

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 240/2013

Date of Institution ... 08.01.2013
Date of Decision ... 20.10.2021

Fazal Raheem Khattak, Ex-Instructor/Lecturer, GTVC, Gulbahar, Peshawar
... (Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat,
Peshawar and three others. ... (Respondents)

MR. SYED NOMAN ALI BUKHAR
Advocate ... For Appellant

MR. RIAZ KHAN PAINDAKHEIL,
Assistant Advocate General ... For Respondents No. 1 to 3

MR. ALI GOHAR DURRANI,
Advocate ... For Respondent No. 4

ROZINA REHMAN ... **MEMBER (JUDICIAL)**
ATIQ-UR-REHMAN WAZIR ... **MEMBER (EXECUTIVE)**

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are

that the appellant was appointed as Junior Instructor (BPS-14) against the post of senior instructor (BPS-17) on 17-06-1980. Later on, the appellant was re-appointed on regular basis in BPS-14 on 24-10-1987. The appellant spent most of his service tenure in litigation on various issues pertaining to his service. Since the appellant was serving against the post of senior instructor (BPS-17), hence he approached this tribunal for grant of BPS-17 ever since his appointment and regularization as such, but did not find favor vide judgment of this tribunal dated

27-07-1994, thereafter the appellant approached the apex court in Civil Appeal No. 129/1995, which was partially allowed vide judgment dated 11-06-1998 and the appellant was allowed benefits of BPS-17 from the date of appointment till passing of the judgment. The appellant was removed from service on the allegations of absence from duty vide order dated 04-04-2000, which order was challenged by the appellant in this tribunal in service appeal No 2188/2000 and which was decided in favor of the appellant vide judgment dated 11-06-2000. Once again the appellant was dismissed from service order dated 06-02-2003, which too was challenged by the appellant before this tribunal in service appeal No 400/2003 and the same was also allowed vide judgment dated 26-04-2007 and the appellant was re-instated in service. In the meanwhile, juniors to the appellant were promoted to the next grade, therefore after re-instatement into service, the appellant made series of applications to the department for his promotion to the post of instructor (BPS-17) with effect from the date his juniors were promoted, which was not acceded to. The respondents at a belated stage promoted the appellant on 07-06-2011, but by the time the appellant retired on 16-06-2011 and his promotion notification was issued on 09-07-2011. Feeling aggrieved, the appellant filed departmental appeal for antedation of his promotion with effect from 31-05-2002, but the same was not decided within statutory period, hence the appellant filed service appeal in this tribunal in service appeal No 240-2013, which was allowed vide judgment dated 16-10-2017, against which the respondents filed CPLA in the Supreme Court of Pakistan in CA No. 16/2020. The supreme court of Pakistan set aside judgment dated 16-10-2017 of this tribunal and remand the matter back to this tribunal for deciding the appeal afresh, in accordance with law and to consider the time limitation as well as the documents (ACRs) pertaining to his fitness for promotion at that particular time vide judgment dated 23-04-2020.

02. Learned counsel for the appellant has confined his arguments to the extent of time limitation and fitness of the appellant for promotion with respect to

ACRs of the appellant. On the question of limitation, the learned counsel have referred to the judgments of the apex court and argued that in cases of promotion, pay and other emoluments, limitation would not foreclose rights of the appellant already accrued to him. Reliance was placed on judgments reported as 2007 PLC (CS) 1267 and 2002 PLC (CS) 1388; that in light of the above-referred judgments, the issue of limitation was undisputed before this tribunal in judgment dated 16-10-2017, hence was not touched. On the question of service record pertaining to his ACRs, the learned counsel added that as per law and rule, ACRs containing bad entries are mandated to be communicated to the civil servant, but in case of the appellant, no such communication was made with the appellant; that respondents had delayed promotion of appellant without any justification, which they had already conceded in their comments and for which the appellant shall not suffer. Reliance was placed on 1979 SCMR 515; that otherwise, case of the appellant is based on genuine reasons, which was already allowed by this tribunal on merit, hence keeping in consideration this aspect, the appellant may be allowed ante-dated promotion.

03. Learned Assistant Advocate General for the respondents assisted by counsel for respondent No.4 contended that promotion of the appellant vide order dated 09-07-2011 was made with immediate effect in light of provincial government promotion policy 2009, where promotions are always made with immediate effect and not with retrospective effect; that promotion is not a vested right of employee, rather it is required to be earned in a prescribed manner; that promotion of the appellant was delayed due to his dismal service record and such cases having bad entries in record are usually not deemed fit for presenting before the departmental promotion committee; that the appellant had adverse entries in his annual reports, hence his case had not earned from the promotion committee; that the appellant preferred departmental appeal with delay of 18 months and it is

a well settled legal proposition that when departmental appeal before appellate authority is barred by time, the service appeal before this tribunal is incompetent.

04. We have heard learned counsel for the parties and have perused the record.

05. Arguments of the learned counsel for the appellant with regard to the question of limitation hold force, as the Judgments so referred have very clearly demarcated such limits and declared that no limitation would run in case of promotion, hence we assume that departmental appeal of the appellant though late, but in light of the judgments of the apex court, limitation would not hit the instant case. The question of adverse remarks in his annual reports was placed before the respondents, but they fail to prove that any adverse remarks were ever communicated to the appellant. The Supreme Court of Pakistan in its judgment reported as 1996 SCMR 850 have held that non communication of adverse remarks made authenticity of such remarks completely ineffective and on the basis of such un-communicated remarks civil servant could not be subjected to any adverse order. We have observed that respondents on one hand claims adverse entries in ACRs of the appellant and on the other hand, had promoted him with the same adverse entries and the respondents, when confronted with such question, as to what happened to such entries, when he was promoted to next grade, were unable to respond. The respondents were also confronted to the minutes of departmental promotion committee with respect to promotion case of the appellant, wherein it has been conceded that the delay occurred purely due to indifferent behavior on part of the respondents. Relevant portion of the minutes is reproduced as under:

"That the promotion case of Mr. Fazal Rahim Khattak, Junior Instructor (Related Studies) BPS-14 could not be timely placed before the departmental promotion committee and the official is now reaching the age of superannuation on 16-06-2011. It could be a inadvertent omission or typical example of human apathy and indifferent behavior on part of staff of DG/TE office. As per provincial

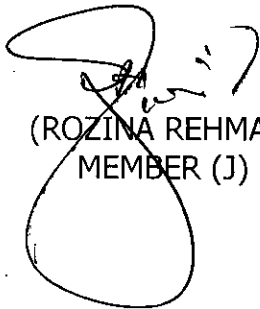
government policy contained in circular No SOR-I (S&GAD) I-29/75 Dated 13-04-1987, cases of inadvertent omission due to clerical error or plain negligence are to be considered for promotion as soon as the mistake comes to notice."

06. In the minutes so recorded, there is no mention of any adverse remarks, or any other deficiency, rather the committee had admitted that injustice is done to the appellant. We have observed that since his appointment, the appellant is on legal battle with the respondents and from 2000 onward, the appellant was twice dismissed from service and due to prolong litigation, the respondents developed grudge against the appellant, hence was kept deprived of promotion at the relevant time and finally when they realized that something wrong were done to the appellant, they promoted him but by the time, the appellant retired from service a few days before promotion. The delay in making promotion had occurred entirely due to slackness of respondents, for which the appellant shall not suffer. Réliance is placed on 1997 SCMR 515 and 2007 SCMR 1355. Withholding or delaying the process of promotion would neither entitle the respondents to agitate the plea of limitation nor such delay could deprive the appellant from claiming his right for consideration for promotion, as they themselves have committed delay, hence having no justification to blame the appellant for delay. Contention of the appellant to the effect that he may be granted pro-forma promotion from the date, his juniors were promoted, hold force, as the Supreme Court of Pakistan in its judgment reported as 2010 PLC (C.S) 760 has held that civil servant would be eligible to be considered for promotion, when substantive vacancy in promotion quota was available. Supreme court of Pakistan in another judgment reported as 1996 SCMR has held that where a civil servant who was not considered for promotion subject to any order made by competent authority in that behalf for purpose of inter se seniority in the higher grade, would be deemed to have been promoted in the same batch as his juniors, thus maintaining seniority of his batch-mates. On the same analogy, the appellant is also entitled to be promoted from the date, his juniors were promoted.

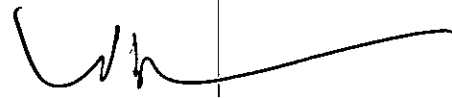
07. We are of the considered opinion that delay in promotion of the appellant was intentional showing malafide on part of the respondents. The appellant as per law deserve to be promoted from the date, his juniors were promoted. In view of the foregoing discussion, the instant appeal is accepted, the appellant stands promoted to the post of Instructor (BPS-17) with effect from the date, his juniors were promoted alongwith all back benefits. Since the appellant is retired from service, hence, he is granted pro-forma promotion with all back benefits from the date, his juniors were promoted. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED

20.10.2021



(ROZINA REHMAN)
MEMBER (J)




(ATIQ UR REHMAN WAZIR)
MEMBER (E)

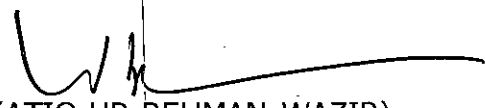
ORDER
20.10.2021

Learned counsel for the appellant present. Mr. Riaz Khan Paindakheil, Assistant Advocate General for respondents present.

Vide our detailed judgment of today, separately placed on file, the instant appeal is accepted, the appellant stands promoted to the post of Instructor (BPS-17) with effect from the date, his juniors were promoted alongwith all back benefits. Since the appellant is retired from service, hence, he is granted pro-forma promotion with all back benefits from the date, his juniors were promoted. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
20.10.2021


(ROZINA REHMAN)
MEMBER (J)


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

7.6.2011

Promotion

8.1.13 -

July 1997

- End 06 18

07/11/2010

Had he been in Service
it would have been
a security cause
of action

Fazal. Rahim

Supreme Court

1) Limitation

2) Acks.

2002-1-6-2011

17 Acks no - e will

2002 PLC CS 1388

NO limitation

By Remond on 6.2.03
w/ J3 in the 11

1096 SCML 850

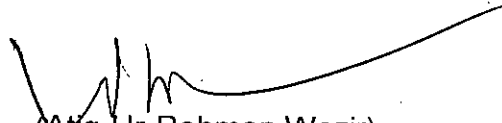
announced

14.10.2021

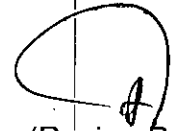
Appellant with counsel present.

Muhammad Riaz Khan Paindakheil learned Assistant Advocate General and Ali Gohar Durrani Advocate, Legal Advisor for respondents present.

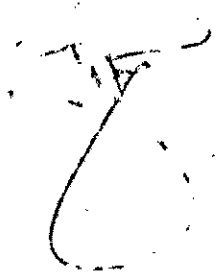
Arguments heard. To come up for order on 20.10.2021 before D.B.



(Atiq-Ur-Rehman Wazir)
Member (E)



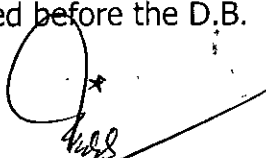
(Rozina Rehman)
Member (J)



08.10.2021

None present on behalf of the appellant. Mr. Kabirullah Khattak, Add. AG for the respondents present.

The appeal was fixed for 09.09.2021 but was adjourned due to strike of the Lawyers for 25.10.2021, however, on application of the appellant, the appeal was re-fixed for a short date today but appellant absented is not in attendance. Let this appeal, on 25.10.2021 i.e the date of already fixed before the D.B.


(Mian Muhammad)
Member(Executive)



Chairman

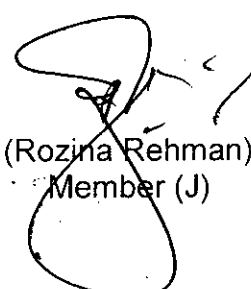
13.10.2021

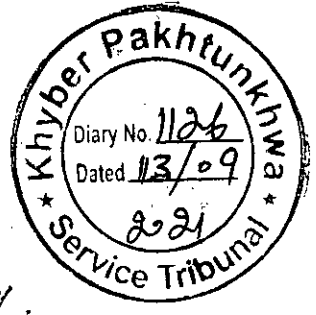
Appellant present with counsel.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

As per preceding order sheet, this appeal was fixed for 25.10.2021. However, today, Reader of the Court informed that this appeal was fixed for early hearing in view of the request of the appellant. But notice of early fixation of the case was not served upon the Legal Advisor of the respondents. Legal Advisor of the respondents was called and was informed in respect of the date of hearing fixed for today who requested for adjournment till tomorrow. Therefore, case is adjourned for 14.10.2021 for arguments before D.B.


(Atiq-Ur-Rehman Wazir)
Member (E)


(Rozina Rehman)
Member (J)



DB1

To
The chair man,
Service Tribunal,
K.P.K. Peshawar.

put up to the worthy chair-man
with relevant app-ent.

Subject: Early date of Appeal No. 240/2013

Respect

13/9/2021

Title Fazli Rahim Khattak VS Technical Education K.P.K. Peshawar.

Respected Sir,

I had Retired in the year June 2011

I am old man 70 years the case is so
delayed

Fix in 1st week of
October.
17/9/2021

The case was Remanded from
suprem court of Pakistan to this Tribu-
al for decision a fresh within period of
three months, but the case was
delayed and ~~previous~~ date was
adjourned ~~at joint~~ due to General strike
the next date was given as 25/10/2021
which is too long.

It is therefore requested that
the early date may be fixed in the
~~above~~ ^{mentioned} appeal instead of
25/10/2021.

Thanks a lot Sir


Fazli Rahim Khattak
Ex. lecturer GVC Gulbani
Peshawar

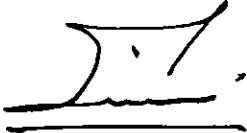
Phone 0315-9594160

Date 13/09/2021

26.07.2021

Appellant alongwith his counsel Mr. Taimur Ali Khan, Advocate, present. Mr. Muhammad Adeel Butt, Additional Advocate General for official respondents No. 1 to 3 present. Mr. Shahab Khattak, Coordinator for respondent No. 4 present and requested for adjournment on the ground that learned counsel for respondent No. 4 has proceeded to his ^{home} house being not feeling well. ~~Last opportunity given. Adjournd to come up for arguments before the D.B. on 09.09.2021.~~


(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

09.09.2021

Appellant in person present.

Kabir Ullah Khattak learned Additional A.G for respondents present.

Lawyers are on general strike. Therefore, case is adjourned. To come up for arguments on 25.10.2021 before D.B.

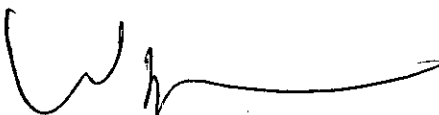

(Rozina Rehman)
Member (J)

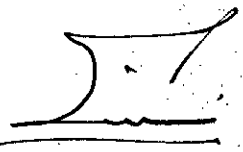

Chairman

29.06.2021

Appellant alongwith his counsel present. Muhammad Rasheed, Deputy District Attorney for respondents No. 1 to 3 and Mr. Shahab Khattak, Legal Advisor for respondent No.4 present.

We being Members of Larger Bench, remained busy in hearing arguments in the appeals fixed before the Larger Bench, therefore, arguments in the instant appeal could not heard. Adjourned. To come up for arguments before the D.B on 13.07.2021


(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)

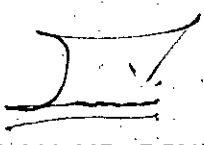

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

13.07.2021

Appellant in person present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Appellant sought adjournment on the ground that his counsel is not available today due to strike of Lawyers. Adjourned. To come up for arguments before the D.B on 26.07.2021.


(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

31.05.2021

Application for early hearing has been put up by the Reader with file.

It is evident from the order dated 19.03.2021 that the matter was remanded by the Apex Court on 23.04.2020 with the directions to conclude the appeal within three months, unnecessary delay, therefore, is to be avoided at all costs. The respondents were required to submit requisite reply within 10 days. The next date was fixed for 12.04.2021 before the D.B. But on the very next date; the proceedings could not take place due to the COVID, 19 issue and the case was adjourned for 27.07.2021.

Irrespective of the adjournment due to COVID issues, the respondents were required to submit the requisite reply within 10 days from 19.03.2021 but they failed. The date of hearing is changed from already fixed date to the new date as 29.06.2021. The respondents be given notice of changed date with the direction to submit the requisite reply in light of order within 10 days on receipt of notice of new date.



Chairman

Appeal No. 240/2013
Fazul Raheem Khattak vs Govt

1-1-2020

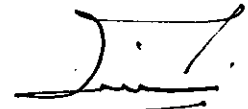
Due to summer vacation, case is adjourned to
19-3-2021 for the same as before.


Reader

19.03.2021

Appellant alongwith counsel and Mr. Abdul Latif, Section Officer for respondent No. 3 alongwith Mr. Muhammad Rasheed, Deputy District Attorney for the respondents present.

Learned Deputy District Attorney requests for time to prepare reply/para-wise comments on behalf of respondents No. 1, 2 & 4. The representative of respondent no. 3 also made a similar request. This matter has been remanded by the Apex court on 23.04.2020 with the directions to conclude the appeal within three months. Unnecessary delay, therefore, is to be avoided at all costs. The respondents shall submit requisite reply within 10 days. To come up for arguments on 12.04.2021 before D.B.


(SALAH-UD-DIN)
MEMBER (JUDICIAL)


CHAIRMAN

12-4-21

Due to COVID-19, the case is adjourned to
29-7-2021 for the same.



26.10.2020

Proper D.B is on Tour, therefore, the case is adjourned for the same on 13.11.2020 before D.B.



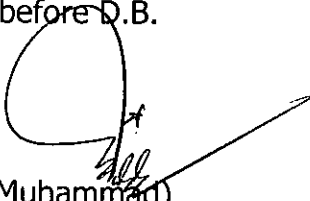
Reader

13.11.2020


Appellant in person present.

Usman Ghani learned District Attorney for respondents present.

Lawyers are on general strike, therefore, case is adjourned to 01.01.2021 as per request of appellant, for hearing before D.B.



(Mian Muhammad)
Member (E)



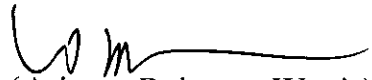
(Rozina Rehman)
Member (J)

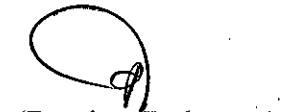
16.09.2020

Nemo for appellant.

Mr. Muhammad Jan learned Deputy District Attorney for respondents present. Legal Advisor of respondent No.4 present.

Notice be issued to appellant and his counsel for arguments on 30.09.2020 before D.B. Record shows that adjournment was granted to the appellant on the preceding date subject to cost but today he is absent and failed to produce his counsel as well, therefore, case is adjourned subject to payment of cost of Rs.2000/- to be paid by the appellant on the next date.

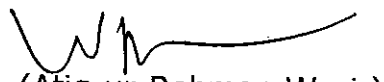

(Atiq ur Rehman Wazir)
Member (E)



(Rozina Rehman)
Member (J)

30.09.2020

Appellant in person present. Mr. Muhammad Jan, learned Deputy District Attorney alongwith Sajid Superintendent representative of respondents are also present.

In the pursuance of the second call make in the instant appeal by this Bench appellant appear and submitted that his counsel is busy in the Hon'ble Peshawar High Court, Peshawar and cannot attend this Tribunal. Requests for adjournment. The request is acceded, however, appellant is directed to make arrangement for the payment of cost of Rs. 2000/- to the opposite party. Adjourned to 26.10.2020 on which to come up for arguments before D.B


(Atiq-ur-Rehman Wazir)
Member(E)

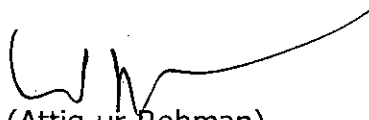

(Muhammad Jamal Khan)
Member (J)

22.07.2020

Appellant alongwith counsel, Mr. Sajid Superintendent for respondent No. 3 alongwith Mr. Muhammad Jan, DDA for respondents No. 1 to 3 and Mr. Shahab Khattak, Advocate for respondent No. 4 present.

It was informed that learned senior counsel for respondent No. 4 had to leave in pursuance to an emergency call. Request for adjournment is, therefore, made.

Being an old matter of the year 2013, instant case is adjourned to 11.08.2020 for arguments but as last chance for all the parties.


(Attiq-ur-Rehman)
Member


Chairman

11.08.2020

Due to summer vacations case to come up for the same on 02.09.2020 before D.B.

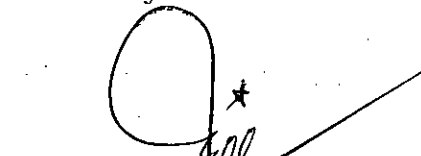

Reader


02.09.2020

Appellant in person present. Mr. Kabirullah Khattak, Additional Advocate General for respondents alongwith Sajid, Supdt for respondents No. 1 to 3 and Mr. Shahab Khattak, Advocate for respondent No.4 present.

Appellant requests for adjournment as his counsel is busy before the august Supreme Court of Pakistan. On the previous date of hearing last chance was given to the parties but today the appellant again seeks adjournment. Further adjournment will be granted subject to cost payment of Rs.1000/- which shall be borne by the appellant.

Adjourned to 16.09.2020 for arguments before D.B.


(Mian Muhammad)
Member (E)


(Muhammad Jamal)
Member(J)

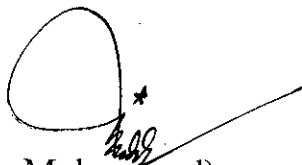
29.06.2020

Appellant present in person.

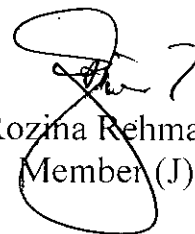
Mr. Muhammad Jan learned Deputy District Attorney for the respondents present.

Former requests for another adjournment as his learned counsel is engaged before Hon'ble Peshawar High Court in various cases today. Another chance is given with direction to argue the case in the light of directions by the August Supreme Court of Pakistan for decision by the Tribunal within three (03) months. Spare copies provided today.

Adjourned to 16.07.2020 before D.B.



(Mian Muhammad)
Member(E)



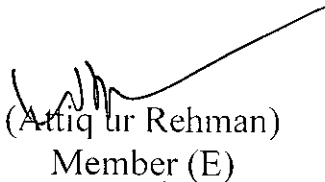
(Rozina Rehman)
Member (J)

16.07.2020

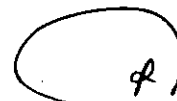
Junior counsel for appellant present.

Mr. Muhammad Jan learned Deputy District Attorney for the respondents present.

Junior counsel for appellant submitted application for adjournment; allowed. To come up for arguments on 22.07.2020 before D.B.



(Attiq ur Rehman)
Member (E)



(Rozina Rehman)
Member (J)

Fazal Raheem

17.06.2020

Appellant in person present. Mr. Muhammad Jan learned Deputy District Attorney for the respondents present.

Former requests for adjournment as his leaned counsel is engaged before Hon'ble Peshawar High Court in various cases today.

Instant matter has been remitted by August Supreme Court of Pakistan for decision by this Tribunal within three (03) months. The appellant is therefore, required to provide spare copies of the brief as per rules within 10 days.

Adjourned to 29.06.2020 before D.B.


Member


Chairman

240//2013

13.05.2020

Appeal received from August Supreme Court of Pakistan
vide order dated 23/04/2020 in (C.A No 16/2020. Assigned to
DB⁽¹⁾ for final hearing/disposal on. 17/06/2020

Notices to the parties be issued accordingly.


Chairman

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 1117 /ST

Dated 11-05 /2020

To,


The Registrar,
Supreme Court of Pakistan,
Islamabad.

Subject:- CIVIL APPEAL NO.16 OF 2020.

Dear Sir,

I directed to acknowledge the receipt of your letter No. C.A.16/2020-
SCJ dated 02.05.2020 along with its enclosure.

Encl. As above.


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR.

Ph: 9214461
Fax: 9220406

Remand

REGISTERED

No. C.A.16/2020 - SCJ

SUPREME COURT OF PAKISTAN

Islamabad, dated: 28/04/2020

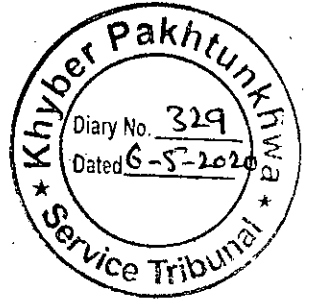
28/4/20

From

The Registrar,
Supreme Court of Pakistan,
Islamabad.

To

The Registrar
K.P.K. Service Tribunal,
Peshawar



Subject: CIVIL APPEAL NO.16 OF 2020

Government of KPK through Chief Secretary, Civil Secretariat, Peshawar & others

VERSUS

Fazal Raheem Khattak

On appeal from the Judgment/Order of the K.P.K. Service Tribunal, Peshawar dated 16/10/2017 in Appeal.240/20213

Dear Sir,

In continuation of this Court's letter of even number dated 16.02.2020, I am directed to enclose herewith a certified copy of the Order of this Court dated 23/04/2020 **allowing and remanding** the above cited case in the terms stated therein for information and further necessary action.

I am further directed to return herewith the original record of the Service Tribunal received vide letter No. 222-01/ST dated 22.01.2020.

The operative part of the Order is reproduced hereunder:-

"...As the matter is quite old, it is expected that the Tribunal shall decide the appeal within a period of three months."

Please acknowledge receipt of this letter alongwith its enclosure immediately.

Yours faithfully,

Encl: Order
O/Record

(Signature)
(MUHAMMAD MUJAHID MEHMOOD)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed, CJ
Mr. Justice Ijaz ul Ahsan

C.A.No.16 of 2020

[Against the judgment dated 16.10.2017, passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Appeal No.240 of 2013]

***Government of KPK through Chief Secretary,
Civil Secretariat, Peshawar & others.*** ...Appellant (s)

Versus

Fazal Raheem Khattak. ...Respondent(s)

For the Appellant (s) : Mr. Atif Ali Khan, Addl.A.G. KP
Shah Riaz, A.D. Litigation, TEVTA.

Respondent : In person.


Date of Hearing : 23.04.2020

ORDER

Gulzar Ahmed, CJ.— We have heard the learned counsel for the appellants so also the respondent, who has appeared in person and have perused the record.

2. It seems that in the first place the very service appeal filed by the respondent was time-barred but the Khyber Pakhtunkhwa Service Tribunal, Peshawar (**the Tribunal**), has not dealt with this issue in the impugned judgment. Further, as per the counsel for the appellants, considerable record has been placed before the Tribunal showing that the respondent's service record has not been up-to the mark and in his ACRs, it was mentioned that he could not have been granted promotion from the year 2002, for that, there have been adverse remarks/reports against him and the said adverse remarks/reports were never challenged

ATTESTED

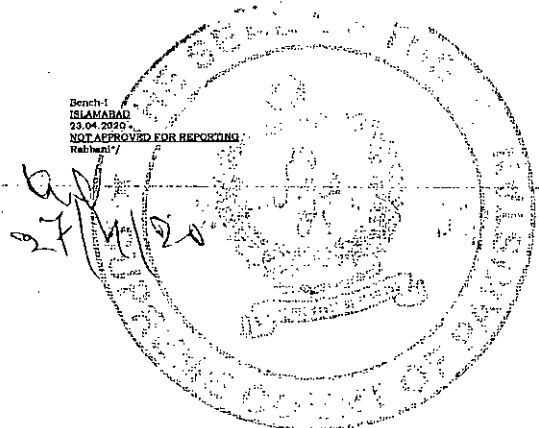

Court Associate
Supreme Court of Pakistan
Islamabad

by him. The summary of the ACRs from 1980 to 1999 (available at page-40 of the record), shows that the respondent is not fit for promotion. What is the effect of this document as well as other documents placed before the Tribunal by the appellant, the same apparently has not been adverted to by the Tribunal in the impugned judgment and it is, therefore, essential that in the first place, the Tribunal should consider all these aspects and then record its finding about the entitlement of the respondent's promotion from 31.05.2002.

3. We have confronted the respondent with all these aspects and though he has argued the matter quite ably himself but concedes that the questions noted above and the available record before the Tribunal, apparently, was not considered by the Tribunal, while passing the impugned judgment.

4. In this view of the matter, we allow this appeal, set aside the impugned judgment dated 16.10.2017 of the Tribunal and remand the matter back to the Tribunal for deciding the appeal of the respondent afresh, in accordance with law and also considering all documents that have been filed by the parties before it. As the matter is quite old, it is expected that the Tribunal shall decide the appeal within a period of three months.

SP/ - HJ
SP/ - J



Bench-I
ISLAMABAD
23.04.2020
NOT APPROVED FOR REPORTING
Rahmani/7

Certified to be True Copy

[Handwritten Signature] 28/11/2020
Court Associate
Supreme Court of Pakistan
Islamabad

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 240/2013

Date of Institution ... 08.01.2013

Date of Decision ... 16.10.2017

Fazal Raheem Khattak,
Ex-Instructor/Lecturer,
GTVC, Gulbahar, Peshawar.

... (Appellant)

VERSUS

1. The Govt: of Khyber Pakhtunkhwa through Chief Secretary, civil Secretariat,
Peshawar, and 3 others.

... (Respondents)

MR. KHALID REHMAN,
Advocate

For appellant.

MR. MUHAMMAD JAN,
Deputy District Attorney

...

For respondents.

MR. AHMAD HASSAN, ...
MR. MUHAMMAD HAMID MUGHAL ...

MEMBER(Executive)
MEMBER(Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER.- Arguments of the learned counsel for the
parties heard and record perused.

FACTS

2. The brief facts are that vide impugned notification dated 09.07.2011, the
appellant was promoted to the post of Instructor/ Lecturer (Related
Studies)(BPS-17) w.e.f 07.06.2011 instead of 31.05.2002 and that too without
arrears of pay and other connected service benefits. The appellant filed
departmental representative but the same was not decided within the statutory
period of 90 days, hence, the instant service appeal.

ARGUMENTS

3. The learned Counsel for the appellant argued that having been entangled in protracted litigation the appellant was deprived of his promotion to BPS-17 in time. The period in which he was engaged in litigation, juniors to the appellant were promoted to BPS-17 vide notification dated 31.03.2001. Upon reinstatement time and again through applications/representation he agitated the issue of his promotion to the post of Instructor/Lecturer (related studies BPS-17) but to no avail. Thereafter in pursuance of meeting of DPC held on 07.06.2011 the appellant was recommended for promotion to BPS-17 w.e.f the date of holding of DPC meeting i.e 07.06.2011. However, on reaching the age of superannuation the appellant retired from service on 16.06.2011 but promotion was notified vide notified dated 09.07.2011. He further argued that the appellant was eligible for promotion w.e.f 31.05.2002 the day when his juniors got promotion to BPS-17. The appellant cannot be deprived of his right of promotion from the due date due to negligence of respondents, hence, impugned notification dated 07.06.2011 is illegal and the appellant is entitled for antedate promotion. The case of the appellant is not governed under the Promotion Policy of 2009, as it relates to 2002 and the policy in hand cannot be given retrospective effect. Reliance was placed on 2007 SCMR 1355, 2010 PLC (C.S) 760 and 2014 PLC (C.S) 585.

4. On the other hand the learned DDA argued that though right of filing of written reply by the respondents was closed by this Tribunal on 02.03.2017 and representation of the department was also not present during the hearing of the case. However, the learned DDA while assisting the court argued that on account of absence from duty disciplinary proceedings were initiated against

the appellant and major penalty of dismissal from service was imposed on him vide impugned order dated 06.02.2003. Thereafter upon acceptance of his appeal he was reinstated in service. He was rightly promoted by the respondents-department vide order dated 09.07.2011. According to instructions of the Provincial Government promotion is always made with immediate effect and it is not a vested right of a civil servant. His case was dealt with by the respondents under Promotion Policy of 2009. Reliance was placed on 2005 SCMR 1742 and judgment of this Tribunal dated 15.09.2017 passed in appeal no. 935/2015.

CONCLUSION.

5. A careful perusal of the entire record would reveal that appellant due to prolong litigation spread over period of more than one decade was deprived of his legitimate right of promotion at the relevant time. This is further corroborated by para one of the minutes of the DPC meeting held on 07.06.2011, wherein his case of promotion to BPS-17 was cleared/ approved by the competent forum. Relevant portion is reproduced below:

“That the promotion case of Mr. Fazli Rahim Khattak, Junior Instructor (Related Studies) BPS-14 could not be timely placed before the Departmental Promotion committee and the official is now reaching the age of superannuation on 16.06.2011. It could be an inadvertent omission or a typical example of human apathy and indifferent behavior on the part of staff of DG/TE office. As per Provincial Govt. policy contained in circular no. SOR-I(S&GAD)1-29/75; dated 13.04.1987, cases of inadvertent omission due to clerical error or plain negligence are to be considered for promotion as soon as the mistake comes to notice.”

The respondents utterly failed to come up with any solid justification for deliberate/intentional delay in promotion case of the appellant. It is a well settled legal proposition that whenever the promotion of a civil servant is

delayed for want of certain deficiencies or any other reason not attributable to him he cannot be deprived of the promotion from the date of when he become eligible for the same. As his case dates back to 2002 so sanity demands it should not be dealt with under the Promotion Policy of 2009. The said policy cannot be applied retrospectively. Attention is also invited to circular dated 13.04.1987, wherein the word "inadvertent" is mentioned but in this case it was an "advertant deliberate/intentional act" on the part of the respondents to deprive the appellants of his right of promotion to BPS-17. In 2010 PLC (C.S) 760 Supreme Court of Pakistan held that:-

"Promotion---delay---legitimate expectancy, principle of – Civil servant was not promoted despite availability of vacancy---Service Tribunal allowed the appeal filed by civil servant and directed the authorities to consider him for promotion from the date when he became eligible for the post as there was vacancy available then---validity--- State functionaries were mandated to act with certain amount of reasonableness---Such canon of due process of law was not observed in processing civil servant's promotion matter---having acquired requisite experience and having authored number of articles required for post in question, the civil servant had legitimate expectancy for the post in question---Judgment passed by Service Tribunal was neither against the rules nor the law declared---Civil servant was eligible to be considered for promotion when substantive vacancy in promotion quota was available."

6. Similarly this issue has also been dilated and decided in 1985 SCMR 1158, 1997 SCMR 515, 2013 SCMR 544, 2017 SCMR 399, 1998 PLC (C.S) 980 and 1997 PLC (C.S) 197. So far as judgment of this Tribunal dated 15.09.2017 passed in service appeal no 935/2015 is concerned, it is not similar to the case of the appellants. It is clarified that Mr. Habib Ullah Jan, Range Officer, Wildlife (BPS-16) was promoted on acting charge basis on 19.12.2013 and regular promotion was notified on 12.03.2015 with immediate effect. He sought antedate promotion w.e.f. 01.07.2014 (the date on which the post was

created). Request of the appellant was not considered as the post against which he was promoted on acting charge basis was reserved for initial recruitment through Public Service Commission. In case he was given antedate promotion then many officers appointed through initial recruitment between 1.07.2014 and 12.03.2015 shall become junior to the appellant. Similarly reference made to the case of Mr. Ibbal Hussain Khattakin the said judgment is quite relevant and can also be attracted in the case of the appellant. In this case the august Supreme Court of Pakistan upheld the decision of this Tribunal regarding antedate promotion.

7. In view of the foregoing, the instant appeal is accepted and promotion case of the appellant be considered for the post of Instructor/Lecturer (Related studies) (BPS-17) w.e.f 31.05.2002 instead of 07.06.2011. However, it needs to be mentioned that this Tribunal vide judgment dated 26.04.2007 while accepting service appeal bearing No.44/2003 earlier filed by the appellant, directed that the period intervening the passing of order dated 06.2.2003 of dismissal of the appellant from service and his reinstatement in service i.e 26.04.2007 shall be treated as extra-ordinary leave (leave without pay). Parties are left to bear their own cost. File be consigned to the record room.



(MUHAMMAD HAMID MUGHAL)
MEMBER




(AHMAD HASSAN)
MEMBER

ANNOUNCED

16.10.2017

06.10.2017

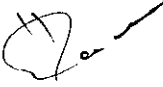
Counsel for the appellant and Mr. Muhammad Jan, DDA for respondents present. Arguments heard. To come up for order on 12.10.2017 before D.B.


(MUHAMMAD HAMID MUGHAL)
MEMBER


(AHMAD HASSAN)
MEMBER

12.10.2017

Counsel for the appellant and Mr. Muhammad Jan, DDA for respondents present. Due to rush of judicial work order could not be announced. To come up for order on 16.10.2017 before D.B.


(MUHAMMAD HAMID MUGHAL)
MEMBER


(AHMAD HASSAN)
MEMBER

Order

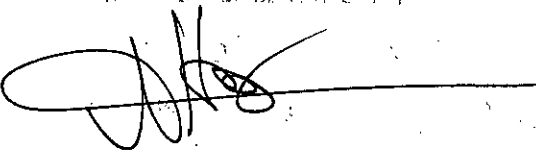
16.10.2017

Counsel for the appellant and Mr. Muhammad Jan, DDA for respondents present. Arguments heard and record perused.

Vide detailed judgment of today of this Tribunal placed on file the instant appeal is accepted and promotion case of the appellant be considered for the post of Instructor/Lecturer (Related studies) (BPS-17) w.e.f 31.05.2002 instead of 07.06.2011. However it needs to be mentioned that this Tribunal vide judgment dated 26.04.2007 while accepting service appeal bearing No.44/2003 earlier filed by the appellant, directed that the period intervening the passing of order dated 06.2.2003 of dismissal of the appellant from service and his reinstatement in service i.e 26.04.2007 shall be treated as extra-ordinary leave (leave without pay). Parties are left to bear their own costs. File be consigned to the record room.

Announced:
16.10.2017


(MUHAMMAD HAMID MUGHAL)
Member


(AHMAD HASSAN)
Member

19.07.2017

Counsel for the appellant submitted an application for early hearing of the appeal. Case file requisitioned. Request seem to be genuine. It may be fixed on 15.08.2017 instead of 04.09.2017. Parties be informed accordingly.

Noted for date fixed

(Gul Zeb Khan)
Member

[Signature]
Member

15.08.2017

Appellant with counsel and Asstt. AG for the respondents present. The learned counsel for the appellant submitted before the court that case of similar nature are fixed for 04.09.2017 and requested that the instant appeal may also be adjourned to same date. Adjourned. To come up for arguments on 04.09.2017 before the D.B with identical appeals.

[Signature]
Member

[Signature]
Chairman

the D.B with identical appeals.

Chairman

Member

04.09.2017

Since 4th September, 2017 has been declared as Public Holiday on account of Eid-UI-Azha. Therefore the case is adjourned for the same on 6.10.17 before D.B. Parties be informed accordingly.

[Signature]

the D.B with identical appeals.

[Signature]
(Member)

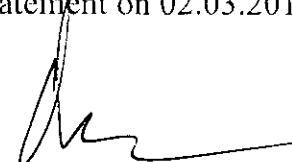
240/2013

24.01.2017

Appellant with counsel and Mr. Muhammad Jan, Government Pleader alongwith Mr. Muhammad Rasool, AD for the respondents present. Learned Government Pleader has requested for hearing on application for setting aside ex-parte proceedings against the respondents.

Arguments on application heard and record perused according to which the respondents had failed to submit written statement despite numerous opportunities including last opportunity which was also extended from time to time subject to payment of cost of Rs. 1000/-. It was further argued that at the relevant time i.e. in the year 2015 the Directorate headed by the Director General was abolished and Managing Director was appointed in view of change law i.e. Khyber Pakhtunkhwa TEVTA Act, 2015. As such the application is allowed subject to further cost of Rs. 1000/-.

To come up for entire cost of Rs. 2000/- as well as written statement on 02.03.2017 before S.B.


Member


Chairman

02.03.2017

Counsel for the appellant and Assistant AG for the respondents present. Written reply not submitted despite repeated opportunities including last opportunity. On 24.02.2016 last opportunity was further extended subject to payment of cost of Rs. 1000/-. On 24.1.2017 last opportunity was further extended subject to payment of further cost of Rs. 1000/-. To-day the case was fixed for submission of written reply and payment of cost of Rs. 2000/- but the respondents have neither submitted written reply nor cost paid. This Tribunal has no option but to place the case before D.B for final hearing. To come up for final hearing before the D.B on 18.05.2017.

Member

Chairman

18.05.2017

Agent to counsel for appellant and Mr. Kabir Ullah Khattak Assistant AG for the respondents present. Agent to counsel for appellant requested for adjournment. Adjourned. To come up for arguments on 04.09.2017 before D.B.

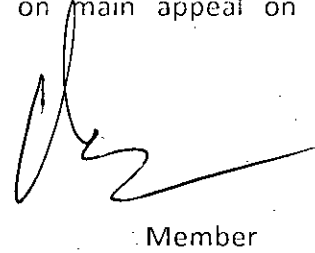
(Gul Zeb Khan)
Member

MA
(Muhammad Amin Khan Kundi)
Member

2.6.2016

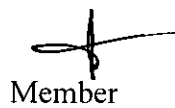
Appellant in person and Mr. Muhammad Rasool, Assistant Director alongwith Ziaullah, GP for respondents present. Appellant submitted an application where of copy handed over to the Government Pleader..To come up for reply on application as well as arguments on main appeal on 26.7.2016.


Member


Member

26.07.2016

Counsel for the appellant and Assistant AG for respondents present. Counsel for the appellant requested for adjournment. Request accepted. To come up for arguments on 14-11-16.


Member


Member

14.11.2016

Counsel for the appellant and Mr. Gul Badshah, Assistant alongwith Addl: AG for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 24.01.2017.


(ABDUL LATIF)
MEMBER


(PIR BAKHSH SHAH)
MEMBER

9.04.2015

Agent of counsel for the appellant and Addl: A.G for respondents present. Written reply not submitted. Requested for adjournment. Last opportunity granted. To come up for written reply/comments on 31.7.2015 before S.B.


MEMBER

31.07.2015

Agent of counsel for the appellant and Addl: A.G for respondents present. Written reply not submitted despite last opportunity. Requested for further adjournment. Last opportunity extended for submission of written reply to 28.10.2015 before S.B.


Chairman

28.10.2015

Appellant in person and Addl: A.G for respondents present. Written reply not submitted despite last opportunities. 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 24.2.2016 before S.B.


Chairman

24.02.2016

Counsel for the appellant and Addl: A.G present. None is in attendance on behalf of respondents despite last opportunity extended on the cost of 1000/- as such no further opportunity granted to respondents for submission of written statement. The appeal is assigned to D.B for final hearing on the available record for 2.6.2016.


Member

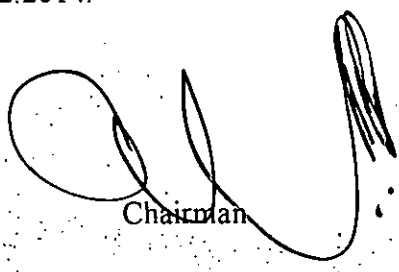
14.5.2014

Clerk of counsel for the appellant present. Respondents are absent despite their service through concerned officials for the previous date when the case was adjourned on note Reader. However, AAG is present and would be contacting the respondents for written reply/comments on 22.8.2014.


Chairman

22.8.2014

Counsel for the appellant and Mr. Kabir Khan Khattak, Assistant Advocate General for the respondents present. Written reply has not been received on behalf of the respondents, and request for further time made on their behalf. Another chance is given for written reply/comments on behalf of the respondents alongwith connected appeal on 23.12.2014.


Chairman

23.12.2014

Clerk of counsel for the appellant and Mr. Muhammad Adeel Butt, AAG for the respondents present. The Tribunal is incomplete. To come up for written reply/comments alongwith connected appeal on 09.04.2015.


Reader.

Appeal No. 240/2013
Mr. Fazal Rahman Khattak

13.09.2013

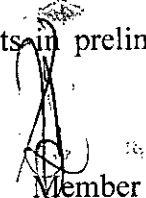
Clerk of counsel for the appellant present and requested for adjournment. To come up for preliminary hearing on 07.11.2013.


Member

8.

07.11.2013

Appellant in with counsel present and requested for adjournment. To come up for further arguments in preliminary hearing on 29.11.2013.


Member

9.

29.11.2013

Appellant in person present and heard. Contended that he has not been treated in accordance with law/rules. The appellant filed departmental appeal on 07.09.2012 against the order dated 09.07.2011. He further contended that no limitation runs against the matter pertaining to pay and allowances. 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 19.02.2014.

Appellant deposited security & process fee Rs 200/- Bank receipt is attached with file

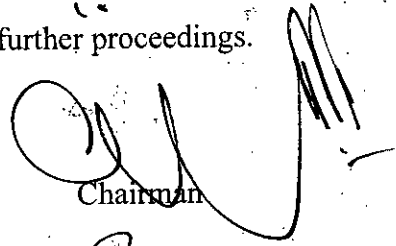



Member


10.

29.11.2013

This case be put before the Final Bench 2 for further proceedings.



Chairman

19.2.14

The 10th Bench is on Recd. Therefor, case is rejected on 19.5.14

Recd

4. 22.4.2013

Clerk of counsel for the appellant present and requested for adjournment. A last chance is given for P.H. To come up for P.H on 31.5.2013.


Member.


5. 31.5.2013

Munshi to Counsel for the appellant present. In pursuance of the Khyber Pakhtunkhwa Service Tribunals (Amendment) Ordinance 2013, (Khyber Pakhtunkhwa ord. II of 2013), the case is adjourned on note Reader for proceedings as before on 9.7.2013.


Reader

6. 09.07.2013

Clerk of counsel for the appellant present. In pursuance of the Khyber Pakhtunkhwa Service Tribunals (Amendment) Ordinance 2013, (Khyber Pakhtunkhwa ord. II of 2013) the case is adjourned on note Reader for proceedings as before on 13.09.2013.


Reader

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 240/2013


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	28/01/2013	<p>The appeal of Mr.Fazle Rahim Khattak resubmitted today by Mr. Khaled Rehman Advocate may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"><i>Hasan</i> REGISTRAR</p>
2	<i>6-2-2013</i>	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>20-3-2013</u>.</p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>
3.	<i>20-3-2013</i>	<p><i>Clk. to Counsel for the appellants present and request for adjournment to 22-4-2013.</i></p> <p style="text-align: right;"><i>[Signature]</i> Member</p> <p>Order of the court The appeal was entered in the register and adjournment was granted to 22-4-2013.</p>

The appeal of Mr. Fazal Raheem Khattak received today i.e. on 08/01/2013 is incomplete on the following scores which is returned to the counsel for the appellent for completion and resubmission within 15 days:-


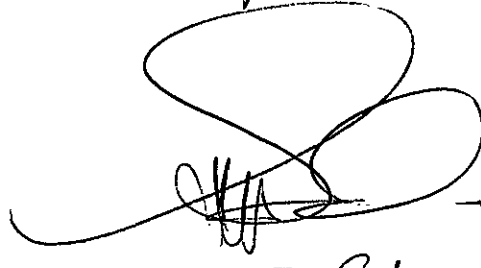
Page Nos 8 to 20, 28 and 30 of the appeal are illegible which may be replaced by legible one.

No. 70 /S.T,

Dt. 09/01/2013.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

MR. KHALED REHMAN ADV.PESH.


resubmitted after
Completion -

28/1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 240 /2013

Fazal Raheem Khattak

.....Appellant

Versus

The Govt. of KPK and
others

.....Respondents

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2.	Appointment order	17.04.1980	A	0-7
3.	Judgment of the Apex Court in Civil Appeal No.129/1995	11.06.1998	B	8-20
4.	Judgment in Service Appeal No.400/2003	26.04.2007	C	21-26
5.	Notification of promotion	31.03.2001	D	27-28
6.	Minutes of the Meeting	07.06.2011	E	29-30
7.	Impugned Notification	09.07.2011	F	0-31
8.	Departmental representation	07.09.2012	G	32-34
9.	Wakalat Nama			

Appellant

Through

Khaled Rahman
Advocate, Peshawar

9-B, Haroon Mansion,
Khyber Bazar, Peshawar.
Cell # 0345-9337312

Dated: 6 / 01/2013

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 240 /2013

W.F. No. 93
Date 08-1-2013

Fazal Raheem Khattak,
Ex-Instructor/Lecturer,
GTVC, Gulbahar, Peshawar.....Appellant.

Versus

1. The Govt. of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar. ✓
 2. The Secretary to Govt. of Khyber Pakhtunkhwa, Industries, Commerce, Min: Development, Labour & Tech: Education Department, Civil Secretariat, Peshawar. ✓
 3. The Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department, Civil Secretariat, Peshawar. ✓
 4. The Director General, Technical Education and Manpower Training, Khyber Pakhtunkhwa, Attached Department Complex, Khyber Road, Peshawar. ✓
-Respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION DATED 09.07.2011 WHEREBY APPELLANT WAS ALTHOUGH PROMOTED TO THE POST OF INSTRUCTOR/LECTURER (RELATED STUDIES) (BPS-17) BUT W.E.F. 07.06.2011 INSTEAD OF 31.05.2002 AND THAT TOO WITHOUT ARREARS OF PAY AND OTHER ATTACHED SERVICE BENEFITS FOR WHICH APPELLANT FILED DEPARTMENTAL REPRESENTATION BUT THE

Submitted to-
[Signature]
8/1/2013

Submitted to-
Registrar,
28/1/13

SAME WAS NOT DECIDED WITHIN THE STATUTORY PERIOD OF 90 DAYS.

PRAYER:

On acceptance of the instant appeal, the impugned Notification dated 09.07.2011 may graciously be modified and appellant be considered for antedation of promotion to the post of Instructor/Lecturer (Related Studies) (BPS-17) w.e.f. 31.05.2002 instead of 07.06.2011 alongwith arrears of pay and other attached service benefits.

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

1. That the appellant was appointed as Junior Instructor (BPS-14) against the post of Senior Instructor (BPS-17) vide office order dated 17.04.1980(*Annex:-A*).
2. That since appellant was serving against the post of Senior Instructor (BPS-17), therefore, he approached the departmental authority in the first instance and then to the Hon'ble Khyber Pakhtunkhwa Service Tribunal in Service Appeal No.142/1993 for grant of BPS-17 ever since his appointment and regularization as such. The appeal of the appellant did not find favour with the Hon'ble Tribunal vide Judgment dated 27.07.1994, whereafter appellant approached the Apex Court in Civil Appeal No.129/1995 which was partially allowed vide Judgment dated 11.06.1998 (*Annex:-B*) and appellant was allowed benefits of BPS-17

from the date of appointment till passing the Judgment. The Judgment of the Apex Court has been partially implemented as arrears up till 1993 have been granted to the appellant while the remaining are still outstanding.

3. That due to litigation, the Department without any just cause turned biased towards the appellant and transferred him to a far-situated institute at Ghazi by way of punishment and started teasing him by false pretexts of absence and thus removed him from service on 04.04.2000. The order was accordingly challenged by appellant before the Service Tribunal in Service Appeal No.2188/2000 which was then allowed vide Judgment dated 11.06.2000.
4. That thereafter once again on the same grounds appellant was dismissed from service vide order dated 06.02.2003, which too was challenged by appellant before the Hon'ble Service Tribunal in Service Appeal No.400/2003 and the same was also allowed vide Judgment dated 26.04.2007 (*Annex:-C*) and appellant was reinstated into service.
5. That during the period when appellant was deliberately got engaged into litigation, juniors to appellant were promoted to the next higher grade i.e. BPS-17 vide Notification dated 31.03.2001 (*Annex:-D*), therefore, on reinstatement into service, appellant made series of applications to the Department for his promotion to the post of

Instructor/Lecturer (Related Studies) (BPS-17) w.e.f. the date juniors to him were promoted to the next higher grade but the requests of appellant remained a remote cry in the wilderness. It was quite belated when appellant was at the verge of his retirement that the Department realized its apathy and thus took up the matter vide Minutes of the Meeting held on 07.06.2011 (*Annex:-E*) and recommended the appellant for promotion to BPS-17 w.e.f. the date his juniors to him were promoted, however, in the meanwhile appellant retired on reaching the age of superannuation on 16.06.2011 and his promotion was notified vide impugned Notification dated 09.07.2011 (*Annex:-F*).

6. That under the previous policy as well as under the settled law, appellant is entitled for promotion w.e.f. the date juniors to him were promoted to (BPS-17) with all attached benefits but vide the impugned Notification *ibid*, appellant's promotion has been ordered w.e.f. the date of holding of DPC Meeting i.e. 07.06.2011 in accordance with the Promotion Policy of 2009 and not from the due date, however, he has been granted seniority w.e.f. 31.05.2002 and intervening period has been counted as increments but without arrears under F.R. 26(c), which is illegal and against the settled principle of law on the subject.
7. That accordingly appellant preferred Departmental Representation (*Annex:-G*) to Respondent No.1 for antedation of his promotion as

Instructor/Lecturer (Related Studies)(BPS-17) w.e.f. 31.05.2002 along with arrears of pay and other attached benefits but the same was not decided within the statutory period hence this appeal inter alia on the following grounds;

Grounds:

- A. That Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully refused to consider the appellant for the requisite promotion, which is unjust, unfair and hence not sustainable in the eye of law.
- B. That admittedly appellant was eligible for promotion against the post of Instructor/Lecturer (BPS-17) with effect from the due date but the promotion was delayed by the Department by one pretext or the other and finally the same was notified after the retirement of appellant and given effect to from 07.06.2011 instead of 31.05.2002, which has resulted in huge financial loss to the appellant without any lawful justification.
- C. That appellant cannot be punished or deprived of his right of promotion from the due date due to the acts of the public functionaries who unlawfully refused to promote the appellant in due course of time, therefore, the impugned Notification with its effect from the date of the DPC i.e. 07.06.2011 is illegal and appellant is entitled to antedated

promotion with effect from the due date.

- D. That it is a settled legal proposition that whenever promotion of a civil servant is delayed for want of a certain deficiency or any other reason not attributable to him, he cannot be deprived of the promotion from the date when he is eligible for promotion and vacancy do exists.
- E. That the case of the appellant cannot be governed by the Provincial Promotion Policy of the Government 2009 inas much as the same relates to a period much before 2009 while the Promotion Policy of 2009 has no retrospective effect.

It is, therefore, humbly prayed that the instant appeal may graciously be accepted as prayed for above.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant.

Through

Appellant


Khaled Rahman,
Advocate, Peshawar.

Dated: 01 / 01/2013

DIRECTORATE OF TECHNICAL EDUCATION,
N.W.F.P., PESHAWAR.

NO. DTE/ESTT/4-1(vi)/4337 (1)

Dated 17th April, 1980.

7

Mr. Fazli Rahim Khattak S/O
Abdul Ghafoor,
Village & P.O. Spin Khak,
Teh: Nowshera & Distt: Peshawar.

ANNE "2"
ANNE "3"

Subject:- OFFER OF APPOINTMENT AS JUNIOR INSTRUCTOR

You are hereby offered a post of Junior Instructor against a vacant post of Senior Instructor (Technical Teacher Wing) at Government Polytechnic Institute, Peshawar at Rs. 430/- (Rupees Four hundred & thirty only) per month in the National Pay Scale No. 11 (Rs. 430-24-550/28/330) subject to the following terms and conditions that:-

- 1- Your employment on the above mentioned post is purely temporary in stop gap arrangement for the period of 3 months w.e.f. the date of taking over charge or till the selection of a candidate through Departmental Selection Committee & whichever is earlier and your services will be terminated at any time without any reasons being assigned.
- 2- You will have to join duty at your own expenses.
- 3- You will have to produce a certificate that you are domiciled in N.W.F.P., from the Deputy Commissioner of your District.
- 4- You will have to produce a Medical Certificate of fitness from the Medical Superintendent/Civil Surgeon Peshawar, within a week of the assumption of charge.
- 5- You will be governed by such rules and orders relating to Leave, Travelling allowance, Medical Attendance, Pay etc as may be issued by Government for the category of Government servants to which you belong.
- 6- In case you wish to resign at any time, a months notice will be necessary or in lieu thereof a month's pay may be forfeited.

If you accept the post on these conditions, you should report for duty to the Principal, Government Polytechnic Institute, Peshawar within 15 days and produce your original certificates.

[Signature]
DIRECTOR OF TECHNICAL EDUCATION,
N.W.F.P., PESHAWAR.

Encl. NO. DTE/ESTT/4-1(vi)/

Dated 17th April, 1980.

Copy forwarded for information and necessary action to:-

- 1- The Accountant General, N.W.F.P., Peshawar.
- 2- The Principal, Government Polytechnic Institute, Peshawar.
- 3- Person file.

[Signature]
DIRECTOR OF TECHNICAL EDUCATION,
N.W.F.P., PESHAWAR.

/ZAHIR SHAH/

Better Copy

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Ajmal Khan, CJ
Mr. Justice Muhammad Bashir Jehangiri.
Mr. Justice Muhammad Arif.

CIVIL APPEAL NO.129 OF 1995

(On appeal from the judgment dated 27.7.1994
passed by the NWFP Service Tribunal, Peshawar
in Appeal No.142 of 1993)

Fazal Rahim Khattak, Trade Instructor,
Government Vocational Institute, Bara,
Khyber Agency.

... Appellant

Versus


1. Director of Technical Education, NWFP,
Peshawar.
2. Principal, Government Vocational Institute,
Bara, Khyber Agency.
3. Secretary to Government of NWFP Education
Department, Peshawar.

... Respondents

For the appellant: Mr. Abdul Qadir Khattak, Advocate
Mr. Abdul Hamid Qureshi, Advocate

For the Respondents: Mr. Talat Qayyum Qureshi, Advocate
Addl: Advocate General, NWFP;
Mr. M.A. Qayyum Mazhar, Adcoate
(Absent)

Date of hearing: 11.6.1998.


ATTACHED

JUDGMENT

MUHAMMAD ARIF, j.— Fazal Rahim Khattak - appellant was offered the post of Junior Instructor (BPS-11) against a vacant post of Senior Instructor (Technical Teachers Training Wing) at Government Polytechnic Institute, Peshawar vide office order dated 17.4.1980, which post he accepted on the same date. According to him, he holds Post Graduate Degree, M.Sc, Second Class in Psychology and, in addition thereto a Diploma of Technical Teachers Education. As he was discharging higher responsibilities of the post of Senior Instructor in BPS-17 ever since the date of his posting, he represented to the Respondents for grant of BPS-17 as also for regularization of his services in the said scale. Instead of making any decision on the representations of the appellant, the Respondents relegated him to the post of Trade Instructor, this time in BPS-14 and not in BPS-11, by posting him to Vocational Institute, Ghazi on 24.10.1987. Within in a short span of 2-months, he was


ATTIESTED

again transferred and posted against the vacant post of Senior Trade Instructor at Government Vocational Institute, Bara. He once again represented to the respondent-Department for grant of BPS-17, but to no effect. Appellant's last representation was made to the Department on 17.1.1993 and, after expiration of 90 days thereof, he filed Appeal No.142/93 on 17.5.1993 before the NWFP Service Tribunal, Peshawar (hereinafter referred to as the Tribunal), with the following prayer:

"It is, therefore, respectfully prayed that on acceptance of this appeal, this Honourable Tribunal may graciously be pleased:-

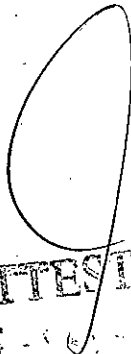
- "I- To regularize the appointment of the appellant in BPS 17 with effect from 17.4.1980.
- "II. To direct the Respondents to disburse the appellant the monthly emoluments of BPS 17, along with all the appurtenant benefits like the Annual increments etc. and assignment of proper seniority with effect from the aforesaid date on the Seniority List among the Senior Instructor(s)."

2. After obtaining para-wise comments to his


ATTESTED

Memo of Appeal (No.142/1993) from the respondents wherein they had denied the accrual of cause of action pleading lack of requisite locus standi to maintain the same, being not competent for non-joinder of necessary parties and being time barred and, after hearing the parties, the Tribunal upheld the objection of the respondents/Department that the appeal was beyond time. Further, the Tribunal repelled their plea that the nature of duties performed by the appellant was different from that of a Senior Instructor and held the appellant entitled to the presumptive pay, inclusive of the increments of the post of Senior Instructor, for a period of only 3-years immediately preceding the institution of the appeal i.e. 17.5.1993. Paras 16 and 17 of the impugned judgment dated 27.7.1994, read thus:

“16. The respondents could not satisfy us on the difference in the nature of duties performed by the appellant vis-à-vis those required of him as Senior Instructor. In case, the appellant was never assigned the duties of Senior Instructor, as alleged by the respondents, then it was incumbent upon them to have downgraded and redesignated the post which the appellant was holding. He remained posted against the post of Senior Instructor involving higher responsibilities, right from 17.4.80 to date, except for a brief spell of


ATTESTED

about 50 days. The Tribunal therefore, holds that the appellant actually worked against the post of Senior Instructor.

“17. The perusal of the record shows that at the time of his appointment as Junior Instructor against the post of Senior Instructor on 17.4.80, he was not fully qualified/eligible to hold the post of Senior Instructor as at least he did not possess the prescribed length of five years teaching experience. This Tribunal therefore, holds that the appellant was entitled to the grant of the minimum of the pay scale prescribed for the post of Senior Instructor for the period he was not fully qualified to be appointed/promoted to the post. As for the remaining period less the period during which he actually performed the duties of Trade Instructor (BPS-14) from 24.10.87 to 11.12.87, during which he was fully eligible and qualified under the rules to hold the post of Senior Instructor, he is entitled to the presumptive pay inclusive of the increments of the post of Senior Instructor. He shall be entitled to draw arrears of pay only in respect of such period of his service as fell after or within three years immediately preceding the institution of this appeal i.e. 17.5.93. The claim for arrears for the earlier period is time barred. The appeal is accepted to this extent only. Parties are left to bear their own costs. File be consigned to the record.”

3. This Court granted leave to appeal on 22.2.1995 to consider whether after holding the appellant entitled to presumptive pay including the increments of the post as also to arrears thereof,

ATTESTED
[Signature]

could he be legally denied the benefits afore-referred beyond the period of 3-years preceding the date of institution of the appeal?

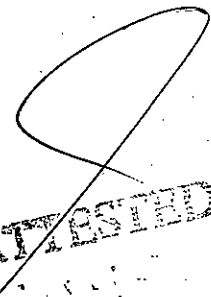
4. Hence this appeal.

5. Mr. Abdul Qadir Khattak, learned ASC appearing for the appellant, has reiterated the pleas noticed in Leave Grant Order dated 22.2.1995 and referred to Islamic Republic of Pakistan through Secretary, Finance Division, Government of Pakistan, Islamabad ..Vs.. Qazi Abdul Karim, Deputy Accountant General, NWFP, Peshawar and another (1978 SCMR 289) in support of his plea that an employee promoted to officiate in a post involving higher responsibilities is entitled to minimum pay of grade of the higher post. He was also critical of the Tribunal limiting the entitlement of the appellant to draw arrears of pay only for a period of 3-years immediately preceding the institution of the appeal. The plea was that the constraint of time afore-referred, is sans any support from the law.

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1/1/95

6. Mr. Talat Qayyum Qureshi, learned Additional Advocate General, NWFP has argued the case in relation to 3-facets thereof. Firstly, in relation to grant annual increments in BPS-17, he submitted that the appellant is not entitled to any such indulgence. Secondly, regarding grant of presumptive pay and arrears he submitted that the appellant is entitled to the minimum scale of BPS-17 for the entire period is that limiting the same to only 3-years preceding the institution of the appeal, cannot be supported by him. Lastly, it was argued that in view of this Court's unreported judgments in Civil Appeals No.18, 125 and 539 to 551 of 1995 dated 26.2.1997 and in Civil Appeal No.156 of 1995 dated 12.1.1998, the matter in relation to regularization of services of persons similarly placed as the appellant cannot be resolved/decided in these proceedings in that the same is to be undertaken by the Department itself.

7. While exercising his right of reply to that arguments of the learned Law Officer, Mr. Abdul Qadir Khattak, learned counsel for the appellant, has also


ATTESTED

referred to this Court's judgment dated 19.5.1992 in Civil Petitions No.69-P and 70-P of 1991, to contend that in addition to allowing these reliefs to the appellant, the Tribunal should have directed for the regularization of his services as Senior Instructor in BPS-17 as well.


8. We have considered the arguments addressed at the bar on behalf of the appellant as well as the respondent-Department. A perusal of the photo copies of the precedent-cases, relied upon by the learned Law Officer, shows that the case of the appellant to the extent of receipt of minimum scale, without annual increments, with effect from 17.4.1980 to date finds support therefrom. The following excerpts from the judgment dated 26.2.1997 are the point:

"4. We will first of all take Civil Appeal No.128 of 1995 filed by the Government of N.W.F.P. against the judgment of Service Tribunal dated 31.5.1994. We may mention here that in so far the judgment of Service Tribunal dated 24.7.1994 in the remaining appeals is concerned, that has not been impugned by the Government of N.W.F.P. The Respondent in Civil Appeal No.128 of 1995 was appointed as S.E.T. in B-15 and adjusted against the post of Subject Specialist vide order dated

ATTESTED
[Signature]

26.4.1988 w.e.f. 19.4.1998. The respondent was denied regularization against the post of Subject Specialist B-17 as well as pay in B-17 on the ground that his appointment as S.E.T in B-15 was temporary appointment and therefore, he was not entitled to draw salary against the post of Subject Specialist which was a post in B-17. The learned Tribunal upheld the claim of the respondent in Civil Appeal No.128/95 with regard to payment of minimum pay of B-17 as he was holding the post of Subject Specialist continuously from the date of his appointment. However, the learned Tribunal did not allow the claim of the respondent beyond the period of three years from the date he filed writ petition in the High Court on the ground that the pay for the period beyond that was time barred. The learned counsel for the appellants in Civil Appeal No.128 of 1995 contended that the respondent was not entitled to draw the salary against the post of Subject Specialist which was a post in B-17 as he did not possess the required qualification namely B.Ed or M.Ed. This contention of the appellants in Civil Appeal No.128 of 1995 was rejected by the Tribunal and rightly so in view of the decision in the case of Islamic Republic of Pakistan ..Vs.. Abdul Karim (1978 SCMR 289) and Federation of Pakistan ..Vs.. Shahzada Shahpur Jan (1986 SCMR 991). We, accordingly, find no substance in the contention of the appellants in Civil Appeal No.128 of 1995 which is, accordingly, dismissed.

“5. We now take up Civil Appeals Nos.18/95 and 539 to 551/95. In all these appeals, the appellants had claimed arrears of pay from the date they were appointed as Subject Specialists in B-17. The learned Tribunal though accepted their contention that having worked in the higher post in B-17, they were entitled to get minimum pay of B-17 from the dates of their respective appointments but


ATTESTED

their claim for arrears of salary was allowed only for a period of three years in the civil appeal No.18/95 from the date of filing of writ petition in High Court and in all other cases from the date of institution of appeals before the learned Tribunal by the appellants in each case. The learned counsel for the Government has not been able to point out any law under which the claim for arrears of salary of the appellants could be denied on the ground that it had become time barred. The learned Tribunal having held that the appellants were entitled to draw minimum salary in Pay Scale No.17 from the date of their appointment as Subject Specialist, could not reject the part of the claim of their salary on the ground that they were only entitled to recover salary for three years from the date they filed appeals before the Service Tribunal. It may be mentioned here that the question regarding payment of salary of BPS-17 post was being agitated by the appellants from the dates of their appointments, first before the departmental authority and thereafter before the Service Tribunal. In these circumstances, it was hardly open to argument that their claim for salary for the period they worked against the post of Subject Specialist B-17 had become time barred. The controversy with regard to entitlement of pay against the post of B-17 having been agitated finally decided by the Service Tribunal through the impugned judgments the appellants were entitled to the arrears of salary for the entire period they have worked against the post of Subject Specialist in B-17 on the basis of minimum pay payable against B-17. We, accordingly, partially allow Appeals Nos. 18 of 1995 and 539 to 551/95 and modify the order of the learned Service Tribunal to the extent that the appellants in these appeals were entitled to the payment of

ATTESTED
[Signature]

minimum salary against the post of Subject Specialist B-17 from the dates of their respective appointments

“6. In so far the claim of appellants in the above appeals with regard to their regularization against the post of Subject Specialist B-17 is concerned, the learned Tribunal rightly declined to grant the same as in the first instance the question of regularization of appellants against the post of Subject Specialist is to be considered by the department. Therefore, no exception can be taken to the judgment of the Tribunal in so far it left the question of regularization of appellants against the post of Subject Specialist B-17 to be decided by the department. The appeals stand disposed of, accordingly, with no order as to costs.”

So are the observations made by this Court in the second precedent in paras 9 to 11 thereof, which read thus:-

“9. In the case of Shahzada Shahpur Jan (supra) 1986 SCMR 918) the question came up for consideration whether an incumbent who while working in the higher grade but without any formal order of promotion to the higher grade, was entitled to the pay of the higher grade in NPS-17 along with annual increments falling due every year. Three categories of officers were under consideration in the precedent case. It is not disputed that the case of the respondent herein relates to second category discussed in the aforementioned decision. The relevant passage whereof is at page 1005. H, whchi reades thus:-

“As regards the cases of the second category, the legality and the effectiveness of the Auditor-General’s Standing Orders, paras 139

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higher post, as stated above.

ATTES
1986

“11. For the reasons given above, the appeal is accepted by setting aside the order of the Tribunal allowing the increments to the respondents. There shall, however, be no order as to costs.”

9. Learned counsel for the appellant was not aware of the ratio in the precedent cases referred to by the learned Law Officer, excerpts wherefrom have been quoted in the preceding paragraph. Even, a perusal of Judgment dated 19.5.1992, pressed into service by him while replying to arguments of his adversary, shows that in the said precedent as well the grant of monitory benefits to the concerned employee in similar terms as in this case, was upheld. We find that the appellant was entitled to minimum scale of pay of the post of Senior Instructor in BPS-17 with effect from 17.4.1980 i.e. the date of his appointment as Junior Instructor and posting against a post of Senior Instructor.

10. As regards the entitlement of the appellant to annual increments, suffice it to say that in line with the precedent-cases dealt with in paras 7 to 9 above, the appellant is not entitled to the same.


ATTEST
BY

Before the KP Service Tribunal, Peshawar

Appeal No: 240/2013

Subject: Application for adjournment.

Respectfully sheweth:-

1. That the above mentioned appeal is pending before Hon'ble Tribunal, and fixed for today.


2. That the Senior Counsel for the appellant is engaged in Supreme Court Islamabad therefore, cannot in position to attend the Tribunal for today.

It is, therefore most humbly requested to adjourn the above mentioned appeal to any next near possible date in interest of Justice.

Date 16.7.20

Through

Appellant


Counsel

To

The Chairman
Service Tribunal KPK
Peshawar.



Subject: Application for early date in Appeal
No 240/13 Titled as Fazle Rahim vs Tech Eder.
instead of 29/7/21.

Respectfully Senth.

1. That the above mentioned appeal is pending
before this Hon'ble Tribunal and fixed
for Arguments.

2. That the instant appeal is remanded by
Supreme Court 22.02.21. On previous date
12/11/21 the tribunal is non-judicial
starts and the case was adjourned to 29/7/21.
which too long date.

3. It is, therefore requested kindly allow this
application and the Appeal may be fixed early
instead of 29/7/21 because the matter is quite
old.

Put up to worthy chairman
with relevant appmt.

27/7/2021.

Revised

through

Appellant

Syed
Fazl
Counsel
Syed Noman

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Has (8)

Annex B

RESPONDENTS

Mr. Justice Ajmal Khan, C.J.
Mr. Justice Muhammad Bashir Khan
Mr. Justice Muhammad Arif.

GRUPE APPEAL NO. 123 OF 1995.

(An appeal from the judgment dated 27.7.1994
passed by the NESP Service Tribunal, Peshawar,
in Appeal No. 102 of 1993)

Fazal Rahim Khattak, Trade Instructor,
Government Vocational Institute, Bada,
Khyber Agency.

Appellant

VERSUS

1. Director of Technical Education, W.P.A.,
Peshawar.
2. Principal, Government Vocational Institute,
Bada, Khyber Agency.
3. Secretary to Government of NESP Education,
Department, Peshawar.

Respondents

For the Appellant: Mr. Abdul Qadir Khattak, Advocate,
Mr. Abdul Hameed Qureshi, Advocate

For the respondents: Mr. Talat Ghyssan Ghyssani,
Advocate-General, W.P.A.;
Mr. M.A. Ghyssan Ghyssani,
(absent).

Date of hearing: 11.8.1995.

ADVISED

[Signature]
Court Associates
Supreme Court of Pakistan
@ Islamabad.

JUDGMENT

(9)

MUHAMMAD ARIF, J. - Fazal Rahim Khattak -
 appellant was offered the post of Junior Instructor
 (BPS-11) against a vacant post of Senior Instructor
 (Technical Teachers Training Wing) at Government
 Polytechnic Institute, Peshawar vide office order
 dated 17.4.1980, which post he accepted on the same
 date. According to him, he holds Post Graduated Degree,
 B.Sc. Second Class in Psychology and, in addition
 thereto a Diploma of Technical Teachers Education. As
 he was discharging higher responsibilities of the post
 of Senior Instructor in BPS-17 ever since the date of
 his posting, he represented to the respondents for
 grant of BPS-17 as also for regularization of his
 services in the said scale. Instead of making any
 decision on the representations of the appellant, the
 respondents relegated him to the post of Trainee
 Instructor, this time in BPS-14 and not in BPS-11
 posting him to Vocational Institute, Ghazi on
 24.10.1987. Within a short span of 2-months.

AUTHENTICATED

Arif J.
 Court Associate
 Supreme Court of Pakistan
 @ Islamabad.

10

again transferred and posted against the vacant post of Senior Trade Instructor at Government

Vocational Institute, Bara. He once again

represented to the respondent-Department for

grant of BPS-17, but to no effect. Appellant's

last representation was made to the Department on

17.1.1993 and, after expiration of 90 days

thereof, he filed Appeal No. 142/93 on 17.5.1993

before the NWFP Service Tribunal, Peshawar

(hereinafter referred to as the Tribunal), with

the following prayer:

"It is, therefore, respectfully prayed that an acceptance of this appeal, this Honourable Tribunal may graciously be pleased:-

"I- To regularise the appointment of the appellant in BPS 17 with effect from 17.4.1980.

"II- To direct the Respondents to disburse the appellant the monthly emoluments of BPS 17 along with all the appurtenant benefits like the annual increments etc. and assignment of proper seniority with effect from the aforesaid date on the Seniority List among the Senior Instructor(s)."

After obtaining para-wise comments to his

2. ATTORNEY

Sh. Javed
Court Associate
Supreme Court of Pakistan
Lahore.

9

(11)

Memo of Appeal (No. 142/1993) from the respondents wherein they had denied the accrual of cause of action pleading lack of requisite locus standi to maintain the same; being not competent for non-joinder of necessary parties and being time barred and, after hearing the parties, the Tribunal upheld the objection of the respondents/Department that the appeal was beyond time. Further, the Tribunal repelled their plea that the nature of duties performed by the appellant was different from that of a Senior Instructor and held the appellant entitled to the presumptive pay, inclusive of the increments of the post of Senior Instructor, for a period of only 3-years immediately preceding the institution of the appeal i.e. 17.5.1993. Paras 16 and 17 of the impugned judgment dated 27.7.1994, read thus:

"16. The respondents could not satisfy us on the difference in the nature of duties performed by the appellant vis-a-vis those required of him as senior Instructor. In case, the appellant was never assigned the duties of Senior Instructor as alleged by the respondents, then it was incumbent upon them to have downgraded and redesignated him about which the appellant was holding. He remained posted against the post of Senior Instructor involving higher responsibilities, right from 17.4.80 to date, except for a brief spell of

ATTORNEY

Sh. Gull
 Court Associate
 Supreme Court of Pakistan
 Islamabad.

about 50 days. The Tribunal therefore, holds that the appellant actually worked against the post of Senior Instructor.

"17. The perusal of the record shows that at the time of his appointment as Junior Instructor against the post of Senior Instructor on 17.4.80, he was not fully qualified/eligible to hold the post of Senior Instructor as at least he did not possess the prescribed length of five years teaching experience. This Tribunal therefore, holds that the appellant was entitled to the grant of the minimum of the pay scale prescribed for the post of Senior Instructor for the period he was not fully qualified to be appointed/promoted to the post. As for the remaining period less the period during which he actually performed the duties of Trade Instructor (BP3-14) from 24.10.87 to 11.12.87, during which he was fully eligible and qualified under the rules to hold the post of Senior Instructor, he is entitled to the presumptive pay inclusive of the increments of the post of Senior Instructor. He shall be entitled to draw arrears of pay only in respect of such period of his service as fell after or within three years immediately preceding the institution of this appeal, i.e., 17.5.93. The claim for arrears for the earlier period is time barred. The appeal is accepted to this extent only. Parties are left to bear their own costs. File is consigned to the record."

This Court granted leave to appeal on 22.2.1995 to consider whether after holding the appellant entitled to presumptive pay including the increments of the post as also to arrears thereof,

APPROVED

Sh. J. J.
 Court Officer
 Supreme Court of Madhya Pradesh
 Bhopal

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could he be legally denied the benefits afore-referred beyond the period of 3-years preceding the date of institution of the appeal?

4. Hence this appeal.

5. Mr. Abdul Qadir Khattak, learned ASC appearing for the appellant, has reiterated the plea noticed in Leave Grant Order dated 22.2.1995 and referred to Islamic Republic of Pakistan through Secretary, Finance Division, Government of Pakistan, Islamabad Vs. qazi Abdul Karim, Deputy Accountant-General, NWFP, Peshawar and another (1978 SCMR 289)

in support of his plea that an employee promoted to officiate in a post involving higher responsibilities is entitled to minimum pay of grade of the higher post. He was also critical of the Tribunal limiting the entitlement of the appellant to draw arrears of pay only for a period of 3-years immediately preceding the institution of the appeal. The plea was that the constraint of time afore-referred, is sans any support

from the law.

ATTESTED
Sh. Jwal
Court Associate
Supreme Court of Pakistan

(14)

6. Mr. Talat Qayyum Qureshi, learned Additional Advocate General, NWFP has argued the case in relation to 3-facets thereof. Firstly, in relation to grant of annual increments in BPS-17, he submitted that the appellant is not entitled to any such indulgence. Secondly, regarding grant of presumptive pay and arrears, he submitted that the appellant is entitled to the minimum scale of BPS-17 for the entire period i.e. that limiting the same to only 3-years preceding the institution of the appeal, cannot be supported by him. Lastly, it was argued that in view of this Court's unreported judgments in Civil appeals No. 15, 128 and 539 to 551 of 1995 dated 26.2.1997 and in Civil Appeal No. 156 of 1995 dated 12.1.1998, the matter in relation to regularization of services of persons similarly placed as The appellant cannot be resolved/decided in these proceedings in that the same is to be undertaken by the Department itself.

7. While exercising his right of reply to the arguments of the learned law Officer, Mr. Abdul Jabbar Khattak, learned counsel for the appellant, has also

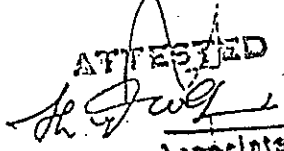
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Jul
Court Associate
to Court of Pakistan
Islamabad

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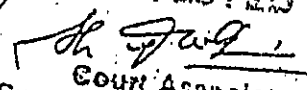
26.4.1988 w.e.f. 19.4.1998. The respondent was denied regularization against the post of Subject Specialist B-17 as well as pay in B-17 on the ground that his appointment as B.E.T. in B-15 was temporary appointment and therefore, he was not entitled to draw salary against the post of Subject Specialist which was a post in B-17. The learned Tribunal upheld the claim of the respondent in Civil Appeal No.128/95, with regard to payment of minimum pay of B-17 as he was holding the post of Subject Specialist continuously from the date of his appointment. However, the learned Tribunal did not allow the claim of the respondent beyond the period of three years from the date he filed writ petition in the High Court on the ground that the pay for the period beyond that period was time barred. ~~XXXXXXXXXXXXXXXXXXXX~~
~~XXXXXXXXXXXXXXXXXXXX~~ 28 XXXX 95
~~XXXXXXXXXXXXXXXXXXXX~~ XXXXXXXXXXXXXXXXXXXX. The learned counsel for the appellants in Civil Appeal No.128 of 1995 contended that the respondent was not entitled to draw the salary against the post of Subject Specialist which was a post in B-17 as he did not possess the required qualification, namely B.Ed or M.Ed. This contention of the appellants in Civil Appeal No.128 of 1995 was rejected by the Tribunal and rightly so in view of the decision in the case of Islamic Republic of Pakistan Vs. Abdul Karim (1978 SCMR 289) and Federation of Pakistan Vs. Shuhzade Shahpur Jan (1995 SCMR 991). We, accordingly, find no substance in the contention of the appellants in Civil Appeal No.128 of 1995 which is, accordingly, dismissed.

"5. We now take up Civil Appeals Nos.13/95 and 539 to 551/95. In all these appeals, the appellants had claimed arrears of pay from the date they were appointed as Subject Specialists in B-17. The learned Tribunal though accepted their contention that having worked in the higher post in B-17, they were entitled to get minimum pay of B-17 from the date of their respective appointments but

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 Court Associate
 Supreme Court of Pakistan
 Islamabad.

(17)

their claim for arrears of salary was allowed only for a period of three years in the civil appeal No. 18/95 from the date of filing of writ petition in High Court and in all other cases from the date of institution of appeals before the learned Tribunal by the appellants in each case. The learned counsel for the Government has not been able to point out any law under which the claim for arrears of salary of the appellants could be denied on the ground that it had become time barred. The learned Tribunal having held that the appellants were entitled to draw the minimum salary in Pay Scale No. 17 from the date of their appointment as Subject Specialist, could not reject the part of the claim of their salary on the ground that they were only entitled to recover salary for three years from the date they filed appeals before the Service Tribunal. It may be mentioned here that the question regarding payment of salary of BPS-17 post was being agitated by the appellants from the dates of their appointments, first before the departmental authority and thereafter before the Service Tribunal. In these circumstances, it was hardly open to argument that their claim for salary for the period they worked against the post of Subject Specialist B-17 had become time barred. The controversy with regard to entitlement of pay against the post of B-17 having been agitated and finally decided by the Service Tribunal through the impugned judgments the appellants were entitled to the arrears of salary for the entire period they have worked against the post of Subject Specialist in B-17 on the basis of minimum pay payable against B-17. We, accordingly, hereby allow appeals Nos. 18 of 1995 and 539 to 544/95 and modify the order of the learned Service Tribunal to the extent that the appellants in these appeals were entitled to the payment of

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 Court Registrar
 Supreme Court of Pakistan
 Islamabad.

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minimum salary against the post of Subject Specialist B-17 from the dates of their respective appointments.

"6. In so far as the claim of appellants in the above appeals with regard to their regularization against the post of Subject Specialist B-17 is concerned, the learned Tribunal rightly declined to grant the same as in the first instance the question of regularization of appellants against the post of Subject Specialist is to be considered by the department. Therefore, no exception can be taken to the judgment of the Tribunal in so far as it left the question of regularization of appellants against the post of Subject Specialist B-17 to be decided by the department. The appeals stand disposed of accordingly, with no order as to costs."

So are the observations made by this Court in the second precedent in paras 9 to 11 thereof, which read thus:

"9. In the case of Shahzad Shahpur Jan (supra), (1986 SCMR 918) the question came up for consideration whether an incumbent who while working in the higher grade but without any formal order of promotion to the higher grade, was entitled to the pay of the higher grade in NES-17 along with annual increments falling due every year. Three categories of officers were under consideration in the precedent case. It is not disputed that the case of the respondent herein relates to second category discussed in the aforementioned decision. The relevant passage whereof is at page 1005.H, which reads thus:-

"As regards the cases of the second category, the legality and the effectiveness of the Auditor-General's Standing Orders, pages 132

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and 229, Chapter V has been upheld in Civil Petitions 32-P to 34-P of 1982, decided on 30.5.1983 and there is no reason to depart for not only it is a part of the terms and conditions of the service one who is not qualified for a post cannot be said to be while so disqualified fully and competently discharging the duties of the higher post with the modified designation of Clerk-in-Charge. It was within the competence of the officer to allow reduced terms than the presumptive pay admissible to those not fully qualified.

"A bare perusal of the aforesaid passage would show that if a person is not qualified for a higher post for which he is performing his duties, it is within the competence of the competent authority to allow reduced terms than the presumptive pay to such incumbent. Clearly, the entitlement of the respondent for the grant of increments is not established. The Tribunal was, therefore, not right in allowing the increments to the respondent for the service rendered by him in the higher post for which latter was admittedly not qualified. In the case of Muhammad Hashim (supra) this Court, while dealing with the case of a person promoted to officiate in higher post involving the assumption of duties and responsibilities of greater importance, held that he would ordinarily be entitled to a higher pay unless the Government, in the exercise of the power given to it under Fundamental Rule 35, has decided to give him a lesser benefit.

"10. In our view, therefore, the respondent had no vested right to claim the annual increments in the facts and circumstances of the case, pursuant to the earlier judgment of the Tribunal. The respondent has already been held entitled to the pay of higher post for the period he has so functioned but is not entitled to the benefits of increments of the higher post, as stated above.

ATTESTED

Sh. J. J.
Court Associate
Supreme Court of Pakistan
Islamabad

ATTESTED

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"11. For the reasons given above, the appeal is accepted by setting aside the order of the Tribunal allowing the increments to the respondents. There shall, however, be no order as to costs."

9. Learned counsel for the appellant was not aware of the ratio in the precedent cases referred to by the learned Law Officer, excerpts wherefrom have been quoted in the preceding paragraph. Even, a perusal of the judgment dated 19.5.1992, pressed into service by him while replying to arguments of his adversary, shows that in the said precedent as well the grant of monetary benefits to the concerned employee in similar terms in this case, was upheld. We find that the appellant was entitled to minimum scale of pay of the post of

Senior Instructor in BPS-17 with effect from 17.4.1990 i.e. the date of his appointment as Junior Instructor and post was vacant post of Senior Instructor.

10. As regards the entitlement of the appellant to annual increments, suffice it to say that in line with the precedent-cases dealt with in paras 7 to 9 above, the appellant is not entitled to the same.

ATTESTED
M. Gulati
Court Assistant
Supreme Court of Pakistan

1. part (1)

(2)

M.

BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR.

Handwritten signature "Amir C" and a circled number "21". A circular stamp contains the text "NWFP Service Peshawar".

Appeal No. 400/2003

Date of institution -- 24.05.2003
Date of decision - 26.04.2007

Fazli Rahim Khattak, Ex-Trade Instructor, Government Vocational Institute, Ghazi.....(Appellant)

VERSUS

1. Secretary, Industries, Commerce, Labour, Transport, Mineral Development and Technical Education Department, Government of NWFP, Peshawar.
2. Director, Technical Education & Manpower Training, Government of NWFP, Peshawar.....(Respondents)

Service appeal u/s 4 of the NWFP Service Tribunals Act, 1974 against the impugned order dated 6.2.2003 passed by respondent No. 2 whereby appellant had been dismissed from service with immediate effect against which he filed a departmental appeal dated 15.2.2003 before respondent No. 1 but the same was not disposed of within statutory period of 90 days.

PRAYER:

On acceptance of the appeal, the impugned order dated 6.2.2003 may be set aside and the appellant be re-instated in service with all back benefits.

Mr. Ashraf Ali, Advocate.....For appellant.
Mr. Zaffar Abbas Mirza, AGP.....For respondents.

MR. SHAH SAHIB.....MEMBER.
MR. MUHAMMAD UMAR AFRIDI.....MEMBER.

Handwritten signature and the word "ATTESTED" written vertically.

(22)

JUDGEMENT.

SHAH SAHIB, MEMBER :- The appellant has filed the instant appeal with the prayer that the impugned order dated 6.2.2003, whereby he had been dismissed from service, may be set aside and he be re-instated in service with all back benefits.

2. Brief facts of the case are that the appellant had been appointed as Junior Instructor (Psychology) in BPS-11 in the respondent department on 17.4.1980. The appellant had been removed from service by an order dated 4.4.2000 for alleged wilful absence from duty. He had challenged it before the NWFP Service Tribunal vide Appeal No. 2188/2000 which had been accepted vide judgment dated 11.6.2002 with option to the respondents to conduct fresh enquiry against the appellant strictly in accordance with law. On 26.6.2002, respondent No. 1 appointed Mr. Fida Muhammad, Assistant Professor, Inquiry Officer who had been later on replaced by Mr. Amanullah, Instructor (BPS-17) vide order dated 24.8.2002. Meanwhile, the appellant had been re-instated in service vide order dated 29.6.2002. The appellant had been provided with Charge Sheet/Statement of Allegations vide letter dated 10.7.2002 on his request to which he had filed reply on 28.8.2002 and had denied the charges as false, irrelevant, without substance and of no legal effect. The inquiry officer had served a questionnaire upon the appellant to which he had submitted his reply on 17.9.2002. Thereafter, he had been put on a Show Cause Notice dated 12.12.2002 to which he also submitted his reply. The appellant had been

ATTESTED

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dismissed from service vide order dated 6.2.2003. He had preferred a departmental appeal against it on 15.2.2003, but the same had not been disposed of within the statutory period of 90 days. Hence, the appellant had filed the present appeal on the following grounds on 24.5.2003:-

- a. That the impugned order had been based on previous charges which had already been declared as invalid and of no legal effect by the Service Tribunal vide judgment dated 11.6.2002;
- b. That there is no provision of questionnaire in the rules. No evidence has been recorded by examining witnesses in support of the charges and allowing opportunity to appellant of cross examination the witnesses. Hence, the impugned order based on such invalid enquiry was not warranted and liable to be set aside;
- c. That the charges were pertaining to factual controversy which could not be resolved without recording the evidence but neither any witness was examined nor fair opportunity of cross examination was provided to the appellant or to produce witnesses in his defence;
- d. That the findings of the inquiry officer are of general nature and no specific findings had been given on the alleged charges;
- e. That the appellant has been condemned unheard and no fair opportunity was given to him to defend himself;
- f. That the appellant had served the department for more than 21 years with excellent service record and in such circumstances, the impugned punishment is harsh, unreasonable, unfair and unjust and not maintainable.

3. The case had been admitted to regular hearing on 27.10.2003 and notices had been issued to the respondents. They appeared through their representatives, filed written reply, contested the appeal and denied the claim of the appellant. The appellant had also filed his replication in rebuttal.

ATTESTED

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4. Arguments heard and record perused.

5. The learned counsel for the appellant argued that the appellant had been dismissed from service on the previous charges which had already been declared by the Service Tribunal, invalid and of no legal effect upon the rights of appellant, vide its judgment dated 11.6.2002. The Inquiry Officer had not carried out the inquiry proceedings in accordance with law and rules. The service of questionnaire upon the appellant had nowhere mentioned in the rules. He had not recorded evidence in presence of the appellant and he had been deprived of his legal right of cross examination. The appellant had been condemned unheard and no fair opportunity had been provided to the appellant to defend himself. The inquiry officer had not brought on record any documentary proof regarding the appellant's alleged unauthorised absence from duty. The appellant had served the department for more than 21 years with excellent service record and the punishment awarded to the appellant had been very harsh in the circumstances of the case.

6. The learned Government Pleader contended that the disciplinary proceedings against the appellant had been carried out by the department fully in accordance with relevant rules. The questionnaire had actually been served upon the appellant to ascertain from him relevant information about the case. It had been an effective method and there had been no alternative way for conducting an elaborate inquiry. The charge of the appellant's wilful absence from duty had been proved against him and he

ATTESTED

had been awarded the punishment of dismissal from service in accordance with law/rules.

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7. After hearing the arguments on both sides and perusing the record, the Tribunal tends to agree with the contention of the learned counsel for the appellant. A specific provision under Rule-8(A) exists in Efficiency & Disciplinary Rules, 1973 to be followed in cases of wilful absence from duty. The 'authorised officer' had to serve the appellant with a registered notice regarding his wilful absence from duty. Secondly, he had to publish a notice about the appellant's absence from duty in two leading newspapers before taking other action. In the instant case no such legal formalities appear to have been adopted and the appellant had been awarded major penalty of removal from service. The inquiry officer had not conducted the inquiry properly and in accordance with rules. Under Rule-8 of the said Rules, the inquiry must be conducted in the appellant's presence. He must be given opportunity of cross-examination the witnesses if he so wished. But, the appellant appear to have been deprived of the right of cross examination. Hence, the Tribunal holds that the impugned order has been passed without following the laid down procedure and meeting the mandatory requirements of the law / rules and is therefore not maintainable.

In view of the foregoing reasoning, the Tribunal accepts the app... sets aside the impugned order and directs the respondent department re-instate the appellant in service within a period of two...

ATTESTED

EXAMINER

NWFP Service Tribunal

Peshawar

ANNOUNCED
02-07-2007
GENERAL
Tribunal

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the period intervening the passing of the impugned order and his reinstatement in service be treated as extra ordinary leave (leave without pay). The parties are left to bear their own costs. File be consigned to the record after completion.

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ANNOUNCED.
26.04.2007.

SHAFI SAHIB
(SHAFI SAHIB)
MEMBER.

M. Umar Afzali
(MUHAMMAD UMAR AFRIDI)
MEMBER.

certified to be true copy

SEAL: (M)
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Recorded.

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Date of Completion of Copy..... 13/6/07

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ANNEX D 27

GOVERNMENT OF N.W.F.P.
INDUSTRIES, COMMERCE, MINERAL DEVELOPMENT
LABOUR AND TECHNICAL EDUCATION DEPARTMENT

Dated Peshawar, the 21-3-2001

NOTIFICATION

No.SOM(IND)TK/1-9/2001. The Governor North-West Frontier Province in consultation with the Departmental Promotion Committee is pleased to promote the following Junior Instructors (BPS-15) to the post of Instructors (BPS-17) and adjust them against the vacant post of Instructors at the places mentioned against their names with immediate effect :-

S.No.	Names & Designation	Posted as
1)	Mr. Abbas Samad, Junior Instructor (Arithmetic) Commercial Training Institute, Nowshera.	Instructor (Arithmetic) Govt. College of Commerce, Peshawar on regular basis.
2)	Mr. Zulfikar Ali, Jr: Instructor (Auto) Govt College of Technology, Peshawar.	Instructor (Auto) Govt College of Technology, Peshawar on regular basis.
3)	Mr. Muhammad Saeed, Jr: Instructor (Civil) Govt; Polytechnic Institute, Kohat.	Instructor (Civil) Govt; College of Technology, Peshawar on regular basis.
4)	Engr. Ahmad Sayed, Jr: Instructor (Mech) Govt; Polytechnic Institute, Nowshera.	Instructor (Mech) Govt; Polytechnic Institute, Swat on regular basis.
5)	Engr. Abid Iqbal, Junior Instructor (Mech) Govt; College of Technology, Peshawar.	Instructor (Mech) Govt; College of Technology, Peshawar on regular basis.
6)	Mr. Muhammad Akram, Junior Instructor (Mech) Govt; Polytechnic Institute, Abbottabad.	Instructor (Mech) Govt; Polytechnic Institute, Haripur on regular basis.
7)	Mr. Salahuddin, Junior Instructor (Mechanical) Govt; College of Technology, Peshawar.	Instructor (Mech) Govt; College of Technology, Peshawar on regular basis.
8)	Mr. Abdul Rehman, Junior Instructor (Mech) Govt; Polytechnic Institute, Haripur.	Instructor (Mech) Govt; Polytechnic Institute, Haripur on regular basis.

GOVERNMENT OF N. W. F. P.
INDUSTRIES, COMMERCE, MINERAL DEVELOPMENT
LABOUR AND TECHNICAL EDUCATION DEPARTMENT

Dated Peshawar, the _____

9)	Mr. Muhammad Humayun, Junior Instructor (Mech) Govt. Polytechnic Institute, D.I. Khan.	Instructor (Mech) Govt. Polytechnic Institute, Kohat on regular basis.
10)	Mr. Infall Rashid, Junior Instructor (Mech) Govt. Polytechnic Institute, Haripur.	Instructor (Mech) Govt. Technical & Vocational Centre, Ghani on regular basis.
11)	Mr. Khanul Mulk, Junior Instructor (Mech) Govt. Polytechnic Institute, Nowshera.	Instructor (Mech) Govt. Polytechnic Institute, Nowshera on regular basis.
12)	Mr. Muhammad Iqbal, Junior Instructor (R/S) Govt. Polytechnic Institute, Swabi.	Instructor (R/S) Govt. Polytechnic Institute, Swabi on regular basis.
13)	Mr. Nazir Ahmad, Trade Instructor (R/S) Govt. Polytechnic Institute, Nowshera.	Instructor (R/S) Govt. Polytechnic Institute, Swabi on regular basis.
14)	Mr. Abdul Samin, Trade Instructor (R/S) Govt. Technical & Vocational Centre (Boys) Charsadda.	Instructor (R/S) Govt. College of Technology, Peshawar on regular basis.
15)	Mr. Ghulam Ali, Trade Instructor (R/S) Govt. Technical & Vocational Centre (Boys), Miranshah.	Instructor (R/S) Govt. Polytechnic Institute, Bannu on regular basis.
16)	Mr. Abdul Majid, Trade Instructor (R/S) Govt. Commercial Training Institute, Miranshah.	Instructor (R/S) Govt. Polytechnic Institute, Kohat on regular basis.
17)	Mr. Sardar Shah, Trade Instructor (R/S) Govt. Polytechnic Institute, Nowshera.	Instructor (R/S) Govt. Polytechnic Institute, Nowshera on regular basis.
18)	Mr. Hafizullah, Trade Instructor (R/S) Govt. Technical & Vocational Centre (Boys) Miranshah.	Instructor (R/S) Govt. Polytechnic Institute, D.I. Khan on regular basis.
19)	Mr. Arish Ansar Lodhi, Trade Instructor (R/S) Govt. Technical & Vocational Centre (Boys) Tank.	Instructor (R/S) Govt. Polytechnic Institute, D.I. Khan on regular basis.

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GOVERNMENT OF N.-W.F.P.
INDUSTRIES, COMMERCE, MINERAL DEVELOPMENT,
LABOUR AND TECHNICAL EDUCATION DEPARTMENT

Dated Peshawar the _____

20)	Mr. Mukhtiar Ahmad, Trade Instructor (R/S), Govt. Technical & Vocational Centre (Boys), Chakdara	Instructor (R/S) Govt. Polytechnic Institute Timergara (Dir) on regular basis.
21)	Mr. Muhammad Sardar _____, Trade Instructor (R/S), Govt. Technical & Vocational Centre (Boys), _____	Instructor (R/S) Govt. Polytechnic Institute Kohat, on regular basis.
22)	Engr: Sher _____ Junior Instructor (Electrical) Govt. Polytechnic Institute, Kohat.	Appointed as Instructor (Electrical) on acting charge basis and posted as Instructor Govt. College of Technology, Peshawar.
23)	Engr: Muhammad Zubair, Junior Instructor (Civil), Govt. Polytechnic Institute, D.I.Khan	Appointed as Instructor (Civil) on acting charge basis and posted as Instructor Govt. Polytechnic Institute, Bannu.

Sd/-

Secretary to Govt. of NWFP,
Industries, Commerce, Mineral Dev:
Labour & Technical Edu: Department

Endst: SOIII(IND)TR/1-8/2001

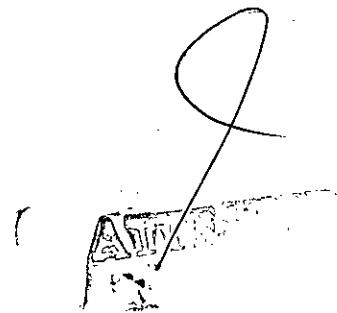
dated Pesh: the 31.3.2001

Copy is forwarded to:-

- 1) The Accountant General, N.W.F. Province, Peshawar.
- 2) The Director Tech: Edu: & Manpower Training, NWFP.
- 3) The Principals concerned.
- 4) Officers concerned.
- 5) O/O file.

Sd/-

(JANAT GUL AFRIDI)
SECTION OFFICER-III





GOVERNMENT OF N.W.F.P.
INDUSTRIES, COMMERCE, MINERAL DEVELOPMENT,
LABOUR AND TECHNICAL EDUCATION DEPARTMENT.

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20)	Mr. Mukhtar Ahmad, Junior Instructor (M/E) Govt; Tech. Edu. & Vocational Centre (Boys) Okara.	Instructor (R/S) Govt; polytechnic Institute Faisalabad (Dir) on regular basis.
21)	Mr. Muhammad Sadiq, Junior Instructor (M/E) Govt; Tech. Edu. & Vocational Centre (Boys) Okara.	Instructor (M/E) Govt; Polytechnic Institute, Dera on regular basis.
22)	Engr. H. H. Baloch, Junior Instructor (Electrical) Govt; Polytechnic Institute, Kohat.	Appointed as instructor (Electrical) on acting charge basis and posted as Instructor Govt; College of Technology, Peshawar.
23)	Engr. Muhammad Zubair, Junior Instructor (Civil) Govt; polytechnic Institute, D.I. Khan.	Appointed as instructor (Civil) on acting charge basis and posted as Instructor, Govt; Polytechnic Institute, Danna.

Sd/-
Secretary to Govt of NWFP,
Industries, Commerce, Mineral Devt
Labour & Technical Edu. Department.

Under: MEMORANDUM NO. 1000/1961, D. 10/12/61

Copy is for various files.

- 1) The Accountant General NWFP, Peshawar.
- 2) The Director, Tech. Edu. & Min. Power Training, NWFP.
- 3) The Principals concerned.
- 4) The District Account Officers concerned.
- 5) Officers concerned.
- 6) O/O File.

(MANSUR GUL ABIDI)
SECTION OFFICER-III

MARDI

MINUTES OF THE DEPARTMENTAL PROMOTION COMMITTEE HELD ON
07/06/2011 AT 11.00 a.m. IN THE OFFICE OF SECRETARY, INDUSTRIES,
COMMERCE, TECHNICAL EDUCATION AND MANPOWER TRAINING
DEPARTMENT:

NKWE "E" (29)

1. A meeting of the Departmental Promotion Committee was held on 07/06/2011 at 11.00 a.m. under Chairmanship of Secretary Industries, Commerce, & Technical Education Department in his office. The following attended:

- a. Mr. Shahrukh Arbab, Secretary IC&TE Department..... In Chair.
- b. Mr. Javed Anwar, Additional Secretary Industries..... Member.
- c. Mr. Khurshid Alam, Section Officer (SR-I) Finance Department....Member.
- d. Mr. Ashfaq Khan, S O Regulation VI, Establishment Department...Member.
- e. Mr. Mohammad Tayyab Deputy Director, Directorate of T.E &MT
- f. Mr. Afsar Halim Assistant Director, TE&MT

2. The Chairman welcomed the participants. While giving background of the case the Additional Secretary Industries Department explained (that the promotion case of Mr. Fazli Rahim Khattak junior Instructor (Related Studies) BPS-14 could not be timely placed before the Departmental Promotion Committee and the official is now reaching the age of superannuation on 16/06/2011. It could be an inadvertent omission or a typical example of human apathy and indifferent behavior on the part of staff of DG/TE office. As per Provincial Govt. policy contained in Circular No. SOR-I(S&GAD)1-29/75; Dated 13.4.1987, cases of inadvertent omission due to clerical error or plain negligence are to be considered for promotion as soon as the mistake comes to notice.) The exact wording of the Policy Circular is as under:

"If and when an officer after his seniority has been correctly determined or after he has been exonerated of the charges or his CR dossier is complete or the adverse remarks in his CR have been expunged, or his inadvertent omission for promotion comes to notice, is considered by the Departmental Promotion Committee and is declared fit for promotion to the next higher grade, 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 DPC. Such an officer, on his promotion will be allowed seniority in accordance with the proviso of sub-section(4) of Section 8 of the 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.....This proviso read with general principles of seniority which are deemed to be rules made under Section 26 of the Civil Servants Act, 1973, enable the left over persons to regain seniority without effecting retrospective promotion. However, in such cases, the intervening period can be counted towards increments under F.R.26(c) but without arrears."

The Additional Secretary Industries also indicated that the existing service rules provide that Lecturer/ Instructor (Related Studies) BPS-17 are to be appointed by initial recruitment only whereas the old service rules were under the erstwhile juniors of Mr. Fazli Rahim Khattak were promoted incorporated a provision for promotion as well. Thus, the old service rules would be applied to promote the aforesaid official to the post of Lecturer (Related Studies) BPS-17.

The representative of Establishment Department and Finance Department were asked whether they had any objections or reservations about the case being considered. Upon which the representative of Establishment Department pointed out that the issue regarding application of old rules in the presence of new rules needed clarification whether it could be possible to do so or otherwise.

brief history

- (1) I was appointed as Junior Instructor against post of Senior Instructor BPS-17 on 17/06/1980.
- (2) Later on, Re-appointed on 24/10/1987 on regular basis BPS-14.
- (3) I appeal in the Supreme Court of Pakistan No.129 dated 1995.

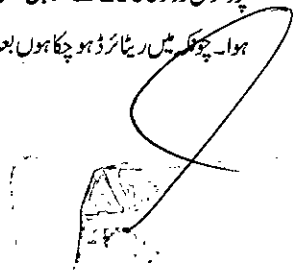
چونکہ میں سینئر انسٹرکٹر کے against کام کر رہا تھا۔ میں نے سروس ٹریبونل اور بعد سپریم کورٹ میں اپیل کیا جو کہ میرے حق میں فیصلہ ہوا۔ اس کے بعد ڈیپارٹمنٹ میرے خلاف ہو گیا 8 سال میں نے Excellent سروس کیا ریکارڈ پر موجود 8 سال کے بعد جب 1998 میں سپریم کورٹ کے فیصلے کے بعد غازی تریبلہ ٹرانسفر کیا۔ اور جب کالج پہنچتا تھا۔ میرے absent پہلے سے رجسٹر میں لگ چکے تھے۔ اس طرح روزانہ کا عمل چونکہ سفر لمبا تھا۔ غازی کی ٹرانسپورٹ بھی پرانے گاڑی تھی۔ وقت پر نہیں پہنچا سکے گا۔ میرا Subject بھی وہاں نہیں تھا۔ پھر بھی مجھے وہاں ٹرانسفر نہیں حتیٰ کہ مجھے 4/4/2000 بغیر شوکا ز سروس سے ٹرمینیٹ کیا ہے۔

(4) میں نے سروس ٹریبونل اپیل کیا۔ ٹریبونل نے میرے حق میں فیصلہ مجھے all back benefit کے سروس بحال کیا۔

(5) ڈائریکٹر نے مجھے remove from service 16/6/2003 سروس ٹریبونل میں اپیل کیا۔ فیصلہ میرے حق میں ہوا۔ لیکن attached--24/10/2007--without back benefit

(6) جب میں بحال ہوا تو میں بار بار درخواستیں ڈائریکٹر کو دیے کہ میں باقی جو ساتھیوں کی پرموشن ہو گیا اس طرح مجھے بھی پرموشن دے دیں۔ نہیں مانتے۔ چونکہ میرے سینئر ائی لسٹ جو مجھے سے جوئیر تھا غلام علی کو گریڈ 17 میں پرموشن کیا میں نے درخواست کے Retirement سے چند پہلے گریڈ 17 میں پرموشن کیا۔ پھر وہی آرڈر میں میرے جوئیر سے میں تاریخ پرموشن ہوا تھا۔ اس تاریخ سے مجھے بھی 31/5/2002 پرموشن ہوا ہے۔

(7) پرموشن روز 2009 کے مطابق جس کے 17 گریڈ میں 5 سال ہوا ہوں تو اسکو گریڈ 18 میں Asst: Professor پرموشن ہوا۔ چونکہ میں ریٹائرڈ ہو چکا ہوں بعد Retired



Better Copy

The Additional Secretary Industries in this connection pointed towards the decisions of Services Tribunal and advice of Law Department as well as the decision of PSB to promote the Associate Professors (BPS-19) of Technical Education to the posts of Professors Technical Education (BPS-20) as per old rules because the new service rules notified on 03/12/2010 made four research papers mandatory for promotion which change, according to decision of Services Tribunal and in the opinion of Law Department was like applying a new rule with retrospective effect as the Associate Professors on the verge of retirement could hardly be expected to produce four research papers and any such abrupt change in service rules was against the spirit of decision of the Superior Courts. The PSB accordingly cleared the officers for promotion as per old service rules despite presence of notified service rules for the cadre. The Chairman and other participants confirmed the aforesaid viewpoint as a real fact.

3. After detailed discussion and meticulous examination of relevant record/ papers, the Departmental Promotion Committee cleared Mr. Fazli Rahim Junior Instructor (Related Studies) BPS-14 to the post of Lecturer (Related Studies) BPS-17 in Technical Education Directorate in accordance with the approved Govt. Policy applicable in promotion cases of inadvertent omission enabling him to regain seniority without effecting retrospective promotion. On promotion and regaining seniority, the intervening period would be counted towards increments under F.R.26(c) without arrears.

4. The meeting ended on a note of thanks from the Chair.

Mr. Khurshid Alam
Section Officer (SR-I)
Finance Department.

Mr. Ashfaq Khan,
Section Officer (R-VI)
Establishment Department.

Sd/-
Javed-Anwar
Additional Secretary
Industries Department.

Mr. Muhammad Taib
Deputy Director,
TE&MT Directorate, KPK

Mr. Shah Rukh Arbab
Secretary Industries, Commerce,
Technical Education Department.

brief history

30

① I was appointed as junior instructor against post of Senior instructor BPS-17 on 12/06/1980-

② later on - Reappointed on 11/10/1982 on regular basis BPS-14

③ I appeal in the Supreme Court of Pakistan No 129 dated 1985.

جوڈک میں سینیئر انسٹرکٹر کے against کام کر رہا تھا۔ میں نے سروس ٹریبونل اور عدلیہ سپریم کورٹ میں اپیل کی۔ چونکہ جوڈک میں حق میں قیام نہ ہوا۔ اس کے بعد ڈیپارٹمنٹ میں 8 سال کے عرصے میں نے Excellent سروس کیا لیکن اس کے بعد 8 سال کے بعد جب 1998 میں سپریم کورٹ کے فیصلے کے بعد غازی ترمیم ٹرانسفر کیا گیا۔ اور جب کالج دینا تھا۔ میرے Absent ہونے کے باعث میں گڈ ہو گیا۔ اس طرح بعد لکھنؤ میں عمل جوڈک سپریم کورٹ گیا۔ غازی کی ٹرانسفر کیوں نہ ہران گازی ہوئے۔ وقت پر میں دینا سے ہوا۔ میرا 6/4/2000 سے 1/1/2007 تک کا ریکارڈ دیکھا گیا۔ میرا اپیل جسے وکیم ٹرانسفر میں بھی تھا۔ لیکن سروس سے ٹرمینٹ کی گئی۔

④ میں نے سروس ٹریبونل اپیل کیا۔ ٹریبونل نے میرے حق میں قیام کے all back benefit سروس میں بحال کیا۔

⑤ ڈاٹا ٹرانسفر کے تحت 16/8/2003 سے remove from senior سروس ٹریبونل میں اپیل کیا۔ قیام میرے حق میں ہوا۔ لیکن without back benefit 24/11/2007 attached

⑥ جب میں بحال ہوا تو میں بار بار درخواستیں ڈال کر اپیل کر رہا تھا کہ میں باقی جو ساتھ میں کسی سروس میں ہو گیا اس طرح حق میں قیام ہو سکتا ہے اس میں مانتے۔ ڈاکٹر میرے سینیئر لیٹ جوائن ہوئے جو نمبر کا غلام علی کو گریڈ 17 میں رکھیں کیا میں در خواست Retrospective میں لکھ کر 17 میں رکھیں لیکن بعد میں اثر میں رہا جو سروس میں میں تاریخ پر مبنی ہوا تھا۔ اس تاریخ سے جمع کئی کئی بار اپیل کر رہا ہوں

⑦ صرف پر مبنی ہوئیں۔ موجود مطالبات کے ساتھ ساتھ 17 میں 5 سال کے سروس میں ڈاٹا ٹرانسفر کے تحت 18/11/2003 میں 12-17 میں Retiring کے حکم کے تحت



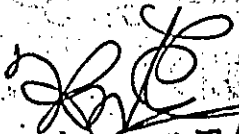
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Additional Secretary
Industries Department.

Mr. Muhammad Taib,
Deputy Director,
TE&MT Directorate, KPK

Mr. Shah Rukh Arbab,
Secretary Industries, Commerce,
Technical Education Department.

Tele: _____



ANNEX

GOVERNMENT OF KHYBER PAKHTUNKHWA
INDUSTRIES, COMMERCE AND TECHNICAL
EDUCATION DEPARTMENT

Dated Peshawar, the _____

NOTIFICATION

ANNEX F¹¹
31

No.SOIII(IND)TE/1-17/2011. On recommendations of the Departmental Promotion Committee, the Competent Authority is pleased to promote Mr. Fazli Rahim, Junior Instructor (Related Studies) (BPS-14) against the post of Instructor/ Lecturer (Related Studies) (BPS-17) with effect from the date of holding of Departmental Promotion Committee meeting i.e. 07.06.2011 in accordance with the provision under S. No. VII of Provincial Government Promotion Policy 2009 circulated vide notification No. SOI-III(E&AD01-3/2008) dated 28th January 2009. The officer has retired from service on 16.06.2011.

2. The competent authority is further pleased to allow the officer to regain seniority with effect from 31st May, 2002 i.e. the date his juniors were promoted. On his promotion and regaining seniority, the intervening period shall be counted towards increments but without arrears under FR(26-c).

Chief Secretary to Govt. of Khyber
Pakhtunkhwa, Peshawar.

Endst.No.SOIII(IND)TE/1-17/2011,

dated Pesh: the July 9, 2011.

Copy is forwarded to:-

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Director General, Technical Edu: & Manpower Training, Khyber Pakhtunkhwa.
3. The Principal Govt. Technical & Vocational Centre (Boys) Gulbahar, Peshawar.
4. Officer concerned c/o Principal, Govt. Technical & Vocational Centre (Boys) Gulbahar, Peshawar.
5. O/O file.

Wazir Gul
9/7/2011

(WAZIR GUL)
SECTION OFFICER-III

To

The Secretary,
Govt. of Khyber Pakhtunkhwa,
Industries, Commerce, Min: Development,
Labour & Tech: Education Department,
Civil Secretariat, Peshawar.

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MANG 9

Subject: Departmental Representation for the antedation of promotion of the appellant from the post of Junior Instructor (Related Studies) (BPS-14) to the post of Instructor/Lecturer (Related Studies) (BPS-17) w.e.f. 31.05.2002 instead of 07.06.2011 alongwith arrears of pay and other attached service benefits.

Respected Sir,

With due respect I have the honour to submit this departmental representation for your kind consideration and favourable action on the following facts and grounds:

1. That the appellant was appointed as Junior Instructor (BPS-14) against the post of Senior Instructor (BPS-17) vide office order dated 17.04.1980.
2. That since appellant was serving against the post of Senior Instructor (BPS-17), therefore, he approached the departmental authority in the first instance and then to the Hon'ble Khyber Pakhtunkhwa Service Tribunal in Service Appeal No.142/1993 for grant of BPS-17 ever since his appointment and regularization as such. The appeal of the appellant did not find favour with the Hon'ble Tribunal vide Judgment dated 27.07.1994, whereafter appellant approached the Apex Court in Civil Appeal No.129/1995 which was partially allowed vide Judgment dated 11.06.1998 and appellant was allowed benefits of BPS-17 from the date of appointment till passing the Judgment. The Judgment of the Apex Court has been partially implemented as arrears up till 1993 have been granted to the appellant while the remaining are still outstanding.
3. That due to litigation, the Department without any just cause turned biased towards the appellant and transferred him to a far-situated institute at Ghazi by way of punishment and started teasing him by false pretexts of absence and thus removed him from service on 04.04.2000. The order was accordingly challenged by appellant before the Service Tribunal in Service Appeal No.2188/2000 which was then allowed vide Judgment

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Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and was unlawfully denied promotion w.e.f. the due date, which is unjust, unfair and hence not sustainable in the eye of law.

- B. That admittedly appellant was eligible for promotion against the post of Instructor/Lecturer (BPS-17) with effect from the due date but the promotion was delayed by the Department by one pretext or the other and finally the same was notified after the retirement of appellant and given effect to from 07.06.2011 instead of 31.05.2002, which has resulted in huge financial loss to the appellant without any lawful justification.
- C. That appellant cannot be punished or deprived of his right of promotion from the due date due to the acts of the public functionaries who unlawfully refused to promote the appellant in due course of time, therefore, the impugned Notification with its effect from the date of the DPC i.e. 07.06.2011 is illegal and appellant is entitled to antedated promotion with effect from the due date.
- D. That it is a settled legal proposition that whenever promotion of a civil servant is delayed for want of a certain deficiency or any other reason not attributable to him, he cannot be deprived of the promotion from the date when he is eligible for promotion and vacancy do exists.
- E. That the case of the appellant cannot be governed by the Provincial Promotion Policy of the Government 2009 inas much as the same relates to a period much before 2009 while the Promotion Policy of 2009 has no retrospective effect.

It is, therefore, humbly requested that on acceptance of this departmental Representation, appellant may graciously be allowed antedated promotion to the post of Instructor/Lecturer (Related Studies) (BPS-17) w.e.f. 31.05.2002 instead of 07.06.2011 with the arrears of pay and other attached service benefits.

Yours faithfully

Fazal Raheem Khattak,
Ex-Instructor/Lecturer,
GTVC, Gulbahar, Peshawar,

Dated: 07/09/2012

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 2278 /ST

Dated 23 / 10 / 2017

To


The Secretary Industries Commerce,
Mineral Labour & Technical Education Department,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: -

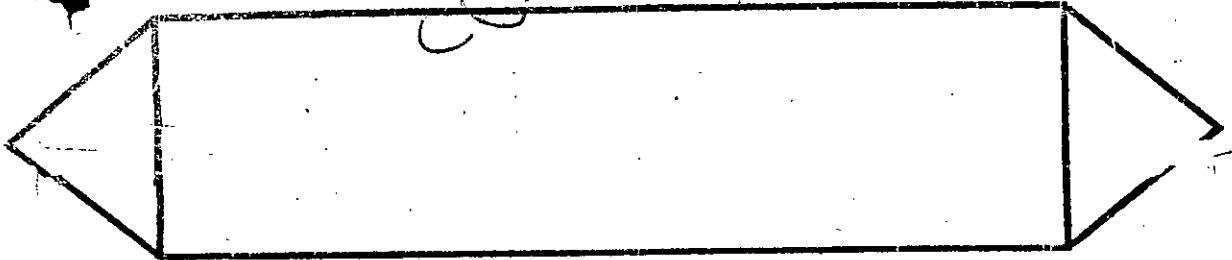
JUDGMENT IN APPEAL NO. 240/2013, MR. FAZAL RAHEEM KHATTAK.

I am directed to forward herewith a certified copy of Judgement dated 16.10.2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

بعدالت



مورخہ
مقدمہ
دعویٰ
جرم

لاہور، 2012ء منجانب اے۔ اے۔ اے۔
ہنام صوبہ

دستخط

باعث تحریر آئندہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ کی
آن مقام کے لئے رائے کارروائی کے لئے مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوفہ کی مکمل کارروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں 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 اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کارروائی 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 با اختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب سے وہ ہوگا۔
کوئی تاریخ پیشی مقام دور پر ہو یا حادث سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکورہ کریں۔ لہذا نکالت نامہ لکھ دیا کہ سند ہے۔

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المرقوم

بسم اللہ الرحمن الرحیم

کے لئے منظور ہے۔

مقام

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قصر

2007

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2007

CIVIL SERVICES

1267

on their part. As such, we convert the appellants' supersession into deferment from the same date i.e. 6-9-2002. The respondents are further directed to antedate the promotion of the appellants accordingly and restore their original seniority as it existed prior to 6-9-2002. As a result of this action, the appellants would be entitled to all the back-benefits.

47. There shall be no order as to costs. Parties be informed.

H.B.T./28/FST

Appeals accepted.

2007 P L C (C.S.) 1267

[Punjab Service Tribunal]

Before K.B. Abid, Member-II

Mrs. NASREEN AKHTAR

versus

SECRETARY, HEALTH GOVERNMENT OF THE PUNJAB,
LAHORE and another

Appeal No.2055 of 2006, decided on 11th April, 2007.

Punjab Civil Servants Act (VIII of 1974)---

----S. 8---Punjab Service Tribunals Act (IX of 1974), S.4---Promotion---
Appeal to Service Tribunal---Appellant who was appointed in BS-14 as
Charge Nurse in 1981, due to her satisfactory performance was
promoted as Head Nurse, but despite being senior she was not
awarded BS-17, whereas her junior was granted said grade---Appellant
not only was appointed earlier to respondent, but was also promoted in
BS-16 prior to the respondent for her satisfactory performance---
Appellant being senior to respondent, was entitled to pro forma
promotion to BS-17 on the basis of seniority-cum-fitness---Claim of
appellant to pro forma promotion in BS-17, could not be rejected on the
ground that her request was time-barred, because in the matter of
promotion and pay, question of limitation was not applied---Case of
appellant for promotion in BS-17 was from date of promotion when her
next junior was promoted---Directions were given to the Authority to
consider case of appellant for promotion from the date her next junior
was promoted in BS-17---Date of promotion of appellant in BS-16,
would be the deciding factor along with well established formula of
seniority-cum-fitness at the relevant time. [p. 1269] A & B

2002 PLC (C.S.) 1388 ref.

appeal that respondents Nos.4 to 9 have been deputed for upper class course in March 1989 whereas appellant was sent to upper class course on 23-9-1989 and completed the course in March, 1990, while he was serving in Multan Range. Grievance of the appellant was that confirmation of respondents No.4 to 9 as Sub-Inspectors w.e.f. 7-2-1990, while he was left in lurch, the respondents were admitted to list 'F' and promoted as officiating Inspectors from various dates occurring in the years 1991 and 1995. Appellant admitted that he was transferred to Sargodha Range at his own request vide order dated 27-1-1991, he was placed at the bottom of officiating Sub-Inspectors on the list of Sargodha Range. Being junior to all officiating Sub-Inspectors in Sargodha Range, he was confirmed as Sub-Inspector w.e.f. 12-8-1992 and in the seniority list of confirmed Sub-Inspectors of Sargodha Range, his name figured at Serial No.60, though he was entitled to be placed below Serial No.24 and above Serial No.25 as these persons were confirmed from various dates ranging between 9-10-1990 to 12-8-1992. Appellant was admitted to list 'F' on 27-3-1999 and promoted as Inspector w.e.f. 19-4-1999 making him junior to respondents Nos.4 to 11 by 8 years. Appellant submitted his representation to respondent No.2 on 19-3-1998, which was rejected and communicated to him on 25-11-2000. Order of respondent No.1 dated 25-2-1998 and that of respondent No.2 dated 25-11-2000 have been challenged in this appeal.

2. Learned counsel for the appellant contended that the injustice to the appellant commenced at the time when he was not considered alongwith his batchmates to undergo upper class course to which they were admitted in March, 1989 and this is the starting point of his miseries. Taking his arguments to their logical conclusion, learned counsel stated that the only ground for not sending the Police Officer for upper course is that when he has an adverse entry in his ACR, as mandated in the Police Rules, 1934. To the contrary, it was urged that appellant has in his whole career not earned even a single adverse entry, particularly, till March, 1989, when respondents Nos.4 to 11 were sent to undergo the upper class course and without any rhyme or reason, his entry in the institution to undergo upper class course was delayed till 23-8-1989, which he passed in March, 1990.

3. Learned counsel for the appellant referred to an unreported judgment of the Hon'ble Supreme Court in Civil Petitions Nos.766-L of 1995 and 790-L of 1995 which took into consideration identical question of law. Respondent and petitioner, in the referred to case, before the apex Court were Junior Instructors in Government College of Technology. Respondent being senior to the petitioner was not promoted to take the training course because the Principal was of the view that his class would be neglected without him. But on the other hand petitioner was allowed to proceed on

training which made him qualified to be promoted in BS-17 on 18-6-1990. However, the case of the respondent was relegated on the ground that he did not complete the training which he did subsequently and obtained Diploma on 13-5-1991. Respondent claimed promotion and seniority asserting that if he had not been ignored earlier, without any fault of his, he would have also been promoted alongwith the petitioner. Punjab Service Tribunal who allowed the petition, observed as under:-

"There was no denying the fact that the appellant was senior to respondent No.3. He should have been deputed for the course by virtue of his seniority. It was not the respondent's case that his record was otherwise unsatisfactory rendering him unfit for getting the training. Conversely, when his record was clean and he was senior as well, he should have been given preference to all others for getting the training. He was detained by the Principal as he had not also to look after the relevant duties but this could not be a reason to traverse seniority of the appellant. Someone should have been brought in by transfer or by initial recruitment to fill the post temporarily. The reason for rendering his seniority ineffective was not sound. Late, however, he got the training and came eligible to be promoted. By virtue of seniority which was a vested right he had a genuine claim to be preferred to respondent No.3.

Accordingly, the appeal is allowed. The appellant is held entitled to be promoted as Inspector (BS-17) in preference to respondent No.3 even though the latter might have to be demoted."

Hon'ble Judges of the Supreme Court held that the respondent was handicapped to undergo the course/training because of refusal of the Principal to allow him to proceed on such training but since he was entitled to undergo the training alongwith others, the Principal should have exercised the discretion in his favour and alternate arrangement should have been made. The appeal of the petitioner was dismissed and judgment of the Tribunal was upheld.

4. Another hurdle which has been created in the way of the appellant is that he got himself transferred to Sargodha and according to the policy of the Government, transfer with consent brings his seniority in his rank to the bottom. However, the mischief to the appellant was done before he opted for transfer to Sargodha in January, 1991 and events culminating in ignoring him for promotion as confirmed Sub-Inspector from 7-2-1990 would not stand in his way for seeking relief by his voluntary transfer to Sargodha Range. Appellant also quoted the case of Muhammad Sarwar v. Director Administration, FIA reported in 1998 SCMR 2409 a case more or less on the similar grounds. Learned District Attorney, raised a single objection about

limitation and submitted that wrong was done to the appellant on 7-2-1990 according to his own showing but the representation which he made was in January, 1998 and according to the dictum of Hon'ble Supreme Court reported in 1998 SCMR 882, question of limitation could be seen by the appellate Court at any stage of the proceedings. It was urged that although appellant may have a good case on merit but having kept mum for 7/8 years, he cannot be allowed condonation there being no sufficient ground in his favour.

5. I have attended to the arguments of the respective counsels and have also gone through the record.

6. Appellant admittedly was punished for no fault of his for not being nominated for upper class course in March, 1989 alongwith other respondents. He had no adverse entry in his ACR standing against him name at that period of time. Ruling of the Hon'ble apex Court upholding the judgment of this Tribunal in Appeal No. 634 of 1991 clinches the issue. Subsequent event of getting himself transferred to Sargodha and being placed at the bottom of officiating Sub-Inspectors list, would not stand in the way of the appellant, as the mischief had completed itself in February, 1990 when juniors to the appellant were confirmed as Sub-Inspectors.

7. Coming to the question of limitation, canvassed by the appellant, I am more prone in the instant case to do substantial justice, as head of the appellant was placed on the chopping block for no fault of his. Undoubtedly, Limitation Act is penal in nature and rights accrued cannot be taken away unless sufficient cause is shown. However, technicalities of law should not stand in the way of a person who has been singled out rather persecuted without knowing as to what crime or sin he has committed. Equities in his favour, far out weight, his tardiness, to make representation against the injustice done to him. I am also fortified in my view by the judgment of the apex Court reported in PLD 1992 SC 825 that in matters of promotion, pay and other emoluments cause of action is recurring, limitation does not foreclose the right. Resultantly I accept the appeal, set aside the impugned orders and direct the respondents to confirm the appellant as Sub-Inspector w.e.f. 7-2-1990 when respondents; 14 to 11 his juniors were given the benefit of confirmation as Sub-Inspector. Respondent No.2 may consider granting ante-dated promotion to the appellant as officiating Inspector from the same date as were allowed to the respondents alongwith consequential benefits flowing from the order to promotion.

H.B.T./64/PST.

Appeal accepted

2002 P.L.C (C.S.) 1393

[Sindh Service Tribunal]

Before Justice (Retd.) Abdul Ghani Shaikh, Chairman
and Muhammad Iqbal Kazi, Member II

GHULAM ASGHAR and others

versus

THE INSPECTOR-GENERAL OF SINDH POLICE

Appeals Nos.146 and 147 of 2000, heard on 29th June, 2001.

Civil service---

---Dismissal from service---Re-instatement---Civil servants who alongwith others were involved in criminal case, were dismissed from service, but subsequently when criminal proceedings against all of them were quashed they all applied for their re-instatement---All others except the appellants were re-instated---Authority had applied different standards of judgment to two similar and identical nature of cases by allowing reinstatement of one and disallowing the same remedy to other and same treatment was meted out without any application of mind and consideration of merits of the case---Relief provided by the Authority to others should have equally been allowed to the civil servants in the interest of equity, fair play and justice. [pp. 1394, 1395] A & B

2002 PLC (CS) 86 ref.

Syed Khalid Shah for Appellants.

Muhammad Qasim Mirjat, A.A.-G. for Official Respondents.

Date of hearing: 29th June, 2001.

JUDGMENT

MUHAMMAD IQBAL KAZI (MEMBER-II)---These are two identical appeals bearing Nos.146 and 147 of 2000, respectively filed by the above-named appellants under section 4 of the Sindh Service Tribunals Act, 1973. Since, both the appeals raise similar questions of law, as such, these have been jointly heard by us. The appellants above-named have prayed for declaration of the impugned order dated 23-5-2000 passed by the respondent No.2 as without jurisdiction hence be set-aside and the appellants reinstated in service.

Facts of the case are that both appellants alongwith others were appointed in Karachi Police as Constables and after successful training were posted in similar positions. However, during the course of their service they were apprehended by CIA Police in a Criminal Case No.498 of 1991 under section 392/34, P.P.C. registered at Police Station Clifton alongwith other

29/6

BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR

Appeal No.240/2013

**Fazal Rahim Khattak, Ex-Instructor/Lecturer,
Government Vocational Training Centre, Gul Bahar, Peshawar.....APPELLANT.**

Received
one copy
[Signature]
25/6/21
Fazli Rahim
Khattak

VERSUS

**Government of Khyber Pakhtunkhwa through Chief Secretary,
Civil Secretariat, Peshawar and others.....RESPONDENTS**

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BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR.

Appeal No.240/2013

**Fazal Rahim Khattak, Ex-Instructor/Lecturer,
Government Vocational Training Centre, Gul Bahar, Peshawar.....APPELLANT.**

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary,
Civil Secretariat, Peshawar and others.....RESPONDENTS

PRELIMINARY OBJECTIONS:

- A- That the appeal is badly time barred. ✓
- B- That the appellant has no cause of action.
- C- That the appellant has got no locus standi.
- D- That the appeal is incompetent in its present forum.
- E- The appellant has not come to the court with clean hands.
- F- That the present appeal is bad in its present form for non-joinder and mis-joinder of the necessary parties.
- G- That this honourable Tribunal has got no jurisdiction to entertain the present appeal.



Respectfully Sheweth,

FACT

- 1) Correct only to the extent that the appointment of the appellant was purely temporarily and stop gap arrangement against the said post.
- 2) Para 2 of appeal is incorrect with further clarification that arrear of higher post BPS-17 was granted by the apex court in civil appeal No.129/95, Judgment dated 11.6.1998, so the appellant already availed the said facility/benefits, however annual increments were not allowed.
- 3) Para 3 of appeal is incorrect with further clarification that transfer of the Government Servant is part and parcel of service under section-10 Khyber Pakhtunkhwa, civil servant Act: 1973. Due to dismal record of service and for misconduct of the appellant, disciplinary proceedings were initiated against him and being a habitual absentee was dismissed from service on 04.04.2000 (Annexure- A), which was challenged in Service Tribunal and matter was remanded to the department for de novo inquiry. Due to the dismal record of service of the appellant, He was removed from service. Later on the appellant re-instated in service on the judgment of this honorable Tribunal on 11.6.2002.
- 4) Para 4 of the appeal is incorrect with further clarification that in the pursuance of Judgment of Honorable NWFP Service Tribunal dated 11.6.2002 the disciplinary proceedings / inquiry against the appellant had been conducted by the department in accordance with the relevant rules. The charge of the appellant's willful absence from the duty had been proved against him and he was awarded the punishment of dismissal from service on 6.2.2003. The order was challenged by the appellant in Service Tribunal. The tribunal accepted the appeal and set aside the impugned order. In the pursuance of Service Tribunal judgment dated 26.4.2007 the appellant was re-instated in service.

- 5) Para-5 of appeal is incorrect; the appellant mostly remained dismissed from service with effect from 2000 to 2007. On his re-instatement on 26.4.2007, he was posted at GTVC, Anbar, Swabi, yet he did not mend his ways and mostly remained absent from duty on one pretext or the other. His absentee report and adverse performance report by the Principal concerned are at **Annexure-B**. For having dismal service record, such cases are usually not deemed fit for presenting before the DPC. The observation of Honorable Supreme Court of Pakistan in C.P. No.558-P/2017 in this case is that "we note that the very DPC in its meeting held on 07.06.2011 apparently did not have full record of service of the respondent....." at **Annexure-C**. The dismal record of service of the appellant has not been reflected in the minutes concerned rather it has been termed the omission of the department for delaying the promotion case of the ex-officer from BPS-14 to BPS-17.
- 6) Para 6 is incorrect. As explained in above paras.
- 7) Incorrect. As explained in above paras.

G R O U N D S

- a) Incorrect. The respondents have treated the appellant in accordance with law, rules and policy.
- b) Incorrect, the appellant suffered due to his own conduct and dismal record of service.
- c) Incorrect, as explained in detail in the preceding paras and duly promoted as per law.
- d) Incorrect. As explained in preceding paras.
- e) Incorrect. The promotion of the appellant comes under provincial promotion policy 2009.

In view of the above, it is requested that the instant appeal may be dismissed with cost.

RESPONDENT NO.1) 

Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.

RESPONDENT NO.2) 

Secretary Industries, Commerce & Technical Education Khyber Pakhtunkhwa Peshawar.

RESPONDENT NO.3) 

Secretary Finance Department Government of Khyber Pakhtunkhwa.

RESPONDENT NO.4) 

Managing Director KP-TEVTA.

BEFORE THE NWP SERVICE TRIBUNAL, PESHAWAR.

Appeal No.240/2013

**Fazal Rahim Khattak, Ex-Instructor/Lecturer,
Government Vocational Training Centre, Gul Bahar, Peshawar.....APPELLANT.**

VERSUS

**Government of Khyber Pakhtunkhwa through Chief Secretary,
Civil Secretariat, Peshawar and others.....RESPONDENTS**


AFFIDAVIT

I Shahab-ud-Din Khattak, Legal Coordinator KP-TEVTA, on behalf of Khyber Pakhtunkhwa Technical Education & Vocational Training Authority Peshawar do hereby solemnly affirm and declare that contents of the accompanying reply are true to the best of my knowledge and belief.


DEPONENT

17301-6527091-8
0334-9199058

Identified by


Adar Advocate General
Khyber Pakhtunkhwa.



25.6.021

25-06-2021

45
Amex (48)
DIRECTORATE OF TECHNICAL EDUCATION,
N.W.F.P., PESHAWAR.

Dated 04-4- /2000.

OFFICE ORDER:-

No. DTE/Estt/4-106/:- Under the provision of rule-5(4) of the N.W.F.P. Govt: Servants (Efficiency & Discipline) Rules, 1973, the Authority is pleased to order the removal from service of Mr. Fazli Rahim Khattak, Trade Instructor (Related Studies), Government Vocational Institute (Boys), Ghazi on account of his wilful and un-authorized absence from duty and dismal record of service with immediate effect.

(SAIFULLAH KHAN BURKI)
DIRECTOR.

Enst: No. DTE/Estt/4-106/13856-5) Dated 04-4- /2000.

Copy forwarded for information and necessary action to:-

- 1- Mr. Sultan Zeb, Lieutenant Colonel for Commander, Headquarters 11 Corps Peshawar Cantonment with reference to his letter No. 0312/2/SMT/Education dated 25-2-2000.
- 2- The Section Officer (TE), Education Department, Government of N.W.F.P., Peshawar.
- 3- The District Accounts Officer, Haripur.
- 4- The Principal, Govt: Vocational Institute (Boys), Ghazi.
- 5- Mr. Fazli Rahim Khattak S/O Abdul Ghafoor, Village Regd: P.O. Spin Khak, District Nowshera.

11
DTE
14/5/00
J
3.4.2000
(ATTA UR RAB)
DEPUTY DIRECTOR (ADMN).
14/2000

GOVERNMENT TECHNICAL AND VOCATIONAL CENTRE
ANBAR, SWABI

NO/GTVC/ANBAR/1162

Dated 6-3-2008

To

The Director General,
Technical Education and Manpower
Training NWFP, Peshawar.

Subject: PERFORMANCE REPORT.

Please refer to your office letter No.DGTE&MT/Estt/4-106/1046 dated 28.02.2008 on the subject cited above.

In this connections it is submitted that:-

Mr. Fazali Rahim Khattak, was directed to explain his position regarding his absence vide your office letter no.DGTE&MT/Estt:/3-106/572(1) dated 7.11.2007 but he failed to do so.

His performance is not satisfactory and remained absent from duty detail given below:-

<u>From</u>	<u>To</u>	<u>Days</u>	<u>Remarks.</u>
15.1.2008	18.1.2008	4	Absent
25.1.2008	26.1.2008	2	Leave
29.1.2008	--	1	Absent
2.2.2008	--	1	Absent
7.2.2008	--	1	Leave
11.2.2008	12.202008	2	Absent
15.2.2008	--	1	Leave
21.2.2008	--	1	Leave
28.2.2008	--	1	Leave
29.2.2008	3.3.2008	4	Absent
5.3.2008	6.3.2008	1	Absent
Total absence		14 days	
Total leave		6 days	

Report is submitted as desired please.

PRINCIPAL

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GOVERNMENT TECHNICAL AND VOCATIONAL CENTRE
ANBAR, SWABI



Dated 01-11-2007

No: GTVC/ANBAR/1101/P.F

To

The Director,
Technical Education and Manpower Training
NWFP, Peshawar.

Subject:

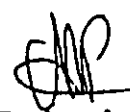
ABSENCE FROM DUTY:

Kindly refer to your office order Endst: No. DTEMP/
Dtt: 4-106/5432(1-3) dated 24-10-2007.

In this connection it is submitted that Mr. Fazle Rahim
Khattak trade Instructor Related studies submitted his arrival report on
29-10-2007 and is absent from duty till date. Therefore his arrival report
at this centre is not acceptable.

It is further added that there are two subjects i, e Trade
Theory and trade practical in each trade at this centre and there is no
need of trade instructor R/S at this centre. It is requested that he may
kindly be posted at a station where his services can be utilized.

Thanks.


Principal

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Annex - C

HONORABLE COURT OF PAKISTAN
(Appellate Jurisdiction)

JUDGMENT

Mr. Justice Gulzar Ahmed, C.J.
Mr. Justice Uzair ul Alam

S.A.No.169C2020

[Against the Judgment dated 16.10.2017, passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Appeal No.240 of 2013]

**Government of KPK through Chief Secretary,
Civil Secretariat, Peshawar & others.** ...Appellant (s)

Versus

Fazal Raheem Khattak. ...Respondent(s)

For the Appellant (s) : Mr. Atif Ali Khan, Adll.A.G. KP
Shah Riaz, A.D. Litigation, TEVTA.

Respondent : In person.

Date of Hearing : 23.04.2020

ORDER

Gulzar Ahmed, C.J.— We have heard the learned counsel for the appellants so also the respondent, who has appeared in person and have perused the record.

2. It seems that in the first place the very service appeal filed by the respondent was time-barred but the Khyber Pakhtunkhwa Service Tribunal, Peshawar (the Tribunal), has not dealt with this issue in the impugned judgment. Further, as per the counsel for the appellants, considerable record has been placed before the Tribunal showing that the respondent's service record has not been up-to the mark and in his ACRs, it was mentioned that he could not have been granted promotion from the year 2002, for that, there have been adverse remarks/reports against him and the said adverse remarks/reports were never challenged

ATTESTED

Senior Court Associate
Supreme Court of Pakistan
Islamabad

9

L.C. No. 10 of 2017

by him. The summary of the ACRs from 1980 to 1999 (available at page-40 of the record), shows that the respondent is not fit for promotion. What is the effect of this document as well as other documents placed before the Tribunal by the appellant, the same apparently has not been adverted to by the Tribunal in the impugned judgment and it is, therefore, essential that in the first place, the Tribunal should consider all these aspects and then record its finding, about the entitlement of the respondent's promotion from 31.05.2002.

3. We have confronted the respondent with all these aspects and though he has argued the matter quite ably himself but concedes that the questions noted above and the available record before the Tribunal, apparently, was not considered by the Tribunal, while passing the impugned judgment.

4. In this view of the matter, we allow this appeal, set aside the impugned judgment dated 16.10.2017 of the Tribunal and remand the matter back to the Tribunal for deciding the appeal of the respondent afresh, in accordance with law and also considering all documents that have been filed by the parties before it. As the matter is quite old, it is expected that the Tribunal shall decide the appeal within a period of three months.

Sd/-HCJ

Sd/-J

Certified to be True Copy



Senior Court Associate
Supreme Court of Pakistan

CR No: 7162/20 Islamabad
 Date of Prosecution: 23/4/20 Civil/Criminal
 No of Words: _____
 No of Folios: (13)
 Requisition Fee Rs: 500
 Copy Fee In: 3
 Court Fee Stamps: 2
 Date of Completion of Copy: 23/4/20
 Date of Delivery of Copy: 4/5/20
 Compa... by... ed by: T. D. Malik

VAKALAT NAMA

NO. _____/20

IN THE COURT OF KP Service Tribunal, Peshawar

Fazl-e-Rahim (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Govt of KP (Respondent)
(Defendant)

I/We Fazl-e-Rahim

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

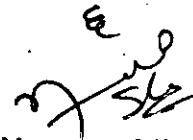


(CLIENT)

ACCEPTED



M. ASIF YOUSAFZAI
Advocate



Syed Noman Ali Bukh
Advocate

Attested

Accepted

M. ASIF YOUSAFZAI
Advocate High Court,
Peshawar.

OFFICE:

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

Placed on file
17/11

CHART SHOWING THE POSITION OF A.C.Rs IN RESPECT OF
MR. FAZLI RAHIM KHATTAQ.

-7

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Name of Officer.	Period of ACRs	Number of Reports			Adverse		
		V. Good	Good	Avg:	Year	Contents	Missing
2	3	4	5	6	7	8	9
Fazli Rahim Khattak. ior Instructor.	14-07-1980 to 31-12-1999.	Nil	06	11	1996	1-Initiative & drive 2-Suitability for promotion	B.Avg Not y fit f promo ion.
						3- <u>General Remarks</u> :- The Official is an habitual abscaunder. He remains abse. without any prior informati. He is very much irregular i: taking the classes.	
					1998	1- <u>General Remarks</u> :- Being non local he is the least interested in his duty at this station for which he h: been using medical grounds : a tactics for medical leave. The above remarks were retained.	
					1999	1- <u>General Remarks</u> :- He i: not doing duty punctually & often remained absent from duty during the year. He h: been warned several times b: the result was nil.	