

Appeal No. 1008/2013.
Mst. Nazam Akhtar

01.04.2014

(i) Mr. Abdul Mateen, Attorney for the appellant and Mr. Ziaullah, GP for the respondents present. Preliminary arguments heard. Attorney for the appellant stated that the appellant was appointed as Primary School Teacher on 03.05.1979 and upgraded to BPS-12 w.e.f 01.10.2007 vide order dated 26.01.2008. As per criteria as laid down in the Finance Department letter dated 26.06.2012 all the posts of PST in various Scales were to be upgraded as BPS-12, BPS-14 and BPS-15. In the mean while Education Department have issued Revised Service Rules for various categories of teachers in the Elementary and Secondary Education Department vide Notification dated 13.11.2012. As per Serials No. 19 and 20 of the appendix to the said Rules, promotion to the posts of Senior Primary School Teachers (SPST), BPS-14 and Primary School Head Teacher (PSHT), BPS-15 will respectively be made on the basis of seniority cum fitness from amongst PST and on the basis of seniority-cum-fitness ~~for~~ amongst Senior Teachers with at least 10 years service and having qualification prescribed for the initial recruitment. Feeling aggrieved from the aforesaid Notification dated 13.11.2012, the appellant filed Departmental Appeal against the said notification on 25.02.2013, which has not been responded with the statutory period of 90 days, hence the instant appeal on 24.06.2013. Attorney for the appellant further contended that the Notification dated 13.11.2012 is un-lawful, illegal, void, malafide and without law full authority. The criteria of initial recruitment for the up-gradation/promotion are against the principles of seniority. The said Service Rule have been given retrospective effect thereby deprived the appellant from his legal rights as Government Servant so the Senior most Matriculate PST teachers would be deprived of promotion to BPS-14 and BPS-15; that the said Service Rules are ultra vires to the Constitution of Pakistan which guarantees equal rights to all the citizens of the state. He prayed that the instant appeal may be admitted for regular hearing.

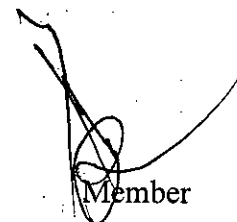
(ii) The learned Government Pleader while assisting the court was of the view that the appeal is lacking jurisdiction, not maintainable in its present form and time barred before the appellate authority. It has been prayed ^{by the appellants} that the respondents be directed to upgrade the appellant in BPS-14 w.e.f 01.07.2012 and promote to BPS-15. According to Section-4, proviso b(i), no

appeal shall lie before this Tribunal against an order/decision of a departmental authority determining the fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher post or grade, hence the tribunal has got no jurisdiction to entertain the instant appeal. Moreover, the relief claimed by the appellant is in a nature of command to Departmental Authority which the Tribunal do not have the power as such as held by the august Supreme Court in its judgment reported in 2006 SCMR 1630(b). It has also been prayed that the impugned Rules/Criteria dated 13.11.2012 may be set-aside which includes criteria for appointments to various other posts which have not been impugned. Moreover, incumbents of a particular posts could not claim as of right provision of certain terms and conditions according to his choice as held by the august Supreme Court of Pakistan 2009 SCMR 980 (a). So the impugned order is not maintainable in its present form. The appeal is badly time barred before the appellate authority. The impugned Notification was issued on 13.11.2012 and the appellant filed Departmental Appeal on 25.02.2013. He while relying on 2011 SCMR 676 (d) that if Departmental Appeal is time barred, the appeal before the Service Tribunal would not be competent; 2012 SCMR 195 that if a Departmental Appeal filed by a Civil Servant is barred by time, no relief can be granted to him even if the appeal before the Service Tribunal is on time and 2010 SCMR 1982 that question of limitation could not be taken lightly. He was of the view that the appeal is liable to be dismissed in limine;

(iii) The attorney of the appellant could not provide plausible explanation and could not controvert the observations/points raised by the Government Pleader.

(iv) In view of the above, the Tribunal while agreeing with the arguments put forth by the learned Government Pleader is of the view that the appeal is lacking jurisdiction, not maintainable in its present form and barred by time before the appellate authority is dismissed in limine with no order as to costs. File to be consigned to the record.

ANNOUNCED
01.04.2014


Member

7
09.12.2013

Mr. Abdul Mateen, Attorney for the appellant, on behalf of the appellant present. M/S Khurshid Ali, SO and Mosam Khan, AD are present in other cases and stated at the Bar that they have not received any notice in this case so far. MR. Muhammad Adeel Butt, AAG is also present. Since the appeal has been lodged on 24.06.2013 for setting aside the impugned rules/criteria dated 13.11.2012 and direction has been sought to the respondent-department to upgrade the appellant in BPS-14 w.e.f 01.07.2012 and also granting her promotion in BPS-15 while seeking relaxation ~~of~~ omission of condition of F.A/FS.c for promotion in BPS-14 and BPS-15 in the application/departamental appeal dated 25.02.2013, appeal to come up for preliminary arguments on limitation as well as maintainability of the appeal on 10.02.2014.


Chairman

8
10.2.2014

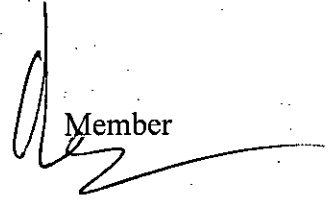
Mr. Abdul Mateen, Attorney for the appellant, M/S Khursheed Khan, SO for respondents No. 1, Mosam Khan, AD for respondent No. 2 and Mr. Aziz Khan, C.T Teacher for respondents No. 3 & 4 with AAG for the respondents present. To come up for preliminary hearing on limitation as well as maintainability of the appeal in the light of order ^{sheet} dated 9.12.2013 before the learned Primary Bench alongwith connected appeal on 24.2.2014.


CHAIRMAN

9.

24.02.2014

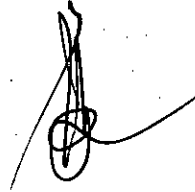
Mr. Abdul Mateen, Attorney for the appellant and Mr. Zia Ullah, GP for the respondents present. Preliminary arguments could not be heard due to general strike of the Bar. To come up for preliminary hearing on 10.03.2014.


Member

10.

10.03.2014

Mr. Abdul Mateen, Attorney for the appellant and Mr. Zia Ullah, GP for the respondents present. Copy of application for transfer of case to a Judicial Member of the Tribunal submitted by the Attorney for the appellant on 21.12.2013 is handed over to the learned GP. To come up for ^{arguments on the application &} further preliminary hearing ^{on} 21.03.2014.



Member

11.

21.03.2014

Mr. Abdul Mateen, Attorney for the appellant present. No one is present on behalf of the respondents. To come up for arguments on the application and further preliminary hearing on 01.04.2014.


Member

6.

26.11.2013

Appellant with Mr. Abdul Mateen, Attorney for the appellant and Mr. Zia Ullah, GP for the respondents present. Appellant stated at the Bar that Mr. Abdul Mateen, is their attorney for which proper Power of Attorney written and submitted before the Tribunal so far as the question of Power of attorney is concerned it has become settled but now the question is as to whether the attorney can argue the case before the Tribunal or otherwise. To come up for clarification and further preliminary hearing on 09.12.2013.


Member

[A large, diagonal handwritten mark or signature spans across the lower half of the page.]

3.
Noted
Asfar

18.09.2013

Attorney who is not legal practitioner for the appellant present. He wants to argue the case himself. Therefore, Pre-admission notice be issued to the Sr.GP/GP to assist the Tribunal. Case to come up for preliminary hearing on 27.09.2013, the date already fixed in similar nature appeal No.861/2013.

Member

4.

27.09.2013

Attorney who is not legal practitioner for the appellant present and requested for adjournment. To come up for preliminary hearing as per order sheet dated 18.09.2013 on 04.11.2013:

Member

5.



4.11.2013

Mr. Abdul Mateen, attorney for the appellant present. In order to verify the power of attorney, the appellant be summoned to attend the Tribunal personally. To come up for preliminary hearing on 26.11.2013.


MEMBER

Form- A
FORM OF ORDER SHEET

Court of _____
Case No. 1008/2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	24/06/2013	<p>The appeal of Mst. Nasreen Akhtar presented today by her, may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p> REGISTRAR</p>
2	16-7-2013	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>18-9-2013</u></p> <p> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1008 /2013.

Mst: Nasreen Akhtar D/O Fazali Rahim,
PST, Government Girls Primary School, Kakshal, Peshawar.

Vs


Secretary to the Government of Khyber Pakhtunkhwa Elementary & Secondary
Education Department, Civil Secretariat, Peshawar and others

I N D E X

S #	Description of Documents	Annexure	Page No.
1	Memo of Appeal	-	1-4
2	Pages of Service Book Showing entry in service on 03.05.1979	A	5-8
3	Order of award of selection BPS-10	B	9
4	Policy/order of upgradation to BPs-12	C	10
5	Incentive of upgradation/promotion to BPS-14 and BPS-15	D	11-12
6	Impugned Rules/Criteria dated 13.11.2012	E	13-23
7	Application dated 25.02.2013 for omitting impugned rules/criteria	F	24-25
8	High Court judgment dated 12.03.2013	G	26-27
	Special Power of Attorney with original copy only.		

COMPLETE AND CORRECT

Dated 24 /06/2013.


Appellant

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWARService Appeal No. 1068/2013

Mst: Nasreen Akhtar D/O Fazali Rahim,
PST, Government Girls Primary School Kakshal, Peshawar

APPELLANT

VERSUS

1066
24-6-13

1. Secretary to Government of Khyber Pakhtunkhwa, Elementary & Secondary Education Department, Civil Secretariat, Peshawar.
2. Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, outside Dabgari Gate Peshawar.
3. District Education Officer (Females) G.T. Road Peshawar.
4. Sub Divisional Education Officer (Female) G.T. Road Peshawar
5. Secretary to the Government of Khyber Pakhtunkhwa, Finance Department, Civil Secretariat Peshawar.
6. Secretary to the Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat Peshawar.

RESPONDENTS

Appeal against the impugned Service Rules issued by the Secretary to the Government of Khyber Pakhtunkhwa, Elementary and Secondary Education Department Peshawar (Respondent No.1) dated 13-11-2012 whereby the path of upgradation and promotion of the Appellant in BPS-14 and 15 has been blocked.

Prayer in appeal: Setting aside the Impugned Rules dated 13-11-2012, the Appellant may be allowed upgradation in BPS-14 with effect from 01-7-2012 and promotion in BPS-15 under the incentive given by the Government of Khyber Pakhtunkhwa, Finance Department vide No. SO (FR)/FD/10-22 (E)/2010 dated 26-06-2012.

Sir,

The Appellant respectfully submits as under:-

1. That the Appellant had joined the Elementary & Secondary Education Department as a trained PST Teacher with the qualification of Matric and PTC Certificate on 03-05-1979. (Copy of the relevant pages of the Service Book showing entry to this effect are annexed as "A")
2. That the Appellant was granted Selection Grade BPS-10 with effect from 01-06-1993 (Copy of the order annexed as "B").
3. That the Appellant was upgraded in BPS-12 on 01-10-2007, under the upgradation policy (Copy of the policy/order annexed as "C").

4. That the Government of Khyber Pakhtunkhwa (Finance Department) gave an incentive of upgradation/ promotion to the PST Teachers vide Order bearing No. SO (FR)/FD/10-22 (E) /2010 dated 26-06-2012 (Copy annexed as "D").
5. Under the said order dated 26-06-2012, 30,000 (Thirty) posts of PST were allowed upgradation in BPS-12 with effect from 01-07-2012, 20,000 (Twenty) posts of PSTs were allowed upgradation in BPS-14 as Senior PST teachers on the basis of minimum service of 10 years. 22,768 PST were allowed upgradation in BPS-15 on the basis of merit with due regard to Seniority.
6. That instead of upgrading/ promoting the PST teachers in accordance with the Order dated 26-06-2012, the Elementary & Secondary Education Department Khyber Pakhtunkhwa (Respondent No.1) issued the Service Rules of various categories of Teachers vide impugned order dated 13-11-2012 (Copy annexed as "E").
7. That under the impugned Rules dated 13-11-2012; the following criteria have been prescribed for initial recruitment of PST Teacher.
 - (i) Intermediate or equivalent qualification from a recognized Board with Primary School Teacher Certificate/ Diploma in Education from a recognized Institute: or
 - (ii) Secondary School Certificate, from a recognized Board in second division with two years Associate Degree in Education from a recognized University.
8. That unfortunately the above said criteria for initial recruitment have been levied with upgradation and promotion of the PST teachers as a result of which many senior most matriculate PST teachers including the appellant, have been deprived of their upgradation and promotion to BPS-14 and BPS-15.
9. That the Appellant being matriculate and PTC certificate holder submitted an application on 25-02-2013, to the Respondent No.1 for omitting the above said unlawful criteria for upgradation and promotion (Copy annexed as "F")
10. That many other matriculate PST teachers approached the Peshawar High Court Peshawar against the unlawful criteria which had blocked the path of upgradation and promotion to them. The Honourable High Court disposing off all those Writ Petitions vide their judgement dated 12-03-2013 sent all those Petitions to the Departmental Appellate Authority with the direction to treat those Petitions as pending appeals/ Representations under the service law and rules and decide them in accordance with the law laid down by the apex Court in the case of Hameed Akhtar Niazi Versus The Secretary, Establishment Division, Government of Pakistan and others (1996 SCMR 1185) (Copy of the judgement annexed as "G").

11. That the statutory period of 90 days has elapsed but so far application of the Appellant dated 25-02-2013 has not been decided, therefore, the Appellant has no other option open to her but to file this Appeal before this Honourable Tribunal for the redressal of her grievances on the following amongst the other grounds.

GROUND:

- A. That the impugned rules dated 13-11-2012 are unlawful, arbitrary, void, illegal, mala fide and as such without lawful authority.
- B. That adhering the criteria for initial recruitment to the upgradation and promotion is against the principle of seniority. The upgradation and promotion are always made on the basis of seniority-cum-fitness.
- C. That the Service Rules cannot be given retrospective effect to snatch away the legal and valid rights of the Government Servants. But the Elementary & Secondary Education Department discarding all the laws and ethics have unlawfully deprived the senior matriculate PST teachers who had been in service before the promulgation of these Impugned Rules by imposing the unlawful conditions on them for their upgradation and promotion to BPS-14 & BPS-15.
- D. That the above said Rules are ultra vires the constitution of Pakistan which guarantees equal rights to all the citizens of this State.
- E. That awarding the juniors and discarding the seniors through an illegal criterion is nullity in the eye of Law.
- F. That the Respondents have not so far implemented the order of the Honourable Peshawar High court Peshawar dated 12-03-2013 which represents contempt of court on their part.
- G. That the Appellant has rendered more than 34 years service. She is at the verge of retirement. Therefore, depriving her of her legal rights is unlawful and invalid. The Rules imposed with immediate effect cannot be given retrospective effect to snatch away the rights of the others who had already been in service before the imposition of Rules. The Appellant being one of the senior most PST teachers is entitled to be upgraded in BPS-14 with effect from 01-07-2012 and she may also be promoted in BPS-15 under the Incentive of higher pay scale/grade given by the Government vide Order No. SO (FR) /FD/10-22 (E) /2010 dated 26-06-2012.

H. That the Appellant shall also rely on the additional grounds after filing the written statement by the Respondents.

I. That under the circumstances as mentioned above the impugned Rules/ criteria dated 13-11-2012 are liable to set aside.

It is humbly prayed that setting aside the impugned Rules/ criteria dated 13-11-2012, the Respondents may kindly be ordered to upgrade the Appellant in BPS-14 with effect from 01-07-2012 and also grant her promotion in BPS-15 and this Appeal may please be accepted in favour of the Appellant and against the Respondents with cost.

Dated 24/06/2013

Nasreen Akhtar
MST: NASREEN AKHTAR
(APPELLANT)

N.B: The addresses of the parties given in the heading of the Appeal are correct and sufficient for service.

AFFIDAVIT

I, Mst: Nasreen Akhtar (Appellant) do hereby solemnly affirm that the contents of the accompanied Appeal are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honourable Tribunal.

Dated 24/06/2013.

Nasreen Akhtar
DEPONENT

ATTESTED
Muhammad Ali Qureshi
NOTARY PUBLIC
District Court Faisalabad

24.6.13

نسرین اختر

59

SERVICE BOOK

G.P.D. 27809/SS

Nasreen Akhtar
D/o
Jazgli Rahim

PERSONNEL NO. 22980
(NEW)

Note—The entries in this page should be renewed or re-attested at least every five years, and the signature in lines 9 and 10 should be dated.

1. Name *Nasreen Akhter*

2. Race *Afghan*

3. Residence *Mohallah Nawab Deendar Khan Alaga Yakatoot H. No 2105 Peshawar*

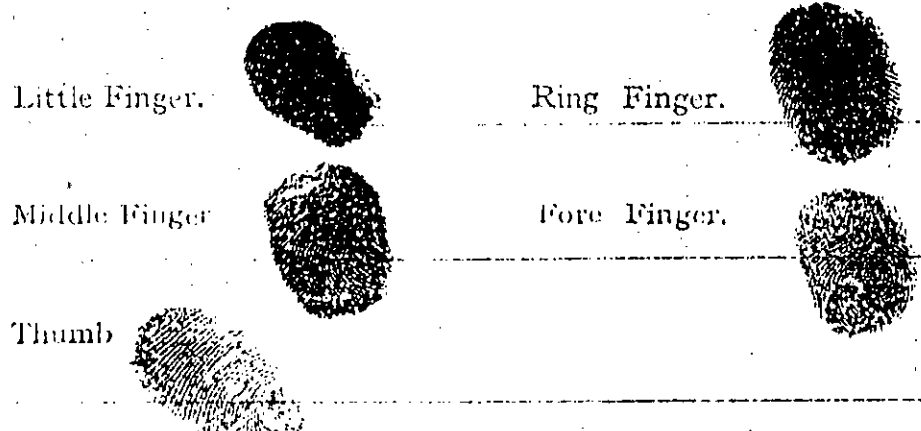
4. Father's name and residence *Fazal-i-Raheem*

5. Date of birth by Christian Era as nearly as can be ascertained. *Thirteenth November Nineteen Hundred Fifty-four*
13.11.1954

6. Exact height by measurement *Five Feet five inches*

7. Personal marks for identification *Black mole on near the left eye*

8. Left hand thumb and finger impression of (non-gazetted) officer



Attested
Nasreen Akhter

9. Signature of Government servant *Nasreen Akhter*

10. Signature and designation of the Head of the Office, or other Attesting Officer

Muliyar J S
Sub Div: Education Officer
(Female) Peshawar

7

48

1 Name of post	2 Whether substantive or officiating and whether permanent or temporary	3 If officiating state - (i) substantive appointment or (ii) whether service counts for pension under Art. 37, C. S. R.	4 Pay in substantive post	5 Additional pay for officiating	6 Other emoluments falling under the term "Pay"	7 Date of appointment	8 Signature of Government servant
M. G. G. P. S Sheikh Mohammadi No 1.	off/ Perm.	N.P.S. Grade No 6:	Rs: 315/-	315-12-399/14-525	✓ 3.5.79	3.5.79	Nazeer Akhtar
"	✓	"	327/-	✓	"	1-12-79	Nazeer Akhtar
"	✓	"	339/-	✓	"	1-12-80	Nazeer Akhtar
"	✓	"	351/-	✓	"	1-7-81	Nazeer Akhtar
"	✓	"	363/-	✓	"	1-12-81	Nazeer Akhtar
"	✓	"	375/-	✓	"	1-12-82	Nazeer Akhtar
"	✓	"	375/-	-	-	22-12-82	Nazeer Akhtar
G.P.S A/c Centre	✓	"	"	"	"	"	"
"	"	"	"	"	"	"	"
"	"	"	"	"	"	"	"
"	"	"	"	"	"	"	"
"	"	"	"	"	"	"	"
"	"	"	"	"	"	"	"
"	"	"	"	"	"	"	"
"	"	"	"	"	"	"	"

G.P.S A/c Centre

Attested
Nazeer Akhtar

NPS No 7. 560-23-1020

675/-

652/-

Nazeer Akhtar

Attested
Muliyil

9	10	11	12	13	14	15	
				Leave			
Signature and designation of the officer attesting in attestation of columns 8				Allocation of periods of leave on average pay up to four months for which leave salary is debit-able to another Government		Signature of the head of the office or other attesting officer	Reference to any recorded punishment for censure, or reward or praise of the Government servant
Date of termination of appointment				Nature and duration of leave taken			
Reason of termination (such as promotion transfer, dismissal, etc.)				Government - Period to which debit-able			
Muliyil Sub Div: Education Officer (Female) Peshawar.	30/11/79	Prom.	Muliyil SDEO (F) Peshawar.			Appointed vide S.D.E.O.(F) office order No 17020-23 dated 2.5.79	
Muliyil SDEO (F) Peshawar.	30/11/80	Prom.	Muliyil SDEO (F) Peshawar.			Muliyil Sub Div: Education Officer (Female) Peshawar.	
N. Shabeen SDEO (F) Peshawar.	30/11/81	Prom.	N. Shabeen SDEO (F) Peshawar.			Passed Middle Standard examination held in 1970 under Roll No 1851 obtained 455 marks.	
N. Shabeen SDEO (F) Peshawar.	30/11/81	Prom.	N. Shabeen SDEO (F) Peshawar.	1981 RECREATION ALLOWANCE EQUAL TO ONE MONTH MAY BE RS 175/50..... ADMITTED FOR PAYMENT DURING THE MONTH 10/81		Muliyil Sub Div: Education Officer (Female) Peshawar.	
N. Shabeen SDEO (F) Peshawar.	30/11/82	Prom.	N. Shabeen SDEO (F) Peshawar.	UNDER TOKE 6627..... DATED 20/10/81.....		Passed S.S.C. Examination held in 1972 under Roll No 6041 obtained 576 marks	
N. Shabeen SDEO (F) Peshawar.	30/11/82	Prom.	N. Shabeen SDEO (F) Peshawar.	1982 RECREATION ALLOWANCE 2 MONTH 181/50 FOR PAYMENT DURING THE MONTH 6/82		Muliyil Sub Div: Education Officer (Female) Peshawar.	
N. Shabeen SDEO (F) Peshawar.	30/11/83	Prom.	N. Shabeen SDEO (F) Peshawar.	UNDER TOKE 4647..... DATED 07/6/82.....		Service Verified w.e.f. 3.5.79 to 3.0.11.79 from the Acq. Roll of the Record of this Office	
N. Shabeen SDEO (F) Peshawar.	30/11/83	Prom.	N. Shabeen SDEO (F) Peshawar.			Muliyil Sub Div: Education Officer (Female) Peshawar.	

Recruitment Allowance equal to one month pay viz Rs 187/50 admitted for payment during the month 3/83 under roll no 1088 Dtd 15-3-83

Signature of N. Shabeen, SDEO (F), Peshawar.

Signature of Muliyil, SDEO (F), Peshawar.

Signature of N. Shabeen, SDEO (F), Peshawar.

Signature of N. Shabeen, SDEO (F), Peshawar.

Signature of N. Shabeen, SDEO (F), Peshawar.

Signature of N. Shabeen, SDEO (F), Peshawar.

Signature of Muliyil, SDEO (F), Peshawar.

Signature of Muliyil, SDEO (F), Peshawar.

Signature of Muliyil, SDEO (F), Peshawar.

Signature of Muliyil, SDEO (F), Peshawar.

Signature of Muliyil, SDEO (F), Peshawar.

B
9

OFFICE OF THE EXECUTIVE DISTRICT OFFICER, SCHOOLS & LITERACY, PESHAWAR.

MODIFICATION.

In partial modification of the office order of the Selection Grade already issued by the Ex-District Education Officer (Female) Primary Peshawar vide Endst; No. 102-248 dated 20.10.1997, where in Mst Nasreen Akhtar P.T. teacher at Sr; No. 464 has been revised and Modified for the purpose of implementation of the decision of Mxh N.S.P. Service Tribunal and the Selection Grade (EPS-10) already granted to the official concerned is allowed to take effect w.e.f. 1.6.1993 instead of 1.6.1996.

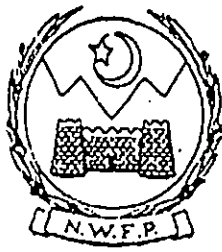
(SYED MANWAR JAN SAJID)
EXECUTIVE DISTRICT OFFICER,
SCHOOLS & LITERACY, PESHAWAR

Endst; No. 2877-86 Dated Pesh; the 8/4 2008.
Copy forwarded for information & necessary action to the

- 1:- Director Schools & Literacy, NWFP, Peshawar w/r to his No. 1831 dated 15.2.2008.
- 2:- District Accounts Officer, Peshawar.
- 3:- Dy; District Officer (Female) Primary Peshawar.
- 4:- Mst. Nasreen Akhtar P.T., GCS, Kaksbal, Peshawar.


Executive District Officer,
Schools & Literacy, Peshawar.

Accepted



GOVERNMENT OF NWFP
FINANCE DEPARTMENT

(REGULATION WING)

Dated Peshawar, the 26th January, 2008

C
10

NOTIFICATION

NO.FD/SO(FR)10-22/2007. In supersession of this Department's letter No.SO(FR)10-22(B)/2005 dated 01-10-2007 and in pursuance of the decisions of the meeting held under the Chairmanship of Secretary Establishment on 2-1-2008, the Competent Authority is pleased to allow upgradation for the incumbents of the posts as per details given below w.e.f. 1-10-2007:-

S.NO	Existing Designation and Pay Scale	Qualification	Upgraded Scale
1	Primary School Teacher (PST) (BPS-07)	FA/FSc and are trained teachers	BPS-09 (one time only)
2	Primary School Teacher (PST) with requisite experience renamed as Head Teacher/Head Mistress of Primary Schools (BPS-07)	Having 10 years service	BPS-12 (one time only)
3	CT (BPS-09)	BA/BSc and are trained teachers	BPS-15 (one time only)
4	SETs (BPS-16)	With at least ten years service. Upgradation to the post shall be made through DPC as per laid down procedure.	BPS-17
5	Qari/Qaria (BPS-07)	Hafiz Quran with SSC	BPS-12

SECRETARY TO GOVT. OF NWFP
FINANCE DEPARTMENT

Endst No. & Date even.

Copy of the above is forwarded for information and necessary action to the:-

- 1) All the Secretaries in NWFP, Peshawar.
- 2) All the DCOs/EDOs Schools & Literacy Department, NWFP.
- 3) Accountant General, NWFP, Peshawar.
- 4) Director Schools & Literacy, NWFP, Peshawar.
- 5) Director of Education FATA NWFP, Peshawar.
- 6) PSO to Chief Minister, NWFP.
- 7) PSO to Chief Secretary, NWFP.
- 8) PS to Secretary Finance Department, NWFP.
- 9) All District/Agency Accounts Officers in NWFP.

A. M. Khan
Naib Khan

(NAIB KHAN)
SECTION OFFICER (FR)

D
11

GOVT: OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

NO. SO(FR)/FD/10-22(E)/2010
Dated Peshawar, the 26-06-2012

To

The Secretary to Govt: of Khyber Pakhtunkhwa,
Elementary & Secondary Education Department.

Subject: -

**GRANT OF INCENTIVE OF HIGHER PAY SCALE/GRADE ON
THE BASIS OF TIME SCALE TO THE DIFFERENT CADERS OF
TEACHERS IN ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT KHYBER PAKHTUNKHWA.**

Dear Sir,

I am directed to refer to your department letter No. SO (B & A)/1-18/E&SE/2008 dated 12.06.2012 on the subject noted above and to state that consequent upon the approval of the competent authority Finance Department agrees to allow upgradation of the posts as per details given below w.e.f 01/07/2012.

Category/Nomenclature of the teaching posts	Basic Pay Scales	Revised nomenclature & Pay Scales	Promotion to Higher scale
Primary school teachers	BPS-5	PST (BS-12) & PST (BS-15)	30,000 posts of PST presently sanctioned in various pay scales will be upgraded in BPS-12 with effect from 01.07.2012. 20,000 posts of the existing posts of PST in various existing Pay Scales may be upgraded to BPS-14 and re-designated as Senior PST teachers. The posts may be filled in by promotion from amongst the holders of posts of PST with minimum 10 years-long service as such. 22,768 posts of the existing posts of PST, (one post in each Primary School) may be upgraded to BPS-15 and re-designated as Primary School Head Teacher, to be promoted from amongst Senior PST teachers on merit with due regard to seniority.
	BPS-6		
	BPS-7		
	BPS-9		
	BPS-10		
	BPS-12		
Middle/High/HS School teachers	1. CT	CT (BS-15) & SCT (BS-16)	All the existing posts of CT are to be upgraded in BPS-15, while 1/3 out of the total CT posts are to be upgraded to BPS-16 and to be re-designated as Senior CT, which will be filled through promotion from CT on merit with due regard to Seniority subject to the condition that he fulfill the minimum academic qualification required for the post of CT as per service rules.
	BPS-09		
	BPS-10		
	BPS-12		
	BPS-14		
	BPS-10		
2. AT	BPS-09	AT (BS-15) & SCT (BS-16)	All the existing posts of AT are to be upgraded in BPS-15, while 1/3 out of the total AT posts are to be upgraded to BPS-16 and to be re-designated as Senior AT, which will be filled through promotion from AT on merit with due regard to Seniority subject to the condition that he fulfill the minimum academic qualification required for the post of AT as per service rules.
	BPS-10		
	BPS-12		
	BPS-14		
	BPS-10		
	BPS-15		

Atina
Muhammad
Nasir Bhatti

	3.TT	BPS-07	TT (BS-15) & STT (BS-16)	All the existing posts of TT are to be upgraded in BPS-15, while 1/3 out of the total TT posts are to be upgraded to BPS-16 and to be re-designated as Senior TT, which will be filled through promotion from TT on merit with due regard to Seniority subject to the condition that he fulfill the minimum academic qualification required for the post of TT as per service rules.
		BPS-09		
		BPS-10		
		BPS-12		
		BPS-14		
		BPS-15		
	4.DM	BPS-09	DM (BS-15) & SDM (BS-16)	All the existing posts of DM are to be upgraded in BPS-15, while 1/3 out of the total DM posts are to be upgraded to BPS-16 and to be re-designated as Senior DM, which will be filled through promotion from DM on merit with due regard to Seniority subject to the condition that he fulfill the minimum academic qualification required for the post of DM as per service rules.
		BPS-10		
		BPS-12		
		BPS-14		
		BPS-15		
	5.PET	BPS-09	PET (BS-15) & SPET (BS-16)	All the existing posts of PET are to be upgraded in BPS-15, while 1/3 out of the total PET posts are to be upgraded to BPS-16 and to be re-designated as Senior PET, which will be filled through promotion from PET on merit with due regard to Seniority subject to the condition that he fulfill the minimum academic qualification required for the post of PET as per service rules.
		BPS-10		
		BPS-12		
		BPS-14		
		BPS-15		
	6.Qari/Qaria	BPS-07	Qari / Qaria (BS-12) & S. Qari / S. Qaria (BS-15)	All the existing posts of Qari/Qaria are to be upgraded in BPS-12, while 1/3 out of the total Qari/Qaria posts are to be upgraded to BPS-15 and to be re-designated as Senior Qari/Qaria, which will be filled through promotion from Qaries / Qarias on merit with due regard to Seniority subject to the condition that he fulfill the minimum academic qualification required for the post Qari/Qaria as per service rules.
		BPS-09		
		BPS-10		
		BPS-12		
		BPS-14		
		BPS-15		

- The Administrative Department however, should devise a policy in the framework of input/output criteria in terms of qualification, length of service, regularity, punctuality, results, curricular and co-curricular achievements and other performance indicators so that teachers do not take the scheme for granted but work for it.
- Audit copies may be prepared and furnished to this department for authentication please.

certified
Rasim Bhatti

Yours faithfully,
(BIBI FATIMA)
 SECTION OFFICER (FR)

Copy is forwarded to:-

Budget Officer-V, Finance Department for information and further necessary action please.

9c
26/6
(F)
 SO (FR)

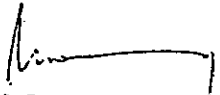
GOVERNMENT OF THE KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT.

NOTIFICATION

Peshawar, dated the November 13, 2012.

No. SO/PE/4-5/SSRC/Meeting/2012/Teaching Cadre:- In pursuance of the provisions contained in sub rule (2) of rule 3 of the Khyber
Servants (Appointment, Promotion and Transfer) Rules, 1989 and in supersession of all Notifications issued in this behalf, the Element
Education Department in consultation with the Establishment Department and the Finance Department hereby lays down the meth
qualification and other conditions specified in the Appendix to this Notification which shall be applicable to all the posts specified in C
said Appendix and the schedule therewith.

Encl. No. & Date as above.

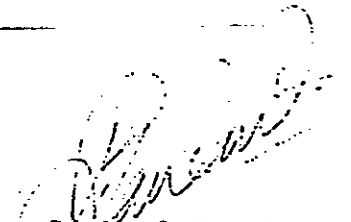

SECRETARY TO GOVERNMENT OF THE KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT

Copy forwarded to:-

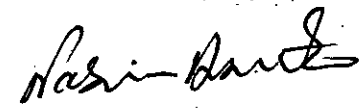
1. The Secretary to Govt. of Khyber Pakhtunkhwa, Establishment Department.
2. The Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department
3. The Secretary to Govt. of Khyber Pakhtunkhwa, Law Department.
4. The Secretary Khyber Pakhtunkhwa, Public Service Commission Peshawar
5. The Accountant General, Khyber Pakhtunkhwa Peshawar.
6. The Director (E&SE) Khyber Pakhtunkhwa Peshawar.
7. The Director Education (FATA), Peshawar.

Attested
Nasir Bhatti

- 3. The Director Curriculum & Teachers Education Abbottabad.
- 3. The Director (PITE) Khyber Pakhtunkhwa Peshawar.
- 10. The Director ESRU, Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
- 11. The Deputy Director Database(EMIS) E&SE Department.
- 12. All District Coordination Officers in Khyber Pakhtunkhwa.
- 13. All Executive District Officers Elementary & Secondary Education in Khyber Pakhtunkhwa.
- 14. All District Accounts Officers in Khyber Pakhtunkhwa /Agency Accounts Officers FATA.
- 15. All Agency Education Officers FATA.
- 16. P.S to Governor, Khyber Pakhtunkhwa.
- 17. P.S to Chief Minister, Khyber Pakhtunkhwa.
- 18. P.S to Chief Secretary, Khyber Pakhtunkhwa.
- 19. PS to Minister E&SE Khyber Pakhtunkhwa Peshawar.
- 20. PS to Secretary E&SE Department.
- 21. Master File.


Section Officer (Primary)

Attested



End

APPENDIX

No.	Nomenclature of the post.	Minimum qualification and experience for initial appointment or by transfer.	Age limit.	Method of recruitment.
	2.	3.	4.	5.
1.	Secondary School Teacher (BPS-16).	(i) Second class Bachelor's Degree with two subjects as Chemistry, Botany, Zoology, Physics, Mathematics, Statistics Humanities and other equivalent groups from a recognized University; or (ii) M.A in Education or Bachelor's Degree in Education, from a recognized University.	18 to 35 years..	(a) Fifty percent by promotion on the basis of seniority-cum-fitness, in the following manner: (i) forty per cent from amongst the Certified Teachers (General), Certified Teachers (Agriculture), Certified Teachers (Industrial Arts) and Certified Teachers (Home Economics) with at least five years service as such and having qualification mentioned in column No. 3; (ii) four per cent from amongst the Drawing Masters with at least five years service as such and having qualification mentioned in column No.3; (iii) four per cent from amongst the Physical Education Teachers with at least five years service as such and having qualification mentioned in column No. 3;

Attested
Naam Ahmad

		(iv) one per cent from amongst 1 Instructional Material Specialis with atleast five years service such and having qualificati mentioned in column No. 3; and (v) one per cent from amongst 1 Arabic Teachers with at least fi years service as such and havi qualification mentioned in Colur No.3; and (b) fifty per cent by initial recruitment.
2.	Senior Arabic Teacher (SAT) (BPS-16)	By promotion, on the basis of seniority-cu fitness, from amongst Arabic Teachers, with least five years service as such and havi qualification as prescribed for initi recruitment of Arabic Teacher.
3.	Senior Theology Teacher (STT) (B-16).	By promotion, on the basis of seniority-cu fitness, from amongst Theology Teachers, wi at least five years service as such and havi qualification as prescribed for initial recruitme of Theology Teacher.
4.	Senior Certified Teacher (SCT)(General) (BPS-16).	By promotion, on the basis of seniority-cu fitness, from amongst Certified Teache (General), with at least five years service as su and having qualification as prescribed for initi recruitment of Certified Teacher (General).

Attested
[Signature]

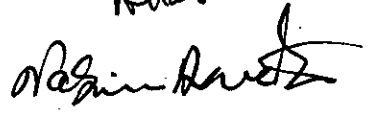
	Industrial Arts) (BPS-16).			By promotion, on the basis of seniority-cum-fitness, from amongst Certified Teachers (Industrial Arts), with at least five years service as such and having qualification as prescribed for initial recruitment of Certified Teacher (Industrial Arts).
6.	Senior Certified Teacher (Agriculture) (BPS-16).			By promotion, on the basis of seniority-cum-fitness, from amongst Certified Teacher (Agriculture), with at least five years service as such and having qualification as prescribed for initial recruitment of Certified Teacher (Agriculture).
7.	Senior Drawing Master (BPS-16).			By promotion on the basis of seniority-cum-fitness from amongst Drawing Masters, with at least five years service as such and having qualification as prescribed for initial recruitment of Drawing Master.
8.	Senior Certified Teacher (SCT) (Home Economics) (BPS-16).			By promotion, on the basis of seniority-cum-fitness, from amongst Certified Teachers (Home Economics), with at least five years service as such and having qualification as prescribed for initial recruitment of Certified Teacher (Home Economics).
9.	Senior Physical Education Teacher (BPS-16).			By promotion, on the basis of seniority-cum-fitness, from amongst Physical Education Teachers, with at least five years service as such and having qualification as prescribed for initial recruitment of Physical Education Teacher.

Noted
Rasim

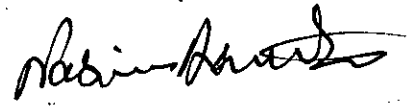
Arabic Teacher (AT) (BPS-15).	(i) Second Class Secondary School Certificate, from a recognized Board with Shahdatul Alamia Fil Uloomul Arabia wal Islamia from a recognized Tanzimuatul Wafaqul Madaris; or Darul Uloom Saidu Sharif Swat, Darul Uloom Charbagh Swat, Darul Uloom Chitral, Darul Uloom Darosh Chitral and any other Government run Darul Uloom, as notified by the Government from time to time; or (ii) Second Class Master's Degree in Arabic from a recognized University.	20 to 35 years.	By initial recruitment
Theology Teacher (TT) (BPS-15).	(i) Second Class Secondary School Certificate, from a recognized Board with Shahdatul Alamia from a recognized Tanzimatul Wafaqul Madaris or Darul Uloom Saidu Sharif Swat, Darul Uloom Charbagh Swat, Darul Uloom Chitral, Darul Uloom Darosh Chitral and any other Government run Darul Uloom, as notified by the Government from time to time; or (ii) Second Class Master's Degree in Islamiyat from a recognized University.	20 to 35 years.	(a) Seventy-five per cent by initial recruitment; and (b) twenty-five per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Senior Qaris, with at least five years service and having qualification prescribed for initial recruitment of Theology Teacher. <u>Note:</u> In case of non availability of suitable person for promotion, then by initial recruitment.
Senior Qari (BPS -15).		-	By promotion, on the basis of seniority-cum-fitness, from amongst Qaris, with at least five years service as such and having qualification prescribed for initial recruitment.
Certified Teacher (General) (BPS-15).	Bachelor's Degree or equivalent qualification from a recognized University with Certified Teacher	18 to 35 years.	(a) Forty per cent by initial recruitment; and

M. M. M. M.
Rahim Khan

	<p>University with nine months training from any Government Agro Technical Teacher Training Center of the Level of Certified Teacher, Agro technical (Industrial Arts).</p>		<p>(Industrial Arts):</p> <p>Provided that if no suitable candidate is available amongst the Primary School Head Teachers for Promotion, then the posts will be filled by promotion on the basis of seniority cum- fitness, from amongst Senior Primary School Teachers with at least five years service and, having qualification prescribed for initial recruitment of Certified Teacher (Industrial Arts).</p> <p>Note: In case of non availability of suitable person for promotion, then by initial recruitment.</p>
<p>15. Certified Teacher (Agriculture) (BPS-15).</p>	<p>(i) Bachelor's Degree from a recognized University with one year training in Agriculture from any Government institute or center with nine months training from Government Agro Technical Teacher Training Center of the level of Certified Teacher Agro Technical (Agriculture); or</p> <p>(ii) Bachelor's Degree with Agriculture as one of the subject, from a recognized University; or</p> <p>(iii) Bachelor's Degree from a recognized</p>	<p>18 to 35 years.</p>	<p>(a) Forty per cent by Initial recruitment; and</p> <p>(b) sixty per cent by promotion, on the basis of seniority-cum-fitness from amongst the Primary School Head Teachers, with at least five years service and having qualification prescribed for initial recruitment of Certified Teacher (Agriculture):</p> <p>Provided that if no suitable candidate is available amongst the</p>

Attested


	any Government Agro Technical Teacher Training Center of the Level of Certified Teacher, Agro technical (Agriculture).		promotion, then the posts will be filled by promotion on the basis of seniority-cum-fitness, from amongst Senior Primary School Teachers with at least five years service and having qualification prescribed for initial recruitment of Certified Teacher (Agriculture). <u>Note:</u> In case of non availability of suitable person for promotion, then by initial recruitment.
16. Certified Teacher (Home Economics) (BPS-15).	<ul style="list-style-type: none"> (i) Bachelor's Degree with Home Economics, as one of the subject, from a recognized University with in service training from Government Agro Technical Teacher Training Center; or (ii) Certified Teacher Certificate with Home Economics, as one of the subjects, from any Government Training school or college with Bachelor's Degree; or (iii) Bachelor's Degree from a recognized University with nine months training from Government Agro Technical Teacher Training Center of the level of the Certified Teacher Agro Technical (Home Economics); or (iv) Bachelor's Degree, from a recognized 	18 to 35 years.	<ul style="list-style-type: none"> (a) Forty per cent by Initial recruitment; and (b) sixty per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Primary School Head Teachers with at least five years service as such and having qualification prescribed for initial recruitment of Certified Teacher (Home Economics): <p>Provided that if no suitable candidate is available amongst the Primary School Head Teachers for promotion, then the posts will be filled by promotion on the basis of seniority-cum-fitness, from amongst Senior Primary School Teachers with at least five years service and having qualification prescribed for initial recruitment of</p>

Attested


	<p>University with one year vocational training from any Government training center or institute with nine months training from Government Agro Technical Teacher Training center of the level of certified Teacher Agro Technical (Home Economics).</p>		<p>Certified Teacher (Home Economics).</p> <p><u>Note:</u> In case of non availability of suitable person for promotion, then by initial recruitment.</p>
<p>17. Drawing Master (BPS-15).</p>	<p>Bachelor's Degree from a recognized University with one year Drawing Master (DM) course Certificate.</p>	<p>18 to 35 years.</p>	<p>(a) Eighty per cent by initial recruitment; and</p> <p>(b) twenty per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Primary School Head Teachers with at least five years service and having qualification prescribed for initial recruitment of Drawing Master:</p> <p>Provided that if no suitable candidate is available for promotion then on the basis of seniority-cum-fitness from Senior Primary School Teachers with at least five years service and having qualification prescribed for initial recruitment of Drawing Master.</p> <p><u>Note:</u> In case of non-availability of suitable candidate for promotion, then by initial recruitment.</p>

Attested
Nazim Malik

18. Physical Education Teacher (BPS-15).	Bachelor's Degree from a recognized University with one year junior Diploma in Physical Education course or Army equivalency or other equivalent qualification.	18 to 35 years.	<p>(a) Eighty per cent by initial recruitment; and</p> <p>(b) twenty per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Primary School Head Teachers with at least five years service and having qualification prescribed for initial recruitment of Physical Education Teacher.</p> <p>Provided that if no suitable candidate is available for promotion then on the basis of seniority-cum-fitness from amongst Senior Primary School Teachers with at least five years service and having qualification prescribed for initial recruitment of Physical Education Teacher.</p> <p><u>Note:</u> In case of non-availability of suitable candidate for promotion, then by initial recruitment.</p>
✓ 19. Primary School Head Teacher (PSHT) (BPS-15).			By promotion, on the basis of seniority-cum-fitness, from amongst Senior Primary School Teachers with at least ten years service and having qualification prescribed for initial recruitment of Primary School Teacher.
✓ 20. Senior Primary School Teacher (BPS-14).			By promotion, on the basis of seniority-cum-fitness, from amongst Primary School Teachers.

Attested
Nasir Ahmad

				with at least five years service as such : <u>having qualification prescribed for ini</u> <u>recruitment of Primary School Teacher.</u>
21.	Primary School Teacher (BPS-12).	(i) Intermediate or equivalent qualification, from a recognized Board with Primary School Teacher Certificate/ Diploma in Education from a recognized Institute; or (ii) Secondary School Certificate, from a recognized Board in second Division with two years Associate Degree in Education from a recognized University.	18 to 35 years.	By initial recruitment on merit at Union Cou level: provided that if no suitable candidate within the Union Council is available, then fr the adjacent Union Councils on merit.
22.	Qari (BPS-12).	Intermediate with Hifz-e-Quran and Qirat Sanad from a recognized Institution.	18 to 35 years.	By initial recruitment.

Attested
Nasir Ahmad

To

The Secretary, to Government of Khyber Pakhtunkhwa,
Elementary & Secondary Education,
Peshawar.

F
24
Govt. of Khyber Pakhtunkhwa
Elementary & Secondary
Education Department
S.B. Dary 13, Peshawar
2861
26/12

Subject:

**APPLICATION FOR RELAXING OR OMITTING THE
CONDITION OF OF FA/FSC FOR THE PROMOTION TO
BPS-14 AND BPS-15.**

Sir,

The applicant respectfully submits as under:-

1. That the applicant had joined the Education Department as a trained PST teacher in 1979, with the qualification of Matric plus PTC certificate.
2. That the applicant was upgraded in BPS-12 on 1-10-2007.
3. That the Government of Khyber Pakhtunkhwa, Elementary & Secondary Education Department have introduced Service Rules of various categories of teachers in 2012. In these Rules for the promotion of PST teachers to BPS-14 and BPS-15, the condition of FA/FSc has been laid down.
4. That on account of the condition of FA/FSc, the senior most PST teachers with the qualification of Matric and PTC certificate have been deprived of their promotion. Therefore, the applicant being aggrieved by the above said condition considers it essential to file this application for the redress of her grievance on the following grounds:-
 - a) That imposing the condition of FA/FSc on the senior and regular PST teachers who possess the qualification of Matric with PST certificate is void, arbitrary illegal, malafide and as such without lawful authority.
 - b) That the promotion in case of non-gazetted staff is always made on the basis of seniority cum fitness. The applicant on the basis of her seniority and lengthy service of more than 34 years can not be ignored under the above said unlawful condition. The applicant stands at serial No.53 of the PSTs Provisional Seniority List.
 - c) That awarding the junior teachers who possess the qualification of FA/FSc and discarding the senior most trained matriculate PST teachers is the worst example of discrimination.
 - d) That the condition of FA/FSc for the promotion of PST teachers has made the Rules ultra vires the Constitution of Pakistan which guarantees the equal rights to all the citizens of this country.
 - e) That the condition of higher qualification has been relaxed in cases of Qari, A.T, T.T teachers. Therefore, the PST teachers also deserve the same treatment.

Affected
Asim Ahmad

Judgment Sheet

G
26

to
✓

IN THE PESHAWAR HIGH COURT, PESHAWAR.
JUDICIAL DEPARTMENT

W.P. No. 3411 of 2012

JUDGMENT

Date of hearing..... 12-3-013

Appellant/Petitioner (s)... (Plx. Badshah & others) by Mr. Shah Nawaz Advocate

Respondent (s)... (Govt of KPK through Chief Secy) by Mr. Naveed Akhtar A.A.G.

DOST MUHAMMAD KHAN, CJ.- This single judgment shall decide Writ Petitions Nos. 3441-P, 3540-P/12, 256-P, 83-P, 590-P, 221-P and 182-P of 2013 because common question of law is involved therein.

2. The petitioners in this and in the connected writ petitions have questioned the amendment in the service rules which, according to all the petitions, are prejudicial to their vested rights accrued to them during the course of their service and because of those amendment they have suffered a setback in the matter of promotion and further benefits.

3. In view of the judgments of the apex Court as well as this Court, it is clear that whenever a matter relating to a terms and conditions of civil service including the question of vires of law or rules or mala fide action, the Service Tribunal has the exclusive jurisdiction in the matter, however, due to the inadvertence of

Attended
Naveed Akhtar

the office these writ petitions were entertained and even by the different Benches, the petitioners shall not suffer for that. As this Court has no jurisdiction in the matter, hence these petitions are sent to the Departmental Appellate Authority with the direction to treat these petitions as pending appeals/representations under the service law and rules and decide them in accordance with the law laid down by the apex Court in the case of Hameed Akhtar Niazi-Vs-The Secretary, Establishment Division, Government of Pakistan and others (1996 SCMR 1185). With the above observations, this and the connected writ petitions are disposed of accordingly.

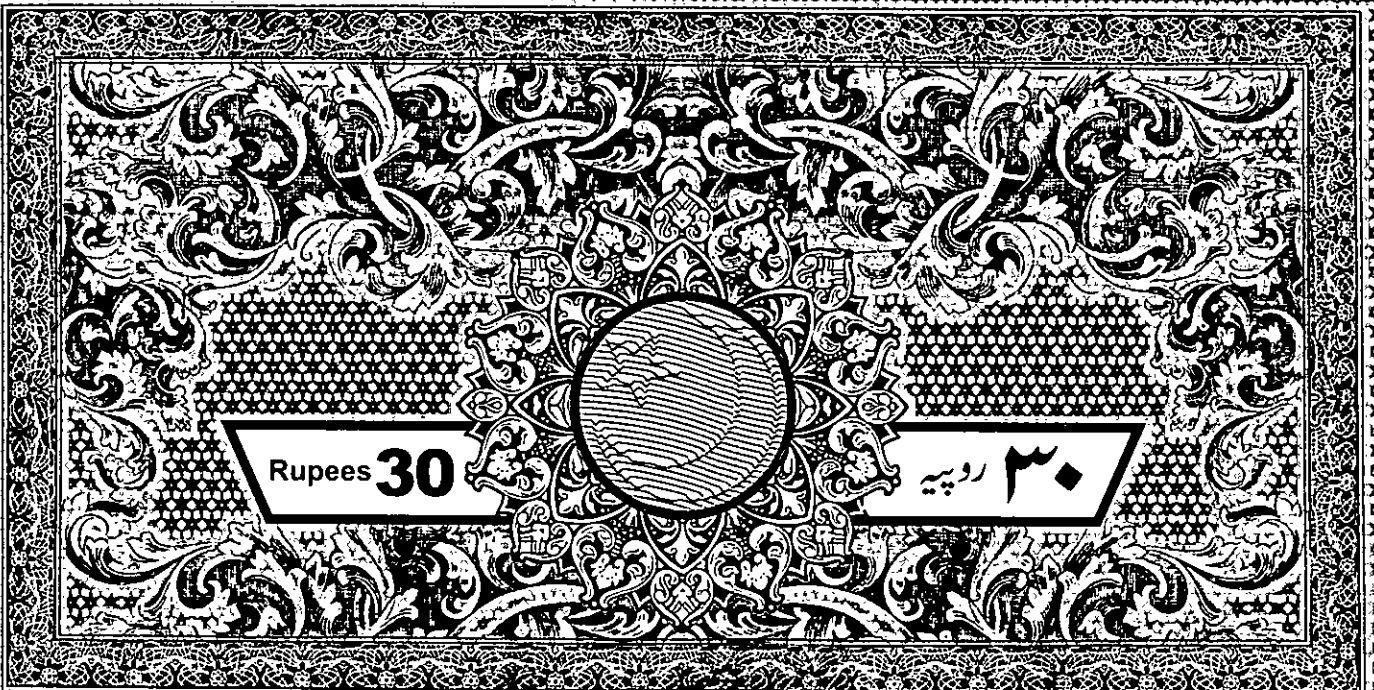
Dated:12.3.2013

sd/- Dst Muhammad Khan CJ
sd/- MRS. Iqbal Qureshi J

Attestation
Rabina Akter

N

A959522



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____ /2013

Mst Nasreen Akhtar

Vs

Secretary E&SE, Khyber Pakhtunkhwa and others

SPECIAL POWER OF ATTORNEY

I, Nasreen Akhtar (Appellant) do hereby confer special power of attorney upon Mr. Abdul Matin S/O Abdur Rauf, resident of House No.27, Quaid Abad Colony No.2, Kakshal, Peshawar City, to plead this case on my behalf and assist the Honourable Tribunal to decide this case on merit.

Dated 24 / 06 / 2013

Nasreen Akhtar

DEPONENT

NIC No.17301-6904578-4

ATTESTED

Mukhtar Ahmed Ghaznowi
NOTARY PUBLIC
District Court, Peshawar

Mukhtar Ahmed Ghaznowi
24-6-13

To,

The Honourable Chairman,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar

966
2/12/13

Subject: Application for Transfer of Case to a Judicial Member of the Tribunal

Sir,

The applicant/appellant respectfully submits as under:

1. That the applicant/appellant had filed an Appeal (No.1008/2013) before the Honourable Tribunal on 24/6/2013.
2. That the applicant/appellant has appointed Mr. Abdul Matin S/O Abdur Rauf, as her Special Attorney to plead and argue her case and assist the Honourable Tribunal to decide the same on merit.
3. That the case was assigned to Mr. Sultan Mehmood, the member of the Tribunal.
4. It is sorry to say that a lengthy period of six months has elapsed but so far the case has not been admitted. Whenever the case is fixed for preliminary hearing, the Member of the Tribunal (Mr. Sultan Mehmood) raises the same objection that the Special Attorney is not allowed to argue the case. As such the case is adjourned to the next date.
5. That on 04-11-2013, the case was fixed before the Judicial Member (Mr. Aamir Nazir) who ordered the Attorney of the applicant/appellant to produce the appellant before the Tribunal on the next date i.e 26-11-2013, so that the power of attorney could be confirmed and case could be argued by the Attorney (Mr. Abdul Matin).
6. That unfortunately the case was again placed before Mr. Sultan Mehmood (Member) on 26-11-2013. Though the applicant/appellant was present before the Tribunal and requested the Member (Mr. Sultan Mehmood) to allow her Attorney (Mr. Abdul Matin) to argue the case but the Member did not agree. So the case could not be heard and adjourned to the next date i.e. 09-12-2013.
7. The Civil Procedure Code allows an Attorney to argue the case on behalf of the applicant/appellant but the Member (Mr. Sultan Mehmood) is reluctant to hear the

Be placed
for preliminary hearing
before Bench - P
the date fixed 11/12/13

①
2012 S C M R 195

[Supreme Court of Pakistan]

Present: Khilji Arif Hussain and Amir Hani Muslim, JJ

SAJJAD HUSSAIN---Appellant

Versus

SECRETARY, MINISTRY OF RAILWAYS, ISLAMABAD and others---Respondents

Civil Appeal No. 224-K of 2010, decided on 9th August, 2011.

(On appeal from the order dated 5-7-2010 of the Federal Service Tribunal, Islamabad passed in Appeal No.21(K)(CS) of 2010).

Service Tribunals Act (LXX of 1973)---

---S. 4---Appeal before Service Tribunal---Limitation---Time barred departmental representation---Service Tribunal dismissed the appeal filed by civil servant as the same was barred by limitation---Validity---Departmental appeal filed by civil servant was barred by time, therefore, even if the appeal filed before Service Tribunal was in time, no relief could be granted to him---Judgment passed by Service Tribunal was reasonable and proceeded on cogent ground---Civil servant was unable to advert to jurisdictional error or legal infirmity which could justify interference---Appeal was dismissed.

Muhammad Aslam v. WAPDA and others 2007 SCMR 513 and Zia-ur-Rehman v. Divisional Superintendent Postal Services, Abbottabad and others 2009 SCMR 1121 **rel.**

Sanaullah Noor Ghouri, Advocate Supreme Court and Abdul Saeed Khan Ghouri, Advocate-on-Record for Appellant

Munib Ahmed Khan, Advocate Supreme Court and Mazhar Ali B. Chohan, Advocate-on-Record for Respondents

Date of hearing: 9th August, 2011.

ORDER

KHILJI ARIF HUSSAIN, J.---This appeal, with the leave of the Court, is directed against the judgment dated 5-7-2010 of the Federal Service Tribunal, Islamabad whereby appeal filed by the appellant was dismissed as the same was hopelessly barred by time.

2. Heard the learned counsel for the parties and perused the available record minutely.

3. It is contended by the learned counsel for the appellant that the appeal filed by the appellant before the Service Tribunal was not barred by time. He has drawn our attention at page 45 of the original order passed by the departmental authority dated 30-4-2003 and departmental appeal on 28-6-2003 at page 52,

which admittedly filed much after expiry of 30 days from the order passed by the competent authority.

4. We have taken into consideration arguments advanced by the learned counsel for the appellant and perused the record. From perusal of the record it appears that the departmental appeal of the appellant was barred by time, even if the appeal filed before the Service Tribunal was in time, no relief can be granted to him. If any case-law is required one can see the cases of Muhammad Aslam v. WAPDA and others, (2007 SCMR 513) and Zia ur Rehman v. Divisional Superintendent Postal Services, Abbottabad and others, (2009 SCMR 1121).

5. Having considered the matter from all angles in the light of material on file, we are of the view that the impugned judgment of the Federal Service Tribunal is eminently reasonable and proceeds on cogent ground. The learned counsel for the appellant was unable to advert jurisdictional error or legal infirmity, which would justify interference.

In view of the above, we do not find any merit in the listed appeal which is dismissed.

M.H/S-54/SC

Appeal dismissed.

2009 S C M R 980

[Supreme Court of Pakistan]

3

Present: Abdul Hameed Dogar, C.J. Ch. Ejaz Yousaf and Muhammad Farrukh Mahmud, JJ

MUHAMMAD FARID KHATTAK and others----Appellants

Versus

CHIEF SECRETARY, GOVERNMENT OF N.-W.F.P. and others----Respondents

Civil Appeals Nos.650 to 652 of 2000, decided on 29th August, 2008.

(On appeal from the judgment, dated 6-1-2000 in Appeals Nos.13 of 1996, 14 of 1996 and 15 of 1996 passed by the N.-W.F.P. Service Tribunal, Peshawar).

(a) Civil service---

---Gradation and presumption of certain terms and conditions of a particular post---Held, it was for the government to place a particular post in any grade or prescribe certain terms and conditions therefor, as per its policy, and incumbents of a particular post could not claim as of right for settlement of prescription or provision of certain terms and conditions according to their own choice and it was always open for a candidate to accept or not the terms and conditions prescribed for a particular post.

Province of Punjab v. Kamaluddin and others PLD 1983 SC 126 and Ahmad Hussain v. Director of Education 2001 SCMR 955 distinguished.

(b) Service Tribunals Act (LXX of 1973)---

---S. 4---Nobody has a vested right in policy decision of the Government and Service Tribunal is divested of power to indirectly set aside the public policy decision in exercise of its power under Service Tribunals Act, 1973 or rules framed thereunder.

(c) Civil service---

---Grant of status to a civil servant with retrospective effect-Scope--Held, a particular status could not be legally bestowed upon a civil servant with retrospective effect, even by a competent authority as he could not be legally made what he had never been---Persons discharging similar duties appointed in different departments may claim that they may be given the same status and benefits but a person, whose nature of duties is altogether different and his terms and conditions were also not alike, could not claim as of right that he may be allowed the same benefits and emoluments which were not part of and covered by the terms and conditions of his service---Government had the prerogative to determine terms and conditions of service of a particular post which could not be challenged.

Ahmad Hussain v. Director of Education 2001 SCMR 955 and Province of Punjab v. Kamaluddin and others PI,1) 1983 SC 126 distinguished.

Service Tribunals Act (LXX of 1973)----

S. 4---Upgradation of status---Civil servant, under the garb and cloak of financial benefits could not demand upgradation of the post retrospectively from Service Tribunal, such being outside the scope and ambit of the Service Tribunal.

Syed Asif Shah, Advocate Supreme Court for Appellants (in all Appeals).

M. Bilal, Senior Advocate Supreme Court for Advocate-General, N.-W.F.P. for Respondents.

Date of hearing: 29th August, 2008.

JUDGMENT

CH. EJAZ YOUSAF, J.--- These appeals by way of leave are directed against a common judgment, dated 6-1-2000 passed by the N.-W.F.P. Service Tribunal, Peshawar, whereby three Appeals Nos.13, 14 and 15 of 1996, separately filed by the appellants, were dismissed.

2. The relevant facts, briefly stated, are that the appellants were deputed by the Khyber Medical College through the Vice-Chancellor, University of Peshawar, to Jinnah Post Graduate Medical Centre, Karachi, in 1974 for doing B.Sc. in Medical Technology. They did their B.Sc. in Medical Technology, in clinical group, whereas two persons, namely Khushdil Khan and Abdul Shakoor did their B.Sc. in Medical Technology, in Radiology group. On successful completion of training they were appointed against the existing post in BPS-16 in the pathology Department, Khyber Teaching Hospital, Peshawar, while the other two namely, Khushdil Khan and Abdul Shakoor, were appointed in Radiology group of the same hospital in BPS-16 on ad hoc basis. The post of Chief Radiographer/Chief X-ray Technician in BPS-17 was advertised through the Public Service Commission and Mr. Khushdil Khan, B.Sc. Medical Technology, was selected/appointed against the said post. The posts of Medical Technologist existing in the Pathology Department were advertised through the Public Service Commission against which the appellants and Muhammad Anwar were selected and appointed against these posts in BPS-16. The prescribed qualification for the post of Medical Technologists (Clinical Group) was B.Sc. Medical Technology through recognized University whereas the prescribed qualification for the post of Chief Radiographer/Chief X-ray Technician was Diploma in Radiography through organized training of not less than two years in a recognized institute. It was the case of the appellants that the prescribed qualification for the post of Chief Radiographer/Chief X-ray Technician and those prescribed for the post of Assistant Physiotherapist were definitely lower than the qualification prescribed for the post of Medical Technologist (Clinical Group), but despite that 20 posts were placed in higher pay scale BPS-17 from the date of creation.

3. It is the case of the appellants that in the case of Refractionist the prescribed qualification was simple B.Sc. with optics with one of the subject as compared with B.Sc. Medical Technology which was a professional degree. Thus, the qualification for the post of Refractionist was comparatively lower than the qualification for the post of Medical Technologist in Clinical Group but it carried a higher pay scale BPS 17 while BPS-16 was allowed to Medical Technologist. It is further case of the appellants that in order to get resolve the controversy a representation was made as far back as in 1983 and it was supported by respondents Nos.2 and 3, as a result whereof the matter was placed before the Anomaly Committee in the finance department which after thorough examination recommended upgradation of the post of Medical Technologist from BPS-16 to BPS-17. Respondent No.3, while accepting the

endation of the Anomaly Committee, ordered for upgradation of the said post with immediate effect i.e. 1-1-1994.

7. It was grievance of the appellants that though the post of Medical Technologist had been upgraded from BPS-16 to BPS-17 with effect from 1-1-1994, yet, since the anomaly arose in the year 1978, and they were deprived of certain benefits, therefore, the posts of Medical Technologists should have been upgraded from the date when the anomaly occurred i.e. in the year 1978.

5. Learned N.-W.F.P. Service Tribunal, however, having found that the anomaly having been removed and the post of Medical Technologist having been upgraded though with immediate effect i.e. 1-1-1994 and the appellants having been appointed in BPS-16 thereby accepting the terms and conditions of their appointment at that point of time, there was no justification for allowing BPS-17 to the appellants from 1978.

6. Syed Asif Shah learned counsel for the appellants has contended that though grievance of the appellants had been partially redressed and the post of medical Technologist was upgraded by the Government of N.-W.F.P. w.e.f. 1-1-1994, yet, since the anomaly arose on 1-7-1978, the appellants had made representation in the year 1983, and on 29-3-1983 when the Government of Punjab, vide Notification No. FD/PC/30-2, dated 29-3-1983, also allowed BPS-17 to the B.Sc. Medical Technologist therefore, the appellants were entitled to financial benefits from the date when the anomaly arose. He has placed reliance on the case reported as *The Province of the Punjab v. Kamaluddin* PLD 1983 SC 126.

7. Mr. M. Bilal, learned Senior Advocate Supreme Court, appearing on behalf of the Advocate-General, N.-W.F.P., on the other hand, while controverting the contentions raised by the learned counsel for the appellants submitted that the appeal before the Service Tribunal was incompetent as grant of relief claimed by the appellants was beyond the jurisdiction of the "tribunal, inasmuch as the Provincial Government under section 26(1) of the N. W. F. P. Civil Servants Act, 1973, was the sole authority to frame financial rules and no exception could have been taken therefrom. He has added that it was the prerogative of the Government to prescribe or fix the terms and conditions of a particular post which could not have been challenged before the Service Tribunal being outside the ambit and scope of aforementioned rule.

8. We have thoroughly considered the contentions raised by the learned counsel for the parties and have also gone through the relevant record with their assistance, carefully.

9. In the instant leave to appeal was granted by this Court in the following terms:---

"The learned counsel appearing for the petitioners submitted that Secretary to Government of N.-W.F.P. Health Department respondent No.2 and Secretary Finance Department respondent No.3 had supported the claim of the petitioners for upgradation of the post. Correspondence in this matter contained right from 1983 and, therefore, for the circumstances, the petitioners were entitled to upgradation from the date they were inducted in the service as has been done in the case of other employees of health Department although they had much lesser qualification than the petitioners. It was further pointed out that the tenor of the impugned order discloses that it was apparently in favour of the petitioners but in the end without assigning any valid reason their appeals were dismissed. In this context PLD 1983 SC 128 was referred to support his view point."

10. Precisely grievance of the appellants before the Service Tribunal was that it was against law to allow lower pay scales to the incumbents of the post of having higher qualifications and greater responsibilities

incumbents of the post for which lower qualifications were prescribed but higher pay scale was prescribed. However, the fact remains that neither the notification in question whereby according to the appellants, the anomaly was removed and the post of Medical Technologist was upgraded with effect from 1-1-1994, was challenged, nor the date of its application was disputed. It is also an admitted fact that the appellants had accepted the terms and conditions of their service in BPS-16 at the time of their induction and the other post against which the appellants lay their claim, at the time of their joining service, was in BPS-17 and it was open for them to compete against any one of the said posts, but they opted to join as Medical Technologist. It would be pertinent to mention here that it is for the Government to place a particular post in any grade or prescribe certain terms and conditions therefor, as per its policy and incumbents of a particular post cannot claim as of right for settlement of prescription or provision of certain terms and conditions according to their own choice. It is always open for a candidate to accept or not the terms and conditions prescribed for a particular post. It is well-settled that nobody has a vested right in policy decision of the Government and therefore, the Service Tribunal too is divested of the power to indirectly set aside the public policy decision in exercise of its power under the Service Tribunals Act, 1973 and the rules framed thereunder. No doubt in the case of Province of Punjab v Kamaluddin and others PLD 1983 SC 126, cited at the Bar by the learned counsel for the appellants, the decision of the Tribunal ordering that Readers to Members of Board of Revenue performing less onerous duties and serving in institution lower in status than High Court, Reader of the High Court, having been placed in NPS-12, were also entitled to be placed in NPS-16, was upheld, but the upgradation order was prospective and it was never laid down that the upgradation would be from a previous date or the notification would have a retrospective effect. Likewise in the case of Ahmad Hussain v. Director of Education 2001 SCMR 955, though it was held by this Court that the petitioners who were appointed as Physical Training Instructors (PTI) in BPS-15 could not have been discriminated and were entitled to upgradation of the post from the date of general upgradation of the posts but the fact remains that the appellants in that case were all teachers and placed in similar situation whereas, in the instant case the facts are other way round.

11. It may be mentioned here that a particular status cannot be legally bestowed upon a civil servant with retrospective effect, even by the competent authority as he cannot be legally made what he had never been. It may be possible that persons discharging similar duties appointed in different departments may claim that they may be given the same status and benefits but a person, whose nature of duties is altogether different and his terms and conditions are also not alike, cannot claim as of right that he may also be allowed the same benefits and emoluments which are not part of and covered by the terms and conditions of his service. It would be pertinent to mention here that in both the above referred cases i.e. Ahmad Hussain (supra) and Kamaluddin (supra), the nature of duties of the appellants and respondent were alike; in first referred case they were Readers and were serving as such though in different departments and in the second referred case they were teachers serving in the same department, but in the instant case nature and duties of the Medical Technologists (Clinical Group) and the Refractionist post being altogether different and that too, in two different Provincial Governments i.e. Government of Punjab and N.-W.F.P., how could the petitioners be treated alike.

12. As to the contention that since the Punjab Government had placed the post of Medical Technologist in BPS-17 w.e.f. 29-3-1983, therefore, the Government of N.-W.F.P. should have also allowed upgradation of the said post from the said date, it may be pointed out here that it is the prerogative of the Government to determine terms and conditions of service of a particular post which cannot be challenged. In fact the appellants under the garb of financial benefits want upgradation of the post from 1-7-1978 instead of 1-1-1994 which being outside the scope and ambit of the Service Tribunal Act but the Tribunal has rightly refused to grant the relief.

Snapshot of the above discussion is that these appeals being misconceived are hereby dismissed.

M.B.A./M-37/SC

Appeals dismissed.

2010 SC MR 1982

[Supreme Court of Pakistan]

Present: Javed Iqbal, Muhammad Sair Ali and Anwar Zaheer Jamali, JJ

MUNIR AHMAD---Petitioner

Versus

CHAIRMAN, WAPDA---Respondent

Civil Petition No. 497 of 2010, decided on 22nd July, 2010.

(On appeal from the judgment dated 2142-2009 passed by Federal Service Tribunal, Islamabad in Appeals No.710-712 (R)CS/2006).

Service Tribunals Act (LXX of 1973)---

---S.4---Constitution of Pakistan (1973), Art. 212(3)---Appeal---Limitation---Promotion---Grievance of civil servant was with regard to promotion on the basis of Water and Power Development Authority (Water Wing) Subordinate Scientific Staff Service Rules, 1982, which were acted upon in year, 1983, whereas civil servant assailed the promotion in year, 2006---Validity---Civil servant remained in deep slumber for more than 20 years and it was too late in the day to question the legality of additional note---No plausible justification could be furnished by civil servant for the delay, except that question of limitation was nothing more but a technicality which was an incorrect approach---Question of limitation could not be taken lightly, as in service matters such question should be considered seriously and applied strictly---Civil servant failed to point out any illegality or irregularity in the judgment passed by Service Tribunal and besides that no question of public importance was involved which was sine qua non for invocation of the provisions enumerated in Art. 212 of the Constitution---Leave to appeal was refused.

Chairman, District Screening Committee, Lahore and another v. Sharif Ahmad Hashmi PLD 1976 SC 258; S. Sharif Ahmad Hashmi v. Chairman, Screening Committee Lahore and another 1978 SCMR 367; Yousaf Ali v. Muhammad Aslam Zia and 2 others PLD 1958 SC Pak 104; Punjab Province v. The Federation of Pakistan PLD 1956 FC 72; Muhammad Swaleh and another v. Messrs United Grain and Fodder Agencies PLD 1964 SC 97; Chief Kwame Asante v. Chief Kwame Tawia PLD 1949 PC 45; Hussain Bakhsh and others v. Settlement Commissioner and another PLD 1969 Lah. 1039; Nawab Syed Raunaq Ali and others v. Chief Settlement Commissioner and others PLD 1973 SC 236; Chief Settlement Commissioner, Lahore v. Raja Muhammad Fazil Khan and other PLD 1975 SC 331; WAPDA v. Abdul Rashid Bhatti 1989 SCMR 467; Federation of Pakistan v. Muhammad Azim Khan 1949 SCMR 1271; Inspector-General of Police, Balochistan v. Jawad Haider and another 1987 SCMR 1606; WAPDA v. Aurangzeb 1988 SCMR 1354; Muhammad Naseem Sibra v. Secretary, Government of Punjab 1989 SCMR 1149; Muhammad Ismail Memon v. Government of Sindh and another 1981 SCMR 244; Qazi Sardar Bahadar v. Secretary, Ministry of Health, Islamabad and others 1984 SCMR 177; Smith v. East Elloe Rural District Council and others 1956 AC 736; Province of East Pakistan and others v. Muhammad Abdu Miah PLD 1959 SC (Pak), 276; Mehr Muhammad Nawaz and others v. Government of the Punjab and others 1977 PLC (C.S.T.) 165 and Fazal Elahi Siddiqi v. Pakistan PLD 1990 SC 692 rel.

Petitioner in person.

Nemo for Respondent.

Date of hearing: 22nd July, 2010.

JUDGMENT

JAVED IQBAL, J.---This petition for leave to appeal is directed against judgment dated 21-12-2009 whereby the appeal preferred on behalf of petitioner has been dismissed.

2. Heard Munir Ahmad, (petitioner) in person who mainly argued that promoted Assistant Research Officers have been deprived of their legitimate rights after promotion in BPS-17 as compared to those Assistant Research Officers who are directly inducted. It is contended that there should be no discrimination in view of the provisions as enumerated in Article 25 of the Constitution of Islamic Republic of Pakistan, 1973. The main grievance of the petitioner is against the additional note added to serial No.1 of appendix 'A' which is reproduced hereinbelow for ready reference:---

"Senior Research Assistants possessing M.A./M.Sc. degree shall be placed in BS-17 on the completion of five years service under the Authority as Senior Research Assistant with due regard to merit on the recommendation of the Selection Board. Such Senior Research Assistants placed in BPS-17 shall not be considered senior to those Senior Research Assistants who are not M.A./M.Sc. for the purpose of regular promotion as Junior Research Officer in BPS-17. Their inter se seniority shall remain as before."

It is worth mentioning that the above mentioned note was added to the Pakistan WAPDA (Water Wing) Subordinate Scientific Staff Service Rules, 1982 and made an integral part of the said rules in 1983 which was challenged by the petitioner in 2006 after lapse of about two decades as he had joined 'service in 1977. The petitioner remained in deep slumber for more than 20 years. It is too late in the day to question the legality of additional note as mentioned hereinabove. No plausible justification whatsoever could be furnished by the petitioner during the course of arguments except that the question of limitation is nothing more but a technicality which is not a correct approach. The question of limitation cannot be taken lightly. It is well settled by now that in service matters the question of limitation should be considered seriously and applied strictly. In this regard, we are fortified by the dictum laid down in Chairman, District Screening Committee, Lahore and another v. Sharif Ahmad Hashmi (PLD 1976 SC 258), S. Sharif Ahmad Hashmi v. Chairman, Screening Committee Lahore and another (1978 SCMR 367), Yousaf Ali v. Muhammad Aslam Zia and 2 others (PLD 1958 SC (Pak 104, Punjab Province v. The Federation of Pakistan (PLD 1956 FC 72), Muhammad Swaleh and another v. Messrs United Grain and Fodder Agencies (PLD 1964 SC 97), Chief Kwame Asante v. Chief Kwame Tawia (PLD 1949 PC 45), Hussain Bakhsh and others v. Settlement Commissioner and another (PLD 1969 Lah. 1039), Nawab Syed Raunaq Ali and others v. Chief Settlement Commissioner and others (PLD 1973 SC 236), Chief Settlement Commissioner, Lahore v. Raja Muhammad Fazil Khan and other (PLD 1975 SC 331), WAPDA v. Abdul Rashid Bhatti, (1989 SCMR 467), Federation of Pakistan v. Muhammad Azim Khan (1949 SCMR 1271), Inspector- General of Police, Balochistan v. Jawad Haider and another (1987 SCMR 1606), WAPDA v. Aurangzeb (1988 SCMR 1354), Muhammad Naseem Sipra v. Secretary, Government of Punjab (1989 SCMR 1149), Muhammad Ismail Memon v. Government of Sindh and another (1981 SCMR 244), Qazi Sardar Bahadar v. Secretary, Ministry of Health, Islamabad and others (1984 SCMR 177), Smith v.. East Elloe Rural District Council and others (1956 AC 736), Province of East Pakistan and others v.

Muhammad Abdu Miah (PLD 1959 SC (Pak), 276), Mehr Muhammad Nawaz and others v. Government of the Punjab and others (1977 PLC (C.S.T.) 165) and Fazal Elahi Siddiqi v. Pakistan (PLD 1990 SC 692).

3. The question of discrimination has been examined by the learned Federal Service Tribunal in the judgment impugned, relevant portion whereof is reproduced hereinbelow for ready reference:-

"9. Before proceeding to examine this appeal on merit, it is necessary to address the question of limitation raised by the learned counsel for the respondents. It is a matter of record that the appellants who entered service in 1977, are aggrieved on account of note added to the service Rules in the year 1983. Secondly, it is not denied that the matter has been agitated by the appellants for the first time in 2006 i.e. after the lapse of almost 21 years. There is no cavil with the general principle that the issue of discrimination can be agitated at any time. But the Tribunal has not been vested with powers which are available to the superior judiciary. The appeals filed before the Tribunal have to comply with the mandatory requirements of section 4 of the Service Tribunals Act, 1973, and it is a settled principle of law that the provisions of the Limitation Act are to be strictly applied to service appeal as held in the case reported in PLD 1990 SC 692. This was further reiterated in the order of the Hon'ble Supreme Court in CP No.700 of 2008 dated 24-6-2008.

10. Even otherwise, the question of discrimination can be pressed into service while comparing equals i.e. while comparing appeals with appeals and not appeals with pears. Perusal of the record reveals that there are two channels for appointment to the post of Assistant Research Officers i.e. through promotion on the basis of 75 % quota and through direct recruitment on the basis of 25% quota. The appellants admittedly have not challenged the recruitment rules nor have they agitated this fact in their oral arguments. Their grievance is directed against the grant of premium to Assistant Research Officers who possess Post-graduate qualification, which they claim is discriminatory. Plain reading of the 1983 amendment clearly shows that the respondents have only given premium to higher educational qualification. They have not disturbed the reserved quota for promotion, nor have they created any hindrance in the career path of the promotee officials because their seniority has been protected over directly appointed ARO's having higher qualification. The change that was brought about 30 years ago, relates only to the grant of premium to higher educational qualifications. But even in this case there is a proviso in the amendment which says that "with due regards to merit on the recommendation of the Selection Board". The premium under dispute in 1983 made no distinction between the directly recruited and promoted officials. It was uniformly applicable to all employees in the said cadre who possessed higher education qualification. Therefore the question of discrimination does not arise. The rules provide for recruitment on the basis of graduation degree at one stage and the post-graduation degree at another stage. The appellant has not been able to point out any violation of policy/instructions/rules by the respondents. Moreover, we find that weightage has been given to both sides. If one side has been given premium for possessing higher education qualification, the other side has received weightage in promotion quota and retention of seniority in the higher grade. Therefore, in the final analysis the weightage is counter-balanced in the term of long-term career prospects. It is a matter of record that the cause of grievance accrued to the appellant almost 30 years ago. And according to him it was aggravated in 2001 with the introduction of new pay scales. In our opinion, the appellant should have agitated the grievance within time."

4. No illegality or irregularity could be pointed out in the judgment impugned and besides that no question of law of public importance is involved which is sine qua non for

invocation of the provisions as enumerated in Article 212 of the Constitution of Islamic Republic of Pakistan. The petition being devoid of merit is dismissed and leave refused.

M.H/M-86/SC

Petition dismissed.

Muhammad Abdu Miah (PLD 1959 SC (Pak), 276), Mehr Muhammad Nawaz and others v. Government of the Punjab and others (1977 PLC (C.S.T.) 165) and Fazal Elahi Siddiqi v. Pakistan (PLD 1990 SC 692).

3. The question of discrimination has been examined by the learned Federal Service Tribunal in the judgment impugned, relevant portion whereof is reproduced hereinbelow for ready reference:-

"9. Before proceeding to examine this appeal on merit, it is necessary to address the question of limitation raised by the learned counsel for the respondents. It is a matter of record that the appellants who entered service in 1977, are aggrieved on account of note added to the service Rules in the year 1983. Secondly, it is not denied that the matter has been agitated by the appellants for the first time in 2006 i.e. after the lapse of almost 21 years. There is no cavil with the general principle that the issue of discrimination can be agitated at any time. But the Tribunal has not been vested with powers which are available to the superior judiciary. The appeals filed before the Tribunal have to comply with the mandatory requirements of section 4 of the Service Tribunals Act, 1973, and it is a settled principle of law that the provisions of the Limitation Act are to be strictly applied to service appeal as held in the case reported in PLD 1990 SC 692. This was further reiterated in the order of the Hon'ble Supreme Court in CP No.700 of 2008 dated 24-6-2008.

10. Even otherwise, the question of discrimination can be pressed into service while comparing equals i.e. while comparing appeals with appeals and not appeals with pears. Perusal of the record reveals that there are two channels for appointment to the post of Assistant Research Officers i.e. through promotion on the basis of 75 % quota and through direct recruitment on the basis of 25% quota. The appellants admittedly have not challenged the recruitment rules nor have they agitated this fact in their oral arguments. Their grievance is directed against the grant of premium to Assistant Research Officers who possess Post-graduate qualification, which they claim is discriminatory. Plain reading of the 1983 amendment clearly shows that the respondents have only given premium to higher educational qualification. They have not disturbed the reserved quota for promotion, nor have they created any hindrance in the career path of the promotee officials because their seniority has been protected over directly appointed ARO's having higher qualification. The change that was brought about 30 years ago, relates only to the grant of premium to higher educational qualifications. But even in this case there is a proviso in the amendment which says that "with due regards to merit on the recommendation of the Selection Board". The premium under dispute in 1983 made no distinction between the directly recruited and promoted officials. It was uniformly applicable to all employees in the said cadre who possessed higher education qualification. Therefore the question of discrimination does not arise. The rules provide for recruitment on the basis of graduation degree at one stage and the post-graduation degree at another stage. The appellant has not been able to point out any violation of policy/instructions/rules by the respondents. Moreover, we find that weightage has been given to both sides. If one side has been given premium for possessing higher education qualification, the other side has received weightage in promotion quota and retention of seniority in the higher grade. Therefore, in the final analysis the weightage is counter-balanced in the term of long-term career prospects. It is a matter of record that the cause of grievance accrued to the appellant almost 30 years ago. And according to him it was aggravated in 2001 with the introduction of new pay scales. In our opinion, the appellant should have agitated the grievance within time."

4. No illegality or irregularity could be pointed out in the judgment impugned and besides that no question of law of public importance is involved which is sine qua non for

2006 S-C M R 1630

[Supreme Court of Pakistan]

Present: Ch. Ijaz Ahmad and Syed Jamshed Ali, JJ

EXECUTIVE DISTRICT OFFICER SCHOOLS AND LITERACY, DISTRICT DIR LOWER and others---Petitioners

Versus

QAMAR DOST KHAN and others---Respondents

Civil Petitions Nos.786, 787 and 788-P of 2004, decided on 8th May, 2005.

(Against the order, dated 28-8-2004 passed by High Court of Peshawar in Service Appeal No. 51 of 2003).

(a) North West Frontier Province Service Tribunals Act (I of 1974)---

---S. 4---Appeal before Service Tribunal---Maintainability---It is only a final order, original or appellate, against which an appeal lies to North West Frontier Province Service Tribunal.

(b) North West Frontier Province Service Tribunals Act (I of 1974)---

---Ss. 4 & 7---North West Frontier Province Service Tribunals Rules, 1974, R.27---Service Tribunal---Jurisdiction---Direction to departmental authorities---Non-availability of any final order---Grievance of civil servants was that alter their appointment as PTC teachers, they were not posted anywhere---Service Tribunal allowed appeals filed by civil servants and directed departmental authority to issue posting orders---Plea raised by Authorities was that Service Tribunal did not have any jurisdiction to issue direction to them and appeal filed by civil servants was not maintainable as there was no final order---Validity---Powers contained in R.27 of North West Frontier Province Service Tribunals Rules, 1974, were not intended to enlarge the scope of S.4 of North West Frontier Province Service Tribunals Act, 1974---Such power was available to Service Tribunal while hearing an appeal and question of maintainability of an appeal was to be answered with reference to Ss.4 and 7 of North West Frontier Province Service Tribunals Act, 1974---There had not been such an order within the contemplation of S.4 of North West Frontier Province Service Tribunals Act, 1974, which could be brought under challenge before North West Frontier Province Service Tribunal---Relief claimed by civil servants through appeals was in the nature of a command to departmental authority to give them suitable posting---In essence, the civil servants were seeking writ of mandamus which jurisdiction the Service Tribunal did not possess---Petition for leave to appeal was converted into appeal and judgment passed by Service Tribunal was set aside---Appeal was allowed.

Secretary to the Government of N.-W.F.P., Agriculture Department v. Asmatullah Khan and others 2003 PLC (C.S.) 1289; Muhammad Amjad Malik v. Pakistan State Oils Co. Ltd. and others 2005 PLC (C.S.) 318; Muhammad Zahid Iqbal and others v. D.E.O. Mardan and others 2006 SCMR 285; Muhammad Sarwar v. The State PLD 1969 SC 278 and Board of Intermediate and Secondary

Education, Lahore through its Chairman and another v. Mst. Salma Afroze and 2 others PLD 1992 SC 263 ref.

(c) Jurisdiction----

---Question of jurisdiction---Raising for the first time before Supreme Court---Principles---Question of jurisdiction goes to the root of case and can be raised for the first time even while appearing before the highest Court of country---Only constraint where a party could be said to be estopped to raise question of jurisdiction would be where the party itself invoked jurisdiction of Court or Tribunal and on the result being unfavourable repudiates its own action and throws challenge to the jurisdiction of such Court or Tribunal but even in such a case, it depends on facts of that case---Yet another case where question of jurisdiction may not be entertained for the first time before superior Courts could be when the equities are plainly against the person raising objection and if upheld consequence would be to perpetuate all ill-gotten gain or to bring about a plainly unjust consequence---Objection to jurisdiction should not be shut even though raised for the first time before Supreme Court.

(d) Administration of justice---

----Duty of Court or Tribunal---Non-engaging of counsel by a party---Effect---Court or Tribunal has to decide lis before it in accordance with law and parties are not bound to engage a counsel---Justice according to law is the duty of Court, which can neither be abdicated in favour of whims or ignorance of litigants or their lawyers nor it be avoided or evaded on the pretext that a question of law going to the root of the case, was not raised promptly.

(e) Jurisdiction---

---Territorial or pecuniary jurisdiction---Scope---Objection to territorial or pecuniary jurisdiction is regulated by Civil Procedure Code, 1908 and Suit Valuation Act, 1887, respectively.

(f) Jurisdiction---

----Conferring of jurisdiction---Principle---Jurisdiction is conferred by either Constitution or law---Consent or acquiescence has never been considered as a factor conferring jurisdiction.

Maulvi Aziz-ur-Rehman v. Ahmad Khan and others 2004 SCMR 1622; Ali Muhammad and others v. Muhammad Shafi and others PLD 1996 SC 292; Shagufta Begum v. The Income Tax Officer, Circle XI, Zone-B, Lahore PLD 1989 SC 360 and Haji Abdullah Khan and others v. Nisar Muhammad Khan and others PLD 1965 SC 690 rel.

M. Saeed Khan, A.A.-G. for Petitioners (in all cases).

Khushdil Khan Mohmand, Advocate Supreme Court and Mir Adam Khan, Advocate-on-Record for Respondents (in all cases).

ORDER

SYED JAMSHED ALI, J.---This order shall dispose of Civil Petitions Nos.786, 787 and 788-P of

2004 because common questions of law and fact are involved therein. The facts of the cases are briefly noted hereunder.

2. Qamar Dost Khan, respondent in C.P. No.786-P of 2004, Gul Zaman Khan, respondent in C.P. No.787-P of 2004 and Saeed Anwar in C.P. No.788-P of 2004 claimed to have been appointed as PTC teachers vide separate orders dated 23-4-1998. Their grievance in the appeals before the N.-W.F.P. Service Tribunal was that the departmental authorities were not issuing any posting order. Qamar Dost Khan, respondent in C.P. No.786-P of 2004, stated to have made a representation on 4-12-1999 to the Incharge Monitoring Cell and Complaints and a departmental representation on 21-10-2002 for a suitable posting and then approached the learned N.-W.F.P. Service Tribunal by filing appeals on 1-2-2003.

2-A. The appeals were contested on a number of grounds including that appeals were barred by time, and these were not maintainable as the respondents were not civil servants, since they had never taken over the charge of the post. On facts, the position taken was that the orders of appointment of the respondents were invalid and dubious. As far as respondents, Gul Zaman Khan, respondent in C.P. No.787-P of 2004 and Saeed Anwar, respondent in C.P.No.788-P of 2004, are concerned, apart from the objections noted above, an additional objection was taken that they were not duly qualified on the date of submission of the applications.

3. The learned Service Tribunal, however, relying on their own judgment in Appeal No.2879 of 2000 titled Nasrullah v. D.E.O. (M) Primary, Dir Lower and others, allowed all the three appeals notwithstanding their observation that "it is the burden of respondent-department to verify the authenticity of the claims of the appellants through fresh departmental enquiry, if they so desire".

4. The learned Additional Advocate-General, submits that the departmental appeal lay only against a final order and in these cases there was no order to be assailed before the learned Service Tribunal. The respondents were not permitted to join the posts because their appointment orders were forged and bogus and, therefore, they never acquired the status of a civil servant to invoke section 4 of the N.-W.F.P. Service Tribunals Act, 1974 and that the so-called departmental appeal was filed by Qamar Dost Khan on 21-10-2002 and that too not against any order, it was for directing a posting. In the other two cases, he submits that no representation was filed, even it be assumed that respondents could invoke the jurisdiction of N.-W.F.P. Service Tribunal. In case of Gul Zaman Khan and Saeed Anwar, he invited our attention to the copy of the PTC certificates, showing announcement of their result on 24-2-1998 while the public notice through press, inviting applications was issued on 3-10-1997 and the closing date was 13-10-1997. It was maintained that since they were not eligible, there was no question of their being summoned for test and interview for selection to the post of PTC teachers. He submits that no record of appointment of these respondents is available with the department.

5. The learned counsel for the respondents first addressed us in C.P. No.786-P of 2004. On the basis of pay rolls of a number of officials whose names find mention in the order, dated 23-4-1998 (in which name of respondent Qamar Dost also appears) such as Muhammad Rasheed, Asghar Khan, Muhammad Saleem Khan, Muhammad Ishaq and Inayat Ullah which were placed on record to contend that the aforesaid officers in the said order were in receipt of salaries which was by itself sufficient to defeat the plea of the departmental authorities that the order, dated 23-4-1998, was a forged document. Before we proceed further, we would like to observe here that the departmental representative had explained that the basis of this consolidated order, dated 23-4-1998 was separate orders, the copy of the orders being relied upon contain thirty-two so-called selectees but as a matter

of fact sixteen out of them were genuine selectees and the department had record of those sixteen. Learned counsel for the respondents strenuously relied on the case of Nasrullah Khan relied upon by the learned Service Tribunal and Secretary to the Government of N.-W.F.P., Agriculture Department v. Asmatullah Khan and others 2003 PLC (C.S.) 1289 and Muhammad Amjad Malik v. Pakistan State Oil Co. Ltd. and others 2005 PLC (C.S.) 318 to contend that the rule of consistency was rightly followed by the N.-W.F.P. Service Tribunal in allowing the appeal of the respondents. He urged that if the record was not available with the department, respondents should not be made to suffer. As far as Gul Zaman Khan and Saeed Anwar Khan are concerned, he submits that before the date of their selection, they had become eligible and, therefore, their selection was in order. As far as objection of non-maintainability of the appeals before the learned Service Tribunal is concerned, he contends that no such objection was taken before the learned Service Tribunal. He, however, relied on rule 27 of the N.-W.F.P. Service Tribunals Rules, 1974, which according to his reading, gave jurisdiction to the learned Service Tribunal to entertain and adjudicate upon the grievance of the respondents. He maintains that the respondents had submitted joining reports and had thus, become civil servants.

6. Exercising his right of rebuttal, the learned Additional Advocate-General relied on Muhammad Zahid Iqbal and others v. D.E.O. Mardan and others 2006 SCMR 285. Explaining the case of Nasrullah, he submitted that the fact of the said case were distinguishable because there was no allegation of fraud and forgery against Nasrullah.

7. Right of appeal has been created by section 4 of the N.-W.F.P. Service Tribunals Act, 1974. It will be appropriate to reproduce the said section:--

"Appeal to Tribunals.---Any civil servant aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him or within six months of the establishment of the appropriate Tribunal having jurisdiction in the matter:

Provided that:

- (a) -----
- (b) -----
- (c) ----- (underlining is ours)"

A plain reading of the said provision shows that it is only against a final order, original or appellate, against which an appeal lies to the N.-W.F.P. Service Tribunal. The powers of the Tribunal are given in section 7 of the said Act, according to which "the Tribunal may on appeal, set aside, vary or modify the order appeal against." (underlining is ours). Rule 27 of N.-W.F.P. Service Tribunals Rules, 1974 which is being relied upon by the learned counsel for the respondents is also reproduced hereinbelow:--

"Additional powers of the Tribunal.---Nothing in these rules shall be deemed to limit or otherwise affect the powers of a Tribunal to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Tribunal. "

The powers contained in rule 27 are not intended to enlarge the scope of section 4. A careful reading of the said rule shows that this power will be available to the Tribunal while hearing an appeal and

the question of maintainability of an appeal is to be answered with reference to sections 4 and 7 of the Act. There has not been such an order within the contemplation of section 4 which could be brought under challenge before the learned N.-W.F.P. Service Tribunal. The relief claimed by the respondents through the appeals was in the nature of a command to the departmental authority to give them suitable posting. In essence, they were seeking issuance of writ of mandamus which jurisdiction the learned Tribunal did not possess.

8. The contention of the learned counsel for the respondents that the question of non-maintainability of the appeals before the learned Tribunal, in the absence of a final order of the departmental authority, not having been raised before the learned Tribunal, could not be allowed to be raised before this Court, has not impressed us for the reason that question of jurisdiction goes to the root of the case and could be raised for the first time even while appearing before the highest Court of the country. It is a fundamental principle of law that a Court or Tribunal has to decide the lis before it in accordance with law and parties are not bound to engage a counsel. Justice according to law is the duty of the Court which can neither be abdicated in favour of the whims or ignorance of the litigants or their lawyers nor it be avoided or evaded on the pretext that a question of law going to the root of the case was not raised promptly. In making the above observations, I am fortified by the following observations of this Court in Muhammad Sarwar v. The State PLD 1969 SC 278.

"It appears that the Judges were not properly advised, but it falls to be said that there is a well-known adage that a Judge must wear all the law of the country on the sleeve of his robe." (underlining is ours).

The rule laid down was reiterated in Board of Intermediate and Secondary Education, Lahore through its Chairman and another v. Mst. Salma Afroze and 2 others PLD 1992 SC 263. The only constraint where a party could be said to be estopped to raise question of jurisdiction would be where the party itself invoked jurisdiction of Court or Tribunal and on the result being unfavourable repudiates its own action and throws challenge to the jurisdiction of the said Court or Tribunal. But even in such a case, it will depend on the facts of that case. Yet another case where question of jurisdiction may not be entertained for the first time before superior Courts could be when the equities are plainly against the person raising objection and if upheld the consequence would be to perpetuate an ill-gotten gain or to bring about a plainly unjust consequence. Examined on the basis of the above stated principles, we do not see that the objection to jurisdiction should be shut even though raised for the first time before this Court. We find yet another reason for permitting the objection to be raised and that is to clarify the scope of jurisdiction of the learned Tribunal lest the impugned judgment becomes a precedent. We may add a word of caution i.e. that this judgment only deals with the subject-matter jurisdiction and not the territorial or pecuniary jurisdiction. Objections to the said jurisdictions are regulated respectively by the Code of Civil Procedure and the Suits Valuation Act.

9. We may also add that jurisdiction is conferred by either Constitution or law. Consent or acquiescence has never been considered as a factor conferring jurisdiction. The judgments of this Court in support of the above view-point are Maulvi Aziz-ur-Rehman v. Ahmad Khan and others 2004 SCMR 1622; Ali Muhammad and others v. Muhammad Shafi and others PLD 1996 SC 292; Shagufta Begum v. The Income Tax Officer, Circle XI, Zone-B, Lahore PLD 1989 SC 360 and Haji Abdullah Khan and others v. Nisar Muhammad Khan and others PLD 1965 SC 690.

10. Accordingly, these petitions are converted into appeals, are allowed and the judgment of the learned Service Tribunal is set aside.

2011 SCMR 676**[Supreme Court of Pakistan]****Present: Iftikhar Muhammad Chaudhry, C.J. Raja Fayyaz Ahmed and Ch. Ijaz Ahmed, JJ****RAJA KHAN---Petitioner.****Versus****MANAGER (OPERATION) FAISALABAD ELECTRIC SUPPLY COMPANY (WAPDA) and others---Respondents**

Civil Petition No. 636 of 2009, decided on 21st May, 2009.

(Against the judgment dated 11-2-2009 passed by the Federal Service Tribunal, Islamabad, in Appeal No. 445(R) CE of 2005).

(a) Removal from Service (Special Powers) Ordinance (XVII of 2000)---

----Ss. 34 & 10---Constitution of Pakistan, Art. 212(3)---Compulsory retirement from service---Dismissal of first departmental appeal for being time barred---Dismissal of second departmental appeal as not competent---Dismissal of appeal by Service Tribunal on merits as well as its being time barred---Validity---Petitioner had filed appeal before Tribunal without fulfilling mandatory requirement of S. 4 of Service Tribunals Act, 1973 in regard to limitation---Court could not compromise on limitation---Petitioner during four years of service had been punished for unauthorized absence as many as eight times---Petitioner by his subsequent conduct had accepted punishment of compulsory retirement by getting his pension claim and monthly pension regularly---Supreme Court refused to grant leave to appeal in circumstances.

Haji Ghulam Rasul's case PLD 1971 SC 376; Mst. Amina Begum's case PLD 1978 SC 220 and Nawat Syed Raunaq Ali's case PLD 1973 SC 236 rel.

(b) Constitution of Pakistan---

----Art. 212(3)---Service Tribunal, finding of---Validity---Such finding being finding of fact would not call for interference by Supreme Court.

Ch. Muhammad Azim's case 1991 SCMR 255 rel.

(c) Constitution of Pakistan---

----Art. 212(3)---Concurrent findings of fact by Appellate Authority and Service Tribunal---Validity---Supreme Court would not interfere with such findings.

Iftikhar Ahmed Malik's case 2005 SCMR 806 rel.

(d) Service Tribunals Act (LXX of 1973)---

---S. 4---Departmental appeal being time-barred---Effect---Appeal before Service Tribunal would not be competent.

Chariman PIA and others v. Nasim Malik PLD 1990 SC 951; Muhammad Aslam v. WAPDA and others 2007 SCMR 513 and Government of Pakistan through Secretary, Establishment Division v. Bashir Ahmad Khan PLD 1985 SC 309 rel.

(e) Limitation---

---Appeal, if required to be dismissed for being time-barred, then its merits need to be discussed.

Khan Sahib Sher Muhammad Mir's case 1987 SCMR 92 rel.

(f) Constitution of Pakistan---

---Art. 212(3)---Constitutional jurisdiction under Art. 212(3) of the Constitution---Discretionary in character.

(g) Constitution of Pakistan---

---Arts. 185(3) & 212(3)---Grant of leave to , appeal by Supreme Court---Discretionary.

Ghulam Qadir Khan's case 1986 SCMR 1386 rel.

(h) Constitution of Pakistan---

---Arts. 199 & 212(3)---Void order---Constitutional jurisdiction of High Court and Supreme Court---Scope---Such jurisdiction might be refused, if same was meant to enable petitioner to circumvent provisions of law of limitation or if he was stopped by his conduct from challenging order.

Muhammad Ismail's case 1983 SCMR 168; Abdur Rashid's case 1969 SCMR 141 and Wali Muhammad's case PLD 1974 SC 106 rel.

Haider Hussain, Advocate Supreme Court and M.S. Khattak, Advocate-on-Record for Petitioner.

Nemo for Respondents:

ORDER

CH. IJAZ AHMED, J.---Raja Khan, petitioner, seeks leave to appeal against the impugned judgment dated 11-2-2009 whereby the learned Federal Service Tribunal, Islamabad, dismissed his appeal on merits as well as time-barred.

2. Detailed facts have already been mentioned in the impugned judgment. However, necessary facts out of which the present petition arises are that petitioner was appointed as Chowkidar with the respondents establishment from April, 1985. Show cause notice dated 23-2-2004 under section 5(4) of the Removal from Service (Special Powers) Ordinance, 2002 along with statement of allegations was served upon the petitioner containing the following charges:--

- (1) Whereas you Mr. Raja Khan, Chowkidar PESCO (WAPDA) Jhang Circle Jhang are charged with misconduct as per statement of allegations attached.
- (2) And whereas on the basis of documentary evidence available, it is not considered necessary to have formal inquiry against you and that proceedings are being initiated under section 5(4) of the Removal from Service (Special Powers) Ordinance 2002 which might entail imposition of a major penalty of dismissal from service as specified in section 3 of the said ordinance.
- (3) Now, therefore, you are required to show cause within 15 days from the date of receipt of this notice as to why the proposed action should not be taken against you.
- (4) If no response is received from you within the time stipulated above, it would be presumed that either you have no defence to offer and/or you have willfully declined to do so. The case shall then be decided on 'ex parte' without further reference.

Whereas you Mr. Raja Khan, Chowkidar, PESCO Jhang Circle Jhang are charged with gross misconduct, inefficiency, corruption and mal practices for the following charges and other relevant circumstances.

As per report of Mr. Shahzad Nasir, Telephone Attendant and Mr. Ghulam Abbas Bhatti Telephone Attendant PESCO Jhang Circle Jhang. You are absent from duty w.e.f 6-2-2004 to 17-2-2004 without intimation/prior permission/sanction leave from the Circle Superintendent/Technical Officer/and by the undersigned.

If any mishap/incident create in Circle office, who are responsible. You are already so many times directed to present in the office after closing hours but you have failed in official duties."

Petitioner submitted reply to the show cause notice and admitted that he was' absent from duty on account of illness. The competent authority after providing him personal hearing awarded major penalty of compulsory retirement from service w.e.f. 31-3-2004 vide order dated 29-3-2004. Petitioner being aggrieved filed departmental appeal on 6-4-2004 before the appellate authority who dismissed the same as time barred vide order dated 10-11-2004. Thereafter the petitioner filed another appeal before the Managing Director Power on 8-12-2004 which was dismissed vide order dated 4-2-2005 on the ground that there is no provision of second appeal "further appeal" under the rules. Petitioner being aggrieved filed Appeal No. 445(R)CS/2005 in the Federal Service Tribunal, Islamabad, on 12-4-2005 which was dismissed vide impugned judgment dated 11-2-2009. Hence the present petition.

3. Learned counsel for the petitioner submits that the impugned order of dismissal of the petitioner date 29-3-2004 .was passed' by incompetent authority, therefore, the same was corum non judice and without lawful authority. He further urges that impugned order of the department was void, therefore, no limitation would run against such type of order. It can be agitated at any time and could be ignored being a void order. Learned Service Tribunal had not adverted to this aspect of the case, therefore, the impugned judgment was passed by the learned Service Tribunal without application of mind.

4. We have given our anxious consideration to the contentions of the learned counsel of the petitioner and perused the record. It is an admitted fact that show cause notice was served upon the petitioner under the provisions of Removal from Service (Special Powers) Ordinance, 2002 wherein it is specifically provided under the provisions of the Ordinance that petitioner has to file departmental appeal with

the prescribed period of 15 days. The order of compulsory retirement was passed by the competent authority on 29-3-2004. The petitioner filed departmental appeal on 6-4-2004 which was dismissed as time barred on 10-11-2004. Thereafter the petitioner filed second appeal before the Managing Director on 8-12-2004 which was also dismissed on 4-2-2005 in the following terms:--

"It is to inform you that your appeal under reference does not merit consideration as there is no provision of second appeal "further appeal" under the rules."

5. The learned Service Tribunal had rightly come to the conclusion that appellate authority was justified to dismiss his appeal as time-barred and second appeal was also dismissed with cogent reasons on account of non availability of any provision under the rules to file second appeal to higher authority after dismissal of the first appeal. We have also re-examined the material on record with the assistance of the learned counsel of the petitioner. We do not find any infirmity or illegality with regard to the conclusion arrived at by the learned Service Tribunal with regard to the finding mentioned in para 7 of the impugned judgment. It is settled principle of law that finding of service tribunal having findings of fact would not call for interference by this Court as law laid down by this Court in Ch. Muhammad Azim case (1991 SCMR 255). Even otherwise this Court does not interfere with the concurrent findings of fact arrived at by the departmental authorities and learned service Tribunal while exercising the power under Article 212(3) of the Constitution. See *Iftikhar Ahmed Malik* case (2005 SCMR 806). It is settled proposition of law that when an appeal of the employee was time barred before the appellate authority then the appeal before the Tribunal was also not competent in view of the various pronouncements of this Court. See *Chairman PIA and others v. Nasim Malik* (PLD 1990 SC 951) and *Muhammad Aslam v. WAPDA and others* (2007 SCMR 513). The question of law with regard to the representation has already been decided by this Court in *Government of Pakistan through Secretary, Establishment Division v. Bashir Ahmad Khan* (PLD 1985 SC 309). The relevant observation is as follows:--

"He challenged his first compulsory retirement through a review application filed on 23rd October, 1974, which was decided on 3-6-1975. This was the final order passed on review. It could be challenged within 30 days, before the Tribunal under section 4 of the Service Tribunals Act. If the appellant chose not to file an appeal but only to repeat a representation before the same authority who had decided the review, that by itself would not give him another cause of action to file an appeal under section 4. The period spent in making the representation this second or any other representation after the decision of the review application, could not be excluded as of right in counting the period of limitation.....The review petition filed by the respondent in that behalf was decided on 13-6-1978. Instead of filing an appeal before the Tribunal under section 4 within 30 days of this final order passed on review, he made another representation which caused further delay. The period consumed during the processing of the subsequent representation could not be excluded as of right. And there being no condonation on any good ground by the Tribunal, the appeal filed on 14-1-1979, was clearly time barred and should have been dismissed accordingly."

6. The appeal of the petitioner before Service Tribunal is incompetent under section 4(1)(b) of the Service Tribunal Act, 1973. Since the petitioner has filed appeal before the Service Tribunal without fulfilling the mandatory requirement of section 4 in regard to limitation and court cannot compromise on the limitation. See:--

Muhammad's case (1998 SCMR 1354)

Messrs Raja Industries' case (1998 SCMR 307)

Mst. Sirajun-Munira's case (1998 SCMR 785)

7. It is admitted fact that appeal is obviously time barred and it has been held by this Court in Khan Sahib Slier Muhammad Mir's case (1987 SCMR 92) that when an appeal is required to be dismissed on limitation, its merits need not be discussed. In spite of the aforesaid law laid down by this Court the learned Service Tribunal has considered the case on merits and the appeal was also dismissed on merits. It is pertinent to mention here that the competent authority awarded penalty of compulsory retirement vide order dated 29-3-2004. The petitioner had accepted the punishment awarded by the respondents due to his conduct on the basis of subsequent events as the petitioner applied for payment of his pensionary benefit to the respondents. Petitioner got settled his pension claim within three months after his retirement and received Rs.155,733 as well as monthly pension. He also received his monthly pension regularly. Petitioner preferred appeal before the Service Tribunal on 12-4-2005. This fact was also noted in the impugned judgment in para 10. Even on merits the learned Service Tribunal was justified to dismiss his appeal on the well known principle of "approbate and reprobate." See Haji Ghulam Rasul's case (PLD 1971 SC 376). The learned Service Tribunal was justified to dismiss his appeal on the well known principle of estoppel keeping in view subsequent events. See Mst. Amina Begum's case (PLD 1978 SC 220).

8. The conduct of the petitioner has been highlighted by the Service Tribunal in para 10 of the impugned judgment which is reproduced herein below:

"We have seen placed on the record a number of documents which indicate the service record of the appellant. From 1989 to 27-3-2003, the appellant has been punished for unauthorized absence as many as eight times. The punishment included censure, stoppage of one annual increment for one year (1983), reduction to three lower stage in time scale for a period of three years (1990), stoppage of one annual increment for one year (1993) and stoppage of annual increment for one year (1995)."

9. It is settled principle of law that constitutional jurisdiction under Article 212(3) is discretionary in character. It is settled law that grant of leave to appeal is discretionary. See Ghulam Qadir Khan's case (1986 SCMR 1386). It is also settled law that constitutional jurisdiction against void order may be refused if it was meant to enable petitioner to circumvent provisions of law of limitation or if he was estopped by his conduct from challenging of order. See:--

Muhammad Ismail's case (1983 SCMR 168)

Abdur Rashid's case (1969 SCMR 141)

Wali Muhammad case (PLD 1974 SC 106)

10. Keeping in view the conduct of the petitioner mentioned herein above in para 10 of the impugned judgment we are not inclined to exercise our discretion in favour of the petitioner on the well known maxim that he who seeks equity must come with clean hands as law laid down by this Court in Nawab Syed Raunaq Ali's case (PLD 1973 SC 236).

11. In view of what has been discussed above we do not find any infirmity or illegality in the impugned judgment. Even otherwise the learned counsel has failed to raise any question of public importance in the present case as contemplated under Article 212(3) of the Constitution. The petition has no merit and the

2010 SC MR 1982

[Supreme Court of Pakistan]

Present: Javed Iqbal, Muhammad Sair Ali and Anwar Zaheer Jamali, JJ

MUNIR AHMAD---Petitioner

Versus

CHAIRMAN, WAPDA---Respondent

Civil Petition No. 497 of 2010, decided on 22nd July, 2010.

(On appeal from the judgment dated 2142-2009 passed by Federal Service Tribunal, Islamabad in Appeals No.710-712 (R)CS/2006).

Service Tribunals Act (LXX of 1973)---

---S.4---Constitution of Pakistan (1973), Art. 212(3)---Appeal---Limitation---Promotion---Grievance of civil servant was with regard to promotion on the basis of Water and Power Development Authority (Water Wing) Subordinate Scientific Staff Service Rules, 1982, which were acted upon in year, 1983, whereas civil servant assailed the promotion in year, 2006---Validity---Civil servant remained in deep slumber for more than 20 years and it was too late in the day to question the legality of additional note---No plausible justification could be furnished by civil servant for the delay, except that question of limitation was nothing more but a technicality which was an incorrect approach---Question of limitation could not be taken lightly, as in service matters such question should be considered seriously and applied strictly---Civil servant failed to point out any illegality or irregularity in the judgment passed by Service Tribunal and besides that no question of public importance was involved which was sine qua non for invocation of the provisions enumerated in Art. 212 of the Constitution---Leave to appeal was refused.

Chairman, District Screening Committee, Lahore and another v. Sharif Ahmad Hashmi PLD 1976 SC 258; S. Sharif Ahmad Hashmi v. Chairman, Screening Committee Lahore and another 1978 SCMR 367; Yousaf Ali v. Muhammad Aslam Zia and 2 others PLD 1958 SC Pak 104; Punjab Province v. The Federation of Pakistan PLD 1956 FC 72; Muhammad Swaleh and another v. Messrs United Grain and Fodder Agencies PLD 1964 SC 97; Chief Kwame Asante v. Chief Kwame Tawia PLD 1949 PC 45; Hussain Bakhsh and others v. Settlement Commissioner and another PLD 1969 Lah. 1039; Nawab Syed Raunaq Ali and others v. Chief Settlement Commissioner and others PLD 1973 SC 236; Chief Settlement Commissioner, Lahore v. Raja Muhammad Fazil Khan and other PLD 1975 SC 331; WAPDA v. Abdul Rashid Bhatti 1989 SCMR 467; Federation of Pakistan v. Muhammad Azim Khan 1949 SCMR 1271; Inspector-General of Police, Balochistan v. Jawad Haider and another 1987 SCMR 1606; WAPDA v. Aurangzeb 1988 SCMR 1354; Muhammad Naseem Sipra v. Secretary, Government of Punjab 1989 SCMR 1149; Muhammad Ismail Memon v. Government of Sindh and another 1981 SCMR 244; Qazi Sardar Bahadar v. Secretary, Ministry of Health, Islamabad and others 1984 SCMR 177; Smith v. East Elloe Rural District Council and others 1956 AC 736; Province of East Pakistan and others v. Muhammad Abdu Miah PLD 1959 SC (Pak), 276; Mehr Muhammad Nawaz and others v. Government of the Punjab and others 1977 PLC (C.S.T.) 165 and Fazal Elahi Siddiqi v. Pakistan PLD 1990 SC 692 rel.

20th Jan 1980
 20th July 1954
 as Member, 5+
 (B-20)
 34 years
 Supremacy: 197-2014
 3 1/2

Technicalities / Munir Ahmad