

30.10.2019

Syed Noman Ali Bukhari, junior counsel for the appellant and Mr. Usman Ghani, District Attorney for official respondents No. 1 to 3 present. Junior counsel for the appellant seeks adjournment on the ground that learned senior counsel for appellant has gone to august Supreme Court of Pakistan at Islamabad and cannot attend the Tribunal today. Adjourned to 01.11.2019 for arguments before D.B.


(Ahmad Hassan)
Member

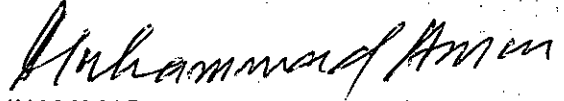

(M. Amin Khan Kundi)
Member

01.11.2019

Counsel for the appellant present. Mr. Usman Ghani, District Attorney alongwith Mr. Muhammad Saleem, Superintendent for official respondents and learned counsel for private respondents present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of six pages placed in connected Service Appeal No. 839/2014 titled "Saleem Jan Versus The Government of Khyber Pakhtunkhwa through Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others", without touching the merits of the appeal, the present service appeal is dismissed being time barred. Parties are left to bear their own costs. File be consigned to the record room

ANNOUNCED
01.11.2019


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER


(HUSSAIN SHAH)
MEMBER

09.07.2019


Learned counsel for the appellant present. Mr. Muhammad Jan learned Deputy District Attorney alongwith Saleem Superintendent for official respondents present. Clerk to counsel for private respondents present and submitted application for adjournment which is placed on file of connected service appeal No.839/2014 filed by Saleem Jan. Application allowed. Adjourn. To come up for arguments on 12.09.2019 before D.B.

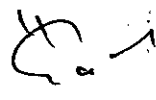

Member


Member

12.09.2019


Junior to counsel for the appellant present. Mr. Zia Ullah learned Deputy District Attorney for the official respondent present. Clerk to counsel for the private respondent present and submitted application for adjournment which is placed on file of connected service appeal No.839/2014. Application allowed. Adjourn. To come up for arguments on 30.09.2019 before D.B.



(Hussain Shah)
Member


(M Hamid Mughal)
Member

30.09.2019

Due to general strike of Khyber Pakhtunkhwa Bar Council learned counsel for the appellant is not available today. Mr. Kabirullah Khattak, Additional AG for the respondents present. Adjourned to 30.10.2019 for arguments before D.B.


(HUSSAIN SHAH)
MEMBER


(M. AMIN KHAN KUNDI)
MEMBER

23.04.2019

Clerk of counsel for the appellant and Addl. AG
alongwith Naqibullah, Senior Scale Stenographer for
the respondents present.

Due to general strike on the call of ^{Provincial} District Bar
Council, case is adjourned to 29.04.2019 for
arguments before the D.B.



Member




Chairman

29.04.2019

Counsel for the appellant and Mr. Muhammad Jan, DDA
for official respondents and counsel for private respondents
present.

Learned counsel for the appellant states that he received
copy of reply submitted by private respondents (4 to 26)
today. He, therefore, requests for time to submit rejoinder.
Adjourned to 14.06.2019 for arguments before the D.B. The
appellant shall submit the requisite rejoinder well before the
date fixed.



Member



Chairman

14.06.2019

Junior to counsel for the appellant and Addl. AG
alongwith Saleem Superintendent for the official respondents
and clerk of counsel for private respondents present.

Due to general strike of the Khyber Pakhtunkhwa Bar
Council, the matter is adjourned to 09.7.2019 for arguments
before the D.B.



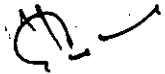
Member



Chairman

28.03.2019

Clerk to counsel for the appellant present. Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Saleem Superintendent for official respondents present. Clerk to counsel for newly impleaded respondents present and requested for time to furnish parawise comments. Granted. To come up for written reply/comments on 01.04.2019 before S.B



Member

01.04.2019

Counsel for the appellant present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Saleem, Supdt for official respondent present. Written reply on behalf of newly impleaded respondents not submitted. Requested for adjournment. Adjourned. Case to come up for written reply/comments on 17.04.2019 before S.B.

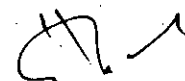


(Ahmad Hassan)

Member

17.04.2019

Learned counsel for the appellant present. Learned counsel for newly impleaded respondents also present and submitted reply. Adjourn. To come up for arguments on 23.04.2019 before D.B




Member

17.01.2019

Mr. Taimur Ali Khan, Junior counsel for the appellant present. Mr. Ziaullah, Deputy District Attorney alongwith Mr. Muhammad Saleem, Superintendent for official respondents and clerk to counsel for applicants present. Clerk to counsel for applicants requested for adjournment on the ground that learned counsel for applicants is not available today. Adjourned. To come up for arguments on main appeal as well as reply/arguments on impleadment application of applicants on 08.02.2019 before D.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

08.02.2019

Appellant alongwith counsel present. Mr. Ziaullah, DDA alongwith M.Saleem, Supdt for official respondents no. 1,2 and 3 present.


On a previous date applicant (Fahad Ikram Qazi and 22 others) submitted an application for impleading them as respondents. Today learned counsel for the appellant expressed no objection on acceptance of their application. Therefore, his application is accepted and the Moharrar of this Tribunal is directed to implead applicant (Fahad Ikram Qazi alongwith 22 others) mentioned in the application in the panel of respondents. Learned counsel for the appellant stated that the present appeal pertains to 2014 and is being delayed unnecessarily. Therefore newly impleaded respondents are directed to submit parawise comments on or before the next date of hearing positively. Case to come up for written reply/comments of newly impleaded respondents on 28.03.2019 before S.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

26.09.2018

Learned counsel for the appellant present. Mr. Saleem Khan, Supdt alongwith Mr. Kabirullah Khattak, Addl: AG for respondents present. Counsel for the appellant seeks adjournment. Granted. Case to come up for arguments on 31.10.2018 before D.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

31.10.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 03.12.2018.

03.12.2018

Counsel for the appellant present. Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 17.01.2019 before D.B.


READER


(Ahmad Hassan)
Member


(Muhammad Amin Khan Kundi)
Member

09.04.2018.

Counsel for the appellant Addl. AG alongwith Muhammad Aslam, SO for the respondents present. Due to incomplete Bench, arguments could not be heard. To come up for arguments on 04.05.2018 before the D.B.


(M. Amin Khan Kundi)
Member

02.05.2018 The Tribunal is defunct due to retirement of Hon'ble Chairman. Therefore, the case is adjourned. To come on 22.06.2018


READER

22.06.2018

Counsel for the appellant present. Mr. Muhammad Jan, Deputy District Attorney for the respondents also present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments 31.07.2018 before D.B.


(Ahmad Hassan)
Member

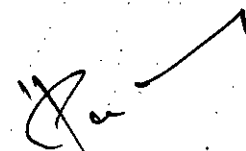

(Muhammad Amin Khan Kundi)
Member

31.07.2018

Clerk to counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney present. Clerk to counsel for the appellant seeks adjournment on the ground that learned counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 26.09.2018 before D.B.

Application for impleadment of private respondents (23 in number) submitted which is placed on file. To also come up for reply and arguments on the said application on the date fixed.



(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

10.11.2017

Junior counsel for the appellant present. Mr. Usman Ghani, District Attorney alongwith Mr. Saleem Khan, Superintendent for the respondents also present. Junior counsel for the appellant requested for adjournment on the ground that learned senior counsel for the appellant is not available today. Adjourned. To come up for arguments on 12.12.2017 before D.B.


(Gul Zeb Khan)
Member


(Muhammad Amin Khan Kundi)
Member

12.12.2017

Clerk of the counsel and Mr. Kabeerullah Khattak, Addl. AG for the respondents present. Due to general strike of the bar, counsel for the appellant is not in attendance. To come up for arguments on 14.02.2018 before the D.B.

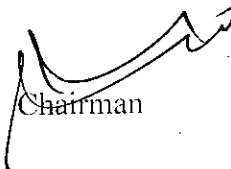

Member


Chairman

14.02.2018

Clerk of the counsel for appellant present. Mr. Kabir Ullah Khattak, Additional AG for the respondents present. Counsel for the appellant is not in attendance due to general strike of the bar. To come up for arguments on 09.04.2018 before D.B.


Member


Chairman

21.12.2016

Counsel for the appellant and Additional AG for the respondents present. Since other Member of the Bench is on leave therefore, arguments could not be heard. To come up for arguments on 21.04.2017 before D.B.

(MUHAMMAD AAMIR NAZIR)
MEMBER

21.04.2017

Counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional AG for the respondents also present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 10.07.2017 before D.B.

(Ahmad Hassan)
Member

(Muhammad Amin Khan Kundi)
Member

10.07.2017

Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for final hearing before the D.B on 10.11.2017.

Member

Chairman

24.11.2015


Agent of counsel for the appellant, M/S Muhammad Anwar Khan, SO and Sultan Shah, Assistant alongwith Addl. A.G for respondents present. Para-wise comments submitted. The appeal is assigned to D.B for rejoinder and final hearing for 12.4.2016.


Chairman

12.04.2016

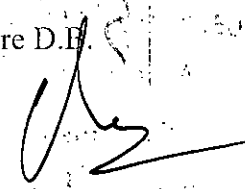
Clerk to counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Rejoinder submitted on behalf of the appellant, copy of which is placed on file. To come up for arguments on 15.08.2016.


Member


Member

15.08.2016

Agent to counsel for the appellant and Mr. Saleem Shah, Assistant alongwith Mr. Muhammad Jan, GP for respondents present. Agent to counsel for the appellant requested for adjournment as counsel for the appellant is not available today before the Tribunal. To come up for arguments on 21-12-16 before D.B.


Member


Member

17.3.2015

Clerk to counsel for the appellant, and Mr. Muhammad Adeel Butt, AAG with Sultan Shah, Assistant for respondents present. The Tribunal is incomplete. To come up for the same on 17.3.2015.


READER

17.3.2015

Counsel for the appellant and Addl. AG with Sultan Shah, Assistant for the respondents present. Representative of the respondents requested for time to be granted for submission of written reply. To come up for written reply on 21.05.2015.


MEMBER

21.05.2015

Clerk of counsel for the appellant and Addl. A.G for respondents present. Written reply not submitted. Requested for further time to submit written reply. To come up for written reply on 3.9.2015.


Member

03.09.2015

Counsel for the appellant and Addl. A.G for respondents present. Written reply not respondents present. Requested for further adjournment. Last opportunity granted. To come up for written reply/comments on 24.11.2015 before S.B.


Chairman

Appeal No. 844/2014
Mr. Hamid Ali

3,
18.08.2014

- Appellant along with his counsel present. Preliminary arguments heard and case file perused. Through the instant appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, the appellant has impugned order dated 15.05.2014 vide which departmental appeal filed by the appellant for grant of anti-date promotion from the date of occurring of vacancy was rejected, hence the present appeal on 13.06.2014.

Since the matter pertains to terms and conditions of service of the appellant, hence admit for regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents for submission of written reply. To come up for written reply/comments on 10.11.2014.

Member

4,
18.08.2014

This case be put before the Final Bench for further proceedings

Chairman

10.11.2014

Junior to counsel for the appellant and Mr. Sultan Shah, Assistant for respondents present. The Tribunal is incomplete. To come up for the same on 05.01.2015.

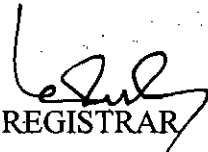

READER

Form - A

Form of Order Sheet

Court of _____

Case No. 844/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	13/06/2014	<p>The appeal of Mr. Gohar Ali presented today by Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	17-6-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>18-8-2014</u></p> <p style="text-align: right;"> CHAIRMAN</p>

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

Appeal No. 844 /2014

Mr. Gohar Ali

V/S

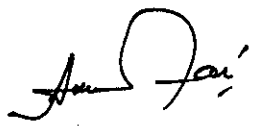
Government of KPK

INDEX

S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	-----	01-04
2.	Copy of Order	- A -	5-9
3.	PMS Rules.	- B -	10-13
4.	Amendment in PMS rules.	- C -	14
5.	Regular promotion.	- D -	15
6.	Appeal.	- E -	16
7.	Rejection order	- F -	17
8.	Iqbal khattak Judgment.	- G -	18-23
9.	S.C Judgment.	- H -	24-28
10.	Fazal Hussain judgment.	I	29-33
11.	S.C judgment.	J	34-37
12.	Vakalat nama.		38

APPELLANT

THROUGH:


(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

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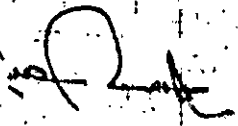
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06-25

23-28

45-50



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

Appeal No. 844 /2014

Mr. Gohar Ali, Addl: Asstt: Commissioner
Mardan.

APPELLANT
882
13-6-2014

VERSUS

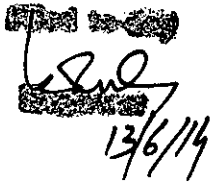
1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Secretary, Establishment Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

RESPONDENTS

.....
APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED. 15.5.2014 WHEREBY THE DEPARTMENTAL APPEAL OF APPELLANT FOR ANTE DATED PROMOTION FROM THE DATE OF OCCURRING OF VACANCY OR ACTING CHARGE PROMOTION HAS BEEN REJECTED FOR NO GOOD GROUNDS.

PRAYER:

.....
THAT ON ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 15TH MAY, 2014 MAY PLEASE BE SET ASIDE AND THE RESPONDENT MAY PLEASE BE DIRECTED TO CONSIDER THE APPELLANT FOR REGULAR ANTEDATED PROMOTION AS PMS OFFICER FROM THE DATE OF OCCURRING OF VACANCY OR FROM THE DATE WHEN THE APPELLANT WAS PROMOTED ON ACTING CHARGE BASIS WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE


13/6/14


- ix. Tariq Ullah District Monitoring officer District Swabi.
- x. Alamgir Khan Assistant Commissioner, Chitral
- xi. Dr. Azmat Assistant Commissioner Lower Kurram District Lower Kurram.
- xii. Anwar Khan Assistant Commissioner Nawagai District Bajour
- xiii. Beenish Imran Assistant Director IMO, Education
- xiv. Irum Shaheen Section Officer Establishment department
- xv. Misbah Riaz Section Officer Establishment department
- xvi. Fazeelat Jehan Section Officer Section Officer Establishment department
- xvii. Shahab Muhammad Khan section officer Establishment.
- xviii. Shakeel Jan Section Officer Establishment department FATA Secretariat
- xix. Israr khan Assistant Commissioner Upper Dir.
- xx. Zameen Khan Assistant Commissioner Charbagh Swat.
- xxi. Asmat Wazir Assistant Commissioner Bara District Khyber.
- xxii. Zahid Usman Kakakhel Assistant Commissioner Upper Dir.

THROUGH

Akhtar Nawaz S/o Gul Rehman (PMS BS-17)
Presently posted as section officer, in
establishment department Khyber Pakhtunkhwa
Peshawar Section officer Governor Secretariat.

It is, therefore, most humbly prayed that on acceptance of this Civil Misc/application, the addresses alongwith designation of applicants may kindly be placed on file and may please be considered.

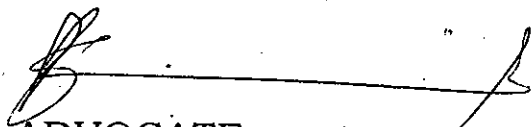
Applicant
Through

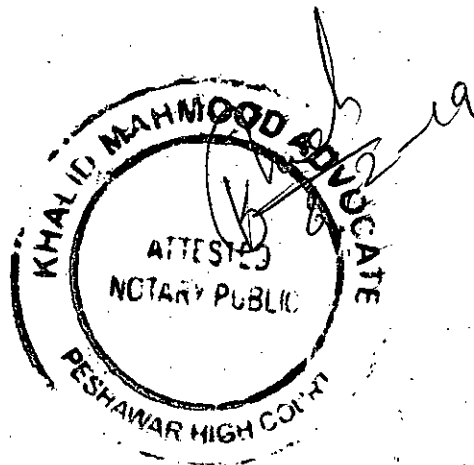

Shahid Mehmood Khan
Advocate, High court
Peshawar
Cell No. 0333-9306491

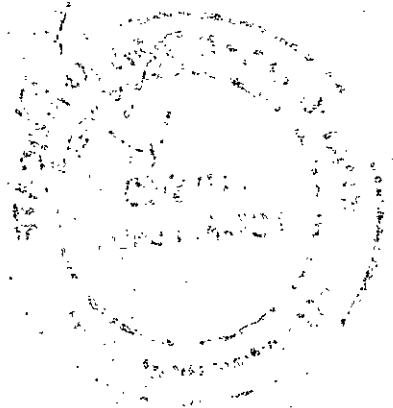
Dated: 08/02/2019

AFFIDAVIT

As per instruction of my client, do hereby solemnly affirm and declare 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.


ADVOCATE





THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWETH:

1. That the appellant was appointed as Tehsildar BPS-16 after proper recommendations of the KPK Public Service Commission vide notification dated. 22.1.2009. The appellant has also successfully completed nine weeks mandatory training for PMS post. Copy of Order is attached as Annexure-A.
2. That the Govt: of KPK promulgated the PMS Rules on 11.5.2007 wherein the post of PMS Officer is to be filled in as , (i)- 50% by initial recruitment, (ii)- 20% by promotion for graduate Tehsildars, (iii)- 20% from amongst graduate Superintendants/ private Secretaries & (iv)- 10% by selection on merit from other ministerial posts holders. The said rules were further amended on 29.12.2009 whereby the required service length of five years was reduced to three years. Copies of Rules are attached as Annexure – B & C.
3. That the PSB meetings were scheduled in the month of May, 25th, 2012, August 16th 2012, September 5th 2012 but the same were postponed for unknown reasons and due to that delay the appellant's service career was suffered a lot.
4. That on 4.10.2012, the appellant has been recommended by the Provincial Selection Board and the competent authority promoted the appellant as PMS Officer (BPS-17) on 04.10.2012 on regular basis but with immediate effect. Copy of Order is attached as Annexure- D.
5. That in meantime the various judgments in appeals of Iqbal Khattak, Fazal Hussain etc were announced in their favour which were also upheld by the august Supreme Court of Pakistan, due to which all those PMS officer were granted the benefits of ante dated promotion. As the same was the case of appellant , therefore, he also filed departmental appeal for his

claim of ante dated promotion on 9.1.2014 which was finally rejected on 15.5.2014 for no good reasons. Copies of appeal and rejection order are attached as Annexure – E&F.

6. That now the appellant comes to this Honourable Tribunal on the following grounds amongst the others:

GROUND:

- A) That the order dated. 15.5.2014 is against the law, rules, norms of justice, material on record and discriminatory, therefore liable to be set-aside.
- B) That the PMS posts were available and that was the reasons the appellant was promoted on acting charge basis but at the time of passing order on regular basis, the appellant was deprived from the benefits of promotion from back date which was an act of arbitrariness on the part of respondents.
- C) That in the Judgment reported in 2006 SCMR 1938 it has been held by the August Supreme Court of Pakistan that "when post was available and the civil servant could be promoted, when such civil servant has qualified to be promoted to such higher post, where he was put on the said higher post on officiating on acting charge basis only because the requisite exercise of the regular promotion to the said post was being delayed by the competent authority and where he has subsequently found fit for the said post and was so promoted on regular basis then he was entitled not only to the salary attaching to the said post but also to all consequential benefits from the very date from which he had been put on the said post on officiating or acting charge basis". Thus the appellant is entitled for his antedated promotion.
- D) That similar principles were also followed in case of Iqbal Khattak in appeal No. 612/2008 and that judgment was also upheld by the august Supreme Court on 24.5.2012. Thus the appellant is also

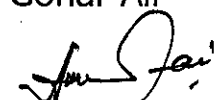
entitled for same relief. Copies of judgments are attached as Annexure – G&H.

- E) That similarly in case of Fazal Hussain & three others , the same principles of antedated promotion were followed which were also upheld by the august Supreme Court. So the appellat cannot be denied such treatment for his antedated promotion. Copies of judgments are attached as Annexure – I&J.
- F) That the Superior Courts have repeatedly held that where a point of law is decided by the Superior courts that cover the cases of all those civil servants who have not litigated than the good governance required that the benefits of such judgment should also be given to those who may not be parties to the litigation instead of compelling them to approach the service Tribunal or any other forum. Reference can be made to case reported as SCMR 1996 page 1185, 2009 SCMR Page-1.
- G) That in the view of timely promotion of the officer, most junior to the appellat is enjoying senior positions, while the appellat remained deprived off.
- H) That the appellat has not been dealt fairly and justly and has been deprived from the benefits of promotion from his due date and that too for no fault on his part because the respondents were failed in conduction PSB meetings in time and if scheduled that were also postponed for un known reasons.
- I) That the appellat seeks permission to advance others grounds and proofs at the time of hearing.

It is, therefore, most humbly prayed that the appeal of the appellat maybe accepted as prayed for.

APPELLANT 
Gohar Ali

THROUGH:


(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

**GOVERNMENT OF NWFP
REVENUE & ESTATE DEPARTMENT**

A

Dated Peshawar the 22/01/2009

(S)

ORDER

No. 1709 /Admn./PSC. On the recommendation of NWFP Public Service Commission, the Board of Revenue NWFP, has accepted / appointed the following as direct Tehsildars (BPS - 16) (Probationer / Trainee) in order of seniority as noted against each, w.e.f 2nd February, 2009 subject to the conditions laid down below:-

S.No	Name of Tehsildar	Permanent Address	Order of Merit	Domicile
1.	Mr. Saleem Jan S/O Muhammad Jan	Mohallah Sadar Kheil, Village Aba Khel, Tehsil & District Lakki-Marwat	1	Lakki Marwat
2.	Mr. Irfan Ali S/O Yar Said Khan	Sheikh Kalli Katlang Road Tehsil & District Mardan.	2	Mardan
3.	Mr. Gohar Ali S/O Hazrat Ali	District & Tehsil Swabi P/O Gharbagh Village Malak Abad Swabi.	3	Swabi ✓
4.	Mr. Waheed Ullah Khan S/O Gul Sharab Khan	Village Doger Umerzai P/O Bizen khel District and Tehsil Bannu.	4	Bannu ✓
5.	Mr. Sajid Nawaz S/O Gul Daraz	Village & P/O Ismail Khel Tehsil & District Bannu.	5	Bannu ✓
6.	Mr. Naeem Ullah Khan S/O Rahim Khan.	Village Dherma Khel P/O Nizam Bazar Tehsil & District Bannu.	6	Bannu
7.	Mr. Kashmir Khan S/O Haji Amir Khan	Village (Buskai) Moghal Koi P/O Sheikh Mela, Tehsil Darazinda FR DIKhan	7	DIKhan
8.	Mr. Khalid Qayyum S/O Abdul Qayyum-shah	Khail Qayyum C/O Excise and Taxation office DIKhan	8	DIKhan
9.	Muhammad Yousaf Karim S/O Abdul Karim Khan	Village & P/O Paniala Mohalla Shadi Khel. District DIKhan NWFP post code 29000	9	DIKhan
10.	Mr. Arshad Khan S/O Rahman Shah	Afridi Road Mera Masho Gager P/O Badaber Peshawar	10	Peshawar
11.	Muhammad Imran Khan S/O Bacha Khan	Village Pishtonai P/O Labat Tehsil Matta District Swat	12	Swat

Ad-111

ATTESTED

Revenue & Estate Dept.
NWFP

12.	Mr. Sohail Ahmad Khan S/O Sher Muhammad Khan	Village & P/O Chakesar District Shangla	15	Shangla
13.	Muhammad Shah Jamil S/O Sar Zamin Khan	Village wari P/O and Tehsil Wari District Dir Upper.	23	Dir Upper
14.	Mr. Naveed Akbar S/O Khan Abbar Khan.	Akbar Abad Jamal Garhi Katlang Road Mardan.	24	Mardan
15.	Mr. Tariq Hussan S/O Muhammad Hassan	Village Masho Gager House opt: Government Degree College Badaber, P/O Badaber Peshawar	32	Peshawar
16.	Mr. Hamid Ali Gigyani S/O Hidayat-ur-Rehman	Qilla Hidayat-ur- Rehman Khan Sukkar Nahaji Doaba Tehsil District Charsadda	37	Charsadda
17.	Mr. Aman Ullah Saeed S/O Muhammad Saeed	Aman Ullah Saeed C/O Haji Soofi Noor Elahi House No. 652, Mohallah Malid Pura Haripur.	307	Haripur
18.	Syed Saiful Islam Shah S/O Syed Abdul Latif Shah	Mohallah Chitti Dheri P/O & District Mansehra	455	Mansehra

TERMS & CONDITIONS:-

- They shall, for all intents and purposes, be Civil Servants except for purpose of pension or gratuity. In lieu of pension and gratuity, they shall be entitled to receive such amount contributed by them towards Contributory Provident Fund (C.P.F) alongwith the contributions made by Government to their account in the said fund, in the prescribed manner.
- They shall be governed by the NWFP Civil Servants Act 1973, all the laws applicable to the Civil Servants and Rules made there-under.
- They shall, initially, be on probation for a period of two years extendable upto 3 years.
- Their services will be liable to termination at any time without assigning any reason before the expiry of the period of probation/extended period of probation, if their performance during this period is not found satisfactory. In such an event, they will be given one month's notice of termination from service or one month's pay in lieu thereof. In case they wish to resign at any time, a month's notice shall be necessary or in lieu thereof a month's pay shall be forfeited.
- Their services shall be liable to termination during initial/extended period of probation without any notice.
- During the period of training of 02 years, they will be entitled to such pay & allowances as are admissible to them under the rules.
- To complete successfully the prescribed training within two years.


ATTESTED

[Handwritten Signature]

- h. To pass the Teshildari Departmental Examination within two year from the date of acceptance failing which their names will be liable to be removed from the list of Tehsildar candidates.
- i. They will be declared qualified to hold the post of Tehsildar only after they have completed the required training and passed the Tehsildari Departmental Examination.
- j. They will be liable to transfer throughout the province.
- k. During the period of training of two years, they will not be entitled for any TA/DA.



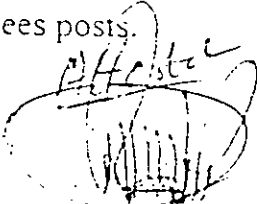
If the above terms & conditions are acceptable to the above selectees, they should report to the Senior Member, Board of Revenue NWFP on 02.02.2009.

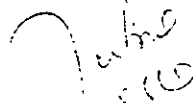

Senior Member
Board of Revenue NWFP

No. 17/0-EP /Admn:I

Copy to :-

1. Private Secretary to Chief Secretary NWFP
2. Secretary to Government of NWFP Finance Department Peshawar for information and necessary action. Necessary provision for their payment of salaries during the training period may kindly be arranged and funds allocated to this office
3. Secretary to Government of NWFP Establishment Department with reference to Notification No. SOR - II E&AD/2(4)/08, dated 16.09.2008.
4. Secretary NWFP Public Service Commission.
5. Director, Pakistan Provincial Service Academy, NIM Peshawar.
6. Settlement Officer, Chitral for information and necessary action. He is requested to please Chalk out his training programme in Chitral Settlement operation.
7. District Office (Revenue & Estate)/Collector in NWFP.
8. Accountant General NWFP
9. District / Agency Accounts Officers in NWFP
10. All candidates concerned.
11. The Budget officer, Board of Revenue NWFP for necessary action. A statement showing financial implications involved in the proposal for payment of salaries to the trainees for a period of two years may please be prepared and sent to the Finance Department NWFP for getting creation of Trainees posts.


Assistant Secretary
Revenue & Estate Dept.
NWFP.

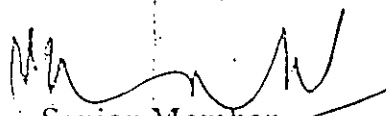

SECRETARY
Board of Revenue
N, W, F, P.

ATTESTED

- h. To pass the Teshildari Departmental Examination within two year from the date of acceptance failing which their names will be liable to be removed from the list of Tehsildar candidates.
- i. They will be declared qualified to hold the post of Tehsildar only after they have completed the required training and passed the Tehsildari Departmental Examination.
- j. They will be liable to transfer throughout the province.
- k. During the period of training of two years, they will not be entitled for any TA/DA.

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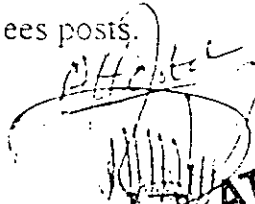
If the above terms & conditions are acceptable to the above selectees, they should report to the Senior Member, Board of Revenue NWFP on 02.02.2009.



Senior Member
Board of Revenue NWFP

No. 770-801/Admn.I

Copy to :-

1. Private Secretary to Chief Secretary NWFP
2. Secretary to Government of NWFP Finance Department Peshawar for information and necessary action. Necessary provision for their payment of salaries during the training period may kindly be arranged and funds allocated to this office
3. Secretary to Government of NWFP Establishment Department with reference to Notification No. SOR - II E&AD/2(4)/08, dated 16.09.2008.
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11. The Budget officer, Board of Revenue NWFP for necessary action. A statement showing financial implications involved in the proposal for payment of salaries to the trainees for a period of two years may please be prepared and sent to the Finance Department NWFP for getting creation of Trainees posts.


ATTESTED
Assistant Secretary
Revenue & Estate Deptt.


SECRETARY
Board of Revenue
N.W.F.P.

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North-West Frontier Province
Provincial Management Service Rules, 2007

GOVERNMENT OF THE NORTH-WEST FRONTIER PROVINCE
ESTABLISHMENT DEPARTMENT

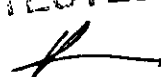
NOTIFICATION

Dated Peshawar the 11.05.2007.

No. SOE.II(ED)2(14)2007.---in exercise of the powers conferred by section 26 of the North-West Frontier Province Civil Servant Act, 1973 (N.-W.F.P. Act XVIII of 1973), the Chief Minister of the North-West Frontier Province is pleased to make the following rules, namely:

THE NORTH-WEST FRONTIER PROVINCE PROVINCIAL MANAGEMENT SERVICE RULES,
2007

1. **Short title and commencement.**---(1) These rules may be called the North-West Frontier Province Provincial Management Service Rules, 2007.
(2) These rules shall come into force at once.
2. **Definitions.**---In these rules, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say:
 - (a) "appointing authority" means the appointing authority as specified in rule 5 of these rules;
 - (b) "Commission" means the North-West Frontier Province Public Service Commission;
 - (c) "Department" means the Establishment and Administration Department;
 - (d) "Departmental Examination" means the prescribed examination to be conducted by the Department for confirmation within probationary period or for promotion to higher post, as the case may be;
 - (e) "Departmental Training" means any training prescribed by Government, the successful completion whereof is necessary for promotion to BS-18 and BS-19;
 - (f) "Schedule" means the Schedule appended to these rules;
 - (g) "Service" means the Provincial Management Service;
 - (h) "Secretariat" means the North-West Frontier Province Civil Secretariat as defined in rule 2(r) of the North-West Frontier Province Government Rules of Business, 1985; and
 - (i) "share" means the share specified for distribution between All Pakistan Unified Group and Provincial Officers as per Schedule-III.
3. **Nomenclature of the posts.**---The Service shall consist of the posts as specified

ATTESTED


4. Method of recruitment.---(1) The method of recruitment, minimum qualification, age limit and other matters related thereto for the Service shall be as given in Schedule-I.

(2) Fifty per cent of posts in BPS-17 shall be filled in by initial recruitment through Commission and remaining by promotion. Ten percent of Secretariat posts in BPS-17 to 19 shall be reserved for officers of technical departments on reciprocal basis. Government may reserve twenty per cent posts for leave, deputation and training etc in each pay scale.

(3) Posts specified in Schedule-II shall be filled in by Officers borne on Provincial Management Service and All Pakistan Unified Group in the ratio prescribed in Schedule-III.

¹[4-A. Training.--- On appointment to the post borne on the service in BS-17, whether by initial recruitment or by promotion, every officer so appointed shall successfully complete one and a half year's mandatory training including one year training at the Provincial Services Academy as per Module specified in Schedule-IV and six months training attachment as specified in Schedule-V. The training will be followed by Departmental Examination to be conducted by the Provincial Services Academy as specified in Schedule-VI.

5. Appointing Authority.---The Chief Minister, N.-W.F.P. shall be the appointing authority for posts borne on the Provincial Management Service specified in Schedule-I.]

6. Saving.---In all other matters not expressly provided for in these rules, the members of the Service shall be governed by the North-West Frontier Province Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, and any other rules pertaining to terms and conditions of service made or deemed to have been made under the North-West Frontier Province Civil Servants Act, 1973 (N.-W.F.P. Act No. XVIII of 1973).

7. Transitional:- The condition of graduation as laid down in para 2(a) and (b) of column-5 against serial No. 1 of Schedule-I shall not apply for a period of seven years from the date coming into force of these rules to the existing incumbents for promotion against BS-17 posts.

8. Repeal.---The North-West Frontier Province Provincial Civil Servants (Secretariat/Executive Group) Rules, 1997 shall stand repealed after the retirement of existing incumbents of both the cadres. Separate seniority list of both the cadres shall be maintained under the existing rules and they shall be promoted at the ratio of 50: 50:

²[Provided that for the purpose of promotion of both the Secretariat Group and the Executive Group of the said service in different pay scales, -

- (i) the incumbents shall continue to be governed by the said service rules till the retirement of the last such incumbent; and
- (ii) the last incumbent of either Group shall rank senior to the first incumbent of the Provincial Management Service.]

1. Rule 4-A added vide Establishment Department Notification No. SOE-III(E&AD)3-5/2007/(PMS) Dated 12.11.2007
2. Amended vide Establishment Department Notification No. SOE-III(E&AD)3-5/2007/(PMS) Dated 12.11.2007

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N.W.F.P. Management Service Rules, 2007

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SCHEDULE-I

S.No.	Nomenclature of posts	Minimum qualification for appointment by Initial recruitment	Age limit for initial recruitment	Method of recruitment
1	2	3	4	5
1	PMS(BS-17) as per detail at Schedule-II	2 nd Division Bachelor Degree from a recognized University	21-30 year	1) Fifty per cent by initial recruitment on the recommendations of the Commission based on the result of competitive examination to be conducted by it in accordance with the provisions contained in Schedule - VII. 2) Subject to rule 7, by promotion in the following manner: (a) twenty per cent from amongst-Tehsildars, who are graduates, on the basis of seniority-cum-fitness, having five years service as Tehsildar and have passed the prescribed Departmental Examination; and (b) twenty per cent from amongst Superintendents/Private Secretaries on seniority-cum-fitness basis, who are graduate and have undergone a training course of 9-weeks at the Provincial Management Academy/Provincial Staff Training Institute. A joint seniority list of the Superintendents and Private Secretaries shall be maintained for the purpose of promotion on the basis of their continuous regular appointment to the respective posts. 3) Ten per cent by selection on merit, on the basis of competitive examination, to be conducted by the Commission in accordance with the provisions contained in Schedule-VII, from amongst persons holding substantive posts of Superintendents, Private Secretaries, Personal Assistants, Assistants, Senior Scale Stenographers, Stenographers, Data Entry Operators, Computer Operators, Senior and Junior Clerks who possess post graduate qualification from a recognized University and have at least five years service under Government. By promotion, on seniority-cum-fitness basis.
2	PMS(BS-18) as	NIL		

1. The Word Schedule-IV replaced by Schedule VII vide Establishment Department Notification No: SOE-III(E&AD)3-5/2007/(PMS) Dated 12.11.2007
 1. The Word Schedule-IV replaced by Schedule VII vide Establishment Department Notification No: SOE-III(E&AD)3-5/2007/(PMS) Dated 12.11.2007

ATTESTED


	per detail at Schedule-II			from amongst the officers of PMS in BS-17 having at least five years service and have passed the prescribed Departmental Training or Departmental Examination.
3.	PMS(BS-19) as per detail at Schedule-II.	NIL		By promotion, on the basis of seniority-combines, from amongst PMS officers holding posts in BS-14 and having at least 12 years service against posts in BS-17 and above and have passed the prescribed Departmental Training/ Examinations
4.	PMS(BS-20) as per detail at Schedule-II.	NIL		By promotion on the basis of selection-cum-merit from amongst PMS officers holding posts in BS-16 and having at least 17 years service against posts in BS-17 and above and have undergone Advanced Training Course from NIPA or any other training course prescribed by Government.
5.	PMS(BS-21) as per detail at Schedule-II.	NIL		By promotion, on the basis of selection-cum-merit from amongst PMS officers holding posts in BS-20 and having at least 22 years service against posts in BS-17 and above and have undergone Course from Pakistan Administrative Staff College/National Defence College or from any other training Institute prescribed by Government.

=====

SCHEDULE-II

S.No.	Name of posts	Basic Scale	No. of posts	Total No.
1.	Chief Secretary	21/22	1	9
2.	Additional Chief Secretary.	21	2	
3.	Senior Member Board of Revenue.	21	1	
4.	Chairman Sarhad Development Authority	21	1	
5.	District Coordination Officer, City District.	21	1	
6.	Secretaries, Chairman Governor's Inspection Team/Provincial Inspection Team.	21	3	
7.	Secretaries (Settled/FATA)	20	32	74
8.	Member Board of Revenue-I & II	20	2	
9.	Member, Governor's Inspection Team	20	1	
10.	Member, Provincial Inspection Team	20	1	
11.	Director Staff Training Institute	20	1	
12.	Member Public Service Commission	20	1	
13.	Member Service Tribunal	20	2	
14.	District Coordination Officer.	20	23	
15.	Presiding officer Revenue Appellate Court	20	2	
16.	Vice Chairman Provincial Economy Commission	20	1	
17.	Project Director National Urban Development Project.	20	1	
18.	Director (Finance) Sarhad Development Authority.	20	1	
19.	Managing Director, Small Industries Development Board.	20	1	
20.	General Manager(Finance & Adm.) Forest	20	1	

~~ATTESTED~~



Fozal Hassan
13987/2010

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GOVERNMENT OF NWFP Annex
ESTABLISHMENT DEPARTMENT

Dated Peshawar the 29.12.2009

NOTIFICATION

NO. SOE/II(ED)2(14)/2009: In exercise of powers conferred by Section 26 of the North-West Frontier Province Civil Servants Act, 1973 (N.W.F.P. Act No. XVIII of 1973), the Chief Minister of the North-West Frontier Province is pleased to direct that in the North-West Frontier Province Provincial Management Service Rules, 2007, the following further amendments, shall be made, namely:

AMENDMENTS

In schedule 1, against the Serial No. 1, in column No. 5, in clause (2),-

- (i) In sub-clause (a), for the words "five years service as Tehsildar", the words "three years service as Tehsildar/Naib Tehsildar" shall be substituted; and
- (ii) in sub-clause (b), after the words "who are graduate", the words "possessing three years service as Private Secretaries/Personal Assistants or Superintendents/ Assistants" shall be inserted.

SECRETARY ESTABLISHMENT

ENDST: NO. & DATE EVEN.

A Copy is forwarded to:-

- 1) Additional Chief Secretary, NWFP.
- 2) Secretary to Governor, NWFP.
- 3) Principal Secretary to Chief Minister, NWFP.
- 4) All Administrative Secretaries, NWFP.
- 5) Senior Member Board of Revenue, NWFP.
- 6) Secretary (Administration & Coordination) Civil Secretariat FATA.
- 7) Chairman, NWFP Public Service Commission.
- 8) Accountant General, NWFP, Peshawar.
- 9) Director, STI, E&A Department.
- 10) Manager, Govt Printing Press, NWFP, Peshawar for publication in the official gazette at an early date, with the request to supply 20 printed copies to the undersigned.
- 11) All Section Officers in E&A Department.
- 12) PS to Chief Secretary, NWFP.
- 13) PS to Secretary Establishment.
- 14) PAs to all Addl: Secretaries / Deputy Secretaries in Estab: Department.
- 15) Office order file.

ATTESTED



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Dated Peshawar the October, 04, 2012

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NOTIFICATION

NO. SOE.II(ED) 2(192)2012-

Consequent upon the recommendations of the Provincial Selection Board, the competent authority is pleased to order the promotion of the following PMS BS-17 (A/C) / Tehsildars to the post of Provincial Management Service (BS-17), on regular basis with immediate effect:-

S.#	Name of Officer
1.	Syed Gul Jamal
2.	Mr. Naeem Akhtar
3.	Mr. Niaz Muhammad
4.	Mr. Abdul Mateen Qasuria
5.	Mr. Shaukat Hussain
6.	Mr. Gul Nawaz Ali
7.	Mr. Noserwan
8.	Qazi Atta-ur-Rehman
✓ 9.	Mr. Saleem Jan ✓
✓ 10.	Mr. Irfan Ali ✓
✓ 11.	Mr. Gohar Ali ✓

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

3. Consequent upon above, the following postings/transfers are ordered with immediate effect:-

S.#	Name of Officer	From	To	Remarks
1.	Syed Gul Jamal	DDO(J), Peshawar	Retained on the same post and station	
2.	Mr. Naeem Akhtar	Asstt. to Commissioner (Dev), Malakand	Retained on the same post and station	
3.	Mr. Niaz Muhammad	DO(R), Swat	HRDO, Swat against the vacant post.	Only for actualization of his promotion for one da whereafter he will continue as DO(R), Swa in his own pay & scale

ATTESTED

4.	Mr. Abdul Mateen Qasuria	DDO(J), D.I.Khan	Retained on the same post
5.	Mr. Shaukat Hussain	DDO(J), Abbottabad	Retained on the same post
6.	Mr. Gul Nawaz Ali	Settlement Officer, Mansehra	DDO(F), Mansehra against the vacant post
7.	Mr. Nowsherwan	Tehsildar, Palas Kohistan	DDO(R), Palas Kohistan against the vacant post.
8.	Qazi Atta-ur-Rehman	DDO(R), Haripur	Retained on the same post
9.	Mr. Saleem Jan	Research Officer, FATA Sectt:	Retained on the same post.
10.	Mr. Irfan Ali	APA, Mir Ali N.W. Agency	Retained on the same post
11.	Mr. Gohar Ali	Tehsildar, Takhtbhai Mardan	DDO(J), Katlang Mardan against the vacant post.

Only for actual his promotion whereafter he will continue as Settlement Officer, Mansehra on own pay & scale.

CHIEF SECRETARY
KHYBER PAKHTUNKHWA

ENDST: NO. & DATE EVEN

A copy is forwarded to:-

1. Additional-Chief Secretary, FATA.
2. Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
3. Secretary to Governor, Khyber Pakhtunkhwa.
4. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. All Divisional Commissioners in Khyber Pakhtunkhwa.
6. All District Coordination Officers in Khyber Pakhtunkhwa.
7. Secretary (Admn. & Coord), FATA Secretariat.
8. Accountant General, Khyber Pakhtunkhwa.
9. Accountant General (PR), Sub-Office, Peshawar.
10. All District Accounts Officers in Khyber Pakhtunkhwa.
11. General Manager, SNGPL, Peshawar.
12. Director (Land), NHA, Khyber Pakhtunkhwa Region, Peshawar.
13. SO(Secret)/SO(Admn)/ EO/Librarian, E&A Department.
14. PS to Chief Secretary, Khyber Pakhtunkhwa
15. PS to Secretary Establishment.
16. PS to Special Secretary(Instt), Establishment Department.
17. PAs to AS(E)/DS(I) Estab: Deptt.
18. Officers concerned.
19. Office order file.
20. Personal file of the officers concerned.

Majumdar

(NAJIM-US-SAHAR)
SECTION OFFICER(E-II)

HISAN AL RIDI



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

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NO.SOE-II(ED)/2(619)/2011
Dated Peshawar the May 15, 2014

To

Mr. Gohar Ali,
Additional Assistant Commissioner (Rev),
Mardan.

SUBJECT: APPEAL FOR REGULAR PROMOTION TO THE POST OF PMS
OFFICER W.E.F. OCCURRENCE OF VACANCIES

I am directed to refer to your appeal dated 09.01.2014 on the subject noted above and to convey that Establishment Department, Govt. of Khyber Pakhtunkhwa regrets its inability to accede to your request being not covered under the rules/policy in vogue.


SECTION OFFICER (E-II)

18/07/14

ATTESTED


To Deputy Secretary (Estab.)
Estab. & Admin. Department
Diary No. 1653
Date 15-01-14

Diary No. 383
13/1

PS/C.S Khyber Pakhtunkhwa
Diary No. 479
Date 13-1-14
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The Chief Secretary,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject:- Appeal for regular promotion to the post of PMS Officers w.e.f. Acting Charge basis or w.e.f. occurrence of vacancies.

R/Sir,

It is stated before your goodself that I have been promoted to the post of PMS Officer (B-17) on Acting Charge basis in December, 2011. Further-more in the month of May, 2012, the Establishment Department has announced PSB meeting for our promotion, but due to certain unknown reasons, the meeting has not been convened. After that different dates for the said meeting have been fixed, but at the 11th hours, the meeting could not convene.

It is further added that I have promoted on Regular basis after the induction of new PMS Batch. Thus my seniority is badly suffered as I was entitled to be promoted prior the induction of the new PMS Batch.

In view of the above, I submit request through this appeal that I may kindly be given due seniority on regular basis w.e.f. date of our promotion on acting charge basis or from the date of occurrence of vacancies.

Sincerely yours,

Gohar Ali

(Gohar Ali)
PMS (B-17),
A.A.C. (R),
Mardan

13/1-14
Secretary to
Establishment
DSE

Dated: 9th January, 2014

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P.S. to Chief Secretary
Govt. of Khyber Pakhtunkhwa
Secy: ESTB

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ATTESTED

BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 612/2008

Date of Institution. .. 16.04.2008
Date of Decision .. 13.03.2009

Muhammad Iqbal Khattak,
Assistant Political Agent, Khar Bajaur Agency. ... (Appellant)

VERSUS

1. Government of NWFP through Secretary Establishment Department, Peshawar.
2. Govt. of NWFP through Chief Secretary, Peshawar. (Respondents)

APPEAL U/S 4 OF THE NWFP SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION NO.SOE.II (E&D) 2 (192)2007 DATED 19.2.2008 WHEREBY THE APPELLANT WAS PROMOTED ON REGULAR BASIS W.E.F. 19.2.2008 INSTEAD OF 30.11.1999 AND ORDER NO.SOE-II (E&D) 2(192) WHEREBY HIS DEPARTMENTAL APPEAL WAS DISMISSED.

MR. SHAKEEL AHMAD,
Advocate ... For appellant.

MR. ZAHID KARIM KHALIL, ... For respondents.
Addl. Government Pleader,

MR. JUSTICE (R) SALIM KHAN, .. CHAIRMAN.
MR. BISMILIAH SHAH, .. MEMBER.

JUDGMENT

JUSTICE (R) SALIM KHAN, CHAIRMAN.-The present appeal No. 612 of 2008 by Muhammad Iqbal Khattak and appeal No. 613 of 2009 by Ahmad Khan involved similar questions of law, therefore, these are taken together for arguments and disposal.

2. Muhammad Iqbal Khattak was promoted as Tehsildar on regular basis vide order dated 28.12.1988. He was promoted to PCS(E.G) (BPS-17) on temporary basis vide notification dated 06.03.1996. He contended that many posts became vacant, but the appellant was promoted to (BPS-17) on regular basis on 19.2.2008 with immediate effect, instead of ante-dating of his promotion to the date on which the vacancy fell to his turn in the

ATTESTED

NWFP Service Tribunal
Peshawar

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seniority lists of officers of PCS (E.G). His departmental appeal was rejected on 22.03.2008. The present appeal was filed on 16.4.2008 which is within time. The case of Ahmad Khan (Appellant) is similar to the case of Muhammad Iqbal Khattak on facts also. His appeal is also within time.

3. The respondents contested the appeal on many grounds, including the ground that no one could claim a vested right in promotion or in the terms and conditions for promotion to a higher post.

4. We heard the arguments and perused the record.

5. The learned counsel for the appellants contended that the appellants were temporarily posted to BPS-17 post on 06.3.1996, but they remained silent, because they did not have a vested right for promotion to a higher post. The appellants have already been considered for promotion and have been found eligible and fit for regular promotion to BPS-17 post, therefore, the principles embodied in the judgment of the August Supreme Court of Pakistan reported as 1990 SCMR 1321 are not applicable to their cases. In fact, the vacancies had become available for the appellants as early as on 30.11.1999, and it was the responsibility of the official respondents to expeditiously deal with the cases of the appellants for their regular promotion. The appellants could not be punished for no fault on their side, or for delay caused by the official respondents in processing the cases of the appellants. He relied on 1997 PLC (C.S) 77, wherein it has been held in para 3 as under:-

"On behalf of the Government it is contended that no civil servant has a right to claim that he should be promoted from a back date even though a vacancy may be existing on the date from which the promotion is being claimed. This is no doubt true but there are no orders by the Government that the respondents/petitioners should be held up for some time. The delay in making the promotions occurred entirely due to the reason that the officials of the Education Department could not carry out a fairly simple exercise within a reasonable period. In the circumstances it will not be appropriate for this Civil Petition to interfere with the order of the Service Tribunal. Leave is refused."

This judgment was in the petition for leave to appeal against the judgment dated 19.02.1995 of the Punjab Service Tribunal. It is worth-mentioning that

ATTESTED
 MEMBER
 PUNJAB SERVICE TRIBUNAL

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the judgments cited as 1990 SCMR 1321 and cited as 1997 PLC (C.S) 77 are on two different aspects of the same subject.

6. Ante-dating of promotion, after consideration of the candidate aspiring for such promotion, after he was found eligible and fit for such promotion and is promoted, is an established principle of law. Such a candidate cannot be punished for any delay caused by the department in processing his case for promotion. The order of promotion, therefore, has to be ante-dated to the date on which the vacancy for his turn became available or to the date on which he actually took charge of the post on officiating/acting charge basis, whichever is later.

7. The A.G.P contended that the present appeals were miserably time-barred and both the appellants were estopped by their own conduct to file the present appeals. In fact, the principle embodied in the judgment reported as 1990 SCMR 1321 was applicable to the cases of the appellants from 06.3.1996 to 18.2.2008. They could not claim promotion as of right. The principle embodied in the judgment reported as 1997 PLC (C.S) 77 became applicable to their case on 19.2.2008. Cause of action arose to the appellants for claiming ante-dation of their promotion as prayed for only when their cases were considered for promotion, they were found eligible and fit for promotion, and their promotion orders were issued, though with immediate effect. They filed their departmental appeals within time from the date of the impugned order dated 19.2.2008, and their appeals were rejected on 22.3.2008. They filed Service Appeals on 16.04.2008. The departmental appeals as well as the Service Appeals were well within time.

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8. The A.G.P further contended that, according to the proviso contained in sub-section (2) of Section 22 of the N.W.F.P Civil Servants Act 1973, "no representation shall lie on matters relating to the determination of fitness of a person to hold a particular post or to be promoted to a higher post or grade." Judgment cited as 1990 SCMR 1321 was, then, applicable and appellants could not file representation. This stage has already passed. The appellants have been considered for holding the higher post after their promotion to that higher post, and their fitness for such promotion and holding of post has already been determined. The judgment cited as 1997

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PLC (C.S) 77 has become applicable after determination of fitness of the appellants. The question in these cases is not the determination of fitness but is the right of ante-dation of their promotion. The appellants had vested right for consideration of promotion on their turn, whenever it was, and, when found fit on determination of fitness, at any stage, they had a right to claim ante-dation of their promotion to the dates on which the vacancies were available for their respective turns or from the dates on which they actually took the charge of their respective posts, whichever were later in time.

9. The A.G.P also contended that according to sub-rule (5) of Rule 9 of the N.W.F.P Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 "acting charge appointment shall not confer any vested right for regular promotion to the post held on acting charge basis." The appellants have never claimed any vested right for regular promotion to the post which they held on acting charge basis, on the basis of acting charge appointment. In fact, they did not have such a right. They remained silent for a long time, knowing that they did not have such a right on the basis of acting charge appointment. They, however, had a vested right, as civil servants, for consideration for promotion, when the authority was to consider someone for promotion against the vacancy. No other person could be considered till the appellants were so considered. They, therefore, had a vested right for ante-dation of their promotion only when they were regularly promoted, but from the date when the vacancy became available for their turn.

ATTESTED
 NWFP Provincial Management Service Rules, 2007

10. The A.G.P further contended that, according to the North West Frontier Province, Provincial Management Service Rules, 2007, notified on 11.05.2007 vide No. SOE.II(ED)2(14)2007, The NWFP Provincial Civil Service (Secretariat/Executive Group) Rules, 1997 were repealed. He was of the view that the N.W.F.P Provincial Management Service Rules, 2007 had come into force at once w.e.f. 11.05.2007, while the orders of promotion of the appellants were issued on 19.02.2008. He submitted that the promotion orders were covered by the new rules, therefore, the appellants could not claim any benefit out of the already repealed rules of 1997. In order to clarify this controversy, it is necessary to reproduce the relevant Rule 8 of the N.W.F.P Provincial Management Service Rules, 2007 which is as under:-

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"8. Repeal. - The North-West Frontier Province Provincial Civil Service (Secretariat/Executive Group) Rules, 1997 shall stand repealed after the retirement of existing incumbents of both the cadres. Separate seniority list of both the cadres shall be maintained under the existing rules and they shall be promoted at the ratio of 50:50. The existing incumbents of PCS (E.G) and (S.G) in different pay scales, for the purpose of their promotion, shall continue to be governed under the said service rules till the retirement of the last such incumbent."

The above rule, by itself, clarifies that the rules of 1997 shall not stand repealed before the retirement of the existing incumbents of both the cadres of Secretariat/Executive Groups, and shall remain in force till the retirement of the last such incumbent. It further clarified that separate seniority list of both the cadres shall be maintained under the existing rules. The existing rules for such incumbents are the N.W.F.P Provincial Civil Service (Secretariat/Executive Group) Rules, 1997. It was also clarified that such incumbents shall be promoted at the ratio of 50:50. It means that out of each two vacancies, one vacancy shall be given to Secretariat Group, while another vacancy shall be given to the Executive Group. Further clarification is to the effect that the existing incumbents of PCS (E.G) and (S.G) in different pay scales shall continue to be governed under the rules of 1997 for the purpose of their promotion, and this process is to continue till the retirement of last such incumbent. Both the appellants belonged to the Executive Group of Civil Servants. They were to be governed under the N.W.F.P Provincial Civil Service (Secretariat/Executive Group) Rules, 1997 before 11.05.2007, and they have to be governed under the above mentioned rules of 1997 till the retirement of the last incumbent of a post in Secretariat Group/Executive Group.

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N.W.F.P. JUDICIAL
SERVICES TRIBUNAL

11. The cases of the appellants are, therefore, to be governed in accordance with the provisions of Section 8 (quoted above) of the new N.W.F.P Provincial Management Service Rules, 2007. The record shows that vacancies were available for the appellants but they were not promoted at the due time and their cases for promotion were delayed unnecessarily without any fault of the appellants. They, therefore, are entitled to ante-dation of their promotion, against the first available vacancy falling to the turn of each of them or from the date of taking over the charge of that vacancy on officiating/acting charge basis, whichever is later.

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12. In the light of the above, we accept both the appeals, and direct the official respondents to ante-date the promotion of each of the two appellants to the respective dates on which a vacancy became available for the respective turn of the appellants or from the respective dates of their taking charge of such vacancy on officiating/acting charge basis, whichever is later. The appellants are entitled to the costs of their respective litigation from the official respondents.

ANNOUNCED
11.03.2009

Adv. Justice C. Salem *Chairman*
Adv. Bismita Ch. Ghosh *Member*

[Signature]
Secretary, State Bar Council
Kolkata

Date of receipt of copy	3-7-09
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IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE EJAZ AFZAL KHAN.

MR. JUSTICE MUHAMMAD ATHER SAEED.

C. As. No. 860 to 861 of 2010.

(On appeal against the judgment dt. 11.3.2009 passed by NWFP Service Tribunal, Peshawar in Appeals No. 612 and 613 of 2008).

Govt. of NWFP thr. Secy. Establishment and another. (in both case.)
...Appellants

Versus.

Muhammad Iqbal Khattak. (in CA.860/10)
Ahmed Khan. (in CA.861/10)
...Respondents

For the appellants: Mian Muhibullah Kakakhel, Sr.ASC.
Miss. Tehmina Muhibullah, ASC.
Mr Adam Khan, AOR.
(in both)

For the respondents: Hafiz S. A. Rehman, Sr.ASC.
Mr. Shakeel Ahmed, ASC
(in both).

Date of hearing: 24.05.2012.

J U D G M E N T

EJAZ AFZAL KHAN, J. --- These appeals with the leave of the Court have arisen out of the judgment dated 11.3.2009 of the Service Tribunal whereby appeals filed by the respondents were allowed.

2. The points raised and noted while granting leave read as under:-

"We have heard the learned counsel at some length. We are inclined to grant leave inter-alia on the point as to whether the legal and factual aspects of the controversy have been dilated upon and decided by the Tribunal in accordance with relevant Rules i.e. Rule 8 of the NWFP, Provincial Civil Service (Secretaria/Executive Group) Rules, 1997 and Rule 9(6) of the NWFP Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. It is also to be examined as to whether that stop-gap arrangement can be equated to that of regular promotion and besides that the order passed by the learned Service Tribunal could be made applicable to

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Superintendent
Supreme Court of Pakistan
ISLAMABAD

Tehsildars who are awaiting their promotion. Since a short question of law is involved in the matter, therefore, the case be listed after four weeks subject to limitation. In the meanwhile operation of the impugned judgment shall remain suspended".

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3. Learned counsel appearing on behalf of the appellants contended that though the Governor of the Province in consultation with the Provincial Selection Board was pleased to order the promotion of the respondents in BPS-16 as Extra Assistant Commissioner in BPS-17 in the Ex-PCS (E.B) Cadre with immediate effect on purely temporary basis vide notification dated Peshawar 6th March, 1996, yet it could not earn them any benefit or entitle them to a vested right notwithstanding they have been promoted on regular basis with immediate effect vide notification dated 19.2.2008. They, the learned counsel added, could not have claimed any ante-dated promotion even on the occurrence of any vacancy in such scale in violation of Section 8 of the Civil Services Act or Rule 2 of NWFP Civil Service (Executive Group) Rules, 1997, as decidedly promotion is not a vested right. Appeal before the departmental authority, the learned counsel added, or before the Tribunal claiming ante-dated promotion was, therefore, misconceived. The learned Tribunal, the learned counsel maintained, could not have allowed such appeal when it tended to mar the seniority of many others in the run. The learned counsel to support his contention placed reliance on the cases of Wajahat Hussain, Assistant Director, Social Welfare, Lahore and 7 others. Vs. Province of the Punjab, through Secretary, Social Welfare and Zakat, Lahore and 81 others (PLD 1991 S.C. 82), Sh. Anwar Hussain, Assistant Director, Labour Welfare, Lahore Region, Lahore. Vs. Government of the Punjab through Secretary, Labour Department and others (1985 SCMR 1201), Nazeer Ahmed. Vs. Government of Sindh through Chief Secretary Sindh, Karachi and 2 others (2001 SCMR 352), Government of Pakistan through Establishment

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Superintendent
Supreme Court of Pakistan
ISLAMABAD

Division, Islamabad and 7 others. Vs. Hameed Akhtar Niazi, Academy of Administrative, Walton Training, Lahore and others" (PLD 2003 S.C. 110).

The learned counsel next contended that a change in scale by means of promotion is not automatic but dependent on a process involving selection, therefore, any change in scale without such process being violative of the relevant law and rules, cannot be maintained. The learned counsel to support his contention placed reliance on the case of "Abid Hussain Sherazi. Vs. Secretary M/o Industries and Production, Government of Pakistan, Islamabad" (2005 SCMR 1742).

4. As against that learned counsel appearing on behalf of the respondents defended the impugned judgment by contending that where a vacancy occurs in the next higher scale, the Civil Servant officiating or working on acting charge basis thereagainst is not considered for promotion or the process of regular promotion is delayed on account of lethargic attitude of the competent authority or any other exigency so-called, the Civil Servant who is subsequently found fit for such promotion on regular basis cannot be deprived of the salary and other consequential benefits attached to such post. Learned counsel to support his contention placed reliance on the case of "Luqman Zareen and others. Vs. Secretary Education, NWFP and others" (2006 SCMR 1938). The learned counsel next contended that though the NWFP Civil Service (Secretariat Group) Rules, 1997 have been substituted by the NWFP Provincial Management Service Rules, 2007 but the rights of the existing incumbents of both the cadres have been protected by Rule 8 of the latter, therefore, the change in rules would not affect the service structure of the respondents or rights accruing thereunder. The learned counsel next contended that if the concluding paragraph of the impugned judgment is read none of the rights of any of the officers including their seniority has been affected.

ATTESTED**ATTESTED**Assistant
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"Lugman Zareen and others. Vs. Secretary Education, NWFP and others"

(2006 SCMR 1938), this Court while dealing with an identical issue held as under :-

"It is then a position admitted on all sides that nothing existed in the way of the petitioners on 31.8.2000 which could have disentitled them to regular promotion to the posts in question and that it was only the usual apathy, negligence and bureaucratic red-tapsim which had deprived the petitioners of the fruits that they deserved. The petitioners could not be permitted to be punished for the faults and inaction of others. We are of the view that where a post was available against which a civil servant could be promoted; where such a civil servant was qualified to be promoted to such a higher post; where he was put on the said higher post on officiating or acting charge basis only because the requisite exercise of allowing the regular promotion to the said post was being delayed by the competent authority and where he was subsequently, found fit for the said promotion and was so promoted on regular basis then he was entitled not only to the salary attaching to the said posts but also to all consequential benefits from the very date from which he had been put on the said post on officiating or acting charge basis and we hold accordingly".

While dealing with the reservations of the nature expressed by the learned counsel for the appellant, this Court held as under :-

"A bare perusal of these judgments would thus, show that this Court had always accepted the principle that a person who was asked to hold a higher post to which he was subsequently promoted on regular basis, was entitled to the salary etc. attaching to such a post for the period that he held the same; that he would also be entitled to any other benefits which may be associated with the said post and further that if a vacancy existed in a higher cadre to which a civil servant was qualified to be promoted on regular basis but was not so promoted without any fault on his part and was instead put on the said post on officiating basis then on his regular promotion to the said post, he would be deemed to have been so promoted to the same from the date from

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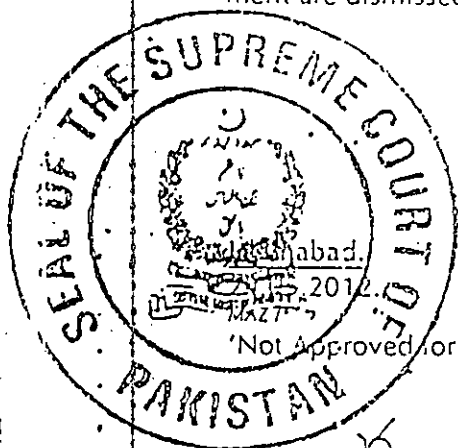
CAS.560-0017090

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which he was alleged to hold the said higher post unless justifiable reasons existed to hold otherwise.

When this being the state of things on factual and legal plain, we don't think the judgment of the learned Service Tribunal is open to any exception. The judgments rendered in the cases of "Wajahat Hussain, Assistant Director, Social Welfare, Lahore and 7 others. Vs. Province of the Punjab, through Secretary, Social Welfare and Zakat, Lahore and 81 others", "Sh. Anwar Hussain, Assistant Director, Labour Welfare, Lahore Region, Lahore. Vs. Government of the Punjab through Secretary, Labour Department and others", "Nazeer Ahmed. Vs. Government of Sindh through Chief Secretary, Sindh, Karachi and 2 others", "Government of Pakistan through Establishment Division, Islamabad and 7 others. Vs. Hameed Akhtar Niazi, Academy of Administrative, Walton Training, Lahore and others" and "Abid Hussain Sherazi. Vs. Secretary M/o Industries and Production, Government of Pakistan, Islamabad", (supra) cited by the learned counsel for the appellants are not applicable to the case in hand because of their distinguishable facts and features.

9. For the reasons discussed above, these appeals being without merit are dismissed.



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Supreme Court of Pakistan
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5878/12 ATTESTED

Case No: 5878/12

Date of Presentation: 2-5-12

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Compared by: Dr. Nazim Adr.

29

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Appellant in
SA-1655

Present:

MR. JUSTICE NASIR-UL-MULK
MR. JUSTICE TARIQ PARVEZ

CIVIL PETITION NOS. 152-P TO 158-P OF 2012

(on appeal from the judgment of the KPK Service Tribunal,
Peshawar dated 11.01.2012 passed in Service Appeal Nos.
1398, 1399, 1372, 1400 to 1403 of 2010)

Government of KPK through
Chief Secretary Peshawar & others

...Petitioners.

VERSUS

Fazal Hussain and others
Nacem Akhtar etc
Abdul Mateen Qasuria
Hidayatullah
Muhammad Nasir
Niaz Muhammad
Syed Kazim Hussain Shah

(in CP 152-P/12)
(in CP 153-P/12)
(in CP 154-P/12)
(in CP 155-P/12)
(in CP 156-P/12)
(in CP 157-P/12)
(in CP 158-P/12)
...Respondents.

For the Petitioners: Mr. Zahid Yousaf, Addl. AG.

For the Respondents: Mr. Ejaz Anwar.
(in CPs 152, 155, 156 & 158-P/12)

Other Respondents: N.R.

Date of Hearing: 23.01.2013.

JUDGMENT

NASIR-UL-MULK, J.— The Government of Khyber Pakhtunkhwa through its Chief Secretary and others filed these petitions assailing the judgment of K.P.K. Service Tribunal dated 11.01.2012 whereby appeals filed by the respondents were allowed in terms to be stated later. The respondents were all serving as Tehsildar (BPS-16) and were appointed on acting charge basis against the posts of Provincial Management Services (PMS) Officers in BPS 17 by Notification of the Establishment Department, Government of Khyber

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[Signature]
Deputy Registrar,
Supreme Court of Pakistan,
Peshawar.

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CPs 152-P to 158-P/12

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Pakhtunkhwa dated 25.03.2010 on the recommendations of the Provincial Selection Board (PSB). They filed service appeals before the Tribunal praying for promotion to the posts they held on acting charge basis with effect from the date on which the vacancies became available. The appeals of Fazal Hussain, Hidayatullah, Muhammad Nasir and Syed Kazim Hussain Shah, Respondents in Civil Petition Nos. 152-P, 155-P, 156-P and 158-P of 2012, respectively, were allowed in the terms that they were directed to be granted ante-date regular promotion to the post of PMS Officer (BPS-17) with effect from 25.03.2010 with all back and consequential benefits. The service appeals of Naccm Akhtar, Abdul Mateen Qasuria and Niaz Muhammad, Respondents in Civil Petition Nos. 153-P, 154-P and 157-P of 2012, respectively, were disposed of in the terms that they shall be considered for regular promotion as and when the vacancies became available for them. We may straight away dismiss the latter set of petitions filed by the Government of Khyber Pakhtunkhwa as no relief was granted to the said Respondents by the Tribunal and the direction was merely restatement of the law that whenever vacancies reserved for Tehsildars for promotion to the post of PMS Officer become available they shall be considered.

2. As regards the other petitions where the Respondents have been granted ante-date regular promotion to the post in question, the learned Additional Advocate General contended that the said Respondents were not eligible for promotion as they did not possess the requisite service of three years as Tehsildar for promotion to the higher post. This argument fails for two reasons. Firstly, that this was never the case of the Provincial Government before the Service Tribunal as nowhere in the comments filed by them before the Tribunal had they

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Deputy Registrar,
Supreme Court of Pakistan,
Peshawar.

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CPs 152-P to 158-P/12


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questioned the eligibility of the Respondents to be promoted. The same is also not discernable from the impugned judgment as no arguments to that effect were advanced before the Tribunal. Furthermore we have perused the minutes of the Meeting of the Provincial Selection Board which considered the question of appointment of the Tehsildars against the vacant posts reserved for them. Its recommendations that the respondents be appointed on acting charge basis was not on account of their ineligibility for promotion to the said posts. Remarks against each of the respondents by the Board were favourable and there is no mention anywhere about their ineligibility. Rather it was expressly stated that they had passed their prescribed Departmental examination. Even otherwise the Additional Advocate General was not in a position to show from the available record that the respondents were not eligible for promotion to the post of PMS Officer.

3. The learned Additional Advocate General further contended that the respondents were duly promoted with immediate effect on 21.12.2011 during the pendency of their service appeals before the Tribunal. That the respondents had not challenged the said Notification superseding the Notification of their appointments on acting charge basis, which was the subject matter of their service appeals. In the impugned judgment the Tribunal did take note of the Notification of 21.12.2011. In case the respondents were otherwise found entitled for regular promotion with effect from the date of their appointment on acting charge basis the subsequent Notification of 21.12.2011 was not an impediment in the way of the Tribunal to grant such relief.

4. The learned Additional Advocate General then submitted that respondents could only have been promoted with immediate effect and not entitled to ante-date promotion. In response the learned

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Deputy Registrar,
The Court of Pakistan,
Peshawar.

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CPs 152-P to 158-P/12

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counsel representing the Respondents pointed out that being duly qualified and vacancies available for their promotion they ought to have been promoted regularly when they were found duly fit and qualified by the Provincial Selection Board. He placed reliance on the judgment of this Court in the case of LUOMAN ZAREEN AND OTHERS v. SECRETARY EDUCATION, NWFP AND OTHERS (2006 SCMR 1938) and an unreported judgment GOVERNMENT OF NWFP THROUGH SECRETARY ESTABLISHMENT AND ANOTHER v. MUHAMMAD IQBAL KHATTAK AND ANOTHER (Civil Appeal No. 860 and 861 of 2010) decided on 24.05.2012.

5. In order to examine the merit of the above contention we went through the minutes of meeting of the Provincial Selection Board of 29.12.2009 where the question of promotion/appointment on acting charge basis of the respondents for the post of PMC Officers was under consideration. From the minutes it transpired that at that time 11 posts were available in the quota reserved for Tehsildars for promotion to the post of PMS Officers. It appears from the minutes that the respondents were not being considered for promotion as some Tehsildars senior to them were for one reason or another not eligible for promotion. By Notification of 21.12.2011 the respondents as well as the said senior Tehsildars were together promoted to the posts of PMS Officer on regular basis. It seems that the only reason that the respondents were not being promoted when they were otherwise qualified for such promotion was the ineligibility of their senior colleagues. Such reason is not legally justifiable. The respondents were entitled to be considered for promotion against the available vacancies and they could not have been made to suffer and their promotion delayed on account of ineligibility of their seniors. The minutes of the Provincial Selection

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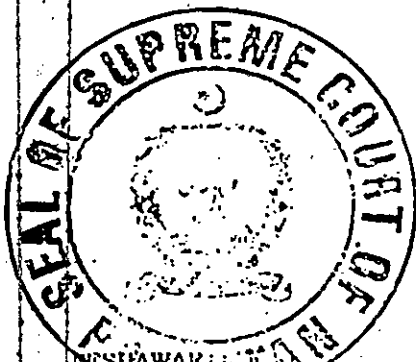
Deputy Registrar,
Supreme Court of Pakistan
& Peshawar

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Board clearly indicates that the respondents were otherwise eligible for promotion to the posts of PMS Officer. That being the situation, they were entitled to be promoted on the date when their acting charge basis appointments to the posts of PMS Officer were notified.

6. In this view of the matter, no exception can be taken to the impugned judgment of the Service Tribunal. The petitions are therefore dismissed and leave declined.



PESHAWAR
23rd January, 2013
Mudassar

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Sd/- Nasir-ul-Mulk, J
Sd/- Tariq Rasvez, J

Certified to be true copy

Muhammad
29.01.2013
Deputy Registrar,
Supreme Court of Pakistan,
Peshawar.

"Not approved for reporting."

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Appeal in St-1655/20

GOVERNMENT OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR



Appeal No. 1798/2010.

Date of Institution ... 30.7.2010
Date of Decision ... 11.1.2012

Fazal Hussain, PMS Officer (BPS-17)
Posted as ACO, Peshawar.

(APPELLANT)

VERSUS

1. Government of Khyber Pakhtunkhwa, through Chief Secretary, Peshawar.
2. Secretary, Establishment Department, Khyber Pakhtunkhwa, Peshawar.
3. Senior Member, Board of Revenue, Khyber Pakhtunkhwa, Peshawar.

(RESPONDENTS)

ATTESTED
Khyber Pakhtunkhwa Service Tribunal, Peshawar

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST NOTIFICATION NO.SOE.11(ED)2(192) 2009 DATED 25.3.2010 WHEREBY APPELLANT IS APPOINTED/PROMOTED AS PMS OFFICER (BPS-17) ON ACTING CHARGE BASIS, WITH IMMEDIATE EFFECT.

MR. BHAL AHMAD KAKAIZAL &
MR. MUHAMMAD ASIF YOUSAFZAL
Advocates

For appellant.

MR. FAHIM IQBAL
Addl. Government Pleader

For respondents.

MR. NOOR ALI KHAN, ... MEMBER
MR. SUBHAN MAHMOOD KHATTAK, ... MEMBER

JUDGMENT

NOOR ALI KHAN, MEMBER:- This appeal has been filed by Fazal Hussain, the appellant under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against notification No.SOE.11(ED)2(192) 2009 dated 25.3.2010, whereby appellant has been appointed/promoted as PMS Officer (BPS-17) on Acting Charge basis with immediate effect. It has been prayed that on acceptance of the appeal, the impugned notification dated

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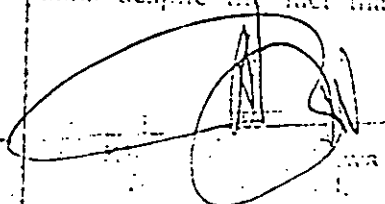
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25.3.2010 be modified to the extent that appellant be appointed/promoted as PMS Officer (BPS-17) on regular basis w.e.f. 7.11.2008 or 3.3.2009 when his batch mates were promoted.

2. Brief facts of the case as averred in the memo of appeal are that the appellant was promoted as Tehsildar (BPS-16) on regular basis vide notification dated 6.9.2008 along with others. Vide notification dated 3.3.2009, who are batch mates of the appellant were promoted as PMS Officer (BPS-17) on regular basis but appellant due to unknown reasons was deferred. On 25.3.2010, vide the impugned notification, although appellant on the recommendations of Provincial Selection Board has been promoted from Tehsildar to PMS Officer (BPS-17) but on acting charge basis and that too with immediate effect. The appellant is holding the post of ACO, Peshawar since long whereas he was posted as Deputy District Officer (Judicial) Nowshera vide notification dated 2.6.2009. On 3.4.2010, appellant submitted his departmental appeal/representation for his regular promotion w.e.f. 7.11.2008 or at least from 3.3.2009 but no reply to the said representation has been received within the statutory period of 90 days, hence the present appeal.

3. After admission of the appeal, notices were issued to the respondents for submission of written reply. Respondents have filed their joint written reply, and contested the appeal. Arguments heard and record perused.

4. The learned counsel for the appellant argued that according to Rule 9 of the Khyber Pakhtunkhwa Civil Servants Act (Appointment, Promotion and Transfer) Rules, 1989, acting charge appointment can only be made where the appointing authority considered it to be in the public interest to fill a post reserved under the rules for departmental promotion and the most senior civil servant belonging to the cadre or service concerned, who is otherwise eligible for promotion, does not possess the specified length of service. The learned counsel for the appellant further argued that the appellant was promoted as PMS Officer (BPS-17) on acting charge basis with immediate effect vide order dated 25.3.2010, despite the fact that there were clear vacancies of PMS Officer (BPS-17) lying vacant in the department in promotion quota. The appellant along with others should have been considered for regular promotion against the said posts from the date when clear vacancies were available for them. He stated that other batch mates of the appellant were promoted w.e.f. 3.3.2009 and 7.11.2008, on regular basis, therefore, the appellant has also the right to be considered for promotion w.e.f. the date when the post was lying vacant and the appellant was holding the same on acting charge basis. In December, 2009, two PSB meetings were held but the appellant had not been considered for promotion without any plausible reasons despite the fact that he was eligible for promotion, so he has been



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discriminated. Articles 25 and 27 of the Constitution of Islamic Republic of Pakistan that all citizens are equal before law and are entitled to equal protection of law. No citizen otherwise qualified for appointment in the service of Pakistan/province shall be discriminated whatsoever. He also stated that as per Rule 9(2) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 if a person is otherwise eligible for further promotion but his length of service is short, then he can be promoted/appointed on acting charge basis but in the appellant's case, his seniors have been given acting charge for the reason that they have not passed departmental examination and not completed their PERS, which is wrong and this wrong action/decision cannot be made a reason for not promoting those juniors who were eligible for regular promotion in all respect. Even sub-rule (2) of Rule 9 of the aforementioned rules has now been deleted. He further stated that during pendency of the appeal, the appellant has been promoted as PMS BPS-17 on regular basis with immediate effect vide notification dated 21.12.2011 instead of ante-dation of his promotion w.e.f the date when a vacancy was available for him as per judgments of the august Supreme Court of Pakistan in reported in 1997-SCMR-515, and 2010-SCMR-1466. He requested that the appeal may be accepted as prayed for.

5. The learned ACP, on the other hand argued that the appeal is bad for non-joinder and mis-joinder of necessary parties. In case, the appeal allowed some officers will be effected who have not been impleaded as private respondents. He further argued that there were some vacant posts of PMS (BPS-17), against promotion quota and Tehsildars, senior to the appellant were considered and promoted on regular basis w.e.f. 3.3.2009. The appellant being junior had not been considered. Even the appellant had not challenged order dated 3.3.2009 in time and the present appeal is time-barred. He stated that it is true that vacant posts of PMS (BPS-17) were available in the department but meant for direct recruits. He maintained that vide notification dated 25.3.2010, the appellant was not promoted as PMS (BPS-17) but appointed on acting charge basis as per provision of Rule 9 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. Appointments and promotions on acting charge basis are always made with immediate effect and under Rule 9 (6) confer no vested right for regular promotion. Moreover, claim of the appellant is not clear and has not specified the date to be considered for promotion as PMS (BPS-17) on regular basis.

The Tribunal observes that the appellant was eligible for promotion as PMS (BPS-17) on regular basis w.e.f. 3.3.2009 but he was not considered. On 25.3.2010, on the recommendation of PMS, he was promoted as PMS (BPS-17) on acting charge basis. Vide notification dated 21.12.2011, he has been promoted on regular basis with immediate effect.

Khyber Pakhtunkhwa
Services Tribunal,
Peshawar

ATTESTED

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5. In minutes of PSB meeting held on 29.12.2009, it has been clearly stated that the appellant was eligible for promotion on regular basis and 11 posts were available, in which 10 candidates were promoted as PMS Officer on regular basis. Due to deficiencies of service record, some candidates were not promoted and the appellant was 11th but was promoted on acting charge basis without any plausible reason. The Tribunal agrees with the arguments put forth by the learned counsel for the appellant.

6. In view of the above, the appeal is accepted, and the respondents are directed to ante-date promotion of the appellant as PMS (BPS-17) with effect from 25.3.2010, with all back/consequential benefits.

7. This order will also dispose off connected service appeals No. 1400/2010, Hidayatullah Khan, No. 1401/2010, Muhammad Nasir Khan, No. 1403/2010, Syed Kazim Hussain Shah, in the same manner.

8. So far as the appellant in Service Appeal No. 1404/2010, namely Habibullah Arif is concerned, his services have been regularized on 21.12.2011 but his appeal cannot be entertained for ante-dated promotion 25.3.2010 for the reason that only 11 posts were available and he comes at S.No.12 in eligible candidates in the minutes of PSB meeting held on 29.12.2009.

9. Since services of the appellants in Service Appeals No. 1372/2010, Abdul Mateen Qasuria, No. 1399/2010, Naeem Akhtar, and 1402/2010, Niaz Muhammad, have not been regularized so far, the respondents are directed to consider them for regular promotion as and when vacancies become available for them.

10. Parties are left to bear their own costs. File be consigned to the record.

Sd/- Nisar Ali Khan Member
Sd/- Sultan Mahmood Khan Member

ANNOUNCED
11.1.2013

Certified copy

[Signature]
L. Khan
Secretary
Peshawar

ATTESTED

[Signature] 1600
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2
12
11-6-2013
11-6-2013

VAKALAT NAMA

NO. _____/20

IN THE COURT OF Services Tribunal Peshawar

Gohar Ali

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Govt of KPK through Chief Secy (Respondent)
Secy Establishment (Defendant)

I/We Additional Assistant Commissioner (A) Mardan ^(Appellant)

Do hereby appoint and constitute **M. Asif Yousafzai, Advocate, Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated 10-6 /2014

Gohar Ali

Gohar Ali
(CLIENT)

ACCEPTED

M. Asif Yousafzai
M. ASIF YOUSAFZAI
Advocate

M. ASIF YOUSAFZAI
Advocate High Court,
Peshawar.

OFFICE:

Room No.1, Upper Floor,
Islamia Club Building,
Khyber Bazar Peshawar.
Ph.091-2211391-
0333-9103240

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No.844/2014

Mr. Gohar Ali, Addl: Asstt: Commissioner, Mardan

.....(Appellant)

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Secretary to Govt of Khyber Pakhtunkhwa, Civil Sectt Peshawar.

..... (Respondents)

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 1, 2 & 3.

Respectfully Sheweth,

PRELIMINARY OBJECTIONS:

1. That the petitioner has got no cause of action/locus standi to file the instant appeal against the respondents.
2. That the petition is not maintainable.
3. That the petitioner has presented the facts in manipulated form which disentitles him for any relief whatsoever.
4. That the petition is barred by law/time.
5. That the petitioner has not come to this Honourable Court with clean hands.
6. That the petition is bad for non-joinder of necessary parties.

ON FACTS:


1. Correct.
2. Correct.
3. Correct.
4. Needs no comments.
5. PSB in its meeting held on 4-10-2012 considered the case of promotion of Tehsildars to the post of PMS BS-17 against 44 posts falling in their share of quota and recommended promotion of 30 Tehsildars including the appellant to PMS BS-17 on regular basis. After approval from Competent Authority, their promotion was notified on 30-10-2012. As per rules, promotion is always notified with immediate effect.


6. Incorrect. Every case has got its own peculiar facts & circumstances and therefore the facts of one case cannot be considered generalized to all other cases. Similarly, cases of Iqbal Khattak and Fazal Hussain have their own peculiar facts which are totally different in nature from the instant case. They were given antedated promotion as per judgment of Khyber Pakhtunkhwa Services Tribunal and august Supreme Court of Pakistan.

ON GROUNDS:

- A. Incorrect. The said order is justified and made according to law and rules.
B. Incorrect. The appellant alongwith others were appointed to the post of PMS BS-17 on acting charge basis on 21-12-2011 against the share pertaining to initial recruitment in the light of Rule 9(3) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer Rules), 1989. Later on he was promoted to the post of PMS BS-17 on regular basis on 30-10-2012 against 20% share of Tehsildars reserved in PMS Posts.
C. The appeal/case of the appellant does not come under the ambit of the quoted judgment.
D. As already explained in preceding paras.
E. As already explained in preceding paras.
F. As explained against Para 6 of the facts.
G. Incorrect.
H. Incorrect. The appellant has been treated according to law and rules.
I. The respondents may be allowed to submit other grounds and proof at the time of hearing.

It is, therefore, most humbly prayed that on acceptance of these parawise comments, the instant appeal may very graciously be dismissed.


Chief Secretary,
Khyber Pakhtunkhwa
(Respondent No.1&2)


Secretary to Govt. of
Khyber Pakhtunkhwa
Establishment Department
(Respondent No.3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 844/2014

Mr. Gohar Ali, Addl: Asstt: Commissioner, Mardan

.....(Appellant)

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Secretary to Govt of Khyber Pakhtunkhwa, Civil Sectt Peshawar.

..... (Respondents)

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 1, 2 & 3.

Respectfully Sheweth,

PRELIMINARY OBJECTIONS:

1. That the petitioner has got no cause of action/locus standi to file the instant appeal against the respondents.
2. That the petition is not maintainable.
3. That the petitioner has presented the facts in manipulated form which disentitles him for any relief whatsoever.
4. That the petition is barred by law/time.
5. That the petitioner has not come to this Honourable Court with clean hands.
6. That the petition is bad for non-joinder of necessary parties.

ON FACTS:

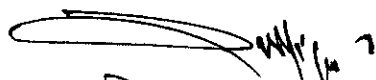
1. Correct.
2. Correct.
3. Correct.
4. Needs no comments.
5. PSB in its meeting held on 4-10-2012 considered the case of promotion of Tehsildars to the post of PMS BS-17 against 44 posts falling in their share of quota and recommended promotion of 30 Tehsildars including the appellant to PMS BS-17 on regular basis. After approval from Competent Authority, their promotion was notified on 30-10-2012. As per rules, promotion is always notified with immediate effect.


6. Incorrect. Every case has got its own peculiar facts & circumstances and therefore the facts of one case cannot be considered generalized to all other cases. Similarly, cases of Iqbal Khattak and Fazal Hussain have their own peculiar facts which are totally different in nature from the instant case. They were given antedated promotion as per judgment of Khyber Pakhtunkhwa Services Tribunal and august Supreme Court of Pakistan.

ON GROUNDS:

- A. Incorrect. The said order is justified and made according to law and rules.
B. Incorrect. The appellant alongwith others were appointed to the post of PMS BS-17 on acting charge basis on 21-12-2011 against the share pertaining to initial recruitment in the light of Rule 9(3) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer Rules), 1989. Later on he was promoted to the post of PMS BS-17 on regular basis on 30-10-2012 against 20% share of Tehsildars reserved in PMS Posts.
C. The appeal/case of the appellant does not come under the ambit of the quoted judgment.
D. As already explained in preceding paras.
E. As already explained in preceding paras.
F. As explained against Para 6 of the facts.
G. Incorrect.
H. Incorrect. The appellant has been treated according to law and rules.
I. The respondents may be allowed to submit other grounds and proof at the time of hearing.

It is, therefore, most humbly prayed that on acceptance of these parawise comments, the instant appeal may very graciously be dismissed.


Chief Secretary,
Khyber Pakhtunkhwa
(Respondent No.1&2)


Secretary to Govt. of
Khyber Pakhtunkhwa
Establishment Department
(Respondent No.3)

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA, SERVICE
TRIBUNAL, PESHAWAR**

C.M No. _____/2018

In

Appeal No.844/2014

Gohar Ali**Appellant**

Versus

Govt. of KPK & others.....**Respondents**

**APPLICATION FOR IMPLEADMENT OF
APPLICANTS BEING IMPORTANT AND
NECESSARY PARTY IN THE NOTED
SERVICE APPEALS IN THE PANEL OF
RESPONDENTS IN THE ABOVE NOTED
CASES.**

Respectfully Sheweth:

The applicants humbly submit as under:-

1. That the above mentioned Service Appeals are pending adjudication before this Hon'ble Tribunal which is fixed of hearing on 31.07.2018.
2. That the names of the applicants which are necessary parties and are liable to be imploded are as under:-
 - i. Fahad Ikram Qazi
 - ii. Ishtiaq Ahmad
 - iii. Doulat Khan
 - iv. Muhammad Ali
 - v. Yasir Qayyum

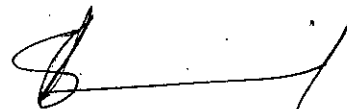
- vi. Jabreal Raza
- vii. Aziz Ullah Jan
- viii. Masood Jan
- ix. Tariq Ullah
- x. Alamgir Khan
- xi. Dr. Azmat
- xii. Anwar khan
- xiii. Beenish Imran
- xiv. Irum Shabeen
- xv. Misbah Riaz
- xvi. Fazeelat Jehan
- xvii. Shahab Muhammad Khan
- xviii. Shakeel Jan
- xix. Israr Khan
- xx. Zameen Khan
- xxi. Asmat Wazir
- xxii. Zahid Usman Kakakhel through:
- xxiii. Akhtar Nawaz S/o Gul Rehman (PMS BS-17),
presently posted as Section Officer, in
Establishment Department, Khyber
Pakhtunkhwa, Peshawar

3. That the above mentioned party being necessary party in the instant petition because they would directly suffering if the instant appeals are allowed, hence the applicants are necessary in the panel of respondents.
4. That it is well settled and equitable principles of law for just and proper decision of the instant service Appeal, the necessary parties who have intentionally not been made party.
5. That if the Application for impleadment is not allowed the Applicants would suffer extreme irreparable loss.

6. That there is no bar in which like application and the necessary parties may be made part as in the panel of respondents.
7. That any other ground will be raised at the time of arguments with prior permission of this Hon'ble Tribunal.

It is, therefore most respectfully prayed that on acceptance of this application, the important and necessary party in the panel of Respondents for just and proper decision of the present case.

Through Applicants



Shahid Mahmood Khan

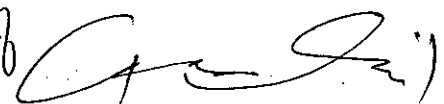
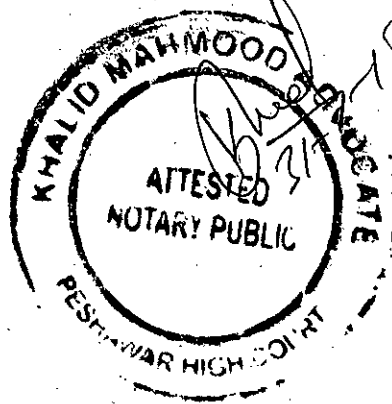
Advocate

High Court, Peshawar

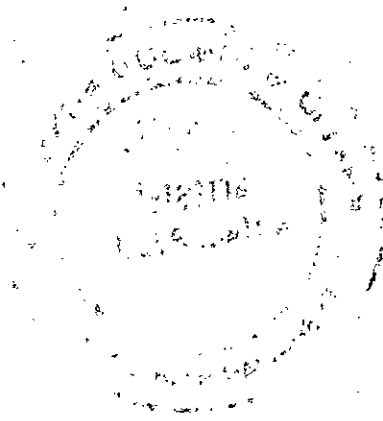
Dated 31.07.2018

AFFIDAVIT

It is solemnly 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 has been concealed from this Hon'ble Court.



DEPONENT



**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA, SERVICE
TRIBUNAL, PESHAWAR**

C.M No. _____/2018

In
Appeal.No.844/2014

Gohar AliAppellant

Versus

Govt. of KPK & others.....Respondents

**APPLICATION FOR IMPLEADMENT OF
APPLICANTS BEING IMPORTANT AND
NECESSARY PARTY IN THE NOTED
SERVICE APPEALS IN THE PANEL OF
RESPONDENTS IN THE ABOVE NOTED
CASES.**

Respectfully Sheweth:

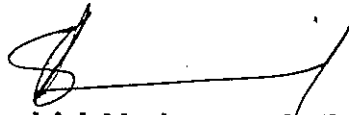
The applicants humbly submit as under:-

1. That the above mentioned Service Appeals are pending adjudication before this Hon'ble Tribunal which is fixed of hearing on 31.07.2018.
2. That the names of the applicants which are necessary parties and are liable to be imploded are as under:-
 - i. Fahad Ikram Qazi
 - ii. Ishtiaq Ahmad
 - iii. Doulat Khan
 - iv. Muhammad Ali
 - v. Yasir Qayyum

6. That there is no bar in which like application and the necessary parties may be made part as in the panel of respondents.
7. That any other ground will be raised at the time of arguments with prior permission of this Hon'ble Tribunal.

It is, therefore most respectfully prayed that on acceptance of this application, the important and necessary party in the panel of Respondents for just and proper decision of the present case.

Through Applicants



Shahid Mahmood Khan

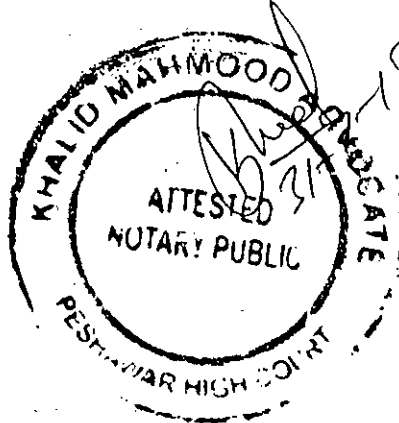
Advocate

High Court, Peshawar

Dated 31.07.2018

AFFIDAVIT

It is solemnly 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 has been concealed from this Hon'ble Court.



DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No.844/2014

Mr. Gohar Ali (PMS BS-17) and others **VERSUS** Govt. of Khyber Pakhtunkhwa & others

1. Fahad Ikram Qazi (PMS BS-17)
2. Isthiaq Ahmed (PMS BS-17)
3. Mr. Daulat Khan (PMS BS-17)
4. Muhammad Ali (PMS BS-17)
5. Yasir Qayyum (PMS BS-17)
6. Jibreel Raza(PMS BS-17)
7. Aziz Ullah Jan (PMS BS-17)
8. Masaud Jan (PMS BS-17)
9. Tariq Ullah (PMS BS-17)
10. Alamgir Khan (PMS BS-17)
11. Dr. Azmat Ullah Wazir (PMS BS-17)
12. Anwar Khan (PMS BS-17)
13. Beenish Imran (PMS BS-17)
14. Irum Shaheen (PMS BS-17)
15. Misbah Riaz (PMS BS-17)
16. Fazeelat Jehan (PMS BS-17)
17. Shahab Muhammad Khan (PMS BS-17)
18. Shakeel Jan (PMS BS-17)
19. Israr Khan (PMS BS-17)
20. Zameen Khan (PMS BS-17)
21. Asmat Ullah Wazir (PMS BS-17)
22. Zahid Usman Kakakhel (PMS BS-17)
23. Through Akhtar Nawaz s/O Gul Rehman (PMS BS-17) presently posted as Section Officer, Governor's Secretariat, Khyber Pakhtunkhwa Peshawar.

..... (Respondents)

**PARAWISE REPLY ON BEHALF OF CURRENTLY IMPLEADED
AFOREMENTIONED RESPONDENTS**

Respectfully Sheweth,

PRELIMINARY OBJECTIONS:

1. That the appeal is badly time barred as regular promotion of the appellants was issued on 04.10.2012 and the appellants preferred departmental appeal after lapse of considerable time on 10.07.2013 (Annex-I & II).

2. The appellant has got no cause of action/locus standi to file the instant appeal against the respondents.
3. That the appeal is not maintainable.
4. That the appellants have presented the facts in manipulated form which disentitles him for any relief whatsoever.
5. That the appellants have not come to this Tribunal with clean hands.
6. That the appellants are bad for non-joinder of necessary parties.

ON FACTS:

1. Correct.
2. Correct.
3. **Incorrect** as per notification dated 21.12.2011 the appellants were not promoted rather appointed on acting basis against the posts falling in the quota of initial recruitment (**Minutes of PSB are enclosed at Annex-III**). Moreover, the appellants were also deficient of the required length of service mandatory for promotion to PMS BS-17 as they have been appointed as Tehsildar on 22.01.2009.
4. Provincial Government calls meeting of PSB when they need promotion of officers to next higher grade keeping in view workload in upper scale and financial implications. Hence, the claim of the appellants that delay of PSB on May 5, 2012 has suffered their service career is baseless and technically incorrect.
5. PSB in its meeting held on 05-09-2012 considered the case of promotion of Tehsildars to the post of PMS BS-17 keeping in view need of their services in next higher grade. After approval from Competent Authority, their promotion was notified on 04-10-2012. As per rules, promotion is always notified with immediate effect. Since, the appellants are performing their duties as PMS Officers since 04.10.2012, therefore, their claim for the benefits from back date, where they have not rendered services as PMS Officers, is baseless, not justifiable and against the norms of justice.
6. Incorrect. Every case has got its own peculiar facts & circumstances and therefore the facts of one case cannot be generalized to all other cases. Similarly, cases of

Iqbal Khattak and Fazal Hussain have their own peculiar facts which are totally different in nature from the instant case. Mr. Fazal Hussain was appointed on acting charge basis on 25.03.2010 while he was fulfilling all requisite conditions for regular promotion to the post of PMS BS-17. However, the appellants were deficient of required length of service at the time of their acting charge appointment, therefore, their case has no similarity with the case of Mr. Fazal Hussain. Likewise, the benefit of judgment in Appeal No. 612/2008 (Muhammad Iqbal Khattak) cannot be extended to the appellant as Mr. Iqbal Khattak was temporary promoted to PCS EG (BS-17) on 06.03.1996 besides the fact that clear vacancies were available in his share for his promotion and was later on promoted on regular basis on 19.02.2008 after a lapse of almost 12 years while in the instant case the appellants were appointed on acting charge basis to PMS BS-17 against the quota reserved for initial recruitment on 21.12.2011 as they were deficient of required length of service, hence, the plea of the appellants for regular promotion against the posts which did not fall in promotion quota is not justifiable and hence baseless (**Annex-IV & V**).

ON GROUNDS:

- A. **Incorrect.** The said order is according to merit, justified, legally covered and according to the law.
- B. **Incorrect.** The appellant alongwith others were appointed to the post of PMS BS-17 on acting charge basis on 21-12-2011 against the share pertaining to initial recruitment in the light of Rule 9(3) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer Rules), 1989. Later on they were promoted to the post of PMS BS-17 on regular basis on 30-10-2012 against 20% share of Tehsildars reserved in PMS Posts. Hence, plea of the appellants is misleading.
- C. **Incorrect.** The benefits of judgment reported in 2006 in SCMR 1938 is only extendable to the appellants where posts are available for promotion in the quota reserved for promotion of the appellants, however, in the instant case the appellants were appointed on Acting Charge Basis against the quota

reserved for initial recruitment. Hence, the acting charge appointment of the appellants against the quota reserved for initial recruitment do not accrue any right of regular promotion under the rules, laws and policies.

D. As already explained in para-6 of the facts.

E. As already explained in para-6 of the facts.

F. **Incorrect.** The benefits SCMR 1996, page 1185, 2009 SCMR page-1, cannot be given to the appellants being completely a different nature of case as explained above.

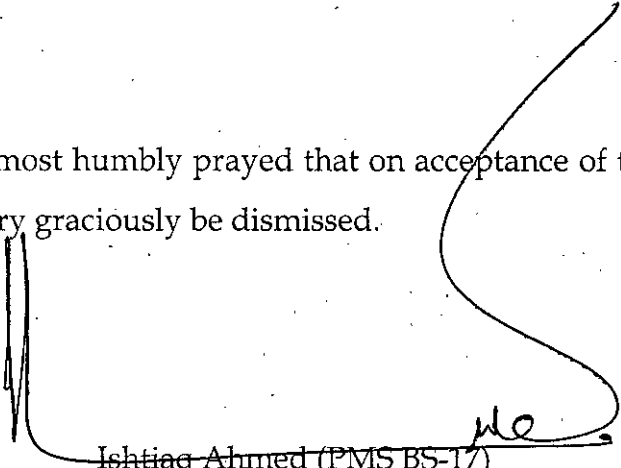
G. **Incorrect.** As the officers referred to as juniors are directly recruited PMS BS-17 officers appointed as PMS BS-17 on 27.05.2012 before the promotion of the appellants to PMS BS-17 and are hence senior. Therefore, the word junior is misleading. No junior of appellants were promoted to PMS BS-17 during the period mentioned by the petitioner.

H. **Incorrect.** As explained in para-4 of the facts.

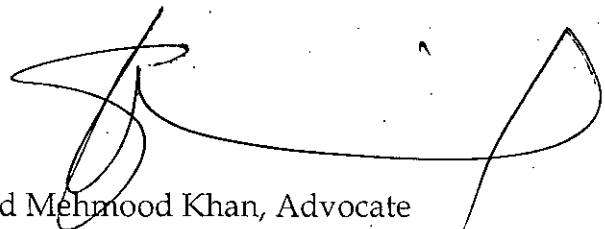
I. No comments.

It is, therefore, most humbly prayed that on acceptance of these response, the instant appeal may very graciously be dismissed.

Through:


Ishtiaq Ahmed (PMS BS-17)
Presently posted as Section Officer
Establishment Department, Peshawar

Through:


Shahid Mehmood Khan, Advocate

6

GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Dated Peshawar the October, 04, 2012

NOTIFICATION

NO.SOE.II(ED) 2(192)2012-

Consequent upon the recommendations of the Provincial Selection Board, the competent authority is pleased to order the promotion of the following PMS BS-17 (V/C) / Tehsildars to the post of Provincial Management Service (BS-17), on regular basis with immediate effect:-

S.#	Name of Officer
1.	Syed Gul Jamal
2.	Mr. Naeem Akhtar
3.	Mr. Niaz Muhammad
4.	Mr. Abdul Mateen Qasuria
5.	Mr. Shaukat Hussain
6.	Mr. Gul Nawaz Ali
7.	Mr. Nosrwan
8.	Qazi Atta-ur-Rehman
9.	Mr. Saleem Iqbal
10.	Mr. Irfan Ali
11.	Mr. Gohar Ali

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

3. Consequent upon above, the following postings/transfers are ordered with immediate effect:

S.#	Name of Officer	From	To	Remarks
1.	Syed Gul Jamal	DDO(J), Peshawar	Retained on the same post and station	
2.	Mr. Naeem Akhtar	Asstt. to Commissioner (Dev), Malakand	Retained on the same post and station	
3.	Mr. Niaz Muhammad	DO(R), Swat	HRDO, Swat against the vacant post.	Only for actualization of his promotion for one day whereafter he will continue as DO(R) Swat in his own pay & scale

5.	Mr. Abdul Mateen Qasuria	DDO(J), D.I.Khan	Retained on the same post
6.	Mr. Shaukat Hussain	DDO(J), Abbottabad	Retained on the same post
6.	Mr. Gul Nawaz Ali	Settlement Officer, Mansehra	DDO(I), Mansehra against the vacant post
7.	Mr. Nowsherwan	Tehsildar, Palas Kohistan	DDO(R), Palas Kohistan against the vacant post.
8.	Qazi Atta-ur-Rehman	DDO(R), Haripur	Retained on the same post
9.	Mr. Saleem Jan	Research Officer, FATA Sectt:	Retained on the same post
10.	Mr. Irfan Ali	APA, Mir Ali N.W. Agency	Retained on the same post
11.	Mr. Gohar Ali	Tehsildar, Takhtbhai Mardan	DDO(J), Katlang Mardan against the vacant post

7

Only for actualization of his promotion for one day whereafter he will continue as Settlement Officer, Mansehra in his own pay & scale.

CHIEF SECRETARY
KHYBER PAKHTUNKHWA

ENDST: NO. & DATE EVEN

A copy is forwarded to:-

1. Additional Chief Secretary, FATA.
2. Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
3. Secretary to Governor, Khyber Pakhtunkhwa.
4. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. All Divisional Commissioners in Khyber Pakhtunkhwa.
6. All District Coordination Officers in Khyber Pakhtunkhwa.
7. Secretary (Admn: & Coord), FATA Secretariat.
8. Accountant General, Khyber Pakhtunkhwa.
9. Accountant General (PR), Sub-Office, Peshawar.
10. All District Accounts Officers in Khyber Pakhtunkhwa.
11. General Manager, SNGPI, Peshawar.
12. Director (Land), NHA, Khyber Pakhtunkhwa Region, Peshawar.
13. SO(Secret)/SO(Admn)/EO/Librarian, E&A Department.
14. PS to Chief Secretary, Khyber Pakhtunkhwa.
15. PS to Secretary Establishment.
16. PS to Special Secretary (Estt), Establishment Department.
17. PAs to AS(E)/DS(E) Estab: Deptt:
18. Officers concerned.
19. Office order file.
20. Personal file of the officers concerned.

najam

(NAJAM US-SAHAR)
SECTION OFFICER(E-II)

380
131

8/18/14

PS/C.S Khyber Pakhtunkhwa
Diary No. 467
Date. 13-1-14

The Chief Secretary,
Government of Khyber Pakhtunkhwa,
Peshawar.

Deputy Secretary (Estab.)
Estab. & Admin. Department
Diary No. 1650
Dated. 15-01-14

Subject:- Appeal for regular promotion to the post of PMS Officers w.e.f. Acting Charge basis or w.e.f. occurrence of vacancies.

R/Sir,

It is stated before your goodself that I have been promoted to the post of PMS Officer (B-17) on Acting Charge basis in December, 2011. Further-more in the month of May, 2012, the Establishment Department has announced PSB meeting for our promotion, but due to certain unknown reasons, the meeting has not been convened. After that different dates for the said meeting have been fixed, but at the 11th hours, the meeting could not convene.

It is further added that I have promoted on Regular basis after the induction of new PMS Batch. Thus my seniority is badly suffered as I was entitled to be promoted prior the induction of the new PMS Batch.

In view of the above, I submit request through this appeal that I may kindly be given due seniority on regular basis w.e.f. date of our promotion on acting charge basis or from the date of occurrence of vacancies.

Deputy Secretary to
Secretary Establishment
13/1/14

DSB

Dated: 9th January, 2014

Sincerely yours,

Salim Jan
(Salim Jan)

PMS (B-17),

APA FR D.I.Khan

13/1/14
P.S. to Chief Secretary
Govt. of Khyber Pakhtunkhwa
Secy: Estab.

Indri 15/01
E/11
OR
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37/371
13-1-14

9

Deputy Secretary (Estab.)
Estab. & Admin. Department
Diary No. 1641
Dated: 15-01-14

PS/C.S Khyber Pakhtunkhwa
Diary No. 469
Date: 13-1-14

The Chief Secretary,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject:- Appeal for regular promotion to the post of PMS Officers w.e.f. Acting Charge basis or w.e.f. occurrence of vacancies.

R/Sir,

It is stated before your goodself that I have been promoted to the post of PMS Officer (B-17) on Acting Charge basis in December, 2011. Further-more in the month of May, 2012, the Establishment Department has announced PSB meeting for our promotion, but due to certain unknown reasons, the meeting has not been convened. After that different dates for the said meeting have been fixed, but at the 11th hours, the meeting could not convene.

It is further added that I have promoted on Regular basis after the induction of new PMS Batch. Thus my seniority is badly suffered as I was entitled to be promoted prior the induction of the new PMS Batch.

In view of the above, I submit request through this appeal that I may kindly be given due seniority on regular basis w.e.f. date of our promotion on acting charge basis or from the date of occurrence of vacancies.

Sincerely yours,

Shah Jamil
(Shah Jamil)
PMS (B-17),
AAC Dir

Dated: 9th January, 2014

Secretary to Establishment
DAB

13/1
P.S. to Chief Secretary
Govt. of Khyber Pakhtunkhwa
Secy: ESTB

Indri 15/01
P-OP P! 12/11
15/11

To Deputy Secretary (Estab.)
Esob. & Estab. Department
Diary No. 1644
Dated. 15-01-14

374 10
B-1-14
PS/C.S Khyber Pakhtunkhwa
Diary No. 472
Date. 13-1-14

The Chief Secretary,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject:- Appeal for regular promotion to the post of PMS Officers w.e.f. Acting Charge basis or w.e.f. occurrence of vacancies.

R/Sir,

It is stated before your goodself that I have been promoted to the post of PMS Officer (B-17) on Acting Charge basis in December, 2011. Further-more in the month of May, 2012, the Establishment Department has announced PSB meeting for our promotion, but due to certain unknown reasons, the meeting has not been convened. After that different dates for the said meeting have been fixed, but at the 11th hours, the meeting could not convene.

It is further added that I have promoted on Regular basis after the induction of new PMS Batch. Thus my seniority is badly suffered as I was entitled to be promoted prior the induction of the new PMS Batch.

In view of the above, I submit request through this appeal that I may kindly be given due seniority on regular basis w.e.f. date of our promotion on acting charge basis or from the date of occurrence of vacancies.

Sincerely yours,

Dated: 9th January, 2014

NA
P.S. to Chief Secretary
Govt. of Khyber Pakhtunkhwa
13/1
Secy: ESTAB

Navid Akbar
(Navid Akbar)
PMS (B-17),
APA FR Peshawar

*Secretary to
Establishment*
D.S.

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B.F.P
P.O.P
15/1

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375
13-1-14

PS/C.S Khyber Pakhtunkhwa
Diary No. 473
Date. 13-1-14

Deputy Secretary (Etab.)
Etab. & Adm. Department

To

Diary No. 1645
Dated. 15-01-14
The Chief Secretary,

Government of Khyber Pakhtunkhwa,
Peshawar.

Subject:- Appeal for regular promotion to the post of PMS Officers w.e.f. Acting Charge basis or w.e.f. occurrence of vacancies.

R/Sir,

It is stated before your goodself that I have been promoted to the post of PMS Officer (B-17) on Acting Charge basis in December, 2011. Further-more in the month of May, 2012, the Establishment Department has announced PSB meeting for our promotion, but due to certain unknown reasons, the meeting has not been convened. After that different dates for the said meeting have been fixed, but at the 11th hours, the meeting could not convene.

It is further added that I have promoted on Regular basis after the induction of new PMS Batch. Thus my seniority is badly suffered as I was entitled to be promoted prior the induction of the new PMS Batch.

In view of the above, I submit request through this appeal that I may kindly be given due seniority on regular basis w.e.f. date of our promotion on acting charge basis or from the date of occurrence of vacancies.

Sincerely yours,

Tariq Hussain
(Tariq Hussain)

PMS (B-17),

S.O. Home Deptt

Dated: 9th January, 2014

[Signature]
Secretary to
Establishment
P.S. to Chief Secretary
Govt. of Khyber Pakhtunkhwa
Diary: ESTAB:
13/1

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[Signature]
[Signature]

372
13-1-14

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98

Deputy Secretary (Estab.)
Estab. & Adm. Department

To

Diary No. 1643

Dated. 15-01-14

PS/C.S Khyber Pakhtunkhwa
Diary No. 470
Date. 13-1-14

The Chief Secretary,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject:- Appeal for regular promotion to the post of PMS Officers w.e.f. Acting Charge basis or w.e.f. occurrence of vacancies.

R/Sir,

It is stated before your goodself that I have been promoted to the post of PMS Officer (B-17) on Acting Charge basis in December, 2011. Further-more in the month of May, 2012, the Establishment Department has announced PSB meeting for our promotion, but due to certain unknown reasons, the meeting has not been convened. After that different dates for the said meeting have been fixed, but at the 11th hours, the meeting could not convene.

It is further added that I have promoted on Regular basis after the induction of new PMS Batch. Thus my seniority is badly suffered as I was entitled to be promoted prior the induction of the new PMS Batch.

In view of the above, I submit request through this appeal that I may kindly be given due seniority on regular basis w.e.f. date of our promotion on acting charge basis or from the date of occurrence of vacancies.

Sincerely yours,

Dated: 9th January, 2014

[Signature]
13/1
P.S. to Chief Secretary
Govt. of Khyber Pakhtunkhwa
Secy. Estab.

Amanullah Saeed
(Amanullah Saeed)

PMS (B-17),

AAC

Secretary to
Establishment
13/1
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15/01

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P.O.P. 15/1

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E. File

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99 ✓

373
13-1-14

To
Deputy Secretary (Estab.)
Estab. Section, Department
Diary No. 1642
Dated. 15-01-14.

PS/C.S Khyber Pakhtunkhwa
Diary No. 971
Date. 13-1-14

The Chief Secretary,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject:- Appeal for regular promotion to the post of PMS Officers w.e.f. Acting Charge basis or w.e.f. occurrence of vacancies.

R/Sir,

It is stated before your goodself that I have been promoted to the post of PMS Officer (B-17) on Acting Charge basis in December, 2011. Further-more in the month of May, 2012, the Establishment Department has announced PSB meeting for our promotion, but due to certain unknown reasons, the meeting has not been convened. After that different dates for the said meeting have been fixed, but at the 11th hours, the meeting could not convene.

It is further added that I have promoted on Regular basis after the induction of new PMS Batch. Thus my seniority is badly suffered as I was entitled to be promoted prior the induction of the new PMS Batch.

In view of the above, I submit request through this appeal that I may kindly be given due seniority on regular basis w.e.f. date of our promotion on acting charge basis or from the date of occurrence of vacancies.

Sincerely yours,

Hamid Ali Giggan
(Hamid Ali Giggan)

PMS (B-17),
AAC Charsadda

dated: 9th January, 2014

[Signature]
13/1
P.S. to Chief Secretary
Govt. of Khyber Pakhtunkhwa

Secy: ESTAB.

[Signature]
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P/S

[Signature]
15/1/14

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13/1

To
Deputy Secretary (Estab:)
Estab: & Admt: Department
Diary No. 1646
Dated 15-01-14

376
13-1-14
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101
PS/C.S Khyber Pakhtunkhwa
Diary No. 474
Date 13-1-14

The Chief Secretary,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject:- Appeal for regular promotion to the post of PMS Officers w.e.f. Acting Charge basis or w.e.f. occurrence of vacancies.

R/Sir,

It is stated before your goodself that I have been promoted to the post of PMS Officer (B-17) on Acting Charge basis in December, 2011. Further-more in the month of May, 2012, the Establishment Department has announced PSB meeting for our promotion, but due to certain unknown reasons, the meeting has not been convened. After that different dates for the said meeting have been fixed, but at the 11th hours, the meeting could not convene.

It is further added that I have promoted on Regular basis after the induction of new PMS Batch. Thus my seniority is badly suffered as I was entitled to be promoted prior the induction of the new PMS Batch.

In view of the above, I submit request through this appeal that I may kindly be given due seniority on regular basis w.e.f. date of our promotion on acting charge basis or from the date of occurrence of vacancies.

Sincerely yours,

Dated: 9th January, 2014

AM
13/1
P.S. to Chief Secretary
Govt: of Khyber Pakhtunkhwa

Secy: ESTB:

Sohail Ahmad

(Sohail Ahmad)

PMS (B-17),

APA Bajaur Agency

ASB
Secretary to
Establishment

Zind
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Deputy Secretary (Estab.)
Estab. & Admin. Department

Diary No. 1647

Dated 15-01-14

377
13-1-14
103

PS/C.S Khyber Pakhtunkhwa

Diary No 475

Date 13-1-14

The Chief Secretary,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject:- Appeal for regular promotion to the post of PMS Officers w.e.f. Acting Charge basis or w.e.f. occurrence of vacancies.

R/Sir,

It is stated before your goodself that I have been promoted to the post of PMS Officer (B-17) on Acting Charge basis in December, 2011. Further-more in the month of May, 2012, the Establishment Department has announced PSB meeting for our promotion, but due to certain unknown reasons, the meeting has not been convened. After that different dates for the said meeting have been fixed, but at the 11th hours, the meeting could not convene.

It is further added that I have promoted on Regular basis after the induction of new PMS Batch. Thus my seniority is badly suffered as I was entitled to be promoted prior the induction of the new PMS Batch.

In view of the above, I submit request through this appeal that I may kindly be given due seniority on regular basis w.e.f. date of our promotion on acting charge basis or from the date of occurrence of vacancies.

Sincerely yours,

M. Imran
(Muhammad Imran)

PMS (B-17),
AAC Malakand

Dated: 9th January, 2014

Principal Secretary to
Secretary Establishment

P.S. to Chief Secretary
Govt. of Khyber Pakhtunkhwa

Secy: ESTB:

In dr
15/01

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Deputy Secretary (Estab.)
Estab. & Admin. Department

Diary No. 1648
Dated. 15-01-14

378
13-1-14

PS/C.S Khyber Pakhtunkhwa
Diary No. 476
Date. 13-1-14

The Chief Secretary,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject:- Appeal for regular promotion to the post of PMS Officers w.e.f. Acting Charge basis or w.e.f. occurrence of vacancies.

R/Sir,

It is stated before your goodself that I have been promoted to the post of PMS Officer (B-17) on Acting Charge basis in December, 2011. Further-more in the month of May, 2012, the Establishment Department has announced PSB meeting for our promotion, but due to certain unknown reasons, the meeting has not been convened. After that different dates for the said meeting have been fixed, but at the 11th hours, the meeting could not convene.

It is further added that I have promoted on Regular basis after the induction of new PMS Batch. Thus my seniority is badly suffered as I was entitled to be promoted prior the induction of the new PMS Batch.

In view of the above, I submit request through this appeal that I may kindly be given due seniority on regular basis w.e.f. date of our promotion on acting charge basis or from the date of occurrence of vacancies.

Sincerely yours,

Yousaf Karim
(Yousaf Karim)
PMS (B-17),
AAC Peshawar

Dated: 9th January, 2014

Principal Secretary to
Secretary Establishment

13/1
P.S. to Chief Secretary
Govt. of Khyber Pakhtunkhwa

Secy: ESTAB.

In file 15/01
B. Fee

Deputy Secretary (Estab.)
Estab. & Admn. Department
Diary No. 1649
Dated. 15-01-14

Diary No. 379
13-1-14

PS/CS Khyber Pakhtunkhwa
Diary No. 468
Date. 13-1-14

The Chief Secretary,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject:- Appeal for regular promotion to the post of PMS Officers w.e.f. Acting Charge basis or w.e.f. occurrence of vacancies.

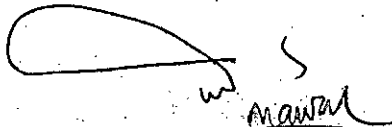
R/Sir,

It is stated before your goodself that I have been promoted to the post of PMS Officer (B-17) on Acting Charge basis in December, 2011. Further-more in the month of May, 2012, the Establishment Department has announced PSB meeting for our promotion, but due to certain unknown reasons, the meeting has not been convened. After that different dates for the said meeting have been fixed, but at the 11th hours, the meeting could not convene.

It is further added that I have promoted on Regular basis after the induction of new PMS Batch. Thus my seniority is badly suffered as I was entitled to be promoted prior the induction of the new PMS Batch.

In view of the above, I submit request through this appeal that I may kindly be given due seniority on regular basis w.e.f. date of our promotion on acting charge basis or from the date of occurrence of vacancies.

Sincerely yours,


(Sajid Nawaz)

PMS (B-17),
DSM PPHI Mardan

Dated: 9th January, 2014

Deputy Secretary to
Establishment
13/1

P.S. to Chief Secretary
Govt. of Khyber Pakhtunkhwa

Secy: Estab.

22/1/14
15/01
D.O.P.

Private Secretary

Diary No. 383

Date 13/1

18/108

Deputy Secretary (Estab.)
Estab. & Admin. Department

Diary No. 1653

Dated 15-01-14

PS/C.S Khyber Pakhtunkhwa

Diary No. 479

Date 13-1-14

The Chief Secretary,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject:- Appeal for regular promotion to the post of PMS Officers w.e.f. Acting Charge basis or w.e.f. occurrence of vacancies.

R/Sir,

It is stated before your goodself that I have been promoted to the post of PMS Officer (B-17) on Acting Charge basis in December, 2011. Further-more in the month of May, 2012, the Establishment Department has announced PSB meeting for our promotion, but due to certain unknown reasons, the meeting has not been convened. After that different dates for the said meeting have been fixed, but at the 11th hours, the meeting could not convene.

It is further added that I have promoted on Regular basis after the induction of new PMS Batch. Thus my seniority is badly suffered as I was entitled to be promoted prior the induction of the new PMS Batch.

In view of the above, I submit request through this appeal that I may kindly be given due seniority on regular basis w.e.f. date of our promotion on acting charge basis or from the date of occurrence of vacancies.

Private Secretary to
Secretary Establishment

Dated: 9th January, 2014

Indi
15/1/14
R-4

13/1
P.S. to Chief Secretary
Govt. of Khyber Pakhtunkhwa
Secy: ESTAB.

Sincerely yours,

Gohar Ali

(Gohar Ali)

PMS (B-17),

A.A.C. (R),

Mardan

P.47

17
106
P/Secy Estab.

382

Deputy Secretary (Estab.)
Estab. & Admn. Department

13/11

Diary No. 1652

Dated: 15-01-14

PS/C.S Khyber Pakhtunkhwa

Diary No. 477

Date: 13-1-14

The Chief Secretary,

Government of Khyber Pakhtunkhwa,

Peshawar.

Subject:- Appeal for regular promotion to the post of PMS Officers w.e.f. Acting Charge basis or w.e.f. occurrence of vacancies.

R/Sir,

It is stated before your goodself that I have been promoted to the post of PMS Officer (B-17) on Acting Charge basis in December, 2011. Further-more in the month of May, 2012, the Establishment Department has announced PSB meeting for our promotion, but due to certain unknown reasons, the meeting has not been convened. After that different dates for the said meeting have been fixed, but at the 11th hours, the meeting could not convene.

It is further added that I have promoted on Regular basis after the induction of new PMS Batch. Thus my seniority is badly suffered as I was entitled to be promoted prior the induction of the new PMS Batch.

In view of the above, I submit request through this appeal that I may kindly be given due seniority on regular basis w.e.f. date of our promotion on acting charge basis or from the date of occurrence of vacancies.

Sincerely yours,

Khalid Qayum
(Khalid Qayum)

PMS (B-17),

AAC Perowa,

D.I.Khan

13
15/01
R-11
P.S.E

Dated: 9th January, 2014

13/1
P.S. to Chief Secretary
Govt. of Khyber Pakhtunkhwa

Secy: ESTB:

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Ps/Secy Estab.

Diary No. 381

Date 13/1

90
10/10

Deputy Secretary (Estab.)
Estab. & Adm. Department

Diary No. 1651

Dated 15-01-14

PS/C.S Khyber Pakhtunkhwa

Di- 478

Date 13-1-14

The Chief Secretary,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject:- Appeal for regular promotion to the post of PMS Officers w.e.f. Acting Charge basis or w.e.f. occurrence of vacancies.

R/Sir,

It is stated before your goodself that I have been promoted to the post of PMS Officer (B-17) on Acting Charge basis in December, 2011. Further-more in the month of May, 2012, the Establishment Department has announced PSB meeting for our promotion, but due to certain unknown reasons, the meeting has not been convened. After that different dates for the said meeting have been fixed, but at the 11th hours, the meeting could not convene.

It is further added that I have promoted on Regular basis after the induction of new PMS Batch. Thus my seniority is badly suffered as I was entitled to be promoted prior the induction of the new PMS Batch.

In view of the above, I submit request through this appeal that I may kindly be given due seniority on regular basis w.e.f. date of our promotion on acting charge basis or from the date of occurrence of vacancies.

Sincerely yours,

Kashmir Khan
(Kashmir Khan)

PMS (B-17)

D.M.O. (Edu)

Bannu/Lakki Marwat

[Signature]
Secretary to
Establishment
13-1-14

Dated: 9th January, 2014

[Signature]
13/1
P.S. to Chief Secretary
Govt. of Khyber Pakhtunkhwa
Secy: ESTB:

[Signature]
15/1

[Signature]
P-3P
15/1

Add: Item No.4

ESTABLISHMENT DEPARTMENT
(Meeting of PSB held on 23.11.2011)

7/6/11

SUBJECT: - APPOINTMENT OF TEHSILDARS TO THE POST OF PMS BS-17 ON ACTING CHARGE BASIS.

~~Secretary Establishment apprised the Board that one hundred and eighty three (183) posts are vacant in the quota of initial recruitment for which a requisition has been placed with the Public Service Commission and the posts are vacant. Out of which forty (40) posts be filled on acting charge basis as per Section 9 (3) of (Appointment, Promotion and Transfer) Rules 1989.~~

2. According to service rules, the posts are filled as under: -
"Twenty percent from amongst Tehsildars who are graduate, on the basis of seniority cum fitness having three years service as Tehsildars/Naib Tehsildars and have passed the prescribed departmental examination".

Note

As per Section 7 of rule ibid the condition of graduation shall not apply for a period of seven years from the date of coming into force of these rules to the existing incumbents for promotion against BPS-17

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

S.NO	NAME OF OFFICER	RECOMMENDATIONS OF THE BOARD
1	Mr. Saleem Jan	His date of birth is 07.06.1975. He joined government service on 07.01.2002. He was appointment as Tehsildar BS-16 on 02.02.2009. He has not yet completed the prescribed length of service. He has passed the departmental examination. No enquiry is pending against him. His service record upto 2010 is generally good. The Board recommended the officer for appointment to the post of PMS BS-17 on acting charge basis.
2	Mr. Irfan Ali	His date of birth is 12.04.1976. He joined government service on 02.02.2009 as Tehsildar BS-16. He has not yet completed the prescribed length of service. He has passed the departmental examination. No enquiry is pending against him. His service record upto 2010 is generally good. The Board recommended the officer for appointment to the post of PMS BS-17 on acting charge basis.
3	Mr. Gohar Ali	His date of birth is 03.02.1979. He joined government service on 02.02.2009 as Tehsildar BS-16. He has not yet completed the prescribed length of service. He has not passed the departmental examination. No enquiry is pending against him. The Board did not consider him for appointment to the post of PMS BS-17 on acting charge basis.
4	Mr. Sajid Nawaz	His date of birth is 14.04.1977. He joined government service on 24.2.1998. He was promoted as Tehsildar BS-16 on 02.02.2009. He has not yet completed the prescribed length of service.

Approved
[Signature]
Deputy Secretary (HRD)
Govt. of Khyber Pakhtunkhwa
Establishment Department

CONFIDENTIAL

		of service. He has passed the departmental examination enquiry is pending against him. His service record upto 2010 is generally good.
5	Mr. Kashmir Khan	<p>The Board recommended the officer for appointment to the post of PMS BS-17 on acting charge basis.</p> <p>His date of birth is 16.04.1982. He joined government service on 02.02.2009 as Tehsildar BS-16. He has not yet completed the prescribed length of service. He has not passed the departmental examination.</p> <p>The Board did not consider him for appointment to the post of PMS BS-17 on acting charge basis.</p>
6	Mr. Khalid Qayum	<p>His date of birth is 03.02.1972. He joined government service on 02.02.2009 as Tehsildar BS-16. He has not yet completed the prescribed length of service. He has not passed the departmental examination.</p> <p>The Board did not consider him for appointment to the post of PMS BS-17 on acting charge basis.</p>
7	Mr. Muhammad Yousaf Karim	<p>His date of birth is 20.11.1977. He joined government service on 02.02.2009 as Tehsildar BS-16. He has not yet completed the prescribed length of service. He has not passed the departmental examination.</p> <p>The Board did not consider him for appointment to the post of PMS BS-17 on acting charge basis.</p>
8	Mr. Arshad Khan	<p>His date of birth is 02.03.1980. He joined government service on 02.02.2009 as Tehsildar BS-16. He has not yet completed the prescribed length of service. He has not passed the departmental examination.</p> <p>The Board did not consider him for appointment to the post of PMS BS-17 on acting charge basis.</p>
9	Mr. Muhammad Imran.	<p>His date of birth is 03.05.1978. He joined government service as Tehsildar BS-16 on 02.02.2009. He has not yet completed the prescribed length of service. He has passed the departmental examination. No enquiry is pending against him. His service record upto 2010 is generally good.</p> <p>The Board recommended the officer for appointment to the post of PMS BS-17 on acting charge basis.</p>
10	Mr. Sohail Ahmed Khan.	<p>His date of birth is 01.04.1976. He joined government service as Tehsildar BS-16 on 02.02.2009. He has not yet completed the prescribed length of service. He has passed the departmental examination. No enquiry is pending against him. His service record upto 2010 is generally good.</p> <p>The Board recommended the officer for appointment to the post of PMS BS-17 on acting charge basis.</p>
11	Mr. Muhammad Shah Jamil	<p>His date of birth is 15.10.1976. He joined government service as Tehsildar BS-16 on 02.02.2009. He has not yet completed the prescribed length of service.</p>

raised
Ahmed
Deputy Secretary (HRD)
Govt of Khyber Pakhtunkhwa
Recruitment Department

Examination held upto 2010 to the

		The Board did not consider him for appointment to the post of PMS BS-17 on acting charge basis.
12	Mr. Naveed Akber	<p>His date of birth is 17.06.1980. He joined government service as Tehsildar BS-16 on 02.02.2009. He has not yet completed the prescribed length of service. He has passed the departmental examination. No enquiry is pending against him. His service record upto 2010 is generally good.</p> <p style="text-align: center;">16</p> <p>The Board recommended the officer for appointment to the post of PMS BS-17 on acting charge basis.</p>
13	Mr. Tariq Hassan	<p>His date of birth is 15.11.1978. He joined government service as Tehsildar BS-16 on 02.02.2009. He has not yet completed the prescribed length of service. He has passed the departmental examination. No enquiry is pending against him. His service record upto 2010 is generally good.</p> <p style="text-align: center;">17</p> <p>The Board recommended the officer for appointment to the post of PMS BS-17 on acting charge basis.</p>
14	Mr. Hamid Ali Gagigyani	<p>His date of birth is 28.08.1979. He joined government service as Tehsildar BS-16 on 02.02.2009. He has not yet completed the prescribed length of service. He has passed the departmental examination. No enquiry is pending against him. His PER for the year 2010 is not available. His remaining service record upto 2009 is generally good.</p> <p style="text-align: center;">18</p> <p>The Board recommended the officer for appointment to the post of PMS BS-17 on acting charge basis subject to earning satisfactory PER for the year 2010 otherwise his case will be referred to Review Committee for disciplinary action/compulsory retirement.</p>
15	Mr. Amanullah Saeed	<p>His date of birth is 03.04.1978. He joined government service as Tehsildar BS-16 on 02.02.2009. He has not yet completed the prescribed length of service. He has passed the departmental examination. No enquiry is pending against him. His service record upto 2010 is generally good.</p> <p style="text-align: center;">19</p> <p>The Board recommended the officer for appointment to the post of PMS BS-17 on acting charge basis.</p>
16	Mr. Muhammad Ayub	<p>His date of birth is 10.01.1952. He joined government service on 10.07.1975. He was promoted as Tehsildar BS-16 on 26.02.2009. He has not yet completed the prescribed length of service. He has not passed the departmental examination.</p> <p style="text-align: center;">N.C. X</p> <p>The Board did not consider him for appointment to the post of PMS BS-17 on acting charge basis.</p>
17	Mr. Akber Shah	<p>His date of birth is 10.02.1956. He joined government service on 23.05.1974. He was promoted as Tehsildar BS-16 on 26.02.2009. He has not yet completed the prescribed length of service. He has not passed the departmental examination.</p> <p style="text-align: center;">N.C. X</p> <p>The Board did not consider him for appointment to the post of PMS BS-17 on acting charge basis.</p>

Deputy Secretary (HRD)
Govt. of Khyber Pakhtunkhwa
Establishment Department

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18	Mr. Shah Naseem	<p>His date of birth is 04.04.1958. He joined government service on 19.03.1977. He was promoted as Tehsildar BS-16 on 26.02.2009. He has not yet completed the prescribed length of service. He has not passed the departmental examination.</p> <p align="right"><i>NC X</i></p> <p>The Board did not consider him for appointment to the post of PMS BS-17 on acting charge basis.</p>
19	Mr. Muhammad Ali Shah	<p>His date of birth is 19.11.1964. He joined government service on 11.05.1988. He was promoted as Tehsildar BS-16 on 10.04.2009. He has not yet completed the prescribed length of service. He has passed the departmental examination. No enquiry is pending against him. His service record upto 2010 is generally good.</p> <p align="right"><i>✓ 10</i></p> <p>The Board recommended the officer for appointment to the post of PMS BS-17 on acting charge basis.</p>
20	Mr. Shah Jehan	<p>His date of birth is 02.01.1956. He joined government service on 09.09.1972. He was promoted as Tehsildar BS-16 on 10.04.2009. He has not yet completed the prescribed length of service. He has not passed the departmental examination.</p> <p align="right"><i>NC X</i></p> <p>The Board did not consider him for appointment to the post of PMS BS-17 on acting charge basis.</p>
21	Mr. Muhammad Zaman Khattak	<p>His date of birth is 06.05.1959. He joined government service on 26.07.1979. He was promoted as Tehsildar BS-16 on 26.02.2009. He has not yet completed the prescribed length of service. He has passed the departmental examination. No enquiry is pending against him. His service record upto 2010 is generally good.</p> <p align="right"><i>✓ 11</i></p> <p>The Board recommended the officer for appointment to the post of PMS BS-17 on acting charge basis.</p>
22	Mr. Bagh Bostan	<p>His date of birth is 07.10.1957. He joined government service on 16.05.1979. He was promoted as Tehsildar BS-16 on 26.02.2009. He has not yet completed the prescribed length of service. He has not passed the departmental examination.</p> <p align="right"><i>NC X</i></p> <p>The Board did not consider him for appointment to the post of PMS BS-17 on acting charge basis.</p>
23	Mr. Amjid Ali	<p>His date of birth is 13.04.1958. He joined government service on 26.6.1980. He was promoted as Tehsildar BS-16 on 26.02.2009. He has not yet completed the prescribed length of service. He has not passed the departmental examination.</p> <p align="right"><i>NC X</i></p> <p>The Board did not consider him for appointment to the post of PMS BS-17 on acting charge basis.</p>
24	Mr. Safdar Azam Qureshi	<p>His date of birth is 01.04.1970. He joined government service on 01.07.1995. He was promoted as Tehsildar BS-16 on 28.03.2009. He has not yet completed the prescribed length of service. He has not passed the departmental examination.</p> <p align="right"><i>NC X</i></p> <p>The Board did not consider him for appointment to the post of PMS BS-17 on acting charge basis.</p>

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Deputy Secretary (HR)
Govt. of Punjab
Establishment Department

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Government service
Tehsildar BS-16
prescribed length
of service.
The post of
Tehsildar BS-16
is vacant on
10.04.2009.

25	Mr. Muhammad Pervez	<p>His date of birth is 28.04.1959. He joined government service on 25.05.1977. He was promoted as Tehsildar BS-16 on 10.04.2009. He has not yet completed the prescribed length of service. He has not passed the departmental examination.</p> <p style="text-align: center;"><i>NC X</i></p> <p>The Board did not consider him for appointment to the post of PMS BS-17 on acting charge basis.</p>
26	Mr. Sajid Hussain	<p>His date of birth is 09.03.1965. He joined government service on 04.06.1988. He was promoted as Tehsildar BS-16 on 10.04.2009. He has not yet completed the prescribed length of service. He has not passed the departmental examination.</p> <p style="text-align: center;"><i>NC X</i></p> <p>The Board did not consider him for appointment to the post of PMS BS-17 on acting charge basis.</p>
27	Mr. Pervez Iqbal	<p>His date of birth is 15.10.1960. He joined government service on 20.11.1984. He was promoted as Tehsildar BS-16 on 10.04.2009. He has not yet completed the prescribed length of service. He has passed the departmental examination. No enquiry is pending against him. His missing PERs have been completed. His service upto 2010 is generally good.</p> <p style="text-align: center;"><i>12</i></p> <p>The Board recommended the officer for appointment to the post of PMS BS-17 on acting charge basis.</p>
28	Mr. Lal Said	<p>His date of birth is 20.01.1961. He joined government service on 12.06.1983. He was promoted as Tehsildar BS-16 on 10.04.2009. He has not yet completed the prescribed length of service. He has not passed the departmental examination.</p> <p style="text-align: center;"><i>NC</i></p> <p>The Board did not consider him for appointment to the post of PMS BS-17 on acting charge basis.</p>
29	Mr. Israr Ahmed	<p>His date of birth is 14.01.1957. He joined government service on 20.04.1981. He was promoted as Tehsildar BS-16 on 10.04.2009. He has not yet completed the prescribed length of service. He has passed the departmental examination. No enquiry is pending against him. His service record upto 2010 is generally good.</p> <p style="text-align: center;"><i>13</i></p> <p>The Board recommended the officer for appointment to the post of PMS BS-17 on acting charge basis.</p>

Approved

[Signature]

Deputy Secretary (HR)
Govt. of Khyber Pakhtunkhwa
Establishment Department

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL



Appeal No. 1398/2010,

Date of Institution. 30.7.2010
Date of Decision 11.1.2012

Fazal Hussain, PMS Officer (BPS-17)
Posted as ACO, Peshawar.

(APPELLANT)

VERSUS

1. Government of Khyber Pakhtunkhwa, through Chief Secretary, Peshawar.
2. Secretary, Establishment Department, Khyber Pakhtunkhwa, Peshawar.
3. Senior Member, Board of Revenue, Khyber Pakhtunkhwa, Peshawar.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST NOTIFICATION NO.SOE.II(ED)2(192) 2009 DATED 25.3.2010 WHEREBY APPELLANT IS APPOINTED/ PROMOTED AS PMS OFFICER (BPS-17) ON ACTING CHARGE BASIS, WITH IMMEDIATE EFFECT.

MR. BILAL AHMAD KAKAIZAI, &
MR. MUHAMMAD ASIF YOUSAFZAI,
Advocates

For appellant.

MR. TAHIR IQBAL,
Addl. Government Pleader

For respondents.

MR. NOOR ALI KHAN, MEMBER
MR. SULTAN MAHMOOD KHATTAK, MEMBER

ATTESTED

EXAMINED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

JUDGMENT

NOOR ALI KHAN, MEMBER.- This appeal has been filed by Fazal Hussain, the appellant under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against notification No.SOE.II(ED)2(192) 2009 dated 25.3.2010, whereby appellant has been appointed/promoted as PMS Officer (BPS-17) on Acting Charge basis with immediate effect. It has been prayed that on acceptance of the appeal, the impugned notification dated

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25.3.2010 be modified to the extent that appellant be appointed/promoted as PMS Officer (BPS-17) on regular basis w.e.f. 7.11.2008 or 3.3.2009 when his batch mates were promoted.

Brief facts of the case as averred in the memo of appeal are that the appellant was promoted as Tehsildar (BPS-16) on regular basis vide notification dated 6.9.2008 along with others. Vide notification dated 3.3.2009, who are batch mates of the appellant were promoted as PMS Officer (BPS-17) on regular basis but appellant due to unknown reasons was not promoted. On 25.3.2010, vide the impugned notification, although appellant on the recommendations of Provincial Selection Board has been promoted from Tehsildar to PMS Officer (BPS-17) but on acting charge basis and that too with immediate effect. The appellant is holding the post of ACO, Peshawar since long whereas he was posted as Deputy District Officer (Judicial) Nowshera vide notification dated 2.6.2009. On 3.4.2010, appellant submitted his departmental appeal/representation for his regular promotion w.e.f. 7.11.2008 at least from 3.3.2009 but no reply to the said representation has been received within the statutory period of 90 days, hence the present appeal.

After admission of the appeal, notices were issued to the respondents for submission of written reply. Respondents have filed their joint written reply and contested the appeal. Arguments heard and record perused.

The learned counsel for the appellant argued that according to Rule 9 of the Khyber Pakhtunkhwa Civil Servants Act (Appointment, Promotion and Transfer) Rules, 1987 acting charge appointment can only be made where the appointing authority considered it to be in the public interest to fill a post reserved under the rules for promotional promotion and the most senior civil servant belonging to the cadre or service concerned, who is otherwise eligible for promotion, does not possess the specified length of service. The learned counsel for the appellant further argued that the appellant was promoted as PMS Officer (BPS-17) on acting charge basis with immediate effect vide order dated 25.3.2010, despite the fact that there were clear vacancies of PMS Officer (BPS-17) vacant in the department in promotion quota. The appellant along with others should have been considered for regular promotion against the said posts from the date when clear vacancies were available for them. He stated that other batch mates of the appellant were promoted w.e.f. 3.3.2009 and 7.11.2008, on regular basis, therefore, the appellant has also a right to be considered for promotion w.e.f. the date when the post was lying vacant and the appellant was holding the same on acting charge basis. In December, 2009, two PSB meetings were held but the appellant had not been considered for promotion without any reasonable reasons despite the fact that he was eligible for promotion, so he has been

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discriminated. Articles 25 and 27 of the Constitution of Islamic Republic of Pakistan that all citizens are equal before law and are entitled to equal protection of law. No citizen otherwise qualified for appointment in the service of Pakistan/province shall be discriminated whatsoever. He also stated that as per Rule 9(2) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 if a person is otherwise eligible for further promotion but his length of service is short, then he can be promoted/appointed on acting charge basis but in the appellant's case, his seniors have been given acting charge for the reason that they have not passed departmental examination and not completed their PERS, which is wrong and this wrong action/decision cannot be made a reason for not promoting those juniors who were eligible for regular promotion in all respect. Even sub-rule (2) of Rule 9 of the aforementioned rules has now been deleted. He further stated that during pendency of the appeal, the appellant has been promoted as PMS BPS-17 on regular basis with immediate effect vide notification dated 21.12.2011 instead of ante-dation of his promotion w.e.f the date when a vacancy was available for him as per judgments of the august Supreme Court of Pakistan in reported in 1997-SCMR-515, and 2010-SCMR-1466. He requested that the appeal may be accepted as prayed for.

The learned AGP, on the other hand argued that the appeal is bad for non-joinder and mis-joinder of necessary parties. In case, the appeal allowed some officers will be effected who have not been impleaded as private respondents. He further argued that there were some vacant posts of PMS (BPS-17), against promotion quota and Tehsildars, senior to the appellant were considered and promoted on regular basis w.e.f. 3.3.2009. The appellant being junior had not been considered. Even the appellant had not challenged order dated 3.3.2009 in time and the present appeal is time-barred. He stated that it is true that vacant posts of PMS (BPS-17) were available in the department but meant for direct recruits. He maintained that vide notification dated 25.3.2010, the appellant was not promoted as PMS (BPS-17) but appointed on acting charge basis as per provision of Rule 9 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. Appointments and promotions on acting charge basis are always made with immediate effect and under Rule 9 (6) confer no vested right for regular promotion. Moreover, claim of appellant is not clear and has not specified the date to be considered for promotion as PMS (BPS-17) on regular basis.

The tribunal observes that the appellant was eligible for promotion as PMS (BPS-17) on regular basis w.e.f. 3.3.2009 but he was not considered. On 25.3.2010, on the recommendations of PSB, he was promoted as PMS (BPS-17) on acting charge basis. Vide notification dated 21.12.2011, he has been promoted on regular basis with immediate effect.

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In the minutes of PSB meeting held on 29.12.2009, it has been clearly stated that the appellant was eligible for promotion on regular basis and 11 posts were available, in which 10 candidates were promoted as PMS Officer on regular basis. Due to deficiencies of service record, some candidates were not promoted and the appellant was 11th but was promoted on acting charge basis without any plausible reason. The Tribunal agrees with the arguments put forth by the learned counsel for the appellant.

In view of the above, the appeal is accepted, and the respondents are directed to ante-date promotion of the appellant as PMS (BPS-17) with effect from 25.3.2010, with all back/consequential benefits.

7. This order will also dispose off connected service appeals No. 1400/2010, Hidayatullah Khan, No. 1401/2010, Muhammad Nasir Khan, No. 1403/2010, Syed Kazim Hussain Shah, in the same manner.

8. So far as the appellant in Service Appeal No. 1404/2010, namely Habibullah Arif is concerned, his services have been regularized on 21.12.2011 but his appeal cannot be entertained for ante-dated promotion 25.3.2010 for the reason that only 11 posts were available and he comes at S.No.12 in eligible candidates in the minutes of PSB meeting held on 29.12.2009.

9. Since services of the appellants in Service Appeals No. 1372/2010, Abdul Mateen Qasuria, No. 1399/2010, Naeem Akhtar, and 1402/2010, Niaz Muhammad, have not been regularized so far, the respondents are directed to consider them for regular promotion as and when vacancies become available for them.

10. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED
11.1.2012.

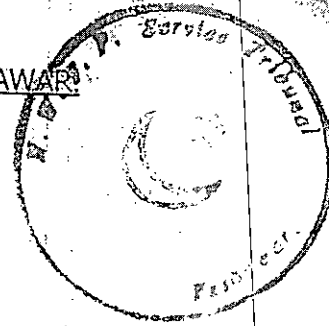
(SULTAN WAHMOOD KHATTAK)
MEMBER

(NOOR ALI KHAN)
MEMBER

Certified to be true copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 23-1-2012
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Date of Completion of Copy 3-2-2012
Date of Receipt of Copy 3-2-2012

BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR



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Appeal No. 612/2008

Date of Institution. .. 16.04.2008
Date of Decision .. 13.03.2009

Muhammad Iqbal Khattak,
Assistant Political Agent, Khar Bajaur Agency. ... (Appellant)

VERSUS

1. Government of NWFP through Secretary Establishment Department, Peshawar.
2. Govt. of NWFP through Chief Secretary, Peshawar. ... (Respondents)

APPEAL U/S 4 OF THE NWFP SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION NO.SOE.II (E&D) 2 (192)2007 DATED 19.2.2008 WHEREBY THE APPELLANT WAS PROMOTED ON REGULAR BASIS W.E.F. 19.2.2008 INSTEAD OF 30.11.1999 AND ORDER NO.SOE-II (E&D) 2(192) WHEREBY HIS DEPARTMENTAL APPEAL WAS DISMISSED.

MR. SHAKEEL AHMAD,
Advocate ... For appellant.

MR. ZAHID KARIM KHALIL,
Addl. Government Pleader, ... For respondents.

MR. JUSTICE (R) SALIM KHAN, .. CHAIRMAN.
MR. BISMILLAH SHAH, .. MEMBER.

JUDGMENT

JUSTICE (R) SALIM KHAN, CHAIRMAN.-The present appeal No. 612 of 2008 by Muhammad Iqbal Khattak and appeal No. 513 of 2009 by Ahmad Khan involved similar questions of law, therefore, these are taken together for arguments and disposal.

2. Muhammad Iqbal Khattak was promoted as Tehsildar on regular basis vide order dated 28.12.1988. He was promoted to PCS(E.G) (BPS-17) on temporary basis vide notification dated 06.03.1996. He contended that many posts became vacant, but the appellant was promoted to (BPS-17) on regular basis on 19.2.2008 with immediate effect, instead of ante-dating of his promotion to the date on which the vacancy fell to his turn in the

of officers of PCS (E.G). His departmental appeal was rejected. The present appeal was filed on 16.4.2008 which is within the time limit. The case of Ahmad Khan (Appellant) is similar to the case of Muhammad Iqbal Khattak on facts also. His appeal is also within time.

3. The respondents contested the appeal on many grounds, including the ground that no one could claim a vested right in promotion or in the terms and conditions for promotion to a higher post.

4. We heard the arguments and perused the record.

5. The learned counsel for the appellants contended that the appellants were temporarily posted to BPS-17 post on 06.3.1996, but they remained silent, because they did not have a vested right for promotion to a higher post. The appellants have already been considered for promotion and have been found eligible and fit for regular promotion to BPS-17 post, therefore, the principles embodied in the judgment of the August Supreme Court of Pakistan reported as 1990 SCMR 1321 are not applicable to their cases. In fact, the vacancies had become available for the appellants as early as on 30.11.1999, and it was the responsibility of the official respondents to expeditiously deal with the cases of the appellants for their regular promotion. The appellants could not be punished for no fault on their side, or for delay caused by the official respondents in processing the cases of the appellants. He relied on 1997 PLC (C.S) 77, wherein it has been held in para 3 as under:-

"On behalf of the Government it is contended that no civil servant has a right to claim that he should be promoted from a back date even though a vacancy may be existing on the date from which the promotion is being claimed. This is no doubt true but there are no orders by the Government that the respondents/petitioners should be held up for some time. The delay in making the promotions occurred entirely due to the reason that the officials of the Education Department could not carry out a fairly simple exercise within a reasonable period. In the circumstances it will not be appropriate for this Civil Petition to interfere with the order of the Service Tribunal. Leave is refused."

This judgment was in the petition for leave to appeal against the judgment dated 19.02.1995 of the Punjab Service Tribunal. It is worth-mentioning that

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the judgments cited as 1990 SCMR 1321, and cited as 1997 PLC (C.S) 77 are on two different aspects of the same subject.

6. Ante-dating of promotion, after consideration of the candidate aspiring for such promotion, after he was found eligible and fit for such promotion and is promoted, is an established principle of law. Such a candidate cannot be punished for any delay caused by the department in processing his case for promotion. The order of promotion, therefore, has to be ante-dated to the date on which the vacancy for his turn became available or to the date on which he actually took charge of the post on officiating/acting charge basis, whichever is later.

7. The A.G.P contended that the present appeals were miserably time-barred and both the appellants were estopped by their own conduct to file the present appeals. In fact, the principle embodied in the judgment reported as 1990 SCMR 1321 was applicable to the cases of the appellants from 06.3.1996 to 18.2.2008. They could not claim promotion as of right. The principle embodied in the judgment reported as 1997 PLC (C.S) 77 became applicable to their case on 19.2.2008. Cause of action arose to the appellants for claiming ante-dation of their promotion as prayed for only when their cases were considered for promotion, they were found eligible and fit for promotion, and their promotion orders were issued, though with immediate effect. They filed their departmental appeals within time from the date of the impugned order dated 19.2.2008, and their appeals were rejected on 22.3.2008. They filed Service Appeals on 16.04.2008. The departmental appeals as well as the Service Appeals were well within time.

The A.G.P further contended that, according to the proviso contained in sub-section (2) of Section 22 of the N.W.F.P Civil Servants Act 1973, "no representation shall lie on matters relating to the determination of fitness of a person to hold a particular post or to be promoted to a higher post or grade." Judgment cited as 1990 SCMR 1321 was, then, applicable and appellants could not file representation. This stage has already passed. The appellants have been considered for holding the higher post after their promotion to that higher post, and their fitness for such promotion and holding of post has already been determined. The judgment cited as 1997

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Peshawar

PLC (C.S) 77 has become applicable after determination of fitness of the appellants. The question in these cases is not the determination of fitness but is the right of ante-dation of their promotion. The appellants had vested right for consideration of promotion on their turn, whenever it was, and, when found fit on determination of fitness, at any stage, they had a right to claim ante-dation of their promotion to the dates on which the vacancies were available for their respective turns or from the dates on which they actually took the charge of their respective posts, whichever were later in time.

The A.G.P. also contended that according to sub-rule (6) of Rule 9 of the N.W.F.P Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 "acting charge appointment shall not confer any vested right for regular promotion to the post held on acting charge basis." The appellants have never claimed any vested right for regular promotion to the post which they held on acting charge basis, on the basis of acting charge appointment. In fact, they did not have such a right. They remained silent for a long time, knowing that they did not have such a right on the basis of acting charge appointment. They, however, had a vested right, as civil servants, for consideration for promotion, when the authority was to consider someone for promotion against the vacancy. No other person could be considered till the appellants were so considered. They, therefore, had a vested right for ante-dation of their promotion only when they were regularly promoted, but from the date when the vacancy became available for their turn.

The A.G.P further contended that, according to the North West Frontier Province, Provincial Management Service Rules, 2007, notified on 11.05.2007 vide No. SOE.II(ED)2(14)2007, The NWFP Provincial Civil Service (Secretariat/Executive Group) Rules, 1997 were repealed. He was of the view that the N.W.F.P Provincial Management Service Rules, 2007 had come into force at once w.e.f. 11.05.2007, while the orders of promotion of the appellants were issued on 19.02.2008. He submitted that the promotion orders were covered by the new rules, therefore, the appellants could not claim any benefit out of the already repealed rules of 1997. In order to clarify this controversy, it is necessary to reproduce the relevant Rule 8 of the N.W.F.P Provincial Management Service Rules, 2007 which is as under:-

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"8. Repeal:- The North-West Frontier Province Provincial Civil Service (Secretariat/Executive Group) Rules, 1997 shall stand repealed after the retirement of existing incumbents of both the cadres. Separate seniority list of both the cadres shall be maintained under the existing rules and they shall be promoted at the ratio of 50:50. The existing incumbents of PCS (E.G) and (S.G) in different pay scales; for the purpose of their promotion shall continue to be governed under the said service rules till the retirement of the last such incumbent."

The above rule, by itself, clarifies that the rules of 1997 shall not stand repealed before the retirement of the existing incumbents of both the cadres of Secretariat/Executive Groups, and shall remain in force till the retirement of the last such incumbent. It further clarified that separate seniority list of both the cadres shall be maintained under the existing rules. The existing rules for such incumbents are the N.W.F.P Provincial Civil Service (Secretariat/Executive Group) Rules, 1997. It was also clarified that such incumbents shall be promoted at the ratio of 50:50. It means that out of each two vacancies, one vacancy shall be given to Secretariat Group, while another vacancy shall be given to the Executive Group. Further clarification is to the effect that the existing incumbents of PCS (E.G) and (S.G) in different pay scales shall continue to be governed under the rules of 1997 for the purpose of their promotion, and this process is to continue till the retirement of last such incumbent. Both the appellants belonged to the Executive Group of Civil Servants. They were to be governed under the N.W.F.P Provincial Civil Service (Secretariat/Executive Group) Rules, 1997 before 11.05.2007, and they have to be governed under the above mentioned rules of 1997 till the retirement of the last incumbent of a post in Secretariat Group/Executive Group.

The cases of the appellants are, therefore, to be governed in accordance with the provisions of Section 8 (quoted above) of the new N.W.F.P Provincial Management Service Rules, 2007. The record shows that vacancies were available for the appellants but they were not promoted at the due time and their cases for promotion were delayed unnecessarily without any fault of the appellants. They, therefore, are entitled to anticipation of their promotion, against the first available vacancy falling to the lot of each of them or from the date of taking over the charge of that vacancy on officiating/acting charge basis, whichever is later.

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In the light of the above, we accept both the appeals, and direct the official respondents to ante-date the promotion of each of the two appellants to the respective dates on which a vacancy became available for the respective turn of the appellants or from the respective dates of their taking charge of such vacancy on officiating/acting charge basis, whichever is later. The appellants are entitled to the costs of their respective litigation from the official respondents.

ANNOUNCED
11.03.2009

Prof. Justice C.S. Dalvi Chairman
Dr. Biswajit Chakrabarti Member

certified to be true copy

[Signature]
Sd/- *[Name]*
Secretary

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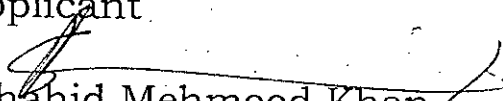
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- ix. Tariq Ullah District Monitoring officer District Swabi.
- x. Alamgir Khan Assistant Commissioner, Chitral
- xi. Dr. Azmat Assistant Commissioner Lower Kurram District Lower Kurram.
- xii. Anwar Khan Assistant Commissioner Nawagai District Bajour
- xiii. Beenish Imran Assistant Director IMO, Education
- xiv. Irum Shaheen Section Officer Establishment department
- xv. Misbah Riaz Section Officer Establishment department
- xvi. Fazeelat Jehan Section Officer Section Officer Establishment department
- xvii. Shahab Muhammad Khan section officer Establishment.
- xviii. Shakeel Jan Section Officer Establishment department FATA Secretariat
- xix. Israr khan Assistant Commissioner Upper Dir.
- xx. Zameen Khan Assistant Commissioner Charbagh Swat.
- xxi. Asmat Wazir Assistant Commissioner Bara District Khyber.
- xxii. Zahid Usman Kakakhel Assistant Commissioner Upper Dir.

THROUGH

Akhtar Nawaz S/o Gul Rehman (PMS BS-17)
Presently posted as section officer, in
establishment department Khyber Pakhtunkhwa
Peshawar Section officer Governor Secretariat.

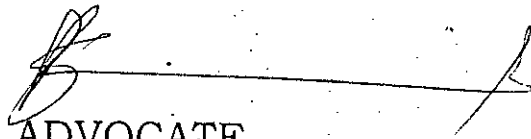
It is, therefore, most humbly prayed that on acceptance of this Civil Misc/application, the addresses alongwith designation of applicants may kindly be placed on file and may please be considered.

Applicant
Through 
Shahid Mehmood Khan
Advocate, High court
Peshawar
Cell No. 0333-9306491

Dated: 08/02/2019

AFFIDAVIT

As per instruction of my client, do hereby solemnly affirm and declare 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.


ADVOCATE

