleader Haripur
3.	Mr. Afzal Haider Zahid	Office of the Government Pleader Peshawar	Office of the Governmer Pleader Labour Court Peshawar
4.	Mr. Rizwan Ullah	Office of the Government Pleader Karak	Office of the Governmer Pleader Karak

9

(2)

6.	Mr. Muhammad Arif	Office of the Government Pleader D.I.Khan	Office of the Government Pleader Mansehra
7.	Mr. Mushtaq Ahmed	Office of the Government Pleader Chitral	Office of the Government Pleader D.I.Khan
8.	Mr. Akhter Zaman	Office of the Government Pleader Tank	Office of the Government Pleader Tank
9.	Mr. Jehanzeb	Office of the Government Pleader Bannu	Office of the Government Pleader Bannu
10.	Mr. Asif Khan	Office of the Government Pleader (Lower) Dir	Office of the Government Pleader Batkhela
11.	Mr. Khalid Mehmood	Office of the Government Pleader Lakki Marwat	Office of the Government Pleader Lakki Marwat
12.	Mr. Syed Mateen Abid Gillani	Office of the Government Pleader Labour Court Peshawar	Office of the Government Pleader Abbotabad
13.	Mr. Muhammad Qaiser	Office of the Government Pleader Peshawar	Office of the Government Pleader Peshawar
14.	Mr. Shuja-ud-Din	Office of the Government Pleader Peshawar	Office of the Government Pleader Kohat
15.	Mr. Muhammad Imran	Office of the Government Pleader Mardan	Office of the Government Pleader Mardan
16.	Mr. Misal Shah	Office of the Government Pleader Sawabi	Office of the Government Pleader Sawabi
17.	Mr. Mishkat Ullah	Office of the Government Pleader Kohat	Office of the Government Pleader Hangu
18.	Mr. Jan Ali	Office of the Government Pleader Charsadda	Office of the Government Pleader Charsadda
19.	Mr. Asad Ullah Khan	Office of the Government Pleader Khyber Pakhtunkhwa Service Tribunal Peshawar	Office of the Government Pleader Swat



(Muhammad Arifeen)

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

Endst: No. E&A/LD/2-77/2012/148058, Dated: 29-01-2013


Copy is forwarded to:

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Ps to Secretary, Law, Parliamentary Affairs & Human Rights Department.
3. All Government Pleaders in Khyber Pakhtunkhwa.
4. All Districts Accounts Officers in Khyber Pakhtunkhwa.
5. The Officers Concerned.
6. Personal file of the Officers Concerned.



ANNEX C

10

	GOVERNMENT OF KHYBER PAKHTUNKHWA FINANCE DEPARTMENT
	No. BO-II/FD/3-2/SNE/LD/14-15 Date Peshawar the 18.05.2015

To

The Secretary to Govt: of Khyber Pakhtunkhwa
Law Department

SUBJECT: ABOLITION OF POSTS IN SR. GOVERNMENT PLEAERS OFFICES AT VARIOUS DISTRICTS OF LAW, PARLIAMENTARY AFFAIRS AND HUMAN RIGHTS DEPARTMENT DUE TO ECONOMY MEASURES.

Dear Sir,

I am directed to your letter No. SO(G)(LD)/15-40/2014-15/13269-70 dated 08.05.2015 on the subject noted above and to convey Finance Department's concurrence to the abolition of the following posts in the offices of the Law Department indicated below with immediate effect:-

S#	Name of Govt: pleader office	Addl: Govt: pleader (BPS-17)	Superintendent (BPS-17)	Assistant (BPS-16)	Total
1.	PR4006-Govt Pleader Peshawar			01	01
2.	PR4008-Lab: Court, Peshawar			01	01
3.	CA4226-Govt: pleader Charsadda			01	01
4.	NR4222-Nowshera			01	01
5.	SU4227-Swabi			01	01
6.	BD4148-Bunner	01	01	01	03
7.	MD4004-Malakand			01	01
8.	DA4236-Dir. (Lower)			01	01
9.	DP4154-Dir. (Upper)		01	01	02
10.	CL4161-Chitral		01	01	02
11.	SH4001-Shangla		01	01	02
12.	KD4078-Kohistan		01	01	02
13.	BM4125-Battagram	01	01	01	03
14.	MA4001-Mansehra	01			01
15.	TG4004-Tor Ghar	01		01	02
16.	HR4046-Haripur		01	01	02
17.	HG4126-Hangu			01	01
18.	KK4207-Karak			01	01
19.	LK4160-Lakki Marwat	01		01	02
20.	TK4012-Tank			01	01
	Total	05	07	19	31

Yours faithfully,

(SYED NOOR AHMAD SHAH)



ANNEX D 11

GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS &
HUMAN RIGHTS DEPARTMENT

Dated Peshawar the 26-04-2017

NOTIFICATION:

No. SO(G)/LD/15-18/2014 / 13414-64. In continuation of this deptt's Notification No. SO(G)/LD/15-18/2014/2768-2837 dated 12-01-2016 and 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 made in this behalf the Law, Parliamentary Affairs and Human Rights Department, in consultation with the Establishment and Finance Departments, hereby lays down the method of recruitment, qualification and other condition of service specified in columns 3 to 5 in following table which shall be applicable to posts in the offices of the Senior Govt. Pleaders as specified in column 2 of the table given below:-

Sr. #	Nomenclature of Post	Qualification	Age Limit	Method of Recruitment
1	District Attorney (B-19)			By promotion on the basis of seniority-cum-fitness from amongst the Deputy District Attorney having twelve years service in BS-17 and above with at least three years service in BS-18. Provided that the length of service for promotion of persons appointed in BS-18 by initial recruitment shall be seven years as such.
2	Deputy District Attorney (B-18)	a) Practicing Lawyer with 2 nd Class LL.M degree from a recognized University with five years standing at the Bar experience; preferably on civil side; OR b) Practicing Lawyer with 2 nd Class LLB degree from a recognized University with total eight years standing at the Bar experience including three years High Court level practice, preferably on civil side.	25-40 years	i) 70% by promotion, on the basis of seniority-cum-fitness, from amongst Assistant District Attorneys with five years service as such; ii) 30% by initial recruitment.
3	Assistant	Practicing Lawyer with	25-35	Bv initial recruitment.

		University with three years standing at the Bar experience.		
4	Superintendent			By promotion, on the basis of seniority-cum-fitness from amongst holders of the post of Assistant with at least five years services as such.
5	Assistant	Second Class Bachelor Degree or equivalent qualification from a recognized University.	20-32 years	i) 75% by promotion, on the basis of seniority-cum-fitness, from amongst Senior Clerks with at least five years service as Junior Clerk and Senior Clerk; and ii) 25% by initial recruitment.
6	Computer Operator	i) 2 nd Class Bachelor Degree in Computer Science/Information Technology (BCS/BIT four years) from a recognized university; OR ii) 2 nd Class Bachelor Degree from a recognized university with one year Diploma in Information Technology from a recognized Board of Technical Education.	20-32 years	By initial recruitment.
7	Senior Clerk			By promotion on the basis of seniority-cum-fitness from amongst Junior Clerks with at least two years service as such.
8	Junior Clerk	i) Matriculation with second division or equivalent qualification from a recognized Board; and ii) A speed of 30 words per minute in typing.	18-30 years	i) 33% by promotion, on the basis of seniority-cum-fitness, from amongst Naib Qasids and Chowkidars with two years service as such who have passed S.S.C. examination; and ii) 67% by initial recruitment. <u>Note:</u> For the purpose of promotion, there shall be maintained a joint seniority list with reference to the dates of acquiring the Secondary School Certificate. Provided that: i) If two or more officials have acquired the S.S.C. in the same session, the inter-se seniority in the lower post shall be maintained for the purpose of determining seniority in the higher post; ii) Where a senior official does not possess the requisite qualification at the time of filling up a vacancy, the official next junior to him possessing

	Naib Qasid	Preferably literate	18-40 years	By initial recruitment
10	Chowkidar	Preferably literate	18-40 years	By initial recruitment
11	Sweeper	Preferably literate	18-40 years	By initial recruitment




(Muhammad Arifeen)
 Secretary to Govt. of Khyber Pakhtunkhwa
 Law, Parliamentary Affairs & Human Rights Department

Endst: No. & Date Even:

Copy forwarded to:-

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. All the Administrative Secretaries to Government of Khyber Pakhtunkhwa.
3. The Advocate General, Khyber Pakhtunkhwa, Peshawar.
4. The Registrar, Peshawar High Court, Peshawar.
5. All the Senior Govt. Pleaders in Khyber Pakhtunkhwa.
6. The Secretary, Khyber Pakhtunkhwa Public Service Commission.
7. The Manager, Government Printing Press, Khyber Pakhtunkhwa for publication in Government Gazette. He is requested to send ten (10) copies of the same to this Department.
8. The Director of Archives and Libraries, Khyber Pakhtunkhwa, Peshawar.
9. The Section Officer (R-IV), Establishment Department.
10. The Librarian, Establishment/Administration Department, Khyber Pakhtunkhwa.
11. The PS to Secretary Law Department, Khyber Pakhtunkhwa.

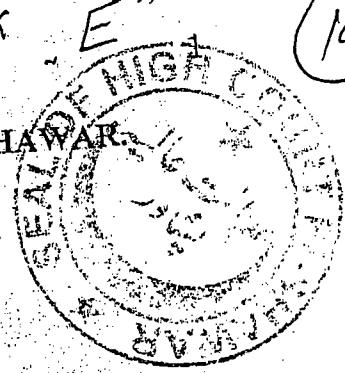


(Rizwan Ullah Khan)
 Section Officer (General)

ANNEX E

(14)

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.



Writ Petition No. 2430 /2017

1. Mr. Ali Haider, Senior Clerk, Office of Senior Government Pleader (District Attorney) Swabi.
2. Mr. Faheez Zaman, Senior Clerk, Office of Senior Government Pleader (District Attorney) Hangu.
3. Mr. Nisar Ahmad, Senior Clerk, Office of Senior Government Pleader (District Attorney) Abbottabad.
4. Mr. Shahid Ali, Senior Clerk, Office of Senior Government Pleader (District Attorney) Malakand.
5. Mr. Muhammad Ismail Khan, Senior Clerk, Office of Senior Government Pleader (District Attorney) Karak.
6. Mr. Muhammad Ilyas, Senior Clerk, Office of Senior Government Pleader (District Attorney) Swat.
7. Mr. Muhammad Ishfaq, Senior Clerk, Office of Senior Government Pleader (District Attorney) Charsadda.
8. Mr. Raza Khan, Senior Clerk, Office of Senior Government Pleader (District Attorney) Peshawar.
9. Mr. Zafar Ali, Senior Clerk, Office of Senior Government Pleader (District Attorney) Nowshera.

PETITIONER

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat, Peshawar.
2. The Secretary Establishment Department, Civil Secretariat, Peshawar.
3. The Secretary Law, Parliamentary Affairs & Human Rights Department, Civil Secretariat Peshawar.
4. The Secretary Khyber Pakhtunkhwa Public Service Commission, 2nd Fort Road, Peshawar Cantt.

RESPONDENTS

.....
ATTESTED
EXAMINER
Peshawar High Court

(15)

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF THE ISMLAIC REPUBLIC OF THE PAKISTAN, 1973 FOR ISSUING APPROPRIATE WRITS TO THE RESPONDENTS TO OBSERVE THE RECRUITMENT RULES DATED 26-04-2017 IN THE LETTER AND SPIRIT AND TO DECLARE THE ADVERTISEMENT DATED 10.05.2017 TO THE EXTENT OF S.NO. 27 OF THE ADVERTISEMENT, WHEREIN THE SHARE OF PROMOTION QUOTA HAS ALSO BEEN INCLUDED FOR THE INITIAL RECRUITMENT, AS ILLEGAL, UNLAWFUL, UNCONSTITUTIONAL VIOLATION OF RULES AND NORMS OF JUSTICE, THEREFORE, INEFFECTIVE UPON THE RIGHTS OF THE PETITIONERS. THE RESPONDENTS MAY FRUTHER PLEASE BE DIRECTED TO FILL THE PROMOTION QUOTA BY PROMOTING THE PETITIONERS AND NOT BY INITIAL RECRUITMENT. ANY OTHER REMEDY WHICH THIS AUGUST COURT DEEMS APPROPRIATE MAY ALSO BE AWARDED IN FAVOUR OF PETITIONERS.

RESPECTFULLY SHEWETH:

Brief facts giving rise to present petition are as under:-

1. That the petitioner are the law abiding citizens of Pakistan and are working as Senior Clerk in the offices of Senior Government Pleaders (District Attorney) mentioned in the heading of writ petition.
2. That since from the date of separation of the prosecution wing from the Law Department till notification of new Rules (26.4.2017), all promotion of ministerial staff of Government Pleader Offices were made on the basis of the Rules of the Establishment Department of the year 1982 and 2012. However, Rules for the Government Pleader Offices (now District Attorney) are notified on 26.04.2017. Copies of Rules of 1982, 2012 and 2017 are attached as Annexure-A, B, & C. respectively.
3. That it is worth to mention here that in all the above mentioned Rules of 1982, 2012 and 2017, the post of Assistant is to be filled in as:-

75% By promotion on the basis of seniority cum fitness from amongst Senior Clerks with five years service as Junior Clerk and Senior Clerk.

ATTESTED

EXAMINER

Baroque High Court

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&

25% By initial recruitment.

Thus as per Recruitment Rules, the petitioners have 75% promotion quota in the posts of Office Assistants.

4. That vide Finance Department memo dated 06.07.2010 total 24 posts of Office Assistant BPS-14 were created in the offices of Government Pleaders at various station, and total 19 persons were working as Office Assistants against those posts as evident from the seniority list dated 24.07.2012. All the 19 Office Assistants were promoted as Superintendent (BPS-16) vide Notification dated 19.01.2013 on the basis of Rules of 2012 (Annexure-B). Copies of posts creation, seniority list and promotion order are attached as Annexure-D, E, & F respectively.
5. That the respondents, instead of giving promotion to the petitioners against those 19 posts vacated by Office Assistants on their promotion, kept the issue pending and finally abolished 15 posts of Office Assistant and as such now only 9 posts of Office Assistants available as shown in details of strength of Government Pleaders Offices stood on 20.05.2016. This also shows the malice of the respondents by giving promotions to 19 persons, whereas denying promotion against those 19 posts to low cadre officials. Copy of list of strength is attached as Annexure-G.
6. That the more injustice caused to the petitioners when all the remaining posts of Office Assistant were advertised for initial recruitment vide publication dated 10.05.2017. (*at. Sr. No. 27*) without observing 75% and 25% quota. It is also to be noted that previously all Office Assistants were directly recruited and no promotion quota for the Senior Clerks was observed for the office of Government Pleaders (now District Attorneys). Copy of the Advertisement is attached as Annexure-H.
7. That despite being senior most, eligible and waiting for promotion since long, the petitioners are deprived illegally from the promotion due to illegal and unlawful advertisement dated 10.05.2017, therefore, the petitioners are constrained to file the instant writ petition on the following grounds amongst the other inter alia. Copy of Strength List is attached as Annexure-I.

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Peshawar High Court

GROUNDS:

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- A. That that impugned advertisement to the extent of Sr. No. 27 whereby posts of Office Assistant meant for promotion are given to initial recruitment as well as all actions/omissions of the respondents in this regard are illegal, unlawful, unconstitutional, violation of 75% : 25% quota, therefore, the same is not tenable and liable to be set aside.
- B. That the career of the petitioners has been damaged twice 1st by abolishing 15 posts of Office Assistants vacated due to promotion on 29.05.2013 (Annexure-F), and 2nd when all the remaining posts are advertised for initial recruitment. Thus the petitioners have been deprived from their legal right of promotion in an arbitrary manner.
- C. That as per quota 75% : 25% (07) posts of Office Assistants come in share of petitioners for promotion, whereas (02) posts of Office Assistants come in share of initial recruitment, but the respondents have advertised all the posts which is a clear violation of Rules notified on 26.04.2017. (Annexure-C) therefore, the advertisement dated 10.05.2017 to the extent of Sr. No. 27 is violation of Rules (Annexure-C).
- D. That the fundamental rights of petitioners protected under Article-9, 25 and 38 are violated by the respondent by advertising their promotion quota posts for initial recruitment.
- E. That to have legitimate expectancy and prospects of equal promotion cannot be denied to the petitioners under the garb of executive domain by advertising promotion quota posts for initial recruitment. Therefore the whole action of the respondents is unlawful, without lawful authority and amount to colorful exercise of powers in an illegal manner.
- F. That 75% quota of the posts of Office Assistant has been given and granted vide Rules dated 26.04.2017 (Annexure-C) and being the Statutory Rules, the respondents are legally bound to observe the same without any exercise of illegal discretion, and similarly, the petitioners are also entitled to be treated as such under the law as per Rules (Annexure-C)
- G. That the acts/omission of respondents and advertisement dated 10.05.2017 (Annexure-H) is against the spirit of Article-2A, 3, 4, 9, 25 & 38 of the Constitution.
- H. That the petitioners seek permission to advance other grounds and proofs at the time of hearing.

ATTESTED

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Peshawar High Court

It is, therefore, most humbly prayed that on acceptance of this writ petition the august may be pleased to declare the advertisement dated 10.05.2017 (Annexure-H) to the extent of Sr. No. 27 as illegal, unlawful, without lawful authority, violation of Rules dated 26.04.2017 (Annexure-C) and ineffective upon the rights of petitioners and liable to be set aside. The respondents may also be directed to abide by Rules and to grant promotion to the petitioners against 75% quota fixed in Rules against the posts of Office Assistant, instead of filling through initial recruitment. Any other remedy which this august Court deems fit that may also be awarded in favor of petitioner.

INTERIM RELIEF.

The respondents may be restrained from making appointment against the posts of Office Assstt. advertised on 10.05.2017 at S.No. 27 OR not to finalize the appointments till the disposal of main writ petition to avoid legal complication.

Ali Haider
PETITIONER
Ali Haider etc.

THROUGH:

M. Asif Yousafzad
(M. ASIF YOUSAFZAD)
ADVOCATE SUPREME COURT,
PESHAWAR.

VERIFICATION:

It is verified that no other Writ Petition earlier has been filed between the present parties, except the present one.

DEPONENT

LIT OF BOOKS:

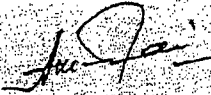
1. Constitution of the Islamic Republic of Pakistan, 1973.
2. Any other case law as per need.

ATTESTED

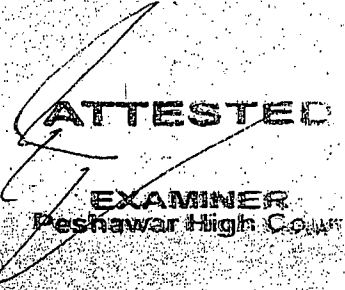
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EXAMINER
Peshawar High Court

NOTE: Prior Notice along with the copies of the Writ Petition has already been given to the respondents as per amended High Court's Rules dated. 23.02.2016

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(M. ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT,
PESHAWAR.



ATTESTED
EXAMINER
Peshawar High Court

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(20)

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.

Writ Petition No. _____/2017

Ali Haider

V/S

Government of KPK.

ADDRESSES OF PARTIES

PETITIONERS

1. Mr. Ali Haider, Senior Clerk, Office of Senior Government Pleader (District Attorney) Swabi.
2. Mr. Feeheez Zaman, Senior Clerk, Office of Senior Government Pleader (District Attorney) Hangu.
3. Mr. Nisar Ahmad, Senior Clerk, Office of Senior Government Pleader (District Attorney) Abbottabad.
4. Mr. Shahid Ali, Senior Clerk, Office of Senior Government Pleader (District Attorney) Malakand.
5. Mr. Muhammad Ismail Khan, Senior Clerk, Office of Senior Government Pleader (District Attorney) Karak.
6. Mr. Muhammad Ilyas, Senior Clerk, Office of Senior Government Pleader (District Attorney) Swat.
7. Mr. Muhammad Ishfaq, Senior Clerk, Office of Senior Government Pleader (District Attorney) Charsadda.
8. Mr. Raza Khan, Senior Clerk, Office of Senior Government Pleader (District Attorney) Peshawar.
9. Mr. Zafar Ali, Senior Clerk, Office of Senior Government Pleader (District Attorney) Nowshera.

RESPONDENTS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat, Peshawar.
2. The Secretary Establishment Department, Civil Secretariat, Peshawar.
3. The Secretary Law, Parliamentary Affairs & Human Rights Department, Civil Secretariat Peshawar.
4. The Secretary Khyber Pakhtunkhwa Public Service Commission, 2nd Fort Road, Peshawar Cantt

THROUGH:

PETITIONER
Ali Haider etc
(Signature)
(M. ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT,
PESHAWAR

ATTESTED

EXAMINER
Peshawar High Court

**JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT**



Writ Petition No. 2430-P of 2017.

**Mr. Ali Haider etc
Versus
Government of Khyber Pakhtunkhwa and others.**

Date of hearing 19.11.2019
Petitioner (by) Muhammed Asif Ullah Yousafzai - Advocate
Respondent (by) Noor Muhammad Ullah Advocate
Muhammed Riaz Ullah Addl. D. J.

JUDGMENT

MUSARRAT HILALI, J.- Through the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have sought the following relief:-

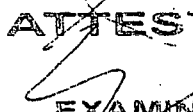
Handwritten mark

"that acceptance of this writ petition the august Court may be please to declare the advertisement dated 10.5.2017 to the extent of Sr. No.27 as illegal, unlawful, without lawful authority, violation of Rules dated 26.4.2017 and ineffective upon the rights of petitioners and liable to be set aside. The

ATTESTED
Signature
EXAMINER

respondents may also be directed to abide by Rules and to grant promotion to the petitioners against 75% quota fixed in Rules against the post of Office Assistant, instead of filling through initial recruitment. Any other remedy which this august Court deems fit that may also be awarded in favour of petitioner."

2. In essence, petitioners are working as Senior Clerks in the offices of Senior Government Pleaders (District Attorney) fully mentioned in the heading of the instant writ petition; that 24 posts were created by respondents in the offices of Government Pleaders at various station while 19 persons were working as Office Assistant against those posts; that vide notification dated 19.1.2013, the above Office Assistants were promoted to the Post of Superintendent (BPS-16); that petitioners who were liable to be promoted on those vacant posts of Office Assistant under 75% quota fixed for promotion to the said post under the relevant rules were not considered for promotion rather 15 posts of Office Assistant out of

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 Peshawar High Court

24 posts were advertised and only nine(09) posts were shown to be available; that the above posts were advertised by respondents vide publication dated 10.5.2017 with observing 75% and 25% quota, so aggrieved from same, petitioners have approached this Court through the instant writ petition.

3. Respondents on Court order submitted their para-wise comments to the writ petition.

4. Comments heard and record annexed with the petition go through.

5. According to the rules framed in the years 1982, 2012 and 2017, 75% of the post of "Assistant" are reserved to be filled by promotion on the basis of seniority-cum-fitness from amongst the Senior Clerks with at least five years experience as Junior Clerk and Senior Clerk and 25% is to be filled in by initial recruitment, however, in the instant case, it appears that respondents are intending to intrude upon 75% quota

ATTESTED

EXAMINER

reserved for promotion as instead of filing the vacant posts of Office Assistant, by promotion, abolished 15 posts of 'Office Assistant' and the remaining posts were advertised to be filled through initial recruitment.

6. We are of the view that the grievance of the petitioners is justified in law as the respondents are not competent to alter the statutory rules by means of administrative instructions and where a cadre has a definite quota reserved for departmental promotion, it has to be filled first and thereafter direct recruitment shall be made. The respondents cannot abolish the quota reserved to be filled by promotion and destroy the chances of promotion to those who are already in service since years.

7. In the circumstances mentioned hereinabove, this writ petition is allowed in terms that the respondents shall strictly adhere to the rules and the quota reserved to be filled through promotion shall not be

ATTESTED

EXAMINER,
Peshawar High Court

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disturbed and the respondents shall consider the petitioners for promotion strictly in accordance with law and rules on the subject.

Announced
19.11.2019

JUDGE

JUDGE

CERTIFIED TO BE TRUE COPY

EXAMINER
Peshawar High Court, Peshawar
Authorised Under Article 175 of
The Qanun-e-Shahadat Order, 1988

13 JAN 2020

No. 14844

Date of Presentation of Application 20/11/19

No of Pages 12

Copying fee 600

Total

Date of Preparation of Copy 13/11/2019

Date of Delivery of copy 13/11/2019

Received By

(D.B)
Hon'ble Justice Musarrat Hilal.
Hon'ble Mr. Justice Ishtiaq Ibrahim.

"A.Qayum PA"



ANNEX F
**DIRECTORATE GENERAL OF LAW & HUMAN RIGHTS
KHYBER PAKHTUNKHWA, PESHAWAR**

Phone: 091-9217204
Email: ghr.kpk@gmail.com
Website: www.humanrights.kp.gov.pk
Plot No. 21, Sector B-2, Phase-V, Hayatabad, Peshawar.

(26)

Dated Peshawar, the 10/12/2020 / 10 26-56

ORDER:-

No. DG/SLT/AD/Promotion/2-16/2019 / 10 26-56 - On the recommendation of the Departmental Promotion Committee the competent authority is pleased to promote the following Senior Clerk (BPS-14) of the Offices of District Attorneys in Khyber Pakhtunkhwa to the post of Assistant (BPS-16) on regular basis with immediate effect.

S. No.	Name of the Official
1.	Mr. Ali Haider
2.	Mr. Faheez Zaman
3.	Mr. Nisar Ahmad
4.	Mr. Shahab Ali
5.	Muhammad Ismail
6.	Muhammad Ilyas
7.	Muhammad Ishfaq

1. The Officials on promotion will remain on Probation in term of Section 6(2) of the Khyber Pakhtunkhwa Civil Servant, 1973 read with the amendment Rule 15(1&4) of the Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion & Transfer) Rules, 1989, for one year, if not extended for another year.

-SD-
DIRECTOR GENERAL
Law and Human Rights Khyber
Pakhtunkhwa

No. DG/SLT/AD/Promotion/2-16/2019:-

Dated Peshawar, the 10/12/2020

Copy Forwarded for Information to:

1. Accountant General, Khyber Pakhtunkhwa.
2. PS to Secretary Law, Parliamentary Affairs and Human Rights Department.
3. PA to director General, Law and Human Rights.
4. All District Attorneys Offices in Khyber Pakhtunkhwa.
5. All District Accounts Offices concerned.
6. Official Concerned for Compliance.
7. Master File for Record.

ASSISTANT SOLICITOR
(M&E)



ANNEX - G

**DIRECTORATE GENERAL OF LAW & HUMAN RIGHTS
KHYBER PAKHTUNKHWA, PESHAWAR**

Phone: 091-9217204
Email: [dhr.xpk@gmail.com](mailto: dhr.xpk@gmail.com)
Website: www.humanrights.kp.gov.pk
Plot No. 21, Sector B-2, Phase-V, Hayatabad, Peshawar.

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Dated: 17/02/2021

ORDER:

No. DG/SLT/AD/Posting/Transfer/2-2/2019:- *11026-56-B* The Competent Authority is pleased to order the posting/transfer of the following Assistant (BPS-16) of District Attorney Offices Khyber Pakhtunkhwa in the best public interest with immediate effect:-

S#	Name of Official	From	To
1.	Mr. Ali Haider	Directorate General of Law and Human Rights.	District Attorney Office Peshawar. (Against the vacant post).
2.	Mr. Faheez Zaman	District Attorney Office Hangu.	District Attorney Office Kohat (Against the vacant post)
3.	Mr. Nisar Ahmad	District Attorney Office Abbottabad.	District Attorney Office Abbottabad (Against the vacant post)
4.	Mr. Shahab Ali	District Attorney Office Malakand at Batkhela.	District Attorney Office Swat (Against the vacant Post).
5.	Muhammad Ismail	District Attorney Office Lakki Marwat.	District Attorney Office Bannu (Against the vacant post)
6.	Muhammad Ilyas	District Attorney Office Lower Dir.	District Attorney Office Mardan (Against the vacant post).
7.	Muhammad Ishfaq	District Attorney Office Mardan.	District Attorney Office Service Tribunal Peshawar (Against the vacant post).

-SD-
DIRECTOR GENERAL
Law and Human Rights Khyber
Pakhtunkhwa

No. DG/SLT/AD/Posting/Transfer/2-2/2019:- Dated Peshawar, the 17/02/2021

Copy Forwarded for Information to:

1. Accountant General, Khyber Pakhtunkhwa.
2. PS to Secretary Law, Parliamentary Affairs and Human Rights Department.
3. PA to director General, Law and Human Rights.
4. All District Attorneys Offices concerned in Khyber Pakhtunkhwa.
5. All District Accounts Offices concerned

To,

The Worthy Secretary,
Govt: of Khyber Pakhtunkhwa
Law, Parliamentary Affairs and Human Rights Department

Through **DIRECTOR GENERAL OF LAW AND HUMAN RIGHTS
KHYBER PAKHTUNKHWA.**

Subject: **DEPARTMENTAL APPEAL FOR THE GRANT OF BACK
BENEFITS ON PROMOTION FROM THE POST OF SENIOR
CLERK (PBS-14) TO THE POST OF ASSISTANT (BPS-16) VIDE
ORDER DATED 10.12.2020**

R/Sir,

The appellant humbly and respectfully submits as under:-

1. That 28 posts of Office Assistants were sanctioned/created by the Finance Department in the office of Government Pleader now District Attorney at various Districts as per **(Flag-A)**.
2. That 19 Office Assistants were promoted to the post of Superintendent (BPS-16) in various offices of District Attorney Khyber Pakhtunkhwa vide order No. E&A/LD/2-77/2012/1480-1558, dated 29.01.2013 as per **(Flag-B)**. Resultantly on their promotion to the post of superintendent 19 post of Assistant (BPS-16) fell vacant.
3. That the Senior Clerks who were entitled to be promoted on those vacant posts of Office Assistant were not considered for promotion rather 19 out of 28 posts of office Assistant were abolished as per **(Flag-C)** and only 9 posts of office Assistant were left behind.
4. That as per relevant Service Rules 75% quota was fixed for promotion on the basis of seniority-Cum Fitness amongst the Senior Clerk with at least five years' experience as Junior Clerk and Senior Clerk and 25% quota for initial recruitment. But ignoring the relevant Rules Law Department advertised 8 posts of Assistant without observing 75% promotion quota **(Flag-D)**

reserved to be filled through promotion shall not be disturbed and the respondents shall consider the petitioners for Promotion strictly in accordance with Law and Rules on the subject as per Judgment (Flag-E) (duly highlighted).

6. That the posts of Assistant remained vacant for more than 7 years, due to which the applicant was entitled to back benefits w.e.from 30.01.2013, but the same were not extended/given to the appellant at the time of promotion. Which made the appellant compel to submit this appeal.
7. That the directions of Hon'ble Peshawar High court Peshawar, Directorate General Law & Human Rights promoted 7 Senior Clerk to the post of Assistant (BPS-16) vide order No.DG/SLT/AD/Promotion/2-16/2019/1026-56, dated 10.12.2020 (Flag-F) who were entitled to be promoted w.e.f. 30.01.2013.

Keeping in view the above mentioned facts, it is, therefore, requested that this appeal may please be allowed and back benefits may graciously be granted to the appellant w.e.f. 30.01.2013.


(MUHAMMAD ISMAIL)

Assistant
Directorate General of Law & Human
Rights

Copy (in advance) forwarded to the Worthy Secretary Law, Parliamentary Affairs and Human Rights Department for information and necessary action please.


(MUHAMMAD ISMAIL)

Assistant
Directorate General of Law & Human
Rights

Dy No. 196
13-01-2022

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO: _____ OF 2022

M, Ismail (APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Govt of K.P (RESPONDENT)
(DEFENDANT)

I/We M, Ismail
Do hereby appoint and constitute **NOOR MUHAMMAD KHATTAK Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/2022

Ismail

CLIENTS

ACCEPTED

NOOR MUHAMMAD KHATTAK

UMER FAROOQ MOHMAND

KAMRAN KHAN

HAIDER ALI

&
KHANZAD GUL
ADVOCATES