

1036/2014

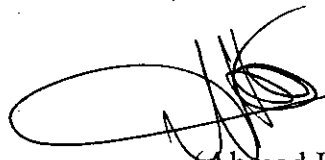
27.10.2017


Counsel for the appellant and Mr. Kabeerullah Khattak, Addl. Advocate General alongwith Hameedullah, Assistant Director of the respondents present.

2. Both the learned counsel for the parties agreed on the point that if this appeal is disposed of in the terms that the department shall calculate the quota of promotees in accordance with the prevalent rules at different stages and then the department shall consider only those appellants and others who are eligible and fit in accordance with the calculation of the department.

3. In view of the above, the respondents are directed that they should calculate the quota of promotees in accordance with the prevalent rules at different stages and then they should consider all those who are eligible and fit for promotion at different stages.

4. The appeal is disposed of in the above terms. Parties are left to bear their own costs. File be consigned to the record room.


(Ahmad Hassan)
Member



(Niaz Muhammad Khan)
Chairman

ANNOUNCED
27.10.2017

14. 07.07.2017

Learned counsel for the appellant and Mr. Kabir Ullah Khattak, Assistant AG for the respondents present. The respondent department is directed to produce complete all relevant record before the next date of hearing. To come up for such record and arguments on 27.10.2017 before D.B.

(Gul Zeb Khan)
Member



(Muhammad Hamid Mughal)
Member

04.08.2016

Counsel for the appellant and Syed Mudassir Shah, ADO alongwith Additional AG for the respondents present. Rejoinder submitted on behalf of appellant, copy whereof handed over to learned Additional AG. To come up for arguments on 7-12-16 before D.B.

07.12.2016

Counsel for the ^{Member} appellant and Syed Mudassir Shah, ADO alongwith ^{Member} Mr. Ziaullah, an, GP for the respondents present. One of the Member (Judicial) Mr. Muhammad Aamir Nazir is on casual leave therefore, the Bench is incomplete, hence adjourned. To come up for arguments on 7.4.17 before D.B.


(ASHFAQUE TAJ)
MEMBER

07.04.2017

Counsel for the appellant and Mr. Muhammad Jan, GP for the respondents present. Learned counsel for the appellant informed the Tribunal that identical service appeals are fixed for final hearing on 07.07.2017. Adjourned for final hearing for the said date alongwith the said appeals.


Member


Chairman

11.08.2015

Appellant in person and Mr. Javed Ahmed, Supdt. alongwith Assistant A.G for respondents present. Written reply not submitted. Requested for further adjournment. Last opportunity granted. To come up for written reply/comments on 15.10.2015 before S.B.


Chairman

15.10.2015

Since 15.10.2015 has been declared as public holiday on account of 1st Muharram-ul-Haram, therefore, case is adjourned to 28-1-15 for the same.


Reader

28.1.2016

Counsel for the appellant and Syed Mudassar Shah, ADO (lit.) alongwith Assistant AG for respondents present. Written reply not submitted despite last opportunity. Requested for further adjournment. Last opportunity is extended subject to payment of cost of Rs. 1000/- which shall be borne by the respondents from their own pockets. To come up for written reply/comments and cost on 13.4.2015 before S.B.


Chairman

13.4.2016

Counsel for the appellant and Syed Mudassir Shah, ADO alongwith Addl. A.G for respondents present. Written reply submitted and cost of Rs. 1000/- paid and receipt whereof obtained. Learned Addl. AG also relies on written reply of respondents No.1 & 2 on behalf of respondent No. 3. The appeal is assigned to D.B for rejoinder and final hearing for 04.08.2016.


Chairman

Appeal No. 1036/2014
Mr. Behrman

18.02.2015

Counsel for the appellant 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. He further contended that the appellant was appointed as Naib Qasid and still working for more than 7 years. He is highly qualified and has passed SSC; that the Government of Khyber Pakhtunkhwa has fixed 33% quota for Class-IV with SSC qualification for the promotion to the Junior Clerk post. But despite of that fixed quota and having eligibility, the appellant was never consider for promotion to the post of Junior Clerk. The appellant filed Departmental Appeal on 24.03.2014 which has not been responded within the statutory period of 90 days, hence the instant appeal on 21.07.2014. He further contended that similar nature case titled Mr. Jan Alam in Service Appeal No. 1593/2013 has already been admitted and pending before the Learned Bench-II and requested that the same may also be clubbed with the said appeal.

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, Notice be issued to the respondents for submission of written reply on 14.05.2015 before the learned Bench-II.

Member

14.05.2015

Agent of counsel for the appellant and Addl: A.G for respondents present. Written reply not submitted. Learned Addl: A.G requested for adjournment. To come up for written reply on 11.8.2015 before S.B.

Chairman

Appellant deposited process fee
& security
[Signature]

3

Reader Note:

12.11.2014

Appellant in person present. Since the Tribunal is incomplete, therefore, case is adjourned to 22.12.2014 for the same.

[Signature]
Reader

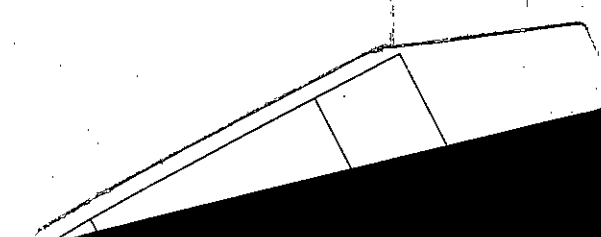
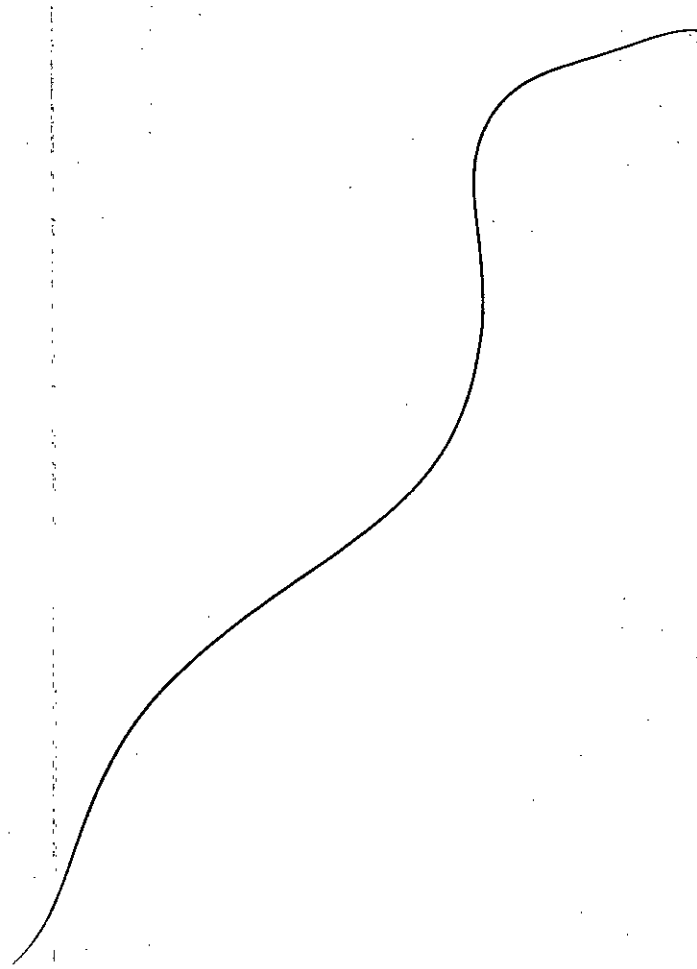
4

Reader Note:

22.12.2014

appellant in person present. Since the Tribunal is incomplete, therefore, case is adjourned to 18.02.2015 for the same.


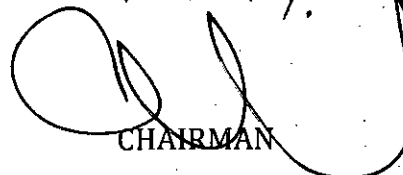
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Reader



Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1036/2014


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	12/08/2014	<p>The appeal of Mr. Behramand resubmitted today by Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	20-8-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>12-11-2014</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Behramand Class-IV employee GGPS Papra, Charsadda received today i.e. on 21.07.2014 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of appointment order mentioned in para-1 of the memo of appeal (Annexure-A) is not attached with the appeal which may be placed on it.
- 2- Annexures of the appeal may be attested.
- 3- Annexure-H of the appeal is illegible which may be replaced by legible/better one. ✓
- 4- Annexures-E, N, O & P are not attached with the appeal which may be placed on it. ✓
- 5- Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 1116 /S.T,

Dt. 28/7 /2014.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Muhammad Asif Yousafzai Adv. Pesh.

Re-submitted after compliance.

1. Removed.
2. Removed.
3. Removed.
4. Removed by correcting annexures, as N, O & P are made by his mistake
5. Removed.

Re-submitted
Mr. Asif

211
212

Re-submitted after correspondence.

- 1. removed.
- 2. removed.
- 3. removed.
- 4. removed by correction of error.
- 5. removed.

Re-submitted
for

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

Appeal No. 1036 /2014

Mr. Behramand

V/S

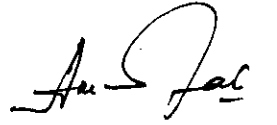
Education Department.

I N D E X


S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	-----	01-03
2.	Copy of Appointment Order	-A-	04
3.	Copy of SSC	-B-	05
4.	Copy of Notification	-C-	06
5.	Copy of Departmental Appeal	-D-	07
6.	Copy of Judgment dt.30.01.2009	-E-	08-11
7.	Copy of Judgment dt.21.10.2011	-F-	12-14
8.	Copy of Judgment dt.11.01.2012	-G-	15-17
9.	Vakalat Nama	--	18

Appellant
Behramand

Through:


(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

And


Taimur Ali Khan
Advocate, Peshawar.

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

Appeal No. 1036 /2014

Mr. Behramand, Class-IV Employee,
Government Girls Primary School,
Papra, Charsadda.

21-7-2014

APPELLANT

VERSUS

1. The Director Education, (E&SE), Peshawar.
2. The Distt: Edu: Officer (E&SE), Charsadda.
3. The Secretary, Finance Department, Khyber Pakhtunkhwa,
Peshawar.

RESPONDENTS

.....

APPEAL UNDER SECTION-4 OF THE KPK SERVICE TRIBUNAL ACT 1974 FOR DIRECTION THE RESPONDENT TO CONSIDER THE APPELLANT FOR PROMOTION TO THE POST OF JUNIOR CLERK UNDER 33% FIXED QUOTA BY THE GOVERNMENT AND AGAINST NOT TAKING ANY ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN STATUTORY PERIOD.

.....

PRAYER:

THAT ON ACCEPTANCE OF THIS APPEAL, THE RESPONDENTS MAY BE DIRECTED TO CONSIDER THE APPELLANT FOR PROMOTION TO THE POST OF JUNIOR CLERK UNDER 33% QUOTA FIXED BY THE GOVERNMENT FROM HIS DUE DATE WITH ALL BACK & CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

.....

as submitted to me
and filed.

21/7/14
21/8/14

RESPECTFULLY SHEWETH:

1. That the appellant joined the respondent department on 24.5.2007. The appellant has more than 07 years service with good record through out at his credit. Copy of Appointment Order is attached as Annexure-A.
2. That the appellant is qualified and has passed SSC, with more than 07 years experience. Copy of Certificate is attached as Annexure-B.
3. That the Government of KPK has fixed 33% quota for Class-IV with SSC qualification for the promotion to the post of Junior Clerk. But despite of that fixed quota and having eligibility, the appellant was never consider for promotion to the post of Junior Clerk. Copy of Notification is attached as Annexure-C .
4. That the appellant fled Departmental Appeal for his claim on 21.3.2014 and waited for 90 days, but no reply has been received by the respondent to the appellant so far, hence the present appeal following grounds amongst the others: Copy of Departmental Appeal is attached as Annexure-D.

GROUND:

- A) That not granting pay benefits of higher post of Junior Clerk and not considering the appellant for regular promotion under 33% quota is against the norms of justice and material on record.
- B) That the appellant is senior most eligible and qualified Class-IV employee and he is entitled to be promoted as Junior Clerk under 33% reserved quota.
- C) That the appellant has been kept deprived from his legal right of promotion which is not tenable under the norms of justice and fair play.
- D) That the respondent department has never observed 33% quota, rather the department promoted the most junior person under 33% quota who were junior to appellant. Thus, the promotion order issued by the respondent department of the most junior person is highly discriminatory and based on nepotism.

- E) That similar appeal have already been decided by this august Tribunal Appeal No.769/2008 decided on 30.1.2009, Appeal No.1604/2010 decided on 21.1.2011 and appeal No.104/2011, and No.323/2011 decided on 11.1.2012. Thus, the appellant also deserves the same treatment under the principle of consistency being similarly placed person. Copies of the Judgments are attached as Annexure- (E, F and G). N, O & P.
- F) That the appellant has not been treated according to law, rules governing the 3355 quota of appellant.
- G) That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

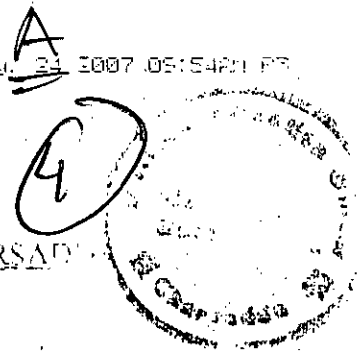
Appellant *Bahsamanand*
(Behramand)

Through:

M. Asif Yousafzai
(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

And

Taimur Ali Khan
(Taimur Ali Khan)
Advocate, Peshawar.



OFFICE OF THE EXECUTIVE DISTRICT OFFICER S&L CHARSADDA

OFFICE ORDER:

Consequent upon the approval of District Selection Committee (Schools & Literacy Department) Charsadda in its meeting held on 07-02-2007 and duly sanctioned by the competent authority, Mr. Bahramang Khan S/O Hidayat ullah Khan, Paora Korona is hereby appointed as Naib Qasid at GGHS Rajjar against the pay of Rs.4000/= (fixed) per month from the date of taking over charge at school in the interest of public service.

Terms & Conditions:

1. The appointment has purely been made on temporary basis & liable to termination at any time without asking any reason or notice.
2. The candidate is required to produce Health and age certificate from the authorized Medical Superintendent before taking over charge. He should not be allowed to take over charge if his age less than 18 years and above 45 years.
3. If charge is not taken over with in 14 days after the receipt of this order, this order will stand withdrawn automatically.
4. Charge report should be submitted to all concerned.

(SAYED INAMUL HAQ)
EXECUTIVE DISTRICT OFFICER
S&L CHARSADDA

Endstt: No. 4011-18 / Date 24/05 /07
Copy forwarded for information to the:

1. P.S to Chief Minister N.W.F.P.
2. District Coordination Officer Charsadda.
3. Deputy District Officer (M&F) Charsadda.
4. Chairman Education Monitoring committee Charsadda.
5. District Accounts Officer Charsadda.
6. Head Teacher concerned.
7. Candidate concerned.
8. Office file.

ACO
25/5
FILE

[Signature]
EXECUTIVE DISTRICT OFFICER
S&L CHARSADDA

ATTESTED
[Signature]

S. No 0762275

Roll No 26384

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

(5) B

BOARD OF INTERMEDIATE AND SECONDARY EDUCATION



Peshawar N.W.F.P. Pakistan

Secondary School Certificate Examination

SESSION SUPPLEMENTARY 1990

THIS IS TO CERTIFY THAT Bahramand

Son/Daughter of Hidayat Ullah

and a resident of Charsadda District

has passed the *Secondary School Certificate Examination*

of the Board of Intermediate & Secondary Education, Peshawar held in October 1990

as a *Private Candidate*. He/She obtained 386 Marks out of 850

and has been placed in Grade D Representing Dair

The Candidate passed in the following subjects:

- | | | | |
|------------|---------------------|-----------------|-----------------|
| 1. English | 3. Islamiyat | 5. Gen: Maths | 7. Isl: Studies |
| 2. Urdu | 4. Pakistan Studies | 6. Gen: Science | 8. Pashto |

Date of birth according to admission form is First May,

one thousand nine hundred and Seventy Three (01-5-1973)

Asstt. Secretary
23rd January 1991

This certificate is issued without alteration for erasure.

Secretary

ATTESTED

VERIFIED AND FOUND CORRECT

Ahmed
Secretary
 (Publicity)
 M.E.P. Islamabad

GRADING FORMULA

(Maximum Marks 850)

Percentage of Marks

Grades

Remarks

80% and above

A One 680 and above

Outstanding

70% and below 80%

A 595 to 679

Excellent

60% and below 70%

B 510 to 594

Very Good

50% and below 60%

C 425 to 509

Good

40% and below 50%

D 340 to 424

Fair

Below 40% and Minimum Pass Mark 339 and below

Satisfactory



ATTESTED

23500

Attestation Stamp

IBCC

WILAYAT KHAN KHATTAH
 Administrative Officer
 Inter Board Examinations Chairmen
 Government of Pakistan
 Ministry of Education
 Islamabad.



PAKISTAN SECURITY

ATTESTED

Zafar Iqbal Awan
 (ZAFAR IQBAL AWAN)
 Assistant Protocol Officer
 Ministry of Foreign Affairs
 Government of Pakistan

**Camp Office
 Peshawar**

09 JUN 2004

07 JUN 2004

S. Akhbar
S. Akhbar

C-1
6

GOVERNMENT OF NWFP
ESTABLISHMENT & ADMINISTRATION DEPARTMENT.

NOTIFICATION

Peshawar, dated the 04 January, 2009

No.SOE-III(E&AD)1-8/2008:- In pursuance of provisions contained in sub-rules(2) of Rule-3 of the North West Frontier Province, the servants (Appointment, Promotion and Transfer) Rules, 1989; the Establishment and Administration Department in consultation with the Finance Department, hereby direct that in this Department's Notification No.SOR-1(S&GAD)4-2/82; dated 8th June, 1988, the following further amendments shall made namely:

AMENDMENTS

In the Appendix, for the existing entries in columns No.3, 4 and 5 against serial No.7, the following shall be substituted in the In the respective columns, namely:

(1)	Secondary School Certificate or equivalent qualification form a recognized Board; and	18030 years	(a) Thirty three percent by promotion, form amongst Daftaries and Naib Qasids or other equivalent posts with two yeas service as such who have passed Secondary School Certificate Examination; and
(ii)	A speed of 30 words per minutes in typing.		(b) Sixty seven percent by initial recruitment.

Note: For the purpose of promotion there shall be maintained a common seniority list of Daftaries and Naib Qasids etc with reference to the date of their acquiring the Secondary School Certificate:

Certified that:-

- (i) If two or more officials have acquired the Secondary School Certificate in the same session, the official having longer service shall rank senior to other officials, and
- (ii) Where a senior official dose not possess the requisite experience at the time of filling up a vacancy, the official next junior to him possessing the requisite experience shall be promoted in preference of the senior official or officials.

SECRETARY TO GOVERNMENT OF THE
NORTH WEST FRONTIER PROVINCE
ESTABLISHMENT & ADMINISTRATION DEPARTMENT.

ATTESTED
A

To

The District Education Officer (Female)
(E&SE), Charsadda.

7

Subject: **DEPARTMENTAL PROMOTION UNDER
33% QUOTA FIXED BY THE GOVERNMENT.**

Sir,

Most profoundly, it is submitted that I was appointed as Naib Qasid on 24.5.2007 and I have also passed my SSC examination in the year 1991.

The Government of KPK has fixed 33% quota for promotion against the post of Junior Clerk from amongst the qualified Matriculate Class-IV employees. But unfortunately, the said quota fixed by the Government has never been observed in its true letter and spirits. Thus, I as well as many Class-IV employees are suffering from in-action of the concerned office.

It is also astonishing to note that the employees namely Mr. Niaz Ali and Muhammad Rehman who were appointed much after my appointment have been promoted under 33% quota by violating the rules and principle of seniority as well. More than 50 posts of Junior Clerk are falling in the share of 33% quota which means the posts are also available under 33% quota fixed by the Government.

Therefore, keeping in view the above submission, it is requested that I may kindly be considered and promoted to the post of Junior Clerk under 33% quota fixed by the Government from due date being eligible for the same.

I shall be thankful for your kind consideration.

Yours Sincerely,

Behramand 24-3-14
(Behramand)
Class-IV employee,
GGPS, Papra, Charsadda.

28/16
24/3/14

203
24/3/14

[Handwritten signature]

ATTESTED
[Handwritten mark]

BEFORE THE N.W.F.P. SERVICE TRIBUNAL, PESHAWAR.

APPEAL NO. 769/2008

Date of institution ... 30.05.2008

Date of decision ... 30.01.2009



Sharif Khan, Naib Qasid,
Office of the Political Agency, Khyber Agency..... (Appellant)

VERSUS

1. Regional Co-ordination Officer, Northern Region, Peshawar.
2. The Political Agent, Khyber Agency.
3. Mr. Haq Nawaz, Junior Clerk,
Political Agent's office Khyber Agency..... (Respondents)

APPEAL U/S 4 OF THE NWFP SERVICE TRIBUNALS ACT, 1974
AGAINST THE ORDER DATED 24.4.08, WHEREBY JUNIOR
NAIB QASID HAS BEEN PROMOTED AND AGAINST THE
FINAL REJECTION ORDER DATED 24.5.2008, WHEREBY THE
DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN
REJECTED FOR NO GOOD GROUNDS.

Mr. Muhammad Asif Yousafzai,
Advocate.....

(For appellant)

Mr. Arshad Alam, A.G.P.....

For official respondents

Mr. Khalid Rehman, Advocate.....

For respondent No.3

Mr. Justice (R) Salim Khan.....

Chairman

Mr. Bismillah Shah.....

Member

JUDGMENT

JUSTICE (R) SALIM KHAN, CHAIRMAN:-

The appellant

contended that he joined the respondent department as Naib Qasid on 1.5.1986.

The name of the appellant was at the top of the seniority list. The appellant

qualified SSC examination. The official respondents issued promotion order of

private respondent No.3 (Haq Nawaz) in violation of seniority position on

24.4.2008. The appellant filed departmental appeal on 10.5.2008 against the said

order but the same was rejected on 24.5.2008. The present appeal was filed on

30.5.2008. The departmental appeal and this service appeal are within time.

2. The respondents contested the appeal. It was contended by the respondent

No.3 that this Tribunal had no jurisdiction, that the appellant passed SSC

examination in 2007, that no appeal could be filed to Service Tribunal regarding

the determination of fitness or otherwise of a person to be appointed to a higher

ATTESTED

EXAMINER
Khyber Pakhtunkhwa

ATTESTED

post or grade. Respondent No.2 admitted that the name of the appellant was at the top of the seniority list but he was not considered for promotion for two reasons:-

- (i) that the appellant had qualified SSC examination in the year 2007 while respondent No.3 had qualified that examination in 1994, therefore, respondent No.3 was considered senior to the appellant,
- (ii) the age of the appellant was more than 45 years and he was not eligible for promotion in accordance with the Notification dated 18.8.1991.

4. We heard the arguments and perused the record.

5. The comments of Political Agent Khyber dated 21.5.2008 in his letter to the Regional Coordination Officer, Northern Region at Peshawar shows that the appellant was ignored for promotion for two reasons:

- (i) that he was over-age,
- (ii) that he was not so promoted in January 2007 also and the appellant had not objected to that order.

It means that the Political Agent had not taken up the point of passing of examination by respondent No.3 earlier in time during his mentioned correspondence, and the issue is an after-thought for the purposes of this appeal only.

6. The Notification No.E&A(A.D)4(17)/2003 dated 17.4.2004 is regarding the post of Daftari (and not the post of Junior Clerk). The issue of posting of the appellant as Daftari is not ^{under} discussion in this case, therefore, the mentioned rule is not applicable. It was for the official respondents to consider that who had passed SSC examination earlier in time, when they wanted to promote a person as Daftari.

7. The Notification No.SOE.IV(E&AD)/1-35/2002 dated 01.12.2006 was

ATTESTED,

EXAMINER

ATTESTED

EXAMINER
Khyber District

regarding amendment in column 5 against Serial No.9, in clause (b), of the Notification No.SOR-I (S&GAD)4-7/86(A), dated 21.12.1982. It contained that the words mentioned in clause (b) "and under 45 years of age" before semi-colon shall be deleted. Serial No.9 of the mentioned Appendix was regarding the post of Junior Clerk. The words "or below forty five years of age" stood deleted from the mentioned method of recruitment for the post of Junior Clerk. There was no conditional priority of passing SSC examination earlier in time for the purpose of seniority, though, as already mentioned, there was such a condition for the post of Daftari. The appellant, therefore, had to be retained as senior most when he passed examination in 2007 in spite of the fact that respondent No.3 had passed examination in 1994.

8. As for the issue of estoppel regarding promotion of another person as Junior Clerk in 2007 and silence by the appellant, it has come on record that the appellant passed SSC examination in ~~1994~~ 2007 only. He, therefore, had no cause of action against that person when he himself was not qualified by passing SSC examination. Silence of the appellant regarding the promotion of that person, even, if the appellant was qualified at that time, could be considered as estoppel in the case of that person only, but not as perpetual estoppel for all persons and for all times to come.

9. The official respondents appear to had mixed up the rules for the post of Daftari with the rules for the post of Junior Clerk, and did not pay attention to the amendment to the rules vide Notification dated 01.12.2006. It prejudiced the appellant and adversely affected his valuable right of consideration for promotion.

10. We, therefore, accept the present appeal, and direct the official respondents to consider the case of the appellant for promotion as Junior Clerk on the basis of merits and , if he is found fit and eligible, the appellant

ATTESTED

ATTESTED

EXAMINER

Khush-Datta

be promoted as Junior Clerk with effect from the date on which respondent No.3 was so promoted. The official respondents may either adjust respondent No.3 as Junior Clerk, but as junior to the appellant, if another post of Junior Clerk is available for him, or may revert him to his original post so that the only post of Junior Clerk becomes available for the appellant with effect from the date on which respondent No.3 was promoted as Junior Clerk to that post. The parties are, however, left to bear their own costs.

Bismillah Singh
(BISMILLAH SHAH)
MEMBER

[Signature]
(JUSTICE (R) SALIM KHAN)
CHAIRMAN

ANNOUNCED
30.01.2009

Date of Presentation of Application	3-3-2011
Number of Words	160
Copying Fee	10-00
Urgent	2-00
Total	12-00
Name of Copyist	4
Date of Completion of Copy	3-3-2011
Date of Delivery of Copy	3-3-2011

Certified to be true copy

[Signature]
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ATTESTED
[Signature]

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 1604/2010

Date of Institution. ... 17.08.2010
Date of Decision ... 21.10.2011



Mr. Yar Gul, Chowkidar,
G.P.S Charahgan, Mardan. ...

(Appellant)

VERSUS

1. The District Coordination Officer, Mardan.
2. The EDO (E&S.E), Mardan.
3. DPC through its Chairman, EDO(E&SE) Mardan.
4. Mr. Alamzeb J. Clerk, GGHS Bagoo Banda Mardan. ... (Respondents)

APPEAL U/S 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 17.3.2010 WHEREBY JUNIOR OFFICIAL(RESPONDENT NO.4) HAS BEEN PROMOTED AS JUNIOR CLERK BY IGNORING THE APPELLANT AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN 90 DAYS.

MR. MUHAMMAD ASIF YOUSAFZAI,
Advocate. ...

For appellant

MR. TAHIR IQBAL,
Addl. Government Pleader ...

For official respondents

MR. NOOR MUHAMMAD KHATTAK,
Advocate. ...

For respondent No.4.

SYED MANZOOR ALI SHAH,
MR. KHALID HUSSAIN ...

MEMBER
MEMBER

ATTESTED
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

JUDGMENT

SYED MANZOOR ALI SHAH, MEMBER.- This appeal has been filed by appellant Yar Gul, against the order dated 17.3.2010, whereby junior to him was promoted while he was ignored. It has been prayed that on acceptance of the appeal, order dated 17.3.2010 may be set aside and the respondents may be directed to consider the appellant for promotion to the post of Junior Clerk under 33% quota reserved for promotion.

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(13)

Brief facts of the case are that the appellant joined the Education Department as Chowkidar vide order dated 31.10.1987. He passed SSC examination in the year, 1989 and FA in the year, 2009 during service. He was at S.No.6 of the seniority list of Class-IV servants while respondent No.4, who joined the department in the year, 1988 was at S.No.18 of the seniority list. The provincial Government had fixed 33% quota for promotion of matriculate Class-IV servants to the post of Junior Clerk. The appellant according to the said notification was entitled to be promoted as Junior Clerk. The respondent department promoted private respondent No.4 on 17.3.2010. Feeling aggrieved, the appellant filed departmental appeal 17.4.2010, which elicited no response within the statutory period, hence this appeal.

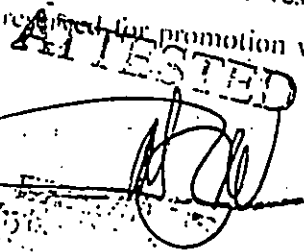
3. Notices were issued to the respondents. Respondents No. 1 to 3 have filed their joint written reply while private respondent No.4 filed written reply through his counsel and contested the appeal. The appellant also filed rejoinder in rebuttal.


4. Arguments heard and record perused.

5. The learned counsel for the appellant argued that the appellant was appointed as Chowkidar in the year, 1987. He passed SSC examination in the year, 1989 and FA in the year, 2009. He was at S.No.6 of the seniority list. On the other hand private respondent No.4 was appointed in the year, 1988 and was at S.No.18 of the seniority list. Therefore, the appellant had more right over private respondent No.4 for consideration for promotion to the post of Junior Clerk against 33% quota reserved for promotion amongst Class-IV civil servants. He further argued that respondent No.4 has been promoted as Junior Clerk while the appellant has been ignored. Moreover, condition of age limit had already been quashed by the august Supreme Court of Pakistan as well as this Tribunal in judgment dated 30.4.2009 in Service Appeal No. 2380/1997. He requested that the appeal may be accepted as prayed for.

6. Counsel for private respondent No.4 argued that as per Notification dated 1.2.2009, the age limit for promotion to the post of Junior Clerk is upto 30 years, whereas the appellant is over and above 45 years of age, therefore, he is not entitled to be promoted to the post of Junior Clerk. On the other hand, the appellant being qualified, eligible and within the prescribed age limit rightly been promoted as Junior Clerk. He further argued that that the Tribunal has no jurisdiction to give directions to the respondent department to fill the posts in promotion quota. He relied on PLD-1994-Supreme Court-539. He requested that the appeal may be dismissed.

7. Perusal of record would show that the appellant was at S.No.6 while private respondent No. 4 was at S.No. 18 of the seniority list of Class-IV of the respondent department. Private respondent No.4 was promoted as Junior Clerk under 33% quota required for promotion while the appellant was ignored on the plea that he had crossed the

ATTESTED


ATTESTED


upper age limit, otherwise he was fully qualified to be promoted against the post of Junior Clerk. Since condition of upper age limit had already been quashed by the august Supreme Court of Pakistan, therefore, he was entitled to be considered for promotion alongwith his colleagues and by not doing so, he has been discriminated.

In view of the above, the appeal is accepted, and the respondent department is directed to consider the appellant for promotion against the post of Junior Clerk from the date when his juniors were promoted. No order as to costs. File be consigned to the record.

ANNOUNCED
11.10.2011

(INOOR ALI KHAN)
MEMBER

(SYED MANZUOR ALI SHAH)
MEMBER

Certified to: *copy*

FF
Khyber Pakhtunkhwa
Sindh
Peshawar

Date of Presentation of Application 28.12.2011
No. of Application 1200
Costs 8
Utility 2
Total 10
Name of Applicant [Signature]
Date of Submission 28.12.2011
Date of Decision 28.12.2011

ATTESTED
[Signature]

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR



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Appeal No. 104/2011

Date of Institution ... 22.1.2011
Date of Decision ... 11.1.2012

Mr. Zahoor Jan, Junior Clerk, Government High School No.1, Nowshera Kalan...

(Appellant)

VERSUS

1. The District Coordination Officer, Nowshera.
2. The EDO(E&S.E), Nowshera.
3. The Secretary Government of Khyber Pakhtunkhwa, Finance Department, Peshawar.

(Respondents)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 FOR GRANTING FULL MONITORY BENEFITS OF JUNIOR CLERK GRADE AND SCALE SINCE 13.2.2010 TILL DATE AND ONWARDS, AND FOR REGULAR PROMOTION TO JUNIOR CLERK UNDER 33% QUOTA.

MR. MUHAMMAD ASIF YOUSAFZAI,
Advocate,

For appellant.

MR. TAHIR IQBAL,
Addl. Government Reader,

For respondents

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

MEMBER
MEMBER.

JUDGMENT

SULTAN MAHMOOD KHATTAK, MEMBER:- This appeal has been filed by Zahoor Jan, the appellant, under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 for granting full monetary benefits of the post of Junior Clerk and since 13.2.2010 for regular promotion to Junior Clerk under 33% quota. It has been prayed that on acceptance of the appeal, the respondents may be directed to grant pay benefits of higher scale (Junior Clerk post) w.e.f. 13.2.2010 with all consequential benefits. The respondents may further be directed to consider the appellant for regular promotion to Junior Clerk post under 33% quota fixed by the Government.

ATTESTED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ATTESTED

[Signature]

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2. Brief facts of the case are that the appellant joined the respondent department on 3.10.1993 as Laboratory Attendant. The appellant has more than 17 years service at his credit with qualification of M.A. He was adjusted against the post of Junior Clerk (BPS-7) in his own pay and scale, by the competent authority, vide order dated 13.2.2010. The Government of Khyber Pakhtunkhwa has fixed the 33% quota for Class-IV, having the qualification of SSC for promotion against the post of Junior Clerk but the appellant has not been considered for promotion till date. The appellant filed departmental appeal on 7.10.2010, which elicited no response within the statutory period, hence the present appeal.

3. The appeal was admitted to regular hearing on 22.3.2011 and notices were issued to the respondents for submission of written reply. Respondents have filed their joint written reply and contested the appeal. Rejoinder was also filed in rebuttal. Arguments heard and record perused.

4. The learned counsel for the appellant argued that the appellant was appointed as Laboratory Attendant on 3.10.1993, having the qualification of SSC. He further acquired qualification of M.A during service. Being highly qualified, the appellant was adjusted as Junior Clerk on 13.2.2010 in his own pay and scale instead of consideration on regular basis. Even without monetary benefits, which is against the verdict of august Supreme Court of Pakistan. Moreover, the Hon'ble Tribunal in Service Appeal No. 59/2006, decided on 15.6.2006 allowed monetary benefits in accordance with the law. So far as the question of seniority is concerned, it was the responsibility of the respondent department to issue seniority list on yearly basis. He stated that the matter pertains to terms and conditions of service of the appellant, thus Tribunal has ample jurisdiction to entertain the present appeal. In this connection, the learned counsel for the appellant relied on PLD 2006 Supreme Court 246 (b). Counsel for the appellant referred to Service Appeal No. 1604/2010, decided on 21.1.2011, that this Hon'ble Tribunal has directed the respondents to consider the appellant for promotion with effect from the date junior to him were promoted. Moreover, cases of similar nature have already been decided in favour of the appellants in Service appeals No. 769/2008. Counsel for the appellant also produced copy of order No. 4235-39, dated 1.10.2009, whereby one Mr. Imad ud Din Naib Qasid holding diploma of "Associate Engineer" has been promoted against the vacant post of Junior Clerk against 33% quota which is junior to the appellant. He requested that the appeal may be accepted as prayed for.

The learned AGP argued that it is true that the appellant was adjusted as Junior Clerk on 13.2.2010 but in his own pay and scale. So he is not entitled to receive

ATTESTED

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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Facts of the case are that the appellant joined the respondent department on 3.10.1993 as Laboratory Attendant. The appellant has more than 17 years service at the time of his promotion against the post of Junior Clerk (13.2.2010) in his own pay and scale, by the competent authority, vide order dated 13.2.2010. The Government of Khyber Pakhtunkhwa has fixed the 33% quota for Class-IV, having the qualification of SSC for promotion against the post of Junior Clerk but the appellant has not been considered for promotion till date. The appellant filed departmental appeal on 7.10.2010, which elicited no response within the statutory period, hence the present appeal.

3. The appeal was admitted to regular hearing on 22.3.2011 and notices were issued to the respondents for submission of written reply. Respondents have filed their joint written reply and contested the appeal. Rejoinder was also filed in rebuttal. Appointments sheet and record perused.

4. The learned counsel for the appellant argued that the appellant was appointed as Laboratory Attendant on 3.10.1993, having the qualification of SSC. He further acquired qualification of M.A. during service. Being highly qualified, the appellant was adjusted as Junior Clerk on 13.2.2010 in his own pay and scale instead of consideration on regular basis. Even without monetary benefits, which is against the verdict of august Supreme Court of Pakistan. Moreover, the Hon'ble Tribunal in Service Appeal No. 592/2006, decided on 15.6.2006 allowed monetary benefits in accordance with the law. So far as the question of seniority is concerned, it was the responsibility of the respondent department to issue seniority list on yearly basis. He stated that the matter remains to terms and conditions of service of the appellant, this Tribunal has ample jurisdiction to entertain the present appeal. In this connection, the learned counsel for the appellant relied on PLD 2006 Supreme Court 246 (b). Counsel for the appellant referred to Service Appeal No. 1604/2010, decided on 21.1.2011, that this Hon'ble Tribunal has directed the respondents to consider the appellant for promotion with effect from the date junior to him were promoted. Moreover, cases of similar nature have already been decided in favour of the appellants in Service appeals No. 769/2008. Counsel for the appellant also produced copy of order No. 4235-39, dated 1.10.2009 whereby one Mr. Imad ud Din Naib Qasid holding diploma of "Associate Engineer" has been promoted against the vacant post of Junior Clerk against 33% quota which is junior to the appellant. He requested that the appeal may be accepted as prayed for.

The learned AGP argued that it is true that the appellant was adjusted as Junior Clerk on 13.2.2010 but in his own pay and scale. So he is not entitled to receive

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ATTESTED

salary of that post. Since the appellant has not been considered for regular promotion and will be considered on his turn on the basis of 33% quota reserved for promotion. Moreover, there is no record produced by the appellant which show that the appellant is most senior official in class-IV employees. He requested that the appeal may be dismissed.

6. The Tribunal observes that the respondents have never maintained any list pertaining to 33% quoted fixed for Class-IV employees and the respondents exercising pick and choose while promoting Class-IV employees to the post of Junior Clerk. The appellant has been posted as Junior Clerk in his own pay and scale and deprived of his promotion due to no valid reasons and improper exercise of discretion. As reported in PLD 2006 Supreme Court 246 (b) in case of depriving a civil servant of his legitimate right of promotion in an illegal manner and by improper exercise of discretion, this Tribunal has the jurisdiction under Section 4 (b) (i). The matter pertains to terms & conditions of service of the appellant which have been violated. The Tribunal further observes that the appellant has been made to work on higher post without benefits attached to that post which is violative of basic rights and according to the judgments of the august Supreme Court ^{as reported in the PLD 1994 Supreme Court 233 (d)} and this Tribunal judgment in Service Appeal No. 59/2006 dated 15.6.2006, the appellant is fully entitled to receive salary of that post. There were clear vacancies of Junior Clerk available in 33% quota which was never observed strictly in accordance with law and rules and keeping seniority positions of the Class-IV employees. The respondent No.2 has made order in own pay and scale basis instead of regular promotions which is against the law. One Mr. Imadud Din has been promoted which is junior to the appellant.

7. In view of the above, the appeal is accepted, and the respondent department is directed to consider the appellant alongwith others against the posts lying vacant in 33% promotion quota immediately from the date when vacancy was available for them within 90 days with all service benefits from that date. The appellant is also entitled to full pay benefits of the post of Junior Clerk post from the date of adjustment as Junior Clerk in own pay and scale. Parties are left to bear their own costs. File be consigned to the record.

8. This order will also dispose of connected Service Appeal No. 323/2011 Iftikhar Ali Versus DCO, Nowshera and others, in the same manner.

ANNOUNCED
11.7.2012

(NOOR ALI KHAN)
MEMBER

(SULAYMAN MAHMOOD KHATTAK)
MEMBER

ATTESTED

Certified to be a true copy
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR
Service Appeal No.1036/2014

Mr. Bahramand
Vs
Govt. of Khyber Pakhtunkhwa

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**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR
Service Appeal No.1036/2014**

**Mr. Bahramand
Vs
Govt. of Khyber Pakhtunkhwa**

Written Reply on behalf of Respondents

Respectfully Sheweth:

Preliminary Objections:

- A. The Appellant has no locus standi and cause of action.
- B. That the present Appeal is wrong, baseless and not maintainable, it shows no cause to be taken for adjudication, therefore the same Appeal is liable to be rejected/ dismissed.
- C. That the Appeal is bad for misjoinder and no joinder of necessary parties.
- D. That no legal right of the appellant has been violated, therefore the appellant has no right to file the instant appeal.
- E. That the appeal is wholly incompetent, misconceived & not maintainable in its present form..
- F. The Appellant is completely estopped/precluded by his conduct to file this Appeal.
- G. Appellant has not come to this Hon' able Tribunal with clean hands. The Appeal also suffers from mis-statements and concealments of facts and as such the Appellant is not entitled to equitable relief.
- H. That the Hon' able Tribunal has got no jurisdiction to adjudicate upon and the Appeal is liable to be dismissed.
- I that there is no find order from which the appellant is aggrieved hence the appeal is not maintainable under section(4) of service tribunal Act.

PARA WISE REPLY ON FACTS:

1. Para 1 pertains to the record.
2. Para 2 pertains to the record, the Appellant will be consider on his own turn after becoming eligible.
3. It is correct that the Government of KPK has fixed 33% quota for class four with SSC qualification Subject to the typing experience thirty words per minutes, moreover the appellant is at S. NO 136 as per waiting list and he will be consider

on his own turn after acquiring the requisite qualification for junior clerk (**copy of tentative waiting list annexed A**), The appellant is only SSC and he does not possess requisite Typing speed. (**copy of notification Annexed(B)**)

4. Para 4 as per para 3

GROUNDES.

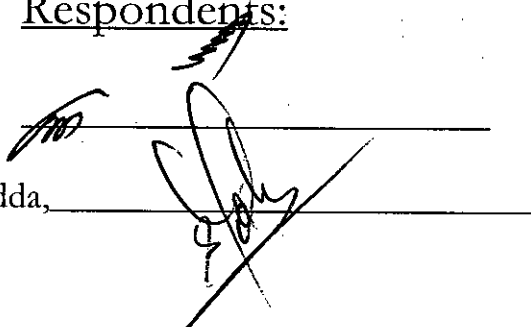
- (A) Incorrect, no vested right of the appellant is violated by the respondent further he does not possess the required qualification, the respondents acted as per law.
- (B) Incorrect only those official were promoted who have fulfilled the requisite qualification.
- (C): As per Para A
- (D) Incorrect no discrimination or illegalities committed by the respondent , hence reply of ground D as per para 3 (**copy of tentative waiting list annexed A.**)
- (E) Incorrect the instant appeal is different from the appeals mentioned in para (e)
- (F) incorrect As per para mentioned above.
- (G) That the respondent also seek permission of this honorable tribunal to Adduce further points at the time of arguments.

IT IS THEREFORE MOST HUMBLLY PRAYED THAT THE APPEAL OF THE APPELLANT MAY GRACIOUSLY BE DISMISSED WITH COST IN FAVOUR OF RESPONDENTS.

Respondents:

1; Director E&SED:KPK

2; District Education Officer Female Charsadda,

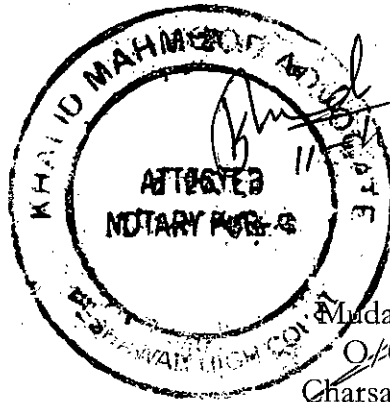
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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR
Service Appeal No.1036/2014

Mr. Bahramand
Vs
Govt. of Khyber Pakhtunkhwa

AFFIDAVIT

I Mr. Mudassir Shah ADEO Litigation of the DEO (F) Charsadda do hereby as per information conveyed to me by DEO (F) Office solemnly affirm and declared that the contents of para wise reply are true and correct to the best of my knowledge and nothing has been intentionally concealed from this Hon'ble Tribunal.



Deponent

Mudassir Shah ADEO Litigation
O/O DEO (FEMALE)
Charsadda CNIC: 17101-6347249-1

OFFICE OF THE DISTRICT EDUCATION OFFICER (FEMALE) CHARSADDA
TENTATIVE SENIORITY LIST OF CLASS-IV EMPLOYEES

Annex 4

S.No	Name	Father Name	Designation	D/O/Birth	D/O/1st Apptt	Academic Qualification	Professional Qualification	Name of School
1	Habib Khan	Mohammad Anwar	N/Qasid	01/01/1993	04/12/1980			GGMS Qandaroo Killi
2	Razaq Khan	Dewan Maseeh	Sweeper	05/01/1957	27/09/1981			GGHSS umarzai
3	Gul Roz	Imrooz Khan	Sweeper	11/04/1966	19/10/1983	SSC		GGHS Tangi
4	Rasheeda Begum	Hazrat Gul	Caller	26/06/1959	27/06/1984			GGCMHS Charadda
5	Treeza Bibi	Nawab	Sweeper	24/08/1956	25/08/1984			GGHS Rajjar
6	Hazrat Bilal	Gul Faraz	Beheshti	21/12/1967	14/02/1987			GGHS Tangi
7	Nasreen Bibi	Batta Maseeh	Sweeper	01/03/1957	02/03/1987			GGHS Charsadda Khas
8	Qayum Shah	Muzafar Shah	Beheshti	01/04/1967	03/08/1987			GGHSS Turangzai
9	Ijaz Mohammad	Din Mohammad	Chowkidar	1968	23/09/1987			GGHS Sheikh Killi
10	Ghafoor Khan	Mohammad Hussain	N/Qasid	14/10/1968	01/10/1987	SSC		GGHS Prang
11	Hadi Gul	Redi Gul	Lab: Attendant	07/10/1968	08/10/1987	SSC		GGHS Dosehra
12	Sabz Ali	Wazeer Zada	Chowkidar	01/11/1955	01/11/1987			GGHSS umarzai
13	ilham Uddin	Sahib Uddin	Sweeper	1963	01/02/1988			"do"
14	Sajid Khan	Sawab Khan	Bearer	13/06/1969	10/02/1988	SSC		GGHSS Shabqadar Fort
15	Abdul Majeed	Abdul Manan	N/Qasid	1975	09/07/1988			GGMS Mian Killi
16	Noor Gul	Lawang Gul	N/Qasid	01/10/1968	01/10/1988			GGHSS Matta Palangzai
17	Zar Bibi	Gul Rooz	Sweeper	01/10/1968	01/10/1988			GGHSS Matta Palangzai
18	Jan Sultan	Fida Mohammad	Sweeper	18/10/1960	17/10/1988			GGCMHS Charadda
19	Moharib Zaman	Khan Mohammad	Beheshti	01/09/1969	13/09/1989			DEO (Female) Charsadda
20	Nisar Ahmad	Noor Mohammad	Mali	07/02/1970	01/02/1990			GGCMHS Charadda
21	ZahoorUl Haq	Sabih Ul Haq	N/Qasid	16/06/1969	04/04/1990	SSC		GGMS Kalyas
22	Mumtaz Khan	Umar Khan	Chowkidar	01/01/1961	08/10/1991			GGCMHS Charadda
23	Gul Jamal	Zabardast Shah	Chowkidar	15/02/1965	01/01/1992			GGHS Tangi
24	Jamal Shah	Durrani	N/Qasid	1969	31/03/1992			"do"
25	Faqir Mohammad	Mir Mohammad	N/Qasid	1957	01/04/1992			GGHS Kot Baba Tangi
26	Hayat Ullah	Tawab Shah	N/Qasid	03/05/1958	02/05/1992			GGHS Sheikh Killi
27	Saeed Ur Rahman	S. Noor Rahman	Lab: Attendant	02/05/1958	02/05/1992			"do"
28	Dawood Jan	Amir Nawaz	Lab: Attendant	01/01/1966	07/07/1992			"do"
29	Mohammad Khalid	Baz Gul	N/Qasid	04/01/1968	09/01/1993			GGMS Sheikhan Dosehra
30	Amali Shah	Sulaiman Shah	N/Qasid	14/02/1964	13/02/1993			"do"
31	Arshad Jan	Qaisar Khan	Beheshti	15/09/1970	14/02/1993	SSC		GGMS Ghari Kaka Khel
32	Iltaf Khan	Habib Ullah	N/Qasid	15/02/1963	15/02/1993			GGMS Shakhn No.6
33	Mohammad sohail	Mohammad Dawood	N/Qasid	01/01/1975	01/03/1993			GGHS Boobak
34	Mahroof Ali	Rab Nawaz Khan	N/Qasid	01/05/1970	02/03/1993	FA		GGHS Zarbab Ghari
35	Mazam Ali	Hayat Ullah	Sweeper	27/02/1964	02/03/1993			GGHS Zarbab Ghari
36	Saleem Shah	Shahzad Gul	Mali	01/01/1997	05/06/1993			GGCMHS Charadda

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37	Ayub Jan	Mohammad Sarwar	N/Qasid	04/01/1971	15/06/1993	FA		GGMS Yaghi Band
38	Sher Wali	Muhid Khan	Beheshti	01/01/1965	01/07/1993			GGHS Jammatt
39	Amroozia	Mohib Khan	Sweeper	01/01/1994	01/04/1994			"do"
40	Jan said	Amir Syed	N/Qasid	01/01/1959	11/05/1994			GGHS umarzai
41	Maqsood Ullah	Yousaf ur Rahman	Sweeper	1957	15/05/1994			GGHS Battagram
42	Shaukat Ali	Faqir Mohammad	Chowkidar	30/06/1957	01/07/1994			"do"
43	Imdad Mohammad	Faqir Ullah	N/Qasid	04/01/1968	25/09/1994	SSC		GGMS Kangra
44	Ghulam Rasool	Mohammad Noor	Sweeper	01/07/1971	19/12/1994			GGMS Kangra
45	Rahat Bibi	Habib Ur Urahman	Beheshti	07/03/1965	29/08/1995			"do"
46	Bi Jan	Mohammad Yaqoob	Sweeper	02/07/1960	29/08/1995			"do"
47	Niaz Mohammad	Asif Jan	N/Qasid	04/09/1969	31/08/1995			GGHS Dhakki
48	Abdul Qayum	Toor Lali	N/Qasid	14/12/1972	10/10/1995			"do"
49	Wazir Mohammad	Mohammad Hassan	N/Qasid	01/07/1957	30/11/1995			GGMS Dargai
50	Said Hussain Mohd	Syed Khan Mohammad	N/Qasid	21/04/1959	30/11/1995			GGMS Tangi
51	Wazir Mohammad	Gul Badshah	Sweeper	01/01/1960	26/12/1995			GGMS Mahzara
52	Mohammad Ali	Jan Mohammad	N/Qasid	01/01/1965	26/12/1995			GGMS Mahzara
53	Zarshanda	Naeem Shah	Sweeper	01/07/1957	04/04/1996			GGHS Safo Bari Band
54	Zaman Khan	Azam Khan	Sweeper	30/08/1975	22/04/1996			GGMS Kaptan Killi
55	Nizar Ullah	Hanif	Sweeper	01/01/1963	24/04/1996			GGHS Nahaqi Gul Abad
56	Arif Ullah	Zareen Gul	Mali	01/07/1978	26/05/1996			GGHS umarzai
57	Zuhra Bibi	Abdul Wadood	Beheshti	01/01/1966	01/09/1996			GGCMS Charadda
58	Farman Ali	Jehan Shah	N/Qasid	01/07/1962	02/11/1996			GGHS umarzai
59	Istikhar	Gul Rahman	Chowkidar	01/07/1966	02/11/1996			GGHS umarzai
60	Ibni Amin	Rahman Gul	N/Qasid	05/06/1968	02/11/1996			GGHS Sherpao
61	Naseem Khan	Najam Khan	Chowkidar	02/11/1970	02/11/1996			"do"
62	Sajid Khan	Sobat Khan	Lab: Attendant	01/07/1970	02/11/1996			"do"
63	Rozeena	Akhtam Uddin	Lab: Attendant	01/01/1972	02/11/1996			"do"
64	Bakht Zareena	Sanobar	Lab: Attendant	13/04/1958	02/11/1996			"do"
65	Usman Ali	Mir Alam Khan	Chowkidar	02/01/1977	01/01/1997			"do"
66	Farooq Shah	Mohammad Shireen	Beheshti	01/12/1967	01/01/1997			"do"
67	Kiramat Ullah	Fazlullah	N/Qasid	02/02/1964	29/05/1997			GGHS Charsadda
68	Farhat Begum	Safdar Khan	Sweeper	1960	20/08/1997			GGHS Shah Afzal Abad
69	Akhtar	Khuda Khan	N/Qasid	10/09/1969	10/09/1997			GGHS Tangi
70	Awal Mir	Gul Zameer	Sweeper	01/01/1962	20/10/1997			GGMS Umar Abad
71	Manzoor Ahmad	Abdul Raof	Lab: Attendant	15/05/1977	11/12/1997	FA		GGHS Boobak
72	Akhtar Gul	Enzar Gul	Beheshti	1966	11/12/1997			GGHS Boobak
73	Mir Wali Shah	Zareen Shah	Chowkidar	1973	11/12/1997			GGHS Boobak
74	Mustaq Ahmad	Azad Gul	N/Qasid	1977	17/12/1997	SSC		GGHS Dado Killi
75	Gul Siyar	Azad Gul	Sweeper	17/12/1989	17/12/1997			GGHS Dado Killi
76	Mohib Gul	Purdal Khan	Sweeper	01/04/1963	22/01/1998			GGMS Tehbana Maqbool Abad

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77	Roshan Zari	Mumtaz Khan	Bearer	01/01/1965	30/04/1998			GGCMHS Charadda
78	Sehra	Mira Khan	Lab: Attendant	1970	01/07/1998			GGHS Jammatt
79	Syed Ullah	Mira Khan	Chowkidar	1967	01/07/1998			GGHS Jammatt
80	Shah Jehan	Fazli Elahi	N/Qasid	15/10/1968	07/10/1998			GGMS Ibrahimzai
81	Sameen Jan	Fazli Elahi	N/Qasid	04/05/1962	07/10/1998			GGMS Ibrahimzai
82	Sammi Ul Haq	Sartaj Ul Haq	N/Qasid	20/04/1979	09/11/1998			GGMS Cheena
83	Jan Parvez	Qadir Khan	N/Qasid	1962	19/11/1998			GGHS Daulat Pura
84	Ismaeel	Qadir Khan	Sweeper	25/11/1965	19/11/1998			GGHS Daulat Pura
85	Sher Alam	Yar Gul	N/Qasid	1972	23/02/1999			GGHSS Mandani
86	Bibi Kahtoon	Mir khan	Sweeper	1968	23/02/1999			"do"
87	Sher Alam	Yar Gul	N/Qasid	1972	23/02/1999			GGHSS Mandani
88	Bismillah Jan	Fazal Raoof	Mali	18/04/1981	01/04/1999	SSC		"do"
89	Syed Ali Shah	Mutawakill Shah	N/Qasid	06/11/1971	01/04/1999	SSC		"do"
90	Fouzia Naz	Mohammad Ismaeel	Sweeper	1972	01/04/1999			"do"
91	Margrate	Joseph Maseeh	Sweeper	21/01/1974	01/05/1999			GGCMHS Charadda
92	Wazir Mohammad	Mukhtiar khan	N/Qasid	1957	30/06/1999			GGMS Mulyanoo Killi
93	Khalid Khan	Fazli Rahman	N/Qasid	10/10/1977	02/09/1999			GGMS Mulyanoo Killi
94	Mohamad Nihar	Mohammad Israr	N/Qasid	16/06/1972	11/09/1999			GGMS Arsala Killi
95	Wahid Zaman	Mohammad Israr	N/Qasid	20/08/1973	12/09/1999			GGMS Arsala Killi
96	Arshad Khan	Dost Mohammad	Beheshti	01/01/1975	01/10/1999			GGHS Charsadda Khas
97	Bakht Bibi	Sultan Mohammad	Sweeper	1973	01/07/2000			GGMS Mulyano Killi
98	Noor Wali Shah	Mian Gul	N/Qasid	1975	03/10/2000			GGHS Shah Passand Killi
99	Mir Akbar Shah	Abdul Manan	N/Qasid	1967	22/11/2000			GGMS Gahri Abdul Manan
100	Hameeda Begum	Imrooz Khan	Sweeper	31/12/1958	31/01/2004			GGMS ?????
101	Yasmeen	ilham ud din	Caller	01/01/1980	23/02/2004			GGHS Rajjar
102	Iftikhar Ullah	Gul Nabi	Lab: Attendant	20/01/1968	19/05/2004	SSC		GGHS Charsadda Khas
103	Sher Rahman	Raza Mohammad	Sweeper	1977	19/07/2004			?????
104	Hamid Ali	Nisar Mohammad	Chowkidar	15/03/1980	10/08/2004	FA		"do"
105	Mohammad Iqbal	Niaz Mohammad	N/Qasid	11/01/1962	10/08/2004			GGMS Rajjar
106	Alam Zeb	Mohammad Ilyas	Sweeper	1969	11/08/2004			"do"
107	Naheed Begum	Patah Mohammad	Lab: Attendant	06/09/1965	16/08/2004	SSC		GGHS Tangi
108	Amuza Begum	Mohammad Arif	Sweeper	01/01/1968	01/11/2004			GGCMHS Charadda
109	Abdullah	Dilbar Khan	N/Qasid	12/07/1984	01/12/2004			GGHSS Shabqadar Fort
110	Darwesh Khan	Anwar Khan	N/Qasid	15/02/1967	01/01/2005	SSC		GGMS Yaghi Band
111	Shah Jehan	Syed Roshan Bacha	Chowkidar	1964	05/04/2005			GGHSS Shabqadar Fort
112	Mohammad Wisal	Mohammad Arif	Lab: Attendant	13/09/1971	13/04/2005	FA		GGCMHS Charadda
113	Nawab Gul	rahma Gul	Lab: Attendant	10/02/1977	15/04/2005	SSC		GGHSS Shabqadar Fort
114	Hasbunullah	Fazli Rabbani	N/Qasid	25/03/1976	15/04/2005			GGHSS Shabqadar Fort
115	Inam Ullah	Naseer Mohammad	N/Qasid	24/11/1973	19/04/2005	FA		GGHS Rajjar
116	Inam Gul	Pasham Gul	N/Qasid	14/02/1979	21/04/2005	SSC		GGMS Hikmat Abad

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117	Abdul Malik	Bahlol Khan	N/Qasid	1977	23/04/2005		GGHS Muslim Abad Shakorr
118	Irum Gul	Pasaham Gul	Sweeper	14/02/1979	21/06/2005	SSC	GGMS Hikmat Abad
119	Jehangir Khan	Sher Akbar	Chowkidar	01/05/1975	01/09/2005		GGHS Jamrooz Khan Killi
120	Mohammad Younas	Sher Zada	Sweeper	05/03/1981	01/09/2005	SSC	GGHS Jamrooz Khan Killi
121	Amrooz Bibi	Irfan Ghafoor	N/Qasid	01/07/1978	01/09/2005	FA	GGHS Jamrooz Khan Killi
122	Israr Ali	Ridad Mohammad	Chowkidar	12/07/1983	01/10/2005	BSc	"do"
123	Irfan Ghafoor	Abdul Ghafoor	Lab: Attendant	01/12/1982	19/12/2005	FA	GGHS Jamrooz Khan Killi
124	Mujahid Khan	Sabir Khan	N/Qasid	02/03/1986	09/01/2006		GGHS Shah Afzal Abad
125	Hamid Iqbal	Noor Rahman	Lab: Attendant	06/02/1987	27/02/2006		"do"
126	Fareed Ullah	Rustam Khan	N/Qasid	1964	18/11/2006		GGHS Ali Jan Killi
127	Shazia	Zafar Khan	Lab: Attendant	03/01/1974	18/11/2006		GGHS Ali Jan Killi
128	Mujahid Khan	Mohammad Safdar Khan	Chowkidar	01/01/1962	19/11/2006		GGHS Shah Afzal Abad
129	safia Begum	Meher Dil Khan	Lab: Attendant	09/05/1971	19/11/2006		GGHS Shah Afzal Abad
130	Israr Bibi	Jaffar Shah	Sweeper	1966	22/11/2006		GGMS Gahri Abdul Manan
131	Mushtaq Hussain	Fazli Khaliq	N/Qasid	14/03/1985	25/11/2006		GGHS Gandheri
132	Mst: Mughala	Fazli Khaliq	Sweeper	1965	25/11/2006		GGHS Gandheri
133	Moin Khan	Yar Gul	Chowkidar	1969	19/12/2006		"do"
134	Aurangzeb	Jan Parvez	Chowkidar	01/01/1989	09/05/2007	BA	GGHS Daulat Pura
135	Akhtar Hussain	Nourooz Khan	Sweeper	02/03/1971	19/05/2007		GGMS Tarnab
136	Bahramand Khan	Hidayat Ullah Khan	N/Qasid		24/05/2007	SSC	GGHS Rajjar
137	Liaqat ali	Mir Alam Khan	N/Qasid	02/01/1978	09/06/2007	FA	GGHS Sarki Mulyan
138	Munzalifa	Ali Mohammad	Sweeper	01/05/1985	09/06/2007		"do"
139	Saeed Ahmad Ali Shah	Syed Shah -e- Rom	Lab: Attendant	10/03/1983	15/06/2007		GGHSS Matta Palangzai
140	Sabir Ahmad	Mohammad Shah	Chowkidar	15/06/1971	15/06/2007	BA	GGHSS Matta Palangzai
141	Shaheen Sardar	Hashmali Khan	Sweeper	1964	18/06/2007		"Do"
142	Bakht Zari	Mira Khan	Sweeper	1972	18/06/2007		GGHS Jammatt
143	Khair Ur Rahman	Lutf ur rahman	N/Qasid	20/03/1987	19/06/2007	FA	GGHS Sheikh Killi
144	Lal Bahdar	Jan Bahadar	Beheshti	01/01/1986	23/06/2007	SSC	"do"
145	Tahira Bibi	Farid Khan	Sweeper	1964	30/06/2007		GGMS Sani Zo Shah
146	Shafiq	Hayat Mohammad	N/Qasid	1986	30/06/2007		GGMS Sani Zo Shah
147	Zar Mohammad	Salikh Mohammad	Lab: Attendant	01/01/1985	23/09/2007		GGHS Daulat Pura
148	Arif Hussain	Mohammad Hussain	N/Qasid	01/10/1987	01/10/2007		"do"
149	Amir Mohammad	Lal Mohammad	Sweeper	21/10/1962	01/10/2007		GGMS Ghari Kaka Khel
150	Farhanda Naz	Rooh Ullah	Lab: Attendant	01/01/1966	03/10/2007		GGHS Kot Baba Tangi
151	Tajamul Hussain	Faqir Mohammad	Chowkidar	12/02/1983	03/10/2007		GGHS Kot Baba Tangi
152	Masood Shah	Baghi Shah	Lab: Attendant	10/04/1984	08/10/2007	MA	GGHS Shoodag
153	Jamal Shah	Rahman Uddin	Chowkidar	1964	08/10/2007		"do"
154	Israr Ali	Shah Wali	N/Qasid	12/02/1988	12/10/2007		GGMS Dargai
155	Taj Ali	Zareen	Sweeper	03/02/1982	19/10/2007		GGHS Rahmat Ullah
156	Ali Shah	Ghulam Ali	Lab: Attendant	01/07/1975	19/10/2007		GGHS Sheikh Killi

Amex
C.B.
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8. Senior Clerk

9. Junior Clerk

- i) Matriculation or equivalent qualification from a recognized Board; and
- ii) A speed of 30 words per minute in typing.

18-30 years

By promotion, on the basis of seniority-cum-fitness from amongst the post of Junior Clerk with two years services as such.

(a) 33% by promotion from amongst Daftaries, G Operator, Qasid and Naib Qasids including other equivalent posts in the Secretariat with two years service as such, who have passed S.S.C. Examination; and

(b) 67% by initial recruitment.

Note: - For the purpose of promotion, there shall be maintained a common seniority list of Daftaries, Gestetner Operators, Qasids, Naib Qasids etc with reference to the dates of their acquiring the Secondary School Certificate provided that:-

- i. If two or more official have acquired the SSC in the same session, the official having longer service shall rank senior to other officials.
- ii. Where a senior official does not possess the requisite experience at the time of filling up a vacancy, the official next junior to him possessing the requisite experience shall be promoted in preference of the senior official or officials.

SECRETARY TO GOVT. OF NWFP
ESTABLISHMENT & ADMINISTRATION DEPARTMENT.

7. Substituted vide Notification No. SOR.IV (S&GAD) 1-1/95(D), dated 13/3/1997.

Dated Peshawar, the December 21, 1982

Endst: NO.SORI (S&GAD) 4 - 7/86 (A)

Copy forwarded for information to the:-

1. All Administrative Secretaries in NWFP.
2. Secretary to Governor, NWFP.
3. All Section Officers: Estate Officer, E & A Department.

SECTION OFFICER (R.I)

Updated on 31st March, 2004
By E.IV Section, E&A.D

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1036/2014

Behramand

VS

Education Deptt:

.....

REJOINDER ON BEHALF OF APPELLANT

.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

(A-I) 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:

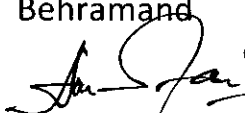

- 1 Admitted correct by the respondents as the service record of the appellant is in the custody of respondent department.
- 2 Admitted correct by the respondents as the service record of the appellant is in the custody of the respondent department.
- 3 First portion of the para is admitted correct that 33% quota for class four with SSC qualification but the typing experience is necessary for promotion is incorrect as typing experience is the requirement of initial recruitment. Moreover as per ESTACODE, no experience is required for promotion post from BPS-1 to BPS-16. Furthermore many juniors to the appellant were promoted while the appellant was deprived from his due right of promotion.
- 4 Not replied according to para 4 of the appeal moreover para 4 of the appeal is correct.

GROUND:

- A) Incorrect. Vested right of the appellant is violated by the respondents as many juniors to appellant were promoted. Further the appellant possesses the required qualification, but the appellant was deprived from his legal right of promotion under 33% quota.
- B) Incorrect. While Para B of the appeal is correct.
- C) As per para A.
- D) Incorrect. The Deptt: itself promoted the most junior person under 33% quota who were juniors to the appellant, thus the Deptt: itself committing irregularities on basis of nepotism in the promotion of junior clerks under 33% quota and deprived many seniors including the appellant from his due right of promotion.
- E) Incorrect. the instant appeal is similar to the appeals mentioned in para E of the appeal as all have the same cause of action and same grievances and the appellant should also deserve the same treatment under the principle of consistency being similarly placed person.
- F) Incorrect. While 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.

Through:

APPELLANT
Behramand

(M. ASIF YOUSAFZAI)
&

(TAIMUR ALI KHAN)
ADVOCATES ,PESHAWAR.

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from Hon'able Tribunal.


DEPONENT



KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 2368 /ST

Dated 31 /10 / 2017


To

The District Education Officer Male,
Government of Khyber Pakhtunkhwa,
Charsada.

Subject: JUDGMENT IN APPEAL NO. 1036/2014, MR. BEHRAMAND.

I am directed to forward herewith a certified copy of Judgement dated 27.10.2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.