


23.08.2016

Counsel for the appellant and Mr. Muhammad Jan, GP for the respondents present. Learned counsel for the appellant, during the course of arguments, informed the Tribunal that in view of newly promulgated rules, the appellant stood retired from service and therefore the instant appeal has become infructuous.

In the light of the afore-stated submissions the appeal is dismissed having become infructuous. File be consigned to the record room.



Member



Chairman
23.08.16

ANNOUNCED
23.08.2016


30.04.2015

Counsel for the appellant and Assistant A.G for respondents present. Written statement by remaining respondents No. 1, 2 and 4 not submitted despite last opportunity as such no further chance is allowed. The appeal is assigned to D.B for final hearing for 29.10.2015.


Chairman

29.10.2015


Clerk to counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Arguments could not be heard due to paucity of time, therefore the case is adjourned to 5-5-16 for arguments.



Member


Member

05.05.2016

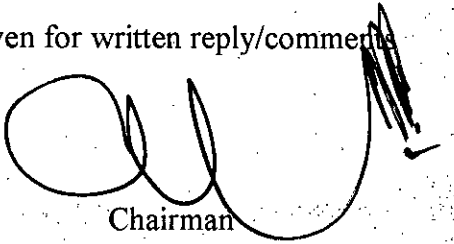
Junior to counsel for the appellant and Mr. Ziaullah, GP for respondents present. Junior to counsel for the appellant requested for adjournment. To come up for arguments on 23.08.2016.


Member


Member

6 30.10.2014

Appellant with counsel present. Mr. Muhammad Adeel Butt, AAG is also present and stated that despite his contact with the respondent-department, neither representative of the respondent-department is present nor written reply has been received on behalf of the respondents. On the request of learned AAG, a last chance is given for written reply/comments on 24.02.2015.



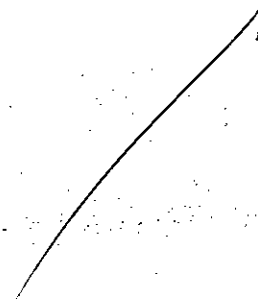
Chairman

7 24.02.2015

Appellant with counsel and Mr. Muhammad Ayub, Assistant for respondent No. 3 alongwith Addl: A.G for all respondents present. Reply on behalf of respondent No. 3 submitted while learned Addl: A.G requested for adjournment for submission of written reply on behalf of remaining respondents No. 1,2 and 4. Last opportunity is extended to 30.04.2015 for written reply/comments on behalf of respondents No. 1, 2 and 4 before S.B.



Chairman



Appeal No. 247/2014.
Mr. Saïd Gul.

3. 17.04.2014

Appellant with counsel present. Preliminary arguments heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. He further contended that the appellant was appointed as Letrate Khasadar (BPS-01) on 11.06.1990 and still working for more than 24 years. He is highly qualified and has passed SSC; that the Government of Khyber Pakhtunkhwa has fixed 33% quota for Class-IV with SSC qualification for the promotion to the Junior Clerk post. But despite of that fixed quota and having eligibility, the appellant was never considered for promotion to the post of Junior Clerk. The appellant filed Departmental Appeal on 13.06.2013 which has been rejected on 04.07.2013 as received on 04.02.2014, hence the instant appeal on 14.02.2014. He further contended that the impugned order dated 04.07.2013 is not a speaking order and has been issued in violation of Section-24-A of the General Clauses Act. 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 01.07.2014.

Appellant Deposited
Security & Process Fee
Rs. 200/- Bank
Receipt is Attached with File

Member

4. 17.04.2014

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

Chairman

5. 01.7.2014



Appellant in person present. Respondents are not present despite their service through registered post/concerned official. However, Mr. Usman Ghani, Sr. GP is present on behalf of the respondents and would be contacting the respondents for written reply/comments on 30.10.2014.

Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 247/2014


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	24/02/2014	<p>The appeal of Mr. Said Gul resubmitted today by Mr. M. Asif Yousafzai Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	25-10-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>17-4-2014</u></p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Said Gul Literate Khasadar received today i.e. on 14.02.2014 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days.

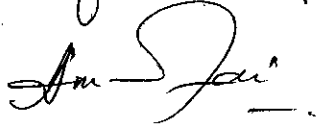
- 1- Memorandum of appeal may be got signed by the appellant.
- 2- Annexures- O & P of the appeal are illegible which may be replaced by legible/better one.

No. gub /S.T,

Dt. 17/02/2014.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Muhammad Asif Yousafzai Adv. Pesh.

Resubmitted after compliance


BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 247/2014

Said Gul.

VS

Govt: of KPK etc.

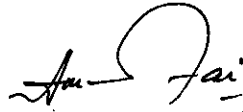
INDEX.

S.NO	DOCUMENTS	ANNEXURE	PAGE
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3-	SSC certificate.	B	5
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5-	Applications.	D to H	7 - 11
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7-	Rejection order	J	13
8-	Application for order.	K	14
9-	Copy of promotion order.	L	15
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Appellant

Said Gul.

Through:


(M. ASIF YOUSAFZAI)
ADVOCATE,

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 247/14

Said Gul , Literate khasadar,
Record Branch, Office of
Political agent, Khyber agency.....Appellant.

VERSUS

- 1- The Secretary Home & T.A Deptt: KPK Peshawar.
- 2- The Secretary Law & Order FATA Secretariat Peshawar.
- 3- The Commissioner Peshawar Division Peshawar.
- 4- The Political Agent Khyber agency at Jamrud.

W.P. Peshawar
No. 179
Dated 14-2-2014

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER DATED. 4.7.2013 COMMUNICATED TO APPELLANT ON 4.2.2014 ON HIS APPLICATION WHEREBY THE APPEAL FOR PROMOTION AS JUNIOR CLERK HAS BEEN FILED FOR NO GOOD GROUNDS.

PRAYER: That on acceptance of this appeal the order dated. 4.7.2013 may be set-aside and the respondents may be directed to consider the appellant for promotion as junior Clerk under 33% quota fixed by the Govt; of KPK for matriculate class-IV employees. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of appellant.

R.SHEWETH.

- 1- That the appellant was appointed as Literate Khasadar in BPS-1 by the competent authority vide order dated. 11.6.1990. Copy of the order is attached as Annexure – A.
- 2- That the appellant was SSC qualification holder at the very date of appointment and that is why the appellant was

As submitted to
[Signature]
14/2/14

As submitted to ~~app~~
and filed.

[Signature]
24/2/14

appointed as Literate Khasadar to work against a clerical post. Copy of the SSC certificate is attached as Annexure – B.

- 3- That the Govt: of KPK has fixed 33% quota for promotion of matriculate class-iv employees but the P.A Khyber Office has never observed the said quota till date due to which the appellant has been kept deprived from his right for no fault on his part. Copy of the Notification is attached as Annexure – C.
- 4- That the appellant has submitted many applications for his claim which were also sent to the concerned P.A office but no fruitful action has been taken on those applications so far. Copies of few applications are attached as Annexure – D,E,F,G & H.
- 5- That finally the appellant filed an appeal for promotion under 33% quota but the same has been filed for no good grounds on 4.7.2013 and the said order was communicated to appellant on his application on 4.2.2014. Hence the present appeal on the following grounds amongst the others. Copies of appeal, order, application are attached as Annexure – I,J,K.

GROUND:

- A- That the order dated. 4.7.2013 communicated to appellant on 4.2.2014 and not considering the appellant for promotion as junior clerk under 33% quota is against the law, rules, norms of justice and material on record, therefore not tenable in the eyes of law.
- B- That the appellant has been discriminated because such benefits of promotion has been extended to others while the appellant has been kept deprived from such benefits, therefore the treatment of the respondents is discriminatory and violation of principles of equality. Copies of order are attached as Annexure – L&M.
- C- That the respondents are under legal obligation to observe the 33% quota fixed for promotion of Class-IV employees by the Govt:

- D- That the appellant is senior most eligible and qualified Class-IV employee and he is entitled to be promoted as Junior Clerk under 33% reserved quota.
- E- That the appellant has been kept deprived from his legal right of promotion which is not tenable under the norms of justice and fair play.
- F- That the respondent department has never observed 33% quota, rather the department promoted the most junior person under 33% quota who were junior to appellant. Thus, the promotion order issued by the respondent department of the most junior person is highly discriminatory and based on nepotism.
- G- That similar appeal have already been decided by this august Tribunal Appeal No.769/2008 decided on 30.1.2009, Appeal No.1604/2010 decided on 21.1.2011 and appeal No.104/2011, and No.323/2011 decided on 11.1.2012. Thus, the appellant also deserves the same treatment under the principle of consistency being similarly placed person. Copies of the Judgments are attached as Annexure- N,O&P.
- H- That the appellant has not been treated according to law, rules governing the 33% quota of appellant.
- I- That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

Appellant
Said Gur. 

Through:


(M. ASIF YOUSAFZAI)
ADVOCATE,

OFFICE ORDER

A 4

Saeed Gul son of Gul Mohammad Mullagori is hereby appointed as Literate Khassadar in B.P.S.NO.1 against the existing vacancy with immediate effect subject to production of medical fitness and academic certificates.

Rach

Political Agent, Khyber

6084-87/dated Peshawar the 9/6 11-6-1990.
Copy to:-
1990

1. The Assistant Political Agent, Jamrud
2. The Political Tehsildar Jamrud/PWT Mullagori
3. The Agency Accounts Officer, Khyber at Peshawar
4. The Subedar Major, Khyber Khassadar Force, Jamrud

for information and necessary action.

SM

Political Agent, Khyber.

ATTESTED

S. No. 401481

Roll No. 12498

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

BOARD OF INTERMEDIATE AND SECONDARY EDUCATION



Peshawar N.W.F.P. Pakistan

Secondary School Certificate Examination

SESSION 1983 (ANNUAL)

THIS IS TO CERTIFY THAT Said Gul
Son/Daughter of GUL MUHAMMAD KHAN
and a student of KHYBER AGENCY

has passed the *Secondary School Certificate Examination*
of the Board of Intermediate and Secondary Education, Peshawar held in April 1983
as a *Private Candidate*. He/She obtained 384 Marks out of 850
and has been placed in Grade D Representing FAIR

The Candidate passed in the following subjects:

- | | | | |
|------------|-----------------|-----------------|---------------------|
| 1. English | 3. Islamiyat | 5. PAK: STUDIES | 7. GEN: MATHEMATICS |
| 2. Urdu | 4. GEN: SCIENCE | 6. ISL: STUDIES | 8. PASHTO |

He/She has been awarded Grade D on the basis of internal assessment by the Institution concerned.

Date of birth according to admission form is FIFTEENTH DECEMBER
one thousand nine hundred and SIXTY ONE (15-12-1961)

Imdad
Asstt. Secretary

10th August, 1983

Secretary
Secretary

This certificate is issued without alteration or erasure.

ATTACHED

BETTER COPY

Annexure-5 (Page-6)

GOVERNMENT OF NWFP
ESTABLISHMENT & ADMINISTRATION DEPARTMENT.

NOTIFICATION

Peshawar, dated the 04 January, 2009

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

AMENDMENTS

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

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

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

Certified that:-

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

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

ATTESTED

گورنمنٹ - پبلسکیشن ڈیپارٹمنٹ

درخواست جوائنٹ

جوائنٹ

گزشتہ سالہ عدوی لٹریچر پندرہ سالوں سے ایسا ہی رہا ہے۔ اس میں ڈیڑھ لاکھ سے
لگاتار سے سرکاری ڈیپارٹمنٹ - عدوی لٹریچر ڈیپارٹمنٹ (جو کہ سابقہ ایس ایچ
1992 سے جاری ہوئے ہیں) سے لیکر 2008 تک درخواست

عدوی لٹریچر ڈیپارٹمنٹ کے ذریعے ایس ایچ ڈی سے لیکر 2008 تک درخواست

لٹریچر ڈیپارٹمنٹ سے جو لٹریچر ڈیپارٹمنٹ کے ذریعے (جو کہ سابقہ ایس ایچ

سوائے ایس ایچ ڈی کے سفارش کرنے والا نہیں ہے۔

اس میں ایس ایچ ڈی کے ذریعے ایس ایچ ڈی سے لیکر 2008 تک درخواست

لٹریچر ڈیپارٹمنٹ سے جو لٹریچر ڈیپارٹمنٹ کے ذریعے (جو کہ سابقہ ایس ایچ

لٹریچر ڈیپارٹمنٹ سے جو لٹریچر ڈیپارٹمنٹ کے ذریعے (جو کہ سابقہ ایس ایچ

Suppl
Report

⑧ E کھنڈہ - پولیٹیکل ایجنٹ صاحب گجراتی
درخواست پر ادا افسانہ

جناب عالی

کوہستان گزشتہ دنوں میں وردی پندرہ سالوں سے صیبا میں
ایک بارڈ بریج اور دو AT کھنڈہ کے زیر اسیانہ پورٹ قائم کرنے
کے پورٹ سرکایا کر کے ہیں۔

اللہ تعالیٰ کے سوا غیر کوئی سفارتیں کرنے والا نہیں ہے
جناب عالی! چیز ایک اوار کے مطابق اس سے پہلے بھی پورٹ
قائم کرنے کے ملک بن چکے ہیں وہ دفتر میں یہ پیشکش
ہوئی ہے۔ گورنر بھی حق بنتا ہے۔

سیرنڈنٹ کے پاس میرا ایک بارڈ حاصل موجود ہے ملک کر کے
(درخواست کیلئے فورٹ سٹ موجود ہے)

وردی بھول سے توقعات رکھتا ہوں، وردی کی کچھ دنوں کے
پیر عبور فرما کر عالی آسانی پیر صبر حق بنتا ہے اور پورٹ کی عالی
آسانی پیر نیا آدھی بھری بنا جائے۔

ایک بارڈ پیر سید گل گل میں لکھتے ہیں اور ایک بارڈ پیر
20/11/06

Supdt.
Bram +
p.v
19/12

ATTACHED

گھوڑا - پولیٹیکل ایجنٹ ملک میراجپنہ

درخواست میراج ال ضاف (P.A.K.)

خدا عالی

گنہگار تھی۔ کہ بندہ اب عہدہ میں رہتا ہے پندرہ سالوں سے ریٹائر ہو گیا ہے اور A.P.A عہدہ ہارے آئیں میں ڈیوٹی اچھے طریقے سے سر انجام دے رہا ہوں خیر اجنبی رولز کے مطابق میرا ریٹائرمنٹ عامہ درجہ سے جو میرا ملکر بن کر ہے جس طرح اگلے میں فوری طور پر پیشینہ کا حقدور ہے لیکن عامہ درجہ میں میرا پیشینہ کا حقدور ہے۔ اس حق کیلئے ایک کمیٹی مقرر کیا جائے (آئین میں شاف والے ارٹیکل کے بغیر یہی کیا جاتا ہے) ارٹیکل 31 آف آئین کے تعلق میں دفتر کے کام میں میرا کوئی حصہ نہیں ہے۔

اب عہدہ میں ایک رہتا ہے اور میرا وہ ال ضاف والا آئین ہے اور میرا وہ سوا میرا کوئی سفارش کرنے والا نہیں ہے۔ میرا کوئی سہنے والا نہیں ہے غریب اور بال بچے ہیں میرا کوئی تعلیم حاصل کرنے سے روکے ہیں

ATTESTED

خیر اجنبی رولز میں میرا ریٹائرمنٹ عامہ درجہ کیلئے کوئی حقدور ہے (درخواست کیلئے پیشینہ کی پیشینہ زرد رنگ کی گالی منسلک ہے) اب عہدہ میں میرا کوئی سفارش کرنے والا نہیں ہے جو میرا ملکر بن کر میرا پیشینہ

Acct-II

Jr

P.A.K 8/14 98

کا حکم صادر ہوا ہے (اب عہدہ میں میرا کوئی سفارش کرنے والا نہیں ہے)

ایک سالہ سینیٹر ریٹائرمنٹ عامہ درجہ ریٹائرمنٹ میرا کوئی سفارش کرنے والا نہیں ہے

گفتگو صواب ہے۔ مگر مقررہ ایڈوائز اور اخبارات کے لئے...

Get report from
PA chapters and
put up.

DS(A) 29/5

صاف عالی کہ قدری ایس سال سے کھتہ لیکچر خانہ اور اخبار پرانی سے دہائیوں
لہرائے خود اعلیٰ قضاوت میں ہوتے ہیں۔

1990 کے بعد ہر سال نائب قاضی / جونیئر جج کی پوزیشن عالی ہوتی ہے۔
اسٹیل سے ہر سال جج کی عالی آسالی پر ہوائے (پروموشن Promotion) درخواستیں
حالی پوسٹوں پر بااثر لوگوں نے کچھ لکھتے ہیں اور میرے جیسے عزیزوں کے لیے
ایئر لیکچریشن کا مشورہ دیا جاتا ہے۔ بیس سالوں میں کوئی نئی جج نہیں نکلتا۔

جس اوپر ہر لیٹرٹ قائم ہوا یا پروموشن (Promotion) ہو جائے وہ میرے جی اور
بھرتی ہو جاتے ہیں۔ (نقل ہائی کورٹ سے) عالی رتبت جج کی پوزیشن قائم ہوا
میرے جی میں سزا دہی نوکری و پروموشن ملتا ہے اس کے لئے حکم نہیں ہے جس پر پروموشن ہوا
اس سال جی دفتر میں عالی پوزیشن موجود ہے۔ پروموشن کے لیے درخواست دینے اور

نمائندگی لیکچر میں عالی رتبت کے تاحس موجود ہے ()

نمائندگی لیکچر میں عالی رتبت کے تاحس موجود ہے ()

نمائندگی لیکچر میں عالی رتبت کے تاحس موجود ہے ()

نمائندگی لیکچر میں عالی رتبت کے تاحس موجود ہے ()



**OFFICE OF THE
COMMISSIONER PESHAWAR DIVISION
PESHAWAR**

(Sub-office H.No.173, Shami Road Peshawar Tel.:9214045 Fax.:9213673)

No.AC(R/GA)/ Pesh/1-16/2009.
Dated Peshawar the, 26/05/2009.

916

To

The Political Agent,
Khyber Agency at Peshawar.

Subject: SERVICE APPEAL FOR SYMPATHETIC CONSIDERATION.

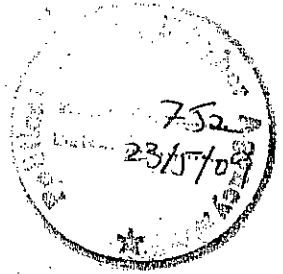
Dear Sir,

I am directed to forward herewith an application (in original) along-with its enclosures, presented in the office of Commissioner Peshawar Division Peshawar by Mr. Said Gul, literate Khassadar working in Record Branch of your office for favour of further necessary action at your end please.

Yours faithfully

(MUNTAZIR KHAN)
ASSTT. TO COMMISSIONER (R/GA)

Spencer
21/5
Said Gul
1 PA. Khyber
21/5
Supdt/Asstt-II
Spesh.



ATTESTED
P



OFFICE OF I.
COMMISSIONER PESHAWAR
PESHAWAR

J

(13)

No. 6/2/EA/II/
Dated: 04/07.2013

3

To

Syed Gul Khassadar,
Record Branch o/o,
Political Agent Khyber Agency.

Subject:

**APPLICATION FOR PROMOTION TO JUNIOR CLERK POST
UNDER 33% FIXED FOR CLASS-IV.**


I am directed to refer to your application as per subject and to inform you that the same has been considered by competent authority and filed.


ASSISTANT to COMMISSIONER (Rev/GA)
PESHAWAR DIVISION PESHAWAR

No.6/7/EA/I

7049

Copy forwarded PS to Commissioner Peshawar Division


ASSISTANT to COMMISSIONER (Rev/GA)
PESHAWAR DIVISION PESHAWAR

ATTESTED


جناح عالی

مرض ہے آ من مسائل نے ایک

عدد اس لئے پہنوشن گزرا ہی تھی۔ جو کم خارج

ہو چکی ہے مگر تاحال مجھے وہ آرڈر نہیں دیا گیا ہے

لہذا استدعا ہے آ مجھے آرڈر بہر اسل

عناست فرمائیں۔ میں تقاضا کر رہی ہوں

تاریخ: 14.2.4

تالیف مسائل

میر تقی میر
ڈائریکٹر جنرل، لکھنؤ
پبلسیشنس

Approved

Shiraz
4/2/4

ATTESTED

[Signature]

OFFICE ORDER
@@@@@@@@@@@@

15

Mr. Zarin Khan, Literate Khassadar son of
Haji Inayatullah is hereby promoted as Junior Clerk in B.P.S.NO.5
(700-25-1200) with usual allowances against a vacant post with
effect from 14.6.1988 subject to his medical fitness.

Political Agent, Khyber.

15/6/1988.

NO. 3042-44 dated Peshawar the
Copy to:-

1. The Agency Accounts Officer, Khyber at Peshawar
2. The Accountant Main office
3. The Senior Khassadar Clerk

for information and necessary action.

Political Agent, Khyber.

Appointed in 1988
~~1988~~

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16

12

Office Order No. 4.

The following transfers amongst the Clerks and Literate Khassadars are ordered in public interest with effect from 1st. April 1941.

....

<u>Name of Official</u>	<u>From</u>	<u>To</u>
1. Mir Taqi Shah.	Tolls Clerk Jamrud.	Passport Clerk Torkham.
2. Dargai Lal.	Passport Clerk Torkham.	Tolls Clerk Jamrud.
3. Mohd Yaqub., Literate Khassadar.	Custom Office Torkham.	Literate Khass at Michni Kand
4. Aziz Ahmad., Literate Khassadar.	Tolls Moharrir Torkham.	Literate Khass Custom Torkham
5. Mohd Azam.	Literate Khassadar Michni Kandoo.	Asstt. Tolls Office Torkha

No joining time is allowed. they should be so relieved on the after noon of the 31st. March that they are able to resume duty on the 1st. April fore-noon.

ATTESTED

R. N. B.

Political Agent, Khyber.

ISSUED

No: 1735-37 Dt 24.3.41

Copy forwarded to the NT. Passport Torkham for NT. Tolls Jamrud Tolls Darogha Torkham

information & necessary action.

M ✓

le. Pending till

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

N 17

APPEAL NO. 769/2008

Date of institution ... 30.05.2008
Date of decision ... 30.01.2009



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

VERSUS

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

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

Mr. Muhammad Asif Yousafzai, Advocate..... (For appellant)
 Mr. Arshad Alam, A.G.P..... For official respondents
 Mr. Khalid Rehman, Advocate..... For respondent No.3

Mr. Justice (R) Salim Khan..... Chairman
 Mr. Bismillah Shah..... Member

JUDGMENT

JUSTICE (R) SALIM KHAN, CHAIRMAN:-

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

The name of the appellant was at the top of the seniority list. The appellant qualified SSC examination. The official respondents issued promotion order of private respondent No.3 (Haq Nawaz) in violation of seniority position on 24.4.2008. The appellant filed departmental appeal on 10.5.2008 against the said order but the same was rejected on 24.5.2008. The present appeal was filed on 30.5.2008. The departmental appeal and this service appeal are within time.

2. The respondents contested the appeal. It was contended by the respondent No.3 that this Tribunal had no jurisdiction, that the appellant passed SSC examination in 2007, that no appeal could be filed to Service Tribunal regarding the determination of fitness or otherwise of a person to be appointed to a higher

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ATTESTED

To,

The Commissioner,
Peshawar Division,
Peshawar.

Subject:

**APPEAL FOR PROMOTION TO JUNIOR
CLERK POST UNDER 33% FIXED FOR
CLASS-IV.**

Sir,

Most respectfully it is stated that I was appointed BPS-1 as Class-IV (Literate Khassadar) vide order dated 11.06.1990. Since I have also been performing duties as Junior Clerk in the Political Agent, Khyber office and nowadays I am the only old experiences employee of Political Agent, Khyber having more than 23 years experience at my credit.

Since, the provincial Govt has fixed 33% quota for promotion to junior clerk post. The total strength of Junior Clerk in Political Agent, Khyber office is 25, meaning thereby, 09 posts come to the share of 33% quota.

The Political Agent, Khyber office has made total Four promotions of Class-IV, and that for all were Junior to me. More-over, are literate Khassadar Mr. Zareen has also been promoted as Junior Clerk. That can be taken departmental precedent.

Since I have been performing duties as Junior Clerk for the last 22 years, but not been regularly promoted which is violation of Law, Rules, quota fixed by Govt and norms of justice.

Therefore, it is requested that I may be considered for promotion as Junior clerk from my due date or when the Juniors to me were promoted. I may also be granted pay benefits of Junior Clerk post against which I have been made to work.

Prompt action will be highly appreciated.

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[Signature]

Dated. 13 / 6 / 2013

Appellant.

[Signature]

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

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

4. We heard the arguments and perused the record.

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

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

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

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

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

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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

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

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

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

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K. S. P. P.

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

Bismillah Shah
(BISMILLAH SHAH)
MEMBER

Justice (R) Salim Khan
(JUSTICE (R) SALIM KHAN)
CHAIRMAN

ANNOUNCED
30.01.2009

Date of Presentation of Application	3-3-2011
Number of Works	1600
Copying Fee	10-00
Urgent	2-00
Total	12-00
Name of Copyist	4
Date of Completion of Copy	3-3-2011
Date of Delivery of Copy	3-3-2011

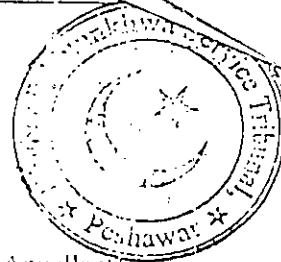
Certified to be true copy

Shahid Khan
CLERK
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ATTESTED
[Signature]

Appeal No. 1604/2010

Date of Institution ... 17.03.2010
Date of Decision ... 21.10.2011



Mr. Yar Gul, Chowkidar,
G.P.S Charak, an, Mardan.

(Appellant)

VERSUS

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

(Respondents)

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

MR. MUHAMMAD ASIF YOUSAFZAL,
Advocate.

For appellant

MR. TAHIR IQBAL,
Addl. Government Pleader

For official respondents

MR. NOOR MUHAMMAD KHATTAK,
Advocate.

For respondent No.4.

SYED MANZOOR ALI SHAH,
MR. KHALID HUSSAIN

MEMBER
MEMBER

ATTESTED

JUDGMENT

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

ATTESTED

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 1604/2010

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



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

(Appellant)

VERSUS

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

(Respondents)

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

MR. MUHAMMAD ASIF YOUSAFZAI,
Advocate.

For appellant

MR. TAHIR IQBAL,
Addl. Government Pleader

For official respondents

MR. NOOR MUHAMMAD KHATTAK,
Advocate.

For respondent No.4.

SYED MANZOOR ALI SHAH,
MR. KHALID HUSSAIN

MEMBER
MEMBER

JUDGMENT

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

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ATTESTED
Khyber Pakhtunkhwa Service Tribunal
Peshawar

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

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

Arguments heard and record perused.

The learned counsel for the appellant argued that the appellant was appointed as Chowkidar in the year, 1987. He passed SSC examination in the year, 1989 and FA in the year, 2009. He was at S.No.6 of the seniority list. On the other hand private respondent No.4 was appointed in the year, 1988 and was at S.No.18 of the seniority list. Therefore, the appellant had more right over private respondent No.4 for consideration for promotion to the post of Junior Clerk against 33% quota reserved for promotion amongst Class-IV civil servants. He further argued that respondent No.4 has been promoted as Junior Clerk while the appellant has been ignored. Moreover, condition of age limit had already been quashed by the august Supreme Court of Pakistan as well as this Tribunal in judgment dated 30.3.2009 in Service Appeal No. 2380/1997. He requested that the appeal may be accepted as prayed for.

6. Counsel for private respondent No.4 argued that as per Notification, dated 4.2.2009, the age limit for promotion to the post of Junior Clerk is upto 30 years, whereas the appellant is over and above 45 years of age, therefore, he is not entitled to be promoted to the post of Junior Clerk. On the other hand, the appellant being qualified, eligible and within the prescribed age limit rightly been promoted as Junior Clerk. He further argued that the Tribunal has no jurisdiction to give directions to the respondent department to fill the posts in promotion quota. He relied on PLD-1994-Supreme Court-539. He requested that the appeal may be dismissed.

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

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

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

4. Arguments heard and record perused.

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

6. Counsel for private respondent No.4 argued that as per Notification dated 4.2.2009, the age limit for promotion to the post of Junior Clerk is upto 30 years, whereas the appellant is over and above 45 years of age, therefore, he is not entitled to be promoted to the post of Junior Clerk. On the other hand, the appellant being qualified, eligible and within the prescribed age limit rightly been promoted as Junior Clerk. He further argued that that the Tribunal has no jurisdiction to give directions to the respondent department to fill the posts in promotion quota. He relied on PLD-1994-Supreme Court-539. He requested that the appeal may be dismissed.

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

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

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

(NOOR ALI KHAN)
MEMBER

(SYED MANZUOR ALI SHAH)
MEMBER

Certificate

copy
Khan
Secretary

Date of Presentation of Application 28-12-2011
No. of Application 1250
Category 8
Vacancies 2
Total 10
Name of Applicant [Signature]
Date of Birth 28-12-2011
Date of Posting 28-12-2011

ATTESTED

[Signature]


ATTESTED

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

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

MANNOOR AHMED
21.10.2011

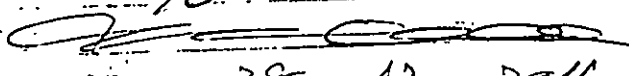
(NOOR ALI KHAN)
MEMBER


(SYED MANZUOR ALI SHAH)
MEMBER

Certified to

True copy

EX-MEMBER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 28.12.2011
Number of 1200
Copying Fee 8
Urgent 2
Total 10
Name of 
Date of Copy 28.12.2011
Date of Delivery of Copy 28.12.2011

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P 24

Date of Institution: 22.1.2011
Date of Decision: 11.1.2012

Mr. Zahid Jap and 4 Clerks, Government High School, Nowshera, Khyber Pakhtunkhwa

(Appellant)

VERSUS

1. The District Coordination Officer, Nowshera.
2. The (D.O. (S.G.M.F)), Nowshera.
3. The Director, Government of Khyber Pakhtunkhwa, Finance Department, Peshawar.

(Respondents)

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

MR. MUHAMMAD ASIF YOUSAFZAI,
Advocate.

For appellant.

MR. FAHIM IQBAL,
Additional Government Engineer.

For respondents.

MR. SULTAN MAHMOOD KHATTAK,
MEMBER

MEMBER
MEMBER

JUDGMENT

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

ATTESTED

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 104/2011

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

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

(Appellant)

VERSUS

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

(Respondents)

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

MR. MUHAMMAD ASIF YOUSAFZAI,
Advocate.

For appellant.

MR. TAHIR IQBAL,
Addl. Government reader.

For respondents.

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

MEMBER
MEMBER.

JUDGMENT

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

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

3. The appeal was admitted to regular hearing on 22.5.2011 and notices were issued to the respondents for submission of written reply. Respondents have filed their joint written reply and contested the appeal. Rejoinder was also filed in rebuttal. Arguments heard and record perused.

4. The learned counsel for the appellant argued that the appellant was appointed as Laboratory Attendant on 3.10.1993, having the qualification of SSC. He further acquired qualification of M.A. during service. Being highly qualified, the appellant was adjusted as Junior Clerk on 13.2.2010 in his own pay and scale instead of consideration on regular basis. Even without monetary benefits, which is against the verdict of august Supreme Court of Pakistan. Moreover, the Hon'ble Tribunal in Service Appeal No. 592/2010, decided on 15.6.2006 allowed monetary benefits in accordance with the law. So far as the question of seniority is concerned, it was the responsibility of the respondent department to issue seniority list on yearly basis. He stated that the matter pertains to terms and conditions of service of the appellant, this Tribunal has ample jurisdiction to entertain the present appeal. In this connection, the learned counsel for the appellant relied on 19.10.2006 Supreme Court 2-10 (b). Counsel for the appellant referred to Service Appeal No. 1604/2010, decided on 21.1.2011, that this Hon'ble Tribunal has directed the respondents to consider the appellant for promotion with effect from the date junior to him were promoted. Moreover, cases of similar nature have already been decided in favour of the appellants in Service appeals No. 769/2008. Counsel for the appellant also produced copy of order No. 4235-39, dated 1.10.2009, whereby one Mr. Imad ud Din Naib Qasid holding diploma of "Associate Engineer" has been promoted against the vacant post of Junior Clerk against 33% quota which is junior to appellant. He requested that the appeal may be accepted as prayed for.

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

ATTESTED

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

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

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

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

ACCEPTED

... of facts of the case are that the appellant joined the respondent department on 3.10.1993 as Laboratory Attendant. The appellant has more than 17 years service at the respondent department with the qualification of M.A. He was adjusted against the post of Junior Clerk (13.2.2010) in his own pay and scale, by the competent authority, vide order dated 13.2.2010. The Government of Khyber Pakhtunkhwa has fixed the 53% quota for Class-IV, having the qualification of SSC for promotion against the post of Junior Clerk but the appellant has not been considered for promotion till date. The appellant filed departmental appeal on 7.10.2010, which elicited no response within the statutory period, hence the present appeal.

The appeal was admitted for regular hearing on 22.5.2011 and notices were issued to the respondents for submission of written reply. Respondents have filed their joint written reply and contested the appeal. Rejoinder was also filed in rebuttal. Arguments heard and record perused.

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

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

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ATTESTED ATTESTED

Facts of the case are that the appellant joined the respondent department on 3.10.1993 as Laboratory Attendant. The appellant has more than 17 years service at the time of his promotion to the post of Junior Clerk (11250) in his own pay and scale, by the competent authority, vide order dated 13.2.2010. The Government of Khyber Pakhtunkhwa has fixed the 55% quota for Class-IV, having the qualification of SSC for promotion against the post of Junior Clerk but the appellant has not been considered for promotion till date. The appellant filed departmental appeal on 7.10.2010, which elicited no response within the statutory period, hence the present appeal.

The appeal was admitted to regular hearing on 22.5.2011 and notices were issued to the respondents for submission of written reply. Respondents have filed their joint written reply and contested the appeal. Rejoinder was also filed in rebuttal. Appointments sheet and record perused.

The learned counsel for the appellant argued that the appellant was appointed as Laboratory Attendant on 3.10.1993, having the qualification of SSC. He further acquired qualification of M.A during service. Being highly qualified, the appellant was adjusted as Junior Clerk on 13.2.2010 in his own pay and scale instead of consideration on regular basis. Even without monetary benefits, which is against the verdict of august Supreme Court of Pakistan. Moreover, the Hon'ble Tribunal in Service Appeal No. 597/2006, decided on 15.6.2006 allowed monetary benefits in accordance with the law. So far as the question of seniority is concerned, it was the responsibility of the respondent department to issue seniority list on yearly basis. He stated that the matter pertains to terms and conditions of service of the appellant, this Tribunal has ample jurisdiction to entertain the present appeal. In this connection, the learned counsel for the appellant relied on PLD 2006 Supreme Court 246 (b). Counsel for the appellant referred to Service Appeal No. 1604/2010, decided on 21.1.2011, that this Hon'ble Tribunal had directed the respondents to consider the appellant for promotion with effect from the date junior to him were promoted. Moreover, cases of similar nature have already been decided in favour of the appellants in Service appeals No. 769/2008. Counsel for the appellant also produced copy of order No. 4235-39, dated 1.10.2009 whereby one Mr. Imad ul Din Naib Qasid holding diploma of "Associate Engineer" has been promoted against the vacant post of Junior Clerk against 55% quota which is junior to the appellant. He requested that the appeal may be accepted as prayed for.

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

AGP
A

ATTESTED

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

The Tribunal observes that the respondents have never maintained any list pertaining to 33% quota fixed for Class-IV employees and the respondents exercising their discretion while promoting Class-IV employees to the post of Junior Clerk. The appellant has been posted as Junior Clerk in his own pay and scale and deprived of his promotion due to no valid reasons and improper exercise of discretion. As reported in P11/2006 Supreme Court 246 (b) in case of depriving a civil servant of his legitimate right of promotion in an illegal manner and by improper exercise of discretion, this Tribunal has the jurisdiction under Section 1 (b) (i). The matter pertains to terms & conditions of service of the appellant which have been violated. The Tribunal further observed that the appellant has been made to work on higher post without benefits attached to that post which is violative of basic rights and according to the judgments of the august Supreme Court ^{as reported in the PLD 1991 Supreme Court 233 (b)} and this Tribunal judgment in Service Appeal No. 59/2006 dated 15.6.2006, the appellant is fully entitled to receive salary of that post. There were clear vacancies of Junior Clerk available in 33% quota which was never observed strictly in accordance with law and rules and keeping seniority positions of the Class-IV employees. The respondent No.2 has made order in own pay and scale basis instead of regular promotions which is against the law. One Mr. Imadud Din has been promoted which is junior to the appellant.

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

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

(NOOR ALI KHAN)
MEMBER

(SULTAN MAHMOOD KHATTAK)
MEMBER

ATTESTED

ATTESTED

ANNOUNCED
14.11.2017
Certified to be true copy
Secretary

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

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

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

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

ANNOUNCED
11.11.2012

(NOOR ALI KHAN)
MEMBER

(SUIFAN MAHMOOD KHATTAK)
MEMBER

Certified to be a true copy
11/11/2012
Secretary
Nowshera

[Handwritten signature]

VAKALAT NAMA

NO. _____/20

IN THE COURT OF Service Tribunal Peshawar.

Said Gul (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

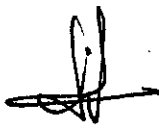
Govt. of KPK etc (Respondent)
(Defendant)

I/We Said Gul (Appellant)

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

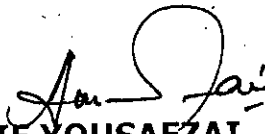
I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding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

Dated _____/20



(CLIENT)

ACCEPTED


M. ASIF YOUSAFZAI
Advocate

M. ASIF YOUSAFZAI
Advocate High Court,
Peshawar.

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

STP Dair No. 452
Date 4/6/15

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

Appeal No. 247/2014

Said Gul

V/S

Home Deptt:

.....

**APPLICATION FOR FIXING OF AN EARLY DATE OF
HEARING IN THE ABOVE TITLED INSTEAD OF 29.10.2015**

.....

RESPECTFULLY SHEWETH:

1. That the appellant has filed the instant appeal for promotion as Junior Clerk under 33% quota fixed by the Govt: of KPK for matriculate class-IV employees.
2. That the appeal is in arguments stage and is fixed for 29.10.2015 before this Honourable KPK Service Tribunal.
3. That the respondents are going to retire the appellant on completion of 25 year service on 15.6.2015 and the appeal of the appellant will be infructuous if the appeal is not hear on the date before his retirement.
4. That it will be in the interest of justice to fix the case at an early date due to above mentioned reasons.

It is, therefore, most humbly prayed that on acceptance of this application, an early date of hearing may kindly be fixed in the above Service Appeal instead of 29.10.2015. Any other remedy which this august Tribunal deems fit and appropriate that may also be awarded in favour of the appellant.

Be placed before
BB for orders
09.06.15

27/5

Appellant
Said Gul

THROUGH:

M. Asif Yousafzai

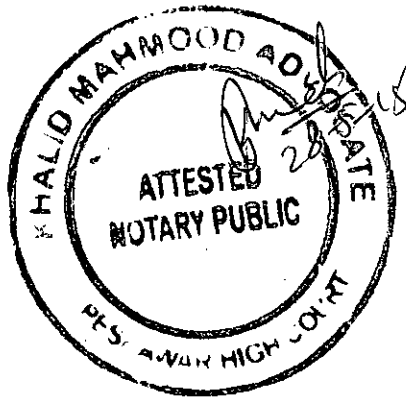
(M. ASIF YOUSAFZAI)

& *Taimur Ali Khan*

(TAIMUR ALI KHAN)
ADVOCATES, PESHAWAR.

AFFIDAVIT:

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



Said Gul
Deponent

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

Appeal No. 247/2014

Said Gul

V/S

Home Deptt:

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27/5

Appellant
Said Gul

THROUGH:

M. Asif Yousafzai

(M. ASIF YOUSAFZAI)

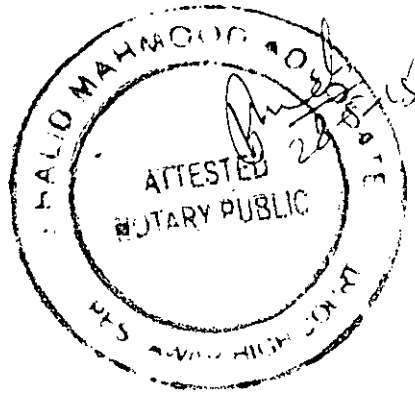
&

Taimur Ali Khan

(TAIMUR ALI KHAN)
ADVOCATES, PESHAWAR.

AFFIDAVIT:

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



Said Gul
Deponent

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

Appeal No. 247/2014

Said Gul

V/S

Home Deptt:

.....

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27/5

Appellant
Said Gul

THROUGH:

M. Asif Yousafzai

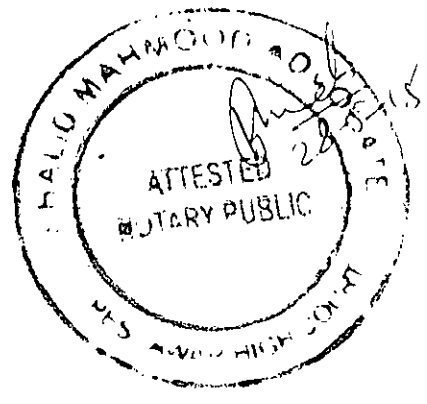
(M. ASIF YOUSAFZAI)

& *Taimur Ali Khan*

(TAIMUR ALI KHAN)
ADVOCATES, PESHAWAR.

AFFIDAVIT:

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



Said Gul
Deponent