

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA

Service Appeal No. 7582 /2021

Mst. Kausar Perveen..... Appellant

Versus

Secretary E&SE Khyber Pakhtunkhwa and others Respondents

INDEX

S. NO	Description of Documents	Annexure	Pages
1	Parawise Comments and Affidavit	-----	1-4
2	Notification dated 22.06.2016	A	5-9
3	Promotion Policy	B	10-11

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA

Service Appeal No: 7582/2021

Mst. Kausar Parveen.....Appellant

Versus

Secretary E & SE KP & OthersRespondents

Joint Parawise Comments on behalf of Respondent No. 1 & 2.

Preliminary objections.

- That the instant appeal is badly time barred.
- That the Appellants have got no cause of action, locus standi to file the instant appeal.
- That as per **Khyber Pakhtunkhwa Civil Servants Promotion Policy, 2009** promotion will always be notified with immediate.
- That the Appellant has not come to this Honorable Tribunal with clean hands.
- That the Appellant has concealed material facts from the Honorable Tribunal.
- That the Appeal is not maintainable in the present form being devoid of merits.
- That the conduct of Appellant estopped him to bring the instant appeal.

ON FACTS.

1. That para-1 pertains to the record of the appellant.
2. That para-1 pertains to the record of the appellant.
3. That at the time of issuing of promotion criteria of Elementary & Secondary Education Department Khyber Pakhtunkhwa erstwhile FATA was working under the SAFRON Division and no such policy was existing at 2014, furthermore, Appellant is mistakenly taking in to consideration the term up -gradation /promotion as one inadvertently and same thing however there is difference between promotion and up-gradation as for as the latter is concerned, respondent department had upgraded all the District cadre posts as per policy **notification attached as (Annex-A)**. Promotion is a sort of appointment/recruitment to next scale /grade under the law/policy which is always be granted

with immediate effect and based on seniority cum fitness, **policy of promotion attached as (Annex-B)**.

4. That detail reply has already been submitted under para-3 above.
5. That detail reply has already been submitted under para-3 above.
6. That para-6 pertains to the record, however, Appellant is mistakenly taking in to consideration the term up -gradation /promotion as one inadvertently and same thing however there is difference between promotion and up-gradation as for as the latter is concerned, respondent department had upgraded all the District cadre posts as per policy **notification attached as (Annex-A)**. Promotion is a sort of appointment/recruitment to next scale /grade under the law/policy which is always be granted with immediate effect and based on seniority cum fitness, **policy of promotion attached as (Annex-B)**.
7. That writing of letters to the subordinate offices is the routine official business of the Directorate, which could not establish any right of the appellant as stated above that Appellant is mistakenly taking in to consideration the term up -gradation /promotion as one inadvertently and same thing however there is difference between promotion and up-gradation as for as the latter is concerned, respondent department had upgraded all the District cadre posts as per policy **notification attached as (Annex-A)**. Promotion is a sort of appointment/recruitment to next scale /grade under the law/policy which is always be granted with immediate effect and based on seniority cum fitness, **policy of promotion attached as (Annex-B)**.
8. That the Respondent department has acted according to rules and policy and no violation has been made.
9. That para-9 correct to the extent that seniority of SST are maintaining at Directorate level but the appellant has been promoted from the post of CT after up- gradation of the posts at Erstwhile FATA level as stated above that That at the time of issuing of promotion criteria of Elementary & Secondary Education Department Khyber Pakhtunkhwa erstwhile FATA was working under the SAFRON Division and no such policy was existing at 2014.
10. That detail reply has already been submitted under paras 3 & 6.
11. That no Department appeal is filed by the appellant to the Responder Department.
12. That no Department appeal is filed by the appellant to the Responder Department.

13. That no Department appeal is filed by the appellant to the Respondent Department.
14. That para- 4 is Legal, hence needs no further comments.
15. Legal, the Respondent Department also submits on the following grounds inter alia.

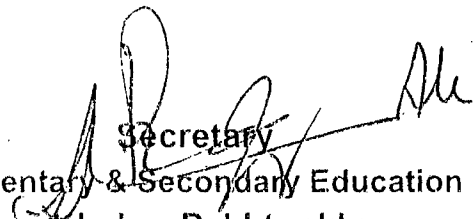
Grounds:

- I. Incorrect and denied, the respondent department has acted according to rules / policy.
- II. Incorrect and denied, the respondent department has acted according to rules / policy.
- III. Incorrect and denied, detail reply has already been submitted under paras 3 & 6.
- IV. Incorrect & denied, no discrimination has been made to the appellant and the respondent department has acted according to rules / policy.
- V. Incorrect and denied, the appellant has been promoted rightly and according to rules / policy.
- VI. Incorrect and denied, no malafide has been made by the respondent department.
- VII. Incorrect and denied, detail reply has already been submitted under paras 3 & 6.
- VIII. Incorrect hence denied. As replied above.
- IX. The respondent seeks leave of this Honorable Tribunal to raise additional ground at the time of arguments.

Prayer:

In light of the stated factual and legal position it is humbly prayed that the case of the appellant may be ordered as dismissed.

Respondent No. 1


Secretary
Elementary & Secondary Education
Khyber Pakhtunkhwa

Respondent No. 2


Director
Elementary & Secondary Education
Khyber Pakhtunkhwa

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA

Service Appeal No. 7582/2021

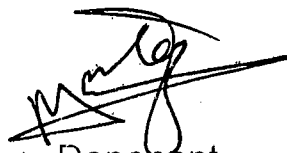
Mst. Kausar Perveen Appellant

Versus

Secretary E&SE Khyber Pakhtunkhwa and others Respondents

AFFIDAVIT

I Murtaza Khan Superintendent (BS-17) Directorate of Education
Merged Areas Khyber Pakhtunkhwa Peshawar do hereby solemnly
affirm and declare that the contents of the instant Parawise
Comments are true & correct to the best of my knowledge & belief.


Deponent



4

ST/11/11/11 - 11

FATA SECRETARIAT
(SOCIAL SECTORS DEPARTMENT)
WARSAK ROAD PESHAWAR
Dated Peshawar-22-06-2016

Annex - E

14

NOTIFICATION:-
No. (14)/SSD/Up-gradation/ 2882-94 .In the light of Presidential Order No.13 of 1972 and in pursuance of
Elementary & Secondary Education Department, Khyber Pakhtunkhwa's Notification No.SO (B&A)/1-18/E&SE/2012 dated
11.07.2012 the competent authority has been pleased to accord sanction for the up-gradation of the posts of
Cadres/Cadres of Teachers working in FATA, as an Incentive for Higher Pay Scales, with effect from 01-07-
Details given below:-

1. Nomenclature of Teaching Cadre Post	2. Name of Institution with the name of Agency/FR	3. Existing Basic Pay Scale	4. New approved/Upgraded Basic Pay Scale	5. Remarks
Primary School Teacher (PST)	Govt. Primary Schools (Agency/FR wise breakup attached)	BS-5 BS-6 BS-7 BS-9 BS-10 BS-12	(BS-12)	The post of PST is upgraded to BPS-12. Accordingly, 9510 posts of PSTs, already sanctioned in various pay scales are upgraded to BPS-12 for the present incumbents as well as future appointees.
Senior Primary School Teacher (Sr. PST)	-do-	Newly Upgraded/ Re-designated post	(BS-14)	500 posts out of existing PSTs (9510) are upgraded to BPS-14 and re-designated as Senior PST. The posts will be filled in the manner as may be prescribed by the Elementary & Secondary Education Department by making necessary service rules or amending the existing service rules, if any for the post
Primary School Head Teacher (PSHT)	-do-	Newly Upgraded/ Re-designated post	(BS-15)	4505 posts out of (9010) PST posts, (one post in each Primary School) are upgraded to BPS-15 and re-designated as Primary School Head Teacher, and will be filled in the manner as may be prescribed by the Elementary & Secondary Education Department by making necessary service rules or amending the existing service rules, if any for the post.

Attended
P

5

15

Certified Teachers (C.T)	Govt. Middle/High/Higher Secondary School (Agency/FR wise breakup attached)	BS-9	(BS-15)	All the existing posts of CTs (2856) are upgraded in BPS-15 for the present incumbents as well as future appointees.
		BS-10		
		BS-12		
		BS-14		
		BS-15		
Senior Certified Teachers (Sr. C.T)	-do-	Newly Upgraded/ Re-designated post	(BS-16)	One thirds (1/3) of the total CTs (981) posts are upgraded to BPS-16 and re-designated as Senior CTs, which will be filled in the manner as may be prescribed by the Elementary & Secondary Education Department by making necessary service rules or amending the existing service rules, if any for the post.
Arabic Teachers (A.T)	-do-	BS-9	(BS-15)	All the existing posts of ATs (882) are upgraded in BPS-15 for the present incumbents as well as future appointees.
		BS-10		
		BS-12		
		BS-14		
		BS-15		
Senior Arabic Teacher (Sr. AT)	-do-	Newly Upgraded/ Re-designated post	(BS-16)	One thirds (1/3) of the total ATs (294) posts are upgraded to BPS-16 and re-designated as Senior ATs, which will be filled in the manner as may be prescribed by the Elementary & Secondary Education Department by making necessary service rules or amending the existing service rules, if any for the post.
Teacher of Theology (T.T)	Govt. Primary/ Middle/High/Higher Secondary School (Agency/FR wise breakup attached)	BS-7	(BS-15)	All the existing posts of TTs (3406) are upgraded in BPS-15 for the present incumbents as well as future appointees.
		BS-9		
		BS-10		
		BS-12		
		BS-14		

6

16

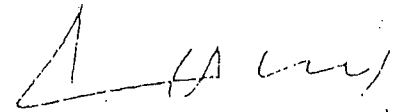
Senior Teacher of Technology (Sr. T.T.)	-do-	Newly Upgraded/ Re-designated post	(BS-16)	One thirds (1/3) of the total TTs (1135) posts are upgraded to BPS-16 and re-designated as Senior TTs, which will be filled in the manner as may be prescribed by the Elementary & Secondary Education Department by making necessary service rules or amending the existing service rules, if any for the post.
Drawing Masters (D.M.)	Govt. Middle/High Higher Secondary School (Agency/FR wise breakup attached)	BS-9 BS-10 BS-12 BS-14 BS-15	(BS-15)	All the existing posts of DMs (918) are upgraded in BPS-15 for the present incumbents as well as future appointees.
Senior Drawing Masters (Sr. D.M.)	-do-	Newly Upgraded/ Re-designated post	(BS-16)	One thirds (1/3) of the total DMs (306) posts are upgraded to BPS-16 and re-designated as Senior DMs, which will be filled in the manner as may be prescribed by the Elementary & Secondary Education Department by making necessary service rules or amending the existing service rules, if any for the post.
Physical Education Teachers (P.E.T's)	-do-	BS-9 BS-10 BS-12 BS-14 BS-15	(BS-15)	All the existing posts of PETs (820) are upgraded in BPS-15 for the present incumbents as well as future appointees.

8

18

Date

1. Secretary Finance Department, FATA Secretariat.
2. Secretary A,I&C Department FATA Secretariat.
3. Secretary (E & SE) Khyber Pakhtunkhwa Peshawar
4. Additional Accountant General (PR) Sub Office Peshawar
5. Director Education (FATA)
6. Director (E & SE) Khyber Pakhtunkhwa Peshawar
7. All Agency Education Officers In Agencies/FRs
8. All Heads of concerned Schools
9. All Agency Accounts Officers In FATA
10. District Accounts Officers, Kohat, Lakki, Bannu, D.I.Khan & Tank
11. PS (FA) SAFRON Division Islamabad with reference his office letter No.3(10) TA/2015 dated 13/7/2016
12. PS to Additional Chief Secretary FATA Secretariat
13. PS to Secretary Social Sector Department FATA Secretariat



(Abdul Manan)
Section Officer (Education)
Social Sector Department

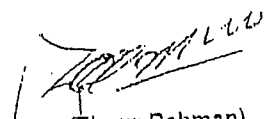
Government of Pakistan
Finance Division
(Regulation Wing)

Islamabad, 28 July, 2016

11/2015-582/2016

Copy to

1. Accountant General (PR) Islamabad.
2. Additional Accountant General (PR) Sub Office Peshawar.
3. Director Education (FATA).
4. All Agency Education Officers In Agencies/FRs.
5. All Agency Accounts Officers In FATA.
6. District Accounts Officers, Kohat, Lakki, Bannu, D.I.Khan & Tank.
7. PS to Secretary Finance Department, FATA Secretariat.

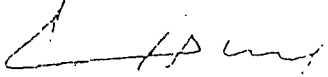


(Zia-ur-Rehman)
Section Officer (R-I)

9

19

- 1. Secretary Finance Department, FATA Secretariat.
- 2. Secretary A.I&C Department FATA Secretariat
- 3. Secretary (E & SE) Khyber Pakhtunkhwa Peshawar
- 4. Additional Accountant General (PR) Sub Office Peshawar
- 5. Director Education (FATA)
- 6. Director (E & SE) Khyber Pakhtunkhwa Peshawar
- 7. All Agency Education Officers in Agencies/FRs
- 8. All Heads of concerned Schools
- 9. All Agency Accounts Officers in FATA
- 10. District Accounts Officers, Kohat, Lakki, Bannu, D.I.Khan & Tank
- 11. SO (TA) SAFRON Division Islamabad with reference his office letter No.3(10) TA/2015 dated 13/5/2016
- 12. PS to Additional Chief Secretary FATA Secretariat
- 13. PS to Secretary Social Sector Department FATA Secretariat

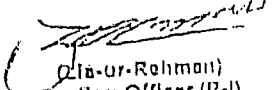

 (Abdul Manan)
 Section Officer (Education)
 Social Sector Department

Government of Pakistan
Finance Division
(Regulation Wing)

Islamabad, 25 July, 2016

102015-75/2016

- 1. Accountant General (PR) Islamabad.
- 2. Additional Accountant General (PR) Sub Office Peshawar.
- 3. Director Education (FATA)
- 4. All Agency Education Officers in Agencies/FRs.
- 5. All Agency Accounts Officers in FATA.
- 6. District Accounts Officer, Kohat, Lakki, Bannu, D.I.Khan & Tank.
- 7. PS to Secretary Finance Department, FATA Secretariat.



 Qia-ur-Rehman
 Section Officer (R-I)

DIRECTORATE OF EDUCATION FATA SECRETARIAT PESHAWAR

Ref. No. 8233-60 Dated 8/8 2016.

Copy forwarded for information and necessary action;

- 1. Accountant General (PR) Islamabad.
- 2. Additional Accountant General (PR) Sub Office Peshawar.
- 3. Director Elementary & secondary Education, Khyber Pakhtunkhwa Peshawar.
- 4. All Agency Education Officers in Agencies/FRs FATA.
- 5. All Heads of concerned schools in FATA.
- 6. All Agency Accounts Officer in FATA.
- 7. District Accounts Officer, Kohat, Lakki, Bannu, D.I.Khan & Tank.
- 8. SO (TA) SAFRON Division Islamabad with reference to letter No.3 (10) TA/2015 dated 13/5/2016.
- 9. Section Officer (R-I) Finance Division (Regulation Wing) Islamabad w/r to letter No.1 (32) R-1/2015-102/2016 Islamabad dated 13/7/2016.
- 10. Section Officer (Edu) FATA Secretariat w/r to letter of Even No. & Date.
- 11. PS to additional Chief Secretary FATA.
- 12. PS to Secretary Finance Department FATA Secretariat
- 13. PS to Secretary AI&C FATA Secretariat
- 14. PS to secretary Social Sectors Department FATA Secretariat.


 Deputy Director (Establishment)
 Directorate of Education (FATA)
 JL

10

Promotion Policy

Order to consolidate the existing Promotion Policy, which is embodied in circular letters issued in piecemeal from time to time, and to facilitate the line officers at every level in prompt processing of promotion cases of Provincial civil servants it has been decided to issue the "Khyber Pakhtunkhwa Civil Servants Promotion Policy 2009" duly approved by the competent authority, for information and compliance of concerned. This Policy will apply to promotions of all civil servants holding appointment on regular basis and will come into effect immediately. The Policy consists of provisions given hereunder:-

Length of service.

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

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

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

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

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

Basic Scale 19	7 years' service in BS-18
Basic Scale 20	10 years' service in BS-18 & above, or 3 years' service in BS-19.

LINKING OF PROMOTION WITH TRAINING:

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

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

(b) This condition will not be applicable to civil servants in specialized cadres such as Doctors, Teachers, Professors, Research Scientists and incumbents of purely technical posts for promotion within their own line of specialization as envisaged in the existing Promotion Policy. However, for promotion against technical posts in BPS-20, which require Managerial and administrative skills, the GMC shall be mandatory. * Substituted vide No. SO(Policy)/E & AD/I-16/2017 dated 05-12-2017

(11)

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

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

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

DATE OF PROMOTION:

Promotion will always be notified with immediate effect.

II. FICTITIOUS PROMOTION:

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

III. PROMOTION OF CIVIL SERVANTS WHO ARE AWARDED MINOR PENALTIES.

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

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

PROMOTION IN CASE OF PENDING INVESTIGATIONS BY NAB:

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