CON	FID	EMI	JIAL

	•		CONTRIDETAMAE) ५`
	18	Mr. Shah Naseem	His date of birth is 04.04.1958. He joined government on 19.03.1977. He was promoted as Tehsildar BS-1, 26.02.2009. He has not yet completed the prescribed let of service. He has not passed the departmental examination.	
			The Board did not consider him for appointment to the post of PMS BS-17 on acting charge basis.	
	19	Mr. Muhammad Ali Shah	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.	
			The Board recommended the officer for appointment to the post of PMS BS-17 on acting charge basis.	
	20	Mr. Shah Jehan	His date of birth is 02.01.1956. He joined government service on 09.09.1972. He was promoted as Tehsildar BS-16 or 10.04.2009. He has not yet completed the prescribed length of service. He has not passed the departmental examination.	۱ [
			The Board did not consider him for appointment to the post of PMS BS-17 on acting charge basis.	
	21	Mr. Muhammad Zaman Khattak	His date of birth is 06.05.1959. He joined government service on 26.07.1979. He was promoted as Tehsildar BS-16 of 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.	n h
			The Board recommended the officer for appointment to the post of PMS BS-17 on acting charge basis.	е
	22	Mr. Bagh Bostan	His date of birth is 07.10.1957. He joined government servic on 16.05.1979. He was promoted as Tehsildar BS-16 o 26.02.2009. He has not yet completed the prescribed lengt of service. He has not passed the departmental examination.	n h
		* '-	The Board did not consider him for appointment to the post of PMS BS-17 on acting charge basis.	of
<u>l</u>	23	Mr. Amjid Ali	His date of birth is 13.04.1958. He joined government service on 26.6.1980. He was promoted as Tehsildar BS-16 of 26.02.2009. He has not yet completed the prescribed length of service. He has not passed the departmental examination.	n th
AGE 4	ed.		The Board did not consider him for appointment to the post of PMS BS-17 on acting charge basis.	of
Deputy Gov!: of h	Secretar Secretar Secretar Shipper Po	Mr. Safdar Azam Qureshi (HK:) hnw his	His date of birth is 01.04.1970. He joined government service on 01.07.1995. He was promoted as Tehsildar BS-16 of 28.03.2009. He has not yet completed the prescribed length of service. He has not passed the departmental examination.	n h
eggenn Mass			The Board did not consider him for appointment to the post of PMS BS-17 on acting charge basis.	of

The Board recommended the officer for appointment to the post of PMS BS-17 on acting charge basis.

And

Deputy Secretary (HR: Govt: of Khyber Pakhtunicasa Establishment Department



GOVERNMENT OF KHYBER PAKHTUNKHWA ESTABLISHMENT DEPARTMENT

Dated Peshawar the December, 21.2011

NOTIFICATION

NO.SOE.II(ED)3(45)2011- Consequent upon the recommendations of the Provincial Selection Board, the competent authority is pleased to appoint the following Tehsildars as PMS Officers (BS-17) on acting charge basis with immediate effect:-

S.#	Name of Officer		
	Mr. Saleem Jan		
2.	Mr. Irfan Ali		
3.	Mr. Sajid Nawaz		
<u>-</u> +.	Mr. Muhammad Imran		
5.	Mr. Sohail Ahmad Khan		
<u> 6. </u>	Mr. Naveed Akbar		
	Mr. sariq biassan		
. 8.	Mr Amanullah Saeed .		
9.	Mr. Muhammad Ali Shah		
10,	Mr. Muhammad Zaman		
	Khattak		
11	Mr. Pervez Iqbal		
12.	Mr. Israr Ahmad		

2. Resultantly the following postings/transfers are ordered with immediate effect:-

S.#	Name of Officer	From	То
1.	Mr. Saleem Jan	Tehsildar Serai	Services placed at the disposal
		Naurang, Lakki Marwat	of FATA Secretariat for further posting as Section Officer.
2.	Mr. Irfan Ali	Tehsildar, Swabi	Services placed at the disposal
		1	of FATA Secretariat for further
	24 6 11 12		posting as Section Officer.
3.	Mr. Sajid Nawaz	Tohsildar, Razar	Services placed at the disposal
		Swabi	of FATA Secretariat for further
4.	Mr. Muhammad		posting as Section Officer.
1 .	Mr. Muhammad Imran	Tehsildar, Charbagh,	HRDO, Buner against the
5.		Swat	vacant post.
J.	Mr. Sohail Ahmad	Political Tehsildar,	HRDO, Dir Lower vice
	Khan	Khar Bajaur Agency	Sr.No.13.
6.	Mr. Naveed Akbar	Tehsildar, Anti	Services placed at the disposal
		Corruption	of FATA Secretariat for further
i <u>-</u>		Establishment	posting as Section Officer.
7.	Mr. Tariq Hassan	Tehsildar, Dargai	DDO(F), Malakand against the
ļ		Malakand	vacant post.
8.	Mr. Amanullah Saeed	Tehsildar, Oghi	DDO(J), Battagram against the
	· ·	Mansehra	vacant post.

7	9 35 36-6	<u> </u>	
•	S24	h DDO(R), Swabi	Retained on the
	Described	d Political Tehsildar,	DDO(R), Paharpur 1
	I P Reality	Upper Orakzai Fehsildar, Mansehra	against the vacant new
_			DDO(J), Katlang Marca- relieving Mr. Habib-ur- Rehman, PMS BS-17 of the
, _	X Sam Ahmad	Tehsildar, Chitral	additional charge. HRDO, Chitral against the
	Seed-ur-Rehman, BS-lo(surplus	HkDO, Dir Lower	DDO(F), Dir Lower against
·,	Moseum Chakdara)		the vacant post in his own pay & scale purely on temporary basis.
	12. Mr. Matloob-ur- Rehman, PMS BS-17 15. Mr. Mansour Qaisor, PM5 BS-17	Awaiting posting in .	DDO(J). Fakhthbhai against the vacant post. DDO(F). D.I.Khan against the
			vacant post,

CHIEF SECRETARY KHYBER PAKHTUNKHWA

ENDST: NO. & DATE EVEN

A suprise in malarace has

- Additional Chief Secretary, LATA.
- Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
- Secretary to Covernor, Khyber Pakhtunkhwa.
- ÷ 5 6 Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
- Secretary (Admn: & Coord), FATA Secretariet.
- All Divisional Commissioners in Khyber Paki tunkhwa. 7
- All District Coordination Officers in Khyber Fakhtunkhwa δ.
- Accountant General, Khyber Pakhtunkhwa. 9
- Accountant General (PR), Sub- Officer, Peshawar, 9
- Political Agents Orakzai / Bajaur Agency.
- All District Accounts Officer in Khyber Pakhtunkhwa. 10. 11
- Agency Accounts Officers, Orakzai / Bajaur.
- SO(Secret)/EO/..ibrarian, E&A Department. 12.
- PS to Chief Minister Khyber Pakhtunkhwa. 13 . -
- PS to Senior Alassier for P&D, Khyber Pakhtunkhwa.
- 15. PS to Chief Secretary, Khyber Pakhtunkhwa.
- PS to Secretary Establishment
- !~ PAs to AS(E), DS(E) Established Deptil.
- Ointers concerned 18
- 19 Omce order file
- Personal ale of the officers concorned.

(FARYAL KAZIM) SECTION OFFICER(É-II)

Deputy Secretary (Establi

PS/C.S Khyber Pakhtynkhwa Diary No.

Date..

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 11^{th} 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-theinduction 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

P.S. to Chilef Secretary Govt: of Khyber Pakhtunkhwa

Seey: Estb:

Shah Jamil (Shah Jamil)

PMS (B-17),

AAC Dir

Deputy Secretary (Estabil)

To Estab. 8 Admit Department

Estab. 8 Admit Department

Diary No. 1649

Dated. 15 M-14

Dated. 72

Date. 73-1-14

Date. Ps/C.S Khyber Pakhtunkhwa

Diary No. 172

Diary No. 173-1-14

Date. Pshawar.

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.

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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.

Dated: 9th January, 2014

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

Lay: ESto

Sincerely yours,

Navid Akbar)

PMS (B-17),

APA FR Peshawar

Secretary to Secretary to

Zadrisjol Retire of 19

13 -1-14 peputy Secretary (Estab.) Estab: & Admil: Department PS/C.S Khyber Pakhtunkhwa plary No. 16.4. Diary No. -10 pated !! The Chief Secretary, Government of Khyber Pakhtunkhwa, peshawar. Appeal for regular promotion to the post of PMS Officers w.e.f. Acting Charge basis or w.e.f. occurrence of vacancies. Subject:-Officer (B-17) on Acting Charge basis in December, 2011. Further-more in the month of May, the Establishment Department has announced PSB meeting for our nearly the most of t Officer (B-17) on the month of May, officer (B-17) on the month of May, the Establishment Department has announced PSB meeting for our promotion, but due the Establishment reasons, the meeting has not been convened. After that different unknown reasons, the meeting has not been convened. After that different unknown reasons, the meeting has not been convened. Office the Estaphism.

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the After that different dates for 2012, and not been fixed, but at the 11th hours, the meeting could not contain to certain meeting have been fixed, but at the 11th hours, the meeting could not contain to certain meeting have been fixed, but at the 11th hours, the meeting could not contain the certain meeting have been fixed, but at the 11th hours, the meeting could not contain the certain meeting have been fixed, but at the 11th hours, the meeting could not contain the certain meeting have been fixed, but at the 11th hours, the meeting could not contain the certain meeting have been fixed, but at the 11th hours, the meeting could not contain the certain meeting have been fixed. 2012 unknown unknown as not been convened. After that different d to certain where the said meeting have been fixed, but at the 11th hours, the meeting could not convene. the said meeting have added that I have promoted. pMS pMSnew rich of the new PMS Batch. in view. Submit request through this appeal that I may kindly be regular basis w.e.f. date of our promotion on acting charge basis or from due seniority on regular basis w.e.f. date of our promotion on acting charge basis or from due seniority of occurrence of vacancies. given up of occurrence of vacancies.

the date of occurrence of vacancies. Sincerely yours, Dated: 9th January, 2014 (Tariq Hussain) PMS (B-17), S.O. Home Deptt Berekay 40 Laris OI P.S. to Chief Secretary Govt: of Khyber Pakhtunkhwa Seel : ESTS!

Deputy Secretary (Estabi) Estabi & Admni Department

Diary No. ... 1593...

Dated. 15-01-11

PS/C.S Khyber Pakhtunkhwa Diary No. 470

Date /3-/-/4

The Chief Secretary,

Government of Khyber Pakhtunkhwa,

Peshawar.

Subject:-

<u>Appeal</u> 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

P.S. to Chilef Secretary

Govt: oi Khyber Pakhtunkhwa

Say: Esto:

Amanulah Saeed)

PMS (B-17),

AAC

full Eta

Single Constitution of the Constitution of the

PS/C.S Khyber Pakhtunkhwa

Diary No... Date...

Deputy Scorerary (Estabi) 13-1-15 Retable & Action Department

Diary No. 16.42.....

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.

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Sincerely yours,

PMS (B-17),

AAC Charsadda

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

Suy Ests:

ted: 9th January, 2014

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

plary No.

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.

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Dated: 9th January, 2014

P.S. to Chib! Secretary Govt: of Khyber Pakhtunkhwa

chablishment

Secos: Estb:

Sincerely yours,

... 13-1-14

PS/C.S Khyber Pakhtunkhwa

Diary No. _ Date._

(Sohail Ahmad)

PMS (B-17),

APA Bajaur Agency

Deputy Socretary (Estabile Stabile & Admini Department 1647
Diary No. 1501-141

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.

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Sincerely yours,

(Muhammad Imran)

Dated: 9th January, 2014

ecretary to

P.S. to Chief Secretary
Govt: of Khyber Pakktunkhwa

Secop: Estb:

AAC Malakand

PMS (B-17),

Indisor

13]1

377 13-414

Diary No.

PS/C.S Khyber Pakhtunkhwa

PS/C.S Khyber Pakhtunkhwa Diary No 176

Date. 13-1-14

Deputy Secretary (Estab.)

Deputy Secretary (Estab.)

Estab. & Advin. Department

H48

Diary No. 11-01-11

Dated ...

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.

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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)

PMS (B-17),

AAC Peshawar

Dated: 9th January, 2014

Secretary to

P.S. to Chief Secretary

Hablishmenx P.S. to Chief Secretary
Govt: of Khyber Pakhtunkhwa
Seed: ES46:

2 Liston

Schrist

Deputy Secretary (Estabil 13 — 1—15 Estabil 8 Admin Department 13 — 1—15 Delay No. 15-01-14...)

Deted. 15-01-14...

PS/C.S Khyber Pakhtochhwa Diary N 168 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.

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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

(Sajid Nawaz)

PMS (B-17),

DSM PPHI Mardan

P.S. to Chief Secretary

Government

P.S. to Chief Secretary

Government

P.S. to Chief Secretary

Seey: Estb

2 dr ,5/01
P +0 P . 2 P

Deputy Secretary (Estab.) Date 1.3. Jahrannan ab: & Asmn: Dopartment Diary No. 162 Oated. The Chief Secretary,

Peshawar.

PS/C.S Khyber, Pakhtunkhwa Diary No.

Subject:-

Appeal for regular promotion to the post of PMS Officers w.e.f. Acting Charge

basis or w.e.f. occurrence of vacancies.

Government of Khyber Pakhtunkhwa,

R/Sir,

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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.

My Establishment

Dated: 9th January, 2014

E qu

Sincerely yours,

(Gohar Ali)

PMS (B-17),

A.A.C. (R),

Mardan

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

Deputy Secretary (Estab.) Department 13 // Estab & Admin. Department 2

Diary No... 9#32ª . /s

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.

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Secretary to Beerktery Fetablishment

Dated: 9th January, 2014

Andrison
Bit

P.S. to Chiler Secretary Govt: of Khyber Pakhtunkhwa

Seey: Estb:

Sincerely yours,

Khalid Qayum

PS/C.S Khyber, Pakhtunkhwa

Diary No __

Date.___

PMS (B-17),

AAC Perowa,

D.I.Khan

Ps/Secry Fetab.

Discy No. 387

Date 1371

PS/C.S Khyba

Deputy Secretary (Estab.)
Estab. & Arbyn: Department

plary No. 15 -01

The Chief Secretary,

Government of Khyber Pakhtunkhwa,

peshawar.

subject:-

<u>Appeal</u> 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 of ficer (B-17) on Acting Charge basis in December, 2011. Further-more in the month of May, officer (B-17) the Establishment Department has announced PSB meeting for our promotion, but due 2012, the Establishment Department has announced PSB meeting for our promotion, but due certain unknown reasons, the meeting has not been convened. After that different dates for to certain unknown reasons, but at the 11th hours, the meeting could not convene.

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

A STEELS IN THE PROPERTY OF TH

Dated: 9th January, 2014

P.S. to Chief Secretary Govt: or Khyber Pakhtunkhwa

Suy: ESTS:

Sincerely yours,

(Kashmir Khan)

PMS (B-17),

D.M.Ö. (Edu)

Bannu/Lakki Marwat

John Sol

P-JP 8/0

BEFORE THE KITYBER PAKHTUNKHWA SERVICE TRIBUNAL TONIES

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

- Government of Khyber Pakhtunkhwa, through Chief Secretary, Peshawar.
- 2. Secretary, Establishment Department, Khyber Pakhtunkhwa, Peshawar.
- Senior Member, Board of Revenue, Khyber Pakhtunkhwa, Peshawar. (RESPOND)

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 APPPOINTED/ 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 ALLKHAN,

... MEMBER

MR. SULTAN 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.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

Officer

15.3.2010 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 perioded as Tehsildar (BPS-16) on regular basis vide notification dated 6:9.2008 alongwith less. Vide notification dated 3.3.2009, who are batch mates of the appellant were promoted at PMS Officer (BPS-17) on regular basis but appellant due to unknown reasons was done on 25.3.2010, vide the impugned notification, although appellant on the dome 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 action is holding the post of ACO, Peshawar since long whereas he was posted as Deputy diet Officer (Judicial) Nowshera vide notification dated 2.6.2009. On 3.4.2010, appellant comitted his departmental appeal/representation for his regular promotion w.c.f. 7.11.2008 of alleast from 3.3.2009 but no reply to the said representation has been received within the saidury 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 accappeal. 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, vacting charge appointment can only be made where the appointing authority it to be in the public interest to fill a post reserved under the rules for partmental promotion and the most senior civil servant belonging to the cadre or service who is otherwise eligible for promotion, does not posses the specified length of erice. The learned counsel for the appellant further argued that the appellant was minded as PMS Officer (BPS-17) on acting charge basis with immediate effect vide order 2010. despite the fact that there were clear vacancies of PMS Officer (BPS-17) in the department in promotion quota. The appellant alongwith others should sconsidered for regular promotion against the said posts from the date when clear gineis were available for them. He stated that other batch mates of the appellant were panoled w.c.f. 3.3.2009 and 7.11.2008, on regular basis, therefore, the appellant has also tright to be considered for promotion w.e.f. the date when the post was lying vacant and e-appellant was holding the same on acting charge basis. In December, 2009, two PSB seetings were held but the appellant had not been considered for promotion without any casons despite the fact that he was eligible for promotion, so he has been UNKE NT

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the criminated. 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 mais-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 execute 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 can giption had not been considered. Even the appellant had not challenged order dated 2.2009 in time and the present appeal is time-barred. He stated that it is true that vacant us of PMS (BPS-17) were available in the department but meant for direct recruits. He attained that vide notification dated 25.3.2010, the appellant was not promoted as PMS (S-17) but appointed on acting charge basis as per provision of Rule 9 of the Khyber tunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. International and promotions on acting charge basis are always made with immediate and under Rule 9 (6) confer no vested right for regular promotion. Moreover, claim of bellant is not clear and has not specified the date to be considered for promotion as

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

infilite minutes of PSB meeting held on 29.12.2009, it has been clearly stated that the supplifiant was eligible for promotion on regular basis and 11 posts were available, in which deficiencies of service feeded, some candidates were not promoted and the appellant was 11th but was promoted on feeling charge basis without any plausible reason. The Tribunal agrees with the arguments put footh by the learned counsel for the appellant.

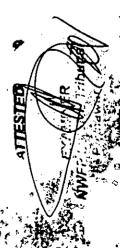
- In view of the above, the appeal is accepted, and the respondents are directed to antedate promotion of the appellant as PMS (BPS-17) with effect from 25.3.2010, with all back/consequential benefits.
- 7. This order will also dispose off connected service appeals No. 1400/2010, Hidayatullah Khan. No. 1401/2010, Muhammad Nasir Khan, No. 1403/2010, Syed Kazim Hussain Shah, in the same manner.
- 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.

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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 the 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 NW.F.P Provincial Civil Service (Secretariat/Executive Group) Rules, 1997 byfore 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 NW.F.P Provincial Management Service Rules, 2007. The record shows that the appellants but they were not promoted at a due time and their cases for promotion were delayed unnecessarily without any fault of the appellants. They, therefore, are entitled to antercallon of their promotion, against the first available vacancy falling to the lum of each of them or from the date of taking over the charge of that vacancy on officiating/acting charge basis, whichever is later.



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

from the official respondents.

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BEFORE THE NWFP SERVICE TRIBUNAL PESHAW

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)

- 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, ...

MR. BISMILLAH SHAH,

CHAIRMAN. MEMBER.

<u>JUDGMENT</u>

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

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

Monofficers, of PCS (E.G). His departmental appeal was rejected in the present appeal was filed on 16.4.2008 which is within let case of Ahmad Khan (Appellant) is similar to the case of Muhammad Iobal-Khattak on facts also. His appeal is also within time.

The Time Such

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

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We heard the arguments and perused the record.

The learned counsel for the appellants contended that the appellants were temporarily posted to BPS-17 post on 06.3.1996, but they are mained 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 learly 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 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 have 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."

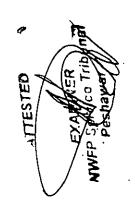
This judgment was in the petition for leave to appeal against the judgment olice to appeal against the property of the purpose to appeal against the property of the purpose to appeal against the purpose to appeal against the purpose to appeal against the purpose the purpose to appeal against the purpose the against the purpose to appeal against the ag

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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 vaçancies were available for their respective turns or from the dateson which they actually took the charge of their respective posts, whichever were later in

The A.G.P also contended that according to sub-rule (6) of Rule of the N.W.F.P Civil Servants (Appointment, Promotion and Transfe) Bules, 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. Infact, 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 Frentier Province, Provincial Management Service Rules, 2007, notified on 11,05.2007 vide No. SOE.II(ED)2(14)2007, The NWFP Provincial Civil Service Segretariat/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 & of the N.W.F.P. Provincial Management Service Rules, 2007 which is as under-



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

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.

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 19/3, "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 SCNR 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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ICATERNMENT OF KHYBER PAKHTUNKHWA ESTABESHMENT DEPARTMENT

Dated Peshawar the October, 04, 2012

NOTIFICATION

NO.SOE.H(FD) 2(192)2012- Consequent upon the recommendations of the Provincial Selection Board, the competers 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 effects-

S.#	Name of Officer
1.	Sved Gul Jamal
3	Mr Nacem Akhtar
3.	Mr. Niaz Muhammad
.1	¹ Nir Abdul Maleen Qasuna
i 5	Nir Shaukar Hussam
· (1.	Mr. Gul Nawaz Ali
· } //	- Mr. Noserwan
8.	Qaza Atta-ur-Rehman
	¹ Mr. Saleem Jan
10.	Mr Istan Ali
. 11	Ah, Gohar All

- 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 tollowing postings/transfers are ord with immediate effect.

S.#	Name of Officer	inon	To	Remarks
1.	Syod Gul Jamal	DDO(J), Feshawar	Retained on the same post and station	
2.	Mr. Nacem Akhtar	Asstuto Commissioner (Dev), Malakand	Retained on the same post and station	
3.	Mr. Niaz Muhammad j	DO(R), Swat	HRDO, Swat against the vacant post	Only for actually his promotion to whereafter he we continue as IVO

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	• 1.		DDO(I).	Bernhad on the	- H
		Mateen Qasuria	D.I.Khan	Same post	
į	 5.		DDO(J),	Retained on the	
ì				. same post	
;	ί, Ό,	Mr. Gul Nawaz	Settlement	DDO(F),Manschra	Only for actualization of
		Λli	· · Officer.	Lagainst the vacame	his promotion for one da
:			Mansehra	ⁱ post	whereafter he will
1			4 •	· ·	continue as Settlement
;				: !	Officer, Mansehra in hi
			1		own pay & scale.
i	7.	Mr. Nowsherwan	Tehsildar, Palas	; DDO(R). Palas	
:			Kohistan	Kohistan against the	
			; !	: vacant post.	
	8.	Qazi Atta-ur-	DDO(R),	[Retained on the	
;		Rehman	Haripur	; same post	
!	9.	Mr. Saleem Jan	Research	¹ Retained on the same	; ;
	/î		Officer, FATA	post.	:
/			: Sectt:		
/ : 	10.	Mr. Irfan Ali	APA, Mir Ali	Retained on the	
			N.W. Agency	i same post	
:	11.	Mr. Gohar Ali	Tehsildar,	DDOÚ), Katlang	
	,		Takhtbhai	Mardan against the	
÷		1	Mardan	vacant post.	
		:	:		

CHIEF SECRETARY KHYBER PAKHTUNKHWA

ENDST: NO. & DATE EVEN

A copy is forwarded to.-

- 1. Additional Chief Secretary, I-NTA.
- Senior Member, Board of Resenue, Kircher Pakhunkhwa.
- 3. Secretary to Governor, Khyber Pakhumkhwa
- 4. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
- 5. All Divisional Commissioners in Khyber Pakhtunkhwa.
- 5. All District Coordination Officers in Khyber Pakhtunkhwa.
- 7. Secretary (Admin. & Coord), FATA Secretariat.
- 8. Accountant General, Khyber Pakhtunkhwa.
- 9. Accountant General (PR), Sub- Office, Peshawar.
- 10 All District Accounts Officers in Khyber Pakhtunkhwa.
- H. General Manager, SNGPL, Peshawar.
- 12. Director (Land), NHA, Khyber Pakhtunkhwa Region, Peshawa:
- 13. SO(Secret)/SO(Admn)/ EO/Librarian, F&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) Establibeptic
- 18. Officers concerned.
- 19. Office order file.
- 20. Personal file of the officers concerned.

(NA) VIUS-SAHAR) SECTION OFFICER(E-II)

THISAN AFRIDIT

PS/C.S Khybby Pakhtunkhwa Diary 45 <u>76 F</u>

The Chief Secretary,

Government of Khyber Pakhtunkhwa,

Peshawar.

Deputy Secretary (Establ)

Dlary No

nated .

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.

Allare Secretary to

Dated: 9th January, 2014

Sincerely yours,

ر (Salim Jan)

(Janiii Jani)

PMS (B-17),

APA FR D.I.Khan

P.S. to **Chief Secretary** ovt: clidbyber Pashtunkhwa

Secy: Estb:

Industral

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Sebuty Secremey (Exist) etab: & Admin. Department

PS/C.S Khyber Pakhtunkhwa Diary No . Date.

The Chief Secretary,

Government of Khyber Pakhtunkhwa,

Peshawar.

Subject:-

Appeal for regular promotion to the post of PMS Officers w.e.f. Acting Charge

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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)

PMS (B-17),

AAC Dir

Shah Jamil

Dated: 9th January, 2014

P.S. to Chile! Secretary Govt: or Khyber Pakhtunkhwa

Souy: ES46

Deputy Secretary (Estabil to 1)

To: Establic & Edward Department

Diary Mar. 15-01-14

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

Date.____

The Chief Secretary,

Government of Khyber Pakhtunkhwa,

Peshawar.

Subject:-

<u>Appeal for regular promotion to the post of PMS Officers w.e.f. Acting Charge</u> basis or w.e.f. occurrence of vacancies.

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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.

Dated: 9th January, 2014

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

Say: ESTO

Sincerely yours,

Nava Akbar)

PMS (8-17),

APA FR Peshawar

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Deputy Secretary (Estab.) Deputy Admin Department PS/C.S Khyber Pakhtunkhwa Diary No. -10 The Chief Secretary, Government of Khyber Pakhtunkhwa, peshawar. Appeal for regular promotion to the post of PMS Officers w.e.f. Acting Charge basis or w.e.f. occurrence of vacancies. subject:-Officer (B-17) on Acting Charge basis in December, 2011. Further-more in the month of May, the Establishment Department has announced PSB meeting for our promoted to the post of PMS meeting for our promoted to the post of PMS announced PSB meeting for our promoted to the post of PMS on Acting Charge basis in December, 2011. Further-more in the month of May, Officer (B-17) on Account Department has announced PSB meeting for our promotion, but due officer the Establishment Department has not been convened. After that different announced PSB meeting for our promotion, but due to the Establishment Department has announced PSB meeting for our promotion, but due of the Establishment Department has not been convened. After that different announced PSB meeting for our promotion, but due to the Establishment Department has announced PSB meeting for our promotion, but due of the Establishment Department has announced PSB meeting for our promotion, but due of the Establishment Department has announced PSB meeting for our promotion, but due of the Establishment Department has announced PSB meeting for our promotion, but due of the Establishment Department has announced PSB meeting for our promotion, but due of the Establishment Department has announced PSB meeting for our promotion, but due of the Establishment promotion is the Establishment the Establishment Office the Estaphism.

2012, the Estaphism reasons, the meeting has not been convened. After that different dates for unknown reasons, but at the 11th hours, the meeting could not so to certain unknown have been fixed, but at the 11th hours, the meeting could not so 2012 unknown been fixed, but at the 11th hours, the meeting could not convene. to certain meeting have been fixed that I have promoted the said meeting further added that I have promoted. pMS pMSnew rich of the new PMS Batch. given due seniority of occurrence of vacancies. given un poccurrence of vacancies.

the date of occurrence of vacancies. Sincerely yours, Dated: 9th January, 2014 (Tariq Hussain) PMS (B-17), S.O. Home Deptt P.S. to Chief Secretary Govt: of Khyber Pakhtunkhwa Saul: Esto!

Deputy Secretary (Estabi)

PS/C.S Khyber Pakintunkhwa

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,

Amanulah Saced

(Amanullah Saeed)

PMS (B-17),

Dated: 9th January, 2014

P.S. to Chief Secretary Govi: of Khyber Pakhtunkhwa

AAC

Vacci: Estb:

373_13-1-14 Deputy Secremany (Estabil) Dehart Separtment PS/C.S Khyber Pakhtunkhwa Diary No. -The Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar. Appeal for regular promotion to the post of PMS Officers w.e.f. Acting Charge Subject: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 to certain 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 Gigyani ted: 9th January, 2014 PMS (B-17),

P.S. to Chief Secretary

Govt: of Khyber Pakhtunkhwa

Suy: ES46:

AAC Charsadda

Deputy Secretary (Estab.) Estab: & Admin: Department 1646

Diary NO 15-01-14

The Chief C

The Chief Secretary,

Government of Khyber Pakhtunkhwa,

Peshawar.

Date 13-1-14

Subject:-

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

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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.

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Dated: 9th January, 2014

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

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Sincerely yours,

(Sohail Ahmad)

PMS (B-17),

APA Bajaur Agency

PS/C.S Khyber Pakhtunkhwa

Date 13-1-14

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

Diary No 15-8

Osteo ...

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.

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Sincerely yours,

· ™ . \tww. (Muhammad Imran)

iviunammad imrai

PMS (B-17),

AAC Malakand

Dated: 9th January, 2014

Private Secretary to

P.S. to Chief Secretary Govt: of Khyber Pakintunkhwa

Seey: ESTO:

Adrigor

15)

Deputy Secretary (Estab.)

The Chief Secretary,

Government of Khyber Pakhtunkhwa,

Peshawar.

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Appeal for regular promotion to the post of PMS Officers w.e.f. Acting Charge

basis or w.e.f. occurrence of vacancies.

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Sincerely yours,

100

PS/C.S Khyber Pakhtunkhwa

Diary No.

Dated: 9th January, 2014

Secretary to

tablishment

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

Sever ES46

(Yousaf Karim)

PMS (B-17),

AAC Peshawar

Deputy Secretary (Estabi)

Estabil & Secretary (Department 13 -1-14

Diary No. 1049

PS/C.S Khyber Pakhthhwa Diary IX 12 1 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.

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Sincerely yours,

Dated: 9th January, 2014

(Sajid Nawaz)

PMS (B-17),

DSM PPHI Mardan

P.S. to Chief Secretary

Sery: Estb

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ol Ib

Diary No.

Diary No. 16 States

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.

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Bivate Secretary to

Dated: 9th January, 2014

In Lista

Ry

Sincerely yours,

(Gohar Ali)

PMS (B-17),

A.A.C. (R),

Mardan

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

Sery: Estb:

Fish Op

Tol

PS/C.S Khyber, Pakhtunkhwa

Diary No. ..

Deputy Secretary (Estab.)
Estab. & arimut Department

1632

Diary No. 1600

The Chief Secretary,

Government of Khyber Pakhtunkhwa,

Peshawar.

Subject:-

Appeal for regular promotion to the post of PMS Officers w.e.f. Acting Charge

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Roll Secretary to

Dated: 9th January, 2014

Indis/01

RTI

P.S. to Chile' Secretary Govt: of Khyber Pakhtunkhwa

Seeif: Estb:

Sincerely yours,

Khalid Qayum)

PMS (B-17),

AAC Perowa,

D.I.Khan

P. 08 19,

Deputy Secretary (Estab:) Estab: 8 Adays: Department plary No.

The Chief Secretary,

Government of Khyber Pakhtunkhwa,

peshawar.

subject:-

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Dated: 9th January, 2014

P.S. to Chief Secretary Govt: of Khyber Pakntunkhwa

Suy: ESTS:

Sincerely yours,

(Kashmir Khan)

PMS (B-17),

D.M.O. (Edu)

Bannu/Lakki Marwat

ESTABLISHMENT DEPARTMENT (Meeting of PSB held on 23.11.2011)

SUBJECT: - APPOINTMENT OF TEHSILDARS TO THE POST OF PMS BS:47 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.

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/Naiii 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:-

			RECOMMENDATIONS OF THE BOARD
S.	NO N	AME OF	RECOMMENDATIONS OF THE
1			and apparament service
1		Ir. 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
Allexed	1		post of PMS BS-17 on acting charge basis.
Apport	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
Deputy Se	Clefairi (unkping	departmental examination. No enquiry is pending against him
Deputy Se Gov: of Khy Establishin	ged Ingr Jed Ingr	artment	The Board did not consider him for appointment to the posteon 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 Tensiloar BS-16

A 10 3 1 2	
	of service. He has passed the departmental examination is generally good.
	enquiry is pending against him. His service record upto 20
	The Board recommended the officer (
	on 02.02.2009 as Tehsildar BS-16. He has not yet completed departmental examination.
	radacu (ne)
	The Board did not consider him for appointment to the post of Mr. Khalid Qayum His date of birth is 03 60 400
	Mr. Khalid Qayum 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 departmental examination.
	He has not passifiered
	The Board did not consider him for appointment to the post of Mr. Muhammad His date of birth is 20.11.1077
	011 112 113 2000
	passed the
	The Board did not consider him for appoint
	on 02 02 2000 13 02.03, 1980 11-11-11
	on 02.02.2009 as Tehsildar BS-16. He has not yet completed departmental examination.
	The Board did not consider him
9	Mr. Muhammad Imran. His date of birth is 03.05.1978. He joined government service the prescribed length of service department.
	as Tehsildar BS-16 on 02.02.2009. He has not yet completed departmental examination. No enquiry is pending against the
Missed	service record upto 2010 is generally good
Dm (10	Post of PMS RS 47
Deputy Sporetary	as Toball 1070 1
Openity Section Control Contro	
	generally good 5 against nim
11 1	The Board recommended the officer for appointment to the post of PMS BS-17 on acting charge basis. Ar. Muhammad His date of birth is 15 10 30 30 30 30 30 30 30 30 30 30 30 30 30
	His date of birth is 15.10 1976. He joined government services the prescribed length of the pres
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			The Board did not consider him for appointment to the postrof. PMS BS-17 on acting charge basis.
	12	Mr. Naveed Akber	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. The Board recommended the officer for appointment to the post of PMS BS 17 on acting charge basis.
	13	Mr. Tariq Hassan	His date of birth is 15:114,1978. He joined government service as Tehsildar BS 16.0n,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. 7 The Board recommended the officer for appointment to the post of PMS BS-17 on acting charge basis.
taller, maning that the species of the state	14	Mr. Hamid Ali Gagigyani	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. 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.
	15	Mr. Amanullah Saeed	His date of birth is 03:04.1978. He joined government service as Tehsildar BS-16 of 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.
P	16	Mr. Muhammad Ayub	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. The Board did not consider him for appointment to the post of PMS BS-17 on acting charge basis.
γŞ	17	Mr. Akber Shah	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.
ド	^{h lo} ut De Maria	hrei de de la parti	The Board did not consider him for appointment to the post of PMS BS-17 on acting charge basis.

Deputy Se Govi: of Kin

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on 19.03.1977. He was promoted as Tehsildar B 26.02.2009. He has not yet completed the prescribe of service. He has not passed the departmental examination of the prescribe of service. He has not passed the department to the pMS BS-17 on acting charge basis. 19 Mr. Muhammad Ali Shah 10.04.2009. He has not yet completed the prescribe of service. He has passed the departmental examination on 11.05.1988. He was promoted as Tehsildar B 10.04.2009. He has not yet completed the prescribe of service. He has passed the departmental examination on 9.09.1972. He was promoted as Tehsildar B 10.04.2009. He has not yet completed the prescribe of service. He has not passed the departmental examination of service. He has not passed the departmental examination of service. He has not passed the departmental examination of service. He has not yet completed the prescribe of service. He has passed the departmental examination of service. He has not yet completed the prescribe of service. He has not yet completed the prescribe of service. He has not yet completed the prescribe of service. He has not yet completed the prescribe of service. He has not yet completed the prescribe of service. He has not yet completed the prescribe of service. He has not yet completed the prescribe of service. He has not yet completed the prescribe of service. He has not yet completed the prescribe of service. He has not passed the departmental examination of the pMS BS-17 on acting charge basis. 23 Mr. Amjid Ali His date of birth is 13.04.1958. He joined government on 16.05.1959. He was promoted as Tehsildar 12.02.2009. He has not yet completed the prescribe of service. He has not passed the departmental examination of service. He has not passed the departmental examination of service. He has not passed the departmental examination			
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The Board did not consider him for appointment to the PMS BS-17 on acting charge basis. 21 Mr. Muhammad Zaman Khattak 22 His date of birth is 06.05.1959. He joined government on 26.07.1979. He was promoted as Tehsildar E 26.02.2009. He has not yet completed the prescrib of service. He has passed the departmental examinenquiry is pending against him. His service record using generally good. 22 Mr. Bagh Bostan 23 His date of birth is 07.10.1957. He joined government on 16.05.1979. He was promoted as Tehsildar E 26.02.2009. He has not yet completed the prescrib of service. He has not passed the departmental examination of the pms Bs-17 on acting charge basis. 23 Mr. Amjid Ali 24 Mr. Safdar The Board did not consider him for appointment to the pms Bs-17 on acting charge basis. The Board did not consider him for appointment to the pms Bs-17 on acting charge basis. The Board did not consider him for appointment to the pms Bs-17 on acting charge basis. The Board did not consider him for appointment to the pms Bs-17 on acting charge basis. The Board did not consider him for appointment to the pms Bs-17 on acting charge basis.	0 N	Mr. Shah Jehan	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.
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20	Pervez.	on 25.05.1977. He was promoted as a rehaldar by llotton in 10.04.2009. He has not yet completed the prescribed length, of service. He has not passed the departmental examination. The Board did not consider him for appointment to the post of PMS BS-17 on acting charge basis.
26	Mr. Sajid Hussain	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.
		The Board did not consider him for appointment to the post of PMS BS-17 on acting charge basis.
27	Mr. Pervez Iqbal	His date of birth is 15.10.1960. He joined government services 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.
		post of PMS BS-17 on acting charge basis.
28	Mr. Lal Said	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.
		The Board did not consider him for appointment to the post of PMS BS-17 on acting charge basis.
29	Mr. Israr Ahmed	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.
		The Board recommended the officer for appointment to the
į		post of PMS BS-17 on acting charge basis.

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Deputy Secretary (HR)

Govt: of Khyber Pakhtunhana

Establishment Department

SEPORE THE KLIYBER PAKETUNKLIWA SERVICE TRIBUNAL TESHISA

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.11(ED)2(192) 2009 DATED 25.3.2010 WHEREBY APPELLANT IS APPPOINTED/ PROMOTED AS PMS OFFICER (BPS-17) ON ACTING CHARGE BASIS, WITH IMMEDIATE EFFECT.

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

For appellant,

MR. TAHIR IQBAL,

Addl. Government Pleader

For respondents.

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

.. MEMBER

... MEMBER

JUDGMENT.

NOOR ALL 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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emodified to the extent that appellant be appointed/promoted as PMS Officer important that appellant important that appellant important that appellant important important important that appellant important importan

Brief facts of the case as averred in the memo: of appeal are that the appellant was Scheider (BPS-16) on regular basis vide notification dated 6:9.2008 alongwith demotification dated 3.3.2009, who are batch mates of the appellant were promoted demotification dated 3.3.2009, who are batch mates of the appellant were promoted demotification dated 3.3.2010. Vide the impugned notification, although appellant on the date of Provincial Selection Board has been promoted from Tehsildar to PMS dations of Provincial Selection Board has been promoted from Tehsildar to PMS department on acting charge basis and that too with immediate effect. The sholding the post of ACO, Peshawar since long whereas he was posted as Deputy phicer (Judicial) Nowshera vide notification dated 2.6.2009. On 3.4.2010, appellant this departmental appeal/representation for his regular promotion w.e.f. 7.11.2008 are from 3.3.2009 but no reply to the said representation has been received within the defined of 90 days, hence the present appeal.

Arguments heard and record perused.

The learned counsel for the appellant argued that according to Rule 9 of the khtunkhwa Civil Servants Act (Appointment, Promotion and Transfer) Rules, ig charge appointment can only be made where the appointing authority it to be in the public interest to fill a post reserved under the rule's for il promotion and the most senior civil servant belonging to the cadre or service who is otherwise eligible for promotion, does not posses the specified length of ic learned counsel for the appellant further argued that the appellant was s PMS Officer (BPS-17) on acting charge basis with immediate effect vide order 010. despite the fact that there were clear vacancies of PMS Officer (BPS-17) nt in the department in promotion quota. The appellant alongwith others should considered for regular promotion against the said posts from the date when clear were available for them. He stated that other batch mates of the appellant were w.c.f. 3.3.2009 and 7.11.2008, on regular basis, therefore, the appellant has also he considered for promotion w.e.f. the date when the post was lying vacant and it was holding the same on acting charge basis. In December, 2009, two PSB ere held but the appellant had not been considered for promotion without any isons despite the fact that he was eligible for promotion, so he has been

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liserminated. Articles 25 and 27 of the Constitution of Islamic Republic of Pakistan that all cilizens 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 dangust 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 deant posts of PMS (BPS-17), against promotion quota and Tehsildars, senior to the promotion were considered and promoted on regular basis w.e.f. 3.3.2009. The appellant appeal is time-barred. He stated that it is true that vacant is of PMS (BPS-17) were available in the department but meant for direct recruits. He department that vide notification dated 25.3.2010, the appellant was not promoted as PMS (BPS-17) hut appointed on acting charge basis as per provision of Rule 9 of the Khyber with the civil Servants (Appointment, Promotion and Transfer) Rules, 1989. The appellant is not clear and has not specified the date to be considered for promotion as

star basis w.e.f. 3.3.2009 but he was not considered. On 25.3.2010, on the star basis of PSB, he was promoted as PMS (BPS-17) on acting charge basis. Vide the transfer of the 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 impellant was eligible for promotion on regular basis and 11 posts were available, in which indicandidates were promoted as PMS Officer on regular basis. Due to deficiencies of service freeord, some candidates were not promoted and the appellant was 11th but was promoted on fitting 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 anteflate 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.
- 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.

<u>ANNOUNCI</u> 11.1.2012.						₹, • <u>‡</u> •
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BEFORE THE NWFP SERVICE TRIBUNAL, PESHAW

Appeal No. 612/2008

Date of Institution.

16.04.2008

Date of Decision

13.03.2009

Muhammad Igbal Khattak.

Assistant Political Agent, Khar Bajaur Agency.

(Appellant)

VERSÚS

- 1. Government of NWFP through Secretary Establishment Department,
- 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 Annual Khan involved similar questions of law, therefore, these are taken together for arguments and disposal.

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

tine present appeal was filed on 16.4.2008 which is within the case of the cas

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

We heard the arguments and perused the record.

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 the 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

the judgments cited as 1990 SCMR 1321 and cited as 1997 P.C. Con two different aspects of the same subject.

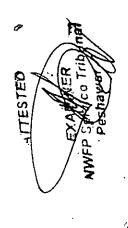
- Ante-dating of promotion, after consideration of the call of aspiring for such promotion, after he was found, eligible and it for promotion and is promoted, is an established principle of law. Such as candidate cannot be punished for any delay caused by the department in processing his case for promotion. 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.
- The A.G.P contended that the present appeals were miserably time-barred and both the appellants were estopped by their own conduct to flie 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 ellyible 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 19%3, "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 SCNR 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



PIC (C.S) 77 has become applicable after determination of fitness of the cappellants. 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 dateson 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 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 ance-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 Frentier 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 claim any benefit out of the already repealed rules of 1997. In order to the N.W.F.P. Provincial Management Service Rules, 2007 which is as underthe N.W.F.P. Provincial Management Service Rules, 2007 which is as underthe N.W.F.P. Provincial Management Service Rules, 2007 which is as underthe N.W.F.P. Provincial Management Service Rules, 2007 which is as underthe N.W.F.P. Provincial Management Service Rules, 2007 which is as underthe N.W.F.P. Provincial Management Service Rules, 2007 which is as underthe N.W.F.P. Provincial Management Service Rules, 2007 which is as underthe N.W.F.P. Provincial Management Service Rules, 2007 which is as underthe N.W.F.P. Provincial Management Service Rules, 2007 which is as underthe N.W.F.P. Provincial Management Service Rules, 2007 which is as underthe N.W.F.P. Provincial Management Service Rules, 2007 which is as underthe N.W.F.P. Provincial Management Service Rules, 2007 which is as underthe N.W.F.P. Provincial Management Service Rules, 2007 which is as underthe N.W.F.P. Provincial Management Service Rules, 2007 which is as underthe N.W.F.P. Provincial Management Service Rules, 2007 which is as underthe N.W.F.P. Provincial Management Service Rules, 2007 which is as underthe N.W.F.P. Provincial Management Service Rules, 2007 which is as underthe N.W.F.P. Provincial Management Service Rules Rules Rules Rules Rules Rules Rules Rules Rules Rules



"8. Repeal. The North-West Frontier Provinces Provincial Civilians Service (Secretariat/Executive Group) Rules, 1997, shall staring 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 RCS (E.G.) and (S.G.) in different pay scales, for the purpose of their promotions 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 retiement 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 fules 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 the purpose of their promotion, and this process is to continue till the retirement of last such incumbent. Both the appellants belonged to the Recutive Group of Civil Servants. They were to be governed under the %F.P Provincial Civil Service (Secretariat/Executive Group) Rules, 1997 ofe 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 retariat Group/Executive Group.

The cases of the appellants are, therefore, to be governed in cordance with the provisions of Section 8 (quoted above) of the new Provincial Management Service Rules, 2007. The record shows that callices were available for the appellants but they were not promoted at time and their cases for promotion were delayed unnecessarily any fault of the appellants. They, therefore, are entitled to ante-their promotion, against the first available vacancy falling to the disease of them or from the date of taking over the charge of that delay on officiating/acting charge basis, whichever is later.



In the light of the above, we accept both the appeals, and direct official respondents to ante-date the promotion of each of the two ellants to the respective dates on which a vacancy became available for respective turn of the appellants or from the respective dates of their aking 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 Miles to be proposes Sen of promisalos of my leader 12:23. 9 2000 0000 2400 Форува јев Bon of completion of copy ter pont on the y paste in Mas, on Aut. . . . metion to the date on which

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Dated Peshawar the October, 04, 2012



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AO_SOE_H(ED) 2(192) 2012. Consequent upon the recommendations of the Provincial Selection Board, the competent authority is preased to order the promotion of the following PMS BS-17 (A/C) / Tehsiddars to the post of Provincial Management

Service (BS-TV), on regular leasis with unreadate effect-

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} •	74: Zacem Akhtar	ī	1
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2. On promotion the above officers will be on probation for a period of engine are in terms of Section-6(2) or Khyber Pakhunkhwa Civil Servants (Appointment, Promotion and wills). Sule-15 of Khyber Pakhunkhwa Civil Servants (Appointment, Promotion and

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	Retained on the same post and station	of diss/. - 'onoissimmo') - (vo())	Macon	Mr. rshlat	5.
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45.		Mr. Abdul	DDO(I),	Sket med on the	
*5.	1	1111	D.I.Khan	· same post	フな
· ·).	Mr. Shaukat	DDO(J),	Retained on the	
•	٠.	I-lussain	Abbottabad	l same post	
(, i	Mr. Gul Nawaz	Settlement	DDO(F),Mansehra	Only for actualization of
		Ali	Officer,	lagainst the vacant	his promotion for one da
			Mansehra	; post	whereafter he will
:			: :	:	continue as Settlement
			:	•	Officer, Mansehra in hi
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	7.	Mr. Nowsherwan	Tehsildar, Palas	DDO(R). Paias	
:			Kohistan	Kohistan against the	i
		A 14	[- DDOOMD).	vacunt post.	
Č	8.	Qazi Atta-ur-	DDO(R);	Retained on the	
ì		Rehman	Haripur	same post	
	9.	Mr. Saleem Jan	Research	Retained on the same	
			Officer, FATA	post	
7		İ	Sectt:		
	1().	Mr. Irfan Ali	ÀΡΛ, Mir Ali	Retained on the	ŀ
			N.W.Agency	! same post	• 1
,	11.	Mr. Gohar Ali	l Tehsildar,	; DDO(J), Katlang	
			Takhtbhai	Mardan against the	
:			! ! Mardan	į vacant post.	

CHIEF SECRETARY KHYBER PAKHTUNKHWA

ENDST: NO. & DATE EVEN

A copy is forwarded to:-

- Additional Chief Secretary, FATA.
- Senior Member, Board of Revenue, Khyber Pakhtunkhwa
- Secretary to Governor, Khyber Pakhtunkhwa.
- Principal Secretary to Chief Minister, Khyber Pakhtunkhwa. . .

- All Divisional Commissioners in Khyber Pakhtunkhwa.
- All District Coordination Officers in Khyber Pakhtunkhwa.
- Secretary (Admn: & Coord), FATA Secretariat Ž.
- Β. Accountant General, Khyber l'akhtunkhwa.
- Accountant General (PR), Sub- Office, Peshawar. Φ.
- All District Accounts Officers in Khyber Pakhtunkhwa. 10.
- 11. General Manager, SNGPL, Peshawar.
- Director (Land), NHA, Khyber Pakhtunkhwa Region, Peshawar. 12.
- 13. SO(Secret)/SO(Admn)/ EO/Librarian, E&A Department
- PS to Chief Secretary, Khyber Pakhtunkhwa. 1
- PS to Secretary Establishment. 15
- PS to Special Secretary(Estt), Establishment Department. ΙĠ.
- 17. PAs to AS(E)/DS(E) Estab: Deptt:
- Officers concerned. 18.
- 19. Office order file.
- Personal file of the officers concerned. 20.

JS-SAHAR) SECTION OFFICER(E-II)

THISAN, ALRIDIA

390

PS/C.S Khybar Pakhtunithwa Diary No. 467 Data 13-1-14

The Chief Secretary,

Government of Khyber Pakhtunkhwa,

Peshawar.

Deputy Secretary (Estab.)

Diary No

Dated. I

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.

Scretcuty to

Dated: 9th January, 2014

Sincerely yours,

(Salim Jan)

PMS (B-17),

APA FR D.I.Khan

P.S. to **Chief Secretary** ovt: pilithyber Pathtenkhwa

Secy: Estb

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Ceputy Secretary (Secretary)

Establish Adomn't Department

Establish Adomn't Department

Diary No 15-01-C

Dated ---

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.

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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)

PMS (B-17),

Dated: 9th January, 2014

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P.S. to Chile's Secretary Govt: of Khyber Pakhtunkhwa

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7-20 P

Dated. The Chief Secretary,

Government of Khyber Pakhtunkhwa,

Peshawar.

übject:-

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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.

Dated: 9th January, 2014

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

Sery: ESto

Sincerely yours,

PSICS Khyber Pakhtunkhwa

Diary No. -

(Navid Akbar)

PMS (B-17),

APA FR Pesnawar

Secretary to

Zadrisol Rte Nos

13 -1-14 PS/C.S Khyber Pakhtunkhwa Diary No. Appeal for regular promotion to the post of PMS Officers w.e.f. Acting Charge basis or w.e.f. occurrence of vacancies. Charge basis in December, 2011. Further-more in the month of May, on Acting Charge basis in December, 2018 meeting for our processing the most of PMS meeting for our processing the most of the most of PMS meeting for our processing f It is stated before your goodself that I have been promoted to the post of PMS The Establishment Department has announced PSB meeting for our promotion, but due the Establishment reasons, the meeting has not been convened. After that different book fixed have been fixed have the Establishment reasons, the meeting has not been convened. After that different dates for unknown reasons, but at the 11th hours, the meeting could not convened been fixed, but at the 11th hours, the meeting could not convened been fixed. nas not been convened. After that different di It is my seniority is badly suffered as I was entitled to be promoted prior the Thus my seniority is badly suffered as I was entitled to be promoted prior the pMS Batch.

PMS Batch af the new pMS Batch. in view, is submit request through this appeal that I may kindly be regular basis w.e.f. date of our promotion on acting charge basis or from due seniority on vacancies.

Biven date of occurrence of vacancies. Sincerely yours, Tariq Hussain PMS (B-17), S.O. Home Deptt

opputy Secretary (Entab.) Exab: & Admin: Department DIATY No. 16.45 The Chief Secretary, Government of Khyber Pakhtunkhwa, _{peshawar}.

new of the new PMS Batch.

given of occurrence of vacancies.

Dated: 9th January, 2014

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P.S. to Chief Secretary Govt: of Khyber Pakhtunkhwa Years! Estő!

372 13-1-14

Deputy Secretary (Estabilicate)

Diary No.... 1643

Dated 15-0/-//

PS/C.S Khyber Pakhtunkhwa Diary No. 170

The Chief Secretary,

Government of Khyber Pakhtunkhwa,

Peshawar.

ijbject:-

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

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Sincerely yours,

Dated: 9th January, 2014

P.S. to Chief Secretary Govt: ei Khyber Pakhtunkhwa

Say: Esto:

Amanulah Saeed

PMS (B-17),

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WAR.

OF INTER

Deputy Secretary (Estab.)

Sepatronal Department

13-1-14

Detect 1642

PS/C.S Khyber Pakhtunkhwa Diary No. 77/ Date. 13-1-14

The Chief Secretary,

Government of Khyber Pakhtunkhwa, peshawar.

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

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

Sincerely yours,

d: 9th January, 2014

13/1 13/1

PMS (B-17),

AAC Charsadda

一覧 All Gigyani (Hamid Ali Gigyani

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

Suy: ES+6:

Ja 2,5/01

Deputy Secretary (Estabil) Estab: & Admn: Department Diary No.

The Chief Secretary,

Government of Khyber Pakhtunkhwa,

Peshawar.

13-1-14 PS/C.S Khyber Pakhtunkhwa

Diary No. -Date.

Subject:-

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

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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.

Dated: 9th January, 2014

ecretary to

P.S. to Chile Secretary Govt: of Khyber Pakhtunkhwa

Seef: EST6:

Sincerely yours,

(Sohail Ahmad)

PMS (B-17),

APA Bajaur Agency

Deputy Secretary (Estab:)

Estab: A Admin: Department

Diary No. 1647

The Chief Secretary,

Government of Khyber Pakhtunkhwa,

Peshawar.

377

PS/C.S Khyber Pakhtunkhwa Diary No. 175

Date. 13-1-14

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.

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Sincerely yours,

(Muhammad Imran.)

PMS (B-17),

AAC Malakand

Dated: 9th January, 2014

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

Seey Estb:

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Pfu de la principal de la prin

Private Section

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