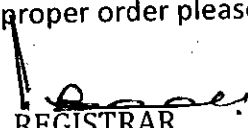
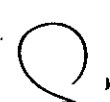
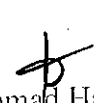


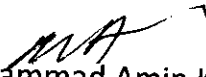
Form-A
FORM OF ORDERSHEET

Court of _____
Case No. 672/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	16/05/2018	<p>The appeal of Mr. Zahoor-ud-Din presented today by Mr. Amjid Ali 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;"> REGISTRAR</p>
2-	18/05/18.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>31/05/18.</u></p> <p style="text-align: right;"> CHAIRMAN</p>
31.05.2018		<p>Counsel for the appellant present and seeks adjournment. Adjourned. To come up for preliminary hearing on 13.07.2018 before S.B.</p> <p style="text-align: right;"> (Ahmad Hassan) Member</p>

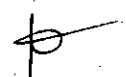
13.07.2018

Appellant in person present and requested for adjournment. Adjourned. To come up for preliminary hearing on 30.08.2018 before S.B.


(Muhammad Amin Kundi)
Member

30.08.2018

Neither appellant nor his counsel present. Adjourned. To come up for preliminary hearing on 11.10.2018 before S.B.


(Ahmad Hassan)
Member

11.10.2018

Counsel for the appellant Mr. Amjad Ali, Advocate present and heard in limine.

Contends that the appellant is senior but dropped from promotion on the allegation of enquiry which is utter violation of the judgment passed by the august Superior Courts.

Points raised need consideration. The appeal is admitted to regular hearing. 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 on 27.11.2018 before S.B. Counsel for the appellant submitted an application for interim relief. Notice of application be also given to the respondents for the date fixed.

Appellant Deposited
Security & Process Fee


Chairman

28.06.2019

Clerk of counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Written reply on behalf of respondents not submitted. Learned Additional AG requested for further adjournment. Adjourned to 23.08.2019 for written reply/comments on amended appeal before S.B.



(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

23.08.2019

Nemo for appellant. Addl. AG alongwith Sajid Anwar, Superintendent for the respondents present.

Representative of respondents submitted Parawise comments which are placed on file. The appeal is assigned to D.B for arguments on 15.11.2019. The appellant may submit rejoinder, within a fortnight, if so advised.


Chairman

15.11.2019

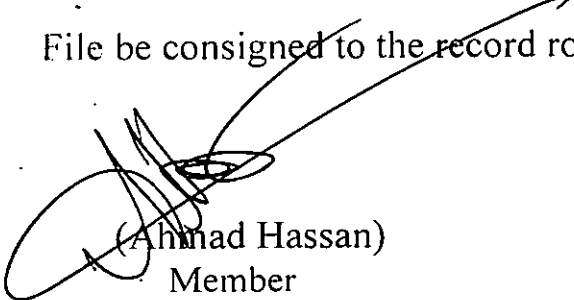
Learned counsel for the appellant present. Mr. Usman Ghani learned Deputy District Attorney for the respondent present. Learned counsel for the appellant submitted rejoinder which is placed on file and seeks adjournment. Adjourn. To come up for arguments on 16.12.2019 before D.B.


Member
Member

Appeal No. 672/2018.
Zahoor-ud-Din vs Govt

16.12.2019

Appellant absent. Learned counsel for the appellant absent. Mr. Muhammad Jan learned Deputy District Attorney alongwith Muhammad Iqbal Superintendent present. Case called but neither the appellant nor his counsel turned up. Consequently the present service appeal is hereby dismissed in default. No order as to costs. File be consigned to the record room.


(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

ANNOUNCED.
16.12.2019

27.11.2018

Appellant with counsel and Mr. Mr. Kabir Ullah Khattak learned AAG alongwith Mr. Said Muhammad Superintendent present. Representative of the respondents submitted reply on behalf of respondent No.1 & 2. Learned A.A.G stated that the respondent No.3 & 4 also relies on the same. Adjourn. To come up for rejoinder if any and arguments on 16.01.2019 before D.B.



Member

16.01.2019

Counsel for the appellant present. Mr. M. Jan, DDA for the respondents present.

At the time of institution of service appeal, the departmental appeal of the appellant was not decided, however, after institution of service appeal the same was decided on 08.05.2018 and the respondents have also annexed the departmental authority order with the comments. Therefore, counsel for the appellant is directed to challenge the same departmental authority order through amended appeal. To come up for amended appeal/arguments on 12.03.2019 before D.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

12.03.2019


Appellant alongwith his counsel present. Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for further proceeding as per preceding order sheet on 10.04.2019 before D.B.


(M. AMIN KHAN KUNDI)
MEMBER


(M. HAMID MUGHAL)
MEMBER

09.04.2019


Appellant in person present. Addl: AG for respondents present. Appellant submitted amended appeal with spare sets which is placed on file. Notices be issued for submission. of written reply/comments on amended appeal. Case to come up for written reply/comments on 13.05.2019 before S.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

13.05.2019

Appellant in person present. Notice of the amended appeal be issued to the respondents for 28.06.2019. Adjourn. To come up for further proceedings/reply to the amended appeal on the date fixed before S.B.


Member

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

Amended.

Service Appeal No. 672 /2019

Zahoor ud Din.....Appellant

V E R S U S

Govt. of Khyber Pakhtunkhwa through Secretary Mineral, Civil Secretariat, Peshawar & othersRespondents

I N D E X

S.No	Description of Documents	Annex	Pages
1.	Service Appeal & Affidavit		1-5
2.	Application for suspension & Affidavit		6-7
3.	Copies of working paper	"A"	8-11
4.	Copies of minutes of the meeting	"B"	12-13
5.	Copy of departmental appeal along with both covering letter	"C"	14-19
6.	Copy of grounds of writ petition and order dated 22.03.2018	"D"	20-30
7.	Copy of legal advice / opinion of Law Debarment	"E"	31
8.	Copy of the Para 4 & 5 of instructions	"F"	32-34
9.	Copy of the judgment	"G"	35-45
10.	Copy FIR, charge sheet in Reference No.4/2016 and order	"H, I & J"	46-54
11.	Other Documents		55-56
12.	Wakalatnama		57


Appellant

Through


ZARTAJ ANWAR
Advocate High Court

1

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

Amended Service Appeal No. _____/2019

Zahoor ud Din, Assistant Director Mineral,
Khyber Pakhtunkhwa, Peshawar.....Appellant

V E R S U S

- ✓1) Govt. of Khyber Pakhtunkhwa through Secretary Mineral, Civil Secretariat, Peshawar
- ✓2) Chief Secretary (CS), Secretariat, Khyber Pakhtunkhwa, Peshawar
- 3) Chief Minister's KP Khyber Pakhtunkhwa in the capacity of Appellate Authority under KP Departmental Appeal Rules, 1986, Chief Minister's Secretariat, Khyber Pakhtunkhwa, Peshawar
- ✓4) Provincial Selection Board for promotion of Mineral Development Officer/Assistant Director (BPS-17) to Director (BPS-18) through Chief Secretary, CS Secretariat, Khyber Pakhtunkhwa, Peshawar

.....Respondents

AMENDED SERVICE APPEAL US 4 OF SERVICE TRIBUNAL ACT 1974, AGAINST THE ORDER DATED 28.12.2017 WHERE BY THE APPELLANT WAS ILLEGALLY AND UNLAWFULLY DEFERRED / DROPPED FROM PROMOTION TO THE POST OF DEPUTY DIRECTOR MINERALS (BPS 18), AGAINST WHICH THE DEPARTMENTAL APPEAL DATED 18.01.2018 WAS DISMISSED ON 08.05.2018 COMMUNICATED ON 22.05.2019.

Prayed in Appeal:

ON ACCEPTANCE OF THIS APPEAL THE RESPONDENTS MAY KINDLY BE DIRECTED TO CONSIDERED THE APPELLANT FOR PROMOTION TO THE POST OF DEPUTY DIRECTOR MINERALS BPS 18 FROM THE POST OF ASSISTANT DIRECTOR BPS 17 FROM THE

DATE WHEN HE WAS DEFERRED, THE RELUCTANCE ON THE PART OF THE RESPONDENTS BY NOT CONSIDERING / PROMOTING THE APPELLANT TO THE POST OF DEPUTY DIRECTOR MINERALS IS ILLEGAL UNLAWFUL AND WITHOUT LAWFUL AUTHORITY, AND BE PROMOTED FROM THE DATE OF DEFERMENT WITH ALL ARREARS AND BENEFITS.

Respectfully Sheweth:-

Brief facts of the instant appeal are as under:

1. That appellant was initially appointed as Royalty Inspector on 16.01.1999 on regular basis in the department and was later promoted to the post of Assistant Director on 12.04.2012, serving and posted as such in Mineral Development Department at Peshawar.
2. That throughout appellant's service, appellant worked efficiently with no complaint what so ever by any person exists against the appellant.
3. That working paper of Provincial Selection Board was prepared for promotion to the post of Deputy Director (BPS-18), whereby the name of the appellant was included in the working paper. It is pertinent to mention that as per the working paper, the appellant along with other officers have been recommended to be promoted on regular basis. (Copies of working paper are Annexure "A").
4. That the meeting of the Provincial Selection Board for the promotion of Assistant Director to the post of Deputy Director Mineral (BPS-18) was held on 28.12.2017, whereby without lawful justification, the Provincial Selection Board deferred the case of the appellant for promotion due to pendency of the Ehtisab Court case. (Copies of minutes of the meeting are Annex "B").

appellant along with his other batch mates have been recommended for promotion on regular basis.

- I. Because the amended service appeal is filed on the directions of this Hon;able Tribunal when the departmental appeal of the appellant **DATED 18.01.2018 WAS DISMISSED ON 08.05.2018 COMMUNICATED ON 22.05.2019** after the lapse of 90 days.

It is, therefore humbly prayed that, the service appeal may kindly be accepted as prayed for.

M. Zartaj Anwar

Appellant

Through

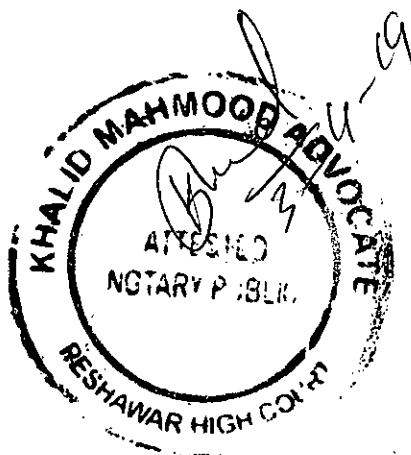
Zartaj Anwar

ZARTAJ ANWAR

Advocate, High Court

AFFIDAVIT

I, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Amended Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



M. Zartaj Anwar

DEPONENT

It is, therefore, respectfully prayed that on acceptance of this application, the respondents may graciously be directed not to fill the post of Deputy Director Mineral (BPS-18) till the final decision of the titled petition.

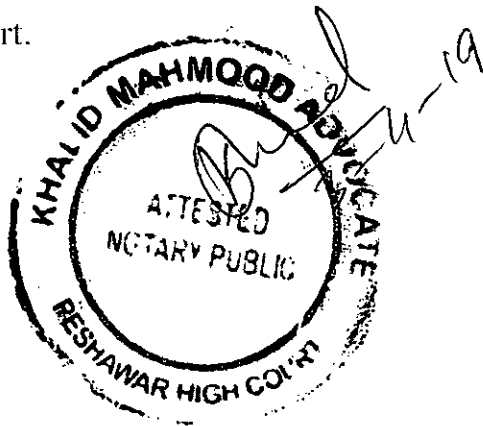
M Zlo
Appellant

Through

Zartaj Anwar
ZARTAJ ANWAR
Advocate High Court

AFFIDAVIT

I, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



M Zlo
DEPONENT

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

C.M. No. _____/2019

In

Amended Service Appeal No. _____/2019

Zahoor ud Din.....Appellant

V E R S U S

Govt. of Khyber Pakhtunkhwa through Secretary Mineral,
 Civil Secretariat, Peshawar & others.....Respondents

**Application for interim relief to the effect
 that, till the final decision of the final decision
 of titled appeal, the respondents may
 graciously be restrained from filling the post
 of Deputy Director Mineral (BPS-18)**

Respectfully Sheweth:

1. That the above tilted service appeal is being filed before this Hon'ble Tribunal, along with instant application.
2. That the facts and ground of main appeal may kindly also be considered as part and parcel of this application.
3. That the applicant/ appellant has got a good prima facie and arguable case and is sanguine about its success.
4. That the balance of convenience also lies in favour of the applicant/ appellant.
5. That if the relief as prayed of in the heading of the application is not granted, the very purpose of accompanying appeal will become infructuous and the appellant would irreparable loss.

5. That the appellant filed departmental appeal dated 18.01.2018, which is dispatched through proper channel through covering letter dated 19.01.2018 & 23.02.2018 to the respondent No.1, but no action was taken. (Copy of departmental appeal along with both covering letter are Annexure "C").
6. That being aggrieved, the appellant filed W.P.No.1287-P/2018 before the Hon'ble Peshawar High Court, Peshawar, which was disposed-off with the direction to the appellant to appear before respondent No.1, as his departmental appeal is still pending, and after providing opportunity to the appellant, the respondent No.1 will decide the appeal of appellant within thirty days. (Copy of grounds of writ petition and order dated 22.03.2018 are Annex "D")
7. That thereafter, appellant appeared before respondent No.1 and in the light of the direction of the Hon'ble High Court the departmental appeal of the appellant dated 18.01.2018 was dismissed on 08.05.2018 communicated on 22.05.2019 after the lapse of 90 days.
8. That the appellant, having no other efficacious remedy, approach this Hon'ble Tribunal on the following grounds:

GRUNDS:-

- A. Because as per legal advice/ opinion of the Khyber Pakhtunkhwa Law Department dated 21.07.2016, promotion of a Civil Servant cannot be deferred due to pending disciplinary proceedings, hence, deferment of the appellant from promotion to BPS-18 is illegal and is against the opinion/ legal advice of the Law Department. (Copy of legal advice / opinion of Law Debarment is Annexure "E")
- B. Because as per Para-4 & 5 Of the Instructions of the Establishment Department dated 2006, promotion of a Civil Servant cannot be deferred on account of pending departmental proceedings, hence deferment of the appellant from promotion to BPS-18 is illegal and against instructions of the Establishment Department. (Copy of the Para 4 & 5 of instructions are Annexure "F")
- C. Because as per 2000 SCMR 645, PLJ 2015 Lahore 24 (DB), PLJ 2015 Lahore 45 and 2009 PLC (CS) 40, promotion of a

Civil Servant cannot be deferred due to pending departmental proceedings against the Civil Servant, hence deferment of the appellant from the promotion to BPS-18 is against the judgments of the Superior Courts. (Copy of the judgment is attached as Annexure "G").

- D. Because there is no bar for stoppage/ deferment of promotion of the appellant on ground of pending inquiry as appellant are to be presumed as innocent unless proved guilty.
- E. Because the alleged so-called inquiry as initiated on 15.09.2017 against thirteen persons including the appellant. According to notification, the said enquiry was to be completed within 30 days, the inquiry has been concluded and minor penalty of stoppage of one increment without cumulative effect was imposed vide order dated 03.08.2018. (Copy FIR, charge sheet in Reference No.4/2016 and order are Annexure "H, I & J")
- F. Because Ehtisab case is pending in the Court against the appellant including others. Formal charge was framed by the Court on 26.05.2016, and so far the statement of only one witness has been completed. In reference fourteen witnesses have been mentioned by the prosecution, which also indicates that conclusion of the case will consume sufficient time. The appellant will be debarred from benefits of promotion for such a long time without proof of any guilt.
- G. Because a person is presumed to be innocent until proved to be guilty by a competent Court of law. So far nothing has been proved by the department against the appellant. Till today the appellant is innocent in the eyes of law. Departmental Promotion Board fell into error by not recommending the appellant for promotion merely due to the pendency of a criminal case enquiry, hence the valuable rights of the appellant has been infringed.
- H. Because the august Supreme Court of Pakistan as well as different High Courts have clearly given the verdict in the subject matter that the pendency of an inquiry or even a presence of a minor penalty cannot come in the way of promotion of a civil servant as it is the right of every civil servant that he be considered for promotion along with his batch mates. It is pertinent to mention that in working paper, the

8

ANNEX "A" 1

PSB-I

WORKING PAPER FOR PROVINCIAL SELECTION BOARD.

Department: DIRECTORATE GENERAL MINES AND MINERALS KHYBER PAKHTUNKHWA (GOVERNMENT OF KHYBER PAKHTUNKHWA MINERAL DEVELOPMENT DEPARTMENT).

1.	Nomenclature of the Post/Basic Scale		Deputy Director Technical (BS-18)		
2.	Service Group/Cader		Mines and Minerals		
3.	Sanction strength of cader		8 posts.		
4.			Direct	Promotion	Transfer
	i)	Percentage of share	---	100 %	---
	ii)	Nos of posts allocated To each category	---	8 posts.	---
	iii)	Present occupancy postion	---	1 post	---
	iv)	No of vacancies in each category	---	7 posts.	---
	v)	How did the vacancy (ies) under Promotion quota accrue and since When?	The Finance Department has created Two posts of Deputy Director Technical (BS-18) During the financial year 2016-17 and due to retirement of the incumbent and promotion, these posts have become with effect from 01/01/2015, 04/04/2015, 26/08/2015, 01/09/2016 and 20/06/2017 (Annexure-I, II, III, IV, V & VI).		
	vi)	Recruitment Rules.	By Promotion on the basis of seniority-cum-fitness, from amongst the Assistant Directors (Technical)(Mining Engineer)/Geologist/Assistant Directors (Royalty) with at least five years service as such. (Annexure- VII).		
	vii)	Required length of service	5-years service		
	viii)	Whether to be promoted on Regular basis or appointed on Acting charges basis.	The officers in "Panel of officers for consideration" at S.No. 01 to 06 having the requisite length of service may be promoted on regular basis. While the officer at S.No. 07 of the same panel having short length of service about 04 months may be promoted on acting charge basis as per Rule-09 of part-II of appointment, promotion & transfer Rules-2011.(ESTA CODE revised addition-2011)		
	ix)	Mandatory training, if any.	Not applicable		
	x)	Minimum required Score on EI	60		

~~ANNEXED~~

Signature _____

Designation _____

Date: _____

PANEL OF OFFICERS FOR CONSIDERATION.

S No	Name of Officer with Qualification	Date of Birth	Date of 1 st entering into Govt. service	Date Of Appointment Promotion To BPS-17	Date of Regular Appointment promotion to the present scale	Whether Fulfilled The prescribed Length of Service	Quantified Scores	Missing PERs (if any)	Disciplinary Proceeding (if any)	Case (if any) In any court of Law including NAB Pica Bargaining with NAB	Mandatory Training for promotion	Research papers	Present posting	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
1	Mr. Saq Ahmad B.Sc. Mining Engineering	18-04-1970	18-12-1994	20-12-2008	20-12-2008	Yes	76.25	Nil	Nil	Nil	Nil	Nil	Assistant Director (Technical) (BPS-17) H/Q Office	Eligible
2	Mr. Sher Aziz B.Sc. L.L.B	20-05-1961	13-09-2008	20-12-2008	20-12-2008	Yes	77.50	Nil	1. The Minor Penalty "with holding of two increments for one year" was imposed vide notification No. SOE(MDD)/4-8/2014 dated 04/08/2016. 2. The name of the officer has been included in embezzlement of royalty case in office of the Assistant Director Mineral Mardan vide Notification No. SOE(MDD)/4-1.Vol-II/2017 dated 15/09/2017 and the enquiry is pending with the Enquiry Officer.	Nil	Nil	=do=	1. The Minor Penalty "with holding of two increments for one year" was imposed vide notification No. SOE(MDD)/4-8/2014 date 04/08/2016. 2. The name of the officer has been included in embezzlement royalty case in of the Assistant Director Mineral Mardan vide Notification No. SOE(MDD)/4-1.Vol-II/2017 dated 15/09/2017 and the enquiry is pending with the Enquiry Officer.	


ATTACHED

3	Muhammad Zulkifal Khan B.Sc Mining Engineering	19-01-1986	19-12-2009	19-12-2009	19-12-2009	Yes	78.57	Nil	Nil	Nil	Nil	Nil	Nil	Eligible
4	Mr. Mohsin Ali Khan B.Sc Mining Engineering	15-05-21984	19-12-2009	19-12-2009	19-12-2009	Yes	78.57	Nil	Reference No. 4/2016 in the Court of Special Ehtesab Court-II Khyber Pakhtunkhwa, Peshawar against the officer regarding Feldspare case under file No. MDW/MA/PL-Feldspare (100) 2007 is under process.	Nil	Nil	Nowshera	Reference No. 4/2016 in the Court of Special Ehtesab Court-II Khyber Pakhtunkhwa, Peshawar against the officer regarding Feldspare case under file No. MDW/MA/PL-Feldspare (100) 2007 is under process.	
5	Mr. Ishfaq Ahmad Saleem	06-04-1986	19-12-2009	19-12-2009	19-12-2009	Yes	72.86	Nil	The minor penalty of "Censure" has been imposed in the Departmental enquiry on the officer, vide letter No.9638-39/DGM M/Adinn/2942, dated 28/09/2015.	Certificate attached	Nil	H Q Office	The minor penalty of "Censure" has been imposed in the Departmental enquiry on the officer, vide letter No.9638-39/DGM M/Adinn/2942, dated 28/09/2015.	
	Mr. Zahoor Ud Din B.A	01-04-1967	16-01-1991	12-04-2012	12-04-2012	Yes	78.00	Nil	1. Reference No. 4/2016 in the Court of Special Ehtesab Court-II Khyber Pakhtunkhwa, Peshawar against the officer regarding Feldspare case under file No. MDW/MA/PL-Feldspare (100)/2007 is under process. 2. The name of the officer has been included in embezzlement of royalty case in office of the Assistant Director Mineral Mardan, vide Notification No. SOE(MDD)/4-1/Vol-II/2017 dated 15/09/2017 and the enquiry is pending with the Enquiry Officer.	Nil	Nil	H Q office	1. Reference No. 4/2016 in the Court of Special Ehtesab Court-II Khyber Pakhtunkhwa, Peshawar against the officer regarding Feldspare case under file No. MDW/MA/PL-Feldspare (100)/2007 under process. 2. The name of the officer has been include in embezzlement of royalty case in office the Assistant Director Mineral Mardan, vide Notification No. SOE(MDD)/4-1/Vol-II/2017 dated 15/09/2017 and the enquiry is pending with the Enquiry Officer.	

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12 Approved B⁹
**SUBJECT: PROMOTION OF ASSISTANT DIRECTOR BS-17 TO THE POST OF DEPUTY DIRECTOR MINERAL BS-18.**


Secretary Mines & Minerals Development apprised the Board that due to creation, retirement and promotion, seven (07) posts of Deputy Director Technical BS-18 are lying vacant.

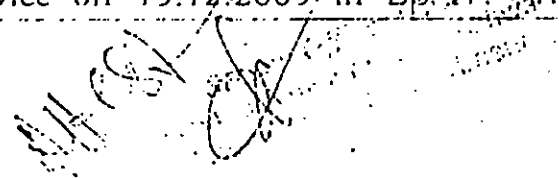
2. According to service rules the post is required to be filled as under:-

"By promotion, on the basis of seniority cum fitness, from amongst the Assistant Directors (Technical) (Mining Engineer)/Geologist/Assistant Directors (Royalty) with at least five years service as such."

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

S.NO	NAME OF OFFICER	RECOMMENDATIONS OF THE BOARD
1.	Mr. Siraj Ahmad	His date of birth is 18.04.1970. He joined government service on 18.12.1994 and was promoted to BS-17 on 20.12.2008. No enquiry is pending against him. His service record upto 2016 is generally good. The Board recommended the Officer for promotion to the post of Deputy Director BS-18 on regular basis. He will be on probation for a period of one year.
2.	Mr. Sher Ayaz	His date of birth is 20.05.1961. He joined government service on 13.09.1982 and was promoted to BS-17 on 20.12.2008. The Secretary Mines was directed to inform the enquiry Officer to speed up the instant enquiry and submit report at the earliest. The Board recommended to defer his promotion.
3.	Mr. Muhammad Zulkifal Khan	His date of birth is 19.01.1986. He joined government service on 19.12.2009 in BS-17. No enquiry is pending against him. His service record upto 2016 is generally good. The Board recommended the Officer for promotion to the post of Deputy Director BS-18 on regular basis. He will be on probation for a period of one year.
4.	Mr. Mohsin Ali Khan	His date of birth is 15.05.1984. He joined government service on 19.12.2009 in BS-17. According to Mineral


ATTEST





To,

The Director General,
Mines and Minerals, Khyber Pakhtunkhwa,
Peshawar.

Through:- Proper Channel

Subject: APPEAL OF ZAHOOR-UD-DIN BEFORE THE HON'ABLE CHIEF
MINISTER KHYBER PAKHTUNKHWA, PESHAWAR.

Kindly referred to the subject above and to state that the undersigned filed appeal against the order No. SO(E)/MDD/2-4/2017 dated 05-01-2018, whereby the appellant has been deferred for promotion due to pending of criminal case and inquiry on 18-01-2018, but since then no decision or any information has been communicated to the appellant.

It is therefore requested to kindly forward my application / reminder to the Competent Authority for further necessary action please.

M. Zhoor
ZAHOOR-UD-DIN 23/1/18
Assistant Director (Tech),
H/Q Office, Peshawar.



~~ATTESTED~~



only one witness has been completed. In reference fourteen witnesses have been mentioned by the prosecution which also indicates that conclusion of the case will consume sufficient time. The appellant will be debarred from benefits of promotion for such a long time without proof of any guilt.

- C) That a person is presumed to be innocent until proved to be guilty by a competent court of law. So far nothing has been proved by the department against the appellant. Till today the appellant is innocent in the eyes of law. Departmental Promotion Board fell into error by not recommending the appellant for promotion merely due to the pendency of a criminal case enquiry, hence the valuable rights of the appellant have been infringed.
- D) That August Supreme Court of Pakistan as well as different High Courts have clearly given the verdict in the subject matter that the pendency of an inquiry or even a presence of a minor penalty cannot come in the way of promotion of a civil servant as it is the right of every civil servant that he be considered for promotion along with his batch mates. It is pertinent to mention that in working paper "Annex" B", the appellant along with his other batch mates have been recommended for promotion on regular basis. (Annexed as "D" to "G").

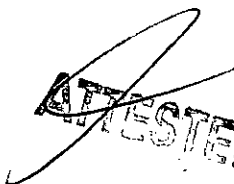
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IN VIEW OF THE ABOVE, IT IS HUMBLY
PRAYED THAT ON ACCEPTANCE OF THE
INSTANT APPEAL, DIRECTIONS BE GIVEN TO
THE CONCERNED AUTHORITY TO CONSIDER
THE APPELLANT FOR PROMOTION ON
REGULAR BASIS TO THE POST OF DEPUTY
DIRECTOR (BPS-18) MINERAL W.E.F 5/01/2018.
(MARKED "A").

Peshawar dated: 18/01/2018


APPELLANT


ATTESTED

14^e ANNEX^o C^o


HON'BLE CHIEF MINISTER KHYBER PAKHTUNKHWA,
PESHAWAR.

THROUGH PROPER CHANNEL

DEPARTMENTAL APPEAL AGAINST THE
ORDER NO. SO(E)/MDD/2-4/2017 DATED
PESHAWAR JANUARY 05, 2018 WHEREBY
THE APPELLANT HAS BEEN DEFERRED FOR
PROMOTION DUE TO PENDENCY OF A
CRIMINAL CASE AND INQUIRY.

PRAYER IN APPEAL:-

BY ALLOWING THE INSTANT APPEAL AND
DIRECTING THE COMPETENT AUTHORITY
TO CONSIDER THE NAME OF THE
APPELLANT FOR PROMOTION TO THE POST
OF DEPUTY DIRECTOR (BPS-18)
DIRECTORATE GENERAL, MINES AND
MINERALS, KHYBER PAKHTUNKHWA
PESHAWAR ON REGULAR BASIS, W.E.F
FROM 05/01/2018, IRRESPECTIVE OF
PENDENCY OF CRIMINAL CASE AND
INQUIRY.

~~ATTACHED~~

justification, the PSB deferred the case of the appellant for promotion due to pendency of an Ehtisab Court case (Minutes of meeting marked "C")

5. That feeling aggrieved against the impugned order, the instant appeal is filed before your honour for favorable consideration inter-alia on following grounds:- (Impugned order Annex; "A")

GROUND:-

- A) That the alleged so called inquiry was initiated on 15/09/2017 against thirteen persons including the appellant. According to notification, the said enquiry was to be completed within 30 days, the inquiry has not been concluded and is still in progress for more than four months with no completion in sight to ascertain the truth. It is also pertinent to mention that against the same charges, an F.I.R has been lodged against forty five persons excluding the appellant. Appellant is not charged in the FIR, which also shows the innocence of the appellant with regard to the charges. (Annexed Mark "H")
- B) That Ehtisab case is pending in the court against appellant including others. Formal charge was framed by the court on 26/05/2016, and so far the statement of

~~ATTESTED~~

		Development department a case is under process against him in Ehtisab Court.
		The Board recommended to defer his promotion.
5.	Mr. Ishfaq Ahmad Saleem	His date of birth is 06.04.1986. He joined government service on 19.12.2009 in BS-17. He has been imposed a minor penalty of censure on 28.09.2015. No enquiry is pending against him. His service record upto 2016 is generally good.
		The Board recommended the Officer for promotion to the post of Deputy Director BS-18 on regular basis. He will be on probation for a period of one year.
6.	Mr. Zahoor ud Din	His date of birth is 01.04.1962. He joined government service on 16.01.1991 and was promoted to BS-17 on 12.04.2012. According to Mineral Development department he is included in Ehtisab Court case and an enquiry is pending against him.
		The Board recommended to defer his promotion.
7.	Mr. Hayat ur Rehman	His date of birth is 27.02.1987. He joined government service on 21.02.2013 in BS-17. He has not yet completed prescribed length of service for promotion. No enquiry is pending against him. His service record upto 2016 is generally good.
		The Board recommended the Officer for appointment to the post of Deputy Director BS-18 on acting charge basis.

~~Attested~~

~~ATTESTED~~

	Mr. Hayat ur Rehman B.Sc Mining Engineering	27-02-1987	21-02-2013	21-02-2013	21-02-2013	No	77.50	Nil	Nil	Nil	Nil	Nil	H/Q Office	Not eligible due to non-completion of length of service
	Mr. Ihsan Ud Din B.Sc Mining Engineering	19-08-1987	26-08-2013	26-08-2013	26-08-2013	No		2013 2014 2015 2016	Nil	Nil	Nil	Nil	Mardan	Not eligible due to non-completion of length of service
9	Mr. Qasim Jamal M.Sc Mineral Resource Management	01-06-1987	07-02-2014	07-02-2014	07-02-2014	No		2014 2015 2016	Nil	Nil	Nil	Nil	Manshera	Not eligible due to non-completion of length of service
10	Mr. Asmat Ali B.Sc Mining Engineering	01-07-1985	07-03-2014	07-03-2014	07-03-2014	No		2014 2015	Nil	Nil	Nil	Nil	D.I.Khan	Not eligible due to non-completion of length of service
11	Mr. Muhammad Riaz M.A	02-02-1966	11-02-1996	23-09-2015	23-09-2015	No		2015 2016	Nil	Nil	Nil	Nil	Abbottabad	Not eligible due to non-completion of length of service

Certified that the officer at S.No 1 to 6 included in the panel are eligible for promotion in all respects. While the officer at S.No. 7 of the same panel having short length of service about four months may be Promoted on acting charge basis as per rule 9 of the part-II of appointment of promotion rules 2011 (ESTA CODE Revised addition 2011)

Signature: _____
 Designation: _____
 Date: 30/12/17

ATTACHED



RESPECTFULLY SHEWETH;

Appellant submits as under:-

FACTS OF THE CASE:-

1. That the appellant Zahooruddin Assistant Director was initially appointed as royalty inspector on 16/01/1999 on regular basis in the department and was later promoted to the post of assistant director on 12/04/2012, serving and posted as such in mineral development department at Peshawar.
2. That throughout appellant service, appellant worked efficiently. No complaint by any person exists against the appellant.
3. That working paper of Provincial Selection Board was prepared for promotion to the post of Deputy Director (BPS-18), whereby the name of the appellant is included in the working paper. It is pertinent to mention that as per the working paper, the appellant along with other officers have been recommended to be promoted on regular basis (working paper marked as Annexure "B").
4. That meeting of the PSB for the promotion of Assistant Director to the post of Deputy Director Mineral (BPS-18) was held on 28/12/2017, whereby without lawful

ATTESTED

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A. INEED
BEFORE THE HONOURABLE PESHAWAR HIGH
COURT PESHAWAR



W.P.No. _____/2018

1. Zahoor-ud-Din, Assistant Director Mineral, KP Peshawar.
2. Mohsin Ali Khan, Assistant Director Mineral, KP Peshawar.

.....Petitioners

VERSUS

1. Govt. of Khyber Pakhtunkhwa Secretary Mineral, Civil Secretariat, Peshawar.
2. Chief Secretary (CS), Secretariat, Khyber Pakhtunkhwa, Peshawar.
3. Chief Minister's KP in the capacity of Appellate Authority under KP Departmental Appeal Rules, 1986, Chief Minister's Secretariat, Khyber Pakhtunkhwa Peshawar.
4. Provincial Selection Board for promotion of Mineral Development Officer/ Assistant Director (BPS-17) to Director (BPS-18) through Chief Secretary, CS Secretariat, Khyber Pakhtunkhwa, Peshawar.

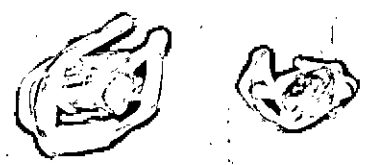
.....Respondents

WRIT PETITION UNDER ARTICLE
199 OF THE CONSTITUTION OF
ISLAMIC REPUBLIC OF PAKISTAN,
1973

~~ATTESTED~~
EXAMINER
Peshawar High Court

28 MAR 2018

~~ATTESTED~~



RESPECTFULLY SHEWETH:-

1. That petitioner No.1 was Initially appointed as Royalty Inspector on 16.01.1991 on regular basis in the department and was later promoted to the post of Assistant Director on 12.04.2012, serving and posted as such In Mineral Development Department at Peshawar.
2. That petitioner No.2 was appointed as Assistant Director through Public Service Commission on 19.12.2009 on regular basis in the Mineral Department.
3. That throughout petitioners' service, petitioners worked efficiently. No complaint by any person exists against the petitioners.
4. That working paper of Provincial Selection Board was prepared for promotion to the post of Deputy Director (BPS-18), whereby the name of the petitioners was Included In the working paper. It is pertinent to mention that as per the working paper, the petitioners alongwith other officers have been recommended to be promoted on regular basis (Copies of working paper are Annex "B")
5. That the meeting of the Provincial Selection Board for the promotion of Assistant Director to the post of Deputy Director Mineral (BPS-18) was held on 28.12.2017, whereby without lawful justification, the Provincial Selection Board deferred the case of

ATTESTED
 EXAMINER
 Peshawar Bench Court
 28 MAR 2018

ATTESTED

the petitioners for promotion due to pendency of the Ehtisab Court case. (Copies of minutes of the meeting are Annex "C")

6. That the petitioners filed departmental appeal dated 18.01.2018, which is dispatched through proper channel through covering letter dated 19.01.2018 & 23.02.2018 to the respondent No.1, but not responded so far. (Copy of both departmental appeals alongwith both covering letters are Annex "D")

7. That finding no other efficacious remedy, the petitioners approach this hon'ble Court for following grounds:-

GROUNDS

A. Because as per legal advice/ opinion of the Khyber Pakhtunkhwa Law Department dated 21.07.2016, promotion of a Civil Servant cannot be deferred due to pending disciplinary proceedings; hence, deferment of the petitioners from promotion to BPS-18 is illegal and is against the opinion/ legal advice of the Law Department. (Copy of legal advice / opinion of Law Department is Annex "E")

B. Because as per Para-4 & 5 of the Instructions of the Establishment Department dated 2006, promotion of a Civil Servant cannot be deferred on account of pending departmental proceedings; hence deferment of the petitioners from promotion to BPS-18 is illegal and against Instructions of the

ATTESTED

RECORDED
 JUDGE
 EHTISAB COURT
 13 MAR 2018



Establishment Department. (Copy of the Para 4 & 5 of instructions are Annex "F")

C. Because as per 2000 SCMR 645, PLJ 2015 Lahore 24 (DB), PLJ 2015 Lahore 45 and 2009 PLC (CS) 40, promotion of a Civil Servant cannot be deferred due to pending departmental proceedings against the Civil Servant, hence deferment of the petitioners from the promotion to BPS-18 is against the judgments of the Superior Courts. (Copies of the judgments ibid are Annex "G")

D. Because there is no bar for stoppage/ deferment of promotion of the petitioners on ground of pending inquiry as petitioners are to be presumed as innocent unless proved guilty.

E. Because the alleged so-called inquiry as initiated on 15.09.2017 against thirteen persons including the petitioners. According to notification, the said enquiry was to be completed within 30 days, the inquiry has not been concluded and is still in progress for more than four months with no completion in sight to ascertain the truth. It is also pertinent to mention that against the same charges, an FIR has been lodged against forty five persons excluding the petitioners. Petitioners are not charged in the FIR, which also shows the innocence of the petitioners with regard to the charges. (Copy FIR, charge sheet in Reference No.4/2016 is Annex "H & I")

F. Because Ehtisab case is pending in the Court against the petitioners including others. Formal

ATTESTED

EXAMINER
Peshawar High Court

28 MAR 2018

[Handwritten signature]

charge was framed by the Court on 26.05.2016, and so far the statement of only one witness has been completed. In reference fourteen witnesses have been mentioned by the prosecution, which also indicates that conclusion of the case will consume sufficient time. The petitioners will be debarred from benefits of promotion for such a long time without proof of any guilt.

(A)
(B)

G. Because a person is presumed to be innocent until proved to be guilty by a competent Court of law. So far nothing has been proved by the department against the petitioners. Till today the petitioners are innocent in the eyes of law. Departmental Promotion Board fell into error by not recommending the petitioners for promotion merely due to the pendency of a criminal case enquiry, hence the valuable rights of the petitioners have been infringed.

H. Because the august Supreme Court of Pakistan as well as different High Courts have clearly given the verdict in the subject matter that the pendency of an inquiry or even a presence of a minor penalty cannot come in the way of promotion of a civil servant as it is the right of every civil servant that he be considered for promotion along with his batch mates. It is pertinent to mention that in working paper (Annex "B"), the petitioners along with his other batch mates have been recommended for promotion on regular basis.

ATTESTED
EXAMINER
Peshawar High Court
28 MAR 2018

~~ATTESTED~~



It is, therefore humbly prayed that, on acceptance of this writ petition, the respondents may kindly be directed to consider petitioners for promotion to BPS-18 (Deputy Director Mineral) from BPS-17 (Assistant Director) by deciding departmental appeals strictly in accordance with Law Department opinion dated 21.07.2016, Para-4.5 of the Instructions of the Establishment Department, Superior Courts judgments 2000 SCMR 645, PLJ 2015 Lahore 24 (DB), PLJ 2015 Lahore 45 and 2009 PLC (CS) 40, Civil Servant Act, 1973 and PMS Rules, 2007 within shortest possible time please.

INTERIM RELIEF

By way of interim relief, it is, prayed that, the respondents may graciously be directed not to fill the posts of Deputy Director Mineral (BPS-18) till the final decision of titled petition.

Petitioners

Through

Amjad Ali (Mardan)
Advocate
Supreme Court of Pakistan



CERTIFICATE

It is certify that, no such like writ petition has earlier been filed by the petitioner before this Hon'ble Court.

Advocate

LIST OF BOOKS

1. Constitution of Pakistan, 1973
2. Other case laws as per need.



ATTESTED

EXAMINER
Peshawar High Court

28 MAR 2018

ATTESTED

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

**Writ Petition No.1284-P of 2018
With Interim Relief**

JUDGMENT

Date of hearing.....22-03-2018.....

Petitioners: (Zahoor-ud-Din and another) by Mr. Amjad Ali (Mardan), Advocate.

Respondents:(Government of Khyber Pakhtunkhwa and others) by Mr. Waqar Ahmad Khan, AAG.

YAHYA AFRIDI, C.J.- Zahoor-ud-Din and

another, petitioners, seek the constitutional jurisdiction of this Court, praying that:

"It is, therefore, humbly prayed that, on acceptance of this writ petition, the respondents may kindly be directed to consider petitioners for promotion to BPS-18 (Deputy Director Mineral) from BPS-17 (Assistant Director) by deciding departmental appeals strictly in accordance with Law Department opinion dated 21.07.2016, para4.5 of the Instructions of the Establishment Department, Superior Courts judgments 2000 SCMR 645, PLJ 2015 Lahore 24(DB), PLJ 2015 Lahore 45 and 2009 PLC (CS) 40, Civil Servant Act, 1973 and PMS Rules, 2007 within shortest possible time please."

ATTESTED
JUDGMENT
PESHAWAR HIGH COURT
28 MAR 2018

ATTESTED

(Handwritten initials)

It is, therefore humbly prayed that, on acceptance of this writ petition, the respondents may kindly be directed to consider petitioners for promotion to BPS-18 (Deputy Director Minral) from BPS-17 (Assistant Director) by deciding departmental appeals strictly in accordance with Law Department opinion dated 21.07.2016, Para-4.5 of the Instructions of the Establishment Department, Superior Courts judgments 2000 SCMR 645, PLJ 2015 Lahore 24 (DB), PLJ 2015 Lahore 45 and 2009 PLC (CS) 40, Civil Servant Act, 1973 and PMS Rules, 2007 within shortest possible time please.

INTERIM RELIEF

By way of interim relief, it is, prayed that, the respondents may graciously be directed not to fill the posts of Deputy Director Mineral (BPS-18) till the final decision of titled petition.

Petitioners
Through *(Signature)*
Amjad Ali (Mardan)
Advocate
Supreme Court of Pakistan

CERTIFICATE

It is certify that, no such like writ petition has earlier been filed by the petitioner before this Hon'ble Court.

LIST OF BOOKS

- 1. Constitution of Pakistan, 1973
- 2. Other case laws as per need.

Advocate
(Signature)

ATTESTED
EXAMINER
Peshawar High Court
28 MAR 2018

ATTESTED

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT



Writ Petition No.1284-P of 2018
With Interim Relief

JUDGMENT

Date of hearing.....22-03-2018.....

Petitioners: (ZAhoor-ud-Din and another) by Mr.Amjad.Ali
(Mardan), Advocate.

Respondents:(Government of Khyber Pakhtunkhwa and
others) by Mr.Waqar Ahmad Khan, AAG.

YAHYA AFRIDI, C.J.- Zahoor-ud-Din and

another, petitioners, seek the constitutional
jurisdiction of this Court, praying that:

*"It is, therefore, humbly prayed
that, on acceptance of this writ
petition, the respondents may
kindly be directed to consider
petitioners for promotion to BPS-
18 (Deputy Director Mineral) from
BPS-17 (Assistant Director) by
deciding departmental appeals
strictly in accordance with Law
Department opinion dated
21.07.2016, para4.5 of the
Instructions of the Establishment
Department, Superior Courts
judgments 2000 SCMR 645, PLJ
2015 Lahore 24(DB), PLJ 2015
Labore 45 and 2009 PLC (CS) 40,
Civil Servant Act, 1973 and PMS
Rules, 2007 within shortest
possible time please."*

ATTESTED
MINER
Peshawar High Court
28 MAR 2018

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2. In essence, the grievance of the petitioner is that the departmental appeal of the petitioners is pending adjudication before the respondents.

3. The appeal of the petitioners is stated to be pending before the worthy Secretary Mineral, Government of Khyber Pakhtunkhwa, Peshawar/ respondent No.1 which requires to be decided. The petitioners are directed to appear before the worthy Secretary Mineral on 29.03.2018 at 10.00 AM. Surely, the petitioners should be provided sufficient opportunity to plead their case. Thereafter, the worthy Secretary is to decide the matter within thirty days. In case, the relief sought by the petitioners cannot be granted then reason in writing be recorded for the same, and copy thereof be transmitted to the worthy Director, Human Rights Cell of this Court. The worthy AAG also undertook to ensure that the

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ATTESTED
 29 MAR 2018

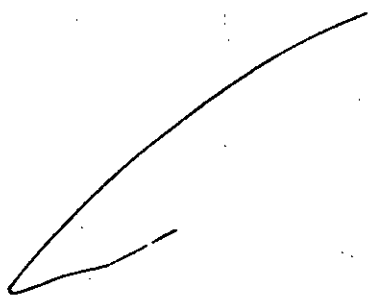
appeal of the petitioners pending before respondent No.1 is decided within the given time.



This writ petition is disposed of, accordingly.

Announced:
Di.22-03-2018.

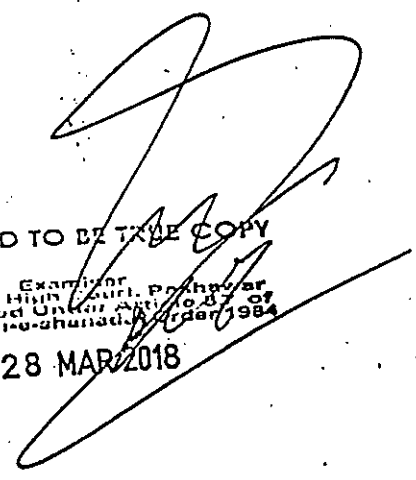
Yakya Afridi
CHIEF JUSTICE
M. I. Khan
JUDGE



CERTIFIED TO BE TRUE COPY

Examiner
Peshawar High Court, Peshawar
Authorized Under Article 87 of
The Qanun-e-shahadat Order 1984

28 MAR 2018



No. 6080
Date of Present. 28/3/18
No of Pages. 20
Copying 1
Urgent 1
Total 28/3/18
Date 28/3/18
Place CHC

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(DB) Hon'ble Mr. Justice Yakya Afridi, Chief Justice
Hon'ble Mr. Justice Muhammad Ayub Khan, Judge.

ATTESTED

ANNEX 15 "E"

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Pg 7 Secy (S) E P AF
Diary No. 5215
Date: 22/7/2016

GOVT OF KHYBER PAKHTUNKHWA
PARLIAMENTARY AFFAIRS &
HUMAN RIGHTS DEPARTMENT

No. SO(OP-III)/LD/5-6/2012-VOL-II 995/4-16
DATED: PESH: TH 27 JULY, 2016

To

The Secretary to Govt of Khyber Pakhtunkhwa,
Public Health Engineering Department.

Subject: ADVICE REGARDING IMPLEMENTATION OF
RECOMMENDATIONS OF THE DEPARTMENTAL
PROMOTION COMMITTEE IN VIEW OF PENDING INQUIRY.

Dear Sir,

I am directed to refer to your Department's letter No SO(Ebit)/PHED/1-1/2010/I.R Kurak dated 18-07-2010 on the subject noted above and to state that in accordance with para-V of Promotion Policy, 2009 promotion of a civil servant will be deferred in addition to para-IV of the said policy if disciplinary or Departmental proceedings are pending against him. Whereas, the Supreme Court of Pakistan in its Judgement, 2000 SCMR 645, declared that "Mere fact that some disciplinary proceedings were pending against the respondent was not a sufficient ground to stop the promotion of Civil servant. However, it would not deter the Authorities to continue with disciplinary proceeding against the Civil servant, if any, justly, fairly and accordance with law." Similarly in other decisions as cited, 2008 PLC (CS) 551, 2007 PLC (CS) 716, 2007 PLC (CS) P-4, which allows the promotion of civil servant even some disciplinary proceedings are pending against the civil servant. Hence, the promotion case/ notification of civil servant cannot be deferred due to an anticipated formal inquiry which is tantamount to punishment in advance.

2. So, in light of Judgement of the Supreme Court it seems that the Promotion Policy is deficient on the point and needs to be updated in line with the Supreme Court Judgement as the decision of the superior Court always have over-riding effect on sub-ordinate legislation and policies.

Yours Faithfully,

Section Officer (Opinion-II)

Endst: of even No. & date.

Copy forwarded for information to :-

1. The P.S to Secretary Law, Department.
2. The P.S to Secretary Establishment Department for information.

[Handwritten signatures and initials]

~~ATTESTED~~

ANNEX F

(32)



INSTRUCTIONS ON

PERFORMANCE EVALUATION REPORT

Compiled by
Establishment & Administration Department
Government of N.W.F.P.

CIVIL SECRETARIAT, PESHAWAR.

Corrected
upto March, 2006



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FOREWORD

(33)

Performance Evaluation Report plays an important role in the career planning of a Government servant. It is the most frequently used document in the service record of an employee. The Government servants, Reporting and Countersigning officers are responsible to initiate, complete and maintain PERs of their subordinates in accordance with the prescribed procedure and in stipulated period of time. For completion of this task, they need approved guidelines and instructions.

A compendium of "Instruction on Performance Evaluation Reports" was last compiled and published in the year 2000. However, on introduction of the Local Government Ordinance 2001, District Governments were established and powers of appointment, promotion and transfers in respect of Government servants in BS-1 to BS-15 were delegated to District officers. Consequently the Reporting Officers and Countersigning Officers in respect of many employees were changed which necessitated amendments in the instructions. The instructions also needed streamlining and updation which necessitated their fresh publication.

A committee headed by Mr. Muhammad Hamayun Khan, Special Secretary Regulation, Mr. Akbar Khan, Deputy Secretary (Regulation-III) and Mr. Muhammad Jamil Section Officer (Secret) Establishment & Administration Department, rendered appreciable services and contribution to update these instructions. Without their efforts, compilation of this compendium of instructions would have not been possible. The new edition of instructions will greatly help and facilitate the Reporting Officers as well as the Countersigning Officers to evaluate the performance and conduct of their subordinates objectively and in a realistic manner.

Suggestions, if any, for improvement in this compendium of instructions would be welcomed and appreciated which may be addressed to the Secretary Establishment Government of NWFP, Civil Secretariat, Peshawar or faxed on 091-9210447.


(MIAN SAHIB JAN)

Secretary to Government of NWFP
Establishment Department.

March, 9th. 2006.

~~ATTACHED~~

be considered as adverse in the case of an officer who fulfills the condition of length of service for promotion to the next higher grade and should be communicated to him.

(iii) It has been decided that if an officer is adjudged unfit for continued retention in service such an entry should be treated as adverse and should be communicated to the officer concerned.

4.4 Un-finalized Departmental Proceedings:-In the case of an officer against whom departmental proceedings are in progress, no mention whatsoever should be made about it in his Performance Evaluation Report. Only when such proceedings have been finalized, and the punishment, if any, has been awarded/exonerated should be mentioned in his Evaluation Report. In such a case complete copy of the final order may be placed, as is usually done, on his Character Roll.

4.5. According to the instructions (vide Para 4.4) no mention should be made in the Evaluation Report of a Government Servant, of the departmental proceedings which may be in progress against him, unless such proceedings have been finalized, and the punishment, if any, has been awarded. There is no bar to a Government servant being considered for promotion during the pendency of departmental proceedings against him. However, in such cases, a copy each of the charge sheet and the statement of allegations should be placed before the Provincial Selection Board or the Departmental Promotion Committee, as the case may be vide Establishment Division's O.M. No. 2/20/67-D.I., dated the 13th November, 1967 (printed at S. No. 118 of chapter V of the Establishment Manual, Volume-I, Reprint, 1968 and page 615 of, ESTACODE).

4.6. According to the instructions contained in the Establishment Division's letter No. 9(1)/58-SE.III, dated the 8th May, 1958 (Para 4.4) no mention whatsoever can be made about a departmental inquiry pending against an officer in the Evaluation Report. However, there should be no harm in making as mention about a criminal case pending against an officer in his C.R.

4.7 Evaluation Report:-If there are any adverse remarks in the Evaluation Reports prepared by NIPA and Administrative

~~ATTESTED~~

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Annex - G



<http://www.pakistanlawsite.com/LawOnline/law/content21.asp?Case...>

Judgement

2000 S C M R 645

[Supreme Court of Pakistan]

Present: *Irshad Hasan Khan, Munawar Ahmed Mina and Ch. Muhammad Arif, JJ*

Maj. ZIAUL HASSAN, HOME SECRETARY and others---Petitioners

versus

Mrs. NASEEM CHAUDHRY---Respondent

Criminal Petition No. 510-L of 1999, decided on 20th October, 1999.

(On appeal from the judgment, dated 27-9-1999 of the Lahore High Court, Lahore in Cr.Org.No.279-W of 1999).

Civil service-

---Promotion---Supreme Court had found that civil servant had not been promoted by superseding any officer senior to her; she was entitled to be promoted from the date her juniors were promoted and there was no valid reason not to consider her for the promotion---Mere fact that some disciplinary proceedings were pending against the civil servant was not a sufficient ground to disregard the order passed by the Supreme Court--Promotion of civil servant, however, would not debar the Authorities to continue with the disciplinary proceedings against the civil servant, if any, justly, fairly and in accordance with law.

Inspector-General of Police, Punjab, Lahore and others v. Mrs. Naseem Chaudhry and others C. P.L.A. No. 1617-L of 1997 ref.

Ghulam Haider Alghazali, Additional Advocate-General, Punjab and Rao Muhammad Yusuf, Advocate-on-Record for Petitioners.

Respondent in person.

Date of hearing: 20th October, 1999.

JUDGMENT

IRSHAD HASAN KHAN, J.---This petition is directed against the judgment, dated 27-9-1999 passed by the Lahore High Court in Cr. Original No.279-W of 1999

2. The dispute herein relates to the promotion of the respondent as Deputy Superintendent of Police.

3. This Court through judgment, dated 15-4-1999 passed in C.P.L.A. No. 1617-L of 1997 entitled The Inspector General of Police, Punjab, Lahore etc. v. Mrs. Naseem Chaudhry, etc., while dismissing

11/25/2016

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J. Jaganm

the appeal of the Inspector-General of Police against the order of the Punjab Service Tribunal, Lahore in Appeal No.3097 of 1997, made the following observation:--

"5. We have heard the learned counsel for the petitioner Dr. A. Basit learned senior counsel for the respondent/caveator and perused the available material on record. The Tribunal was right in holding that the respondent had not been promoted by superseding any officer senior to her. She was entitled to be promoted from the date her A juniors were promoted. There was no valid reason not to consider her case for promotion as DSP as above. The impugned order appears to be just, fair and equitable. Mr. Ghuman was unable to substantiate his plea that the impugned order suffers from any illegality. Be that as it may, no substantial question of public importance is involved to warrant interference in these proceedings."

4. The petitioner not implemented the above order passed by this Court. The respondent therefore, approached the High Court for redress of her grievance. The contempt application was also filed on 25-1-1999 wherein notice was issued to the petitioner, who took the plea that the respondent could not be promoted as some disciplinary proceedings had been initiated against her. The contention was repelled by the learned Judge in Chambers vide the impugned order, dated 27-9-1999, which is to the following effect:--

"The learned Advocate-General says that the petitioner has been suspended from service and as such the question of her promotion does not arise. The learned counsel for the petitioner has, however, placed on record, a copy of the order, passed by the Punjab Service Tribunal on 30-8-1999, whereby the order of suspension of the petitioner has been suspended. That being so, there is no hurdle left in the way the respondent for implementation of the orders passed by this Court. The needful shall now be done within one week from today failing which coercive process shall be issued against the respondents. "

5. The learned Additional Advocate-General, Punjab submitted that the High Court fell into error by not considering in true perspective that the disciplinary proceedings have been initiated against the respondent and, therefore, there was genuine hurdle in the way of petitioner to promote her in accordance with the orders passed by the Supreme Court as well as the High Court.

6. We are afraid that the mere fact that some disciplinary proceedings are pending against the respondent is not a sufficient ground to disregard the order passed by this Court. However, we may clarify that promotion of the respondent as DSP will not debar the petitioner to continue with the disciplinary proceedings against the respondent if any, justly, fairly and in accordance with law.

7. With the above observation, the petition is dismissed and leave to appeal declined.

M.B.A./Z-33/S

Petition dismissed.

ATTORNEY

2009 P L C (C.S.) 40

[Lahore High Court]

Before Hafiz Tariq Nasim, J

MUHAMMAD AFZAL KHAN

Versus

GOVERNMENT OF PUNJAB through Secretary to Government of the Punjab, C&W Department and another

Writ Petition No.5857 of 2008, decided on 20th June, 2008.

(a) Civil service---

---Promotion cannot be claimed as matter of right---Principles.

The civil servant cannot claim promotion as a matter of right, but it is an inalienable right to every civil servant that he be considered for promotion along with his batch mates, if he fulfills eligibility criteria.

(b) Civil Service---

---Promotion, consideration for---Meaning---Consideration for promotion means a just and fair consideration and not as a matter of routine.

(c) Punjab Civil Servants Act (VIII of 1974)---

---S. 8---Constitution of Pakistan (1973), Art.199---Constitutional petition---Promotion---Non-consideration of petitioner's case for promotion by Selection Board repeatedly on ground of pendency of enquiry against him---Validity---Pendency of enquiry and minor penalties could not come in way of promotion---Enquiry must be concluded within a specific period---Enquiry proceedings pending against petitioner for an indefinite period smacked of arbitrariness and mala fide---Hanging sword on head of a civil servant in form of pendency of enquiry would reflect only to deprive him of his lawful right of promotion---Treatment meted out to petitioner could not sustain in eye of law---Consideration for promotion would mean a just and fair consideration and not as a matter of routine---High Court directed authority to place petitioner's case before Selection Board within specified time, which would consider his case fairly, justly and independent of pendency of enquiry, if not finalized on day of consideration of his case for promotion.

Zarar Khan v. Government of Sindh and others PLD 1980 SC 310; Captain Sarfraz Ahmad Mufti v. Government of the Punjab and others 1991 SCMR 1637; Maj. Ziaul Hassan, Home Secretary and others v. Mrs. Naseem Chaudhry 2000 SCMR 645; Ch. Yar Muhammad Durraina v. Government of the Punjab and another 1992 PLC (C.S.) 95; Sh. Muhammad Riaz v. Government of the Punjab 2003 PLC (C.S.) 1496 and Writ Petition No.2573 of 2000 ref.

ATTESTED

(d) Civil Service---

---Promotion---Pendency of enquiry and minor penalties against civil servant not a hurdle in way of his promotion.

Masood Ahmad Riaz for Petitioner.

Naeem Masood, Asstt. A.-G. Punjab with Humayun Akhtar Sabi, Deputy Director Legal for Respondents.

ORDER

HAFIZ TARIQ NASIM, J.---The backdrop of this writ petition is that the petitioner being senior most Executive Engineer BS-18 of the Communication Works Department, Government of Punjab was expecting his promotion as Superintending Engineer in BS-19 in the year 2003 but he was deferred. In spite of his deferment he remained in the field for five long years when again on 23-5-2008 the petitioner's case of promotion was taken up by respondent No.1 who prepared working paper and placed it before the Provincial Selection Board, who recommended for deferment of the petitioner on the plea of pendency of some inquiry. The petitioner continuously persuaded for the redressal of his grievance since 2003 but with no result and finally filed this writ petition with the following prayer:--

"(I) Petition may kindly be accepted with costs.

(II) Respondents may kindly be directed to place the petitioner's case of promotion as Superintending Engineer in BS-19 before the Provincial Selection Board within a period of one month positively.

(III) Respondent No.2 who is the Chairman of Provincial Selection Board may very kindly be directed to consider Petitioner's promotion case fairly, justly and without being influenced by the pendency of any inquiry.

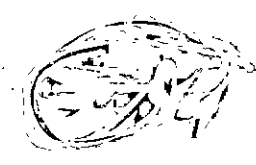
(IV) Respondents may kindly be further directed to consider the petitioner for promotion as Superintending Engineering in BS-19 from 9-7-2003 when the petitioner was eligible for such promotion and when his case was first placed before the Provincial Selection Board.

(V) Impugned show-cause notice dated 8-1-2004 and order of inquiry dated 5-9-2007 may kindly be set aside.

(VI) Petitioner may also kindly be granted such other relief/reliefs to which he is found entitled."

2. Learned counsel for the petitioner submits that so far prayer No. V in respect of setting aside of show-cause notice and order of enquiry is concerned, he does not press the same and it be treated deleted from the prayer clause. However, the learned counsel argued the case in respect of other prayers with vehemence and contends that the petitioner is being victimized with no fault of him, rather on extraneous consideration, with ulterior motive and malice and it is well-settled law that any action, which is based on mala fide cannot be termed as a legal action in the eye of law.

~~APPROVED~~



Further submits that mere pendency of enquiry cannot deprive the petitioner from his lawful right of fair consideration for further promotion. Learned counsel referred Zarar Khan v. Government of Sindh and others PLD 1980 SC 310, Captain Sarfraz Ahmad Mufti v. Government of the Punjab and others 1991 SCMR 1637, Maj. Ziaul Hassan, Home Secretary and others v. Mrs. Naseem Chaudhry 2000 SCMR 645, Ch. Yar Muhammad Durraiana v. Government of the Punjab and another 1992 PLC (C.S.) 95, Sh. Muhammad Riaz v. Government of the Punjab 2003 PLC (C.S.) 1496 and a recent judgment in Writ Petition No.2573 of 2008 titled as Sanjida Irshad v. Secretary Health and others, in support of this contentions.



3. On the other hand learned Assistant Advocate-General submits that consideration for promotion of course is right of a civil servant but no civil servant can ask for promotion as a matter of right. Further submits that the petitioner's promotion case was repeatedly placed before the Punjab Selection Board but due to some cogent reasons the petitioner could not be promoted. However, being a deferred case the petitioner's case shall be reconsidered in the forthcoming PSB's meeting.

4. Arguments heard. Record perused.

5. There is no cavil from the proposition that the civil servant cannot claim promotion as a matter of right but it is also undisputed fact A that it is an inalienable right of every civil servant that he be considered for promotion along with his batch mates when he fulfills eligibility criteria and it must be noted that consideration for promotion means a just and fair consideration and not as a matter of routine.

6. It is well-established law laid down by the apex Court that pendency of enquiry and even minor penalties cannot come in the way of promotion. In the present case the departmental representative, who produced the record did not disclose any penalty available in the petitioner's record except pendency of enquiry. However, when confronted with the sole question that how much time it should take to finalize the enquiry, no satisfactory reply could be given by the departmental representative.

7. Surprisingly keeping the civil servant continuously for a long period in facing certain enquiries and without concluding the proceedings for an indefinite period smacks arbitrariness and smells mala fides when now a days there is a specific provision that enquiry must be concluded in a specific time. Hanging sword on the heads of certain civil servants in the form of pendency of enquiry reflects only to deprive from their further lawful right of promotion, which can be termed an exploitation and nothing else because there is no bar on the part of administration to reach on logical conclusion and then impose penalty on that very civil servant if he is found guilty, when this part of the administration is unfettered then such like treatment, which is meted out to the petitioner cannot sustain in the eye of law.

8. In the attending circumstances, I have no other option except to allow the writ petition. The respondents are directed to place the petitioner's promotion case before the Provincial Selection Board within a period of two months positively from today and the PSB shall consider the petitioner's promotion case fairly, justly and particularly independent of pendency of enquiry if the same is not finalized on the day of consideration for promotion. The exercise must be concluded within two months and result thereof be conveyed to the Deputy Registrar. (J.) of this Court. The writ petition is accepted in the above terms.

S.A.K./M-245/L

Petition accepted.

ACCEPTED

10/1/2015

January 2015

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PLJ 2015 Lahore 24 (DB)
[Multan Bench Multan]
Present: SHAHID WAHEED AND SHAH KHAWAR, JJ.
MUHAMMAD SALEEM--Petitioner

versus
GOVERNMENT OF PUNJAB through its Chief Secretary
and 6 others--Respondents
W.P. No. 14949 of 2012, decided on 15.7.2014.

Constitution of Pakistan, 1973-

---Art. 199--Promotion Policy Rules, 2010, R. 9(iv)--Promotion--Deferment was raising on creditability and unblemished career--Policy was challenged--Validity--Superior Courts--Civil servant against whom a departmental inquiry or criminal proceedings were pending was not an outcast for purpose of consideration of his case for promotion and there was no bar on his promotion--Any policy of government including Promotion Policy 2002 of Government of Punjab cannot come in its way and has become redundant. [P. 27] A & B

Mr. Muhammad Ali Siddiqui, Advocate for Petitioner.

Mr. M. Aurangzeb Khan, A.A.G. along with Saleem Akhtar Qureshi, District Officer Co-Operative Multan for Respondents No. 1, 2 and 3.

Date of hearing: 25.6.2014.

ORDER

In the instant writ petition, the petitioner being a civil servant has challenged the vires of Sub-Rule (IV) of Rule 9 of the Promotion Policy, 2010 and decision of Provincial Selection Board with respect to the deferment of the petitioner for promotion as same being Un-Islamic, Un-Constitutional, discriminatory and against the fundamental rights of the petitioner.

2. The question of law to be determined by this Court is reproduced is under:

"Whether promotion of the civil servant could be deferred which he otherwise entitled to, on a sole ground that a case or inquiry is pending against him in which he is yet to be proven guilty?"

3. Brief facts of the case are that the petitioner was appointed on 07.04.1984 as Assistant Registrar (BS-16) through Punjab Public Service Commission.

4. The promotion of the petitioner in BS-19 has been due since 04.12.2011 on the retirement of one Fayyaz-ul-Hassan Farooqi senior to him. However, he has not been promoted since that date.

5. On 1.3.2012, vide Notification No. SO(E)7-3/96(P-III), a final seniority list was issued by the Secretary Co-Operatives whereby, the petitioner was placed at Serial No. 1 and Respondents No. 4 to 7 were placed at Serial Nos. 2, 3, 4 and 5 respectively.

6. On 24.07.2012, meeting of the Provincial Selection Board-I was held whereby, Respondents No. 4 to 7 were promoted to BS-19 and the promotion of the petitioner was deferred.

7. Learned counsel for the petitioner contends that the promotion of the petitioner was deferred which he otherwise is entitled to, as per the impugned rule. Further submits that the petitioner has a spotless career and is at verge of his retirement. Till today, not an FIR as well as not a single inquiry has been registered and initiated against him; hence his deferment is raising questions on his creditability and unblemished career, that requires kind interference by this Hon'ble Court. Reliance is placed on Captain Sarfraz Ahmdd Mufti vs. Government of the Punjab and others (1991 SCMR 163), Mr. Ziaul Hassan, Home Secretary and others vs. Mrs. Naseem Chaudhry (2000 SCMR 645), Sh. Muhammad Riaz vs. Government of Punjab [(2003 PLC (CS) 1496] and Muhammad Afzal Khan vs. Government of Punjab through Secretary to Government of the Punjab, C&W Department and another [(2009 PLC (CS) 40)].

8. Report and parawise comments were filed by the respondents. One of the preliminary objections was that the matter relates with the terms and conditions of promotion and the petitioner has not availed his remedy by way of filing appeal before the Punjab Service Tribunal, hence Constitutional petition is not maintainable.

9. On facts, Respondents No. 1 & 2 also controverted the prayer made by the petitioner by contending that the promotion case of the petitioner was placed before the Punjab Selection Board, but the Board deferred the same due to the reason that an FIR No. 18/2010 Police Station Anti-Corruption

ATTESTED

Establishment Multan is pending against the petitioner, and the petition is hit by the Promotion Policy 2010. However, a post in BS-19 has been reserved for the petitioner, subject to his exoneration from the above said case and will be granted promotion from the date when his juniors were promoted.

10. I have given anxious consideration to the arguments advanced by learned counsel for the petitioner and the learned AAG, Punjab.

11. Before arriving at a conclusion that the Policy under challenge is sustainable under the law or not, it will be proper to understand spirit of Article 8 of the Constitution of Pakistan 1973; which is re-produced herein under:-

"8. Laws inconsistent with or in derogation of Fundamental Rights to be void.--(1) Any law, or any custom or usage having the force of law, insofar as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights so conferred and any law made in contravention of this clause shall, to the extent of such contravention, be void."

12. Admittedly in the constitution, the Superior Courts have been mandated to ascertain either any law is inconsistent with the rights conferred by the Constitution i.e. Fundamental Rights. In *Tariq Cotton Mills Ltd and another vs. Joint Registrar, Joint Stock Companies and another* (1989 CLC 2013), it is held that the State is prohibited to make any law which curtails or take away any Fundamental Right and any law so made shall to the extent of inconsistency with such right, is to be void. The same principle of law has been enunciated in *Sharaf Faridi vs. The Federation of Islamic Republic of Pakistan through Prime Minister of Pakistan and another* (PLD 1989 Kuruchi 404), it was held that limitation has been placed on the Legislature not to curtail the Fundamental Rights or abridge them by any law.

13. Question of law raised by the petitioner is answered in following terms:-

(i) Any judgment passed by the Hon'ble Supreme Court of Pakistan, in which a question of law has been determined, is binding on all the Courts subordinate to the Apex Court, as contemplated in Article 189 of the Constitution of Islamic Republic of Pakistan, 1973.

(ii) The petition in hand has been filed on the touch stone of above quoted judgments of the Hon'ble Supreme Court of Pakistan.

(iii) In the case of *Maj Zail-ul-Hassan, Home Secretary vs. Mrs. Naseem Ch.* (2000 SCMR 645), the Hon'ble Supreme Court has held that:

"We are afraid that the mere fact that some disciplinary proceedings are pending against the respondent is not a sufficient ground to disregard the Order passed by this Court. However, we may clarify that promotion as DSP will not debar the petitioner to continue with the disciplinary proceedings against the respondent if any, justly, fairly and in accordance with law."

(iv) In case titled as *Captain Sarfraz Ahmad Mufti vs. Government of Punjab & others* (SCMR 1637) the Hon'ble Supreme Court upheld judgment of the High Court in which the High Court had directed departmental authorities that case of civil servant be placed before Promotion Board. The High Court had referred to certain Policy letters of the Government under which respondent civil servant's case for promotion merited consideration, but he was illegally ignored.

(v) In the same manner, in case of *Sh. Muhammad Riaz vs. Govt. of Punjab through Secretary Communication and Works and another* [(2003 PLC (C.S) 1496)] it was held that "withholding of promotion is a penalty and therefore refused to issue a formal notification of the promotion of the petitioner, after he had been recommended by the Provincial Selection Board, which was duly approved by the Competent Authority, was illegal and arbitrary in as much as that it was withheld on the ground of an anticipated departmental inquiry.

14. A principle of law has been enunciated by the Superior Courts. The nutshell of the same is that a civil servant against whom a departmental inquiry or criminal proceedings are pending is not an outcast for the purpose of consideration of his case for promotion and there is no bar on his promotion.

15. The above quoted judgments, in which question of law has been settled, have attained finality and force of law. Any policy of the Government including the Promotion Policy 2002 of the Government of the Punjab cannot come in its way and has become redundant.

~~ATTESTED~~

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January 2015

10. For what has been discussed above, the instant writ petition is allowed. Sub Rule (iv) of Rule 9 of the Promotion Policy, 2002 of the Government of Punjab is hereby declared Un-Constitutional, against the spirit of Article 8 of the Constitution and against the principles of law enunciated by the Hon'ble Superior Courts of Pakistan. The respondent Department is directed to place the case of the petitioner to the Provincial Promotion Board and his case may be considered for promotion within a period of 30 days.
(R.A.) Petition allowed

~~ATTESTED~~

January 2015

PLJ 2015 Lahore 45
[Multan Bench Multan]

Present: SHAH KHAWAR, J.

SHAMA KHAN ZAFAR--Petitioner

versus

DISTRICT COORDINATION OFFICER, LODHRAN etc.--Respondents

W.P. No. 15606 of 2012, decided on 14.4.2014.

Constitution of Pakistan, 1973..

....Art. 199--Constitutional petition--Promotion to next higher grade--Appointment against leave vacancy--Seniority list of employees--Juniors were promoted--Inquiry was pending--Disciplinary proceedings pending against civil servant was not sufficient ground to disregard lawful right of four consideration for promotion--Validity--Mere pendency of departmental inquiry or in presence of minor penalty, a civil servant cannot be denied of his fundamental rights to be considered for promotion where his batch mates and even juniors are considered and promoted--Petitioner, who is a teacher by profession, must have gone through frustration and mental stress due to denial of his legal right--Concept of administration of justice has been defined and interpreted by a number of judicial pronouncements. [P. 49] A & B

Mr. Noor Ahmad Khan Meo, Advocate for Petitioner.

Mr. Aurangzeb Khan, Assistant Advocate General, Punjab for Respondents.

Date of hearing: 14.04.2014

ORDER

Through instant writ petition, the petitioner has called in question his non-consideration by the Departmental Promotion Committee for promotion to next higher grade i.e. BS-16 under uplift and upward mobility (Pay Package w.e.f. 1.12.2009).

2. Relevant facts giving rise to the filing of the instant writ petition are that the petitioner was appointed as PTC vide Letter No. 11079 dated 31.12.1984 and joined his duties at Government Primary School, Dera Mehro Markaz Karor Pacca, Lodhran. Later on, he was temporarily adjusted as EST against the leave vacancy of Mr. Hazoor Bakhsh, EST vide Letter No. 7870/Admn dated 28.10.1985 with the condition that appointment against leave vacancy is temporary up till 31.08.1986 and after the said date he was to report back at his original post i.e. PTC. Instead of report back to his original post the said teacher was adjusted as EST against the post of Mr. Hazoor Bakhsh vide Letter No. 3365/Admn dated 10.08.1986 by the competent authority. On query regarding verification/confirmation of posting of the petitioner as EST by the Deputy District Education Officer, Kehror Pacca as well as the Incharge Head Master, Govt. High School, Bahawal Garh, Tehsil Kehror Pacca, District Lodhran vide letters dated 27.09.2010 and 16.08.1986 respectively, the District Education Officer informed that the services of the petitioner as EST had already been confirmed/verified vide Letter No. 3365 dated 16.08.1986 on permanent basis.

3. Subsequently, the Chief Minister of the Punjab vide notification dated 06.11.2009 approved the structure for uplift and upward mobility of Primary and Elementary School Teachers (Male and Female) of all categories in Punjab w.e.f. 01.12.2009 as per ratio given below:--

Category of Teacher	Initial Level		Level I		Level II	
	Pay Scale	Ratio of Post	Pay Scale	Ratio of Post	Pay Scale	Ratio of Post
PSTs (Male & Female)	BS-9	50%	BS-12	35%	BS-14	15%
ESTs (Male & Female)	BS-11	50%	BS-15	35%	BS-16	15%

<http://www.pljlawsla.com/AmPLJ2015L45.htm>

ATTESTED

Mof's (Encl. M. L. F.)	BS-14	7%	BS-15	35%	BS-16	15%
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This regard the seniority list of ESTs (General), District Lodhran was prepared in which the petitioner was placed at Sr. No. 17. The meeting of Departmental Promotion Committee, Lodhran was convened on 11.08.2011 but the petitioner, whose seniority was rated at Sr. No. 17, was not considered for the benefit of next higher grade BS-16 and his juniors, who were assigned seniority at Serial No. 18 to 65 were awarded BS-16. When the petitioner approached the Executive District Officer (Education), Lodhran, he was informed that his name was not considered by the Departmental Promotion Committee due to the reason that his inquiry was pending on the basis of an Audit Para in respect of his irregular appointment against the post as EST.

4. The petitioner prayed that a direction may be issued to the respondents to place his case before the Departmental Promotion Committee for fair consideration to award grade BS-16 under the structure of uplift and upward mobility at par with his batch mates.

5. Notice was issued to the respondents who filed report and para-wise comments wherein, it is mentioned that in the year 2006-09, the audit scrutiny was conducted by the Audit Department of office of the Deputy District Education Officer (M) Tehsil Kahror Pacca. The Audit Officer raised the objection regarding appointment of the petitioner as EST at Government Middle School Mohammad Saeed Tehsil Kahror Pacca in the shape of Advance Audit Para No. 02 that the appointment of the petitioner is irregular and needs an inquiry into the matter and an inquiry officer was deputed to look into the matter.

6. Learned counsel for the petitioner has argued that the pendency of inquiry on the basis of Audit Para could not have been made basis for non-consideration of the petitioner in the next higher grade BS-16. He contended that it is a well established law laid down by the Hon'ble Superior Courts that the pendency of inquiry and even minor penalty cannot come in the way of promotion. Reliance has been placed on *Maj Ziaul Hassan, Home Secretary and others versus Mrs. Naseem Chaudhry* (2000 SCMR 645), *Mrs. Sanjida Irshad, Assistant Director Nursing, Bahawalpur versus Secretary to Government of the Punjab Health Department Lahore and others* (2008 PLC (C.S) 1019) and *Muhammad Afzal Khan versus Government of Punjab through Secretary to Government of the Punjab C&W Department and another* (2009 PLC (C.S.) 40). The Hon'ble Supreme Court of Pakistan in its judgment has held that some disciplinary proceedings pending against the civil servant is not a sufficient ground to disregard his lawful right of fair consideration for promotion. Moreover, the Hon'ble High Court in the above cited judgment has held that the civil servant cannot claim promotion as a matter of right, but it is an inalienable right to every civil servant that he be considered for promotion along with his batch mates, if he fulfills eligibility criteria.

7. During the course of arguments, learned Assistant Advocate General Punjab has fairly commented that a civil servant cannot be disregarded for promotion if one is not otherwise ineligible. He has fully agreed with the judgments passed by the Hon'ble Superior Courts on this issue.

8. I have given my anxious consideration to the arguments advanced by learned counsel for the petitioner as well as learned Assistant Advocate General and have perused the record with their able assistance.

9. This is an admitted position that the Chief Minister of the Punjab approved the structure of uplift and upward mobility of Primary and Elementary School Teachers of all categories vide notification dated 06.11.2009. In pursuance of the said notification, EST and other cadres were to be awarded next higher grade BS-15 & BS-16 on the basis of date of their regular appointments and length of service on the recommendations of District Selection Committee, Lodhran. Consequently, the District Education Officer, Lodhran notified seniority list for such promotion and petitioner's seniority was reckoned at Sr. No. 17 in the said list. The Departmental Promotion Committee was convened on 11.08.2011 but the petitioner's name was not placed before the same, as a result of which the juniors to the petitioner, who were assigned seniority against Sr. Nos. 18 to 65 were awarded BS-16. From the para-wise comments filed by the respondents, it is made clear that the name of the petitioner was not placed before the Departmental Promotion Committee due to the reason that an inquiry on the basis of advance Audit Para was pending against him.

10. As held by the Hon'ble Superior Courts of the country that the pendency of inquiry and one minor penalty cannot come in the way of promotion of a civil servant. Further that civil servant cannot claim promotion as a matter of right but it is also undisputed fact that it is an inalienable right of every civil servant that he be considered for promotion alongwith his batch mates.

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11. Surprisingly, in the instant case, the petitioner was deprived to be considered for promotion at next higher grade BS-16 before Departmental Promotion Committee, Lodhnan on the sole reason his inquiry regarding Audit Para was pending.

12. Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 speaks about the right of individuals to be dealt with in accordance with law, to enjoy the protection of law and to be treated in accordance with law as the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan. In the same manner, Article 25 of the Constitution of Islamic Republic of Pakistan, 1973 ensures equality of citizens by mandating that all citizens are equal before law and are entitled to equal protection of law.

13. Chapter I of the Constitution of Islamic Republic of Pakistan, 1973 is an integral part of the Constitution and all State functionaries are duty bound to extend these rights across the board to the citizen. It is not necessary for State functionaries to have performed their Constitutional obligations after intervention of the Hon'ble Superior Courts. Under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 this Court has the jurisdiction to protect and enforce the fundamental rights of the citizens which have been denied. According to Article 5 of the Constitution of Islamic Republic of Pakistan, 1973, loyalty to State and obedience to Constitution and law is the inviolable obligation of every citizen wherever he may be and of every other person for the time being within Pakistan. The word "citizen" does not confine to the ordinary citizen of the country but also covers a person's functions in connection with the affairs of the Federation, Province or a legal authority. All the State functionaries are duty bound to strictly adhere to the Constitution and specially Articles 4, 5 and 25 of the Constitution of Islamic Republic of Pakistan, 1973 while dealing with their day to day business. They should not wait for intervention of the Hon'ble Superior Courts but to extend equal treatment and protection of law whenever they are seized of the matters of the aggrieved persons.

14. In the present case, the respondents were mindful of the fact that there are number of judgments passed by the Hon'ble Superior Courts having decided question of law that mere pendency of departmental inquiry or in the presence of minor penalty, a civil servant cannot be denied of his fundamental rights to be considered for promotion where his batch mates and even juniors are considered and promoted. The department sat over the case of the petitioner for a long time waiting for the decision of this Court. The name of the petitioner could have been placed in the next scheduled meeting of Departmental Promotion Committee but the needful was not done in complete determent. The petitioner, who is a teacher by profession, must have gone through frustration and mental stress due to denial of his legal right. The concept of administration of justice has been defined and interpreted by a number of judicial pronouncements. Reference could be placed on the judgment passed by the Hon'ble Supreme Court of Pakistan in case titled *Samiullah Khan Marwat*

versus Government of Pakistan and another reported in [2003 SCMR 11401, in which concept of administration of justice has been interpreted, the relevant portion of the judgment is reproduced as under:

"The exercise of powers by the public functionaries in derogation to the direction of law would amount to disobey the command of law and the Constitution. The concept of administration of justice is not confined only to the judicial system rather every person discharging the functions in relation to the rights of people is bound to act fairly, justly and in accordance with law."

15. In the aforementioned circumstances, I have no other option except to allow the instant writ petition. The respondents are directed to place petitioner's promotion case before the Departmental Promotion Committee, Lodhnan within a period of two months from the receipt of this order and the Departmental Promotion Committee shall consider the promotion case of the petitioner in highly fair and just manner. The result of the Departmental Promotion Committee shall be conveyed to this Court through the Deputy Registrar (Judicial). The instant writ petition is allowed in the above terms.

(R.A.) Petition allowed

ATTESTED

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ANNEX I

Page 1 of 6

IN THE COURT OF SUBHAN SHER, JUDGE
SPECIAL EHTESAB COURT-II, KHYBER PAKHTUNKHWA PESHAWAR

Reference No. 04/2016

IPK Ehtesab Commission ...VS... Muhammad Riaz & others
C H A R G E

I, Subhan Sher, Judge, Special Ehtesab Court-II Khyber Pakhtunkhwa, hereby charge you accused namely;

1. Muhammad Riaz, aged about 50/51 years, Assistant Director Mineral Development, Mines & Mineral Department Khyber Pakhtunkhwa, presently posted as Assistant Director (Royalty) Headquarter office, Peshawar.
2. Mohsin Ali Khan, aged about 32 years, Assistant Director Mineral Development, Mines & Mineral Department Khyber Pakhtunkhwa, presently posted as Assistant Director Minerals Development, Swat.
3. Noor-ul-Islam aged about 46/47 years, Assistant Director Mineral Development, Mines & Mineral Department Khyber Pakhtunkhwa, presently posted as Assistant Director Minerals Development, Mardan.
4. Zahoor-ud-Din aged about 49/50 years, Assistant Director Mineral Development, Mines & Mineral Department Khyber Pakhtunkhwa, presently posted as Assistant Director Minerals Development, Headquarters office, Peshawar.
5. Nazir Ahmed, aged about 63 years, s/o Abdul Haq, r/o Attar Sheesha, Shah Kot, District Manshara.
6. Ashraf Ali aged about 41 years s/o Ali Zamari r/o Shah Kot, District Manshara, as follow:-

Firstly:- That you accused No.1 Muhammad Riaz posted as Mineral Development Officer during the period from 10.07.2006 to 06.11.2008, as DDO from 23.09.2010 to 31.10.2011 and Assistant Director, Mineral Department, Manshara from 07.05.2015 to 31.10.2015, during your these tenures in the above mentioned capacities, in connivance with your co-accused at serial No. 2 to 6 and in furtherance of your

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Ehtesab Court-II, KPK,
Peshawar

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common intention and common object of you all, fraudulently and illegally issued 1500 Transit Challans to your co-accused No.5, Nazir Ahmad from 28.06.2008 to 28.06.2011 for Feldspar mining area, but in fact no practical excavation/work was executed in the said area during the above mentioned period and thus you failed to exercise your authority required under the law as you were bound to inspect practically the area at the time of issuance of challans mentioned above. Similarly, you did not prepare the working papers for the cancellation of the lease to licensing authority and willfully failed to fulfill your duties; and you accused caused to suffer public exchequer huge monetary loss to the tune of Rs. 64,204,000/- and thereby committed offences as defined u/s 23 of the Khyber Pakhtunkhwa Ehtesab Commission Act 2014 (as amended upto date) punishable under section 24 read with schedule thereto of the said Act and within the cognizance of this Court.

Secondly:- That you accused No.2 Mohsin Ali while posted as Assistant Director Mineral Department, Mansehra w.e.f 31.10.2011, during this tenure, your co-accused No.5 Nazir Ahmad filed an application for renewal of the mining lease on 14.06.2012 after 9 months and 25 days of the expiry of the period for filing application for renewal of mining lease, you accused No.2 was required under the law to prepare and submit the working papers for cancellation of mining lease; but you illegally, fraudulently kept the said application in your office and had not acted upon. Similarly, you accused named above posted as Assistant Director Mineral Department, Manshra w.e.f. 25.07.2013 to 14.04.2014 but during this tenure too, you did not prepare and submit the working papers to competent authority for cancellation of mining lease. During your above mentioned tenures, your co-accused No.5 through authority letter dated 23.10.2013 without the permission of the Licensing Authority sublet the leased area to your co-accused No.6 (Ashraf Ali), who involved in unauthorized mining but you accused did not take any action against above named co-accused No.6 and has been failed to stop the unauthorized

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mining which was continued till 12.10.2015 and thus you willfully failed to fulfill your duties and responsibilities under the law, illegally benefited your co-accused No.5 by suppressing the application in your office and allowing the sublettee your co-accused No.6 for unauthorized and illegal excavation and you accused caused to suffer public exchequer huge monetary loss to the tune of Rs. 64,204,000/- and thereby committed offences as defined u/s 23 of the Khyber Pakhtunkhwa Ehtesab Commission Act 2014 (as amended upto date) punishable under section 24 read with schedule thereto of the said Act and within the cognizance of this Court.

Thirdly:-

That you accused No.3 Noor-ul-Islam while posted as Assistant Director Mineral Development, Mansehra w.e.f. 02.04.2013 to 29.07.2013 and 18.11.2014 to 06.05.2015, the application filed by your co-accused No.5 on 14.06.2012 in the office tenure of your co-accused No.2 for the renewal of the mining lease, deliberately it was kept pending from 14.06.2012 to 10.04.2015 whereas you accused were duty bound to prepare and submit the working papers to the competent authority for cancellation of mining lease but you with malafide intentions did not fulfill the same. Similarly, in your second office tenure you accused illegally and unlawfully did not prepare the working papers for the cancellation of mining lease. Furthermore, you accused illegally issued 200 challans in your second tenure from Serial No.1701 to 1900 of the Challan book on 17.02.2015 to unauthorized and illegal sublettee your co-accused No.6 inspite of the fact that the mining lease had been expired on 19.08.2012. So you accused named above willfully failed to fulfill your duties and responsibilities and illegally benefited the unauthorized sublettee your co-accused No.6 and you accused caused to suffer public exchequer huge monetary loss to the tune of Rs. 64,204,000/- and thereby committed offences as defined u/s 23 of the Khyber Pakhtunkhwa Ehtesab Commission Act 2014 (as amended upto date) punishable under section 24 read with schedule thereto of the said Act and within the cognizance of this Court.

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ATTACHED
or Copying Branch
Sb Courts, KPK,
Peshawar
2016

ATTACHED

57

Fourthly:- That you accused No.4 Zahir-ud-Din, while posted as Assistant Director Development, Manshra w.e.f from 23.04.2014 to 14.11.2014, your co-accused No.5 (Nazir Ahmad) had already filed an application for renewal of mining lease on 14.06.2012. This application under the law was time-barred, so you accused were required to prepare and submit the working papers to the competent authority for cancellation of mining lease but inspite of doing this, you accused illegally and fraudulently issued 200 challans from 1501 to 1700 on 02.05.2014 to your co-accused. You accused willfully failed to fulfill your duties and responsibilities and illegally benefited the unauthorized and illegal sublettee your co-accused No.6 and you accused caused to suffer public exchequer huge monetary loss to the tune of Rs. 64,204,000/- and thereby committed offences as defined u/s 23 of the Khyber Pakhtunkhwa Ehtesab Commission Act 2014 (as amended upto date) punishable under section 24 read with schedule thereto of the said Act and within the cognizance of this Court.

Fifthly: That you accused No.5 Nazir Ahmad were granted mining lease vide No. MDW/MA/ML-Feldspar(100)/2007 over an area of 299.163 acres near Village Shahkot, district Manshra on 20.08.2007 for the period of 5 years valid upto 19.08.2012, but you accused did not work in the said lease area since June, 2008 to May, 2010, but even then you were receiving transit challans from your co-accused No.1 since 28.06.2008 to 28.06.2011 and you accused received 1500 challans during the period and utilized it; whereas, this area was idle since 2008 to May, 210. Inspite of directions issued by the Assistant Director Mineral Development, Manshra you willfully did not submit the monthly production report showing raising and dispatches of feldspar since June, 2008 to Feb, 2011 and did not deposit the deed rent and annual rent as well. You accused also sublet the mining area to your co-accused No.6 illegally and without the permission of the licensing authority through authority letter dated 23.10.2013. You accused in connivance with accused No.1, 2, 3, 4 and 6 remained involved in unauthorized mining of feldspar and due to this,

Recd. S. J. 21.5.14
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 Minor Copying Branch
 District Court, KPK.
 Muzaffar

~~ATTESTED~~

you accused caused to suffer public exchequer huge monetary loss to the tune of Rs. 64,204,000/- and thereby committed offences as defined u/s 23 of the Khyber Pakhtunkhwa Ehtesab Commission Act 2014 (as amended upto date) punishable under section 24 read with schedule thereto of the said Act and within the cognizance of this Court.



Sixthly: That you accused No.6, Ashraf Ali remained involved in unauthorized mining of feldspar from 23.10.2013 to October, 2015 under the cover of authority letter dated 23.10.2013 and in connivance with your co-accused No. 2, 3, 4 and 5, you accused illegally obtained the transit Challans from your co-accused No. 3 and 4 and utilized them and due to this practice, you accused caused to suffer public exchequer huge monetary loss to the tune of Rs. 64,204,000/- and thereby committed offences as defined u/s 23 of the Khyber Pakhtunkhwa Ehtesab Commission Act 2014 (as amended upto date) punishable under section 24 read with schedule thereto of the said Act and within the cognizance of this Court.

Seventhly:- That you all accused at serial No. 1 to 6 during posting in different categories, working in official and private capacities and in connivance of you all illegally assisted and facilitated one another in excavating mines in utter violation of the laws by misusing your authority and due to your above mentioned illegal acts, you all six accused caused to suffer public exchequer huge monetary loss to the tune of Rs. 64,204,000/- and thereby committed offences as defined u/s 23 of the Khyber Pakhtunkhwa Ehtesab Commission Act 2014 (as amended upto date) punishable under section 24 read with schedule thereto of the said Act and within the cognizance of this Court.

And I hereby direct that you be tried by me on the said charges.

Examined Copy
Ehtesab Court-II, KPK,
Peshawar
26-05-2016

[Signature]
Judge Special,
Ehtesab Court-II, KPK
Peshawar
25.5.2016

[Signature]
ATTORNEY

RO & AC
26.05.2016

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Note: - The charges have been read over to the accused and explained in their own language.

Q: Have you heard and understood the same?

A: Yes.

Q: Do you plead guilty to the charges?

A: No.

1. Muhammad Riaz

2. Mohsin Ali Khan

3. Noor-ul-Islam

4. Zahoor-ud-Din

5. Nazir Ahmed

6. Ashraf Ali

Certified u/s 164 Cr.P.C

Certified to be True Copy
Exonika Copying Branch,
Ehtesab Court, KPK,
Peshawar

26-05-2016

26.5.2016
Judge Special,
Ehtesab Court-II, KPK
Peshawar

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[Handwritten signatures and stamps]

Order No. 25
26.05.2016

Mr. Farooq Shah, ADPG for the state and all the six accused in person alongwith their respective counsels present. Fresh wakalatnama submitted by Mr. Munir Hussain and Hafecz ul Asad Advocates on behalf of four accused, which are placed on file.

Charge framed against the accused which they denied and claimed trial. PWs at serial No. 1 to 2 alongwith record, if any, be summoned for 02.06.2016.

Since the accused facing trial have not been arrested in the present case and after submitting the Reference to this court, when they were summoned, they all put appearance, as such, to make sure their future attendance during the trial, this court invokes the power provided under section 91 of Cr.P.C, all the accused are directed to furnish bail bonds in sum of Rs. 01 Lac (100,000/-) with two sureties each in the like amount to the satisfaction of this court on or before the date fixed.

[Handwritten signature]

Verified To Be True Copy
Examiner Copying Branch,
Ehtesab Court, KPK,
Peshawar
26-05-2016

[Handwritten signature]
26.5.2016

Judge,
Special Ehtesab Court-II,
KPK, Peshawar

~~ATTESTED~~

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

Service Appeal No. 672/2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 690

Dated 16/05/2018

Zahoor-ud-Din, Assistant Director Mineral,
Khyber Pakhtunkhwa, Peshawar.



.....Appellant.

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Secretary Mineral, Civil Secretariat, Peshawar.
2. Chief Secretary (CS), Secretariat, Khyber Pakhtunkhwa, Peshawar.
3. Chief Minister's KP in the capacity of Appellate Authority under KP Departmental Appeal Rules, 1986, Chief Minister's Secretariat, Khyber Pakhtunkhwa Peshawar.
4. Provincial Selection Board for promotion of Mineral Development Officer/ Assistant Director (BPS-17) to Director (BPS-18) through Chief Secretary, CS Secretariat, Khyber Pakhtunkhwa, Peshawar.

.....Respondents

SERVICE APPEAL U/S 4 OF SERVICE
TRIBUNAL ACT, 1974 FOR DIRECTING
THE RESPONDENTS TO CONSIDER
PETITIONER FOR PROMOTION TO BPS-
18 (DEPUTY DIRECTOR MINRAL) FROM
BPS-17 (ASSISTANT DIRECTOR) IN
ACCORDANCE WITH LAW DEPARTMENT
OPINION DATED 21.07.2016, PARA-4.5
OF THE INSTRUCTIONS OF THE

ATTESTED

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

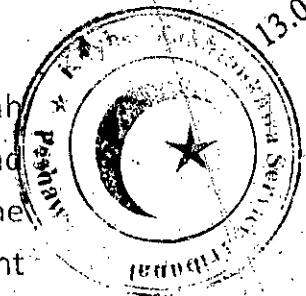
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Registrar

16/5/18

27.11.2018

Appellant with counsel and Mr. Mr. Kabir Ullah Khattak learned AAG alongwith Mr. Said Muhammad Superintendent present. Representative of the respondents submitted reply on behalf of respondent No.1 & 2. Learned A.A.G stated that the respondent No.3 & 4 also relies on the same. Adjourn. To come up for rejoinder if any and arguments on 16.01.2019 before D.B.





Member

16.01.2019


Counsel for the appellant present. Mr. M. Jan, DDA for the respondents present.

At the time of institution of service appeal, the departmental appeal of the appellant was not decided, however, after institution of service appeal the same was decided on 08.05.2018 and the respondents have also annexed the departmental authority order with the comments. Therefore, counsel for the appellant is directed to challenge the same departmental authority order through amended appeal. To come up for amended appeal/arguments on 12.03.2019 before D.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

12.03.2019

Appellant alongwith his counsel present. Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for further proceeding as per preceding order sheet on 10.04.2019 before D.B.

MA

(M. AMIN KHAN KUNDI)
MEMBER

[Signature]

(M. HAMID MUGHAL)
MEMBER

Certificate of true copy
[Signature]
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 20-3-19
Number of Words 1700
Copying Fee 8-
Urgent 25
Total 10
Name of Copyist [Signature]
Date of Completion of Copy 20-3-19
Date of Delivery of Copy 20-3-19

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

Service Appeal No. 672/2018

Zahoor-ud-Din.....Appellant

VERSUS

Govt. of Khyber Pakhtunkhwa through
Secretary Mineral and others.....Respondents

I N D E X

S#	Description of documents.	Annexure	Pages.
1.	Memo of appeal		1-6
2.	Interim application with affidavit		7-8
3.	Addresses of the parties.		9
4.	Copies of working paper	B	10-13
5.	Copies of minutes of the meeting	C	14-15
6.	Copy of departmental appeal alongwith both covering letter	D	16-21
7.	Copy of grounds of writ petition and judgment dated 22.03.2018	E	22-30
8.	Copy of legal advice / opinion of Law Debarment 21.07.2016	F	31
9.	Copy of the Para 4 & 5 of instructions	G	32-34
10.	Copies of the judgments	H	34/A-34/K
11.	Copy FIR	I	35-36
12.	Copy of charge	J	37-43
13.	Wakalantama		44

Appellant 

Through


Amjad Ali (Mardan)

Advocate

Supreme Court of Pakistan

Clerk of Counsel
Imran
Cell No.0321-9870175

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

Service Appeal No. 672/2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 690

Dated 16/05/2018

Zahoor-ud-Din, Assistant Director Mineral,
Khyber Pakhtunkhwa, Peshawar.

.....Appellant.

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Secretary Mineral, Civil Secretariat, Peshawar.
2. Chief Secretary (CS), Secretariat, Khyber Pakhtunkhwa, Peshawar.
3. Chief Minister's KP in the capacity of Appellate Authority under KP Departmental Appeal Rules, 1986, Chief Minister's Secretariat, Khyber Pakhtunkhwa Peshawar.
4. Provincial Selection Board for promotion of Mineral Development Officer/ Assistant Director (BPS-17) to Director (BPS-18) through Chief Secretary, CS Secretariat, Khyber Pakhtunkhwa, Peshawar.

.....Respondents

SERVICE APPEAL U/S 4 OF SERVICE
TRIBUNAL ACT, 1974 FOR DIRECTING
THE RESPONDENTS TO CONSIDER
PETITIONER FOR PROMOTION TO BPS-
18 (DEPUTY DIRECTOR MINRAL) FROM
BPS-17 (ASSISTANT DIRECTOR) IN
ACCORDANCE WITH LAW DEPARTMENT
OPINION DATED 21.07.2016, PARA-4.5
OF THE INSTRUCTIONS OF THE

Filed to-day

Registrar

16/5/18

(2)

ESTABLISHMENT DEPARTMENT,
SUPERIOR COURTS JUDGMENTS 2000
SCMR 645, PLJ 2015 LAHORE 24 (DB),
PLJ 2015 LAHORE 45 AND 2009 PLC
(CS) 40, CIVIL SERVANT ACT, 1973
AND PMS RULES, 2007.

RESPECTFULLY SHEWETH:-

1. That appellant was initially appointed as Royalty Inspector on 16.01.1999 on regular basis in the department and was later promoted to the post of Assistant Director on 12.04.2012, serving and posted as such in Mineral Development Department at Peshawar. ~~(Copies of)~~
appointment letters are Annex "A")
2. That throughout appellant's service, appellant worked efficiently. No complaint by any person exists against the appellant.
3. That working paper of Provincial Selection Board was prepared for promotion to the post of Deputy Director (BPS-18), whereby the name of the appellant was included in the working paper. It is pertinent to mention that as per the working paper, the appellant alongwith other officers have been recommended to be promoted on regular basis **(Copies of working paper are Annex "B")**
4. That the meeting of the Provincial Selection Board for the promotion of Assistant Director to the post of Deputy Director Mineral (BPS-18) was held on 28.12.2017, whereby without lawful justification,

the Provincial Selection Board deferred the case of the appellant for promotion due to pendency of the Ehtisab Court case. **(Copies of minutes of the meeting are Annex "C")**

(3)

5. That the appellant filed departmental appeal dated 18.01.2018, which is dispatched through proper channel through covering letter dated 19.01.2018 & 23.02.2018 to the respondent No.1, but no action was taken. **(Copy of departmental appeal alongwith both covering letter are Annex "D")**

6. That being aggrieved, the appellant filed W.P.No.1287-P/2018 before the Hon'ble Peshawar High Court, Peshawar, which was disposed-off with the direction to the appellant to appear before respondent No.1, as his departmental appeal is still pending, and after providing opportunity to the appellant, the respondent No.1 will decide the appeal of appellant within thirty days. **(Copy of grounds of writ petition and order dated 22.03.2018 are Annex "E")**

7. That thereafter, appellant appeared before respondent No.1 and despite the clear direction of the hon'ble High Court the departmental appeal of the appellant has not been decided till date.

8. That as the statutory period as described in law has already been lapse, therefore, finding no other efficacious remedy, the appellant approach this hon'ble Tribunal Court for following grounds:-

GROUND

A. Because as per legal advice/ opinion of the Khyber Pakhtunkhwa Law Department dated 21.07.2016;

promotion of a Civil Servant cannot be deferred due to pending disciplinary proceedings, hence, deferment of the appellant from promotion to BPS-18 is illegal and is against the opinion/ legal advice of the Law Department. **(Copy of legal advice / opinion of Law Department is Annex "F")**

(4)

B. Because as per Para-4 & 5 of the Instructions of the Establishment Department dated 2006, promotion of a Civil Servant cannot be deferred on account of pending departmental proceedings, hence deferment of the appellant from promotion to BPS-18 is illegal and against instructions of the Establishment Department. **(Copy of the Para 4 & 5 of instructions are Annex "G")**

C. Because as per **2000 SCMR 645, PLJ 2015 Lahore 24 (DB), PLJ 2015 Lahore 45 and 2009 PLC (CS) 40**, promotion of a Civil Servant cannot be deferred due to pending departmental proceedings against the Civil Servant, hence deferment of the appellant from the promotion to BPS-18 is against the judgments of the Superior Courts. **(Copy of the Judgments is Annex H)**
Annex "H"

D. Because there is no bar for stoppage/ deferment of promotion of the appellant on ground of pending inquiry as appellant are to be presumed as innocent unless proved guilty.

E. Because the alleged so-called inquiry as initiated on 15.09.2017 against thirteen persons including the appellant. According to notification, the said enquiry was to be completed within 30 days, the

inquiry has not been concluded and is still in progress for more than four months with no completion in sight to ascertain the truth. It is also pertinent to mention that against the same charges, an FIR has been lodged against forty five persons excluding the appellant . Appellant are not charged in the FIR, which also shows the innocence of the appellant with regard to the charges. **(Copy FIR, charge sheet in Reference No.4/2016 is Annex "I & J")**

(5)

- F. Because Ehtisab case is pending in the Court against the appellant including others. Formal charge was framed by the Court on 26.05.2016, and so far the statement of only one witness has been completed. In reference fourteen witnesses have been mentioned by the prosecution, which also indicates that conclusion of the case will consume sufficient time. The appellant will be debarred from benefits of promotion for such a long time without proof of any guilt.
- G. Because a person is presumed to be innocent until proved to be guilty by a competent Court of law. So far nothing has been proved by the department against the appellant. Till today the appellant is innocent in the eyes of law. Departmental Promotion Board fell into error by not recommending the appellant for promotion merely due to the pendency of a criminal case enquiry, hence the valuable rights of the appellant has been infringed.
- H. Because the august Supreme Court of Pakistan as well as different High Courts have clearly given the verdict in the subject matter that the

pendency of an inquiry or even a presence of a minor penalty cannot come in the way of promotion of a civil servant as it is the right of every civil servant that he be considered for promotion alongwith his batch mates. It is pertinent to mention that in working paper (Annex "B"), the appellant alongwith his other batch mates have been recommended for promotion on regular basis. (6)

*It is, therefore humbly prayed that, on acceptance of this appeal, the respondents may kindly be directed to consider appellant for promotion to BPS-18 (Deputy Director Minral) from BPS-17 (Assistant Director) in accordance with Law Department opinion dated 21.07.2016, Para-4.5 of the Instructions of the Establishment Department, Superior Courts judgments **2000 SCMR 645, PLJ 2015 Lahore 24 (DB), PLJ 2015 Lahore 45 and 2009 PLC (CS) 40, Civil Servant Act, 1973 and PMS Rules, 2007** within shortest possible time please.*

Appellant

Through

Amjad Ali (Mardan)

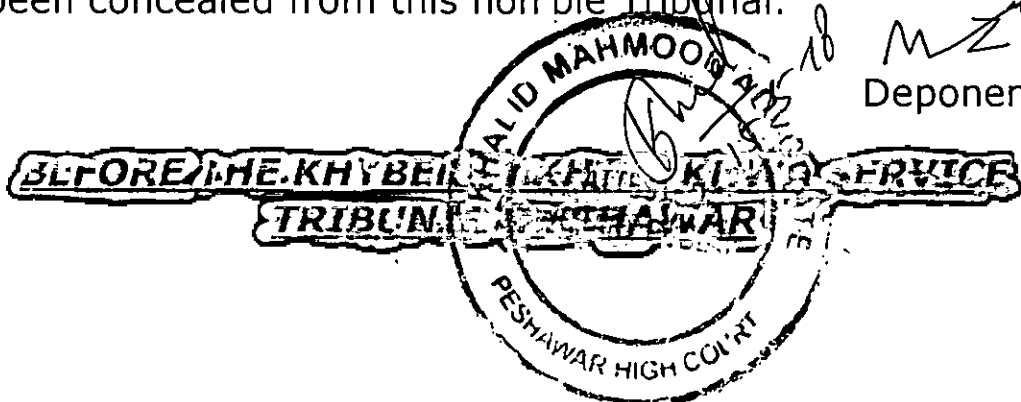
Advocate

Supreme Court of Pakistan

AFFIDAVIT

I, do hereby affirm and declare on oath that the contents of the appeal are true and correct to the best of my knowledge and belief and nothing material has been concealed from this hon'ble Tribunal.

Deponent



(7)

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

Service Appeal No. _____/2018

Zahoor-ud-Din.....Appellant

VERSUS

Govt. of Khyber Pakhtunkhwa through
Secretary Mineral and others.....Respondents

**APPLICATION FOR INTERIM RELIEF
TO THE EFFECT THAT, TILL THE
FINAL DECISION OF TITLED
APPEAL, THE RESPONDENTS MAY
GRACIOUSLY BE RESTRAINED FROM
FILLING THE POST OF DEPUTY
DIRECTOR MINERAL (BPS-18)**

Respectfully Sheweth:

1. That the above titled appeal is being filed before this hon'ble Tribunal alongwith instant application.
2. That the grounds of main appeal may kindly also be considered as part and parcel of this application.
3. That the appellant is having a good prima-facie case in his favour and is also sanguine about its success.
4. That balance of convenience also lies in faovur of appellant.
5. That if the relief as prayed for in the heading of this application is not granted, the very purpose of accompanying appeal will become infructuous.

It, is therefore, prayed that, on acceptance of this application, the respondents may graciously be directed not to fill the posts of Deputy Director Mineral (BPS-18) till the final decision of titled petition.

(8)

M. Zahoor

Appellant

Through

Amjad Ali

Amjad Ali (Mardan)

Advocate.

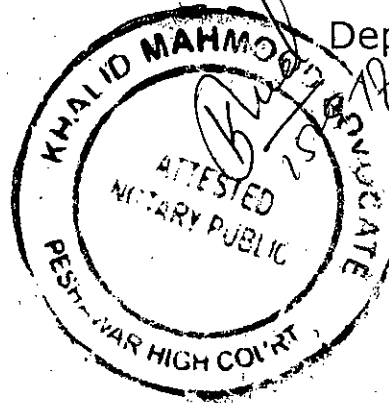
Supreme Court of Pakistan

AFFIDAVIT

I, do hereby affirm and declare on oath that the contents of the Application are true and correct to the best of my knowledge and belief and nothing material has been concealed from this hon'ble Tribunal.

M. Zahoor

Deponent



(9)

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

Service Appeal No. _____/2018

Zahoor-ud-Din.....Appellant

VERSUS

Govt. of Khyber Pakhtunkhwa through
Secretary Mineral and others.....Respondents

MEMO OF ADDRESSES

APPELLANT

Zahoor-ud-Din, Assistant Director Mineral, KP
Peshawar.

RESPONDENTS

1. Govt. of Khyber Pakhtunkhwa through Secretary Mineral, Civil Secretariat, Peshawar.
2. Chief Secretary (CS), Secretariat, Khyber Pakhtunkhwa, Peshawar.
3. Chief Minister's KP in the capacity of Appellate Authority under KP Departmental Appeal Rules, 1986, Chief Minister's Secretariat, Khyber Pakhtunkhwa Peshawar.
4. Provincial Selection Board for promotion of Mineral Development Officer/ Assistant Director (BPS-17) to Director (BPS-18) through Chief Secretary, CS Secretariat, Khyber Pakhtunkhwa, Peshawar.

Appellant 

Through


Amjad Ali (Mardan)
Advocate
Supreme Court of Pakistan

(10)
Annexure "B"

PSB-I

WORKING PAPER FOR PROVINCIAL SELECTION BOARD.

Department: DIRECTORATE GENERAL MINES AND MINERALS KHYBER PAKHTUNKHWA (GOVERNMENT OF KHYBER PAKHTUNKHWA MINERAL DEVELOPMENT DEPARTMENT).

1.	Nomenclature of the Post/Basic Scale		Deputy Director Technical (BS-18)		
2.	Service Group/Cader		Mines and Minerals		
3.	Sanction strength of cader		8 posts.		
4.			<u>Direct</u>	<u>Promotion</u>	<u>Transfer</u>
	i)	Percentage of share	---	100 %	---
	ii)	Nos of posts allocated To each category	---	8 posts.	---
	iii)	Present occupancy postion	---	1 post	---
	iv)	No of vacancies in each category	---	7 posts.	---
	v)	How did the vacancy (ies) under Promotion quota accrue and since When?	The Finance Department has created Two posts of Deputy Director Technical (BS-18) During the financial year 2016-17 and due to retirement of the incumbent and promotion, these posts have become with effect from 01/01/2015,04/04/2015,26/08/2015, 01/09/2016 and 20/06/2017(Annexure-I,II,III,IV,V & VI).		
	vi)	Recruitment Rules.	By Promotion on the basis of seniority-cum-fitness, from amongst the Assistant Directors (Technical)(Mining Engineer)/Geologist/Assistant Directors (Royalty) with at least five years service as such. (Annexure- VII).		
	vii)	Required length of service	5-years service		
	viii)	Whether to be promoted on Regular basis or appointed on Acting charges basis.	The officers in "Panel of officers for consideration" at S.No. 01 to 06 having the requisite length of service may be promoted on regular basis. While the officer at S.No. 07 of the same panel having short length of service about 04 months may be promoted on acting charge basis as per Rule-09 of part-II of appointment, promotion & transfer Rules-2011.(ESTA CODE revised addition-2011)		
	ix)	Mandatory training, if any.	Not applicable		
	x)	Minimum required Score on EI	60		

Annexure M
ATTESTED

Signature _____

Designation _____

Dated: 25/08/2017

PANEL OF OFFICERS FOR CONSIDERATION.

S.No	Name of Officer with Qualification	Date of Birth	Date of 1 st entering into Govt. service	Date Of Appointment Promotion To BPS-17	Date of Regular Appointment promotion to the present scale.	Whether Fulfill The prescribed Length of Service.	Quantified Scores	Missing PERs (if any)	Disciplinary Proceeding (if any)	Case (if any) In any court of Law including NAB/Plea Bargaining with NAB	Mandatory Training for promotion	Research papers	Present posting	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
1	Mr. Siraj Ahmad B.Sc. Mining Engineering	18/04/1970	18/12/1994	20/12/2008	20.12/2008	Yes	76.25	Nil	Nil	Nil	Nil	Nil	Assistant Director (Technical) (BPS-17) HQ Office	Eligible
2	Mr. Sher Aynz B.Sc L.L.B	20-05-1961	13-09-2008	20-12-2008	20-12-2008	Yes	77.50	Nil	1. The Minor Penalty "with holding of two increments for one year" was imposed vide notification No. SOE(MDD)/4-8/2014 dated 04/08/2016. 2. The name of the officer has been included in embezzlement of royalty case in office of the Assistant Director Mineral Mardan vide Notification No. SOE(MDD)/4-1/Vol-II/2017 dated 15/09/2017 and the enquiry is pending with the Enquiry Officer.	Nil	Nil	=do=	1. The Minor Penalty "with holding of two increments for one year" was imposed vide notification No. SOE(MDD)/4-8/2014 dated 04/08/2016. 2. The name of the officer has been included in embezzlement of royalty case in of the Assistant Director Mineral Mardan vide Notification No. SOE(MDD)/4-1/Vol-II/2017 dated 15/09/2017 and the enquiry is pending with the Enquiry Officer.	

ATTACHED

3	Muhammad Zulkifal Khan B.Sc Mining Engineering	19-01-1986	19-12-2009	19-12-2009	19-12-2009	Yes	78.57	Nil	Nil	Nil	Nil	Nil	Nil	Eligible
4	Mr. Mohsin Ali Khan B.Sc Mining Engineering	15-05-21954	19-12-2009	19-12-2009	19-12-2009	Yes	78.57	Nil	Reference No. 4/2016 in the Court of Special Ehtesab Court-II Khyber Pakhtunkhwa, Peshawar against the officer regarding Feldspare case under file No. MDW/MA/PL-Feldspare (100)/2007 is under process.	Nil	Nil	Nowshera	Reference No. 4/2016 in the Court of Special Ehtesab Court-II Khyber Pakhtunkhwa, Peshawar against the officer regarding Feldspare case under file No. MDW/MA/PL-Feldspare (100)/2007 is under process.	
5	Mr. Ishaq Ahmad Saleem	06-04-1986	19-12-2009	19-12-2009	19-12-2009	Yes	72.86	Nil	The minor penalty of "Censure" has been imposed in the Departmental enquiry on the officer, vide letter No.9638-39/DGM MA/Admn/2/942, dated 28/09/2015.	Certificate attached	Nil	H Q Office	The minor penalty of "Censure" has been imposed in the Departmental enquiry on the officer, vide letter No.9638-39/DGM MA/Admn/2/942, dated 28/09/2015.	
6	Mr. Zahoor Ud Din B.A	01-04-1967	16-01-1991	12-04-2012	12-04-2012	Yes	78.00	Nil	1. Reference No. 4/2016 in the Court of Special Ehtesab Court-II Khyber Pakhtunkhwa, Peshawar against the officer regarding Feldspare case under file No. MDW/MA/PL-Feldspare (100)/2007 is under process. 2. The name of the officer has been included in embezzlement of royalty case in office of the Assistant Director Mineral Mardan, vide Notification No. SOE(MDD)/4-1/Vol-II/2017 dated 15/09/2017 and the enquiry is pending with the Enquiry Officer.	Nil	Nil	H Q office	1. Reference No. 4/2016 in the Court of Special Ehtesab Court-II Khyber Pakhtunkhwa, Peshawar against the officer regarding Feldspare case under file No. MDW/MA/PL-Feldspare (100)/2007 is under process. 2. The name of the officer has been included in embezzlement of royalty case in office of the Assistant Director Mineral Mardan, vide Notification No. SOE(MDD)/4-1/Vol-II/2017 dated 15/09/2017 and the enquiry is pending with the Enquiry Officer.	

ACCEPTED

7	Mr. Hayat ur Rehman B.Sc Mining Engineering	27-02-1987 (13)	21-02-2013	21-02-2013	21-02-2013	No	77.50	Nil	Nil	Nil	Nil	Nil	II/Q Office	Not eligible due to non-completion of length of service
8	Mr. Ihsan Ud Din B.Sc Mining Engineering	19-08-1987	26-08-2013	26-08-2013	26-08-2013	No	---	2013 2014 2015 2016	Nil	Nil	Nil	Nil	Mardan	Not eligible due to non-completion of length of service
9	Mr. Qasim Jamal M.Sc Mineral Resource Management	01-06-1987	07-02-2014	07-02-2014	07-02-2014	No	--	2014 2015 2016	Nil	Nil	Nil	Nil	Maushera	Not eligible due to non-completion of length of service
10	Mr. Asmat Ali B.Sc Mining Engineering	01-07-1985	07-03-2014	07-03-2014	07-03-2014	No	---	2014 2015	Nil	Nil	Nil	Nil	D.I.Khan	Not eligible due to non-completion of length of service
11	Mr. Muhammad Riaz M.A	02-02-1966	11-02-1996	23-09-2015	23-09-2015	No	---	2015 2016	Nil	Nil	Nil	Nil	Abbottabad	Not eligible due to non-completion of length of service

Certified that the officer at S.No 1 to 6 included in the panel are eligible for promotion in all respects. While the officer at S.No. 7 of the same panel having short length of service about four months may be Promoted on acting charge basis as per rule 9 of the part-II of appointment of promotion rules 2011 (ESTA CODE Revised addition 2011)

ATTESTED

Signature: _____
Designation: _____
Date: 30/11/17

Ann - "C"

SUBJECT:- PROMOTION OF ASSISTANT DIRECTOR BS-17 TO THE POST OF DEPUTY DIRECTOR MINERAL BS-18.

(14)

Secretary Mines & Minerals Development apprised the Board that due to creation, retirement and promotion, seven (07) posts of Deputy Director Technical BS-18 are lying vacant.

2. According to service rules the post is required to be filled as under:-

"By promotion, on the basis of seniority cum fitness, from amongst the Assistant Directors (Technical) (Mining Engineer)/Geologist/Assistant Directors (Royalty) with at least five years service as such."

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

S.NO	NAME OF OFFICER	RECOMMENDATIONS OF THE BOARD
1.	Mr. Siraj Ahmad	His date of birth is 18.04.1970. He joined government service on 18.12.1994 and was promoted to BS-17 on 20.12.2008. No enquiry is pending against him. His service record upto 2016 is generally good. The Board recommended the Officer for promotion to the post of Deputy Director BS-18 on regular basis. He will be on probation for a period of one year.
2.	Mr. Sher Ayaz	His date of birth is 20.05.1961. He joined government service on 13.09.1982 and was promoted to BS-17 on 20.12.2008. The Secretary Mines was directed to inform the enquiry Officer to speed up the instant enquiry and submit report at the earliest. The Board recommended to defer his promotion.
3.	Mr. Muhammad Zulkifal Khan	His date of birth is 19.01.1986. He joined government service on 19.12.2009 in BS-17. No enquiry is pending against him. His service record upto 2016 is generally good. The Board recommended the Officer for promotion to the post of Deputy Director BS-18 on regular basis. He will be on probation for a period of one year.
4.	Mr. Mohsin Ali Khan	His date of birth is 15.05.1984. He joined government service on 19.12.2009 in BS-17. According to Mineral

ATTESTED

[Handwritten Signature]

		Development department a case is under process against him in Ehtisab Court. The Board recommended to defer his promotion. (15)
5.	Mr. Ishfaq Ahmad Saleem	His date of birth is 06.04.1986. He joined government service on 19.12.2009 in BS-17. He has been imposed a minor penalty of censure on 28.09.2015. No enquiry is pending against him. His service record upto 2016 is generally good. The Board recommended the Officer for promotion to the post of Deputy Director BS-18 on regular basis. He will be on probation for a period of one year.
6.	Mr. Zahoor ud Din	His date of birth is 01.04.1962. He joined government service on 16.01.1991 and was promoted to BS-17 on 12.04.2012. According to Mineral Development department he is included in Ehtisab Court case and an enquiry is pending against him. The Board recommended to defer his promotion.
7.	Mr. Hayat ur Rehman	His date of birth is 27.02.1987. He joined government service on 21.02.2013 in BS-17. He has not yet completed prescribed length of service for promotion. No enquiry is pending against him. His service record upto 2016 is generally good. The Board recommended the Officer for appointment to the post of Deputy Director BS-18 on acting charge basis.

ATTESTED

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16

HON'BLE CHIEF MINISTER KHYBER PAKHTUNKHWA,
PESHAWAR.

THROUGH PROPER CHANNEL

DEPARTMENTAL APPEAL AGAINST THE
ORDER NO. SO(E)/MDD/2-4/2017 DATED
PESHAWAR JANUARY 05, 2018 WHEREBY
THE APPELLANT HAS BEEN DEFERRED FOR
PROMOTION DUE TO PENDENCY OF A
CRIMINAL CASE AND INQUIRY.

PRAYER IN APPEAL:-

ATTESTED

BY ALLOWING THE INSTANT APPEAL AND
DIRECTING THE COMPETENT AUTHORITY
TO CONSIDER THE NAME OF THE
APPELLANT FOR PROMOTION TO THE POST
OF DEPUTY DIRECTOR (BPS-18)
DIRECTORATE GENERAL, MINES AND
MINERALS, KHYBER PAKHTUNKHWA
PESHAWAR ON REGULAR BASIS, W.E.F
FROM 05/01/2018, IRRESPECTIVE OF
PENDENCY OF CRIMINAL CASE AND
INQUIRY.

justification, the PSB deferred the case of the appellant for promotion due to pendency of an Ehtisab Court case (Minutes of meeting marked "C")

5. That feeling aggrieved against the impugned order, the instant appeal is filed before your honour for favorable consideration inter-alia on following grounds:- (Impugned order Annex; "A")

GROUND:-

- A) That the alleged so called inquiry was initiated on 15/09/2017 against thirteen persons including the appellant. According to notification, the said enquiry was to be completed within 30 days, the inquiry has not been concluded and is still in progress for more than four months with no completion in sight to ascertain the truth. It is also pertinent to mention that against the same charges, an F.I.R has been lodged against forty five persons excluding the appellant. Appellant is not charged in the FIR, which also shows the innocence of the appellant with regard to the charges. (Annexed Mark "H")

ATTESTED

- B) That Ehtisab case is pending in the court against appellant including others. Formal charge was framed by the court on 26/05/2016, and so far the statement of

(17)

RESPECTFULLY SHEWETH;

Appellant submits as under:-

FACTS OF THE CASE:-

1. That the appellant Zahooruddin Assistant Director was initially appointed as royalty inspector on 16/01/1999 on regular basis in the department and was later promoted to the post of assistant director on 12/04/2012, serving and posted as such in mineral development department at Peshawar.
2. That throughout appellant service, appellant worked efficiently. No complaint by any person exists against the appellant.
3. That working paper of Provincial Selection Board was prepared for promotion to the post of Deputy Director (BPS-18), whereby the name of the appellant is included in the working paper. It is pertinent to mention that as per the working paper, the appellant along with other officers have been recommended to be promoted on regular basis (working paper marked as Annexure "B").
4. That meeting of the PSB for the promotion of Assistant Director to the post of Deputy Director Mineral (BPS-18) was held on 28/12/2017, whereby without lawful


ATTESTED

only one witness has been completed. In reference fourteen witnesses have been mentioned by the prosecution which also indicates that conclusion of the case will consume sufficient time. The appellant will be debarred from benefits of promotion for such a long time without proof of any guilt.

- C) That a person is presumed to be innocent until proved to be guilty by a competent court of law. So far nothing has been proved by the department against the appellant. Till today the appellant is innocent in the eyes of law. Departmental Promotion Board fell into error by not recommending the appellant for promotion merely due to the pendency of a criminal case enquiry, hence the valuable rights of the appellant have been infringed.
- D) That August Supreme Court of Pakistan as well as different High Courts have clearly given the verdict in the subject matter that the pendency of an inquiry or even a presence of a minor penalty cannot come in the way of promotion of a civil servant as it is the right of every civil servant that he be considered for promotion along with his batch mates. It is pertinent to mention that in working paper "Annex" B), the appellant along with his other batch mates have been recommended for promotion on regular basis. (Annexed as "D" to "G").

~~ATTACHED~~

20

IN VIEW OF THE ABOVE, IT IS HUMBLY PRAYED THAT ON ACCEPTANCE OF THE INSTANT APPEAL, DIRECTIONS BE GIVEN TO THE CONCERNED AUTHORITY TO CONSIDER THE APPELLANT FOR PROMOTION ON REGULAR BASIS TO THE POST OF DEPUTY DIRECTOR (BPS-18) MINERAL W.E.F 5/01/2018. (MARKED "A").

Peshawar dated: 18/01/2018


APPELLANT


ATTESTED

To,

The Director General,
Mines and Minerals, Khyber Pakhtunkhwa,
Peshawar.

(21)

Through:- **Proper Channel**

Subject: **APPEAL OF ZAHOOR-UD-DIN BEFORE THE HON'ABLE CHIEF MINISTER KHYBER PAKHTUNKHWA, PESHAWAR.**

Kindly referred to the subject above and to state that the undersigned filed appeal against the order No. SO(E)/MDD/2-4/2017 dated 05-01-2018, whereby the appellant has been deferred for promotion due to pending of criminal case and inquiry on 18-01-2018, but since then no decision or any information has been communicated to the appellant.

It is therefore requested to kindly forward my application / reminder to the Competent Authority for further necessary action please.

M. Zhoor 23/1/18
ZAHOOR-UD-DIN
Assistant Director (Tech),
H/Q Office, Peshawar.

ATTESTED



Annex - E

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BEFORE THE HONOURABLE PESHAWAR HIGH COURT PESHAWAR



W.P.No. _____/2018

1. Zahoor-ud-Din, Assistant Director Mineral, KP Peshawar.
2. Mohsin Ali Khan, Assistant Director Mineral, KP Peshawar.

.....Petitioners

VERSUS

1. Govt. of Khyber Pakhtunkhwa Secretary Mineral, Civil Secretariat, Peshawar.
2. Chief Secretary (CS), Secretariat, Khyber Pakhtunkhwa, Peshawar.
3. Chief Minister's KP in the capacity of Appellate Authority under KP Departmental Appeal Rules, 1986, Chief Minister's Secretariat, Khyber Pakhtunkhwa Peshawar.
4. Provincial Selection Board for promotion of Mineral Development Officer/ Assistant Director (BPS-17) to Director (BPS-18) through Chief Secretary, CS Secretariat, Khyber Pakhtunkhwa, Peshawar.

.....Respondents

ATTESTED

WRIT PETITION UNDER ARTICLE
199 OF THE CONSTITUTION OF
ISLAMIC REPUBLIC OF PAKISTAN,
1973

ATTESTED
EXAMINER
Peshawar High Court

28 MAR 2018

RESPECTFULLY SHEWETH:-

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④

1. That petitioner No.1 was Initially appointed as Royalty Inspector on 16.01.1991 on regular basis in the department and was later promoted to the post of Assistant Director on 12.04.2012, serving and posted as such in Mineral Development Department at Peshawar.
2. That petitioner No.2 was appointed as Assistant Director through Public Service Commission on 17.12.2009 on regular basis in the Mineral Department.
3. That throughout petitioners' service, petitioners worked efficiently. No complaint by any person exists against the petitioners.
4. That working paper of Provincial Selection Board was prepared for promotion to the post of Deputy Director (BPS-18), whereby the name of the petitioners was included in the working paper. It is pertinent to mention that as per the working paper, the petitioners alongwith other officers have been recommended to be promoted on regular basis (Copies of working paper are Annex "B")
5. That the meeting of the Provincial Selection Board for the promotion of Assistant Director to the post of Deputy Director Mineral (BPS-18) was held on 28.12.2017, whereby without lawful justification, the Provincial Selection Board deferred the case of

ATTESTED

ATTESTED
EXAMINER
Peshawar High Court
28 MAR 2018

the petitioners for promotion due to pendency of the Ehtisab Court case. (Copies of minutes of the meeting are Annex "C")

6. That the petitioners filed departmental appeal dated 18.01.2018, which is dispatched through proper channel through covering letter dated 19.01.2018 & 23.02.2018 to the respondent No.1, but not responded so far. (Copy of both departmental appeals alongwith both covering letters are Annex "D")

7. That finding no other efficacious remedy, the petitioners approach this hon'ble Court for following grounds:-

GROUND

A. Because as per legal advice/ opinion of the Khyber Pakhtunkhwa Law Department dated 21.07.2016, promotion of a Civil Servant cannot be deferred due to pending disciplinary proceedings, hence, deferment of the petitioners from promotion to BPS-18 is illegal and is against the opinion/ legal advice of the Law Department. (Copy of legal advice / opinion of Law Department is Annex "E")

B. Because as per Para-4 & 5 of the Instructions of the Establishment Department dated 2006, promotion of a Civil Servant cannot be deferred on account of pending departmental proceedings, hence deferment of the petitioners from promotion to BPS-18 is illegal and against instructions of the

ATTESTED

EXAMINER
Punjab High Court
23 MAR 2018

Establishment Department. (Copy of the Para 4 & 5 of instructions are Annex "F")

(4)
25

C. Because as per 2000 SCMR 645, PLJ 2015 Lahore 24 (DB), PLJ 2015 Lahore 45 and 2009 PLC (CS) 40, promotion of a Civil Servant cannot be deferred due to pending departmental proceedings against the Civil Servant, hence deferment of the petitioners from the promotion to BPS-18 is against the judgments of the Superior Courts. (Copies of the judgments ibid are Annex "G")

D. Because there is no bar for stoppage/ deferment of promotion of the petitioners on ground of pending inquiry as petitioners are to be presumed as innocent unless proved guilty.

E. Because the alleged so-called inquiry as initiated on 15.09.2017 against thirteen persons including the petitioners. According to notification, the said enquiry was to be completed within 30 days, the inquiry has not been concluded and is still in progress for more than four months with no completion in sight to ascertain the truth. It is also pertinent to mention that against the same charges, an FIR has been lodged against forty five persons excluding the petitioners. Petitioners are not charged in the FIR, which also shows the innocence of the petitioners with regard to the charges. (Copy FIR, charge sheet in Reference No.4/2016 is Annex "H & I")

F. Because Ehtisab case is pending in the Court against the petitioners including others. Formal

ATTESTED

ATTESTED

EXAMINER
Peshawar High Court

28 MAR 2018

charge was framed by the Court on 26.05.2016, and so far the statement of only one witness has been completed. In reference fourteen witnesses have been mentioned by the prosecution, which also indicates that conclusion of the case will consume sufficient time. The petitioners will be debarred from benefits of promotion for such a long time without proof of any guilt.

G. Because a person is presumed to be innocent until proved to be guilty by a competent Court of law. So far nothing has been proved by the department against the petitioners. Till today the petitioners are innocent in the eyes of law. Departmental Promotion Board fell into error by not recommending the petitioners for promotion merely due to the pendency of a criminal case enquiry, hence the valuable rights of the petitioners have been infringed.

H. Because the august Supreme Court of Pakistan as well as different High Courts have clearly given the verdict in the subject matter that the pendency of an inquiry or even a presence of a minor penalty cannot come in the way of promotion of a civil servant as it is the right of every civil servant that he be considered for promotion along with his batch mates. It is pertinent to mention that in working paper (Annex "B"), the petitioners along with his other batch mates have been recommended for promotion on regular basis.

~~ATTESTED~~

~~ATTESTED~~
EXAMINER
Peshawar High Court

28 MAR 2018

(87)

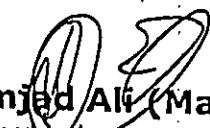
It is, therefore humbly prayed that, on acceptance of this writ petition, the respondents may kindly be directed to consider petitioners for promotion to BPS-18 (Deputy Director Mineral) from BPS-17 (Assistant Director) by deciding departmental appeals strictly in accordance with Law Department opinion dated 21.07.2016, Para-4.5 of the Instructions of the Establishment Department, Superior Courts judgments 2000 SCMR 645, PLJ 2015 Lahore 24 (DB), PLJ 2015 Lahore 45 and 2009 PLC (CS) 40, Civil Servant Act, 1973 and PMS Rules, 2007 within shortest possible time please.

INTERIM RELIEF

By way of interim relief, it is, prayed that, the respondents may graciously be directed not to fill the posts of Deputy Director Mineral (BPS-18) till the final decision of titled petition.

Petitioners:

Through


Amjad Ali (Mardan)
Advocate
Supreme Court of Pakistan

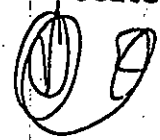
CERTIFICATE

It is certify that, no such like writ petition has earller been filed by the petitioner before this Hon'ble Court.

LIST OF BOOKS

1. Constitution of Pakistan, 1973
2. Other case laws as per need.

Advocate




ATTESTED

ATTESTED
EXAMINER
Peshawar High Court
28 MAR 2018

(28)

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

**Writ Petition No.1284-P of 2018
With Interim Relief**

JUDGMENT

Date of hearing.....22-03-2018.....

Petitioners: (Zahoor-ud-Din and another) by Mr.Amjad Ali
(Mardan), Advocate.

Respondents:(Government of Khyber Pakhtunkhwa and
others) by Mr.Waqar Ahmad Khan, AAG.

YAHYA AFRIDI, C.J.- Zahoor-ud-Din and

another, petitioners, seek the constitutional

jurisdiction of this Court, praying that:

"It is, therefore, humbly prayed that, on acceptance of this writ petition, the respondents may kindly be directed to consider petitioners for promotion to BPS-18 (Deputy Director Mineral) from BPS-17 (Assistant Director) by deciding departmental appeals strictly in accordance with Law Department opinion dated 21.07.2016, para4.5 of the Instructions of the Establishment Department, Superior Courts judgments 2000 SCMR 645, PLJ 2015 Lahore 24(DB), PLJ 2015 Labore 45 and 2009 PLC (CS) 40, Civil Servant Act, 1973 and PMS Rules, 2007 within shortest possible time please."

ATTESTED

ATTESTED

DEPUTY MINISTER
Peshawar High Court

28 MAR 2018

2. In essence, the grievance of the petitioner is that the departmental appeal of the petitioners is pending adjudication before the respondents.

3. The appeal of the petitioners is stated to be pending before the worthy Secretary Mineral, Government of Khyber Pakhtunkhwa, Peshawar/ respondent No.1 which requires to be decided. The petitioners are directed to appear before the worthy Secretary Mineral on 29.03.2018 at 10.00 AM. Surely, the petitioners should be provided sufficient opportunity to plead their case. Thereafter, the worthy Secretary is to decide the matter within thirty days. In case, the relief sought by the petitioners cannot be granted then reason in writing be recorded for the same, and copy thereof be transmitted to the worthy Director, Human Rights Cell of this Court. The worthy AAG also undertook to ensure that the

ATTESTED

ATTESTED
29 MAR 2018

appeal of the petitioners pending before respondent

No.1 is decided within the given time.

(30)

This writ petition is disposed of,

accordingly.

Announced:
Dt.22-03-2018.

Y. Afridi
CHIEF JUSTICE
M. Ayub Khan
JUDGE

ATTENDED

CERTIFIED TO BE TRUE COPY
Examiner
Peshawar High Court, Peshawar
Authorised Under Article 87 of
The Qanun-e-shahadat Order 1984
28 MAR 2018

No. 16080
Date of Presentation 28/3/18
No of Pages 2
Copying Fee ---
Urgent Fee ---
Total --- 28/3/18
Date of ---
Date of ---
Receipt ---

sd/ E-100
(DB) Hon'ble Mr. Justice Yahya Afridi, Chief Justice
Hon'ble Mr. Justice Muhammad Ayub Khan, Judge.

Handwritten notes at top left: "Department of Public Health Engineering", "No. SO(II)/PHED/1-1/2016/I.R Karak", "18-07-2016", "CPC".

Handwritten notes at top right: "31" in a circle, "Ann 3", "F", and a circular stamp with the number "33".

GOVERNMENT OF KHYBER PAKHTUNKHWA
PARLIAMENTARY AFFAIRS &
HUMAN RIGHTS DEPARTMENT
No. SO(OP-II)/LD/5-6/2012-VOL-II 995/4-16
DATED: PESH: THU 21 JULY, 2016

To

The Secretary to Govt of Khyber Pakhtunkhwa,
Public Health Engineering Department.


Subject: ADVICE REGARDING IMPLEMENTATION OF
RECOMMENDATIONS OF THE DEPARTMENTAL
PROMOTION COMMITTEE IN VIEW OF PENDING INQUIRY.

Dear Sir,

I am directed to refer to your Department's letter No.SO(Estt)/PHED/1-1/2016/I.R Karak dated 18-07-2016 on the subject noted above and to state that in accordance with para-V of Promotion Policy, 2009 promotion of a civil servant will be deferred in addition to para-IV of the said policy if disciplinary or Departmental proceedings are pending against him. Whereas, the Supreme Court of Pakistan in its Judgement, 2000 SCMR 645, declared that "Mere fact that some disciplinary proceedings were pending against the respondent was not a sufficient ground to stop the promotion of Civil servant. However, It would not deter the Authorities to continue with disciplinary proceeding against the Civil servant, if any, justly, fairly and accordance with law." Similarly in other decisions as cited, 2008 PLC (CS) 551, 2007 PLC (CS) 716, 2007 PLC (CS) P-4, which allows the promotion of civil servant even some disciplinary proceedings are pending against the civil servant. Hence, the promotion case/ notification of civil servant cannot be deferred due to an anticipated formal inquiry which is tantamount to punishment in advance.

2. So, in light of Judgement of the Supreme Court it seems that the Promotion Policy is deficient on the point and needs to be updated in line with the Supreme Court Judgement as the decision of the superior Court always have over-riding effect on sub-ordinate legislation and policies.

Handwritten notes on left margin: "21/7" and "502-V".

Yours Faithfully,


Section Officer (Opinion-II)

Endst: of even No. & date.

Copy forwarded for information to :-

- 1. The P.S to Secretary Law, Department.
- 2. The P.S to Secretary Establishment Department for information.

Handwritten initials: "my" and "E".

ATTACHED

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FOREWORD

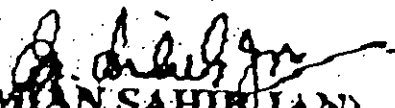
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Performance Evaluation Report plays an important role in the career planning of a Government servant. It is the most frequently used document in the service record of an employee. The Government servants, Reporting and Countersigning officers are responsible to initiate, complete and maintain PERs of their subordinates in accordance with the prescribed procedure and in stipulated period of time. For completion of this task, they need approved guidelines and instructions.

A compendium of "Instruction on Performance Evaluation Reports" was last compiled and published in the year 2000. However, on introduction of the Local Government Ordinance 2001, District Governments were established and powers of appointment, promotion and transfers in respect of Government servants in BS-1 to BS-15 were delegated to District officers. Consequently the Reporting Officers and Countersigning Officers in respect of many employees were changed which necessitated amendments in the instructions. The instructions also needed streamlining and updation which necessitated their fresh publication.

A committee headed by Mr. Muhammad Hamayun Khan, Special Secretary Regulation, Mr. Akbar Khan, Deputy Secretary (Regulation-III) and Mr. Muhammad Jamil Section Officer (Secret) Establishment & Administration Department, rendered appreciable services and contribution to update these instructions. Without their efforts, compilation of this compendium of instructions would have not been possible. The new edition of instructions will greatly help and facilitate the Reporting Officers as well as the Countersigning Officers to evaluate the performance and conduct of their subordinates objectively and in a realistic manner.

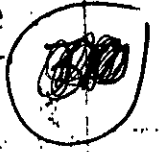
Suggestions, if any, for improvement in this compendium of instructions would be welcomed and appreciated which may be addressed to the Secretary Establishment Government of NWFP, Civil Secretariat, Peshawar or faxed on 091-9210447.


(MIAN SAHIB JAN)

Secretary to Government of NWFP
Establishment Department.

March, 9th, 2006.

ATTACHED



be considered as adverse in the case of an officer who fulfills the condition of length of service for promotion to the next higher grade and should be communicated to him.

(iii) It has been decided that if an officer is adjudged **unfit for continued retention in service** such an entry should be treated as adverse and should be communicated to the officer concerned.

4.4 Un-finalized Departmental Proceedings:-In the case of an officer against whom departmental proceedings are in progress, no mention whatsoever should be made about it in his Performance Evaluation Report. Only when such proceedings have been finalized, and the punishment, if any, has been awarded/exonerated should be mentioned in his Evaluation Report. In such a case complete copy of the final order may be placed, as is usually done, on his Character Roll.

4.5 According to the instructions (vide Para 4.4) no mention should be made in the Evaluation Report of a Government Servant, of the departmental proceedings which may be in progress against him, unless such proceedings have been finalized, and the punishment, if any, has been awarded. There is no bar to a Government servant being considered for promotion during the pendency of departmental proceedings against him. However, in such cases, a copy each of the charge sheet and the statement of allegations should be placed before the Provincial Selection Board or the Departmental Promotion Committee, as the case may be vide Establishment Division's O.M. No. 2/20/67-D.I., dated the 13th November, 1967 (printed at S. No. 118 of chapter V of the Establishment Manual, Volume-I, Reprint, 1968 and page 615 of, ESTACODE).

4.6 According to the instructions contained in the Establishment Division's letter No. 9(1)/58-SE.III, dated the 8th May, 1958 (Para 4.4) no mention whatsoever can be made about a departmental inquiry pending against an officer in the Evaluation Report. However, there should be no harm in making as mention about a criminal case pending against an officer in his C.R.

4.7 Evaluation Report:-If there are any adverse remarks in the Evaluation Reports prepared by NIPA and Administrative

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<http://www.pakistanlawsite.com/LawOnline/law/content21.asp?Case...>

Judgement

2000 S C M R 645

[Supreme Court of Pakistan]

Present: Irshad Hasan Khan, Munawar Ahmed Mina
and Ch. Muhammad Arif, JJ

Maj. ZIAUL HASSAN, HOME SECRETARY
and others---Petitioners

versus

Mrs. NASEEM CHAUDHRY---Respondent

Criminal Petition No. 510-L of 1999, decided on 20th October, 1999.

(On appeal from the judgment, dated 27-9-1999 of the Lahore High Court, Lahore in
Cr.Org.No.279-W of 1999).

Civil service-

---Promotion---Supreme Court had found that civil servant had not been promoted by superseding
any officer senior to her; she was entitled to be promoted from the date her juniors were promoted and
there was no valid reason not to consider her for the promotion---Mere fact that some disciplinary
proceedings were pending against the civil servant was not a sufficient ground to disregard the order
passed by the Supreme Court--Promotion of civil servant, however, would not debar the Authorities to
continue with the disciplinary proceedings against the civil servant, if any, justly, fairly and in
accordance with law.

Inspector-General of Police, Punjab, Lahore and others v. Mrs. Naseem Chaudhry and others C.
P.L.A. No. 1617-L of 1997 ref.

Ghulam Haider Alghazali, Additional Advocate-General, Punjab and Rao Muhammad Yusuf,
Advocate-on-Record for Petitioners.

Respondent in person.

Date of hearing: 20th October, 1999.

ATTESTED

JUDGMENT

IRSHAD HASAN KHAN, J.---This petition is directed against the judgment, dated 27-9-1999 passed
by the Lahore High Court in Crl. Original No.279-W of 1999

2. The dispute herein relates to the promotion of the respondent as Deputy Superintendent of Police.

3. This Court through judgment, dated 15-4-1999 passed in C.P.L.A. No. 1617-L of 1997 entitled The
Inspector General of Police, Punjab, Lahore etc. v. Mrs. Naseem Chaudhry, etc., while dismissing

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Judgement

the appeal of the Inspector-General of Police against the order of the Punjab Service Tribunal, Lahore in Appeal No.3097 of 1997, made the following observation:--

"5. We have heard the learned counsel for the petitioner Dr. A. Basit learned senior counsel for the respondent/caveator and perused the available material on record. The Tribunal was right in holding that the respondent had not been promoted by superseding any officer senior to her. She was entitled to be promoted from the date her A juniors were promoted. There was no valid reason not to consider her case for promotion as DSP as above. The impugned order appears to be just, fair and equitable. Mr. Ghuman was unable to substantiate his plea that the impugned order suffers from any illegality. Be that as it may, no substantial question of public importance is involved to warrant interference in these proceedings."

4. The petitioner not implemented the above order passed by this Court. The respondent therefore, approached the High Court for redress of her grievance. The contempt application was also filed on 25-1-1999 wherein notice was issued to the petitioner, who took the plea that the respondent could not be promoted as some disciplinary proceedings had been initiated against her. The contention was repelled by the learned Judge in Chambers vide the impugned order, dated 27-9-1999, which is to the following effect:--

"The learned Advocate-General says that the petitioner has been suspended from service and as such the question of her promotion does not arise. The learned counsel for the petitioner has, however, placed on record, a copy of the order, passed by the Punjab Service Tribunal on 30-8-1999, whereby the order of suspension of the petitioner has been suspended. That being so, there is no hurdle left in the way the respondent for implementation of the orders passed by this Court. The needful shall now be done within one week from today failing which coercive process shall be issued against the respondents."

5. The learned Additional Advocate-General, Punjab submitted that the High Court fell into error by not considering in true perspective that the disciplinary proceedings have been initiated against the respondent and, therefore, there was genuine hurdle in the way of petitioner to promote her in accordance with the orders passed by the Supreme Court as well as the High Court.

6. We are afraid that the mere fact that some disciplinary proceedings are pending against the respondent is not a sufficient ground to disregard the order passed by this Court. However, we may clarify that promotion of the 8 respondent as DSP will not debar the petitioner to continue with the disciplinary proceedings against the respondent if any, justly, fairly and in accordance with law.

7. With the above observation, the petition is dismissed and leave to appeal declined.

M.B.A./Z-33/S

Petition dismissed.

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2009 P L C (C.S.) 40

[Lahore High Court]

Before Hafiz Tariq Nasim, J

MUHAMMD AFZAL KHAN

Versus

GOVERNMENT OF PUNJAB through Secretary to Government of the Punjab, C&W Department and another

Writ Petition No.5857 of 2008, decided on 20th June, 2008.

(a) Civil service---

---Promotion cannot be claimed as matter of right---Principles.

The civil servant cannot claim promotion as a matter of right, but it is an inalienable right to every civil servant that he be considered for promotion along with his batch mates, if he fulfills eligibility criteria.

(b) Civil Service---

---Promotion, consideration for---Meaning---Consideration for promotion means a just and fair consideration and not as a matter of routine.

(c) Punjab Civil Servants Act (VIII of 1974)---

---S. 8---Constitution of Pakistan (1973), Art.199---Constitutional petition---Promotion---Non-consideration of petitioner's case for promotion by Selection Board repeatedly on ground of pendency of enquiry against him---Validity---Pendency of enquiry and minor penalties could not come in way of promotion---Enquiry must be concluded within a specific period---Enquiry proceedings pending against petitioner for an indefinite period smacked of arbitrariness and mala fide---Hanging sword on head of a civil servant in form of pendency of enquiry would reflect only to deprive him of his lawful right of promotion---Treatment meted out to petitioner could not sustain in eye of law---Consideration for promotion would mean a just and fair consideration and not as a matter of routine---High Court directed authority to place petitioner's case before Selection Board within specified time, which would consider his case fairly, justly and independent of pendency of enquiry, if not finalized on day of consideration of his case for promotion.

Zarar Khan v. Government of Sindh and others PLD 1980 SC 310; Captain Sarfraz Ahmad Mufti v. Government of the Punjab and others 1991 SCMR 1637; Maj. Ziaul Hassan, Home Secretary and others v. Mrs. Naseem Chaudhry 2000 SCMR 645; Ch. Yar Muhammad Durraina v. Government of the Punjab and another 1992 PLC (C.S.) 95; Sh. Muhammad Riaz v. Government of the Punjab 2003 PLC (C.S.) 1496 and Writ Petition No.2573 of 2000 ref.

ATTESTED

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(d) Civil Service---

----Promotion---Pendency of enquiry and minor penalties against civil servant not a hurdle in way of his promotion.

Masood Ahmad Riaz for Petitioner.

Naeem Masood, Asstt. A.-G. Punjab with Humayun Akhtar Sabi, Deputy Director Legal for Respondents.

ORDER

HAFIZ TARIQ NASIM, J.---The backdrop of this writ petition is that the petitioner being senior most Executive Engineer BS-18 of the Communication Works Department, Government of Punjab was expecting his promotion as Superintending Engineer in BS-19 in the year 2003 but he was deferred. In spite of his deferment he remained in the field for five long years when again on 23-5-2008 the petitioner's case of promotion was taken up by respondent No.1 who prepared working paper and placed it before the Provincial Selection Board, who recommended for deferment of the petitioner on the plea of pendency of some inquiry. The petitioner continuously persuaded for the redressal of his grievance since 2003 but with no result and finally filed this writ petition with the following prayer:--

"(I) Petition may kindly be accepted with costs.

(II) Respondents may kindly be directed to place the petitioner's case of promotion as Superintending Engineer in BS-19 before the Provincial Selection Board within a period of one month positively.

(III) Respondent No.2 who is the Chairman of Provincial Selection Board may very kindly be directed to consider Petitioner's promotion case fairly, justly and without being influenced by the pendency of any inquiry.

(IV) Respondents may kindly be further directed to consider the petitioner for promotion as Superintending Engineering in BS-19 from 9-7-2003 when the petitioner was eligible for such promotion and when his case was first placed before the Provincial 'Selection Board.

(V) Impugned show-cause notice dated 8-1-2004 and order of inquiry dated 5-9-2007 may kindly be set aside.

(VI) Petitioner may also kindly be granted such other relief/reliefs to which he is found entitled."

2. Learned counsel for the petitioner submits that so far prayer No. V in respect of setting aside of show-cause notice and order of enquiry is concerned, he does not press the same and it be treated deleted from the prayer clause. However, the learned counsel argued the case in respect of other prayers with vehemence and contends that the petitioner is being victimized with no fault of him, rather on extraneous consideration, with ulterior motive and malice and it is well-settled law that any action, which is based on mala fide cannot be termed as a legal action in the eye of law.

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[Signature]

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Further submits that mere pendency of enquiry cannot deprive the petitioner from his lawful right of fair consideration for further promotion. Learned counsel referred Zarar Khan v. Government of Sindh and others PLD 1980 SC 310, Captain Sarfraz Ahmad Mufti v. Government of the Punjab and others 1991 SCMR 1637, Maj. Ziaul Hassan, Home Secretary and others v. Mrs. Naseem Chaudhry 2000 SCMR 645, Ch. Yar Muhammad Durraiana v. Government of the Punjab and another 1992 PLC (C.S.) 95, Sh. Muhammad Riaz v. Government of the Punjab 2003 PLC (C.S.) 1496 and a recent judgment in Writ Petition No.2573 of 2008 titled as Sanjida Irshad v. Secretary Health and others, in support of this contentions.

6/11/11

3. On the other hand learned Assistant Advocate-General submits that consideration for promotion of course is right of a civil servant but no civil servant can ask for promotion as a matter of right. Further submits that the petitioner's promotion case was repeatedly placed before the Punjab Selection Board but due to some cogent reasons the petitioner could not be promoted. However, being a deferred case the petitioner's case shall be reconsidered in the forthcoming PSB's meeting.

4. Arguments heard. Record perused.

5. There is no cavil from the proposition that the civil servant cannot claim promotion as a matter of right but it is also undisputed fact A that it is an inalienable right of every civil servant that he be considered for promotion along with his batch mates when he fulfills eligibility criteria and it must be noted that consideration for promotion means a just and fair consideration and not as a matter of routine.

6. It is well-established law laid down by the apex Court that pendency of enquiry and even minor penalties cannot come in the way of promotion. In the present case the departmental representative, who produced the record did not disclose any penalty available in the petitioner's record except pendency of enquiry. However, when confronted with the sole question that how much time it should take to finalize the enquiry, no satisfactory reply could be given by the departmental representative.

7. Surprisingly keeping the civil servant continuously for a long period in facing certain enquiries and without concluding the proceedings for an indefinite period smacks arbitrariness and smells mala fides when now a days there is a specific provision that enquiry must be concluded in a specific time. Hanging sword on the heads of certain civil servants in the form of pendency of enquiry reflects only to deprive from their further lawful right of promotion, which can be termed an exploitation and nothing else because there is no bar on the part of administration to reach on logical conclusion and then impose penalty on that very civil servant if he is found guilty, when this part of the administration is unfettered then such like treatment, which is meted out to the petitioner cannot sustain in the eye of law.

8. In the attending circumstances, I have no other option except to allow the writ petition. The respondents are directed to place the petitioner's promotion case before the Provincial Selection Board within a period of two months positively from today and the PSB shall consider the petitioner's promotion case fairly, justly and particularly independent of pendency of enquiry if the same is not finalized on the day of consideration for promotion. The exercise must be concluded within two months and result thereof be conveyed to the Deputy Registrar. (J.) of this Court. The writ petition is accepted in the above terms.

S.A.K./M-245/L

Petition accepted.

ATTESTED

10/1/2015

January 2015

PLJ 2015 Lahore 24 (DB)
[Multan Bench Multan]

Present: SHAHID WAHEED AND SHAH KHAWAR, JJ.
MUHAMMAD SALEEM--Petitioner
versus

GOVERNMENT OF PUNJAB through its Chief Secretary
and 6 others--Respondents
W.P. No. 14949 of 2012, decided on 15.7.2014.

Constitution of Pakistan, 1973--

---Art. 199--Promotion Policy Rules, 2010, R. 9(iv)--Promotion--Deferment was raising on creditability and unblemished career--Policy was challenged--Validity--Superior Courts--Civil servant against whom a departmental inquiry or criminal proceedings were pending was not an outcast for purpose of consideration of his case for promotion and there was no bar on his promotion--Any policy of government including Promotion Policy 2002 of Government of Punjab cannot come in its way and has become redundant. [P. 27] A & B

Mr. Muhammad Ali Siddiqui, Advocate for Petitioner.

Mr. M. Aurangzeb Khan, A.A.G. along with Saleem Akhtar Qureshi, District Officer Co-Operative Multan for Respondents No. 1, 2 and 3.

Date of hearing: 25.6.2014.

ORDER

In the instant writ petition, the petitioner being a civil servant has challenged the vires of Sub-Rule (IV) of Rule 9 of the Promotion Policy, 2010 and decision of Provincial Selection Board with respect to the deferment of the petitioner for promotion as same being Un-Islamic, Un-Constitutional, discriminatory and against the fundamental rights of the petitioner.

2. The question of law to be determined by this Court is reproduced is under:

"Whether promotion of the civil servant could be deferred which he otherwise entitled to, on a sole ground that a case or inquiry is pending against him in which he is yet to be proven guilty?"

3. Brief facts of the case are that the petitioner was appointed on 07.04.1984 as Assistant Registrar (BS-16) through Punjab Public Service Commission.

4. The promotion of the petitioner in BS-19 has been due since 04.12.2011 on the retirement of one Fayyaz-ul-Hassan Farooqi senior to him. However, he has not been promoted since that date.

5. On 1.3.2012, vide Notification No. SO(E)7-3/96(P-III), a final seniority list was issued by the Secretary Co-Operatives whereby, the petitioner was placed at Serial No. 1 and Respondents No. 4 to 7 were placed at Serial Nos. 2, 3, 4 and 5 respectively.

6. On 24.07.2012, meeting of the Provincial Selection Board-I was held whereby, Respondents No. 4 to 7 were promoted to BS-19 and the promotion of the petitioner was deferred.

7. Learned counsel for the petitioner contends that the promotion of the petitioner was deferred which he otherwise is entitled to, as per the impugned rule. Further submits that the petitioner has a spotless career and is at verge of his retirement. Till today, not an FIR as well as not a single inquiry has been registered and initiated against him; hence his deferment is raising questions on his creditability and unblemished career, that requires kind interference by this Hon'ble Court. Reliance is placed on Captain Sarfraz Ahmdd Mufti vs. Government of the Punjab and others (1991 SCMR 163), Ma Ziaul Hassan, Home Secretary and others vs. Mrs. Naseem Chaudhry (2000 SCMR 645), Sh. Muhammad Riaz vs. Government of Punjab [(2003 PLC (CS) 1496] and Muhammad Afzal Khan vs. Government of Punjab through Secretary to Government of the Punjab, C&W Department and another [(2009 PLC (CS) 40)].

8. Report and parawise comments were filed by the respondents. One of the preliminary objections was that the matter relates with the terms and conditions of promotion and the petitioner has not availed his remedy by way of filing appeal before the Punjab Service Tribunal, hence Constitutional petition is not maintainable.

9. On facts, Respondents No. 1 & 2 also controverted the prayer made by the petitioner by contending that the promotion case of the petitioner was placed before the Punjab Selection Board, but the Board deferred the same due to the reason that an FIR No. 18/2010 Police Station Anti-Corruption

Establishment, Multan is pending against the petitioner, and the petition is hit by the Promotion Policy 2010. However, a post in BS-19 has been reserved for the petitioner, subject to his exoneration from the above said case and will be granted promotion from the date when his juniors were promoted.

10. I have given anxious consideration to the arguments advance by learned counsel for the petitioner and the learned AAG, Punjab.

11. Before arriving at a conclusion that the Policy under challenge is sustainable under the law or not, it will be proper to understand spirit of Article 8 of the Constitution of Pakistan 1973; which is re-produced herein under:--

"8. Laws inconsistent with or in derogation of Fundamental Rights to be void.--(1) Any law, or any custom or usage having the force of law, insofar as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights so conferred and any law made in contravention of this clause shall, to the extent of such contravention, be void."

12. Admittedly in the constitution, the Superior Courts have been mandated to ascertain either any law is inconsistent with the rights conferred by the Constitution i.e. Fundamental Rights. In *Tariq Cotton Mills Ltd. and another vs. Joint Registrar, Joint Stock Companies and another* (1989 CLC 2013), it is held that the State is prohibited to make any law which curtails or take away any Fundamental Right and any law so made shall to the extent of inconsistency with such right, is to be void. The same principal of law has been enunciated in *Sharaf Faridi vs. The Federation of Islamic Republic of Pakistan through Prime Minister of Pakistan and another* (PLD 1989 Karachi 404), it was held that limitation has been placed on the Legislature not to curtail the Fundamental Rights or abridge them by any law.

13. Question of law raised by the petitioner is answered in following terms:--

(i) Any judgment passed by the Hon'ble Supreme Court of Pakistan, in which a question of law has been determined, is binding on all the Courts subordinate to the Apex Court, as contemplated in Article 189 of the Constitution of Islamic Republic of Pakistan, 1973.

(ii) The petition in hand has been filed on the touch stone of above quoted judgments of the Hon'ble Supreme Court of Pakistan.

(iii) In the case of *Maj Zail-ul-Hassan, Home Secretary vs. Mrs. Naseem Ch.* (2000 SCMR 645), the Hon'ble Supreme Court has held that:

"We are afraid that the mere fact that some disciplinary proceedings are pending against the respondent is not a sufficient ground to disregard the Order passed by this Court. However, we may clarify that promotion as DSP will not debar the petitioner to continue with the disciplinary proceedings against the respondent if any, justly, fairly and in accordance with law."

(iv) In case titled as *Captain Sarfraz Ahmad Mufti vs. Government of Punjab & others* ((sic) SCMR 1637) the Hon'ble Supreme Court upheld judgment of the High Court in which the High Court had directed departmental authorities that case of civil servant be placed before Promotion Board. The High Court had referred to certain Policy letters of the Government under which respondent civil servant's case for promotion merited consideration, but he was illegally ignored.

(v) In the same manner, in case of *Sh. Muhammad Riaz, vs. Govt. of Punjab through Secretary Communication and Works and another* [(2003 PLC (C.S) 1496)] it was held that "withholding of promotion is a penalty and therefore refused to issue a formal notification of the promotion of the petitioner, after he had been recommended by the Provincial Selection Board, which was duly approved by the Competent Authority, was illegal and arbitrary in as much as that it was withheld on the ground of an anticipated departmental inquiry.

14. A principle of law has been enunciated by the Superior Courts. The nutshell of the same is that a civil servant against whom a departmental inquiry or criminal proceedings are pending is not an outcast for the purpose of consideration of his case for promotion and there is no bar on his promotion.

15. The above quoted judgments, in which question of law has been settled, have attained finality and force of law. Any policy of the Government including the Promotion Policy 2002 of the Government of the Punjab cannot come in its way and has become redundant.

ATTESTED

PLJ 2015 Lahore 45
[Multan Bench Multan]

Present: SHAH KHAWAR, J.

SHAMA KHAN ZAFAR--Petitioner

versus

DISTRICT COORDINATION OFFICER, LODHRAN etc.--Respondents

W.P. No. 15606 of 2012, decided on 14.4.2014.

Constitution of Pakistan, 1973--

----Art. 199--Constitutional petition--Promotion to next higher grade--Appointment against leave vacancy--Seniority list of employees--Juniors were promoted--Inquiry was pending--Disciplinary proceedings pending against civil servant was not sufficient ground to disregard lawful right of four consideration for promotion--Validity--Mere pendency of departmental inquiry or in presence of minor penalty, a civil servant cannot be denied of his fundamental rights to be considered for promotion where his batch mates and even juniors are considered and promoted--Petitioner, who is a teacher by profession, must have gone through frustration and mental stress due to denial of his legal right--Concept of administration of justice has been defined and interpreted by a number of judicial pronouncements. [P. 49] A & B

Mr. Noor Ahmad Khan Meo, Advocate for Petitioner.

Mr. Aurangzeb Khar., Assistant Advocate General, Punjab for Respondents.

Date of hearing: 14.04.2014

ORDER

Through instant writ petition, the petitioner has called in question his non-consideration by the Departmental Promotion Committee for promotion to next higher grade i.e. BS-16 under uplift and upward mobility (Pay Package w.e.f. 1.12.2009).

2. Relevant facts giving rise to the filing of the instant writ petition are that the petitioner was appointed as PTC *vide* Letter No. 11079 dated 31.12.1984 and joined his duties at Government Primary School, Dera Mehro Markaz Karor Pacca, Lodhran. Later on, he was temporarily adjusted as EST against the leave vacancy of Mr. Hazoor Bakhsh, EST *vide* Letter No. 7870/Admn dated 28.10.1985 with the condition that appointment against leave vacancy is temporary up till 31.08.1986 and after the said date he was to report back at his original post i.e. PTC. Instead of report back to his original post the said teacher was adjusted as EST against the post of Mr. Hazoor Bakhsh *vide* Letter No. 3365/Admn dated 10.08.1986 by the competent authority. On query regarding verification/confirmation of posting of the petitioner as EST by the Deputy District Education Officer, Kehrro Pacca as well as the Incharge Head Master, Govt. High School, Bahawal Garh, Tehsil Kehrro Pacca, District Lodhran *vide* letters dated 27.09.2010 and 16.08.1986 respectively, the District Education Officer informed that the services of the petitioner as EST had already been confirmed/verified *vide* Letter No. 3365 dated 16.08.1986 on permanent basis.

3. Subsequently, the Chief Minister of the Punjab *vide* notification dated 06.11.2009 approved the structure for uplift and upward mobility of Primary and Elementary School Teachers (Male and Female) of all categories in Punjab w.e.f. 01.12.2009 as per ratio given below:--

Category of Teacher	Initial Level		Level I		Level II	
	Pay Scale	Ratio of Post	Pay Scale	Ratio of Post	Pay Scale	Ratio of Post
PSTs (Male & Female)	BS-9	50%	BS-12	35%	BS-14	15%
ESTs (Male & Female)	BS-14	50%	BS-15	35%	BS-16	15%

ATTESTED

Mof's (English in M.A.F)	BS-14	7%	BS-15	35%	BS-16	15%
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(Handwritten signature)

In regard to the seniority list of ESTs (General), District Lodhran was prepared in which the petitioner was placed at Sr.No. 17. The meeting of Departmental Promotion Committee, Lodhran was convened on 11.08.2011 but the petitioner, whose seniority was rated at Sr. No. 17, was not considered for the benefit of next higher grade BS-16 and his juniors, who were assigned seniority at Serial No. 18 to 65 were awarded BS-16. When the petitioner approached the Executive District Officer (Education), Lodhran, he was informed that his name was not considered by the Departmental Promotion Committee due to the reason that his inquiry was pending on the basis of an Audit Para in respect of his irregular appointment against the post as EST. (34)

4. The petitioner prayed that a direction may be issued to the respondents to place his case before the Departmental Promotion Committee for fair consideration to award grade BS-16 under the structure of uplift and upward mobility at par with his batch mates.

5. Notice was issued to the respondents who filed report and para-wise comments wherein, it is mentioned that in the year 2006-09, the audit scrutiny was conducted by the Audit Department of office of the Deputy District Education Officer (M) Tehsil Kahror Pacca. The Audit Officer raised the objection regarding appointment of the petitioner as EST at Government Middle School Mohammad Saeed Tehsil Kahror Pacca in the shape of Advance Audit Para No. 02 that the appointment of the petitioner is irregular and needs an inquiry into the matter and an inquiry officer was deputed to look into the matter.

6. Learned counsel for the petitioner has argued that the pendency of inquiry on the basis of Audit Para could not have been made basis for non-consideration of the petitioner in the next higher grade BS-16. He contended that it is a well established law laid down by the Hon'ble Superior Courts that the pendency of inquiry and even minor penalty cannot come in the way of promotion. Reliance has been placed on *Maj. Ziaul Hossan, Home Secretary and others versus Mrs. Naseem Chaudhry* (2000 SCMR 645), *Mrs. Sanjida Irshad, Assistant Director Nursing, Bahawalpur versus Secretary to Government of the Punjab Health Department Lahore and others* [2008 PLC (C.S) 1019] and *Muhammad Afzal Khan versus Government of Punjab through Secretary to Government of the Punjab C&W Department and another* [2009 PLC (C.S.) 40]. The Hon'ble Supreme Court of Pakistan in its judgment has held that some disciplinary proceedings pending against the civil servant is not a sufficient ground to disregard his lawful right of fair consideration for promotion. Moreover, the Hon'ble High Court in the above cited judgment has held that the civil servant cannot claim promotion as a matter of right, but it is an inalienable right to every civil servant that he be considered for promotion along with his batch mates, if he fulfills eligibility criteria.

7. During the course of arguments, learned Assistant Advocate General Punjab has fairly commented that a civil servant cannot be disregarded for promotion if one is not otherwise ineligible. He has fully agreed with the judgments passed by the Hon'ble Superior Courts on this issue.

8. I have given my anxious consideration to the arguments advanced by learned counsel for the petitioner as well as learned Assistant Advocate General and have perused the record with their able assistance.

9. This is an admitted position that the Chief Minister of the Punjab approved the structure of uplift and upward mobility of Primary and Elementary School Teachers of all categories *vide* notification dated 06.11.2009. In pursuance of the said notification, EST and other cadres were to be awarded next higher grade BS-15 & BS-16 on the basis of date of their regular appointments and **length of service on the recommendations** of District Selection Committee, Lodhran. Consequently, the District Education Officer, Lodhran notified seniority list for such promotion and petitioner's seniority was reckoned at Sr.No. 17 in the said list. The Departmental Promotion Committee was convened on 11.08.2011 but the petitioner's name was not placed before the same, as a result of which the juniors to the petitioner, who were assigned seniority against Sr. Nos. 18 to 65 were awarded BS-16. From the parawise comments filed by the respondents, it is made clear that the name of the petitioner was not placed before the Departmental Promotion Committee due to the reason that an inquiry on the basis of advance Audit Para was pending against him.

10. As held by the Hon'ble Superior Courts of the country that the pendency of inquiry and one minor penalty cannot come in the way of promotion of a civil servant. Further that civil servant cannot claim promotion as a matter of right but it is also undisputed fact that it is an inalienable right of every civil servant that he be considered for promotion alongwith his batch mates.

ATTESTED

11. Surprisingly, in the instant case, the petitioner was deprived to be considered for promotion at the next higher grade BS-16 before Departmental Promotion Committee, Lodhran on the sole reason that his inquiry regarding Audit Para was pending.

Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 speaks about the right of individuals to be dealt with in accordance with law, to enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan. In the same manner, Article 25 of the Constitution of Islamic Republic of Pakistan, 1973 ensures equality of citizens by mandating that all citizens are equal before law and are entitled to equal protection of law.

13. Chapter-I of the Constitution of Islamic Republic of Pakistan, 1973 is an integral part of the Constitution and all State functionaries are duty bound to extend these rights across the board to the citizen. It is not necessary for State functionaries to have performed their Constitutional obligations after intervention of the Hon'ble Superior Courts. Under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 this Court has the jurisdiction to protect and enforce the fundamental rights of the citizens which have been denied. According to Article 5 of the Constitution of Islamic Republic of Pakistan, 1973, loyalty to State and obedience to Constitution and law is the inviolable obligation of every citizen wherever he may be and of every other person for the time being within Pakistan. The word "citizen" does not confine to the ordinary citizen of the country but also covers person's functions in connection with the affairs of the Federation, Province or a legal authority. All the State functionaries are duty bound to strictly adhere to the Constitution and, specially Articles 4, 5 and 25 of the Constitution of Islamic Republic of Pakistan, 1973 while dealing with their day to day business. They should not wait for intervention of the Hon'ble Superior Courts but to extend equal treatment and protection of law whenever they are seized of the matters of the aggrieved persons.

14. In the present case, the respondents were mindful of the fact that there are number of judgments passed by the Hon'ble Superior Courts having decided question of law that mere pendency of departmental inquiry or in the presence of minor penalty, a civil servant cannot be denied of his fundamental rights to be considered for promotion where his batch mates and even juniors are considered and promoted. The department sat over the case of the petitioner for a long time waiting for the decision of this Court. The name of the petitioner could have been placed in the next scheduled meeting of Departmental Promotion Committee but the needful was not done in complete determent. The petitioner, who is a teacher by profession, must have gone through frustration and mental stress due to denial of his legal right. The concept of administration of justice has been defined and interpreted by a number of judicial pronouncements. Reference could be placed on the judgment passed by the Hon'ble Supreme Court of Pakistan in case titled *Samiullah Khan Marwat*

versus Government of Pakistan and another reported in [2003 SCMR 11401, in which concept of administration of justice has been interpreted, the relevant portion of the judgment is reproduced as under:

"The exercise of powers by the public functionaries in derogation to the direction of law would amount to disobey the command of law and the Constitution. The concept of administration of justice is not confined only to the judicial system rather every person discharging the functions in relation to the rights of people is bound to act fairly, justly and in accordance with law."

15. In the aforementioned circumstances, I have no other option except to allow the instant writ petition. The respondents are directed to place petitioner's promotion case before the Departmental Promotion Committee, Lodhran within a period of two months from the receipt of this order and the Departmental Promotion Committee shall consider the promotion case of the petitioner in highly fair and just manner. The result of the Departmental Promotion Committee shall be conveyed to this Court through the Deputy Registrar (Judicial). The instant writ petition is allowed in the above terms.

(R.A.) Petition allowed

ATTESTED

January 2015

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10. For what has been discussed above, the instant writ petition is allowed. Sub Rule (iv) of Rule 9 of the Promotion Policy, 2002 of the Government of Punjab is hereby declared Un-Constitutional, against the spirit of Article 8 of the Constitution and against the principles of law enunciated by the Hon'ble Superior Courts of Pakistan. The respondent Department is directed to place the case of the petitioner to the Provincial Promotion Board and his case may be considered for promotion within a period of 30 days.
(R.A.) Petition allowed

ATTESTED

گورنمنٹ ہسپتال، پشاور، فون: 228613، فیکس: 228613، ایڈریس: 20.06.2011 (میں سے پہلے) (میں سے پہلے)

فارم نمبر 22-15

ابتدائی اطلاعی رپورٹ

ابتدائی اطلاع نسبت جرم تامل دست اندازی پولیس رپورٹ شدہ زبردستی 152 مجموعہ ضابطہ نو جداری

حدران

انٹی کرپشن

Amroch
Hader
Maree

تاریخ وقت وقوع سال 2015 2016

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تاریخ وقت وقوع سال	2015 2016
تاریخ وقت وقوع سال	2015 2016
نام و سکونت اطلاع دہندہ	علی اکبر خان
محقق کیفیت جرم (مصدقہ) حال اگر ہو یا کیا ہو	پاکستان پولیس
بائے ذمہ عمل گزار سے اور دست	دفعہ عدنیات حدران
نام و سکونت لازم	سر سید علی اکبر خان
کارروائی جو پیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہو تو وہ بیان کرو	کارروائی نمبر 288/ACE جنسیت 288/ACE
تقاضے روائی کی تاریخ وقت	سر سید علی اکبر خان

صلح حدران، ڈیپٹی سیکریٹری، ابتدائی اطلاع سے درج کروا کر دستخط حدران کے ہاتھ سے لیا گیا۔ اس کے بعد حدران نے ایک رپورٹ No. DAC 12/2017 کے تحت لکھی اور اس کے ساتھ ایک دستخط شدہ رپورٹ بھی لکھی۔ اس کے بعد حدران نے ایک رپورٹ No. DAC 12/2017 کے تحت لکھی اور اس کے ساتھ ایک دستخط شدہ رپورٹ بھی لکھی۔ اس کے بعد حدران نے ایک رپورٹ No. DAC 12/2017 کے تحت لکھی اور اس کے ساتھ ایک دستخط شدہ رپورٹ بھی لکھی۔

حدران نے ایک رپورٹ No. DAC 12/2017 کے تحت لکھی اور اس کے ساتھ ایک دستخط شدہ رپورٹ بھی لکھی۔ اس کے بعد حدران نے ایک رپورٹ No. DAC 12/2017 کے تحت لکھی اور اس کے ساتھ ایک دستخط شدہ رپورٹ بھی لکھی۔ اس کے بعد حدران نے ایک رپورٹ No. DAC 12/2017 کے تحت لکھی اور اس کے ساتھ ایک دستخط شدہ رپورٹ بھی لکھی۔

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ATTACHED

جو کہ یہ سب سے پہلے کے ہیں۔ پہلے کنیز بیگم اور ان کے ساتھ 46 تا 66 کے
 ایسے صفحہ کا ترجمہ دو ایسے ایسے لکھوائے جہاں پر سرکار کا خط لکھا گیا ہے۔ حالت
 ملاقات سے ہم قابل دست اندازہ کا ترجمہ کیا اور سرکار کے ایسے ایسے ایسے
 یہ تا 46 صفحہ تک ہے۔ 1. نور احمد خان سابقہ AD عدلیہ سروس ایسے ایسے ایسے
 صفحہ 46 تک ہے۔ 2. نور احمد خان سابقہ AD عدلیہ سروس ایسے ایسے ایسے
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C.O. ACE. Marwat

اطلاع کے لیے اطلاع دینے کا دستخط ہوگا یا اس کی ہر نشان لگایا جائے گا۔ اور اگر تحریر کنندہ ابتدائی اطلاع کا دستخط لکھو تو عدالت میں اس کے خلاف درخواستیں ہوتی ہیں۔
 ایک لازم یا مشہور علی الترتیب ذیلے باشندے ان علاقہ غیر یا سیدہ ایشیا اور افغانستان جہاں سوزوں ہوں لکھنا چاہئے۔

Attested
 Director
 Anti-Corruption Establishment
 Khyber Pakhtunkhwa
 Peshawar.

ATTESTED

Reference No. 04/2016

KPK Ehtesab Commission ...VS... Muhammad Riaz & others

CHARGE

I, Subhan Sher, Judge, Special Ehtesab Court-II Khyber Pakhtunkhwa, hereby charge you accused namely;

1. Muhammad Riaz, aged about 50/51 years, Assistant Director Mineral Development, Mines & Mineral Department Khyber Pakhtunkhwa, presently posted as Assistant Director (Royalty) Headquarter office, Peshawar.
2. Mohsin Ali Khan, aged about 32 years, Assistant Director Mineral Development, Mines & Mineral Department Khyber Pakhtunkhwa, presently posted as Assistant Director Minerals Development, Swat.
3. Noor-ul-Islam aged about 46/47 years, Assistant Director Mineral Development, Mines & Mineral Department Khyber Pakhtunkhwa, presently posted as Assistant Director Minerals Development, Mardan.
4. Zahoor-ud-Din aged about 49/50 years, Assistant Director Mineral Development, Mines & Mineral Department Khyber Pakhtunkhwa, presently posted as Assistant Director Minerals Development, Headquarters office, Peshawar.
5. Nazir Ahmed, aged about 63 years, s/o Abdul Haq, r/o Attar Sheesha, Shah Kot, District Mansherra.
6. Ashraf Ali aged about 41 years s/o Ali Zaman r/o Shah Kot, District Mansherra, as follow:-

Firstly:- That you accused No.1 Muhammad Riaz posted as Mineral Development Officer during the period from 10.07.2006 to 06.11.2008, as DDO from 23.09.2010 to 31.10.2011 and Assistant Director, Mineral Department, Mansherra, from 07.05.2015 to 31.10.2015, during your these tenures in the above mentioned capacities, in connivance with your co-accused at serial No. 2 to 6 and in furtherance of your

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Miner Copying Branch,
Ehtesab Court, KPK,
Peshawar

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mining which was continued till 12.10.2015 and thus you willfully failed to fulfill your duties and responsibilities under the law, illegally benefited your co-accused No.5 by suppressing the application in your office and allowing the sublettee your co-accused No.6 for unauthorized and illegal excavation and you accused caused to suffer public exchequer huge monetary loss to the tune of Rs. 64,204,000/- and thereby committed offences as defined u/s 23 of the Khyber Pakhtunkhwa Ehtesab Commission Act 2014 (as amended upto date) punishable under section 24 read with schedule thereto of the said Act and within the cognizance of this Court.

Thirdly:-

That you accused No.3 Noor-ul-Islam while posted as Assistant Director Mineral Development, Mansehra w.e.f. 02.04.2013 to 29.07.2013 and 18.11.2014 to 06.05.2015, the application filed by your co-accused No.5 on 14.06.2012 in the office tenure of your co-accused No.2 for the renewal of the mining lease, deliberately it was kept pending from 14.06.2012 to 10.04.2015 whereas you accused were duty bound to prepare and submit the working papers to the competent authority for cancellation of mining lease but you with malafide intentions did not fulfill the same. Similarly, in your second office tenure you accused illegally and unlawfully did not prepare the working papers for the cancellation of mining lease. Furthermore, you accused illegally issued 200 challans in your second tenure from Serial No.1701 to 1900 of the Challan book on 17.02.2015 to unauthorized and illegal sublettee your co-accused No.6 inspite of the fact that the mining lease had been expired on 19.08.2012. So you accused named above willfully failed to fulfill your duties and responsibilities and illegally benefited the unauthorized sublettee your co-accused No.6 and you accused caused to suffer public exchequer huge monetary loss to the tune of Rs. 64,204,000/- and thereby committed offences as defined u/s 23 of the Khyber Pakhtunkhwa Ehtesab Commission Act 2014 (as amended upto date) punishable under section 24 read with schedule thereto of the said Act and within the cognizance of this Court.

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Peshawar

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Fourthly:- That you accused No.4 Zahir-ud-Din, while posted as Assistant Director Development, Mansehra w.e.f from 23.04.2014 to 14.11.2014, your co-accused No.5 (Nazir Ahmad) had already filed an application for renewal of mining lease on 14.06.2012. This application under the law was time-barred, so you accused were required to prepare and submit the working papers to the competent authority for cancellation of mining lease but inspite of doing this, you accused illegally and fraudulently issued 200 challans from 1501 to 1700 on 02.06.2014 to your co-accused. You accused willfully failed to fulfill your duties and responsibilities and illegally benefited the unauthorized and illegal sublettee your co-accused No.6 and you accused caused to suffer public exchequer huge monetary loss to the tune of Rs. 64,204,000/- and thereby committed offences as defined u/s 23 of the Khyber Pakhtunkhwa Ehtesab Commission Act 2014 (as amended upto date) punishable under section 24 read with schedule thereto of the said Act and within the cognizance of this Court.

Fifthly:

That you accused No.5 Nazir Ahmad were granted mining lease vide No. MDW/MA/ML-Feldspar(100)/2007 over an area of 299.163 acres near Village Shahkot, district Mansehra on 20.08.2007 for the period of 5 years valid upto 19.08.2012, but you accused did not work in the said lease area since June, 2008 to May, 2010, but even then you were receiving transit challans from your co-accused No.1 since 28.06.2008 to 28.06.2011 and you accused received 1500 challans during the period and utilized it; whereas, this area was idle since 2008 to May, 210. Inspite of directions issued by the Assistant Director Mineral Development, Mansehra you willfully did not submit the monthly production report showing raising and dispatches of feldspar since June, 2008 to Feb, 2011 and did not deposit the deed rent and annual rent as well. You accused also sublet the mining area to your co-accused No.6 illegally and without the permission of the licensing authority through authority letter dated 23.10.2013. You accused in connivance with accused No.1, 2, 3, 4 and 6 remained involved in unauthorized mining of feldspar and due to this,

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Inner Copying Branch
Muzah Courts, KPK,
Mansehra

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common intention and common object of you all, fraudulently and illegally issued 1500 Transit Challans to your co-accused No.5, Nazir Ahmad from 28.06.2008 to 28.06.2011 for Feldspar mining area, but in fact no practical excavation/work was executed in the said area during the above mentioned period and thus you failed to exercise your authority required under the law as you were bound to inspect practically the area at the time of issuance of challans mentioned above. Similarly, you did not prepare the working papers for the cancellation of the lease to licensing authority and willfully failed to fulfill your duties, and you accused caused to suffer public exchequer huge monetary loss to the tune of Rs. 64,204,000/- and thereby committed offences as defined u/s 23 of the Khyber Pakhtunkhwa Ehtesab Commission Act 2014 (as amended upto date) punishable under section 24 read with schedule thereto of the said Act and within the cognizance of this Court.

secondly:- That you accused No.2 Mohsin Ali while posted as Assistant Director Mineral Department, Mansehra w.e.f 31.10.2011, during this tenure, your co-accused No.5 Nazir Ahmad filed an application for renewal of the mining lease on 14.06.2012 after 9 months and 25 days of the expiry of the period for filing application for renewal of mining lease, you accused No.2 was required under the law to prepare and submit the working papers for cancellation of mining lease; but you illegally, fraudulently kept the said application in your office and had not acted upon. Similarly, you accused named above posted as Assistant Director Mineral Department, Manshra w.e.f. 25.07.2013 to 14.04.2014 but during this tenure too, you did not prepare and submit the working papers to competent authority for cancellation of mining lease. During your above mentioned tenures, your co-accused No.5 through authority letter dated 23.10.2013 without the permission of the Licensing Authority sublet the leased area to your co-accused No.6 (Ashraf Ali), who involved in unauthorized mining but you accused did not take any action against above named co-accused No.6 and has been failed to stop the unauthorized

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 Inner Copying Branch,
 Hqs. Courts, Peshawar

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you accused caused to suffer public exchequer huge monetary loss to the tune of Rs. 64,204,000/- and thereby committed offences as defined u/s 23 of the Khyber Pakhtunkhwa Ehtesab Commission Act 2014 (as amended upto date) punishable under section 24 read with schedule thereto of the said Act and within the cognizance of this Court.

(41)

Sixthly:


That you accused No.6, Ashraf Ali remained involved in unauthorized mining of feldspar from 23.10.2013 to October, 2015 under the cover of authority letter dated 23.10.2013 and in connivance with your co-accused No. 2, 3, 4 and 5, you accused illegally obtained the transit Challans from your co-accused No. 3 and 4 and utilized them and due to this practice, you accused caused to suffer public exchequer huge monetary loss to the tune of Rs. 64,204,000/- and thereby committed offences as defined u/s 23 of the Khyber Pakhtunkhwa Ehtesab Commission Act 2014 (as amended upto date) punishable under section 24 read with schedule thereto of the said Act and within the cognizance of this Court.

Seventhly:- That you all accused at serial No. 1 to 6 during posting in different categories, working in official and private capacities and in connivance of you all illegally assisted and facilitated one another in excavating mines in utter violation of the laws by misusing your authority and due to your above mentioned illegal acts, you all six accused caused to suffer public exchequer huge monetary loss to the tune of Rs. 64,204,000/- and thereby committed offences as defined u/s 23 of the Khyber Pakhtunkhwa Ehtesab Commission Act 2014 (as amended upto date) punishable under section 24 read with schedule thereto of the said Act and within the cognizance of this Court.

And I hereby direct that you be tried by me on the said charges.

ATTESTED
Examiner Copy
Ehtesab Court, KPK,
Peshawar
26-05-2016

ATTESTED


Judge Special,
Ehtesab Court-II, KPK
Peshawar
25.5.2016

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26.05.2016

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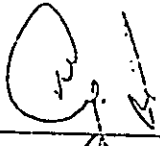
Note: - The charges have been read over to the accused and explained in their own language.

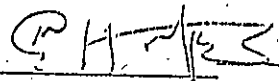
Q: Have you heard and understood the same?

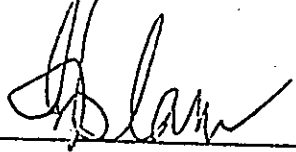
A: Yes.

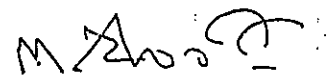
Q: Do you plead guilty to the charges?

A: No.


1. Muhammad Riaz 

2. Mohsin Ali Khan 

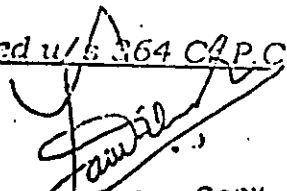
3. Noor-ul-Islam 

4. Zahoor-ud-Din 

5. Nazir Ahmed 

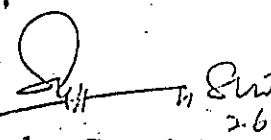
6. Ashraf Ali 

Certified u/s 364 Cr.P.C



Certified to be True Copy
Examination Copying Branch,
Ehtesab Court, KPK,
Peshawar

26-05-2016


26.5.2016

Judge Special,
Ehtesab Court-II, KPK
Peshawar


ATCESTED

Order No. 25
26.05.2016

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Mr. Farooq Shah, ADPG for the state and all the six accused in person alongwith their respective counsels present. Fresh wakalatnama submitted by Mr. Munir Hussain and Hafeez ul Asad Advocates on behalf of four accused, which are placed on file.

Charge framed against the accused which they denied and claimed trial. PWs at serial No. 1 to 2 alongwith record, if any, be summoned for 02.06.2016.

Since the accused facing trial have not been arrested in the present case and after submitting the Reference to this court, when they were summoned, they all put appearance, as such, to make sure their future attendance during the trial, this court invokes the power provided under section 91 of Cr.P.C, all the accused are directed to furnish bail bonds in sum of Rs. 01 Lac (100,000/-) with two sureties each in the like amount to the satisfaction of this court on or before the date fixed.

Jawid
Certified To Be True Copy
Examiner Copying Branch,
Ehtesab Courts, KPK,
Peshawar
26-05-2016

J. S. 2016
Judge,
Special Ehtesab Court-II,
KPK, Peshawar

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original

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

Service Appeal No. 672/2018

Zahoor UddinPetitioner

VERSUS

Government of Khyber PakhtunkhwaRespondent

INDEX

S.No.	Particular of documents	Annexes	Pages
1.	Para wise comments	01-02
2.	Affidavit	03
3.	Decision of the Appellate Authority dated 04-04-2018	"A"	04
4.	Appeal rejection dated 08-05-2018 & 22-05-2018	"B"	05-06
5.	Notification dated 03-08-2018	"C"	07
6.	Order	"D"	08-12


DEPONENTS

(12)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.

Service Appeal No. 672/2018

Zahoor ud Din Appellant

Versus

Government of Khyber Pakhtunkhwa etc..... Respondents

Respectively Sheweth

Parawise comments on the behalf of respondent No. 1 to 4

Preliminary Objections

1. That the appellant has not come to this tribunal with clean hands nor the appeal is based upon legal footing^{of} and is therefore liable to be dismissed.
2. That the appellant has no cause of action or locus standai to file the instant appeal, hence this appeal is not maintainable in its present form.
3. That the appellant is not entitle to any relief and this appeal is filed just to waste the precious time of this court.
4. That the appellant has no case in his support.

Reply on facts

1. Para 1 of the service appeal is correct.
2. Para 2 of the service appeal is correct to the extent that, currently no any complaint exists against the Appellant.
3. Para 3 of the service appeal is correct.
4. Para 4 of the service appeal is correct to the extent that, the meeting of Provincial Selection board was held on 28-12-2017. The Provincial Selection board deferred the case of Appellant for promotion due to pending of an enquiry and the Ehtesab Court case.
5. Para 5 of the service appeal is correct to the extent that, the appellant filed departmental appeal dated 18/01/2018 through proper channel which was forwarded to the Appellate Authority for decision, vides letter dated 04/04/2018 (Annexure-A)
6. Para 6 of the service appeal is correct.
7. Para 7 of the service appeal is incorrect. The case was processed in accordance with Rules/Policy and inlight of Judgments of Peshawar High Court Peshawar. The Appellate Authority rejected the appeal of the appellant with reason “**rejected the subject appeal as it merits no consideration**” (Annexure B).

8. In reply to para. 8 of the service appeal it is submitted that, the appeal of the appellant is liable for dismissal on the following grounds.

GROUND

- A. Para "A" of grounds of service appeal is incorrect. The decision taken by the Provincial Selection Board Khyber Pakhtunkhwa is clear and covered under the relevant law.
- B. Para "B" of grounds of service appeal is incorrect. Detail reply is mentioned in the above paras.
- C. Para "C" of grounds of service appeal is legal. The decision of Provincial Selection Board is lawful and covered under the law.
- D. Para "D" of grounds of service appeal is incorrect. Detail reply has mentioned in the above paras.
- E. Para "E" of grounds of service appeal is correct to the extent that, inquiry initiated against the appellant was concluded with the imposition of Minor penalty i.e. stoppage of one increment without cumulative effect" on the appellant (Annexure C)
- F. Para "F" of grounds of service appeal is correct to the extent that a case of Ehtesab Commission is pending against the appellant in the special Ehtesab Court Khyber Pakhtunkhwa. Hence the order of respondents for deferment of promotion is lawful and covered under the law (Annexure-D).
- G. Para "G" of grounds of service appeal is incorrect. Reply has mentioned in the above para F.
- H. Para "H" of grounds of service appeal is legal. The order of respondents is lawful and covered under the relevant law.

In view of the above facts it is humbly prayed that, the appeal of the appellant may be dismissed with cost as the same is untenable on law please.

**Secretary to Government of
Khyber Pakhtunkhwa Mineral
Development Department
Respondent No.01**

**Chief Secretary
Khyber Pakhtunkhwa
Respondent No.02**

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

Service Appeal No. 672/2018

Zahoor UddinPetitioner

VERSUS

Government of Khyber PakhtunkhwaRespondent

AFFIDAVIT


I, Said Muhammad, Superintendent (Litigation), Directorate General Mines and Mineral do hereby solemnly affirm and declare that the contents of the accompanying para-wise comments are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honorable Court.

DEPONENT

Identified by

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Government of  Annex "A"
Khyber Pakhtunkhwa
Minerals Development Department

No. SO (E)/MDD/2-4/2018/KC

Peshawar, 4th April, 2018/29/10/13

To

The Secretary to Govt. of Khyber Pakhtunkhwa,
Establishment Department

Subject: APPEALS OF ASSISTANT DIRECTORS (BS-17) OF MINERAL
DEVELOPMENT DIRECTORATE, KHYBER PAKHTUNKHWA

Dear Sir,

I am directed to refer to this department's letter of even number dated 07.03.2018 on the above captioned subject and to state that the officers, whose appeals have already been sent to Establishment Department through the above quoted letter, have filed a Writ Petition No.1284-P of 2018 in the Peshawar High Court, Peshawar (copy enclosed); with the plea that their appeals are pending before the Worthy Secretary, Minerals Development Department, Khyber Pakhtunkhwa, Peshawar/respondent No.1, which requires to be decided. The Peshawar High Court, in its judgment dated 22-03-2018 (copy enclosed), passed the following orders:-

"The petitioners are, directed to appear before the worthy Secretary, Minerals Development Department on 29-03-2018 at 10:00 AM. Surely, the petitioners should be provided sufficient opportunity to plead their case. Thereafter, the worthy Secretary is to decide the matter within thirty days. In case, the relief sought by the petitioners cannot be granted then reason in writing be recorded for the same, and copy thereof be transmitted to the worthy Director, Human Rights Cell of this Court."

2. It may be added that in compliance to Peshawar High Court's above judgment, the petitioner came/called for personal hearing on 29-03-2018 at 10:00 AM and during hearing, both the petitioners were of the view that they have nothing to add new and their stance is the same which already explained/expressed in their appeals submitted earlier.

3. However, it may also be added that the Secretary, Minerals Development Department, is not the Appellate Authority in the case to decide appeals of the officers (petitioners).

4. In view of the above, it is, therefore, requested that decision of the Appellate Authority, on the appeals already sent to Establishment Department, may please be communicated to this Department so that case could be processed further, accordingly.

Yours faithfully,

(Muhammad Javed)
Section Officer (Estt.)

Encls: as Above:

Endst: No & Date Even:

Copy is forwarded for information to:-

1. Mr. Waqar Ahmad, Additional Advocate General, Khyber Pakhtunkhwa, Peshawar.
2. Director, Human Rights Cell of Peshawar High Court, Peshawar.
3. The Director General, Mines & Minerals, Khyber Pakhtunkhwa.
4. P.S to Secretary Minerals Development Department.


Section Officer (Estt.)

(5)

Annex "B"



GOVT. OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMN: DEPARTMENT
(REGULATION WING)

No. Kc. SO(O&M)E&AD/10-4/2014
Dated Peshawar, the 8th May, 2018

To

✓
The Secretary to Govt. of Khyber Pakhtunkhwa,
Minerals Development Department.

Subject:

APPEAL OF ASSISTANT DIRECTORS (BS-17) OF MINERALS
DEVELOPMENT DIRECTORATE, KHYBER PAKHTUNKHWA.

Dear Sir,

I am directed to refer to your department letter No.SO (E)/MDD/2-4/2018/KC dated 04.04.2018 on the subject cited above and to state that the competent authority rejected the subject appeal as it merits no consideration.

Yours faithfully,

(Dr. Irum Shaheen)
SECTION OFFICER (O&M)

Copy to:-

PA to Deputy Secretary (Reg-III), Establishment Department

SECTION OFFICER (O&M)

(5)

Annex "B (2)"



Minerals Development Department

No. SO (E)/MDD/2-4/2018/KC/2073/75
Dated Peshawar, May 22, 2018

To

The Directorate General,
Mines & Minerals,
Khyber Pakhtunkhwa

**SUBJECT: APPEAL OF ASSISTANT DIRECTORS (BS-17) OF MINERALS
DEVELOPMENT DIRECTORATE, KHYBER PAKHTUNKHWA**

I am directed to refer to this Department's letter No SO(E)/MDD/
2-4/2018/KC/2073/75 dated 07-03-2018 on the above captioned subject and
to inform that the Competent Authority has been pleased to reject the subject appeal
as it merits no consideration.

Section Officer (Estt)



7 Annex "C"

**Government of
Khyber Pakhtunkhwa
Minerals Development Department**

Dated Peshawar, August 03, 2018

NOTIFICATION

No.SO(E)/MDD/4-1/Vol-II/2018: WHEREAS, Mr. Zahoor-ud-Din, Assistant Director Mineral (BPS-17) was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, for the charges as mentioned in the Charge Sheet and Statement of Allegations dated 15-09-2017, served upon the said officer;

2. AND WHEREAS, Mr. Israar-ul-Haq, Director General Monitoring & Evaluation, Planning & Development Department was appointed as Enquiry Officer to conduct the inquiry against the said accused officer;

3. AND WHEREAS, the Enquiry Officer, after having examined the charges, evidence on record and explanation of the accused officer, submitted its report, wherein the charges against the officer being of serious nature have been established beyond reasonable doubt;

4. AND WHEREAS, the Competent Authority, after considering the Inquiry Report and other related documents of the case, served a Show Cause Notice upon the said officer to which he replied, and provided him opportunity of personal hearing;

5. NOW, THEREFORE, the Competent Authority, after having considered the charges, evidence on record, findings of the Enquiry Officer, the explanation of the accused officer, and exercising his powers under Rule-14(5)(ii) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 read with Rule 4(1)(b) of (APT) Rules, 1989, has been pleased to impose a minor penalty of **"Stoppage of one increment without cumulative effect"**; upon Mr. Zahoor-ud-Din, Assistant Director Mineral (BPS-17), Directorate General, Mines & Minerals Khyber Pakhtunkhwa, with immediate effect.

**CHIEF SECRETARY
KHYBER PAKHTUNKHWA**

Endst: No. SO(E)/MDD/4-1/Vol-II/2018/6759-6, Dated Pesh: August 03, 2018

Copy is forwarded to:-

1. Accountant General, Khyber Pakhtunkhwa
2. PSO to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
3. PS to Secretary Minerals Development Department, Khyber Pakhtunkhwa.
4. Directorate General, Mines & Minerals Khyber Pakhtunkhwa.
5. Officer concerned C/O Directorate General, Mines & Mineral, Peshawar.
6. Master file.
7. Office order file.


(MUHAMMAD JAVED)
SECTION OFFICER (Estt:)

(8)

Amir J - D



Amir J Page 1 of 6

IN THE COURT OF SUBHAN SHER, JUDGE
SPECIAL EHTESSAB COURT-II, KHYBER PAKHTUNKHWA PESHAWAR

Reference No. 04/2016

37

IPK Ehtesab Commission ...VS... Muhammad Riaz & others

CHARGE

I, Subhan Sher, Judge, Special Ehtesab Court-II Khyber Pakhtunkhwa, hereby charge you accused namely;

1. Muhammad Riaz, aged about 50/51 years, Assistant Director Mineral Development, Mines & Mineral Department Khyber Pakhtunkhwa, presently posted as Assistant Director (Royalty) Headquarter office, Peshawar.
2. Mohsin Ali Khan, aged about 32 years, Assistant Director Mineral Development, Mines & Mineral Department Khyber Pakhtunkhwa, presently posted as Assistant Director Minerals Development, Swat.
3. Noor-ul-Islam aged about 46/47 years, Assistant Director Mineral Development, Mines & Mineral Department Khyber Pakhtunkhwa, presently posted as Assistant Director Minerals Development, Mardan.
4. Zahoor-ud-Din aged about 49/50 years, Assistant Director Mineral Development, Mines & Mineral Department Khyber Pakhtunkhwa, presently posted as Assistant Director Minerals Development, Headquarters office, Peshawar.
5. Nazir Ahmed, aged about 63 years, s/o Abdul Haq, r/o Attar Sheesha, Shah Kot, District Mansehra.
6. Ashraf Ali aged about 41 years s/o Ali Zamari r/o Shah Kot, District Mansehra, as follow:-

Firstly:- That you accused No.1 Muhammad Riaz posted as Mineral Development Officer during the period from 10.07.2006 to 06.11.2008, as DDO from 23.09.2010 to 31.10.2011 and Assistant Director, Mineral Department, Mansehra from 07.05.2015 to 31.10.2015, during your these tenures in the above mentioned capacities, in connivance with your co-accused at serial No. 2 to 6 and in furtherance of your

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Minor Copying Branch,
Ehtesab Court, KPK,
Peshawar

common intention and common object of you all, fraudulently and illegally issued 1500 Transit Challans to your co-accused No.5, Nazir Ahmad from 28.06.2008 to 28.06.2011 for Feldspar mining area, but in fact no practical excavation/work was executed in the said area during the above mentioned period and thus you failed to exercise your authority required under the law as you were bound to inspect practically the area at the time of issuance of challans mentioned above. Similarly, you did not prepare the working papers for the cancellation of the lease to licensing authority and willfully failed to fulfill your duties, and you accused caused to suffer public exchequer huge monetary loss to the tune of Rs. 64,204,000/- and thereby committed offences as defined u/s 23 of the Khyber Pakhtunkhwa Ehtesab Commission Act 2014 (as amended upto date) punishable under section 24 read with schedule thereto of the said Act and within the cognizance of this Court.

secondly:- That you accused No.2 Mohsin Ali while posted as Assistant Director Mineral Department, Mansehra w.e.f 31.10.2011, during this tenure, your co-accused No.5 Nazir Ahmad filed an application for renewal of the mining lease on 14.06.2012 after 9 months and 25 days of the expiry of the period for filing application for renewal of mining lease, you accused No.2 was required under the law to prepare and submit the working papers for cancellation of mining lease; but you illegally, fraudulently kept the said application in your office and had not acted upon. Similarly, you accused named above posted as Assistant Director Mineral Department, Mansehra w.e.f. 25.07.2013 to 14.04.2014 but during this tenure too, you did not prepare and submit the working papers to competent authority for cancellation of mining lease. During your above mentioned tenures, your co-accused No.5 through authority letter dated 23.10.2013 without the permission of the Licensing Authority sublet the leased area to your co-accused No.6 (Ashraf Ali), who involved in unauthorized mining but you accused did not take any action against above named co-accused No.6 and has been failed to stop the unauthorized

mining which was continued till 12.10.2015 and thus you willfully failed to fulfill your duties and responsibilities under the law, illegally benefited your co-accused No.5 by suppressing the application in your office and allowing the sublettee your co-accused No.6 for unauthorized and illegal excavation and you accused caused to suffer public exchequer huge monetary loss to the tune of Rs. 64,204,000/- and thereby committed offences as defined u/s 23 of the Khyber Pakhtunkhwa Ehtesab Commission Act 2014 (as amended upto date) punishable under section 24 read with schedule thereto of the said Act and within the cognizance of this Court.

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Thirdly:- That you accused No.3 Noor-ul-Islam while posted as Assistant Director Mineral Development, Mansehra w.e.f. 02.04.2013 to 29.07.2013 and 18.11.2014 to 06.05.2015, the application filed by your co-accused No.5 on 14.06.2012 in the office tenure of your co-accused No.2 for the renewal of the mining lease, deliberately it was kept pending from 14.06.2012 to 10.04.2015 whereas you accused were duty bound to prepare and submit the working papers to the competent authority for cancellation of mining lease but you with malafide intentions did not fulfill the same. Similarly, in your second office tenure you accused illegally and unlawfully did not prepare the working papers for the cancellation of mining lease. Furthermore, you accused illegally issued 200 challans in your second tenure from Serial No.1701 to 1900 of the Challan book on 17.02.2015 to unauthorized and illegal sublettee your co-accused No.6 inspite of the fact that the mining lease had been expired on 19.08.2012. So you accused named above willfully failed to fulfill your duties and responsibilities and illegally benefited the unauthorized sublettee your co-accused No.6 and you accused caused to suffer public exchequer huge monetary loss to the tune of Rs. 64,204,000/- and thereby committed offences as defined u/s 23 of the Khyber Pakhtunkhwa Ehtesab Commission Act 2014 (as amended upto date) punishable under section 24 read with schedule thereto of the said Act and within the cognizance of this Court.

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26.5.2016

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Ehtesab Courts, KPK,
Peshawar
2016

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ly:- That you accused No.4 Zahir-ud-Din, while posted as Assistant Director Development, Mansehra w.e.f from 23.04.2014 to 14.11.2014, your co-accused No.5 (Nazir Ahmad) had already filed an application for renewal of mining lease on 14.06.2012. This application under the law was time-barred, so you accused were required to prepare and submit the working papers to the competent authority for cancellation of mining lease but inspite of doing this, you accused illegally and fraudulently issued 200 challans from 1501 to 1700 on 02.06.2014 to your co-accused. You accused willfully failed to fulfill your duties and responsibilities and illegally benefited the unauthorized and illegal sublettee your co-accused No.6 and you accused caused to suffer public exchequer huge monetary loss to the tune of Rs. 64,204,000/- and thereby committed offences as defined u/s 23 of the Khyber Pakhtunkhwa Ehtesab Commission Act 2014 (as amended upto date) punishable under section 24 read with schedule thereto of the said Act and within the cognizance of this Court.

Fifthly:

That you accused No.5 Nazir Ahmad were granted mining lease vide No. MDW/MA/ML-Feldspar(100)/2007 over an area of 299.163 acres near Village Shahkot, district Mansehra on 20.08.2007 for the period of 5 years valid upto 19.08.2012, but you accused did not work in the said lease area since June, 2008 to May, 2010, but even then you were receiving transit challans from your co-accused No.1 since 28.06.2008 to 28.06.2011 and you accused received 1500 challans during the period and utilized it; whereas, this area was idle since 2008 to May, 210. Inspite of directions issued by the Assistant Director Mineral Development, Mansehra you willfully did not submit the monthly production report showing raising and dispatches of feldspar since June, 2008 to Feb, 2011 and did not deposit the deed rent and annual rent as well. You accused also sublet the mining area to your co-accused No.6 illegally and without the permission of the licensing authority through authority letter dated 23.10.2013. You accused in connivance with accused No.1, 2, 3, 4 and 6 remained involved in unauthorized mining of feldspar and due to this,

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you accused caused to suffer public exchequer huge monetary loss to the tune of Rs. 64,204,000/- and thereby committed offences as defined u/s 23 of the Khyber Pakhtunkhwa Ehtesab Commission Act 2014 (as amended upto date) punishable under section 24 read with schedule thereto of the said Act and within the cognizance of this Court.

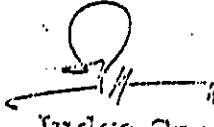
Sixthly:

That you accused No.6, Ashraf Ali remained involved in unauthorized mining of feldspar from 23.10.2013 to October, 2015 under the cover of authority letter dated 23.10.2013 and in connivance with your co-accused No. 2, 3, 4 and 5, you accused illegally obtained the transit Challans from your co-accused No. 3 and 4 and utilized them and due to this practice, you accused caused to suffer public exchequer huge monetary loss to the tune of Rs. 64,204,000/- and thereby committed offences as defined u/s 23 of the Khyber Pakhtunkhwa Ehtesab Commission Act 2014 (as amended upto date) punishable under section 24 read with schedule thereto of the said Act and within the cognizance of this Court.

Seventhly:-That you all accused at serial No. 1 to 6 during posting in different categories, working in official and private capacities and in connivance of you all illegally assisted and facilitated one another in excavating mines in utter violation of the laws by misusing your authority and due to your above mentioned illegal acts, you all six accused caused to suffer public exchequer huge monetary loss to the tune of Rs. 64,204,000/- and thereby committed offences as defined u/s 23 of the Khyber Pakhtunkhwa Ehtesab Commission Act 2014 (as amended upto date) punishable under section 24 read with schedule thereto of the said Act and within the cognizance of this Court.

And I hereby direct that you be tried by me on the said charges.

ATTESTED
Examiner Copy
Ehtesab Court-II, KPK,
Peshawar
26-05-2016


25.5.2016
Judge Special,
Ehtesab Court-II, KPK
Peshawar

POWER OF ATTORNEY

In the Court of _____

Zahoor-ud-Din Assistant-Director

Mineral, KPK Peshawar

For
} Plaintiff
} Appellant
} Petitioner
} Complainant

VERSUS

Govt. of KPK & others

} Defendant
} Respondent
} Accused
}

Appeal/Revision/Suit/Application/Petition/Case No. _____ of _____

Fixed for _____

I/W, the undersigned, do hereby nominate and appoint

ZARTAJ ANWAR ADVOCATE, my true and lawful attorney, for me in my same and on my behalf to appear at _____ to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions. An appeal, statements, accounts, exhibits. Compromise or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc, and to apply for and issue summons and other writs or sub-poena and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

IN WITNESS whereof I/we have here to signed at _____

the _____ day to _____ the year _____

Executant/Executants _____

Accepted subject to the terms regarding fee _____



Zartaj Anwar

Advocate High Courts

ADVOCATES, LEGAL ADVISORS, SERVICE & LABOUR LAW CONSULTANT
FR-3-4, Fourth Floor, Bilour Plaza, Saddar Road, Peshawar Cantt
Ph.091-5272154 Mobile-0331-9389185

**BEFORE THE KHYBER PAKHTUNKWA
SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 672/2019

Zahoor-Ud-Din, Assistant Director Minerals, Khyber
Pakhtunkhwa, Peshawar.

(Appellant)

VERSUS

Secretary Mineral, Khyber Pakhtunkhwa Peshawar and Others

(Respondents)

REJOINDER ON BEHALF OF THE APPELLANT

Respectfully Submitted:

The appellant submit his rejoinder as under:

Preliminary Objections:

1. That the appellant has cause of action against the respondents.
2. That the appellant has locus standi and got cause of action to file the instant appeal and is maintainable in its present form.
3. That all the necessary parties are included in the appeal.
4. That the appellant has come to this court with clean hands.
5. That the appellant has not concealed anything from this honourable Tribunal.

ON FACTS:

1. Need no reply.
2. Contents of Para 2 of the Appeal is correct, furthermore, mere pendency of any proceeding pending before any Commission or Court of law does not de-bar the civil servant from his right of promotion.

3. Para 3 of Appeal is correct as admitted by the respondent as well, as the case of the Appellant was placed before the Provincial Selection Board and the meeting held on 28.12.2017, but illegally against the settled rule and law on the subject deferred the present Appellant from promotion.
4. Contents of Para 4 of the Appeal is correct. The detail reply is given in the above para.
5. Contents of Para 5 as admitted by the respondent on submission of the departmental appeal by the Appellant which was dismissed on 08.05.2018, without following the due course of law on the subject matter.
6. Contents of Para 6 needs no reply.
7. Contents of Para 7 where the departmental appeal of the Appellant was dismissed by the respondent department on 08.05.2018, conveyed later on but without due course of law, hence need no reply.

GROUNDS

- A. Incorrect. According to the lay down law & procedure mere pendency of any proceeding does not de-bar any civil servant from his right of promotion.
- B. Contents of Para B of Appeal are correct and the reply so submitted is incorrect and misleading.
- C. Para C of the appeal is correct and the reply so submitted is incorrect and misleading.
- D. Para D of the appeal is correct and the reply so submitted is incorrect and misleading.
- E. Contents of the appeal is correct and the reply so submitted is incorrect and misleading.
- F. Contents of the appeal is correct and the reply so submitted is incorrect and misleading.

G. Contents of the appeal is correct and the reply so submitted in incorrect and misleading.

H. Need no comments.

It is, therefore, prayed that on acceptance of this *Service Appeal*, may please be accepted as prayed for.

Appellant

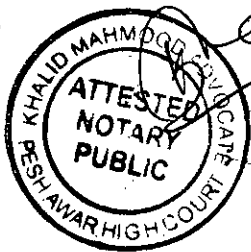
Through



ZARTAJANWAR
Advocate Peshawar

Affidavit

I do hereby solemnly affirm and declare that the contents of the *above Rejoinder* are true and correct and that nothing has been kept back or concealed from this Honourable Court.




Deponent



**Government of Khyber Pakhtunkhwa
Minerals Development Department**

No. SO(Lit)/MDD/2-1/2019

Dated Peshawar, the 22.8.2019

19300-02

To

✓ Directorate General,
Mineral Development Department,
Khyber Pakhtunkhwa Peshawar.


Subject: **PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 1,2
AND 4 IN AMENDED SERVICE APPEAL NO. 672/2019 TITLED
AS ZAHOR-UD-DIN VS SECRETARY, MINERAL DEVELOPMENT
DEPARTMENT KHYBER PAKHTUNKHWA AND OTHERS**

Dear Sir,

I am directed to the subject noted above and to return herewith joint parawise comments **(in original)** duly signed by Secretary, Mineral Development Department, for further necessary action.

Encl: as above:

Your's faithfully


**Section Officer (Litigation)
Mineral Dev: Department**

CC:

1. PS to the Secretary Minerals Development Department
2. Master file.

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Before the Khyber Pakhtunkhwa Service Tribunal Peshawar.

Amended Service Appeal No. 672/2019

Zahoor-ud-din, Assistant Director Mineral,
Khyber Pakhtunkhwa Peshawar

Appellant

Versus

The Secretary, Mineral
Development Department
Khyber Pakhtunkhwa, Peshawar & Others.

Respondents

**PARAWISE REPLY ON BEHALF OF RESPONDENT NO. 1,2 AND 4 IN
AMENDED SERVICE APPEAL NO. 672/2019 TITLED AS ZAHOOR UD
DIN VS SECRETARY, MINERAL DEVELOPMENT DEPARTMENT
KHYTBER PAKHTUNKHWA AND OTHERS.**

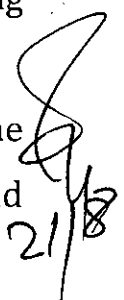
Respectfully Shewith.

PRELIMINARY OBJECTION

1. That the appellant has got no cause of action and locus standi to file the instant service appeal.
2. That the instant appeal is not maintainable in its present form.
3. That the instant appeal is bad due to non joinder and miss-joinder of necessary party.
4. The appellant has not come to this Tribunal with clean hands.
5. That the appellant is estopped by his own conduct to file this appeal.

FACTS

1. Pertain to record hence no comments.
2. Incorrect. A case in the Ehtisab Commission is pending adjudication against the appellant. Moreover, he was found guilty in the Departmental inquiry, and his one increment was stopped. **Annex-I.**
3. Correct to the extent that working paper for promotion from BPS-17 to BPS-18 were processed and sent to Establishment Department for placing before the Provincial Selection Board (PSB) Meeting, which was held on 28.12.2017. The Department did not recommend him for promotion due the reasons recorded against his name in the working paper (**Annex-B** of appeal).
4. Correct to the extent that PSB deferred the case of promotion of the appellant due to pending Ehtisab Court's case against him and Departmental inquiry as well (**Annex-C** of the appeal).

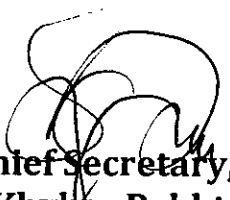

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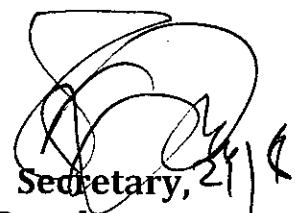
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5. Correct to the extent that the appellant filed Departmental appeal which was dismissed on 08.05.2018.
 6. No Comments.
 7. The Departmental Appeal of the appellant was rejected by the Competent Authority on 08.05.2018 and conveyed to his on 22.05.2018 (**Annex-II**).
 8. No comments.

GROUND:

- A. His promotion was deferred by the Competent Authority for his pending case in Ehtisab Court which was criminal in nature, as well as pending inquiry. (Para V (a) (II) of promotion policy 2009 (Annex-III).
- B. The plea taken by the appellant is not correct as he has quoted Para-04 and 05 of "Instruction on Performance Evaluation Report" which is a separate guideline for filling of Performance Evaluation Report.
- C. His promotion was not only deferred due to the Departmental Inquiry but a case was also pending adjudication against him in Ehtisab Court.
- D. As explained in Para-C of the grounds.
- E. Inquiry report was sufficient to prove him guilty.
- F. No comments as it related to Ehtisab Court.
- G. As explained in Para-C.
- H. As explained in Para-C.
- I. No Comments.

Foregoing in view, there is no solid or legal ground to maintain the present Appeal of the appellant for the reason that the appellant has got promotion to BPS-18 in the Provincial Selection Board Meeting held on 19.04.2019 (**Annex-IV & V**) hence the same may very graciously be dismissed with cost.


Chief Secretary,
Govt: Khyber Pakhtunkhwa
Respondent No. 2 & 4


Secretary, 21/1
Mineral Development Department
Respondents No. 1