

22.02.2022


Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 28.04.2022 for the same as before.



Reader

28.04.2022

Counsel for the petitioner present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present. Learned AAG seeks time for implementation report. To come up on 27.05.2022 before S.B.



(FAREEHA PAUL)
Member (E)

27th May, 2022

Clerk of counsel for the appellant present. Mr. Kabir Ullah Khattak, AAG for respondents present.

Due to general strike of the bar. Case is adjourned. To come up for the same on 06.07.2022 before S.B.




(Kalim Arshad Khan)
Chairman

6th July, 2022

Learned counsel for the petitioner present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Masood Khan, Litigation Officer for respondents present.

The department has filed reply/compliance report which is placed on file. Learned counsel for the petitioner after going through the reply submitted that he would come up with submissions for which he sought time. To come up for further proceedings on 07.09.2022 before S.B.

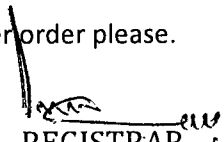




(Kalim Arshad Khan)
Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 351/2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	29.11.2021	<p>The execution petition submitted by Mr. Yasir Khan through Mr. Fazal Shah Mohmand Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p> REGISTRAR</p>
2-		<p>This execution petition be put up before S. Bench on <u>07/01/22</u>.</p> <p> CHAIRMAN</p>
	07.01.2022	<p>Rabia Muzaffar, Advocate for the petitioner present. Notices be issued to the respondents. Case to come up for implementation report on 22.02.2022 before S.B.</p> <p> (Rozina Rehman) Member (J)</p>

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR.

Implementation Petition No 350 /2021

In
Service Appeal No. 10408/2020

Muhammad UsmanPetitioner/Appellant.

V E R S U S

DEO and Others.....Respondents

I N D E X

S.No	Description of documents	Annexure	Pages
1.	implementation Petition with Affidavit		1-2
2.	Copy of the Order and Judgment dated 10-09-2021	A	3-7
3.	Copy of Application	B	8
4.	Wakalat Nama		9


Dated:-25-11 -2021


Petitioner/Applicant

Through


FAZAL SHAH MOHMAND
ADVOCATE,
SUPREME COURT OF PAKISTAN.

&


RABIA MUZAFFAR
ADVOCATE,
HIGH COURT, PESHAWAR

- 1 -

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR.

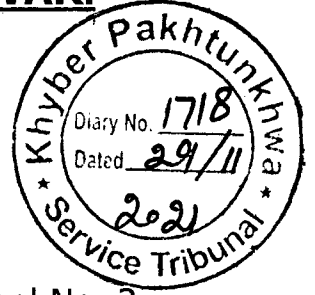
Implementation Petition No 350 /2021

In

Service Appeal No. 10408/2020

Muhammad Usman S/o Muhammad Hanif, Qari at Govt High School No. 2
R/o Mohallah Nawab Abad, Khesghi Bala Nowshera

.....**Appellant/Applicant.**



VERSUS

1. Director Elementary and Secondary Education, KPK Peshawar.
2. District Education Officer (Male) Nowshera.
3. Secretary, Elementary and Secondary Education, KPK Peshawar.

.....

.....**Respondents**

**PETITION FOR THE IMPLEMENTATION OF ORDER/JUDGMENT
DATED 10-09-2021 PASSED BY THIS HONORABLE TRIBUNAL IN
THE ABOVE TITLED SERVICE APPEAL.**

Respectfully Submitted:-

1. That the petitioner/appellant earlier filed Service Appeal No 10408/2020 for promotion, wherein the service appeal of the appellant was disposed of in terms that the cases of the appellant are remitted to respondents to examine their promotion cases strictly in accordance with the promotion criteria together with the correct distribution of the seats amongst the cadres and promote the appellants on the basis of seniority cum fitness upon availability of posts. **(Copy of the Order and Judgment dated 10-09-2021 is enclosed as Annexure A).**
2. That the petitioner/appellant time and again approached respondents for the implementation of the Order and Judgment of this honorable Tribunal and also filed application dated 29-09-2021 for his promotion as Qari (M/P) SST which was not responded and the promotion of the appellant has not been duly processed as per the Judgment of this honorable tribunal. **(Copy of the Application is enclosed as Annexure B).**
3. That the respondents are not ready to implement the Order and Judgment of this honorable Tribunal in its true spirit for no legal and valid reasons, this act of the respondents is unlawful,

unconstitutional and goes against the Orders and Judgment dated 10-09-2021 of this honorable Tribunal.

It is therefore prayed, that on acceptance of this Application/Petition, respondents may kindly be directed to implement the Order and Judgment of this honorable Tribunal dated 10-09-2021 passed in Service Appeal No 10408/2020.


Dated: -25-11-2021


Petitioner/Applicant

Through


FAZAL SHAH MOHMAND
ADVOCATE,
SUPREME COURT OF PAKISTAN.

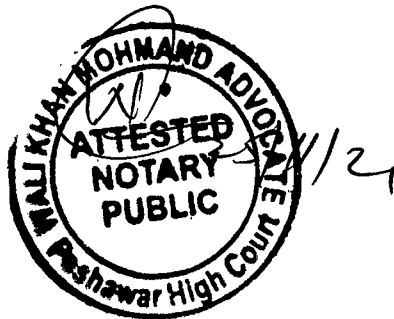
&


RABIA MUZAFFAR
ADVOCATE,
HIGH COURT, PESHAWAR

AFFIDAVIT

I, Muhammad Usman S/o Muhammad Hanif, Qari at Govt High School No. 2 R/o Mohallah Nawab Abad, Khesghi Bala Nowshera, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Implementation Petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.


DEPONENT

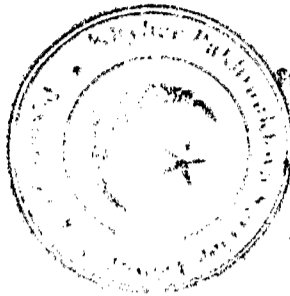


"A" - 3 -

BEFORE THE KHYBER PUKHTUNKHWA SERVICES TRIBUNAL

PESHAWAR

Service Appeal No. 10408 /2020



Khyber Pakhtunkhwa
Service Tribunal

Diary No. 9862-

Dated 8/9/2020

(1) Muhammad Usman Son of Muhammad Hanif R/O Moshalla Nawab Abad, Village Khashgi Bala, District Nowshera, Working and posted presently as Qari at Government High School No. 2 Nowshera Kalan (Nowshera)..... (**Appellant**)

VERSUS

(1) Secretary to Government of Khyber Pakhtunkhwa Elementary and Secondary Education Department, Civil Secretariat, Peshawar.

(2) Director Elementary and Secondary Education Department, KP, Peshawar.

(3) District Education Officer (Male) Nowshera..... (**Respondents**)

APPEAL U/S 4 OF THE SERVICES TRIBUNAL, ACT, 1974

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Registrar,
8/9/2020

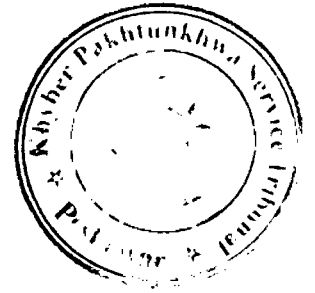
Respectfully Sheweth,

- (1) That the Appellant joined the service of education department as Qari and is working as such for more than 8 years by now.
- (2) That the respondent department in consultation with the Establishment and Finance Department has passed notification No. SO (PE)4-5/SSRC/Meeting/2013 Teaching Cadre. Peshawar dated 18th December 2013, whereby 75% quota for the posts of Secondary School Teacher (BPS-16) has been reserved/sanctioned for promotion on the basis of seniority-cum-fitness and 25% for initial recruitment. Furthermore the note to the policy also provided that

Handwritten signature and stamp:
REGISTERED
[Signature]

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 10408/2020



Date of Institution ... 08.09.2020

Date of Decision ... 10.09.2021

Muhammad Usman Son of Muhammad Hanif F/O Mohallah Nawab Abad, Village Khesghi Bala, District Nowshera, Working and posted presently as Qari at Government High School No.2 Nowshera Kalan (Nowshera)

... (Appellant)

VERSUS

Secretary to Government of Khyber Pakhtunkhwa Elementary and Secondary Education Department, Civil Secretariat, Peshawar and two others.

... (Respondents)

ISHFAQ AHMAD KHAN
Advocate

... For Appellant

RIAZ KHAN PAINDAKHEIL,
Assistant Advocate General

... For Respondents

ROZINA REHMAN
ATIQU-UR-REHMAN WAZIR

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

Wh

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E) :- This single judgment shall dispose of the instant service appeal as well as the connected service appeal bearing No. 10407/20 titled "Yasir Khan Vs. Secretary to Government of Khyber Pakhtunkhwa Elementary and Secondary Education Department Civil Secretariat, Peshawar and two others", as common question of law and facts are involved therein.

02. Brief facts of the case are that the appellants joined education department as Qari. The appellants are mainly aggrieved of the inaction of the respondents by not promoting the appellants as per 3% quota reserved for qari specified in the

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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Notification dated 18-12-2013, against which the appellants filed separate departmental appeals dated 03-03-2020 and 09-05-2020 respectively, which were not responded, hence the instant service appeals instituted on 08-09-2020 with prayers that the appellants may be considered for promotion to the post of Secondary School Teacher (SPS-16) with immediate effect enabling the appellants to enjoy the financial benefits and seniority in accordance with law to meet the ends of justice.

03. Learned counsel for the appellant has contended that the notification dated 18-12-2013 envisages a clear and transparent policy of promotion, whereby 75% quota is reserved for promotion and 25% for initial recruitment; that out of 75% quota specified for promotion, 3% is specified for Qari Cadre, but the respondents have illegally amalgamated all the seats of quota just to accommodate their own blue eyed candidates, whereas the appellants are ignored repeatedly, which is discriminatory, hence is liable to be set at naught; that the appellant being qualified in every respect as per policy was required to be considered for promotion, but the respondents recently conducted departmental promotion committee meeting and again ignored the appellants; that the appellants have not been treated in accordance with law and illegally made to suffer financially; that the appellants are deserving and eligible candidates for promotion to the next grade with no adverse remarks from any quarter and thus valuable rights have been accrued to them, which could not be taken away in an arbitrary or fanciful manner; that the respondents have exceeded their powers and jurisdiction by enjoying their own innovation and monopoly, creating problems for the entire family of the appellant by treating the appellant with discrimination and depriving the appellants from their due right of promotion as well as financial benefits; that a total of 97 vacancies have been filled from 2014 to 2020, where only one Qari was promoted, whereas the share of Qari comes to 3 seats, which were not allocated to the Qari Cadre, hence both the appellants were deprived of their right of promotion.

EXAMINER
 CHIEF PAKHTUNKHWA
 SERVICE COMMISSION
 PESHAWAR

04. Learned Assistar : Advocate General appearing on behalf of respondents has contended that the appellants were initially appointed as Qari on 25-05-2012 and 02-12-2014 respectively and as per Notification dated 18-12-2013, the appellants were required to complete five years mandatory period as Qari and such period in respect of appellants comes to 25-05-2017 and 02-12-2019 respectively, hence they have become eligible for promotion in the mentioned dates, but they are calculating their quota from the dates when they were initially appointed, which is wrong, as such quota for promotion is observed and calculated on yearly basis and the appellants quota will be considered from the date, when they become eligible for promotion; that in 2017, one Mr. Zaibullah, who was senior most amongst Qari, had already been promoted to SST in their 3% quota; that after 2017, the next and last promotions were made in 2020 in which 10 seats were filled as according to the reserved quota 3% is 0.3, not even half of a seat, so for that very reason, candidates in other cadres, whose quota percentage is higher, were promoted as per rule and policy, hence the collective calculations of vacant seats from 2014 to 2020 makes no sense; that the appellants at the moment are eligible for promotion to the post of SST and they will be promoted on availability of posts; that all the promotions have been made in accordance with law and the appellant has got no cause of action to file the instant service appeal.

05. We have heard learned counsel for the parties and have perused the record. respondents vide notification dated 18-12-2013 have devised criteria for filling in the post of Secondary School Teacher (BPS-16), where 75% of the vacant posts are required to be filled in by promotion on the basis of seniority cum fitness with further distribution of such percentage amongst SCT/CT holding 40% share, PSHT with share of 20% drawing master 4%, senior Arabic teacher 4%, senior theology teacher 4% and 1% seats reserved for Qari cadre. Promotions against such post is made conditional with seniority cum fitness and at least five years service as senior Qari/Qari. The appellants stands qualified to this effect after completion of five

INTERESTED

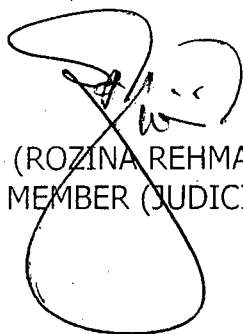
EXAMINER

Khairpur, Bahawalpur,
Service Tribunal
Peshawar

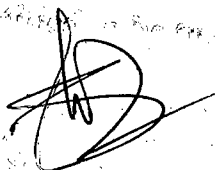
years service on 25-05-2017 and 02-12-2019 respectively and after their fitness for promotion until 2020, one Qari namely Zaibullah was promoted vide order dated 09-10-2017 and again promotions were made against ten vacant posts, where share of the Qari comes to 0.3%, which does not make a share even to half of the seat hence the Qari Cadre was not allocated any seat. Placed on record is a tentative seniority list of Senior Qari, Qari, where the appellants stand at serial No. 37 and 51 but it was un-disputed and representative of the respondents admitted to the fact that both the appellants stand at the top for promotion, as his other colleagues senior to them are otherwise deficient in fitness for promotion, hence they both are considered as fit for promotion at the moment and they will be promoted upon availability of posts.

06. We have not observed any illegality in the promotion process, but to make it sure that justice is done to the appellants, the cases of appellants are remitted to respondents to examine their promotion cases strictly in accordance with the promotion criteria together with the correct distribution of seats amongst the cadres and promote the appellants on the basis of seniority cum fitness upon availability of posts. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
10.09.2021


(ROZINA REHMAN
MEMBER (JUDICIAL))


(ATIQ UR REHMAN WAZIR)
MEMBER (EXECUTIVE)



10.09.2021
2000
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22-09-21
22-09-21

"B" -8-

بخدمت جناب DEO صاحب (مردانہ) ضلع نوشہرہ
Roshan Ali
Discuss
29/9/21

عنوان: درخواست برائے عطاء کی ترقی از قاری تا SST (M/P)

جناب عالی!

گزارش کی جاتی ہے کہ میں محکمہ تعلیم میں 25-05-2012 سے بحیثیت قاری ہائی اسکول نمبر 2 نوشہرہ وکلاں میں اپنے فرائض سرانجام دے رہا ہوں۔ اور SST (M/P) کی مطلوبہ اہلیت کے بنیاد پر ترقی کا امیدوار ہوں۔ لیکن چار سال سے DPC میں فائل شامل نہیں کی جا رہی ہے اور یہ اعتراض بیان کیا جاتا ہے کہ قاری کیڈر کا کوڈ اتنا کم ہے کہ جس سے پوسٹ ہی مکمل نہیں ہوتی۔ اپنی پرموشن کے لیے میں نے ہار ہار (DIK) اور ڈائریکٹر صاحبان کی خدمت میں تحریری درخواستیں دی تھیں، لیکن ان پر مناسب کارروائی نہ ہونے کے باعث مجھے عدالت کے دروازے پر دستک دینا پڑی۔

عدالت میں سدرجہ ذیل گزارشات کے ساتھ اپیل کی۔

- 1- کسی زیب اللہ قاری کیڈر سے 4 خالی آسامیوں میں 3 فیصد کوڈ کے حساب سے پرموشن ہوا ہے۔ آرڈر منسلک ہے۔
- 2- کسی فضل جواد AT کیڈر سے 6 خالی آسامیوں میں 4 فیصد کوڈ کے حساب سے پرموشن ہوا ہے۔ آرڈر منسلک ہے۔
- 3- مجھے چار سال DPC میں بالترتیب 6، 5، 10، اور 4 خالی آسامیوں پر اسی حساب سے پرموشن نہیں دی گئی۔
- 4- اسی طرح 2017ء میں DPC کے ذریعے چار امیدواروں کو ترقی دی گئی جبکہ NTS کے ذریعے 32 امیدوار بھرتی کئے گئے، جو کہ رولز کے خلاف ہے۔
- 5- ابھی تک تمام پرموشن اور NTS کے ذریعے بھرتی میں تناسب 40 اور 60 فیصدی ہے جبکہ رولز کے مطابق 75 اور 25 ہونی چاہئے۔

معزز عدالت نے کئی سماعتوں کے بعد 09-09-2021 کو اپنا فیصلہ سنایا۔ معزز عدالت نے اسی فیصلے میں وضاحت کی ہے کہ قاری کیڈر سے SST (M/P) پوسٹ پر ترقی کے لیے پانچ سال سروس شرط ہے۔ یہی شرط پوری کرنے پر قاری زیب اللہ کو 09-10-2017 پر پرموشن دی گئی۔ عدالت نے یہ بھی قرار دیا کہ SST (M/P) پوسٹوں کی دستیابی کی صورت میں اسی فارمولے کے تحت میری بھی پرموشن کی جائے۔

جناب والا

اب چونکہ ضلع نوشہرہ کے پانچ سکولوں میں SST (M/P) کی پوسٹیں خالی ہیں۔ لہذا انصاف پر عمل درآمد کے لیے اور معزز عدالت کے فیصلے کے نفاذ کے لیے ان میں سے کسی ایک پوسٹ پر میری پرموشن کی جائے۔

367
89-9-81
29/9/21

29/9/21

الحاض الرقوم: 29/09/2021

محمد عثمان سینئر قاری

GHS No 2 نوشہرہ وکلاں

Accepted & Accepted

Accepted & Accepted

کے لئے منظور ہے۔

تاریخ

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یہ ترقیاتی پروگرام ۱۹۹۰ء میں شروع کیا گیا تھا۔

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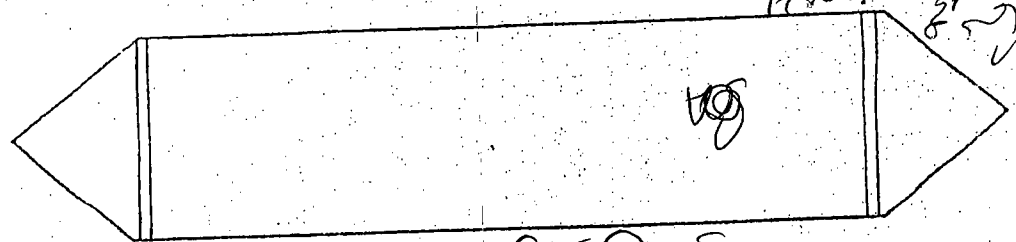
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بمقام

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بمقام

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"B"

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

No.

EP NO 350, 351/21

SK

Appeal No..... 10408... of 20 20

M. Usman Yasir Khan Appellant/Petitioner

Director (ESSE) Pesh Respondent

Respondent No..... 3

Notice to:

Secretary (ESSE) Peshawar


25/11

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 22-2-22.....at 8.00 A.M. If you wish to urge anything against the appellent/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

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


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

Given under my hand and the seal of this Court, at Peshawar this 24.....

Day of..... 1 22 20

along with another connected app: is also attached.




Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

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

"B"

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

SB

No.

EP No 350, 351 of 20 21

M Usman, Yasir Khan Appellant/Petitioner
Versus

Director (ESSE) Peshawar Respondent
Respondent No. 1

Notice to: - Director (ESSE) Peshawar

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WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 22-2-2022 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

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

Given under my hand and the seal of this Court, at Peshawar this.....24.....

20 22

[Handwritten notes: M. Usman, APP, etc.]

[Handwritten signature]
Registrar
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

are the same that of the High Court
correspondence. at Sunday and Gazotted Holidays.

"B"

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

No.

EP No 350, 351/21

SIB

Appeal No..... of 20 20

M. Usman: Yasir Khan Appellant/Petitioner
Versus

Director (E&SE) Peshawar Respondent

Respondent No..... 2

Notice to: - Dist Education officer (Male)

Nowshera

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

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

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

Given under my hand and the seal of this Court, at Peshawar this 24.....

Day of....., 2022

[Signature]
31-1-2022

[Signature]
Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

along with another connected APP: is also attached.

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

**OFFICE OF THE
DISTRICT EDUCATION OFFICER (MALE)
NOWSHERA**

Email: deomalensr@gmail.com

No: 6830-33 DEO (M) NSR DATED: 11/12/2021

**COMPLIANCE REPORT OF THE ORDER/JUDGMENT DATED 10/09/2021
OF KPK SERVICE TRIBUNAL IN SERVICE APPEAL NO.10407/20 &
10408/20 IN CASE TITLED YASIR KHAN AND OTHER VERSUS
SECRETARY E&SE KPK etc.**

In compliance of the above titled Service Tribunal final order/judgment the cases of the appellants were re-examined and their positions were thoroughly checked, strictly in accordance with the promotion criteria, seniority-cum fitness and availability of posts.

Following is the report;

- At present the appellant Muhammad Usman is at S.No. 19 of Sr. Qari while Yasir khan is at S.NO. 14 of the seniority list of Qari.
- The promotion quota of 75% has been observed in all DPC's meetings in which 3% quota for S.Qari/Qari has also been duly observed for promotion to SST.
- Presently there is no available seats of SST (math-physics) for promotion hence no one from any cadre has been promoted nor any fresh seat has been advertised for "SST Math-Physics". So the appellants will be promoted to SST Math-Physics under their reserved quota subject to their seniority-cum fitness position at that time and proportionate availability of seats in their specific cadre of qualification i.e. SST math-physics.

**District Education officer Male
Nowshera**

Copy for information and necessary action:

1. Sectary E&SED KPK, Peshawar
2. Director E&SED KPK, Peshawar
3. Muhammad Usman (Appellant)
4. Yasir Khan (Appellant)
5. Office Copy

**District Education officer Male
Nowshera**