

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT D.I.KHAN

SERVICE APPEAL NO. 632/2018

Date of institution ... 09.05.2018

Date of judgment ... 25.02.2020

Ghulam Abbas Naib Tehsildar BS-14,
Resident of Village Yarak, Tehsil and District Dera Ismail Khan.
... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa, through Secretary Revenue and Estate Department/SMBR, Peshawar.
 2. Director Land Records, Board of Revenue Peshawar.
 3. Assistant Secretary Establishment Board of Revenue Peshawar.
 4. Commissioner Dera Ismail Khan Division.
 5. Deputy Commissioner Dera Ismail Khan.
- ... (Respondents)

M. Amin
25.2.2020

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER NO. ESTT:V/DPC/2016 DATED 04.10.2016 VIDE WHICH APPELLANT HAS BEEN DENIED ANTE DATED PROMOTION FROM 29.05.2008 AND ORDER NO. ESTT:V/P.F/GHULAM ABBAS/DIK/16679 DATED 02.04.2018 ISSUED BY RESPONDENT NO. 3 THROUGH WHICH THE DEPARTMENTAL APPEAL OF THE PETITIONER WAS FILED.

Mr. Umar Farooq Betani, Advocate. .. For appellant.
Mr. Ziaullah, Deputy District Attorney .. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI .. MEMBER (JUDICIAL)
MR. MIAN MOHAMMAD .. MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Appellant
alongwith his counsel and Mr. Ziaullah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

2. Brief facts of the case as per present appeal are that the appellant was serving in Revenue Department. He filed Service Appeal No. 1490/2011 before this Tribunal for promotion to the post of Naib Tehsildar. The service appeal of the appellant was accepted and the respondent-department was directed to consider the appellant for promotion as Naib Tehsildar on regular basis from the date when his juniors were promoted vide detailed judgment dated 08.06.2016. The respondent-department promoted the appellant as Naib Tehsildar vide order dated 04.10.2016 but with immediate effect. The appellant filed execution petition/implementation application before this Tribunal for implementation of the judgment dated 08.06.2016 of this Tribunal for directing the respondents to promote him from the date when his juniors were promoted. The execution petition/implementation application was disposed of by this Tribunal and it was observed by this Tribunal while disposing the execution petition that the petitioner was granted relief in the judgment dated 08.06.2016 to be considered for promotion from the date when his juniors were promoted, however, since the order whereby juniors to the appellant was promoted as Naib Tehsildars has been withdrawn being violative of service rules and instructions governing promotion and ^{is m} also well settled preposition that one wrong cannot justify second one. Therefore, in view of the above circumstances, the judgment dated 08.06.2016 of this Tribunal has been implemented in the shape of promotion order dated 04.10.2016 and the execution petition was filed

M. Amin
28.2.2020

vide detailed order dated 30.11.2017. Feeling aggrieved from the order dated 04.10.2016 of promotion of the appellant with immediate effect, he filed departmental appeal on 10.01.2018 which was rejected on 02.04.2018. The rejection order dated 02.04.2018 was communicated to the appellant on 02.05.2018 as per para-9 of the service appeal, hence, the present service appeal on 09.05.2018.

3. Respondents were summoned who contested the appeal by filing written reply/comments.

4. Learned counsel for the appellant contended that the appellant filed service appeal for promotion to the post of Naib Tehsildar from the date when his juniors were promoted, the service appeal of the appellant was accepted and the respondent-department was directed to consider the appellant for promotion as Naib Tehsildar on regular basis from the date when his juniors were promoted. It was also contended that the Tribunal also observed in the judgment that the appellant was otherwise eligible for promotion, therefore, it was contended that if the promotion order of his juniors has been withdrawn being violative of service rules and instructions, ~~and~~ the said withdrawal order of his juniors cannot affect the judgment dated 08.06.2016 passed by this Tribunal as the Tribunal has observed in the judgment that the appellant was otherwise eligible for promotion, therefore, the respondent-department was bound to implement the judgment dated 08.06.2016 and promote the appellant from the date when his juniors were promoted but the respondent-department

M. Amin
25.7.2020

promoted him vide order dated 04.10.2016 but with immediate effect, therefore, prayed that the order dated 04.10.2016 may be set-aside and the appellant may be promoted from the due date i.e 29.05.2008 when his juniors were promoted.

5. On the other hand, learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the service appeal of the appellant was accepted and the respondent-department was directed to consider the appellant for promotion as Naib Tehsildar on regular basis from the date when his juniors were promoted vide judgment dated 08.06.2016. It was further contended that the promotion orders of the junior colleagues of the appellant were withdrawn by the respondent-department on the ground that their promotion order to the post of Naib Tehsildars was passed without any departmental promotion committee, therefore, their promotion order being violative of service rules and instructions governing promotion was withdrawn by the respondent-department. It was further contended that since the promotion order of junior colleagues of the appellant was withdrawn by the respondent-department on the aforesaid allegation than the respondent-department could not promote the appellant from date when his juniors colleagues were promoted, therefore, respondent-department has rightly promoted the appellant vide order dated 04.10.2016 with immediate effect and has rightly implemented the judgment dated 08.06.2016 passed by this Tribunal. It was further contended that the appellant filed execution petition for

M. Amin
25.12.2022

implementation of the judgment dated 08.06.2016 but the same was also dismissed by this Tribunal vide order dated 30.11.2017 on the ground that the appellant could not be promoted from the date when his junior colleagues were promoted as the promotion order of his colleagues to Naib Tehsildars were withdrawn by the respondent-department on the ground that their promotion orders were passed being violative of service rules and instructions. It was further contended that the appellant was required to challenge the order dated 30.11.2017 of this Tribunal passed in execution petition before the august Supreme Court of Pakistan but the appellant did not challenge the same, therefore, the order dated 30.11.2017 passed by this Tribunal dismissing the execution petition of the appellant attained finality. It was also contended that the appellant was promoted as Naib Tehsildar with immediate effect on 04.10.2016 on the basis of judgment of this Tribunal dated 08.06.2016, therefore, if the appellant was aggrieved from the order dated 04.10.2016 he was required to file departmental appeal within one month but he has filed departmental appeal against the order dated 04.10.2016 on 10.01.2018 after a delay of more than one year, therefore, the departmental appeal is badly time barred and prayed for dismissal of appeal.

M. Amin
25.2.2020

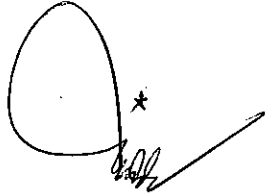
6. Perusal of the record reveals that the appellant was serving in Revenue Department as Kanungo. He filed Service Appeal No. 1490/2011 before this Tribunal for promotion to the post of Naib Tehsildar. The service appeal of the appellant was

accepted and the respondent-department was directed to consider the appellant for promotion as Naib Tehsildar on regular basis from the date when his juniors were promoted vide detailed judgment dated 08.06.2016. The record also reveals that the respondent-department promoted the appellant from the post of Kanungo to the post of Naib Tehsildar vide order dated 04.10.2016 but with immediate effect. The appellant was required to challenge the same within one month through departmental appeal but he has filed departmental appeal on 10.01.2018 against the order dated 04.10.2016 after a delay of more than one year, therefore, the departmental appeal of the appellant is badly time barred. Moreover, the appellant filed execution petition before this Tribunal for implementation of judgment dated 08.06.2016 for promotion of the appellant to the post of Naib Tehsildar from the date when his juniors were promoted but the execution petition of the appellant was also dismissed by this Tribunal vide detailed order dated 30.11.2017 on the ground that the appellant could not be promoted by the respondent-department from the date when his juniors were promoted as the promotion orders of his junior colleagues as Naib Tehsildars have already been withdrawn by the competent authority being violative of service rules and instructions governing promotion, therefore, if the appellant was aggrieved from the order dated 30.11.2017 passed by this Tribunal regarding dismissal of execution petition he was required to challenge the same before the apex court but he has also not challenged the same,

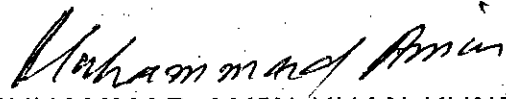
M. Amin
25.12.2022

therefore, the order dated 30.11.2017 has also attained finality and the present service appeal is hit by rule 23 of Khyber Pakhtunkhwa Service Rules, 1974. As such, the appeal has no force which is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
25.02.2020



(MIAN MOHAMMAD)
MEMBER
CAMP COURT D.I.KHAN


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER
CAMP COURT D.I.KHAN

Service Appeal No. 632/2018

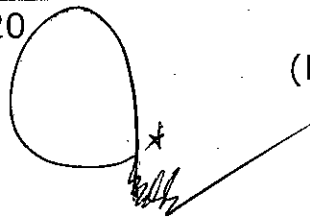
25.02.2020

Appellant alongwith his counsel and Mr. Ziaullah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of seven pages placed on file, the appeal has no force which is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

25.02.2020



(MIAN MOHAMMAD)
MEMBER
CAMP COURT D.I.KHAN




(MUHAMMAD AMIN KHAN KUNDI)
MEMBER
CAMP COURT D.I.KHAN

22/10/2019 Since tour to D.I.Khan has been cancelled .To come for the same on 27/11/2019.




Reader

27.11.2019 Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney for the respondents present. Learned Deputy District Attorney requested for adjournment. Adjourned to 28.01.2020 for rejoinder and arguments before D.B at Camp Court D.I.Khan.

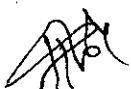


(Hussain Shah)
Member
Camp Court D.I.Khan




(M. Amin Khan Kundi)
Member
Camp Court D.I.Khan

28.01.2020 Due to strike of Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today. Mr. Usman Ghani, District Attorney alongwith Mr. Farmanullah, Superintendent for the respondents present. Adjourned to 25.02.2020 for rejoinder and arguments before D.B at Camp Court D.I.Khan.



(Hussain Shah)
Member
Camp Court D.I.Khan



(M. Amin Khan Kundi)
Member
Camp Court D.I.Khan


26.03.2019

Appellant in person and Mr. Farhaj Sikandar, District Attorney for the respondents present. Written reply not submitted. Requested for adjournment. Adjourned. Case to come up for written reply on 24.06.2019 before the S.B at camp court, D.I.Khan.


Member
Camp Court, D.I.Khan


24.06.2019

Appellant in person and Mr. Farhaj Sikandar, District Attorney alongwith Mr. Muhammad Arif, Superintendent for respondents No. 1 & 2 present. Representative of respondents No. 3 to 5 absent therefore, notice be issued to respondents No. 3 to 5 with the direction to direct the representative to attend the court and submit written reply on the next date positively. Case to come up for written reply/comments on behalf of respondents No. 3 to 5 on 23.09.2019 before S.B at Camp Court D.I.Khan.


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I.Khan


23.09.2019

Appellant in person present. Mr. Farhaj Sikandar, DDA alongwith Atta Ullah Assistant Secretary (respondent No.2) and Naimat Ullah Assistant (for respondents No.4 & 5) present. Written reply on behalf of respondents No.1 & 2 already submitted. Atta Ullah Assistant Secretary and Naimat Ullah Assistant Commissioner (representatives of respondents No.3 to 5) stated that respondents No.3 to 5 rely on the reply submitted on behalf of respondents No.1 & 2. Adjourn. To come up for rejoinder if any and arguments on 22.10.2019 before D.B at Camp Court, D.I.Khan.


Member
Camp Court D.I.Khan


29.11.2018

Neither appellant nor his counsel present therefore, notice be issued to appellant and his counsel for attendance and preliminary hearing for 19.12.2018 before S.B at Camp Court D.I.Khan.


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I.Khan

19.12.2018


As per direction of the worthy Chairman Khyber Pakhtunkhwa Service Tribunal, D.I.Khan tour dated 19.12.2018 has been rescheduled and the case is re-fixed for 28.12.2018.


Reader

28.12.2018

Counsel for the appellant Ghulam Abbas present. Preliminary arguments heard. It was contended by the learned counsel for the appellant that the appellant was serving in Revenue Department as Naib Tehsildar (BPS-14). It was further contended that the appellant filed Service Appeal before this Tribunal for his promotion and the service appeal of the appellant was decided by this Tribunal through judgment dated 08.06.2016 with the direction to respondents to consider the appellant for promotion as Naib Tehsildar on regular basis from the date when his junior colleagues were promoted. It was further contended that juniors to the appellant were promoted on regular basis with effect from 02.09.2010 but the respondent-department has promoted the appellant on regular basis vide order dated 04.10.2016 with immediate effect. It was further contended that the appellant filed an Execution Petition for implementation of the judgment which was filed vide order dated 30.11.2017. It was further contended that on coming to know that the appellant was promoted on regular basis with immediate effect instead of 02.09.2010 than the appellant immediately filed departmental appeal on 10.01.2018 which was rejected on 02.04.2018 hence, the present service appeal. It was further contended that some juniors to the appellant were regular promoted with effect from 02.09.2010 therefore, the appellant is also entitled for regular promotion with effect from 02.09.2010.

The contention raised by the learned counsel for the appellant need consideration. The 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 the respondents for written reply/comments for 26.03.2019 before S.B at Camp Court D.I.Khan.


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I. Khan

Appellant Deposited
Security & Process Fee

Form-A
FORM OF ORDERSHEET

Court of _____

Case No. 632/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	09/05/2018	<p>The appeal of Mr. Ghulam Abbass presented today by Mr. Umar Farooq Battani Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR 9/5/18</p>
2-	13.09.2018	<p>This case is entrusted to Touring S. Bench at D.I.Khan for preliminary hearing to be put up there on <u>13-9-18</u>.</p> <p style="text-align: right;"><i>[Signature]</i> MEMBER</p>
	23-10-18	<p>Neither appellant nor his counsel present. Notice be issued to appellant and his counsel for attendance and preliminary hearing for 23.10.2018 before S.B at Camp Court D.I.Khan.</p> <p style="text-align: right;"><i>[Signature]</i> (Muhammad Amin Khan Kundi) Member Camp Court D.I.Khan</p> <p><i>Case is hereby cancelled, therefore the case is adjourned for the same on 29-11-2018 at Camp Court D.I.Khan.</i></p> <p style="text-align: right;"><i>[Signature]</i></p>

BEFORE THE HONOURABLE SERVICE TRIBUNAL,

KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal No ^{632/} of 2018

Ghulam Abbas

Versus

Govt of K.P.K etc

INDEX

S. No.	Particulars	Annexure	Page
1.	Memo of Service Appeal along with memo of addresses of the parties	-	1-12
2.	Copy of the Judgment of Learned KPK Service Tribunal dated 08.06.2016	"A"	13-15
3.	Copy of the Order No Estt:V/DPC/2016 Dated 04.10.2016	"B"	16
4.	Copies of Execution Petition and Order Dated 30.11.2017	C & D	17-20
5.	Copies of the Departmental appeal and Order Dated 02.04.2018	E & F	21-29
6	Wakalatnama		31

07 May, 2018


Petitioner

1

BEFORE THE HONORABLE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal No ⁶³⁷ of 2018

Khyber Pakhtukhwa
Service Tribunal

Diary No. 673

Dated 9-5-2018

**Ghulam Abbas Naib Tehsildar BS-14, Resident of Village Yarak, Tehsil
and District Dera Ismail Khan**

Petitioner

Versus

1. **Government of Khyber Pakhtunkhwa Through Secretary
Revenue and Estate Department/SMBR, Peshawar.**
2. **Director Land Records, Board of Revenue Peshawar.**
3. **Assistant Secretary Establishment Board of Revenue Peshawar.**
4. **Commissioner Dera Ismail Khan Division**
5. **Deputy Commissioner Dera Ismail Khan**

Respondents

Filed to-day

Registrar

9/5/18

2

**SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE
IMPUGNED ORDER NO ESTT: V/DPC/2016 Dated 04.10.2016
VIDE WHICH APPELLANT HAS BEEN DENIED ANTE DATED
PROMOTION FROM 29.05.2008 AND ORDER NO.
Estt:V/P.F/GHULAM ABBAS /DIK/16679 DATED 02.04.2018
ISSUED BY RESPONDENT NO 3 THROUGH WHICH THE
DEPARTMENTAL APPEAL OF THE PETITIONER WAS
FILED/DISMISSED.**

PRAYER IN APPEAL

**To modify the impugned Order No ESTT:
V/DPC/2016 Dated 04.10.2016 and Petitioner may
please be promoted with effect from 29.05.2008 and
set aside the Order No. Estt:V/P.F/Ghulam
Abbas/DIK/16679 DATED 02.04.2018 issued by
Respondent No 3 through which the Departmental
Appeal filed by Petitioner is filed/dismisssed**

Note:- Addresses given above shall suffice the object of service

Respected Sir,

3

1. **That** on 18.08.2011, the Petitioner filed a service appeal 1490 of 2011 which has finally been decided in favour of the Petitioner through Judgment Dated 08.06.2016. Copies of the Service Appeal along with Judgment of the Hon'ble Khyber Pakhtunkhwa Service Tribunal Dated 08.06.2016 are enclosed as **Annexures "A"**
2. **That** the claim of the Petitioner was with regard to his promotion from the date when his juniors were promoted and the Honorable Khyber Pakhtunkhwa Service Tribunal was pleased to pass a Judgment in favour of Petitioner which is worth perusal.
3. **That** after passing the Judgment Dated 08.06.2016, a meeting of the Departmental Promotion Committee was convened and vide Order dated 04.10.2016 the Petitioner has been promoted from the Post of Qanungo BS-11 to the post of Naib Tehsildar BS-14 on regular basis, but to his utter surprise with immediate effect and not with effect from the date when his promotion was due, which is 29.05.2008. As the post of Naib Tehsildar stood vacant on 29.05.2008 and Petitioner also fulfilled the laid down criteria for promotion to the said post, so it was the legal right of the Petitioner not to deny the benefit of promotion to the next step even for a single day. Numerous judgments/case laws of the superior Courts are in favour of the Petitioner's stand.

4. **That** the Honorable Khyber Pakhtunkhwa Service Tribunal in its Judgment 08.06.2016 clearly stated that Petitioner shall be promoted as Naib Tehsildar on regular basis from the Date i.e., 29.05.2008, when his juniors were promoted but Departmental Promotion Committee in clear cut violation of Judgment Dated 08.06.2016 promoted the Petitioner from the post of Qanoongo (BPS-11) to the post of Naib Tehsildar (BPS-14) with immediate effect. Copy of the Order No Estt:V/DPC/2016 Dated 04.10.2016 is enclosed as Annexure "B".
5. **That** for implementation of the Honorable Khyber Pakhtunkhwa Service Tribunal judgment Dated 08.06.2016, the Petitioner requested the Departmental Authorities for its compliance in letter and spirit through Departmental letter date 14.10.2016, but vide letter dated 21.11.2016 they have flatly refused to comply with this Honorable Tribunal Judgment dated 08.06.2016.
6. **That** later for implementation of Judgment Dated 08.06.2016, the Petitioner filed execution petition No.6 of 2017 on 27.12.2017 but the Departmental Authorities took the stance in execution proceedings that as the promotion orders of the colleagues / juniors of the Petitioner have been withdrawn on the ground that they were promoted through Administrative Order and without adopting the legal procedure, so execution petition was filed through order Dated 30.11.2017. Copies of the execution petition along with Judgment Dated 30.11.2017 are enclosed as Annexures- "C & D" respectively.

5

7. **That** as the promotion order Dated 04.10.2016 was not passed in accordance with the Judgment Dated 08.06.2016 of the Learned Khyber Pakhtunkhwa Service Tribunal, so the Petitioner was constrained to file execution petition, which remained pending upto 30.11.2017 and Petitioner was having legal right and remained in impression that he will get the relief through execution petition, but the stance of the Departmental Authorities of having withdrawn the promotion order of the colleagues of the Petitioner, have been accepted by the Hon'ble Tribunal through Judgment Dated 30.11.2017.
8. **That** Petitioner applied for getting certified copies of the Hon'ble Khyber Pakhtunkhwa Service Tribunal on 06.12.2017, which were received to him on 18.12.2017, hence within limitation of one month time, the petitioner moved departmental appeal against promotion order Dated 04.10.2016 seeking his ante-dated/proforma promotion w.e.f 29.05.2008. Copies of the Departmental Appeal are enclosed as Annexure "E" respectively.
9. **That** in terms Rules 19 (1) (2) of Khyber Pakhtunkhwa Government Servant (Efficiency and Discipline Rules) 2011, the Official Respondents were legally mandated to communicate any kind of order on the departmental appeal of the Petitioner with in a period of thirty or sixty days, but the Impugned Order No. Estt:V/P.F/Ghulam Abbas/DIK/16679 DATED 02.04.2018 was communicated to the Petitioner on 02.05.2018 through Political Agent North Waziristan Agency, so the instant service appeal is with in a limited statutory period as required under the law, so there is no hurdle for the Petitioner to file the instant service appeal.

6

10. **That** feeling aggrieved from the impugned dismissal from service order No 5513-19 Dated 27.04.2017 and Departmental Appeal rejection Order Dated 02.04.2018 and having left with no other efficacious or alternative remedy to approach this Learned Court for instant service appeal on the following amongst other grounds.

GROUND S

- a. **That** the impugned order Dated 04.10.2016 promoting the Petitioner from the post of Qanoongo as Naib Tehsildar against law, facts of the case and material available on record; hence liable to be modified and Petitioner is entitled for promotion w.e.f, 29.05.2008 and not with immediate effect as envisaged in the impugned order Dated 04.10.2016 thus the impugned order calls for interference by your worthy honour.

- b. **That** as it has been established from the Judgment Dated 08.06.2016 of the Hon'ble Khyber Pakhtunkhwa Service Tribunal that the post of Naib Tehsildar stood vacant on 29.05.2008 and Petitioner was also eligible for promotion on that very crucial date, so granting promotion with immediate effect is the clear cut violation of the law of the land and judgments of the superior Courts, thus the impugned order Dated 04.10.2016 is liable to be modified.

7

- c. **That** as the stance of the Departmental Authorities that promotion order of the juniors of the Petitioner have been withdrawn on the ground that they were promoted through Administrative Order prevailed upon the Hon'ble Khyber Pakhtunkhwa Service Tribunal but the legal right of the Petitioner to be promoted w.e.f 29.05.2008 could not vanished and give the Petitioner a fresh cause of action; hence, Petitioner's request for ante-dated/proforma promotion.
- d. **That** as the impugned order Dated 04.10.2016 was challenged by the Petitioner through execution petition No.6 of 2017 and the same has been finally decided by the Hon'ble Khyber Pakhtunkhwa Service Tribunal on 30.11.2017, so the time consumed in execution petition and also the time which has been consumed in obtained certified copies of the execution petition and its order Dated 30.11.2017 may please be condoned, so the Order ESTT: V/DPC/2016 Dated 04.10.2016 and Petitioner may please be modified and Order No. Estt:V/P.F/Ghulam Abbas/DIK/16679 DATED 02.04.2018 may please be setaside
- e. **That** it is the legal right of the Petitioner that he will be considered for promotion on that very day and date when the post fell vacant and he was fulfilling the eligibility criteria for the post of Naib Tehsildar, so denying the benefit of promotion from that very crucial date run contrary to established principle of law and judgments of superior Courts, thus the action of the Departmental Authorities needs to be modified.

8

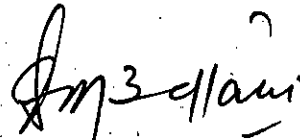
It is therefore, most humbly prayed
that Service Appeal may please be allowed
as prayed in the prayer clause of the
instant appeal.



Dated:-07.05.2018

Ghulam Abbas

Naib Tehsildar BS-14



Cell No:- 03414504900

Umar Farooq Betani

Advocate High Court

Dera Ismail Khan

9

BEFORE THE HONORABLE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal No of 2018

Ghulam AbbasPetitioner

Versus

Government of K.P.K etc.....Respondents

SERVICE APPEAL

CERTIFICATE

Certified that this is first Service Appeal involving the instant subject matter and that the Petitioner has not filed any other petition earlier in this Honorable tribunal regarding the above stated controversy.


Petitioner

Through Counsel

10

BEFORE THE HONORABLE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal No of 2016

Ghulam AbbasPetitioner

Versus

Government of K.P.K etc.....Respondents

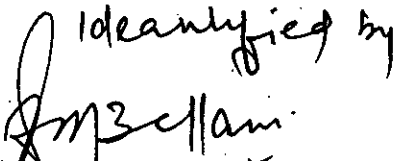
SERVICE APPEAL

AFFIDAVIT

I, **Ghulam Abbas Naib Tehsildar BS-14**, Resident of Village Yarak, Tehsil and District Dera Ismail Khan, do hereby solemnly affirm and declare on oath:-

1. **That** accompanying service appeal has been drafted by Counsel following instructions of me
2. **That** all parawise contents of the service appeal are true and correct to the best of my knowledge, belief and information;
3. **That** nothing has been deliberately concealed from this August Tribunal nor anything contained therein is based on exaggeration or distortion of facts.

Dated:- 07.05.2018

Identified by

Umar Farooq Betani
Advocate High Court


Deponent

Identified by

11

BEFORE THE HONORABLE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal No of 2018

Ghulam AbbasPetitioner

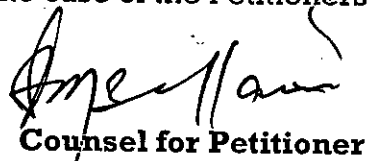
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SERVICE APPEAL

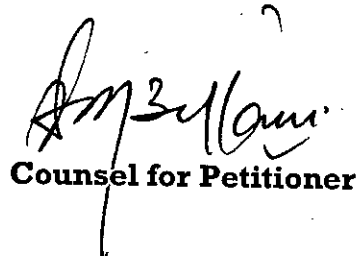
List of Books refereed:

1. Code of Civil Procedure, 1908
2. The Constitution of Islamic Republic of Pakistan, 1973
3. The K.P.K Civil Servant Act, 1973
4. K.P.K Appointment, Promotion, Transfer Rules 1989
5. K.P.K Service Tribunal Act, 1974
6. Judicial Precedents, favouring the case of the Petitioners


Counsel for Petitioner

Note:-

Service Appeal with annexures along with three sets thereof are being presented in three separate enclosed covers.


Counsel for Petitioner

12

BEFORE THE HONORABLE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal No of 2018

Ghulam AbbasPetitioner

Versus

Government of K.P.K etc.....Respondents

SERVICE APPEAL

MEMO OF ADDRESSES OF THE PARTIES

APPELLANT

**Ghulam Abbas Naib Tehsildar BS-14, Resident of Village Yarak,
Tehsil and District Dera Ismail Khan**

RESPONDENTS

- 1. Government of Khyber Pakhtunkhwa Through Secretary Revenue and Estate Department/SMBR, Peshawar.**
- 2. Director Land Records, Board of Revenue Peshawar.**
- 3. Assistant Secretary Establishment Board of Revenue Peshawar.**
- 4. Commissioner Dera Ismail Khan Division**
- 5. Deputy Commissioner Dera Ismail Khan**

Dated:- 07.05.2018

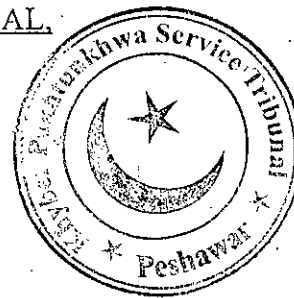

Your Humble Petitioner

Annexure 'A' b
13

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO. 1490/2011

Date of institution ... 18.8.2011
Date of judgment ... 08.06.2016



Ghulam Abbas
Office Kanungo, D. I. Khan

... (Appellant)

VERSUS

1. The Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
2. The Commissioner D. I. Khan Division D. I. Khan.
3. The DOR & EC, D.I. Khan.

... (Respondents)

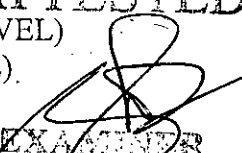
APPEAL UNDER SECTION-4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, FOR DIRECTING THE RESPONDENTS TO CONSIDER THE APPELLANT FOR PROMOTION AS NAIB TEHSILDAR AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN STATUTORY PERIOD OF NINETY DAYS.

Mr. Muhammad Asif Yousafzai, Advocate.
Mr. Adeel Butt, Additional Advocate General,

.. For appellant.
.. For respondents.

MR. AHMAD HASSAN
MR. PIR BAKHSH SHAH

.. MEMBER (EXECUTIVE)
.. MEMBER (JUDICIAL)

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

JUDGMENT

AHMAD HASSAN, MEMBER: The appellant Ghulam Abbas S/o of Abdur Rehman, through instant appeal filed under section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, to direct the respondents to consider the appellant for promotion as Naib Tehsildar and not taking action on the departmental appeal of the appellant within statutory period of ninety days.

2. Brief facts of the case as narrated in the contents of appeal are that the appellant was working as Patwari in the Revenue Department since 1984. The appellant has also passed N.T exam and was eligible for promotion to the post of Naib Tehsildar under the rules. The

14

appellant was promoted as Kanungo (BPS-9) vide order dated 27.6.2005, whereas, the junior official who are now regular Naib Tehsildar, were also promoted as Kanungo vide order dated 15.1.2008. The appellant was promoted as Naib Tehsildar on acting charge basis on 10.5.2008, whereas, his junior colleagues, who are now regular Naib Tehsildar were promoted as Naib Tehsildar on acting charge basis on 2.7.2008, 1.6.2008 & 13.10.2009. That the appellant was reverted back as Kanungo by the Commissioner D. I. Khan on 31.12.2009. That he was performing duties as District Kanungo D. I. Khan since 23.6.2009 and accordingly actual reversion order was passed by the DOR & EC D. I. Khan on 20.7.2010. That the junior colleagues of the appellant were regularly promoted as Naib Tehsildar on the basis of judgment of this august Tribunal in appeal No. 559/2010 titled Fazal-Ur-Rehman, No.560/2010 titled Gohar Zaman and No. 568/2010 titled Haq Nawaz dated 23.07.2010 while one Abdur Rashid was regularly promoted on the basis of SMBR judgment. It is worth mentioning here that none of the above junior colleagues had ever arrayed the appellant as respondent in their appeals. That in the prevailing circumstances, the appellant filed departmental appeal on 20.4.2011, which was routed through proper channel and waited for ninety days but no reply has been received so far, hence the present service appeal.

3. Arguments heard and record perused.

4. Learned counsel for the appellant argued that he was appointed as Kanungo (BPS-9) on 27.6.2005. Appellant was appointed as Naib Tehsildar on acting charge basis on 10.5.2008. He was posted as District Kanungo D. I. Khan on 23.6.2009. He was reverted as Kanungo by the Commissioner D. I. Khan on 31.12.2009. Appellant after reversion was posted as office Kanungo Daraban vide order dated 20.7.2010. Appellant was appointed as Naib Tehsildar on acting charge basis on 10.5.2008, while his junior colleagues, who are now regular Naib Tehsildar were promoted as Naib Tehsildar on acting charge basis on 2.7.2008, 1.6.2008 & 3.10.2009. On the basis of this judgment of this Tribunal in appeal No. 5591/2010 dated 23.7.2010, Mr. Gohar Zaman, Haq Nawaz & Riaz ur Rehman though junior to appellant were promoted on regular basis, w.e.f 29.5.2008. It is worth mentioning that his junior colleagues had not made appellant respondent in their appeal. Similarly in pursuance of a judgment of

ATTENDED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

SMBR dated 12.9.2009, Mr. Abdur Rashid was regularized as Naib Tehsildar w.e.f 29.5.2008. Due to promotion of juniors, the appellant has been discriminated, by not extending similar treatment to him. He further mentioned that under rule-9 of APT Rules 1989 juniors cannot be promoted on regular basis if senior officials are there.

5. The learned Additional AG resisted the appeal and argued that it was clearly mentioned in the concluding para of the Board of Revenue order dated 10.5.2008 that the officials appointed on acting charge basis will be reverted, if candidates selected/recommended as Naib Tehsildar by Public Service Commission NWFP reported their arrival in BOR after getting one year training. Hence, it was lawful order of the government. He further argued that if proper assistance by the then Additional AG had been provided to the Service Tribunal at the time of hearing appeal No. 559/2010 decided on 23.7.2010 the decision would have been different. He further argued that departmental appeal was not filed by the appellant, as office record was silent.

6. Having examined the pros and cons of the case, this Tribunal is of the view that the appellant being senior to Gohar Zaman, Haq Nawaz, Riaz ur Rehman and Abdur Rashid should have been considered for regular promotion as Naib Tehsildar at the time of the promotion of above referred Kanungo in the light of judgment of the Service Tribunal and SMBR. He was otherwise eligible for promotion. Though, promotion is not a vested right but promoting his juniors and ignoring him without any justification amounts to discrimination.

7. This Tribunal is left with no other option but to accept the appeal and direct the respondent to consider appellant for promotion as Naib Tehsildar on regular basis from the date when his juniors were promoted. Parties are, however, left to bear their own costs. File be consigned to the record room.

ANNOUNC
08.06.2016

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Edf Ahmad Hassan, Member
Edf- Mr Bakhtish Shah, Member

Date of Presentation of _____ 8-1-18
Number of Words _____ 1200
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Urgent _____ 2-
Total _____ 10-
Name of Client _____
Date of Copying _____ 8-1-18
Date of Delivery _____ 8-1-18

Annexure C 3

17



BEFORE THE HONORABLE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA, PESHAWAR

Execution Petition No 6 of 2017

Khyber Pakhtunkhwa
Service Tribunal

In Service Appeal No 1490 of 2011 Decided On 08.06.2016

Diary No. 13

Dated 9-1-17

Ghulam Abbas Naib Tehsildar BS-14, Resident of Village Yarak, Tehsil and District Dera Ismail Khan

Petitioner

Versus

1. **Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar.**
2. **The Commissioner Dera Ismail Khan Division, Dera Ismail Khan.**
3. **The DOR & EC, Dera Ismail Khan.**

Respondents

EXECUTION PETITION SEEKING IMPLEMENTATION OF THIS HONORABLE TRIBUNAL'S JUDGMENT DATED 08.06.2016 PASSED IN SERVICE APPEAL 1490/2011 TITLED "GHULAM ABBAS VERSUS SMBR ETC"

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Handwritten signature

27.12.2016

(18)

PRAYER IN EXECUTION PETITION

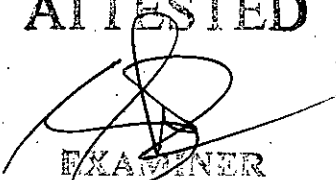
To direct the Respondents to modify the Order No Estt:V/DPC/2016 Dated 04.10.2016 by promoting the Petitioner with effect from 29.05.2008 i.e from the Dated when his juniors were promoted.

Note:- Addresses given above shall suffice the object of service

Respectfully Sheweth,

1. That in the earlier round of litigation the Petitioner filed a service appeal 1490 of 2011 which has finally been decided in favour of the Petitioner through Judgment Dated 08.06.2016. Copy of the Judgment Dated 08.06.2016 is enclosed as **Annexure "A"**
2. That the claim of the Petitioner was with regard to his promotion from the date when his juniors were promoted and this Honorable tribunal was pleased to pass a Judgment in favour of Petitioner which is worth perusal.
3. That after passing the Judgment Dated 08.06.2016 , the Respondents convened the meeting of the Departmental Promotion Committee and vide Order dated 04.10.2016 the Petitioner has been promoted from the Post of Qanungo BS-11 to the post of Naib Tehsildar BS-14 on regular basis , but to his utter surprise with immediate effect,. However there were clear direction of this Honorable Tribunal in its Judgment 08.06.2016, that he shall be promoted as Naib Tehsildar on regular basis from the Date when his Juniors were promoted. Copy of the Order No Estt:V/DPC/2016 Dated 04.10.2016 is enclosed as **Annexure "B"**.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Lawyer
Amir

27.12.2016

03

19

4. That for implementation of this Honorable Tribunal judgment Dated 08.06.2016, the Petitioner requested the Respondents for its compliance in letter and spirit through Departmental letter date 14.10.2016, but vide letter dated 21.11.2016 they have flatly refused to comply with this Honorable Tribunal Judgment dated 08.06.2016. Copies of Departmental Letter Dated 14.10.2016 and Letter Dated 21.11.2016 are enclosed as Annexure "C" & "D".

It is therefore, most humbly prayed that on acceptance of instant Execution Petition, direct the Respondents to compliance the Judgment of this Honorable Tribunal Dated 08.06.2016 in letter and spirit, the impugned Order No Estt: V/DPC/2016 dated 04-10-2016 may please be modified and the Petitioner may please be promoted with effect from 29-05-2008 i.e from the Dated when his juniors were promoted.

Ghulam Abbas
N.T.L.A

Dated:-27.12.2016

Ghulam Abbas

Naib Tehsildar BS-14

Petitioner
Through Counsel

Zia-ur-Rahman Kazi
Kazi
Zia-ur-Rahman Kazi 27/12/16

Cell No:- 03018792378

Advocate High Court
Dera Ismail Khan

Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 6-12-17
Number of Words 1250
Copying Fee 82
Urgent 8
Total 8
Name of Copyist [Signature]
Date of Completion of Copy 18-12-17
Date of Delivery of Copy 18-12-17

Annexure 'D'

20

Execution Petition No. 06/2017



Order

30.11.2017 Petitioner with counsel present. Farhaj Sikandar Learned District Attorney for the respondents present.

Petitioner has submitted the present Execution Petition seeking implementation of this Tribunal's judgment dated 08.06.2016, passed in Service Appeal No. 1490/2011.

Learned Counsel for the petitioner contended that consequent upon the judgment of this Tribunal passed in Appeal No. 1490/2011 vide order dated 04.10.2016, the petitioner was promoted as Nab Tehsildar but with immediate effect. Learned Counsel for the appellant pleaded that as per the judgment of this Tribunal, petitioner should have been promoted as Naib Tehsildar from the date when his juniors were promoted as Naib Tehsildars. Learned District Attorney while controverting the plea of the learned counsel for the petitioner argued that the judgment of this Tribunal has already been implemented in the shape of promotion order dated 04.10.2016 whereby the petitioner has been promoted as Naib Tehsildar with immediate effect. Learned District Attorney argued that since juniors to the petitioner have been reverted to the original posts and their promotion order dated 02.09.2010 is no more in field hence the petitioner was rightly promoted with immediate effect.

Arguments heard. File perused.

The petitioner in his departmental appeal dated 14.10.2016 submitted that vide order dated 2.09.2010 his juniors namely Fazal Rehman, Gohar Zaman and Haq Nawaz were promoted w.e.f 29.05.2008. The petitioner has not disputed the fact that the promotion order of Fazal Rehman, Gohar Zaman and Haq Nawaz no more holds field.

The petitioner was granted relief in the judgment dated 08.06.2016 to be considered for promotion from the date his juniors were promoted, however since the order whereby juniors to the appellant were promoted as Naib Tehsildars has been withdrawn being violative of service rules and instructions governing promotion and it is also well settle preposition that one wrong cannot justify second one. This Tribunal is of the view that in the above circumstances, the judgment dated 08.06.2016 of this Tribunal has been implemented in the shape of promotion order dated 04.10.2016 as such the present execution petition is filed. No order as to costs. File be consigned to the record room.

Announced
30.11.17

Sd/- M. Hamid Mughal
Member

ATTESTED
[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Anexure E^s

(21)

To,

The Worthy Senior Member Board of Revenue,
Revenue & Estates Department,
Khyber Pakhtunkhwa Peshawar

Subject: **DEPARTMENTAL APPEAL FOR ANTE-DATED/
PROFORMA PROMOTION W.E.F 29.05.2008
WITH ALL ENSUING BACK BENEFITS**

Respected Sir,

1. **That** on 18.08.2011, the Petitioner filed a service appeal 1490 of 2011 which has finally been decided in favour of the Petitioner through Judgment Dated 08.06.2016. Copies of the Service Appeal along with Judgment of the Hon'ble Khyber Pakhtunkhwa Service Tribunal Dated 08.06.2016 are enclosed as **Annexures "A&B"** respectively.
2. **That** the claim of the Petitioner was with regard to his promotion from the date when his juniors were promoted and the Honorable Khyber Pakhtunkhwa Service Tribunal was pleased to pass a Judgment in favour of Petitioner which is worth perusal.
3. **That** after passing the Judgment Dated 08.06.2016, a meeting of the Departmental Promotion Committee was convened and vide Order dated 04.10.2016 the Petitioner has been promoted from the Post of Qanungo BS-11 to the

post of Naib Tehsildar BS-14 on regular basis, but to his utter surprise with immediate effect and not with effect from the date when his promotion was due, which is 29.05.2008. As the post of Naib Tehsildar stood vacant on 29.05.2008 and Petitioner also fulfilled the laid down criteria for promotion to the said post, so it was the legal right of the ^{Department} ~~Petitioner~~ not to deny the benefit of promotion to the next step even for a single day. Numerous judgments/case laws of the superior Courts are in favour of the Petitioner's stand.

4. **That** the Honorable Khyber Pakhtunkhwa-Service Tribunal in its Judgment 08.06.2016 clearly stated that Petitioner shall be promoted as Naib Tehsildar on regular basis from the Date i.e., 29.05.2008, when his juniors were promoted but Departmental Promotion Committee in clear cut violation of Judgment Dated 08.06.2016 promoted the Petitioner from the post of Qanoongo (BPS-11) to the post of Naib Tehsildar (BPS-14) with immediate effect. Copy of the Order No Estt:V/DPC/2016 Dated 04.10.2016 is enclosed as Annexure "C".
5. **That** for implementation of the Honorable Khyber Pakhtunkhwa Service Tribunal judgment Dated 08.06.2016, the Petitioner requested the Departmental Authorities for its compliance in letter and spirit through

23

Departmental letter date 14.10.2016, but vide letter dated 21.11.2016 they have flatly refused to comply with this Honorable Tribunal Judgment dated 08.06.2016. Copies of Departmental Letter Dated 14.10.2016 and Letter Dated 21.11.2016 are enclosed as Annexure "D&E" respectively.

6. **That** later for implementation of Judgment Dated 08.06.2016, the Petitioner filed execution petition No.6 of 2017 on 27.12.2017 but the Departmental Authorities took the stance in execution proceedings that as the promotion orders of the colleagues / juniors of the Petitioner have been withdrawn on the ground that they were promoted through Administrative Order and without adopting the legal procedure, so execution petition was filed through order Dated 30.11.2017. Copies of the execution petition along with Judgment Dated 30.11.2017 are enclosed as Annexures-"F&G" respectively.

7. **That** as the promotion order Dated 04.10.2016 was not passed in accordance with the Judgment Dated 08.06.2016 of the Learned Khyber Pakhtunkhwa Service Tribunal, so the Petitioner was constrained to file execution petition, which remained pending upto 30.11.2017 and Petitioner was having legal right and remained in impression that he will get the relief through execution petition, but the

24

stance of the Departmental Authorities of having withdrawn the promotion order of the colleagues of the Petitioner, have been accepted by the Hon'ble Tribunal through Judgment Dated 30.11.2017.

8. **That** Petitioner applied for getting certified copies of the Hon'ble Khyber Pakhtunkhwa Service Tribunal on 06.12.2017, which has been received to him on 18.12.2017, hence within limitation of one month time, the petitioner is moving instant departmental appeal against promotion order Dated 04.10.2016 seeking his ante-dated/proforma promotion w.e.f 29.05.2008 on the following legal grounds:-

GROUND S

a. **That** the impugned order Dated 04.10.2016 promoting the Petitioner from the post of Qanoongo as Naib Tehsildar is against law, facts of the case and material available on record; hence liable to be modified and Petitioner is entitled for promotion w.e.f, 29.05.2008 and not with immediate effect as envisaged in the impugned order Dated 04.10.2016 thus the impugned order calls for interference by your worthy honour.

25

- b. **That** as it has been established from the Judgment Dated 08.06.2016 of the Hon'ble Khyber Pakhtunkhwa Service Tribunal that the post of Naib Tehsildar stood vacant on 29.05.2008 and Petitioner was also eligible for promotion on that very crucial date, so granting promotion with immediate effect is the clear cut violation of the law of the land and judgments of the superior Courts, thus the impugned order Dated 04.10.2016 is liable to be modified.
- c. **That** as the stance of the Departmental Authorities that promotion order of the juniors of the Petitioner have been withdrawn on the ground that they were promoted through Administrative Order prevailed upon the Hon'ble Khyber Pakhtunkhwa Service Tribunal but the legal right of the Petitioner to be promoted w.e.f 29.05.2008 could not vanished and give the Petitioner a fresh cause of action; hence, Petitioner's request for ante-dated/proforma promotion.
- d. **That** as the impugned order Dated 04.10.2016 was challenged by the Petitioner through execution petition No.6 of 2017 and the same has been finally decided by the Hon'ble Khyber Pakhtunkhwa Service Tribunal on 30.11.2017, so the time consumed in execution petition and also the time which has been consumed in obtained

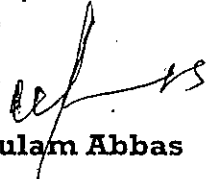
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certified copies of the execution petition and its order Dated 30.11.2017 may please be condoned in filing the instant department appeal.

- e. **That** it is the legal right of the Petitioner that he will be considered for promotion on that very day and date when the post fell vacant and he was fulfilling the eligibility criteria for the post of Naib Tehsildar, so denying the benefit of promotion from that very crucial date run contrary to established principle of law and judgments of superior Courts, thus the action of the Departmental Authorities needs to be modified.

It is therefore, most humbly prayed that on acceptance of instant departmental appeal, the impugned Order No Estt: V/DPC/2016 dated 04-10-2016 may please be modified and the Petitioner may please be promoted with effect from 29-05-2008 with all ensuing back benefits.

Dated:-10.01.2018


Ghulam Abbas

Naib Tehsildar BS-14

27

To,

The Worthy Senior Member Board of Revenue,
Revenue & Estates Department,
Khyber Pakhtunkhwa Peshawar.

Subject: **DEPARTMENTAL APPEAL FOR ANTE-DATED/
PROFORMA PROMOTION W.E.F 29.05.2008
WITH ALL ENSUING BACK BENEFITS**

**APPLICATION FOR CONDONATION OF DELAY
IN FILING INSTANT DEPARTMENTAL APPEAL**

Respected Sir,

1. **That** the Petitioner was promoted from the post of Qanoongo as Naib Tehsildar vide impugned order Dated 04.10.2016, which was assailed by the petitioner by way of execution petition No.6 of 2017. The 'execution petition of the Petitioner remained pending before Hon'ble Khyber Pakhtunkhwa Service Tribunal upto 30.11.2017.
2. **That** the stance of the Departmental Authorities that promotion orders of the juniors of the Petitioner have been withdrawn stood admitted by the Hon'ble Khyber Pakhtunkhwa Service Tribunal through its Judgment Dated 30.11.2017 but the ground of withdrawal of promotion orders of Petitioner is no hurdle in the way of the petitioner to be promoted w.e.f., 29.05.2008 which is his legal right and give him a fresh cause of action.

28

3. That Petitioner persuade his legal remedy against the impugned order Dated 04.10.2016 by way of execution petition No.6 of 2017 which remained pending upto 30.11.2017. For obtaining certified copy of Judgment Dated 30.11.2017 the Petitioner applied on 06/12/2017 and the same has been received to the Petitioner on 28.12.2017 while instant departmental appeal is being filed on 10.01.2018 within a period of one month time, thus the same may please be treated as within time and delay in filing the same may please be condoned.

It is therefore, most humbly prayed that delay in filing instant appeal may please be condoned.

Dated:-10.01.2018


Ghulam Abbas

• Naib Tehsildar BS-14

29

Annexure P 5

GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE

REVENUE & ESTATE DEPARTMENT

No. Estt:V/PF/Ghulam Abbas/Dik/ 16679

Peshawar dated the 02 /04/2018.

To

Mr. Ghulam Abbas
Political Naib Tehsiidar Dossali.

Through Political Agent North Waziristan Agency.

SUBJECT: APPLICATION.

Your application dated 19.03.2018 has been examined and filed by the
Competent Authority.


Assistant Secretary (Estt.)

- (ii) A panel of two senior most officers shall be placed before the Provincial Selection Board for each vacancy in respect of promotion to BS-18 & 19. Similarly, a panel of three senior most officers shall be submitted to the Provincial Selection Board for each position in respect of promotion to BS-20 and 21 and the officer with the requisite score on the Efficiency Index shall be recommended for promotion.
- (iii) The senior most officer(s) on the panel securing the requisite threshold of the Efficiency Index shall be recommended by the Provincial Selection Board for promotion unless otherwise deferred. In case of failure to attain the requisite threshold, he (she)/they shall be superseded and the next officer on the panel shall be considered for promotion.

(b) Marks for quantification of PERs, Training Evaluation Reports and Provincial Selection Board evaluation shall be assigned as under:-

S. No.	Factor	Marks for promotion to BS-18 & 19	Marks for promotion to BS-20 & 21
1.	Quantification of PERs relating to present grade and previous grade(s) @ 60% : 40%	100%	70%
2.	Training Evaluation Reports as explained hereafter.	--	15%
3.	Evaluation by PSB	--	15%
	Total	100%	100%

(c) A total of fifteen (15) marks shall be allocated to the Training Evaluation Reports (Nine marks @ 60% for the training in the existing BPS and Six marks @ 40% in the preceding BS). Evaluation of the reports from the Training Institutions shall be worked out as under:-

- (i) It shall be on the basis of Grade Percentage already awarded by the National School of Public Policy (National Management College and Senior Management Wing) and its allied Training Institutions as provided in their reports.
- (ii) Previous reports of old Pakistan Administrative Staff College and old NIPAs where no such percentage has been awarded,

points shall be worked out on the basis of weighted average of the percentage range of grades followed by these Institutions as reflected in table-A below:

TABLE-A
Old PASC & NIPAs

Category	Range	Weighted Average	Points of PASC @ 60%=9	Points of NIPAs @ 40%=6
A. Outstanding	91-100%	95.5%	8.60	5.73
B. Very Good	80-90%	85%	7.65	5.10
C. Good	66-79%	72.5%	6.52	4.35
D. Average	50-65%	57.5%	5.17	3.45
E. Below Average	35-49%	42%	3.78	2.52

(iii) Grades from National Defence University will be computed according to the weighted average based on the Grading Key for the range provided by the NDU as reflected in Table-B below:

TABLE-B
NATIONAL DEFENCE UNIVERSITY

Category	Range	Weighted Average	Points @ 60%=9
A. Outstanding	76-100%	88%	7.92
B-Plus. Very Good	66-75.99%	71%	6.39
B- High. Good	61-65.99%	63.5%	5.71
B-Average. Average	56-60.99%	58.5%	5.26
B-Low. Below Average	51-55.99%	53.5%	4.81
B-Minus. Below Average	46-50.99%	48.5%	4.36
C. Below Average	40-45.99%	43%	3.87
F. Below Average	35-39.99%	37.5%	3.37

(d) The officers who have been granted exemption from mandatory training having attained the age of 56 years or completed mandatory period of serving in a Training Institution upto 27-12-2005, may be awarded marks on notional basis for the training factor (for which he/she was exempted) in proportion to the marks obtained by them in the PERs.

(e) Status quo shall be maintained in respect of officers of special cadres such as teachers, doctors, professors, research scholars and incumbents of technical posts for promotion within their own line of speciality. However, for calculation of their CEI, 70% marks shall be assigned to the quantified score of PERs and 30% marks shall be at the disposal of the PSB.

(f) For promotion against selection posts, the officer on the panel securing maximum marks will be recommended for promotion. Thirty marks placed at the disposal of the Provincial Selection Board in such cases shall be awarded for technical qualification, experience and accomplishments (research publications relevant to the field of specialism).

(g) Since three of the aspects of performance i.e. moral integrity, intellectual integrity, quality and output of work do not figure in the existing PER forms, the grades secured and marks scored by the officer in overall assessment shall be notionally repeated for the other complementary evaluative aspects and form the basis of quantification.

(h) The performance of officers shall be evaluated in terms of the following grades and scores:

		<i>Upto 11th June, 2008</i>	<i>From 12th June, 2008</i>
1.	Outstanding	--	10 Marks
2.	Very Good	10 marks	8 marks
3.	Good	7 marks	7 marks
4.	Average	5 marks	5 marks
5.	Below Average	1 mark	1 mark

(i) The outstanding grading shall be awarded to officers showing exceptional performance but in no case should exceed 10% of the officers reported on. The grading is not to be printed in the PER form but the reporting officer while rating an officer as "outstanding" may draw another box in his own hand in the form, initial it and write outstanding on the descriptive side. Convincing justification for the award shall be recorded by the reporting /countersigning officer. The discretion of awarding "outstanding" is to be exercised extremely sparingly and the award must be merited.

(j) The quantification formula and instructions for working out quantified score are annexed.

IV. Promotion of officers who are on deputation, long leave, foreign training:

a) The civil servants who are on long leave i.e. one year or more, whether within or outside Pakistan, may be considered for promotion on their return from leave after earning one calendar PER. Their seniority shall, however, remain intact.

- b) The civil servants who are on deputation abroad or working with international agencies within Pakistan or abroad, will be asked to return before their cases come up for consideration. If they fail to return, they will not be considered for promotion. They will be considered for promotion after earning one calendar PER and their seniority shall remain intact.
- c) In case of projects partially or fully funded by the Federal or Provincial Government, where PERs are written by officers of Provincial Government, the condition of earning one calendar PER shall not be applicable to officer on deputation and the officer on return to his/her cadre shall be considered for promotion.
- d) The civil servants on deputation to Federal Government, Provincial Government, autonomous/semi-autonomous organization shall be considered for promotion and informed to actualize their promotion within their cadres. They shall have to stay and not be allowed to go back immediately after promotion. Such stay shall be not less than a minimum of two years. If he/she declines his/her actual promotion will take place only when he/she returns to his/her parent cadre. His/her seniority in the higher post shall, however, stand protected.
- e) The cases of promotion of civil servants who have not successfully completed the prescribed mandatory training (MCMC, SMC & NMC) or have not passed the departmental examination for reasons beyond control, shall be deferred.
- f) Promotion of officers still on probation after their promotion in their existing Basic Scales shall not be considered.
- g) A civil servant initially appointed to a post in a Government Department but retaining lien in a department shall not be considered for promotion in his parent department. However, in case he returns to parent department, he would be considered for promotion only after he earns PER for one calendar year.
- h) A civil servant who has resigned shall not be considered for promotion no matter the resignation has yet to be accepted.

V. Deferment of Promotion:

(a) Promotion of a civil servant will be deferred, in addition to reasons given in para-IV, if

- (i) His inter-se-seniority is disputed/sub-judice.

- (ii) Disciplinary or departmental proceedings are pending against him.
- (iii) The PER dossier is incomplete or any other document/ information required by the PSB/DPC for determining his suitability for promotion is not available for reasons beyond his control.

(b) The civil servant whose promotion has been deferred will be considered for promotion as soon as the reasons for deferment cease to exist. The cases falling under any of the above three categories do not warrant proforma promotion but the civil servant will be considered for promotion after determining his correct seniority over the erstwhile juniors.

(c) If an officer is otherwise eligible for promotion but has been inadvertently omitted from consideration in the original reference due to clerical error or plain negligence and is superseded, he should be considered for promotion as soon as the mistake is noticed.

(d) If and when an officer, after his seniority has been correctly determined or after he has been exonerated of the charges or his PER dossier is complete, or his inadvertent omission for promotion comes to notice, is considered by the Provincial Selection Board/ Departmental Promotion Committee and is declared fit for promotion to the next higher basic scale, he shall be deemed to have been cleared for promotion alongwith the officers junior to him who were considered in the earlier meeting of the Provincial Selection Board/Departmental Promotion Committee. Such an officer, on his promotion will be allowed seniority in accordance with the proviso of sub-section (4) of Section 8 of the North-West Frontier Province Civil Servants Act, 1973, whereby officers selected for promotion to a higher post in one batch on their promotion to the higher post are allowed to retain their inter-se-seniority in the lower post. In case, however, the date of continuous appointment of two or more officers in the lower post/grade is the same and there is no specific rule whereby their inter-se-seniority in the lower grade can be determined, the officer older in age shall be treated senior.

(e) If a civil servant is superseded he shall not be considered for promotion until he earns one PER for the ensuing one full year.

(f) If a civil servant is recommended for promotion to the higher basic scale/post by the PSB/DPC and the recommendations are not approved by the competent authority within a period of six months from such recommendations, they would lapse. The case of such civil servant would require placement before the PSB/DPC afresh.

VI. **Date of Promotion:**

Promotion will always be notified with immediate effect.

VII. **Notional Promotion:**

In respect of civil servants who retire (or expire) after recommendation of their promotion by the PSB/DPC, but before its approval by the competent authority, their promotion shall be deemed to have taken effect from the date of recommendation of the PSB/DPC, as the case may be, and their pension shall be calculated as per pay which they would have received had they not retired/expired.

VIII. **Promotion of Civil Servants who are awarded minor penalties.**

(a) The question of promotion to BS-18 and above in case of civil servants who have been awarded minor penalties has been settled by the adoption of quantification of PERs and CEI which allows consideration of such cases for promotion subject to deduction of 5 marks for each major penalty, 3 marks for each minor penalty and 1 mark for each adverse PER from the quantified score and recommendation for promotion on attaining the relevant qualifying threshold.

(b) However, the CEI policy is not applicable to civil servants in BS-16 and below. In this case, the concerned assessing authorities will take into consideration the entire service record with weightage to be given for recent reports and any minor penalty will not be a bar to promotion of such a civil servant.

IX. **Promotion in case of pending investigations by NAB:**

If there are any NAB investigations being conducted against an officer, the fact of such investigations needs to be placed before the relevant promotion fora which may take a considered decision on merits of the case.

2. All the existing instructions on the subject shall stand superseded to the above extent, with immediate effect.

Yours faithfully,

(MUHAMMAD ABID MAJEED)
Special Secretary (Regulations)

Endst: No. SOE-III(E&AD)1-3/2008

Dated Peshawar the 28th January, 2009

Copy forwarded to:

1. The Accountant General, NWFP, Peshawar.
2. The Registrar, Peshawar High Court, Peshawar.
3. The Director, Staff Training Institute, E&A Department, Peshawar.
4. All Additional Secretaries in E&A Department, GoNWFP.
5. Reforms Coordinator, Reforms Cell, E&A Department.
6. All Deputy Secretaries in E&A Department, GoNWFP.
7. The Secretary, NWFP Public Service Commission, Peshawar.
8. The Director, Anti-Corruption Establishment, N.-W.F.P., Peshawar.
9. The Registrar, NWFP Service Tribunal, Peshawar.
10. All Section Officers in E&A Department, GoNWFP.
11. Private Secretary to Chief Secretary, N.-W.F.P.
12. Private Secretary to Secretary, Establishment Department, GoNWFP.
13. Librarian, E&A Department.

(*Syeda Tanzeela Sabahat*)
Section Officer (E-III)

Endst: No. SOE-III(E&AD)1-3/2008

Dated Peshawar the 28th January, 2009

Copy forwarded to:

1. The Chief Secretary, Government of the Punjab, Lahore.
2. The Chief Secretary, Government of Sindh, Karachi.
3. The Chief Secretary, Government of Baluchistan, Quetta.

(*Syeda Tanzeela Sabahat*)
Section Officer (E-III)

First Step

Arithmetic mean will be calculated for each calendar year containing 2 or more PERs to derive the PER score for that year as follow:

$$M = \frac{\sum M_y}{N_y}$$

Where

M_y = marks for each PER recorded in calendar year 'y',

N_y = Number of PERs recorded in year 'y',

and Σ stands for summation.

Second Step

Average marks for each level will be calculated according to the following formula:

$$\text{Average marks} = \frac{\sum M}{T}$$

Where

M = Marks for PERs; and

T = Total number of PERs in posts at that level.

Third Step

Weightage for posts held at each level will be given as follows in computing the aggregate score against a uniform scale of 100 marks for promotion:

- (i) to post carrying basic pay scale 18 $10 \times A$
- (ii) to post carrying basic pay scale 19 $(6 \times B) + (4 \times A)$
- (iii) to post carrying basic pay scale 20 $(5 \times C) + (3 \times B) + (2 \times A)$
- (iv) to post carrying basic pay scale 21 $(5 \times D) + (3 \times C) + (A + B)$

Where

A = Average marks for reports in posts carrying basic pay scale 17

B = Average marks for reports in posts carrying basic pay scale 18

C = Average marks for reports in posts carrying basic pay scale 19

D = Average marks for reports in posts carrying basic pay scale 20

Fourth Step

The following additions/deductions shall be made in the total marks worked out in the third step for purposes of mandatory trainings.

A. Additions:

- (i) for serving in a Government training institution, including those meant for specialized training in any particular cadre, for a period of 2 years or more **2 marks**

B. Deductions:

- (i) for each major penalty imposed under the Government Servants (Efficiency and Discipline) Rules, 1973/Disciplinary Rules prevailing at the time. **5 marks**
- (ii) for each minor penalty imposed under the Government Servants (Efficiency and Discipline) Rules, 1973/Disciplinary Rules prevailing at the time. **3 marks**
- (iii) for adverse remarks (deductions be made for such remarks only as were duly conveyed to the concerned officer and were not expunged on his representation, or the officer did not represent) **1 mark per PER containing adverse remarks**

Note: For purpose of CEI, the negative marks for adverse entries and / or imposition of penalty shall be deducted from the quantified score of the relevant grade. However, additions for serving in a Government training institution for a period of two years or more shall be made in the total quantified scores of the PERs.

INSTRUCTIONS FOR GUIDANCE

While filling in the quantification Form and working out quantification marks the following factors may be kept in view to avoid in error:-

- (i) DEDUCTION is to be made as indicated below:-
 - (a) One mark for each adverse report;
 - (b) 3 marks for each minor penalty imposed on a civil servant in a disciplinary case under E&D Rules, 1973/Disciplinary Rules prevailing at the time;
 - (c) 5 marks for each major penalty imposed on a civil servant in a disciplinary case under E&D Rules, 1973/Disciplinary Rules prevailing at the time.
- (ii) Addition of 2 marks is to be made for service in a (specified training) institutions for a period of two years or more.
- (iii) If more than one PERs have been initiated on an officer during the calendar year, their average marks would be the marks for the whole calendar year.
- (iv) Writing of a PER covering part periods of two calendar years is not permissible.
- (v) If a period of report is less than 3 months, it shall be ignored for purposes of quantification.
- (vi) Quantification marks should be in round figure.
- (vii) If the overall grading in a PER is ambiguous e.g. placed between 'Good' and 'Average' the quantification will be based on the lower rating.
- (viii) Where Only two reports or less are available on an officer against posts in a particular basic pay scale, these PERs will be added to the PERs earned in the lower post for calculating the average marks.
- (ix) Where an officer appointed to a higher post on acting charge basis is considered for regular promotion that post, the PER earned during acting charge appointment will be added to PERs earned in the lower post for calculating average marks.

GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT
Peshawar dated the 25 /01/2019

O.R.D.E.R.

No.Esst:V/DPC/NT/2019/_____ On the recommendation of Departmental Promotion Committee meeting dated 22.01.2019, the Competent Authority is pleased to order the promotion of the following Kanungos (BS-11) of Peshawar, Malakand, Bannu and DIKhan Divisions to the post of Naib Tehsildar (BS-14) on regular basis with immediate effect :-

S. No.	NAME OF OFFICIAL	OFFICES
1.	Mr. Gohar Ali	Kanungo office of the Deputy Commissioner Nowshera
2.	Mr. Ahmad Nawaz	Kanungo office of the Deputy Commissioner Shangla
3.	Mr. Hazrat Hussain	Kanungo office of the Deputy Commissioner Shangla
4.	Mr. Sadiq Akbar	Kanungo office of the Deputy Commissioner Dir Lower
5.	Mr. Murad Ali - I	Kanungo office of the Deputy Commissioner Bannu
6.	Mr. Saadullah	Kanungo office of the Deputy Commissioner DIKhan
7.	Mr. Haq Nawaz	Kanungo office of the Deputy Commissioner DIKhan
8.	Mr. Hakim Khan	Kanungo office of the Deputy Commissioner DIKhan
9.	Mr. Gohar Zaman	Kanungo office of the Deputy Commissioner DIKhan
10.	Mr. Mohammad Ashraf	Kanungo office of the Deputy Commissioner DIKhan

On promotion, the above officials shall be on probation for a period of one year in terms of Section-6(2) of Khyber Pakhtunkhwa Civil Servant Act, 1973, read with Rule 15 of Khyber Pakhtunkhwa, Civil Servant (Appointment, Promotion and Transfer) Rules - 1989.

Consequent upon their promotion, the following posting / transfer is hereby ordered with immediate effect: -

S.NO.	NAME OF OFFICIAL	FROM	TO
1.	Mr. Gohar Ali	Naib Tehsildar (OPS) Ekhaghund	Retained on the same post
2.	Mr. Ahmad Nawaz	District Kanungo Shangla	Retained on the same post
3.	Mr. Hazrat Hussain	Naib Tehsildar Larjum	Retained on the same post
4.	Mr. Sadiq Akbar	Naib Tehsildar Dir Lower	Retained on the same post
5.	Mr. Murad Ali - I	Naib Tehsildar Bakakhel	Retained on the same post
6.	Mr. Saadullah	Kanungo, office of the Deputy Commissioner DIKhan	Services placed at the disposal of Commissioner DIKhan for further posting in the Division
7.	Mr. Haq Nawaz	Naib Tehsildar (OPS) Consolidation	Retained on the same post
8.	Mr. Hakim Khan	Sub - Registrar (OPS) DIKhan	Retained on the same post
9.	Mr. Gohar Zaman	Naib Tehsildar (OPS) Sarwakai	Retained on the same post
10.	Mr. Mohammad Ashraf	Kanungo of the office of Deputy Commissioner DIKhan	Services placed at the disposal of Commissioner DIKhan for further posting in the Division

Sd/-
Senior Member

No.Estt:V/DPC/2018/ 2705-22

Copy forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa.
2. Commissioners, Peshawar, Malakand, Bannu and DIKhan Division.
3. Deputy Commissioners of the respective District.
4. District Accounts Officers of the respective District.
5. P.S to Senior Member Board of Revenue.
6. Officials concerned.
7. Personal Files.


Assistant Secretary (Estt.)