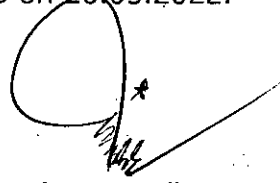


13.04.2022

Nemo for the appellant present. Syed Naseer Ud Din Shah; Asst: AG alongwith Mr. Qasim Khan, Supdt for respondents present.

Previous date was changed on Reader note, therefore, notice of prosecution of appeal be issued to the appellant as well as his counsel through registered post. To come up for arguments before the D.B on 26.05.2022.



(Mian Muhammad)
Member(E)



(Salah Ud. Din)
Member(J)

26th May, 2022

None present for the appellant. Mr. Kabirullah Khattak, Addl. AG for the respondents present.

Today the appeal was called time and again but neither appellant nor his counsel is available. In view of the above, the appeal is dismissed in default.

Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 26th day of May, 2022.



(Fareeha Paul)
Member(E)



(Kalim Arshad Khan)
Chairman

15.04.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 09.08.2021 for the same as before.


Reader

09.08.2021

Nemo for parties.

Asif Masood Ali Shah learned Deputy District Attorney for respondents present.

Preceding date was adjourned on a Reader's note, therefore, both the parties be put on notice for 17.12.2021 for arguments before D.B.

*27/12/21
date 15/12/21*



(Rozina Rehman)
Member (J)


Chairman

17.12.21

*DB is on Tour case to come up
for the same on Dated 13-4-22*

Reader

19.08.2020

Due to summer vacations, the case is adjourned to 21.10.2020 for the same.


Reader

21.10.2020

Appellant in person and Mr. Muhammad Jan, DDA alongwith Mukhtiar Ali, Asstt. Secretary for the respondents present.

The Bar is observing general strike today, therefore, the matter is adjourned to 11.01.2021 for hearing before the D.B.


(Mian Muhammad)
Member


Chairman

11.01.2021

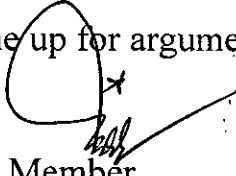
Junior to counsel for the appellant and Mr. Kabirullah Khattak learned Addl. AG for respondents present.


Due to COVID-19, the case is adjourned for the same on 15.04.2021 before D.B.


READER

14.02.2020

Junior to counsel for the appellant and Mr. ~~Zia~~
~~Ullah~~ Deputy District Attorney present. Junior to
counsel for the appellant seeks adjournment on the
ground that senior learned counsel for the appellant has
gone to august Supreme Court of Pakistan. Adjourned To
come up for arguments on 25.03.2020 before D.B.


Member


Member

25.03.2020

Due to public holidays on account of Covid-19, the case
is adjourned. To come up for the same on 08.06.2020 before
D.B.


Reader


08.06.2020

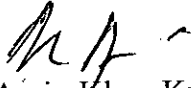
Bench is incomplete as learned Member (J) is on leave,
therefore, the case is adjourned. To come up for the same on
19.08.2020 before D.B.


Reader

11.09.2019


Junior to counsel for the appellant present. Asst: AG alongwith Mr. Zar Muhammad, Assistant for respondents present. Junior to counsel for the appellant seeks adjournment as senior counsel was busy before the august Supreme Court of Pakistan. Adjourned. To come up for arguments on 21.10.2019 before D.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

21.10.2019


Due to general strike on the call of Khyber Pakhtunkhwa Bar Council learned counsel for the appellant is not in attendance. Mr. Riaz Paindakhel learned Assistant Advocate General for the respondents present Adjourned. To come up for further proceedings on 30.12.2019 before D.B.



(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

30.12.2019


Learned counsel for the appellant present. Mr. Usman Ghani learned District Attorney alongwith Mr. Zar Muhammad Assistant for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up arguments on 14.02.2020 before D.B.

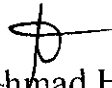

(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

27.06.2019


Appellant in person present. Mr. Muhammad J
Deputy District Attorney for the respondents present. App
seeks adjournments as his counsel is busy before the Hon
Peshawar High Court Peshawar. Adjourned. Case to come up
for arguments on 01.07.2019 before D.B.


(Hussain Shah)
Member


(M-Ahmad Hassan)
Member

01.07.2019


Appellant alongwith his counsel and Mr. Riaz Ahmad
Paindakheil, Assistant AG alongwith Mr. Muhammad Saleem,
Superintendent for the respondents present. Learned counsel for the
appellant requested for adjournment. Adjourned to 20.08.2019 for
arguments before D.B.



(HUSSAIN SHAH)
MEMBER


(M. AMIN KHAN KUNDI)
MEMBER

20.08.2019

Mr. Taimur Ali Khan, learned counsel for the appellant and Mr.
Ziaullah, Deputy District Attorney alongwith Mr. Muhammad Saleem,
Superintendent for the respondents present. Learned counsel for the
appellant requested for adjournment. Adjourned to 11.09.2019 for
arguments before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

14.03.2019

Junior for the appellant and Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Muhammad Saleem, Superintendent for the respondents present. Junior counsel for the appellant seeks adjournment on the ground that learned senior counsel is busy before the Hon'ble Peshawar High Court. Adjourn. To come up for arguments on 10.04.2019 before D.B.



(M. AMIN KHAN KUNDI)
MEMBER


(M. HAMID MUGHAL)
MEMBER

10.04.2019

Junior to counsel for the appellant present. Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Muhammad Saleem, Supdt for respondents present. Junior to counsel for the appellant seeks adjournment on the ground that senior counsel for the appellant was busy before the Supreme Court of Pakistan. Adjourned. Case to come up for arguments on 17.05.2019 before D.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

17.05.2019

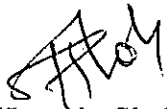
Syed Noman Bukhari learned counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Muhammad Saleem, Superintendent for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 27.06.2019 for arguments before D.B.


(AHMAD HASSAN)
MEMBER


(M. AMIN KHAN KUNDI)
MEMBER

18.12.2018

Appellant in person present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Javed Iqbal, Senior Clerk for the respondents present. Appellant requested for adjournment on the ground that his counsel is busy in the Hon'ble Peshawar High Court. Adjourned. To come up for arguments on 01.02.2019 before D.B.


(Hussain Shah)
Member


(Muhammad Amin Khan Kundi)
Member

01.02.2019

Learned counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney alongwith Muhammad Aslam SO present. Arguments heard. To come up for order on 14.02.2019 before D.B.


Member


Member

14.02.2019

To come up before proper bench on 05.03.2019.



Member


Member

05.03.2019


Junior to counsel for the appellant present. Learned Member (Executive) who heard the arguments is indisposed. Adjourned. To come up for re-arguments on 14.03.2019 before D.B.


Member


Member

19.07.2018


Learned counsel for the appellant and Mr. Sardar Shaukat Hayat learned Additional Advocate General present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 10.09.2018 before D.B.



(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

10.09.2018

Counsel for the appellant and Mr. Usman Ghani learned District Attorney for the respondent present. Counsel for the appellant seeks adjournment. Adjourned. To come for arguments on 31.10.2018 before D.B.


(Hussain Shah)
Member


(Muhammad Hamid Mughal)
Member

31.10.2018

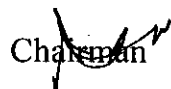
Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 18.12.2018.


READER

14.11.2017

Junior counsel for the appellant and Mr. Kabeerullah Khattak, Addl. AG for the respondents present. Learned Senior counsel for the appellant was stated to be busy before the august Supreme Court of Pakistan and seeks adjournment. Granted. To come up for arguments before the D.B on 24.01.2018.


Member


Chairman

24.01.2018

Clerk of the counsel for appellant present. Mr. Zia Ullah, DDA for the respondents present. Clerk of the counsel for appellant seeks adjournment as his senior counsel is not available today. Adjourned. To come up for arguments on 28.03.2018 before D.B.



Member


Chairman

28.03.2018


Clerk to counsel for the appellant and Mr. Zia Ullah, learned Deputy District Attorney present. Clerk to counsel for the appellant seeks adjournment as senior counsel for the appellant is not available. Adjourn. To come up for arguments on 24.05.2018 before D.B


(Muhammad Amin Kundi)
Member


(Muhammad Hamid Mughal)
Member

24.05.2018


Appellant in person and Addl. AG for the respondents present. Arguments could not be heard due to incomplete bench. Adjourned. To come up for arguments on 19.07.2018 before D.B.


(Muhammad Amin Khan Kundi)
Member

11.04.2017

Appellant with counsel present. Mr. Muhammad Ibrar, Assistant Secretary alongwith Mr. Muhammad Adeel Butt, Additional AG for respondents also present. Learned counsel for the appellant stated at the bar that similar connected case is pending before this Tribunal titled Abdul Hadi-Versus-Government of Khyber Pakhtunkhwa and the same is fixed on 17.05.2017 and requested that the same may also be fixed for the same date. Adjourned. To come up for arguments on 17.05.2017 before D.B.



(Ahmad/Hassan)
Member


(Muhammad Amin Khan Kundi)
Member

17.05.2017

Clerk of the counsel for appellant present. Mr. Muhammad Ibrar, Assistant Secretary alongwith Mr. Kabirullah Khattak, Assistant AG for the respondents also present. Clerk of the counsel for appellant requested for adjournment. Adjourned. To come up for arguments on 18.08.2017 before D.B.


(GUL ZEB KHAN)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

18.08.2017

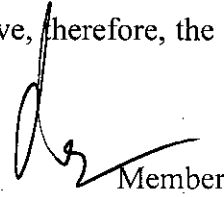
Counsel for the appellant and Mr. Muhammad Jan, DDA for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 14.11.2017 before D.B.


Member


Chairman

04.05.2016

Appellant in person and Mr. Mukhtiar Ali, Supdt alongwith
Addl: AG for respondents present. Arguments could not be heard
due to leaned Member (Judicial) is on leave, therefore, the case is
adjourned to 19.08.2016 For arguments.


Member

19.08.2016

Counsel for the appellant and Addl. AG for respondents present.
Counsel for the appellant requested for adjournment. Request accepted. To
come up for arguments on 21.12.2016.

Member


Member

21.12.2016

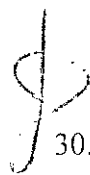
Counsel for the appellant and Mr. Muhammad Ibrar, Assistant
Secretary alongwith Mr. Ziaullah, GP for the respondents present. Since
other Member of the Bench is on leave therefore, arguments could not be
heard. To come up for arguments on 11.04.2017 before D.B.


(MUHAMMAD AAMIR NAZIR)
MEMBER


15.06.2015

Appellant with counsel and Mr. Muhammad Naeem, Assistant
alongwith Addl: A.G for respondents present. Written reply has not
been submitted by respondent No. 3 despite repeated opportunities
including last opportunity, therefore, respondent No. 3 proceeded ex-
parte. Rejoinder on behalf of appellant submitted. To come up for
arguments on 30.10.2015.


Member

 30.10.2015

Counsel for the appellant and Mr. Sultan Shah, Assistant
alongwith Mr. Ziaullah, GP for respondents present. Counsel for
the appellant requested for adjournment. To come up for
arguments on 19-1-16.


Member


Member

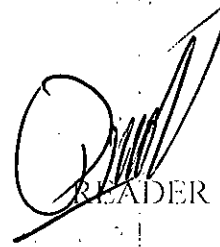
19.01.2016

None present for appellant. Mr. Mukhtiar Ali, Supdt. alongwith
Addl: A.G for respondents present. Due to non-availability of learned
counsel for the appellant as well as incomplete Bench therefore, case is
adjourned to 4.5.16 for arguments.


MEMBER

24.12.2014

Appellant in person and Mr. Muhammad Jan, GP with Mir Qasam, Assistant Secretary and Sultan Shah, Assistant for the respondents present. The Tribunal is incomplete. To come up for the same on 11.2.2015.


READER

11.02.2015

Agent of counsel for the appellant present. Filed a fresh Wakalat Nama on behalf of the appellant. M/S Mir Qasim, Assistant Secretary on behalf of respondents No. 1 & 2 and Sultan Shah, Assistant for respondent No. 3 alongwith Addl. A.G present. Requested for adjournment. Last opportunity granted for written reply. Adjourned to 24.04.2015 before S.B.


Chairman

24.4.2015

Appellant with counsel and Mr. Mir Qasam, Assistant Secretary on behalf of respondents No. 1 & 2 alongwith Addl. AG for respondents present. Request made by the learned Addl.AG on behalf of respondent No. 3 for submission of written reply. On the request of the learned AAG another last chance is given to respondent No. 3. To come up for written reply of respondent No. 3 on 15.6.2015.


Member

Appeal No. 463/2014.
Syed Muhammad Sohail

3. 16.05.2014

Appellant with counsel present. Preliminary arguments heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. Against the impugned order dated 20.03.2008, he filed departmental appeal on 24.12.2013, which has not been responded within the statutory period of 90 days, hence the present appeal on 04.02.2014. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notices be issued to the respondents. To come up for written reply/comments on 12.08.2014.

Appellant deposited
Process fee & Security
Rs. 180/- Balance Receipt
attached with file

Member

4. 16.05.2014

This case be put before the Final Bench D for further proceedings.

Chairman

12.08.2014

Appellant in person and AAG with Mir Qasam, Assistant Secretary and Sultan Shah, Assistant for the respondents present and requested for time. To come up for written reply on 20.10.2014.

MEMBER

20.10.2014



Appellant in person and Mr. Muhammad Jan, GP with Mir Qasam, Assistant Secretary for the respondents No. 1 & 2 present and reply filed. Copy handed over to appellant. Fresh notice be issued to respondent No. 3 for submission of written reply on 24.12.2014.

MEMBER

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 463/2014

| S.No. | Date of order Proceedings | Order or other proceedings with signature of judge or Magistrate |
|-------|---------------------------|--|
| 1 | 2 | 3 |
| 1 | 28/03/2014 | <p>The appeal of Syed Muhammad Sohail resubmitted today by Mr. Fazal-e-Haque Kohidamani Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p> |
| 2 | 31-3-2014 | <p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>16-5-2014</u></p> <p style="text-align: right;"> CHAIRMAN</p> |


This is an appeal filed by Syed Muhammad Sohail today on 04/02/2014 against the order dated 20.03.2008 against which he preferred a department appeal on 24.12.2013 which is premature as laid down in an authority reported as 2005-SCMR-890.

As such the instant appeal is returned in original to the appellant/counsel. The appellant would be at liberty to resubmit fresh appeal after maturity of cause of action and also removing the following deficiencies.

- 1- Law under which appeal is filed is wrong.
- 2- Annexures of the appeal may be attested.
- 3- Annexures A, B & D of the appeal are illegible which may be replaced by legible/better one.

No. 179 /ST,

Dt. 06/02/2014


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Fazal-e-Haque Kohidamani Adv. Pesh.

*Re-submitted after necessary completion.
Please entertain it Sir,
Fazal-e-Haque*

BEFORE KPK SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 463 of 2014

Syed Muhammad Sohail

V E R S U S

Govt. of Khyber Pakhtunkhwa through Chief Secretary,
Govt. of KPK, Peshawar and others

I N D E X

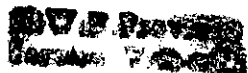
| S.No | Description of Documents | Annexure | Pages |
|------|---|----------|-------|
| 1. | Memo of Service Appeal alongwith affidavit | | 1-9 |
| 2. | Notification dated 04/12/2001 | A | 10 |
| 3. | Regularization list dated 20/03/2008 | B | 11-13 |
| 4. | Precedental case appeal No. 612 / 2008 dated 13/03/2009 | C | 14-21 |
| 5. | Judgment of the August Supreme Court dated 24/05/2012 | D | 22-27 |
| 6. | Notification dated 25/07/2012 | E | 28-30 |
| 7. | Letter dated 29/01/2014 | F | 31 |
| 8. | Result of PCS Examination | G | 32-35 |
| 9. | Result of PCS Examination | H | 36-38 |
| 10. | PMS Services Rules 2007 | I | 39-41 |
| 11. | Departmental appeal | J | 42-43 |
| 12. | Wakalat Nama | | |

Applicant
Through

Fazal-E-Haque
Fazal-E-Haque Kohidamani,
Advocate, High Court, Peshawar
Address: Office No. 379-381,
Deans Trade Center, Peshawar.
Mobile No. 0333-9402284

BEFORE KPK SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 463 of 2014


 131
 dated 04/2-14

Syed Muhammad Sohail S/O Syed Hamid Ali Shah,
S.O Home & Tribal Affairs Department KPK

.....Appellant.

V E R S U S

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

..... Respondents.

⇔ ⇔ ⇔ ⇔ ⇔ ⇔ ⇔ ⇔

APPEAL U/S 4 OF THE NWFP SERVICE
TRIBUNAL ACT, 1974, AGAINAT THE
IMPUGNED NOTIFICATION DATED
20/03/2008 VIDE ORDER NO. 5240-5415 /
ADMN:1 / DPC / THE /2008,
ISSUED BY THE RESPONDENT NO. 2,
WHEREBY SERVICE OF THE

28/3/14

TEHSILDAR (BPS-16) WITH
IMMEDIATE EFFECT INSTEAD OF 4-
12-2001 AS THE APPELLANT HAVING
THE LEGAL RIGHT FROM 04-12-2001.

⇔ ⇔ ⇔ ⇔ ⇔ ⇔ ⇔

Prayer:

On the acceptance of this appeal, the Honourable Tribunal may please be declare:-

- i. That the appellant may be Regularized as Tehsildar with effect from 04-12-2001 against the vacant post.
- ii. Further declare that appellant is entitled as a regularized service as Tehsildar with effect of 04-12-2001 with all such remuneration, and
- iii. Issuance a direction to the respondents to regularized the service of the appellant as Tehsildar with effect of 04-12-2001 and include the appellant in the seniority list of PCS (EG) Officer with all back benefits.

Respectfully Sheweth:

Compendium of facts out of which the present appeal arises as under:-

1. That on 04/12/2001 the appellant along with others was **selected** from the regular post of Superintendent DLR as Tehsildar i.e **from BPS-16 to BPS-16 on acting charge basis** despite of the fact that regular vacancy was available and I was eligible and qualified for regular selection (Annex-A).
2. That as per the verdict of the Courts in such like circumstances, services are required to be regularized **from the date of occurring of the vacancy and not with immediate effect.**
3. That services of appellant were regularized as Tehsildar BPS-16 on 20-03-2008 with immediate effect instead of 04.12.2001 along with others. The name of appellant was placed at S.No.37 of the Regularization List.
(Annex B).
4. That a similar subject matter and precedental case was decided by this Honourable Tribunal, wherein the incumbents were promoted with immediate effect but dissatisfying with the same, they filed service appeals which was accepted on 13.03.2009 with the direction to the authority to regularized their services from the date of availability of vacancies. (Annex C).

5. That feeling aggrieved of the aforesaid judgment of this Honourable Tribunal, the department filed an Appeal before the August Supreme Court of Pakistan and on final hearing, the request of the department was turned down vide judgment dated 24.05.2012 by dismissing their leave to appeal and uphold the judgment of this Honourable Tribunal dated 11.03.2009. Meaning thereby, that they were granted relief from the date of availability of the vacancies instead of with immediate effect (Annex D).
6. That, in pursuance of the judgment of the Honourable Tribunal as well as of the August Supreme Court of Pakistan, the antedated promotion was granted by the Department vide Notification dated 25/07/2012 to all the incumbents (Annex E). Even in the Notification dated 25/07/2012, the appellant is entitled to be regularized against at Serial No. 2 of the regularization list dated 25/07/2012, on the post, by the respondent No. 2 on his own motion after the regularization of 62 incumbents. Which could not be done till date, however, Respondent No. 2 issued a letter No. Estt: I/PF/ Sohail 2517 dated 29/01/2014 to Respondent No.3 for advise adopting an amazing plea therein that promotion policy 2009 cannot covered the regularization of appellant as according to said promotion policy, will always be notified with immediate effect (Annex-F), it is necessary to added here that the selection of the appellant was issued on

04-12-2001 whereas the regularization was made on 20-03-2008, i.e. prior to enforcement of promotion policy 2009. So, the promotion policy 2009 cannot cover the instant case of the appellant.

7. That I have passed my prescribed departmental examination of DMG, PCS and Tehsildars on April 10th, 2004 & August 27, 2004 (Annex-G & H), in higher status and entered into PCS (EG) Services.
8. That Rule 8 of Provincial Management Services Rules, 2007 speak's **"The North West Frontier Province Provincial Civil Service (Secretariat / Executive Group) Rules, 1997 shall stand repealed after the retirement of existing incumbents of both the cadres. Separate seniority list of both the cadres shall be maintained under the existing rules and they shall be promoted at the ratio of 50:50. The existing incumbents of PCS (E.G) and (S.G) in different pay scales, for the purpose of their promotion shall continue to be governed under the said service rules till the retirement of the last such incumbent"** (Annex- I). Therefore, as per rule ibid and according to the decision of Services Tribunal in the Appeal No. 612/2008 decided on 13/03/2009 maintained by the August Supreme Court of Pakistan vide order dated 31/05/2012. Being PCS examination passed officer I am required to be included in the seniority list of the PCS (EG) cadre.

9. That the impugned order dated 20/03/2008 harshly damaged the vested rights of the appellant etc which are against the natural norms of justice.
10. That by meeting of aforesaid relief, appellant filed departmental appeal before Respondent No.1 which met no response till date. (Annex J). Hence the instant appeal, inter alia, on the following grounds:-

GROUND S:-

- a. That, at the time of Selection of appellant on Acting Charge Basis, the post in question was available, and appellant was required to be selected as Tehsildar on regular basis from the date of the availability of the vacancy and not with immediate effect.
- b. That, the post was available with the department in the year 2001, so it was the responsibility of the respondents to expeditiously dealt with the case of appellant for regular selection to antedate order dated 20.03.2008 to 04.12.2001.
- c. That, appellant could not be punished for lapses of time and delaying acts of the department, but the respondents shall be responsible for causing delay

in processing the case for regular promotion within time of the appellant.

- d. That, appellant was, when found eligible and fit for regular selection in the year 2008, he was equally eligible and fit for regular selection in the year 2001.
- e. That, the department could not attribute their ignorance of time to the appellant but the department itself responsible and the services of the appellant required to be regularized from the date of taking over charge of Acting Charge Basis with effect from 04/12/2001.
- f. That the Honourable Tribunal as well as the August Supreme Court of Pakistan were consequently accept the claim of the affectees those who treated the same illegal and unlawful manners which reliance be made through 2006 SCMR 1938 and others.
- g. That some other relevant factors will be raised during the assistance of this Honourable Tribunal at the time of arguments through substantiate with the kind permission.

It is, therefore, most humbly prayed that
on acceptance of this appeal,


- i. That the appellant may be Regularized as Tehsildar with effect from 04-12-2001 against the vacant post.
- ii. Further declare that appellant is entitled as a regularized service as Tehsildar with effect from 04-12-2001 with all such remuneration, and
- iii. Issuance a direction to the respondents to regularized the service of the appellant as Tehsildar with effect from 04-12-2001 and include the appellant in the seniority list of PCS (EG) Officer with all back benefits.

Or any other remedy may also be graciously granted in favour of appellant.



Appellant

Through


Fazal-E-Haque Kohidamani,
Advocate, High Court,
Peshawar.

BEFORE KPK SERVICE TRIBUNAL PESHAWAR

Service Appeal No. _____ of 2014

Syed Muhammad Sohail

.....Appellant.

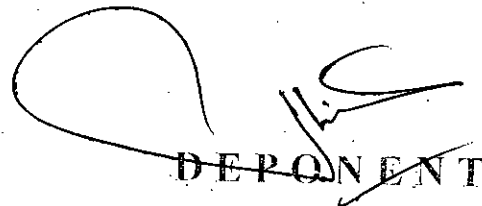
V E R S U S

1. Govt. of Khyber Pakhtunkhwa through Chief Secretary, Govt. of KPK, Peshawar and others

..... Respondents

AFFIDAVIT

I, SYED MOHAMMAD SOHAIL, Section Officer Home and Tribal Affairs Department, Govt. of Khyber Pakhtunkhwa, Peshawar, do hereby solemnly affirm and declare on oath that all the contents of instant service appeal are true and correct to the best of my knowledge and belief and nothing has been concealed or misstated from this Honourable Tribunal.


~~DEPONENT~~

SYED MOHAMMAD SOHAIL

CNIC No. 17301-0383320-2



Annex A

PESHAWAR DATED THE 04/12/2001.

NOTIFICATION.

No. 28552 /Admn:I/26. Pursuant to the recommendations of the Departmental Promotion/Selection Committee, the following members of the subordinate service as defined in rule-2(13)(b) of the West Pakistan Tehsildari and Naib Tehsildari Service Rules, 1962, are hereby selected/promoted as Tehsildar (B-16) on acting charge basis with immediate effect on usual terms and condition. The officers at Sl: No.3 and 8 will be posted as and when vacancies occurred in near future for actualization of their selection:-

- | | | |
|----|-----------------------|--------------------------|
| 1- | Mr. Asmatullah, | Supdt: Bannu District. |
| 2- | Mr. Sanaulah, | H.V.C.D.O(R&E) Kohistan. |
| 3- | Mr. Abdul Hadi, | Assistant B.C.R. NWFP. |
| 4- | Mr. Bahre Karam. | Supdt: Swat District. |
| 5- | Mr. Naseem Khan, ✓ | Assistant, E.O.F. NWFP. |
| 6- | Mr. Iqrar Ali Shah, | Supdt: Kohat District. |
| 7- | Mr. Amir Zaman, | Assistant, E.O.F. NWFP. |
| 8- | Syed Muhammad Schail. | Supdt: D.L.R, N.W.F.P. |

On their promotion/Selection as such, M/S Bahre Karam, Naseem Khan, Iqrar Ali Shah and Amir Zaman are placed under Settlement/Revenue training for a period of Six months w.e.f. 01-5-2002 as required under rule-53 of the Tehsildari and Naib Tehsildari Departmental Examination and Training Rules, 1969. Training programme is attached.

Sd/-
Senior Member,
Board of Revenue, N.W.F.P.

Handwritten signature

No. 28553-71/Admn:I.

Copy to the :-

- 1- Settlement Officer, Chitral.
- 2- District Officer (P&E), Chitral.
- 3- Director, Land Records, N.W.F.P.
- 4- Accountant General, N.W.P., Peshawar.
- 5- Budget & Accounts Officer, Board of Revenue, NWFP.
- 6- Concerned officers.
- 7- Bill Assistant Board of Revenue, N.W.F.P.
- 8- Personal file/Office order file.

*Attested
Imam Haque*

"Sharif Khan"

SECRETARY,
BOARD OF REVENUE, NWFP.

(11)

**GOVERNMENT OF NWFP
REVENUE & ESTATE DEPARTMENT**

Dated Peshawar The. 20 /03/2008

*Annex
"B"*

NOTIFICATION

No. /Admn./DPC/Tch/2008 The Competent Authority, in consultation with the Departmental Promotion Committee is pleased to order the promotion of the following Naib Tehsildars and Tehsildars working on Acting Charge Basis to the post of Tehsildar (BS- 6) on Regular Basis with immediate effect.

Sof (37)

| S.NO | NAME OF OFFICER | PRESENT POSTING |
|------|-------------------------|--|
| 1. | Mr. Muhammad Amin | Board of Revenue, NWFP |
| 2. | Mr. Habibur Rehman | DDO (J), Mardan |
| 3. | Mr. Miftahud Din | EASO, Chitral |
| 4. | Mr. Khalid Akbar | Tehsildar Reconciliation Peshawar |
| 5. | Mr. Nisar Hussain. | DDOR Fangu |
| 6. | Mr. Ali Muhammad. | Tehsildar Lachi District Kohat |
| 7. | Mr. Ismail Khan. | DDO(J) Buner |
| 8. | Mr. Fazal Muhammad. | Tehsildar Nowshera |
| 9. | Mr. Alamzeb Khan | NHA PNBP Peshawar |
| 10. | Mr. Raj Bahadur. | Board of Revenue, NWFP |
| 11. | Muhamamd Fayyaz | Tehsildar Takhta Bhai District Mardan |
| 12. | Mr. Shah Nadir | Tehsildar Chitral |
| 13. | Mr. Jehanzeb Khan | DDO (J), Peshawar. |
| 14. | Mr. Muhammad Roshan | Political Tehsildar Bara Khyber Agency |
| 15. | Mr. Ijaz ur Rehman | Tehsildar Ghazi |
| 16. | Mr. Muhammad Akbar Khan | Tehsildar Batagram |
| 17. | Mr. Samar Gul | Tehsildar Lakki Marwat |

| | | |
|-----|---------------------------|--|
| 18. | Mr. Qayyum Nawaz | Settlement Tehsildar DIKhan |
| 19. | Mr. Mansoor Qasir | LAC NHA DIKhan |
| 20. | Mr. Sajid Ahmad | Political Tehsildar Upper Orakzai Orakzai Agency |
| 21. | Mr. Abdul Ghafoor Shah | Political Tehsildar Mahal Khurram Agency |
| 22. | Mr. Muhammad Asghar | DDO (J) Bannu |
| 23. | Mr. Mawaz Khan | Political Tehsildar Khar Bajaur |
| 24. | Mr. Mumtaz Ahmad | Promoted as Tehsildar (BS-16) on regular basis subject to Court decision. |
| 25. | Syed Masood Shah | Promoted as Tehsildar (BS-16) on regular basis subject to Court decision. |
| 26. | Mr. Tariq Hassan | Tehsildar Shabqadar, District Charsadda |
| 27. | Mr. Gohar Ali | DDO (J) Tangi |
| 28. | Mr. Rehan Gul Khattak | Political Tehsildar Tirah, Khyber Agency |
| 29. | Mr. Fazal Qadir | Tehsildar Housing Department NWFP |
| 30. | Mr. Navced Qadir | Tehsildar Kohat |
| 31. | Mr. Asmatullah | Assistant Political Agent Mirali, North Waziristan Agency |
| 32. | Mr. Abdul Hadi | Tehsildar Anti-Corruption Establishment Peshawar |
| 33. | Mr. Bahre Karam | DDO(R), Swat |
| 34. | Mr. Naseem Khan | Tehsildar Manshra |
| 35. | Mr. Iqrar Ali Shah | Instructor Revenue Academy Karak |
| 36. | Mr. Amir Zaman | Tehsildar Hangu |
| 37. | Syed Muhammad Sohail | Tehsildar/RO Khyber Circle PI:SCO WAPDA Peshawar |
| 38. | Mr. Muhammad Yaqoob Barki | Tehsildar Tank |
| 39. | Mr. Khalid Mumtaz Kundi | Political Tehsildar Jamrud, Khyber Agency |

*Abdul
Fazal*

| | | |
|-----|------------------------|---|
| 40. | Mr. Khalid Mehmood | Political Tehsildar Alizai Kurram Agency |
| 41. | Mr. Javid Ullah Mahsud | Political Tehsildar Landi Kotal Khyber Agency |
| 42. | Mr. Hafeczullah | Tehsildar Land Acquisition DIKhan |

2. They shall continue working against their present posting except Syed Masood Shah, at S.No:25 whose posting order will be issued later on.

By order of
Senior Member
Board of Revenue, NWFP

5240-5615

Endst: No. /Admn: I/DPC/Teh/2008

Copy to

1. Secretary Housing Department, NWFP.
2. All District Coordination Officers in NWFP.
3. All District Officer (Revenue & Estate)/Collectors in NWFP.
4. All Political Agents in NWFP.
5. All District Accounts Officers/Agency Accounts Officers in NWFP.
6. Manager Operation-PESCO-WAPDA, Khyber Circle, Peshawar.
7. Deputy Director National Highway Authority (Peshawar Northern Bypass (PNBP) Peshawar
8. Director Anti-Corruption Establishment, Peshawar.
9. Regional Director National Highway Authority DIKhan.
10. Officers concerned.
11. Personal file.
12. Office order file.

*Asst. Secy
Imam Haseem*

[Signature]
Secretary
Board of Revenue, NWFP

C 1 8 13-3-09 'C'
BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR

Appeal No. 612/2008

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

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

VERSUS

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

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

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

MR. ZAHID KARIM KHALIL,
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. 613 of 2009 by Ahmad Khan involved similar questions of law, therefore, these are taken together for arguments and disposal.

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

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

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

4. We heard the arguments and perused the record.

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

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

Attorney General

This judgment was in the petition for leave to appeal against the judgment dated 10.02.1995 of the Punjab Service Tribunal. It is worth-mentioning that

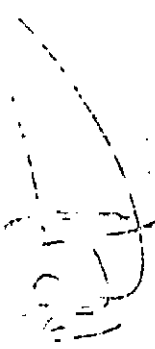
the judgments cited as 1990 SCMR 1321 and cited as 1997 PLC (C.S) 77 are on two different aspects of the same subject.

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

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

*Admitted
Fugate*

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



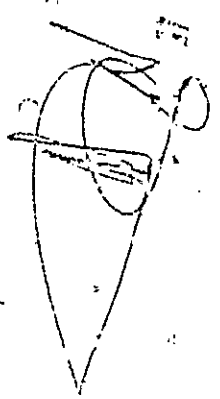
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(C S) 77 has become applicable after determination of fitness of the appellants. The question in these cases is not the determination of fitness but the right of ante-dation of their promotion. The appellants had vested right for consideration of promotion 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 date on which they actually took the charge of their respective posts, whichever were later in time.

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

*Attached
Enclosure*

The A.G.P further contended that, according to the North West Province, Provincial Management Service Rules, 2007, notified on 11.05.2007 vide No. SOE.II(ED)2(14)2007, The NWFP Provincial Civil Service (Junior/Junior Executive Group) Rules, 1997 were repealed. He was of the opinion that the N.W.F.P Provincial Management Service Rules, 2007 had come into force from 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 benefit out of the already repealed rules of 1997. In order to resolve this controversy, it is necessary to reproduce the relevant Rule 8 of the N.W.F.P Provincial Management Service Rules, 2007 which is as under:-



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

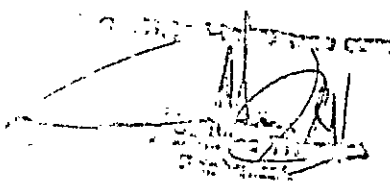
The above rule, by itself, clarifies that the rules of 1997 shall not stand repealed before the retirement of the existing incumbents of both the cadres of Secretariat/Executive Groups, and shall remain in force till the retirement of the last such incumbent. It further clarified that separate seniority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

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


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

ANNOUNCED
11.03.2009

*J.J. Justice (S) Colim Vaidyan
Chairman*
*J.J. Bisimillah Chaki
Member*



No. of pages 200 25/4/09
 Serial no. 14
 Date of 16
 Date of completion of work 28-4-09
 Date of delivery of copy 28-4-09

Attested


Attested
Fayaz Hussain

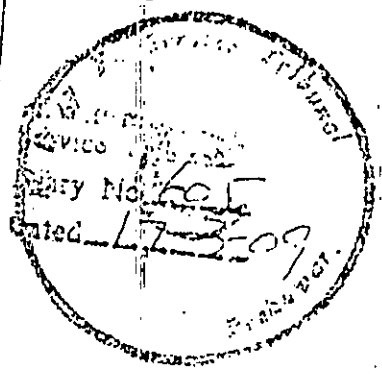
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9-4-09

BEFORE THE SERVICE TRIBUNAL NWFP, PESHAWAR

Service Appeal No. 575 /2009



Latif-u-Rehman

A.P.A Razmak, NW Agency.....Appellant

VERSUS

1. Govt of NWFP through Secretary Establishment, Civil Secretariat, Peshawar
2. Govt of NWFP through Chief Secretary, NWFP, Peshawar.....Respondents

Appeal u/s 4 of the NWFP; Service Tribunal Act, 1974 against the impugned Notification No.SOE-II(E&D)2(192)2007 dt. 19.02.2008, whereby the appellant was promoted as Extra-Assistant Commissioner (EAC) on regular basis instead of 27.12.2005 and order dated 06.12.2008 received on 07.03.2009, whereby his departmental appeal was not acceded to.

*Muzeeb
Fazal*

09.04.2009

Counsel for the appellant present.
The broad facts and legal issues involved in this case are almost the same as in the cases in Service Appeals No. 612/08 and 613/08. This appeal is also disposed of in limine with the same directions as issued vide judgment in Service Appeal No.612/08; with further directions to the official respondents to ascertain that the appellant of this case is a person similarly placed with the appellants of the mentioned cases and is entitled to the benefits of the judgment in Service Appeal No. 612/08, and

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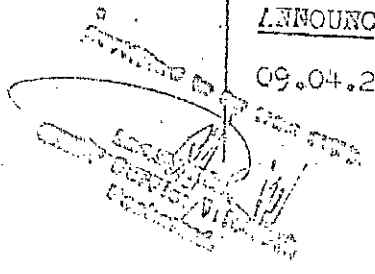
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to conduct and decide the cases of all other similarly placed persons in the same manner as was prescribed and indicated vide judgment mentioned above, otherwise the cost of litigation of such similarly placed persons, who may be compelled to enter into litigation with the official respondents, shall be payable by the official respondents officially and the same may be recovered from the pay and pension, as well as person and property of the concerned delinquent officers after ascertaining their fault/default through inquiry.

This order will ^{also} dispose of Service Appeal No. 574/2009 as well as Service Appeals No. 576/2009 to 597/2009 respectively.

ANNOUNCED
09.04.2009



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IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

Annex D

PRESENT:

MR. JUSTICE EJAZ AFZAL KHAN.

MR. JUSTICE MUHAMMAD ATHER SAEED.

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

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

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

Versus:

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

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

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

Date of hearing: 24.05.2012.

J U D G M E N T

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

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

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

Ahsanul
Iqbal

ATTESTED

Superintendent
Supreme Court of Pakistan
1st AMARAI

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

3. Learned counsel, appearing on behalf of the appellants contended that though the Governor of the Province in consultation with the Provincial Selection Board was pleased to order the promotion of the respondents in BPS-16 as Extra Assistant Commissioner in BPS-17 in the Ex-PCS (E:B) Cadre with immediate effect on purely temporary basis vide notification dated Peshawar 6th March, 1996, yet it could not earn them any benefit or entitle them to a vested right notwithstanding they have been promoted on regular basis with immediate effect vide notification dated 19.2.2008. They, the learned counsel added, could not have claimed any ante-dated promotion even on the occurrence of any vacancy in such scale in violation of Section 8 of the Civil Services Act or Rule 9 of NWFP Civil Service (Executive Group) Rules, 1997, as decidedly promotion is not a vested right. Appeal before the departmental authority, the learned counsel added, or before the Tribunal claiming ante-dated promotion was, therefore, misconceived. The learned Tribunal, the learned counsel maintained, could not have allowed such appeal when it tended to mar the seniority of many others in the run. The learned counsel to support his contention placed reliance on the cases of "Wajahat Hussain, Assistant Director, Social Welfare, Lahore and 7 others. Vs. Province of the Punjab, through Secretary, Social Welfare and Zakat, Lahore and 81 others" (PLD 1991 S.C. 82), "Sh. Anwar Hussain, Assistant Director, Labour Welfare, Lahore Region, Lahore. Vs. Government of the Punjab through Secretary, Labour Department and others" (1985 SCMR 1201), "Nazeer Ahmed. Vs. Government of Sindh through Chief Secretary Sindh, Karachi and 2 others" (2001 SCMR 352), "Government of Pakistan through Establishment

Attested
Fazal Hussain

ATTESTED

Superintendent
Supreme Court of Pakistan
ISLAMABAD

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

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

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

*Abdul
Fazul Hossain*

ATTESTED

Attendant
Supreme Court of Pakistan
ISLAMABAD

5. We have gone through the entire record carefully and considered the submission of the learned counsel for the parties.

6. The record reveals that the Governor of the Province in consultation with the Provincial Selection Board was pleased to order the promotion of the respondents working in BPS-16 as Extra Assistant Commissioner in BPS-17 in Ex-PCS (E.B) Cadre. The respondents were, no doubt, promoted on temporary basis in the year 1996, all the same, what stands out to be taken notice of is, that it was not done without considering their eligibility and without involving the process of selection as is evident from the order itself. When asked whether the respondents were deficient in terms of qualification or experience to hold the post in the next higher scale, at the time they were promoted temporarily, the reply of the learned counsel for the appellant was in no. When asked whether there was any impediment in the way of the respondents to be promoted to the next higher scale, at the time when a vacancy or two occurred in the said scale, again the answer was in no. When asked what restrained the appellants to defer or delay the process of selection to fill one or any number of vacancies occurring from time to time in the next higher scale, the reply of the learned counsel was that it was because of confusion created by the devolution plan. This answer to say the least, is too vague to be plausible. When asked who was senior to the respondent and whose right of ranking senior has been affected or impaired by the impugned judgment, again the learned counsel could not refer to anything on the record.

*Attested
Fazal Haque*

8. There is no dispute with the proposition that the terms and conditions of the service of the respondents, in view of the provision contained in Rule 8 of NWFP Civil Service (Secretariat Group) Rules, 2007, shall continue to be governed by the erstwhile rules. There is also no dispute with the proposition that if the respondents were to hold a post on acting charge basis, they could also hold the same on regular basis. In the case of

ATTESTED

*Supintendent
Grounds of Pakistan
ISLAMABAD*

"Luqman Zareen and others Vs Secretary Education, NWFP and others"

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

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

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

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

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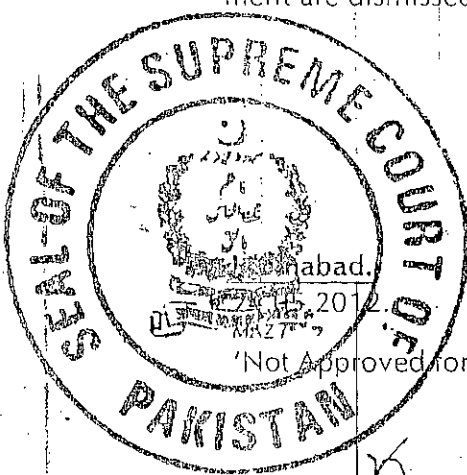
Secretary
Court of Petitioners
ISLAMABAD

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

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

*Attended
Fazul Khan*

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



Adv. Faraz Abbas Khan, J.
Adv. Muhammad Athar Pined,
Certified to be True Copy
Superintendent
Supreme Court of Pakistan
ISLAMABAD

SR No: 5878/12 Case No: 25-5-12

Date of Presentation: 18/05/12

No. of Words: 18

No. of folios: 5.00

Requisition Fee Paid: 11.16

Copy Fee In: 16.16

Court Fee stamps: 16.16

Date of Completion of Copy: 21/5/12

Date of delivery of Copy: 21/5/12

Compared by: Sh. Rizwan Nawaz, Adv.

Received by:

3870/12

'Not Approved for Reporting'



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Dated Peshawar the July, 25, 2012

NOTIFICATION

NO. DE-3 (ED) 2(423)/2010/Vol-II:-

In pursuance of Judgment of Supreme Court of Pakistan dated 24.05.2012 in CPLAs No. 860/2010 and 851/2010 the Govt. of Khyber Pakhtunkhwa through Secretary Establishment and others versus Muhammad Iqbal Khattak and Ahmad Khan Third Judgments of Khyber Pakhtunkhwa High Court dated 13.03.2009 & 09.04.2009 in service appeals No. 617/2008, 618/2008 & 625/2009 titled Muhammad Iqbal Khattak, Ahmad Khan & Latif-ur-Rehman vs. Govt. of Khyber Pakhtunkhwa through Secretary Establishment and others, the Government authority is pleased to ante-date the promotion of following PMS BS-17 officers with the dates as mentioned against each with all back benefits/consequential benefits and to designate them as PCS(EG) BS-17:-

| Name of PMS BS-17 officer for ante-dated promotion as PCS (EG) BS-17 | Date of ante-dated promotion as PCS (EG) BS-17 |
|--|--|
| Muhammad Iqbal Niazat (Retired on 31.07.2009) | 27.12.2009 |
| Muhammad Iqbal Niazat (Retired on 28.02.2009) | 26.01.2000 |
| Muhammad Iqbal Niazat | 27.12.2009 |
| Muhammad Iqbal Niazat (Retired on 05.03.2011) | 15.05.2000 |
| Muhammad Iqbal Niazat (Retired on 05.03.2011) | 29.05.2000 |
| Muhammad Iqbal Niazat | 01.06.2000 |
| Muhammad Iqbal Niazat | 07.06.2000 |
| Muhammad Iqbal Niazat | 10.01.2001 |
| Muhammad Iqbal Niazat | 10.02.2001 |
| Muhammad Iqbal Niazat | 08.04.2001 |
| Muhammad Iqbal Niazat (Retired on 31.03.2010) | 09.04.2001 |
| Muhammad Iqbal Niazat | 14.04.2001 |
| Muhammad Iqbal Niazat (Retired on 01.03.2012) | 27.12.2005 |
| Muhammad Iqbal Niazat | 27.12.2005 |
| Muhammad Iqbal Niazat | 13.11.2001 |
| Muhammad Iqbal Niazat | 03.03.2005 |
| Muhammad Iqbal Niazat | 13.11.2001 |
| Muhammad Iqbal Niazat | 13.11.2001 |
| Muhammad Iqbal Niazat | 26.12.2001 |
| Muhammad Iqbal Niazat | 17.01.2002 |

(Signature)
Secretary

| | | |
|-----|--|------------|
| 21. | Mr. Naeem Anwar Khan | 09.04.2002 |
| 22. | Mr. Laj Khan (Retired on 02.11.2010) | 14.04.2002 |
| 23. | Mr. Damsaz Khan | 29.05.2004 |
| 24. | Mr. Habibullah Wazir | 23.05.2002 |
| 25. | Mr. Zafar Ali Khan | 29.05.2004 |
| 26. | Mr. Gul Wahid (Retired on 13.03.2011) | 31.08.2002 |
| 27. | Mr. Abdul Maceen | 13.11.2002 |
| 28. | Mr. Akbar Jani | 04.03.2003 |
| 29. | Mr. Khaista Rehman | 24.03.2003 |
| 30. | Mr. Sharif ul Alam | 27.12.2005 |
| 31. | Mr. Fazal Rehman | 29.05.2004 |
| 32. | Mr. Latif ur Rehman (died on 25.10.2010) | 27.12.2005 |
| 33. | Mr. Rashid Mehtod | 29.05.2004 |
| 34. | Mr. Muhammad Jamil | 29.05.2004 |
| 35. | Mr. Khurshid Anwar | 29.05.2004 |
| 36. | Mr. Perwez Khan | 29.05.2004 |
| 37. | Mr. Munir Ahmad | 29.05.2004 |
| 38. | Mr. Hameedullah (Retired on 24.09.2010) | 26.05.2007 |
| 39. | Mr. Monir Khan (Retired on 14.06.2010) | 27.12.2005 |
| 40. | Mr. Syed Bilal Ali Saib Gillani | 26.05.2007 |
| 41. | Mr. Ahmad Khan | 09.01.2006 |
| 42. | Mr. Jan Muhammad | 01.02.2005 |
| 43. | Mr. Saeed ur Rehman | 09.01.2005 |
| 44. | Mr. Muhammad Israr (Retired on 02.01.2012) | 27.12.2005 |
| 45. | Mr. Arshad Naveed | 25.03.2005 |
| 46. | Mr. Hidayatullah | 09.01.2006 |
| 47. | Mr. Saif Ahmad Jan | 17.05.2005 |
| 48. | Mr. Abdul Farid Jan | 13.01.2006 |
| 49. | Mr. Muhammad Tahir (Retired on 12.06.2012) | 27.04.2006 |
| 50. | Mr. Sultanat Khan (Retired on 14.08.2010) | 13.04.2005 |
| 51. | Mr. Syedhanullah (Retired on 12.05.2012) | 13.04.2006 |
| 52. | Mr. Muhammad Siddique | 25.05.2006 |
| 53. | Mr. Anwar Zairai | 11.09.2006 |
| 54. | Mr. Thadat Khan | 11.09.2006 |
| 55. | Mr. Anwar Abbas | 26.05.2007 |
| 56. | Mr. Anwar Khan | 26.05.2007 |
| 57. | Mr. Fida Muhammad (Retired on 30.10.2010) | 23.12.2006 |
| 58. | Mr. Munir Khan | 23.12.2006 |
| 59. | Mr. Altaf ur Rehman | 31.12.2006 |
| 60. | Mr. Shahab Hamid Yousafzai | 15.02.2007 |
| 61. | Mr. Ghulam Habib | 16.02.2007 |
| 62. | Mr. Ghulam Habib | 15.02.2007 |

Attended
Ismaeel

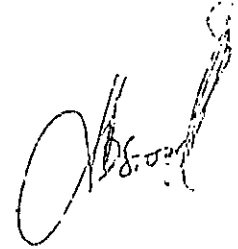
CHIEF SECRETARY
KHYBER PAKHTUNKHWA

24

ENDST: NO. & DATE EVEN.

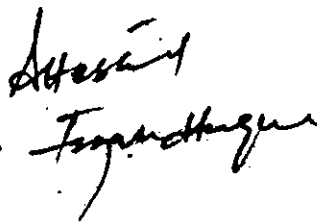
A copy is forwarded to:-

1. Additional Chief Secretary, Planning & Dev. Department, Khyber Pakhtunkhwa.
2. Additional Chief Secretary(FATA), FATA Secretariat.
3. Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
4. Secretary to Governor, Khyber Pakhtunkhwa.
5. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
6. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
7. All Divisional Commissioners in Khyber Pakhtunkhwa.
8. All District Coordination Officers in Khyber Pakhtunkhwa.
9. All Political Agents in FATA.
10. Accountant General, Khyber Pakhtunkhwa.
11. Accountant General(PR) Sub Office, Feshawar.
12. All District Accounts Officers in Khyber Pakhtunkhwa.
13. All Agency Accounts officers in FATA.
14. Officers concerned.
15. P.S to Chief Secretary, Khyber Pakhtunkhwa.
16. P.S to Secretary Establishment, Khyber Pakhtunkhwa.
17. P.S to Special Secretary(Estt) Establishment Department.
18. PAs to AS(E)/AS(HRD)/DS(E) Establishment Department.
19. Office order file.



(TABASSUM)
SECTION OFFICER(E-II)

*RISAN PRIDE



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2008

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GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT

No. Estt: I/PF/Sohail 2517
Peshawar dated the 29 /01/2014.

To

The Secretary to Government,
Establishment Department,
Khyber Pakhtunkhwa.

SUBJECT: DEPARTMENTAL APPEAL AGAINST OFFICE NOTIFICATION NO.5240-5415/ADMN:I/DPC/THE/2008, DATED 20.3.2008 OF THE WHERE BY I WAS REGULARIZED WITH IMMEDIATE EFFECT INSTEAD OF 04.12.2001.

Sir,

I am directed to enclose copy of application in respect of Syed Muhammad Sohail, the then Tehsildar now Section Officer, Home & TAs Department who was promoted as Tehsildar (B-16) on Acting Charge Basis on 04.12.2001 (copy of order is enclosed). Later-on on availability of regular post, Syed Muhammad Sohail was promoted as Tehsildar on regular basis on 20.3.2008. The officer has requested antedate seniority w.e.f 04.12.2001 i.e the date of his acting charge appointment.

According to Promotion Policy, 2009 circulated vide Establishment & Administration Department circular dated 28.01.2009, promotion will always be notified with immediate effect.

I am further directed to request you to favour this Department with your valuable advice in the matter as to whether the applicants can be granted antedate seniority/promotion as Tehsildar w.e.f 04.12.2001 or otherwise.


Assistant Secretary (Estt.)

*Assist
Secretary*

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GOVERNMENT OF N.W.F.P.
ESTABLISHMENT DEPARTMENT
(SECRET SECTION)

Dated Peshawar, the April 10, 2004

NOTIFICATION.

No.SOS(ED)Examination /2/78/April: 2004. Under Rules-II(3) of the prescribed for the examination of DMG,PCS and Tehsilalars of NWFP as published with the Home Department Gazette Notification No.6857 /HG, dated 8.5.1952 8th May, 1952 the Governor of NWFP Province is pleased to declare the following candidates to have passed in various subjects of the Departmental Examination held in Jan,2004 at Peshawar by standard noted against each:

(LIST ENCLOSED)

*Attested
Fazal H. Khan*

PTO

RESULT OF DEPARTMENTAL EXAMINATION HELD IN JANUARY 2004

| Sl No. | Name & Designation | Criminal Law | Civil Law | Revenue Law | Treasury | Local Govt. | Jail | Patwar |
|--------|---|---------------|---------------|---------------|-----------------|---------------|---------------|--------|
| 1 | Muntazir Khan, Tehsildar, Board of Revenue, Peshawar | - | Higher Passed | - | - | - | - | - |
| 2 | Syed Muhammad Sohail, Tehsildar, Board of Revenue, | Higher Passed | Higher Passed | Lower Passed | - Higher Passed | Higher Passed | Higher Passed | - |
| 5 | Mr. Hidayatullah, Tehsildar, HBL, 49th Mail Peshawar. | - | - | Higher Passed | - | - | - | Fail |
| 6 | Mr. Mawaz Khan, Tehsildar, Bajaur Agency. | Higher Passed | - | - | - | - | - | - |
| 7 | Mr. Miftahuddin, Tehsildar, Chitral Distt. | - | - | - | Higher Passed | - | - | - |
| 9 | Mr. Insanullah, Tehsildar, Upper Mohmand Agency. | Higher Passed | - | - | - | - | - | - |
| 10 | Mr. Haider Hussain, P.N.T.F.R Kurram Agency. | Higher Passed | Higher Passed | Higher Passed | Fail | Lower Passed | Higher Passed | Passed |
| 13 | Mr. Amir Muhammad Khan, N.T Karak | Fail | Higher Passed | Lower Passed | Fail | Fail | Fail | Fail |
| 14 | Mr. Khalid Hyder Shah, D.D.O (Rev) Bannu | Higher Passed | Higher Passed | Higher Passed | Higher Passed | Higher Passed | Higher Passed | - |
| 16 | Mr. Abadat Khan, Tehsildar, Puran, Shangla Distt. | - | - | Higher Passed | Fail | - | - | - |
| 18 | Mr. Raj Bahadar, Tehsildar, Revenue Academy, Karak. | Higher Passed | Higher Passed | Higher Passed | Fail | Lower Passed | Higher Passed | Fail |
| 19 | Mr. Shah Nadir Khan, Tehsildar, Revenue Academy, Karak. | Lower Passed | Lower Passed | - | - | - | - | - |
| 21 | Mr. Abdus Saeed, Tehsildar, B.O.R, Peshawar. | Higher Passed | - | - | - | - | - | - |
| 22 | Mr. Ali Muhammad, Tehsildar, Dir | Lower Passed | Higher Passed | Lower Passed | Fail | Fail | Higher Passed | Fail |
| 23 | Mr. Behri Karam, Tehsildar, Wari, Dir(U) | - | - | Higher Passed | Higher Passed | - | - | - |

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RESULT OF DEPARTMENTAL EXAMINATION HELD IN JANUARY 2004

| Roll No. | Name & Designation | Criminal Law | Civil Law | Revenue Law | Treasury | Local Govt. | Jail | Patwar |
|----------|---|---------------|---------------|---------------|---------------|---------------|---------------|--------|
| 24 | Mr. Saifullah Khan, District Qanungo, Shangla Ditt. | Lower Passed | Higher Passed | Higher Passed | Fail | Higher Passed | Higher Passed | Passed |
| 27 | Mr. Sajid Khan, N.T F.R Kohat. | Higher Passed | Higher Passed | Higher Passed | Higher Passed | Higher Passed | Higher Passed | Passed |
| 28 | Mr. Fazli Qadir, Tehsildar, Bara, Khyber Agency. | Higher Passed | Higher Passed | Higher Passed | Higher Passed | Higher Passed | Higher Passed | Passed |
| 29 | Mr. Roshan Khan Mahsud, P.T Tirah, Khyber Agency. | Higher Passed | Higher Passed | Higher Passed | Higher Passed | Higher Passed | Higher Passed | Passed |
| 30 | Mr. Iftikhar Ahmad, P.T Orakzai Agency. | - | Higher Passed | Higher Passed | Higher Passed | - | - | - |
| 31 | Mr. Latifur Rehman, Tehsildar, B.O.R, Peshawar. | Fail | Fail | Higher Passed | Higher Passed | Higher Passed | - | Passed |
| 32 | Syed Muhammad Shafiq, N.T Acquisition, Swabi. | Fail | Fail | Lower Passed | Fail | Fail | Fail | Fail |
| 34 | Mr. Naseem Khan, Tehsildar, WAPDA, Miranshah | - | - | - | - | Higher Passed | - | - |
| 35 | Mr. Asmatullah, Tehsildar Shawal, N.W Agency. | - | - | Higher Passed | Higher Passed | Higher Passed | Higher Passed | Passed |
| 37 | Mr. Abdur Rehman, Tehsildar, Anti-Corruption, Peshawar. | Lower Passed | - | - | - | Higher Passed | - | - |
| 39 | Mr. Hidayatullah, N.T Gagra, Distt: Buner. | Higher Passed | Higher Passed | Higher Passed | Fail | Higher Passed | Higher Passed | Passed |
| 40 | Muhammad Asghar, Tehsildar, N.W Agency. | Lower Passed | Lower Passed | Higher Passed | Higher Passed | Higher Passed | Higher Passed | Passed |
| 41 | Mr. Javedullah Khan, P.T Parachinar, Kurram Agency | Higher Passed | Lower Passed | - | - | - | - | - |
| 42 | Mr. Irshad Khan, N.T Upper Dir | - | - | - | - | - | Higher Passed | - |

*Asst. Secy
Tirah*

Endst:No. SOS(ED)/Examination /2/78/April,2004. Dated Peshawar,the April 10, 2004.

Copy forwarded for information to :-

1. All District Coordination Officers in NWFP.
2. All Political Agents in NWFP.
3. The Secretary ,Board of Revenue NWFP,Peshawar.
4. The Accountant General NWFP,Peshawar.
5. The Section Officer Establishment (E-I).
6. The Section Officer (E-II)Establishment Department.
7. All concerned.

*Attested
Signature*



(MULHAMMAD JAMIL)
SECTION OFFICER(SECRET).

GOVERNMENT OF N.W.F.P.
ESTABLISHMENT DEPARTMENT
(SECRET SECTION)

Dated Peshawar, the August 27, 2004

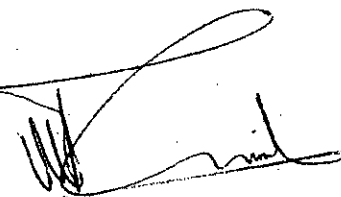
NOTIFICATION.

No.SOS(ED)Examination /2/78/April: 2004. Under Rules-II(3) of the prescribed for the examination of DMG,PCS and Tehsildars of NWFP as published with the Home Department Gazette Notification No.6857 /HG, dated 8.5.1952 8th May, 1952 the Governor of NWFP Province is pleased to declare the following candidates to have passed in various subjects of the Departmental Examination held in July,2004 at Peshawar by standard noted against each:

*Asst Secy
Peshawar*

(LIST ENCLOSED)

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Endst:No. SOS(ED)/Examination /2/78/Aug,2004. Dated Peshawar,the August 27,2004.

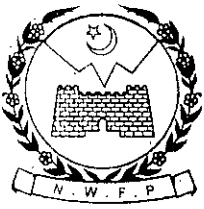
Copy forwarded for information to :-

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3. The Secretary ,Board of Revenue NWFP,Peshawar.
4. The Accountant General NWFP,Peshawar.
5. The Section Officer Establishment (E-I).
6. The Section Officer (E-II)Establishment Department.
7. All concerned.

*Attested
Inayatullah*



(MURHAMMAD JAMIL)
SECTION OFFICER(SECRET).



**GOVERNMENT OF THE
NORTH-WEST FRONTIER PROVINCE
ESTABLISHMENT DEPARTMENT**

NOTIFICATION

Dated Peshawar the 11.05.2007.

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

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

1. **Short title and commencement.**---(1) These rules may be called the North-West Frontier Province Provincial Management Service Rules, 2007.

(2) These rules shall come into force at once.

2. **Definitions.**---In these rules, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say-

- (a) "appointing authority" means the appointing authority as specified in rule 5 of these rules;
- (b) "Commission" means the North-West Frontier Province Public Service Commission;
- (c) "Department" means the Establishment and Administration Department;
- (d) "Departmental Examination" means the prescribed examination to be conducted by the Department for confirmation within probationary period or for promotion to higher post, as the case may be;
- (e) "Departmental Training" means any training prescribed by Government, the successful completion whereof is necessary for promotion to BS-18 and BS-19;
- (f) "Schedule" means the Schedule appended to these rules;
- (g) "Service" means the Provincial Management Service;
- (h) "Secretariat" means the North-West Frontier Province Civil Secretariat as defined in rule 2(r) of the North-West Frontier Province Government Rules of Business, 1985; and

*Asst. Secy
Establishment Dept.*

- (i) "share" means the share specified for distribution between All Pakistan Unified Group and Provincial Officers as per Schedule-III.

3. **Nomenclature of the posts**---The Service shall consist of the posts as specified in Schedule-I.

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

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

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

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

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

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

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

8. **Repeal**---The North-West Frontier Province Provincial Civil Service (Secretariat/Executive Group) Rules, 1997 shall stand repealed after the retirement of existing incumbents of both the cadres. Separate seniority lists of both the cadres shall be maintained under the existing rules and they shall be promoted at the ratio of 50: 50:-²[Provided that for the purpose of promotion of both the Secretariat Group and the Executive Group of the said service in different pay scales, -

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

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

CHIEF SECRETARY
Government of the
North-West Frontier Province.

*Attested
Fazal Hossain*

² Amended vide Establishment Department Notification No. SOE-III(E&AD)3-5/2007/(PMS) Dated 12/11.2007

To,

The Chief Secretary,
Government of Khyber Pakhtunkhwa,
Peshawar.

PS/C.S Khyber Pakhtunkhwa
Diary No. 13823
Date: 24-12-13

J
42

SUBJECT: DEPARTMENTAL APPEAL AGAINST OFFICE NOTIFICATION NO.5240-5415/ADMN-I/DPC/The/2008 DATED, 20/03/2008 OF THE S.M.B.R WHEREBY I WAS REGULARIZED WITH IMMEDIATE EFFECT INSTEAD OF 04/12/2001.

Respected Sir,

That during my entire services I have performed my all official duties to the best of my abilities, efficiency, and honesty with excellent services record throughout my service.

That on 04/12/2001 (Annex-A) I, along with others was selected from the regular post of Superintendent DLR as Tehsildar i.e from **BPS-16 to BPS-16 on acting charge basis** despite of the fact that regular vacancy was available and I was eligible and qualified for regular promotion.

That since my selection I rendered excellent services to the Department when on 20/03/2008 (Annex-B) my service along with others was regularized as Tehsildar BPS-16 **but with immediate effect instead of 04/12/2001** (Annex-B).

That as per the verdict of the Courts in such like circumstances, services are required to be regularized **from the date of occurring of the vacancy and not with immediate effect.**

That I have passed my prescribed departmental examination of DMG, PCS and Tehsildars on April 10, 2004 & August 27, 2004 (Annex-C&D), in higher status and entered into PCS (EG) Services. As per Rule 8 of Provincial Management Services Rules, 2007 that:-

" The North West Frontier Province Provincial Civil Service (Secretariat /Executive Group) Rules, 1997 shall stand repealed after the retirement of existing

*Abdullah
Fazal Khan*

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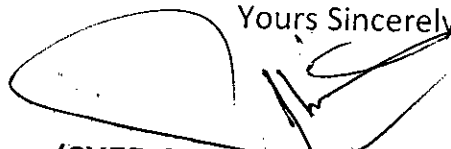
incumbents of both the cadres. Separate seniority list of both the cadres shall be maintained under the existing rules and they shall be promoted at the ratio of 50:50. The existing incumbents of PCS (E.G) and (S.G) in different pay scales, for the purpose of their promotion shall continue to be governed under the said service rules till the retirement of the last such incumbent ”.

Therefore, according to the decision of Services Tribunal in the Appeal No. 612/2008 decided on 13/03/2009 (Annex-E) upheld by August Supreme Court of Pakistan on dated 31/05/2012 (Annex-F), being PCS (E.G) officer I am required to be included in the seniority list of the cadre ibid.

That the impugned order dated 20/03/2008 badly damaged my vested rights of seniority etc which are against the norms of justice.

It is therefore, most humbly prayed that my order of regularization as Tehsildar may please be antedated from 04/12/2001 instead of 20/03/2008 and may be included in the seniority list of PCS (E.G) with all service benefits.

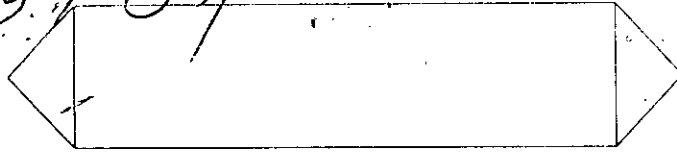
Yours Sincerely,



(SYED MUHAMMAD SOHAIL),
Section Officer, Home & TAs Department
Khyber Pakhtunkhwa.

Attested
Fogara Hage

بعدالت صواب سرورس کٹر ہونیل کسب



2014ء پنجاب

بنام گورنمنٹ کالجز

سید محمد نسیل

موردہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام لسٹاور کیلئے فصل حق کوہ دسامی

مقررہ کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز

وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور

بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق

زرایں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی

اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت

مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے

تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے

اور اس کا ساختہ پر داختم منظور قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے

سبب سے وہوگا۔ کوئی تازخ پیش مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں

گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھد یا کہ سندر ہے۔

سید محمد نسیل

2014ء

غزوری

ماہ

۵۶

المرقوم

د گ واہ الع

کے لئے منظور ہے۔

سماور

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Service Appeal No. 463/2014

Muhammad Sohail PMS-17.....Appellant

VERSUS

Senior Member Board of Revenue.....Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO.1 & 2 ARE AS UNDER: -

PRELIMINARY OBJECTIONS

1. That the appeal is badly time barred.
2. That appellant is estopped by his own conduct to institute the appeal.
3. The appellant has no grounds in support of his Appeal and no cause of action.
4. That the appeal is not maintainable in its present form.
5. That the appeal is not maintainable due to mis-joinder & non-joinder of necessary parties.
6. That the Hon'able Tribunal has got no jurisdiction to entertain the appeal.

RESPECTFULLY SHEWETH.

ON FACTS.

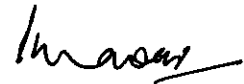
- 1 Incorrect. The appellant was selected as Tehsildar BPS-16 on Acting Charge Basis against the available vacancy in the quota of Ministerial Staff.
- 2 Incorrect. According to Para-VI of the promotion policy 2009, promotion will be made/notified with immediate effect and not from the date of occurrence of vacancy. The decision of court is applicable to cases where delay in filling of vacancy was on part of department, which is not the case instant appeal. (Policy Annexed-A)
- 3 Correct to the extent that in the year, 2008, on availability of regular post, the services of the appellant was regularized as Tehsildar with immediate effect.
- 4 Incorrect. Facts of the appeal are different from the ones decided by the Service Tribunal, therefore, the decisions have no bearing on this appeal.
- 5 As above.
6. Incorrect. Promotion will always be made / notified with immediate effect and not from retrospective effect as per previous Policy also. Further if the appellant was given attitude regularization after persons rights would be affected who are not penalty to this appeal.
7. Passing of examination has no bearing on granting of retrospective promotion.
8. Relates to Respondent No.3.
9. Incorrect. Order dated 20.03.2008 is in accordance with law.
10. Incorrect. The time barred appeal was sent to Establishment Department, being PMS BPS-17 Officer which was filed by Establishment Department, vide their letter. (Annexure-B).

20/10/

ON GROUNDS

- A. Incorrect. At the time of selection as Tehsildar there was no regular post of Tehsildar available against which the appellant selected as Tehsildar on regular basis.
- B. Incorrect. As in Para-A above.
- C. Incorrect. On availability of regular posts, the services of the appellant were regularized in the year, 2008.
- D. Incorrect as in Para C above.
- E. Incorrect. Under Rule 8 (4) of the Khyber Pakhtunkhwa Civil Servants Act, 1973 seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post.
- F. Incorrect. The appellant has rightly been given seniority from the date of his regular promotion as Tehsildar.
- G. Respondent will also take additional grounds at the time of arguments.

It is prayed that the time barred and merit less appeal may please be dismissed with costs.



Respondent No. 1&2

Annex A

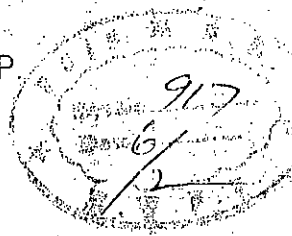


GOVERNMENT OF N.-W.F.P.
ESTABLISHMENT & ADMINISTRATION
DEPARTMENT
(ESTABLISHMENT WING)

No. SOE-III (E&AD)1-3/2008
Dated Peshawar the 28th January, 2009

To

1. The Additional Chief Secretary, GoNWFP.
2. The Additional Chief Secretary (FATA), Peshawar.
3. The Senior Member, Board of Revenue, N.-W.F.P.
4. All Administrative Secretaries to Government of N.-W.F.P.
5. The Secretary to Governor, N.-W.F.P.
6. The Principal Secretary to Chief Minister, N.-W.F.P.
7. All Divisional Commissioners in NWFP.



SUBJECT:- NORTH-WEST FRONTIER PROVINCE CIVIL SERVANTS PROMOTION POLICY, 2009.

Dear Sir,

I am directed to refer to the subject noted above and to say that in order to consolidate the existing Promotion Policy, which is embodied in several circular letters issued in piecemeal from time to time, and to facilitate the line departments at every level in prompt processing of promotion cases of Provincial civil servants, it has been decided to issue the "North-West Frontier Province Civil Servants Promotion Policy, 2009" duly approved by the competent authority, for information and compliance by all concerned. This Policy will apply to promotions of all civil servants holding appointment on regular basis and will come into effect immediately. The Policy consists of the provisions given hereunder:-

Handwritten notes:
S. M. B. R.
6/2/2009
B. A. S. M.
Aug 9/12

I. Length of service.

(a) Minimum length of service for promotion to posts in various basic scales will be as under:

| | |
|----------------|--------------------------------------|
| Basic Scale 18 | : 5 years' service in BS-17 |
| Basic Scale 19 | : 12 years' service in BS-17 & above |
| Basic Scale 20 | : 17 years' service in BS-17 & above |

No proposal for promotion shall be entertained unless the condition of the prescribed length of service is fulfilled.

(b) Service in the lower pay scales for promotion to BP-18 shall be counted as follows:

- (i) Half of the service in BS-16 and one fourth in Basic Scales lower than 16, if any, shall be counted as service in Basic Scale 17.
- (ii) Where initial recruitment takes place in Basic Scale 18 and 19, the length of service prescribed for promotion to higher Basic Scales shall be reduced as indicated below:

| | |
|----------------|--|
| Basic Scale 19 | : 7 years' service in BS-18 |
| Basic Scale 20 | : 10 years' service in BS- 18 and above or 3 years' service in BS-19. |

Section Officer E-3
Establishment Deptt.

Handwritten notes:
S.A.
1/11/09
1/11/09

II. Linking of promotion with training:

(a) Successful completion of the following trainings is mandatory for promotions of officers of the Provincial Civil Service / Provincial Management Service to various Basic Scales

- Mid-Career Management Course at National Institute of Management (NIM) for promotion to BS-19
- Senior Management Course at National Management College, Lahore for promotion to BS-20
- National Management Course at National Management College, Lahore for promotion to BS-21

(b) This condition will not be applicable to civil servants in specialized cadres such as Doctors, Teachers, Professors, Research Scientists and incumbents of purely technical posts for promotion within their own line of specialization as envisaged in the existing Promotion Policy

(c) The qualifying thresholds of quantification of PERs for nomination to these trainings are as under:

| | |
|------|----|
| MCMC | 60 |
| SMC | 70 |
| NMC | 75 |

(d) There will be no exemptions from mandatory trainings. An officer may, however, request for temporary exemption in a particular moment in time but grant of such exemption would be at the discretion of the competent authority. No such request with regard to an officer would be made by the Government Departments concerned.

(e) Three officers shall be nominated for each slot of promotion on the basis of their seniority. Those unwilling to attend will be dropped at their own expense without prejudice to the rights of others and without thwarting or minimizing the chance of improving the quality of service.

(f) Officers failing to undergo mandatory training in spite of two time nominations for a training shall stand superseded if such failure was not for the reasons beyond the control of the officers concerned.

III. Development of Comprehensive Efficiency Index (CEI) for promotion:

(a) The Comprehensive Efficiency Index to be maintained for the purpose of promotion is clarified as under:

- (i) The minimum of aggregate marks for promotion to various grades shall be as follows:

| Basic Scale | Aggregate marks of Efficiency Index |
|-------------|-------------------------------------|
| 18 | 50 |
| 19 | 60 |
| 20 | 70 |
| 21 | 75 |

(ii) A panel of two senior most officers shall be placed before the Provincial Selection Board for each vacancy in respect of promotion to BS-18 & 19. Similarly, a panel of three senior most officers shall be submitted to the Provincial Selection Board for each position in respect of promotion to BS-20 and 21 and the officer with the requisite score on the Efficiency Index shall be recommended for promotion.

(iii) The senior most officer(s) on the panel securing the requisite threshold of the Efficiency Index shall be recommended by the Provincial Selection Board for promotion unless otherwise deferred. In case of failure to attain the requisite threshold, he (she)/they shall be superseded and the next officer on the panel shall be considered for promotion.

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

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

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

(i) It shall be on the basis of Grade Percentage already awarded by the National School of Public Policy (National Management College and Senior Management Wing) and its allied Training Institutions as provided in their reports.

(ii) Previous reports of old Pakistan Administrative Staff College and old NIPAs where no such percentage has been awarded.

Section Officer E-3
Establishment Deptt.

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

TABLE-A
Old FASC & NIPAs

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

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

TABLE-B
NATIONAL DEFENCE UNIVERSITY

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

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

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

Section Officer E-3
Establishment Deptt.

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

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

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

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

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

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

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

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

Section Officer E-3
Establishment Deptt.

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

V. Deferment of Promotion:

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

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

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

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

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

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

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

Section Officer E-3
Establishment Deptt.

present before the PSB/DPC afresh.

VI. Date of Promotion: ✓

Promotion will always be notified with immediate effect.

VII. Notional Promotion:

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

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

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

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

IX. Promotion in case of pending investigations by NAB:

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

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

Yours faithfully,

Muhammad Abid Majeed
28 Jan, 09

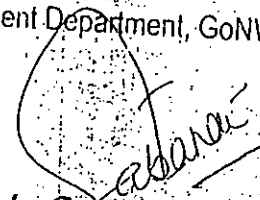
(MUHAMMAD ABID MAJEED)
Special Secretary (Regulations)

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

Dated Peshawar the 28th January, 2009

Copy forwarded to:

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

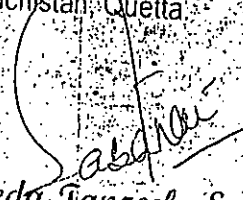

(Syeda Tanzeela Sabahat)
Section Officer (E-III)

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

Dated Peshawar the 28th January, 2009

Copy forwarded to:

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


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

Annex-B

**GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMN: DEPARTMENT
(REGULATION WING)**



No. SOR-II (E&AD) 2-54/2007 (Vol-I)
Dated Peshawar the 8th April 2013

General Diary

Dy: No. 16/6.....

Date 10/4/13
Revenue & Estate
Khyber Pukhtun Khawa.

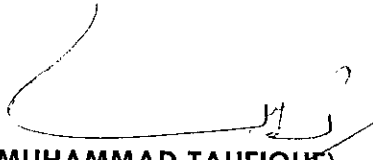
To,

The Assistant Secretary, Estt
Revenue & Estate Department,
Khyber Pakhtunkhwa.

Subject: - **REQUEST FOR ANTEDATE/REGULARIZATION IN (BPS-16) AND
OTHER BACK BENEFITS/CONSEQUENTIALS BENEFITS IN LIGHT OF
SUPREME COURT/SERVICES TRIBUNAL AND ESTABLISHMENT
DEPARTMENT ORDERS.**

R-136/e

I am directed to refer to your letter No.Estt-I/PMS/Seniority/7428 dated
26.3.2013 on the subject noted above and to state that the case has been filed being
not covered under the rules/policy of the Government.


(MUHAMMAD TAUFIQUE)
SECTION OFFICER (R-II)
Phone # 9211785

10/4/13

10/4/13

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 463/2014


Syed Muhammad Sohail.....Appellants

VERSUS

Senior Member, Board of Revenue and others.....Respondents

AFFIDAVITS

I Mir Qasim, Assistant Secretary (Lit;II) Board of Revenue Khyber Pakhtunkhwa do hereby solemnly affirm and declare on oath that the contents of the comments are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal .


Assistant Secretary (Lit;II),
Board of Revenue

VAKALAT NAMA

NO. 463 /2014

IN THE COURT OF Service Tribunal Peshawar

Mohammad Sohail

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

SMBR etc

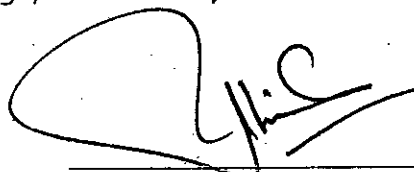
(Respondent)
(Defendant)

I/We Mohammad Sohail (Appellant)

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

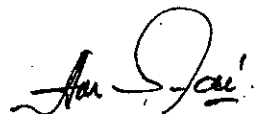
I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding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

Dated _____/20



(CLIENT)

ACCEPTED



M. ASIF YOUSAFZAI
Advocate

M. ASIF YOUSAFZAI
Advocate High Court,
Peshawar.

OFFICE:

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

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

Service Appeal No. 463/2014

Muhammad Sohail

VS

Revenue Deptt:

.....

REJOINDER ON BEHALF OF APPELLANT

.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

(1-6) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

- 1 Incorrect. The appellant was selected as Tehsildar BPS-16 on acting charge basis despite the fact that that regular vacancy was available and according to the judgment of Superior Courts when regular vacancy is available then the promotion should be made on regular basis and not on acting charge basis.
- 2 Incorrect. While para 2 of the appeal is correct.
- 3 Incorrect. Vacancy was available from the date when the appellant was promoted to Tehsildar on acting charge basis and according to Superiors Courts judgment services are required to be

regularized from the date of occurring of the vacancy and not with the immediate effect.

- 4 Incorrect. Facts of the instant appeal are similar to the ones decided by the Service Tribunal and on the principle of consistency the instant appeal should also be treated like the decided appeals.
- 5 Not replied according to para 5 of the appeal. Moreover para 5 of the appeal is correct.
- 6 Incorrect. While para 6 of the appeal is correct.
- 7 No comments.
- 8 Not specifically denied by the respondents, which means that para 8 of the appeal is correct.
- 9 Incorrect. The impugned order dated 20.3.2008 is not accordance with law as by this impugned order the appellant was deprived from his legal right of promotion from due date.
- 10 Incorrect. The departmental appeal was in time which was not decided by the respondents within the statutory period.

GROUND:


- A) Incorrect. At the time of selection of the appellant as Tehsildar vacancy of Tehsildar was available on which the appellant was selected as Tehsildar on acting charge basis and according to Superiors Courts judgment services are required to be regularized from the date of occurring of the vacancy. It means that the appellant should be regularized from the time availability of vacancy and not from immediate effect.
- B) Incorrect. As explain in para A.
- C) Not replied according to para C of the appeal. Moreover para C of the appeal is correct.

- D) Incorrect. At the time of selection of the appellant as Tehsildar vacancy of Tehsildar was available on which the appellant was selected as Tehsildar on acting charge basis and according to Superiors Courts judgment services are required to be regularized from the date of occurring of the vacancy. It means that the appellant should be regularized from the time availability of vacancy and not from immediate effect.
- E) Incorrect. While para E of the appeal is correct.
- F) Not replied according to para F of the appeal. Moreover para F of the appeal is correct.
- G) Legal.

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

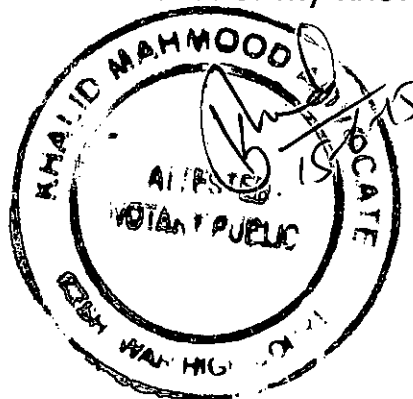
APPELLANT
Muhammad Sohail

Through:


(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.




DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

**A.W.P Province
Service Tribunal**
Diary No. 931
Dated 13-8-15

M. Sohail versus Chief Secretary, Khyber Pakhtunkhwa etc.

**APPLICATION ON BEHALF RESPONDENT NO. 3 FOR SETTING
ASIDE EX-PARTE PROCEEDINGS DATED 15-06-2015 IN THE TITLED APPEAL.**

Respectfully Sheweth,

- 1) That the above titled appeal is pending before this Hon'ble Tribunal which is fixed for 30.10.2015.
- 2) That on 15.06.2015 representative of the Respondent No. (Chief Secretary & Secretary Establishment) came to this Hon'ble tribunal & brought into the knowledge of reader of the Tribunal about the title appeal.
- 3) That on the same date i.e. 15.06.2015 another case under the titled of Writ Petition No. 1239-P/2015 Ihsan Ullah Versus govt. of Khyber Pakhtunkhwa was also pending before the Peshawar High Court, Peshawar in which respondent No. was also party to the writ Petition.
- 4) That representative of the respondent No. 3 went to Peshawar high court in the said writ petition in order to mark the attendance of respondent No. and when came to this Hon'ble Tribunal, he came to know that ex-parte proceedings has been initiated against the petitioners.
- 5) That absence of the petitioners are not intentional and deliberate rather it was through extreme emergency.
- 6) That there is Government interest involved in the present appeal and if present petition for setting aside ex-parte proceeding has not been expected then petitioners (Government) will suffer irrepable loss.
- 7) That the present petition is well in time and there is no legal bar to accept this petition
- 8) That there are judgments of the superior courts that no one should be condemned un-heard and cases should be decided on merits rather on technical grounds.
- 9) That any other ground/point will be raised at the time of arguments with the permission of this Hon'ble Tribunal.

It is therefore humbly prayed that on acceptance of this petition ex-parte proceedings dated 15.06.2015 may kindly be set aside and present petitioners/respondents may kindly be given an opportunity to submit their reply so that the title appeal may be decided on merits.

Any other remedy which is not specifically asked for may also be granted in favour of petitioners.

Petitioner

M. Sohail

Through Representative

with that all contents of this petition are correct to the best of and nothing has been concealed from this Hon'ble Tribunal.

M. Sohail
Representative



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 463/2014

Mr. Muhammad Sohail PMS BS-17.....(Appellant)

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Govt. of Khyber Pakhtunkhwa, Peshawar.
2. Senior Member, Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
3. Establishment Department through its Secretary, Govt. of Khyber Pakhtunkhwa, Peshawar..... (Respondents)

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

Respectfully Sheweth,

PRELIMINARY OBJECTIONS:

1. That the appeal is badly time barred.
2. That appellant is estopped by his own conduct to institute the appeal.
3. The appellant has no grounds in support of his Appeal and has no cause of action.
4. That the appeal is not maintainable in its present form.
5. That the appeal is not maintainable due to mis-joinder & non-joinder of necessary parties.
6. That the Hon'able Tribunal has got no jurisdiction to entertain the appeal.

ON FACTS:

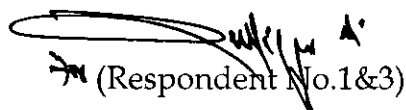
1. Incorrect. The appellant was appointed by way of promotion as Tehsildar BPS-16 on Acting Charge Basis against the available vacancy in the quota of Ministerial Staff.
2. Incorrect. According to Para-VI of the promotion policy 2009, promotion will be made / notified with immediate effect and not from the date of occurrence of vacancy. The decision of court is applicable to cases where delay in filling of vacancy was on part of department, which is not the case in instant appeal (Policy Annexed-A).
3. Correct to the extent that in the year, 2008, on availability of regular post, the services of the appellant were regularized as Tehsildar with immediate effect.
4. Incorrect. Facts of the appeal are different from the ones decided by the Service Tribunal, therefore, the decisions have no bearing on this appeal.
5. As above.

6. Incorrect. Promotion is always made / notified with immediate effect and not from retrospective effect as per previous Policy also. Further, if the appellant was given antedated regularization other persons rights would be affected who are not party to this appeal.
7. Passing of examination has no bearing on granting of retrospective promotion.
8. Incorrect. The officer has never remained in PCS (EG) cadre as he was promoted to BS-17 on 20.03.2008 and at that time PMS Rules were enforced. Moreover, the name of officer is not included in the seniority list of PCS (EG) Officers as it starts in BS-17.
9. Incorrect. Order dated 20.03.2008 is in accordance with law.
10. Incorrect. The time barred appeal was sent to Establishment Department, being PMS BS-17 Officer which was filed (Annex-B).

ON GROUNDS:

- A. Incorrect. At the time of appointment as Tehsildar there was no regular post of Tehsildar available against which the appellant could be appointed as Tehsildar on regular basis.
- B. Incorrect. As in Para-A above.
- C. Incorrect. On availability of regular posts, the services of the appellant were regularized in the year, 2008.
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- E. Incorrect. Under Rule-8(4) of the Khyber Pakhtunkhwa Civil Servants Act, 1973 seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post.
- F. Incorrect. The appellant has rightly been given seniority from the date of his regular promotion as Tehsildar.
- G. Respondent will also take additional grounds at the time of arguments.

It is prayed that the time barred and merit less appeal may please be dismissed with costs.


(Respondent No.1&3)

Senior Member Board of
Revenue
(Respondent No.2)

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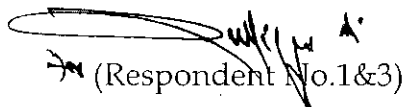
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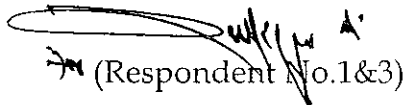
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