

# Nawaz Nethemial vs Govt

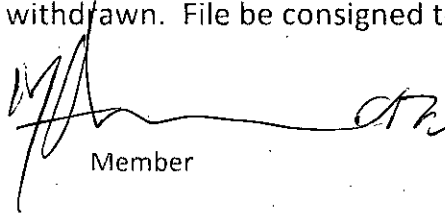
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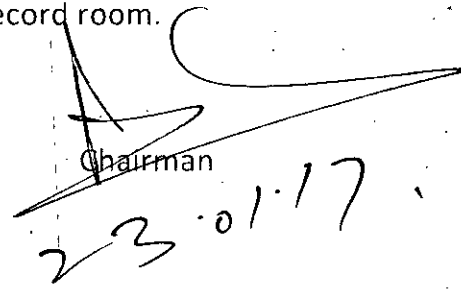
23.01.2017

Counsel for the appellant and Asstt. AG alongwith Naeem Gul, A.D for the respondents present. Learned Government Pleader argued that issue in the instant appeal pertains to upgradation and according to judgment dated 17.02.2016 of the august Supreme Court of Pakistan in Civil Appeals No. 101 & 102-P of 2011 this Tribunal has no jurisdiction to entertain the instant appeal.

Learned counsel for the appellant requested for withdrawal of the instant appeal to approach proper forum for redressal of grievances of the appellant.

In the light of the above, the appeal is dismissed as withdrawn. File be consigned to the record room.

  
Member

  
Chairman  
23.01.17

ANNOUNCED  
23.01.2017

31.03.2016

Counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Counsel for the appellant requested for adjournment. To come up for arguments on 14.06.2016.

  
MEMBER

  
MEMBER

14.06.2016

Counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Learned counsel for the appellant requested for adjournment. Adjourned for arguments to 19.10.16 before D.B.

  
MEMBER

  
MEMBER

19.10.2016

Counsel for the appellant and Addl. AG for respondents present. Counsel for the appellant requested for adjournment. To come up for arguments on 23-1-17.

  
(ABDUL LATIF)  
MEMBER

  
(PIR BAKISH SHAH)  
MEMBER

30.07.2015

Counsel for the appellant and Addl:AG for the respondents present. Arguments could not be heard due to Learned Member (Executive) is on leave because of certain emergency, therefore, the case is adjourned to 11.12.2015 for arguments.


  
Member

11.12.2015

Counsel for the appellant and Mr. Ziaullah, GP for respondents present. Arguments heard. To come up for order on

12.2.2016

  
Member

  
Member

12.02.2016

Junior to counsel for the appellant and Mr. Muhammad Jan, GP for the respondents present. Since the Court time is over, therefore, case is adjourned to 31.3.16 for arguments.

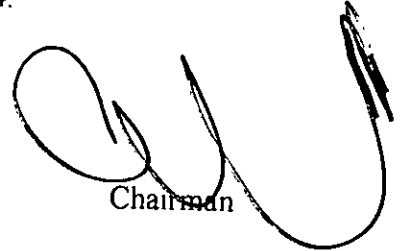
MEMBER

  
MEMBER

ce -

21.3.2014

Counsel for the appellant and Mr. Jan Gul, Supdt. on behalf of respondents with AAG present. Written reply has not been received, and request for further time made on behalf of the respondents. Another chance is given for written reply/comments, positively, alongwith connected appeal on 13.6.2014.

  
Chairman

11-

13.6.2014

Counsel for the appellant and Mr. Muhammad Rasool, AD on behalf of respondents with AAG present. Written reply has not been received, and request for further time made on behalf of the respondents. A last chance is given for written reply/comments alongwith connected appeal on 29.9.2014.

  
Chairman

12-

29.09.2014

Clerk of counsel for the appellant and Mr. Naeem Gul, Supdt. on behalf of respondents with Mr. Muhammad Adeel Butt, AAG present. Written reply received on behalf of the respondents, copy whereof is handed over to the clerk of counsel for the appellant for rejoinder alongwith connected appeal on 28.01.2015.

  
Member

13

28.01.2015

Appellant with counsel and Mr. Naeem Gul, Supdt for respondents alongwith Mr. Ziaullah, GP present. Rejoinder submitted. To come up for final hearing/arguments before D.B on 30.07.2015.

  
Chairman

Appeal No. 569/2013  
Mr. Nawaz Nathaniel.

Counsel for the appellant present and heard on

10.10.2013

preliminary. Contended that the appellant has not been treated in accordance with the law/rules. Vide the facts in the instant case are similar to that of service appeal No. 462/13 except the present appellant belongs to Electrical Group and he is senior to Mr. Noor Gul who has been upgraded to BPS-17 vide order dated 30.04.2008. Moreover, the departmental appeal of the appellant has not been responded with the statutory period of 90 days, hence the present appeal on 20.02.2013. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, notice be issued to the respondents. Case adjourned to 26.12.2013 for submission of written reply.

  
Member.

10.10.2013

This case be put before the Final Bench 1 for further proceedings.

  
Chairman

26.12.2013

Counsel for the appellant present. Respondents are not present despite their service through the concerned officials. However, Mr. Usman Ghani, Sr. GP is present on their behalf. Written reply has not been received. To come up for written reply/comments along with connected appeal on 21.3.2014.

  
Chairman

7.  
The appellan deposited  
Security & Process fee  
Rs. 180/- Bank receipt  
attached on file

8.

9 -

3. 23.5.2013

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

*[Signature]*  
Reader

4. 09.07.2013

Clerk of counsel for the appellant present. In pursuance of the Khyber Pakhtunkhwa Service Tribunals (Amendment) Ordinance 2013, (Khyber Pakhtunkhwa ord. II of 2013) the case is adjourned on note Reader for proceedings as before on 16.09.2013.

*[Signature]*  
Reader

5. 16.09.2013

Appellant with counsel present and requested for adjournment. To come up for preliminary hearing on 18.09.2013.

*[Signature]*  
Member

6. 18.09.2013

Counsel for the appellant present and requested for adjournment. To come up for further preliminary hearing on 10.10.2013.

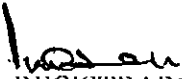

*That the appellant is entitled to B-14 net 1-3-2008 for the reasons that given to the appellant have been provided.*

*[Signature]*  
Member

Form-A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 569/2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	26/03/2013	<p>The appeal of Mr. Nawaz Nathaniel resubmitted today by Mr. Ijaz Anwar Advocate may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	1-4-2013	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>23-5-2013</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Nawaz Nathaniel Senior Instructor received today i.e. on 20/02/2013 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 day.

Copies of regularization and restoration of regularization order in respect of appellant mentioned in the of appeal (Annexure-B & H) are not attached with the appeal which may be placed on it.

*Not removed  
memo of appeal is  
amended.*

No. 324 /S.T.

Dt. 20/2 /2013.

MR. IJAZ ANWAR ADV. PESH.

*L. P. P.*  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

*Resubmitted after Completion*  
*4/2*



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

Appeal No. 569/2013

Nawaz Nathaniel, Senior Instructor (Radio/ TV) BPS-17 Govt.  
Technical & Vocational Centre, Gulbahar, Peshawar  
(Appellant)

VERSUS

Govt. of Khyber Pakhtunkhwa through Secretary, Industries,  
Commerce, & Technical Education, Department, Khyber  
Pakhtunkhwa, Peshawar and others.

(Respondents)

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Five spare copies.

Through

Appellant



**IJAZ ANWAR**  
Advocate Peshawar

&



**SAJID AMIN**  
Advocate Peshawar

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

Appeal No. 569/2013

P.W. 3  
480  
20-2-13

Nawaz Nathaniel, Senior Instructor (Radio/ TV) BPS-17 Govt.  
Technical & Vocational Centre, Gulbahar, Peshawar.

(Appellant)

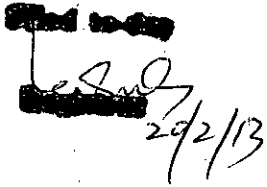
VERSUS

1. Govt. of Khyber Pakhtunkhwa through Secretary, Industries, Commerce, & Technical Education, Department, Khyber Pakhtunkhwa, Peshawar.
2. Director General, Technical Education & Manpower Training, Khyber Pakhtunkhwa, Peshawar.

(Respondents)

**Appeal under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 for the ante dation of the Notification dated 26.09.2012 whereby the appellant has been allowed upgradation as Senior Instructor BPS-17 but with immediate effect, the Departmental Appeal dated 24.10.2012 of the appellant for the ante dation of upgradation to (BPS-17) w.e.f 1.03.2008 was not responded despite the lapse of 90 days.**

Prayed in Appeal:


  
29/2/13

**On acceptance of this Appeal the impugned order dated 26.09.2012 of the respondents may please be varied/modified and they be directed to allow the appellant upgradation as Senior Instructor BPS-17 w.e.f 01.03.2008 with all arrears and benefits.**

**RESPECTFULLY SUBMITTED:**

re-submitted to  
and filed.

1. That the appellant was appointed as Instructor (Radio/ TV) BPS-14 on adhoc basis vide order of appointed dated 15.06.1986. (Copy of appointment order dated 15.06.1986 is attached as Annexure A).

  
26/3/13.

2. That vide Office Order dated 31.07.1993 the service of the appellant was regularized. (Copy of the Regularization Order is attached as Annexure B).
3. That in the meantime vide order dated 08.05.1996 the regularization Order dated 31.07.1993 was withdrawn by the department, the appellant challenged the same in WP No. 606/1996 in the Honorable Peshawar High Court. The writ petition appeal was allowed vide Judgment and Order dated 3.10.2000 and the order of withdrawal of regularization order was set aside. (Copy of the Judgment of the High Court is attached as Annexure C).
4. That the department went in appeal against the Judgment and Order of the Honorable Peshawar High Court Peshawar before the august Supreme Court of Pakistan, in the meantime the appellant was promoted vide order dated 27.12.2007 as Senior Instructor BPS-16. (Copy of the promotion order is attached as Annexure D).
5. That while the appeal of the department before the Supreme Court was pending, the Govt. has upgraded 103 posts of Senior Instructor BPS-16 to that of BPS-17 vide Order No. SO (III) IND/TE/4-13/2005 dated 1.03.2008, implementing the decision of up-gradation, numerous Senior Instructors were upgraded to BPS-17 vide different notifications, however, the appellant was not allowed up-gradation allegedly for pendency of his case before the August Supreme Court of Pakistan. (Copies of the Minutes and the up-gradation notification are attached as Annexure E & F).
6. That in the meantime vide Judgment and Order dated 18.06.2009 the august Supreme Court of Pakistan dismissed appeal of the department and maintained the Judgment of the Service Tribunal in favour of the appellant. (Copy of the Judgment and Order dated 18.06.2009 is attached as Annexure G).
7. That in compliance with Judgment of the Supreme Court of Pakistan, vide Office Order dated 17.10.2009, the de-regularization order dated 08.05.1996 was withdrawn and the order of regularization dated 31.07.1993 was restored. (Copy of the Office Order dated 17.10.2009 is attached as Annexure H).
8. That on restoration of his regularization, the appellant throughout agitated and submitted different applications, for allowing him up-gradation w.e.f the date when his colleagues were allowed the application was partially accepted when vide notification dated 26.09.2012, the appellant was allowed

up-gradation as Senior Instructor (BPS-17), however with immediate. (Copy of the applications and notification dated 26.09.2012 are attached as Annexure I, J & K).

- 9. That the appellant submitted his representation 24.10.2012 for allowing him up-gradation w.e.f 01.03.2008, the date when his colleagues were allowed up-gradation, however it was not replied despite the lapse of 90 days.
- 10. That the Order impugned is discriminatory and in violation of law is liable to be varied/ modified inter alia on the following grounds.

**GROUND OF APPEAL:**

- A. That the Appellant has not been treated in accordance with law, and his right secured and guaranteed under the Law and Constitution has been violated.
- B. That similarly placed employees have been allowed the upgradation w.e.f 01.03.2008, hence the appellant being similarly placed deserved to be allowed this benefit, and the refusal to grant this benefit is highly discriminatory and in violation of Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973.
- C. That the since the matter of the grant of upgradation pertains to pay and is continuous cause of action and no period of limitation is attracted to the case in hand.
- D. That the appellant was denied benefit of upgradation w.e.f 01.03.2008 for the only reason that the Govt has went in appeal against the judgment of Service Tribunal, thus case was deferred, as such on dismissal of appeal before the Supreme Court, the appellant was entitled to have been granted upgradation from the date it was allowed to his colleagues.
- E. That the benefits allowed to the similarly placed can be extended to the appellant, and there is no legal impediment in the grant of such benefit.
- F. That the appellant seeks the permission of this Honorable Tribunal to rely on additional grounds at the hearing of this appeal.

It is, therefore, prayed that On acceptance of this Appeal the impugned order dated 26.09.2012 of the respondents may please be varied/modified and they be directed to allow the appellant upgradation as Senior Instructor BPS-17 w.e.f 01.03.2008 with all arrears and benefits.

*Qasim Zahid*  
Appellant

Through

*Ijaz Anwar*

**IJAZ ANWAR**  
Advocate Peshawar

&  
*Sajid Amin*

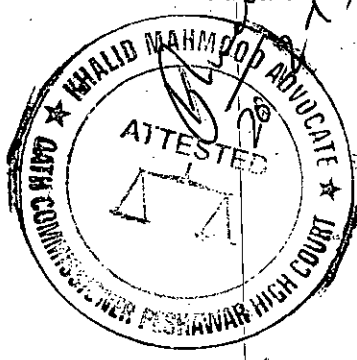
**SAJID AMIN**  
Advocate Peshawar

**AFFIDAVIT**

I, do hereby solemnly affirm and declare on oath that the contents of the above appeal are true and correct and that nothing has been kept back or concealed from this Honourable Tribunal.

*Qasim Zahid*

Deponent



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ANNEX A

GOVERNMENT OF N.W.F.P.  
DIRECTORATE OF MANPOWER & TRAINING  
JEHANGIRABAD P.O. BOX. 825  
UNIVERSITY ROAD, PESHAWAR

ORDER

DATED 15th June, 1986.

Mr. Nawaz Nathaniel S/O Mr. B. Nathaniel, Mohallah Satar Shah Badshah Dubgari Peshawar is appointed on the post of Instructor in BPS-14 and is posted in Technical Training Centre, D.I. Khan against the vacancy caused vacant by termination of services of Mr. Gul Mar Jan Instructor engaged on contract basis and whose services were terminated w.c.f. 31st May, 1986 as per order issued by the Principal Technical Training Centre, D.I. Khan vide endorsement No. TTC/DIK/Estt/PT/232-43 dated 31st May, 1986.

2. Since Masonry class has been closed and due to influx of students in the trade of Radio and T.V. Mr. Nawaz Nathaniel shall impart training to trainees in the Radio and T.V. trade till further orders.

3. His appointment in BPS-14 (Rs. 850-50-1850) plus usual allowances is subject to the following terms and conditions:-

- i) His appointment is made on adhoc basis terminable at any time without any reasons or notice and subject to clearance by the Departmental Selection Committee.
- ii) His services are transferrable to Training Centres through-out the Province.
- iii) He will have to produce Medical certificate of fitness from the Medical Superintendent/Civil Surgeon of the District Government Hospital.
- iv) He will have to produce a domicile certificate from the Deputy Commissioner of the District.
- v) Verification of his character and antecedents by Police Department.

Authority: Approved vide para 369/N of PTB/133/Estt dated 14th June, 1986.

DIRECTOR  
MANPOWER AND TRAINING  
N.W.F.P.

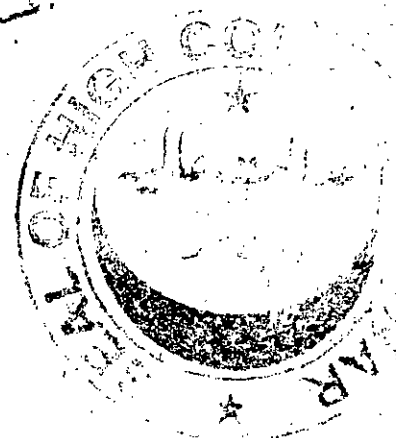
Dated, 15th June, 1986.

Endst: No. PTB/133/Estt/1363

Copy for information and necessary action to:-

1. The Principal TTC D.I. Khan. A copy of arrival report alongwith a copy of medical fitness certificate of the above named individual may please be furnished to this office at an early date.
2. The Asstt: Director (Budget and Accounts) PTB— Directorate of Manpower and Training, Peshawar.
3. The District Accounts Officer D.I. Khan.
4. Mr. Nawaz Nathaniel S/O Mr. B. Nathaniel, Mohallah Satar Shah Badshah Dubgari Peshawar for compliance.
5. Personal file of the official concerned.
6. Office order file.
7. Office copy.

(HAJI MALAL KHAN)  
ASSTT: DIRECTOR (ADMIN)



WRIT PETITION NO. 606 / of 1996.

- 1) Muhammad Ayaz Khan.
  - 2) Izhar-ul-Haq.
  - 3) Asif Daud.
  - 4) Jehan Zeb.
  - 5) Saleem Akhtar.
  - 6) Nafees Ahmzd.
  - 7) Adeel Azam.
  - 8) M. Zarif Khan.
  - 9) Nawaz Nathaniel.
- All Instructors Technical Training Centre Peshawar.

- 10) Imtiaz Ahmad.
  - 11) Murid Hussain.
  - 12) Rahim-ur Rehman.
  - 13) Fakhr-uz-Zaman.
  - 14) Muhammad Jameel.
  - 15) Syed Suleman Shah.
- All Instructors Technical Training Centre Khalabat Tehsil and District Haripur.

- 16) Zulfiqar Ali.
  - 17) Muhammad Ajmal.
  - 18) Khalid Mehmood.
  - 19) Syed Alkaf Shah.
  - 20) Shamraiz Khan.
- All Instructors Technical Training Centre Mansehra.
- 21) Aurangzeb Khan.
  - 22) Ibrahim Khan.
- ~~Technical~~ Instructors Technical Training Centre Kohat.
- 23) Zafar Iqbal/Instructor Technical Training Centre Kalaya.
  - 24) Sher Ali Baz.
  - 25) Habib-ul-Mans.
  - 26) Fazal Ahmad.
  - 27) Naeem Ibrar.
  - 28) Zain Ullah.
  - 29) Bahadar Ali Shah.
  - 30) Liaq Muhammad.
  - 31) Faridoon Khan.
- Instructors Technical Training Centre Mingora.

- 32) Ihsan Ullah.
  - 33) Fazal Rehman.
  - 34) Saleem Ahmad.
  - 35) Abdul Khalique.
  - 36) Dil Jan.
  - 37) Hayat Khan.
  - 38) Rooh Ullah.
  - 39) Faridullah.
  - 40) Zahoor-ud-Din.
  - 41) Ghulam Hussain.
  - 42) Shahabud Din.
  - 43) Shujat Ali.
  - 44) Abdur Rashid.
- Instructors Technical Training Centre D. T. Khan.

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File: 10/1/1996

19/6/96

QUESTED  
EXAMINER

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Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR  
JUDICIAL DEPARTMENT

N.W.F.P. No. 606 of 1996

JUDGMENT

Date of hearing..... 3.10.2000

Petitioners Appellants: (Muhammad Ayaz Khan) by Mr. Masood Khan  
Respondent: (Govt. N.W.F.P.) by Mr. Idris Khan

SHAH JEHAN KHAN YOUSAFZAI, J. - The petitioners 50 in number serving as Instructors Technical Training in various Centres of the Peshawar, Haripur, Kohat, Mingora, D.I.Khan, Bannu, Nowshera and Mardan have filed the instant Constitutional petition whereby the policy instructions bearing No.SOR-I(S&GAD)1-117/91 dated 1.2.1993 issued by Secretary, Services and General Administration Department (Regulation Wing) (respondent No.3) and in pursuance thereof subsequent letter dated 8.5.1996 issued by Director, Man Power and Training N.W.F.P. (respondent No.4) whereby the regularisation of the petitioners on their existing posts was withdrawn have been challenged being illegal, without lawful authority and of no legal effect.

2. The petitioners were inducted in service through different appointment orders in between 29.6.1986 and 25.9.1992 (all available on file) on adhoc basis subject to the clearance

*[Signature]*  
EXAMINER

*yes*



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by Departmental Selection Committee, The Department Selection Committee vide its letter dated 31.7.1993 granted regularization to all the petitioners. Pertinent to mention here that in all the appointment letters this condition was specifically mentioned that the appointment of the petitioners shall be subject to the clearance by Departmental Selection Committee except in appointment letters dated 18.4.1988, 15.11.1988 and 16.9.1990 wherein no such condition was intimated.

3. Some of the petitioners were appointed under the N.W.F.P. Civil Servants (Appointment, Promotion and Transfer) Rules, 1975 which were repealed by enforcement of N.W.F.P. Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 (under section 26 of the N.W.F.P. Civil Servants Act, 1973) with effect from 31.1.1989. After 31.1.1989 the appointments were made under the new rules. The previous policy of the recruitment vide S&GAD letter No. 30K-1 (S&GAD)4-1/75 dated 11.2.1987 was as under:-

"I am directed to say that under <sup>Technical</sup> rule 7 of the NWFP Civil Servants <sup>Nishkar</sup> (Appointment, Promotion & Transfer) Rules, 1975, appointment by promotion to posts in BPS-2 to BPS-16 shall be

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made on the recommendations of the appropriate Departmental Promotion Committee. Similarly, under rule 11 of the rules *ibid*, initial appointments to posts in BPS-1 to 15 shall be made on the recommendations of the Departmental Selection Committee after the vacancies in Grade-3 to 15 have been advertised in newspapers. However, no criteria for selection has so far been prescribed."

The policy was substituted by the new policy promulgated vide SOR-1(S&GAD)1-117/91 dated 1.2.1993. The relevant portions are reproduced below:-

"(b) Recruitment to posts in the various Government Departments as indicated below will also henceforth be made by the NWFP Public Service Commission:-

- (i) .....
- (ii) .....
- (iii) .....
- (iv) .....

- (a) .....
- (b) Directorate of Manpower and Training:
  - (1) Instructor T.P.C.(B-14).

- (c) Initial recruitment to posts in BPS-15 and below other than the posts in the purview of the Public Service Commission; in all the departments shall continue to be made in accordance with Rules 10, 11 and 12 (Part-III) of the NWFP Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the criteria as laid down in S&GAD letter No. SOR1(S&GAD)4-1/72, dated 11.2.1987 and the zonal allocation formula contained in

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S&GAD notification No SOS.III(S&GAD) 3-39/70, dated 2.10.1973 as amended from time to time."

4. We heard the learned counsel for petitioners who contended that the new policy applied on 1.2.1993 has got no legal basis. The petitioners were qualified for appointment as Instructors in the Technical Training Centres and were legally appointed by the competent authority and subsequently their services were regularised on the recommendation of Departmental Selection Committee. Further contended that notwithstanding the new policy introduced on 1.2.1993 the petitioners' services were regularised vide order dated 31.7.1993 and the petitioners were allowed to continue their services till the impugned order dated 8.5.1996 whereby regularisation granted to the petitioners was withdrawn. Also submitted that there is no fault on the part of petitioners and the petitioners could not be punished for the irregularity committed by others. If the impugned order dated 8.5.1996 is kept intact the petitioners would suffer irreparable loss and they would be deprived of getting any service in government departments in future due to overage limit.

*Shahel*

*[Signature]*  
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9/11

5. The learned Additional Advocate General objected to the maintainability of the writ petition in view of Article 212 of the Constitution. In this respect he relied upon Malik Muhammad Aslam vs. Federal Directorate of Education, Islamabad (1998 SCMR 748), Syed Mazhar Hussain Bukhari vs. Secretary, Government of Punjab (1998 SCMR 1948), Khalid Mahmood Wattoo vs. Government of Punjab (1998 SCMR 2280), Sarfraz Ahmad Hiraja vs. WAPDA (1999 SCMR 2828) and Accountant General vs. Abdul Majeed Babar (1990 SCMR 790). Further submitted that at the time of regularization of the petitioners' services new policy was invoked and the regularization granted to the petitioners was coram non iudice. The new policy has got the legal sanctity as the same was approved by Governor N.W.F.P. on 13.3.1993 by amending Schedule 'A' appended with N.W.F.P. Public Service Commission (Functions) Rules, 1985 whereby at serial No.27 the posts of Instructors Technical Training Centres in the Directorate of Manpower and Training were brought within the purview of Public Service Commission. Only on the recommendation of Public Service Commission the appointment in RPS-14 could be made under section 10 of the North-West Frontier Province Civil Servants (Appointment, Promotion and Transfer) Rules, 1989.

6. There is no dispute that the petitioners were appointed by competent authority subject to the clearance by Departmental Selection Committee through separate orders appended with the writ petition. One of the petitioners submitted

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31.3.1992 and 13.3.1992 were made on leave vacancies, at least in case of three petitioners whose appointment orders were issued on 18.4.1988, 15.11.1988 and 19.9.1990, there was no condition of clearance by Departmental Selection Committee even.

7. The Government of N.W.F.P. enacted Act II of 1987 whereby in the public interest regularization was granted to certain civil servants appointed on adhoc basis, section 3 whereof reads as under:-

"3. Regularization of services of Certain Civil Servants:

Notwithstanding anything contained in any law or rule, or in any decree, order of judgment of a Court, all civil servants holding ad hoc appointment to a post on or before 20th September, 1986, and continuing as such till the commencement of this Act, shall be deemed to have been validly selected and appointed to the posts held by them on regular basis with effect from the date of commencement of this Act:

Provided that --

- (i) the services of such civil servants shall be deemed to have been regularized under this Act only on the publication of their names in the official Gazette.
- (ii) such civil servants possess the qualification and experience prescribed for the posts; and
- (iii) the Commission has in respect of the posts held by such civil servants not recommended any other person on or before the commencement of this Act."

On 23.1.1988 N.W.F.P. Civil Servants (Regulations of Services) Act, 1988(I of 1988) was enacted whereby regularization was granted to certain civil servants appointed on adhoc basis in the public interest, Section 3

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whereof reads as follows:-

"3. Regularization of services of certain civil servants:

Notwithstanding anything contained in any law or rule for the time being in force, but subject to preferential right of appointment of a selectee of the Public Service Commission, if any, selected before the commencement of this Act, all civil servants holding appointment to a post on ad hoc basis in any Department of Government immediately before the commencement of the Act shall be deemed to have been as selected for appointment on regular basis on the commencement of this Act:

Provided that:-

- (a) the services of such civil servants shall be deemed to have been regularized under this Act only on the publication of their names in the official Gazette;
- (b) such civil servants possess the qualifications and experience prescribed for the posts to which they are appointed on regular basis."

A ban was imposed for a period of 10 years on the recruitment on adhoc basis under section 5. However, under sub-section (2) of section 5 the Government was made empowered to fill in short term or temporary vacancies by way of contractual appointments for a period of not exceed 2 years during which period the vacancies shall be referred to Public Service Commission for selection on the said post.

8. In 1989 the Provincial Assembly passed N.W.F.P. Employees on Contract Basis (Regulation of Services) Act, 1989 (VIII of 1989) effective from 13.11.1989. Section 5 of Act I of 1988 was

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repealed and the appointments made thereunder were converted as appointments on adhoc basis under section 3 of the said Act. Section 4 of Act VIII of 1989 was substituted by N.W.F.P. Employees on Contract Basis (Regulation of Services) Act, 1990 which reads as follows:-

"4. Regulation of services of certain Civil Servants: (1)

Notwithstanding anything contained in any law for the time being in force, any Civil Servant, who is or has been appointed or deemed to have been appointed against any post in any Government Department under Section 3 of this Act shall be deemed to have been regularly appointed from the date of his continuous officiation, subject to eligibility, according to the service rules applicable to the post, verified by the administrative Secretary of the department concerned:

Provided that if any Civil Servant is aggrieved regarding his eligibility, he shall have one right of appeal to the Chief Secretary, Government of North-West Frontier Province, and his decision in the case shall be final.

Provided further that if there is any gap in service of any Civil Servant between this enactment and the date of appointment under Section 3 of this Act, due to termination of contractual service only, the same shall be deemed to have been condoned as extraordinary leave without pay.

(2) The inter se seniority of the Civil Servants under this Act shall be determined by the Government, according to the service rules in vogue."

9. The legislation noted above has granted regularization to all those civil servants who were appointed either on adhoc basis or on contract basis before 13th November, 1989. In this view of the matter the appo-

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made through orders in between 29.6.1986 and 13.11.1989 were regularized and the Provincial Government/respondents were not competent to make their services subject to the selection through Public Service Commission.

10. The Circular Letter dated 1.2.1995 issued by Services and General Administration Department, Government of N.W.F.P. whereby the post of Instructors Technical Training Centre (B-14) under the Man Power and Training Directorate was given within the purview of Public Service Commission while the said posts were within the purview of Departmental Selection Committee. The newly circulated policy has no retrospective effect and all those civil servants appointed before the aforesaid date i.e. 1.2.1995 are to be governed by the terms of appointment letters issued under the law prevailing at that time. Those petitioners who were appointed during the period 13.11.1989 to 25.9.1992 were made under the previous policy and in the terms of appointment letter their services are required to be regularized on the recommendation of Departmental Selection Committee. The newly policy was provided legal

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cover by amending section 10 of the N.W.F.P. Public Service Commission Ordinance, 1978. The schedule appended to N.W.F.P. Public Service (Functions) Rules 1983 was amended and at serial No.27 the Instructor T.T.C. in Directorate of Man Power and Training was given in the purview of Public Service Commission. The petitioners were granted regularization on the recommendation of Departmental Selection Committee through letter No. DMT/4-39/60-0 (B) dated 31.7.1993 and in accordance with the terms of their appointment letters. The regularization was granted on the recommendation of Departmental Selection Committee because the new policy which was given effect by amending the schedule on 13.3.1993 was of no retrospective effect. It shall be presumed that the Government functionaries granting regularization to the petitioners were in the knowledge of new policy and amendment in the schedule noted above. Even if the regularization is considered to be irregular or unlawful the same was required to be rectified forthwith but the respondents did not object to the regularization till the impugned letter dated 8.5.1996 whereby the regularization already granted was recalled. The impugned order of withdrawal of regularization of petitioners speaks of mala fide on the part of the respondents. The action of respondents called

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 AND TRAINING

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not be protected being passed without any legal sanctity, ultra vires and of no legal effect which could be struck down under Article 199 of the Constitution.

11. In view of the discussion made above we have arrived at the conclusion that the impugned order of respondent No.4 dated 2.5.1996, whereby the regularization of services of the petitioners vide letter No.DWT/4-39/0940/93 dated 31.7.1993 was withdrawn, is found illegal, ultra vires of the Constitution and thus set aside. The writ petition is accepted with no order as to costs.

Announced

14.11.2000

*sd/ Ghazi Johar Khan*

*sd/ Ghazi Ismail Khan*

CERTIFIED TO BE TRUE COPY

Examiner  
Peshawar High Court  
Authorised Officer

No. 3044  
Date of Presentation of Application 04/10/00  
No of Pages 12  
Copying Fee 10  
Urgent Fee 0  
Total 20  
Date of Preparation 04/10/00  
Date of Delivery of Copy 04/10/00  
received by [Signature]

04/10/00

*[Signature]*

18

ANNEX C

DIRECTORATE OF TECHNICAL EDUCATION AND MANPOWER TRAINING NWFP PESHAWAR

OFFICE ORDER

The competent authority, on the recommendation of Departmental Promotion Committee, is pleased to promote the following Instructors (BPS-14) GTVC to the post of Senior Instructor (BPS-16) GTVC on regular basis with immediate effect:

Sr.No	Name of incumbent	Promoted as
1-	Mr. Nawaz Nathenial, Instructor (RTV) (BPS-14) GTVC (B) Peshawar.	Senior Instructor (RTV) (BPS-16) His promotion is subject to final decision by the Supreme Court of Pakistan in appeal filed by the Government
2-	Mr. Noor Gul, Instructor (RTV) (BPS-14) ATTC Hayatabad Peshawar	Senior Instructor (RTV) (BPS-16)

2- They, on promotion, will remain on probation for a period of one year in terms of section-6 (2) of NWFP, Civil Servants Act, 1973 read with rules-15 (1) of NWFP, Civil Servants (Appointment Promotion and Transfer) Rules 1989.

3- Consequent upon their promotion, they are hereby posted as follows.

Sr.No	Name of incumbent with present posting	Posted as
1-	Mr. Nawaz Nathenial, Instructor (RTV) (BPS-14) GTVC (B) Peshawar.	Senior Instructor (RTV) (BPS-16) at GTVC (B) Peshawar.
2-	Mr. Noor Gul, Instructor (RTV) (BPS-14) ATTC Hayatabad Peshawar	Senior Instructor (RTV) (BPS-16) at GTVC (B) Peshawar.

DIRECTOR GENERAL TECHNICAL EDUCATION AND MANPOWER TRAINING NWFP, PESHAWAR

Endst.No.DTE&MT/Estt-II/A-67/6508(1-4)

Dated 27/12/2007

Copy is forwarded to:-

- 1- The Accountant General NWFP, Peshawar.
- 2- The District Accounts Officer concerned.
- 3- The Principal concerned.
- 4- Individual concerned.
- 5- Office copy.

*[Signature]*  
DEPUTY DIRECTOR (ADMN)

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*[Handwritten marks and stamps]*

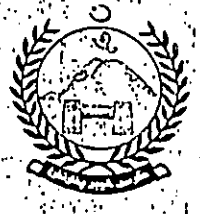
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Approved  
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No. SOI/TE(IND)/E/71-17/2011

GOVERNMENT OF KHYBER PAKHTUNKHWA  
INDUSTRIES, COMMERCE AND TECHNICAL  
EDUCATION DEPARTMENT

Tel: \_\_\_\_\_



10<sup>th</sup> August, 2011

Dated Peshawar, the \_\_\_\_\_

To

The Director General,  
Technical Education & Manpower Training,  
Khyber Pakhtunkhwa, Peshawar.

Subject: UP-GRADATION OF EXISTING INCUMBENTS OF THE  
POST OF SENIOR INSTRUCTOR FROM BPS-16 TO BPS-17.

Dear Sir,

I am directed to refer to your letter No. DTE&MT/Estt-II/A-142/Vol-11/37898 dated 06.08.2011 on the above noted subject and to return herewith 07 sets of working paper with the request to attest all its certificates and service rules etc may also be send to this department for holding of the meeting of Department Promotion Committee.

Encl: as above.

Yours faithfully,

(WAZIR GUL)  
SECTION OFFICER-III

12/5/11

~~\_\_\_\_\_~~

DG TE & MT/ESTT-II/A142/3788 dt 6-8-2011

Dairy No - 2072 - dt 11-8-011

Subject: UP GRADATION OF THE EXISTING INCUMBENTS OF THE POST OF SENIOR INSTRUCTOR FROM BPS-16 TO BPS-17

According to the administrative approval of the Govt. Khyber Pakhtunkhwa Industries, Commerce, Labour & Technical Education and Manpower Training Department, issued vide their notification No. SO-III(IND)TE/4-13/2005 dated 12<sup>th</sup> November 2007 (Annexure-I), 103 posts of Senior Instructor BPS-16 were up graded to BPS-17 in the Institutes situated in settled areas under the Directorate General of Technical Education and Manpower Training, with immediate effect.

2- The up gradation cases of existing incumbents of the posts were considered by the DPC in its meeting held on 26-02-2008 (Minutes at Annexure-II) and the up gradation order of those incumbents of the post who were cleared by the DPC was issued vide Administrative Department No. SO/III(IND)TE/1-17/07/Vol-II dated 30<sup>th</sup> April 2008 (Annexure-III).

3- Now the up gradation of the following incumbents Senior Instructor from (BPS16) to (BPS-17) is pending due to the reason given against each:

Sr.No.	Name of Incumbent	Reasons
1	Muhammad Razin, Machinist.	Previously the up gradation case was considered by the DPC in its meeting held on 26-02-2008 vide agenda item No. 11 Sr.No.21 (Mechanical group) of the minutes (Annexure-IV) and was deferred due to being his departmental appeal for his reinstatement in service subjudice in the Supreme Court of Pakistan.
2	Mr. Raj Wali	Previously his up gradation case was considered by the DPC in its meeting held on 26-02-2008 vide agenda item No. 11 Sr.No.35 (Mechanical group) of the minutes (Annexure-IV) and was deferred due to being his departmental appeal for his regularization in service subjudice in the Supreme Court of Pakistan.
3	Mr. Nawaz Nathnial	Previously his up gradation case was considered by the DPC in its meeting held on 26-02-2008 vide agenda item No. 11 Sr.No.31 (Electrical group) of the minutes (Annex-IV) and was deferred due to being his departmental appeal for his regularization in service subjudice in the Supreme Court of Pakistan.
4	Mr. Manzoor Elahi	Previously his up gradation case was considered the DPC in its meeting held on 26-02-2008 vide agenda item No.11 Sr.No.30 of the minutes (Annexure-IV) and was deferred for want of missing ACR for the year 2006.
5	Sardar Mohammad Farid	He has been promoted to BPS-16 vide order dated 04-11-2010 (Annexure-V) and his further up gradation to BPS-17 has to be cleared by DPC.
6	Mr. Baid ullah Jan	He has been promoted to BPS-16 vide order dated 04-11-2010 (Annexure-V) and his further up gradation to BPS-17 has to be cleared by DPC.
7	Mr. Muhammad Iqbal	He has been promoted to BPS-16 vide order dated 04-11-2010 (Annexure-VI) and his further up gradation to BPS-17 has to be cleared by DPC.
8	Syed Nusrat Shah	He has been promoted to BPS-16 vide order dated 04-11-2010 (Annexure-VI) and his further up gradation to BPS-17 has to be cleared by DPC.
9	Mr. Riaz Ahmad (explud)	He has been promoted to BPS-16 vide order dated 04-11-2010 (Annexure-VI) and his further up gradation to BPS-17 has to be cleared by DPC.
10	Mohammad Jan	He has been promoted to BPS-16 vide order dated 04-11-2010 (Annexure-VII) and his further up gradation to BPS-17 has to be cleared by DPC.

The particulars of the aforesaid 10 existing Senior Instructors (BPS-16) who are due for up gradation to BPS-17 against the upgraded post of Senior Instructor in BPS-17 are given as under:

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**I) SENIOR INSTRUCTOR (MECHANICAL GROUP) -03**

S.N	Name of Incumbents	Qualification	Date of appointment/promotion to the post of senior Instructor BPS-16	Whether eligible for up gradation
1	2	3	5	6
2	Muhammad Raziq (Machinist)	i) Matric ii) G-II level Certificate iii) 3-Year Apprenticeship Certificate iv) 6 Months Inst. training course	27-01-1983 10-08-1992	Eligible The apex Court has decided the case in his favour through its Judgment dated 21-01-2009 (Annexure IX).  However he was awarded a minor penalty of withholding of annual increment through order dated 27-01-2003 (Annexure-X).
3	Mr. Raj Wali (Machinist)	i) Matric ii) 18 Month TPC iii) 6 Month Inst. Training course	29-05-1984 23-03-2007	Eligible  The apex Court has decided the case in his favour through its Judgment dated 18-06-2009 (Annex: XI)
4	Syed Nusrat Shah	i) Matric ii) 18 Month TPC iii) 6 Months Inst Training Course	02-05-1987 04-11-2010	Eligible Newly promoted to BPS-16 and his further up gradation to BPS-17 has to consider by DPC.
5	Mohammad Iqbal	i) Matric ii) 18 Months TPC iii) 6 Month Inst Training Course	14-05-1987 04-11-2010	Eligible  Newly promoted to BPS-16 and his further up gradation to BPS-17 has to consider by DPC.
6	Mohammad Riaz (Expired on 26-11-2010)	i) Matric ii) 3 Year D.A.E iii) 6 Months Inst. Training Course	19-04-1987 04-11-2010	Eligible Newly promoted to BPS-16 however the officer concerned has expired on 26-11-2010.
7	Mohammad Jan	i) Matric ii) 3 Years D.A.E iii) 6 months Inst. Trg. Course	01-01-1986 04-11-2010	Eligible  Newly promoted to BPS-16 and his further up gradation to BPS-17 has to consider by DPC.

**II) SENIOR INSTRUCTOR (ELECTRICAL GROUP)-02**

S.N	Name of Incumbent	Qualification	Date of appointment/promotion to the post of senior Instruct: BPS-16	Whether eligible for up g. adation
1	2	3	5	6
1	Mr. Manzoor Elahi (RAC)	i) Matric ii) 3Year DAE in RAC	26-05-2004 07-11-2007	Eligible  The ACR has not made available.
2	Mr. Nawaz Nathania (Radio/TV)	i) B.A. L.U.B. ii) MCS iii) 1-Year TPC iv) G-II From NTB Islamabad. v) 6 Months Inst. Training Course	16-06-1986 27-12-2007	Eligible  The apex Court has decided the case in his favour through its Judgment dated 12-06-2009 (Annex: Xi)

*AFB*

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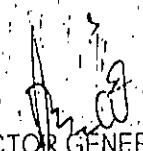
	Ar Mohammad Arif	i) Matric ii) G-III/G-II level Certificate from NIB Islamabad. iii) Years TPC From GPI. iv) 6 Months Instructor Training Course.	01-01-1986 04-11-2010	Eligible Newly promoted to BPS-16 and his further up gradation to BPS- 17 has to consider by DPC.
4	Baidullah Jan	i) Matric ii) 3 Years D.A.E. iii) 1 Years Instructor Training Course.	01-01-1986 04-11-2010	Eligible Newly promoted to BPS-16 and his further up gradation to BPS- 17 has to consider by DPC.

5- Attested copies of synopsis of ACR along with Comparative Chart of ACR and their original ACRs, dossiers are placed on board.

6- It is certified that the officers recommended for up gradation to BPS-17:-

- a) hold the lower posts on regular basis and none of them is holding the post on adhoc basis.
- b) neither any disciplinary/departmental proceeding/anti corruption case/ judicial enquiry is pending against the official concerned, nor any penalty was imposed on him during the last five years.
- c) no departmental/professional examination has been prescribed to be passed under relevant recruitment rules.
- d) no publication has been prescribed to be published under the relevant recruitment rules.
- e) no senior officer of the cadre has been appointed on Acting Charge Basis in terms of rule (2) of the K.P.K Civil Servant (Appointment, Promotion and Transfer) Rule, 1989.

7- The Departmental Promotion committee is requested to determine the suitability of the existing incumbent of the post of Senior Instructor BPS-16 for up gradation to BPS-17.

  
DIRECTOR GENERAL  
TECHNICAL EDUCATION AND MANPOWER  
TRAINING PESHAWAR



23



ANNEX-1

GOVERNMENT OF NWFP  
FINANCE DEPARTMENT

(Regulation Wing)

SUBJECT: AUDIT COPY.

Will the Section Officer-III, Government of NWFP, Industries, Commerce, Min: Dev: Labour and Technical Education Department, Peshawar, please refer to his letter No.SO.III(IND)TE/4-13/05 dated 01.03.2008 on the subject noted above.

2. Audit copy duly authenticated is returned herewith.

  
(NAIB KHAN)  
SECTION OFFICER (FR)

The Section Officer-III,  
Government of NWFP,  
Industries, Commerce, Min: Dev:  
Labour and Technical Education Deptt:

U.O.No.FD/SO(FR)/FD/7-1/2001.

Dated Peshawar the 15.3.2008.

Y/S



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**GOVERNMENT OF N.W.F.P  
INDUSTRIES, COMMERCE, MIN: DEV:  
LABOUR & TECHNICAL EDUCATION  
DEPARTMENT.**

No. SOIII (IND) TE / 4-13 / 2005  
Dated Peshawar the, 01-03-2008

**ORDER**

In continuation of this Department Notification of even No. Dated 12-11-2007, Sanction is hereby accorded to the up-gradation of 103 posts of Senior Instructor from BPS-16 to BPS-17 in the Directorate General of Technical Education & Manpower Training NWFP with effect from 12-11-2007 as per break-up given below.

S No.	Number of posts / Nomenclature of the post.	Existing Scale of the posts	Upgraded Scale of the posts.	Name of Institute at Provincial.	Name of Institute at District level.
1	(03) Sr. Instructor	BPS-16	BPS-17	GATTC Peshawar	Nil
2	(07) Sr. Instructor	BPS-16	BPS-17	GTTTC Pesh	Nil
3	(30) Sr. Instructor	BPS-16	BPS-17	Nil	GTVC Pesh
4	(12) Sr. Instructor	BPS-16	BPS-17	Nil	GTVC Mardan
5	(02) Sr. Instructor	BPS-16	BPS-17	Nil	GTVC Jhangira Distt: Nowshera
6	(03) Sr. Instructor	BPS-16	BPS-17	Nil	GTVC Distt: Kohat
7	(01) Sr. Instructor	BPS-16	BPS-17	Nil	GTVC Distt: Karak
8	(01) Sr. Instructor	BPS-16	BPS-17	Nil	GTVC Hangu.
9	(14) Sr. Instructor	BPS-16	BPS-17	Nil	GTVC DIKhan
10	(05) Sr. Instructor	BPS-16	BPS-17	Nil	GTVC Bannu.
11	(02) Sr. Instructor	BPS-16	BPS-17	Nil	GTVC Lakki Marwat
12	(02) Sr. Instructor	BPS-16	BPS-17	Nil	GTVC Manshra.
13	(08) Sr. Instructor	BPS-16	BPS-17	Nil	GTVC Haripur
14	(03) Sr. Instructor	BPS-16	BPS-17	Nil	GTVC Abbottabad
15	(02) Sr. Instructor	BPS-16	BPS-17	Nil	GTVC Battagram
16	(07) Sr. Instructor	BPS-16	BPS-17	Nil	GTVC Swat
17	(01) Sr. Instructor	BPS-16	BPS-17	Nil	GTVC Upper Dir

Sd/-

SECRETARY TO GOVERNMENT OF NWFP,  
INDUSTRIES, COMMERCE, MIN: DEV:  
LABOUR & TECHNICAL EDU:  
DEPARTMENT

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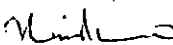


Endst: No. SOIII (IND) TE / 4-13 / 2005

Dated Peshawar the, 01-03-2008.

Copy forwarded for information and necessary action to:-

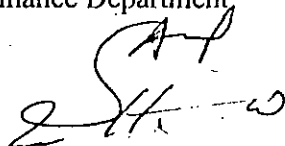
- 1) The Accountant General NWFP Province Peshawar.
- 2) All District/Agency Accounts Officers concerned in NWFP.

  
(NAIB KHAN)  
SECTION OFFICER(FR)  
Government of NWFP  
Finance Department

Enst: No.SOIII (IND) TE / 4-13 / 2005

Dated Peshawar the, 01-03-2008.

- 1) The Accountant General NWFP Peshawar.
- 2) All District Account Officers in NWFP.
- 3) Director General Technical Education and Manpower Training NWFP.
- 4) Secretary FATA, Finance Department.
- 5) Director Technical Education FATA.
- 6) All Principals, Govt. Technical & Vocational Centres in NWFP and Govt. Technical Institutes in FATA.
- 7) Manager Govt. Printing Press NWFP.
- 8) Section Officer (FR) Government of NWFP Finance Department
- 9) Budget Officer-VIII Government of NWFP Finance Department
- 10) O/O FILE.

  
(SARDAR ASAD-HAKOON)  
SECTION OFFICER-III  
Government of NWFP  
Industries Department



26

Amir: (Signature)

48/51

IN THE SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction),

PRESENT:  
MR. JUSTICE JAVED IQBAL  
MR. JUSTICE CH. EJAZ YOUSAF  
MR. JUSTICE SARDAR MUHAMMAD ASLAM

CIVIL APPEALS NO. 1282 OF 2001  
AND 1366 TO 1371 OF 2002.

CIVIL APPEAL No. 1282 of 2001  
(On appeal from the judgment dated  
14.11.2000 in W.P. No. 606/2006 passed  
by the Peshawar High Court, Peshawar)

AND

C.A. Nos. 1366 TO 1371 OF 2002  
(On appeal from the judgment dated  
23.12.2000 in Appeal No. 479, 466, 480,  
548, 549 & 550 of 1996 passed by the  
NWFP Service Tribunal, Peshawar)

Government of NWFP through Secretary,  
Industries, Commerce, Labour, Mineral  
Development and Transport Department,  
Peshawar and others

... Appellants  
(in all cases)

Versus

Muhammad Ayaz Khan & others (in CA 1282/2001)  
Raj Wali Khan (in CA 1366/2002)  
Inayatullah (in CA 1367/2002)  
Iftikhar Ahmad Khan (in CA 1368/2002)  
Ajmal Khan (in CA 1369/2002)  
Khalid Gul (in CA 1370/2002)  
Tehsinullah (in CA 1371/2002)

... Respondents

For the Appellants  
(in all cases)

Mr. Qaiser Rasheed, Addl. A.G. NWFP

For the Respondents  
(in all cases)

Qazi Muhammad Anwar, Sr. ASC  
Mr. Waseem-ud-Din Khattak, ASC

(Signature)

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(Signature)  
Superintendent  
Supreme Court of Pakistan

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C.A. 1282/2001, etc.

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Date of hearing

18.6.2009

JUDGMENT

CH. EIAZ YOUSAF, J.- Civil Appeal No. 1282 of 2001 is directed against the judgment dated 14.11.2000, passed by the Peshawar High Court, Peshawar, while Civil Appeals No. 1366 to 1371 of 2001 are directed against a common judgment dated 23.12.2000 passed by the NWFP Service Tribunal, Peshawar, whereby writ petition as well as service appeals filed by the respondents were allowed.

2. As a common question of law is involved in all these appeals, therefore, we propose to decide the same through this single judgment.

3. Facts of the case in brief are that in C.A. 1282/2001 the respondents who were serving as Instructors Technical Training in various Centres of Peshawar, Haripur, Kohat, Mingora, D.I. Khan, Bannu, Nowshera and Mardan, had filed Constitution Petitions whereby the policy instructions contained in letter bearing No. SOR-I(S&GAD)1-117/91, dated 1.2.1993 issued by Secretary, Service and General Administration Department (Regulation Wing) and subsequent letter dated 8.5.1996 issued by Director, Man Power and Training NWFP in pursuance thereof, whereby the regularisation of the respondent on their existing posts was withdrawn, were challenged.

4. The respondents were inducted in service on ad-hoc basis through different appointment letters/orders issued/passed in

ATTESTED

Superintendent  
Supreme Court of Pakistan  
ISLAMABAD

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C.A. 1282/2001, etc.

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between 29.6.1986 to 25.9.1992. It may be mentioned here that except letters dated 18.4.1998, 15.11.1988 and 16.9.1990 it was mentioned in all the appointment letters that services of the respondents would be subject to clearance by the Departmental Selection committee. On 31.7.1993, however, the Departmental selection committee regularized services of all the respondents.

5. It may be noted here that some of the respondents were appointed under the NWFP Civil Servants (Appointment, Promotion and Transfer) Rules, 1975 which were repealed subsequently by the enforcement of NWFP Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 (Under section 26 of NWFP Civil Servants Act, 1973) with effect from 31.1.1989. The previous recruitment policy introduced vide S&GAD letter No. SOR-I (S&GAD) 4-1/75 dated 11.2.1987 was also substituted by the new policy promulgated vide SOR-1 (S&GAD)1-117/91 dated 1.2.1993 which included, inter-alia, the condition that recruitment to the posts in the various Government Departments would thenceforth be made by the NWFP Public Service Commission.

6. Since regularization order dated 31.7.1993 passed in favour of the respondents on the basis of the circular SOR-1 (S&GAD)1-117/91, dated 1.2.1993, was withdrawn vide order dated 8.5.1996, therefore, the respondents, being aggrieved, filed constitutional petition before the Peshawar High Court, Peshawar, which was allowed and it was, vide the impugned judgment, held

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**ATTESTED**

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Superintendent  
Supreme Court of Pakistan  
ISLAMABAD

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C.A. 1282/2001, etc.

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that the order dated 8.5.1996 was illegal, ultra vires of the Constitution and of no legal effect. Resultantly it was set-aside.

7. In C.As. No. 1366 to 1371/2002 the respondents, filed departmental appeals against order dated 8.5.1996 whereby the regularization of services of the respondents vide order dated 31.7.1993 was set-aside. As no reply was received from the department, the respondents approached the NWFP Service Tribunal, Peshawar by way of appeals. Learned members of the Tribunal, while relying on the decision of the Peshawar High Court, dated 14.11.2000 (impugned in the connected appeal i.e. C.A. No.1282/2001), accepted the appeal holding that the letter dated 1.2.1993 issued by the S&GAD was applicable to the posts/vacancies available on or after 1.2.1993.

8. Leave to appeal, in the instant cases, was granted to consider primarily, the question as to whether the High Court could have interfered with the matter in exercise of its constitutional jurisdiction, in view of the bar contained in Article 212 of the Constitution?

9. It has been contended by the learned Additional Advocate General NWFP, that since the new policy, approved by the Governor on 13.3.1993 by amending Schedule 'A' appended with the NWFP Public Service Commission (Functions) Rules, 1983, had the legal sanctity and was in force, therefore, it could not have been declared by the learned Judges in the High Court that order dated 8.5.1996, whereby the regularisation granted to the respondents

ATTESTED

Superintendent  
Court of Sessions

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was withdrawn, was illegal. It is further his grievance that since the matter related to the terms and conditions of service of the respondents therefore, the High Court had no jurisdiction to entertain the petition and decide the matter.

10. Qazi Muhammad Anwar, learned counsel for the respondents, on the other hand, while controverting the contentions raised by the learned counsel for the petitioner has submitted that since application of the Policy introduced vide SOR-I(S&GAD)1-117/91, dated 1.2.1993 was prospective therefore, it could not have been applied to the cases of the respondents which were to be governed as per the old policy. With regards to jurisdiction of the High Court, he submitted that since order dated 8.5.1996 was ultra vires the Constitution and the law besides being malafide and in excess of jurisdiction, therefore, the Court had jurisdiction to entertain the petition and decide the same.

11. We have given our anxious consideration to the respective contentions of the learned counsel for the parties and have also perused the record of the case with their assistance, minutely.

12. Adverting to the first contention of the learned Additional Advocate General that since the old policy was substituted by the new policy and thereunder services of the employees were to be regularised on the recommendations of the Public Service Commission only, therefore, it could not have been concluded that order dated 8.5.1996, whereby regularisation was

*[Handwritten signature]*

ATTESTED  
*[Handwritten signature]*  
Superintendent

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withdrawn was illegal, it may be mentioned here that the reasons primarily weighed with the learned Judges in the High Court in allowing the petition were that since operation of the new policy was prospective and services of the respondents were to be governed by the old policy, therefore, the regularization granted on the basis of the recommendations of the Departmental Selection committee, vide order dated 31.7.1993 as per old policy could not have been withdrawn vide order dated 8.5.1996. Learned Judges were further of the opinion that since terms and conditions of service of the respondents were already settled and their services were required to be regularised in accordance with the policy which was in vogue at the time of their recruitment/appointment against the said posts, therefore, the order dated 8.5.1996 being in excess of jurisdiction, malafide and ultra vires of the Constitution was of no legal effect.

13. In order to ascertain as to whether there is substance in the contention raised by the learned Addl. A. G. NWFP, it would be advantageous to have a glance at clause (b) of the new policy introduced vide No.SOR-I(S&GAD)1-117/91, dated 1<sup>st</sup> February, 1993, which reads as follows:-

*"Recruitment to posts in the various Government Departments as indicated below will also "henceforth" be made by the NWFP Public Service commission:....."*

(The policy has been reproduced in the impugned judgment in extenso)

*Y*  
*C*

**ATTESTED**

Supervisor  
Supreme Court of Pakistan  
ISLAMABAD



The use of word "henceforth" in the above provision indicates clearly that application of the policy was prospective and therefore, it could not have been applied to the cases of the respondents who were recruited at the time when the old policy was holding the field, hence, conclusions drawn by the learned Judges in the High Court that letter dated 8.5.1996 issued by Director, Directorate of Manpower & Training, Government of NWFP was without any lawful authority appears to be correct. The contention, therefore, is devoid of force.

14. As to the next contention regarding jurisdiction of the High Court, it may be stated here that although in the matters relating to the terms and conditions of civil servants jurisdiction of civil courts including the High Courts has been clearly ousted by Article 212 of the constitution, yet, actions taken by the government functionaries in excess of authority or jurisdiction or in disregard thereof or in colourful exercise of powers being virtually coram-non-judice are amenable to writ jurisdiction of the High Court under Article 199 of the Constitution. While exercising its constitutional jurisdiction, therefore, a superior court is not precluded from scrutinising the lawfulness or otherwise of a particular act or transaction. In this view we are fortified by the following reported judgments (i) Muhammad Iqbal & others v. Executive District Officer (Revenue), Lodhran (2007 SCMR 682), (ii) Muhammad Akhtar Shirani & others v. Punjab Text Book Board and others (2004 SCMR 1077), and (iii) Prince Shaikh Abdul Qadir v. Late Nawab Sheikh

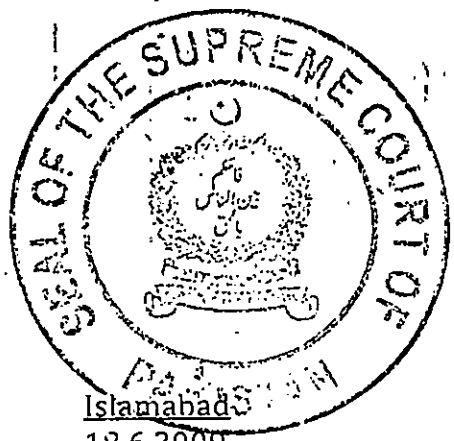
ATTESTED

Nasiruddin and others (2000 SCMR 695) . In a recent unreported judgment delivered in the case of PTCL v. Muhammad Zahid & others (C.A. No. 351/2005), this court has refused to interfere with the order of the High Court passed under Article 199 of the Constitution when it was found that action taken by the functionary was discriminatory.

15. Since in the instant case the policy promulgated on 1.12.1993 had no retrospective effect, therefore, the order of regularisation made on the basis of recommendations of the Departmental Selection Committee, as per terms and conditions of their appointment could not have been withdrawn under the garb and clog of the new policy. The order issued by the department, in excess of authority, therefore, was rightly set-aside by the courts below. The contention as such has no force.

16. Upshot of the above discussion is that we find no merit in these appeals which are hereby dismissed.

Sd/- Javed Iqbal, J  
 Sd/- Ch. Aziz Yasir, J  
 Sd/- Sardar Muhammad Aslam, J



Islamabad  
 18.6.2009  
 (Zulfiqar)

Certified to be True Copy  
 [Signature]  
 Superintendent  
 Supreme Court of Pakistan  
 ISLAMABAD

NOT APPROVED FOR REPORTING

[Signature]  
 15/7/09

[Signature]



Approved CB



DIRECTORATE GENERAL TECHNICAL EDUCATION  
AND MANPOWER TRAINING NWFP PESHAWAR

OFFICE ORDER.

In pursuance of the Judgment of the Supreme Court of Pakistan dated 18-06-2009 in Civil appeal No. 1282 in 2001 and 1366 to 1371 of 2002, the competent authority is pleased to withdraw the de-regularization order issued vide this Directorate order Endst: NO.DMT/4-39/2712-83 dated 8<sup>th</sup> May, 1996 and to restore the order of regularization of the services in respect of Mr.Raj Wali Khan Instructors Machinist (BPS-14) issued vide this Directorate order Endst: No. DMT/4-39/6040 (b) dated 31<sup>st</sup> July, 1993

DIRECTOR GENERAL

Endst: No. DGTE&MT/Estt-II/A-59/5519(1-5)

Dated 17/10/2009.

Copy to:-

- 1- The District Accounts Officer Kohat.
- 2- The Additional Registrar Peshawar High Court w/r to his letter No.5449/judl: dated 09-09-2009.
- 3- The Principals of GTVC' Kohat
- 4- The District Accounts Officers concerned.
- 5- Mr.Raj Wali Khan Senior Instructor (Machinist)

DEPUTY DIRECTOR (ADMN)

Daily letter-4

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ANNEX: H

To

The Secretary,  
Industries Commerce and,  
Technical Education Department.

Through: Proper Channel.

SUBJECT: UP GRADATION FROM BPS -16 TO BPS-17.

Sir,

Respectfully submitted in my previous application dated 27.10.2010 and now again submit that I am serving as senior Instructor BPS-16 in the department of Technical Education and Manpower Training since 01.05.2007. The Provincial Government. On 01.03.2008, up graded all 103 posts of Senior Instructor from BPS-16 to BPS -17 with incumbents. The department had upgraded all my colleagues and my case was kept pending for the reason the department had filed an appeal against our regularization of appointment before the honorable supreme court of Pakistan. The honorable court dismissed the departmental appeal on 18.06.2009 and upheld the decision of Khyber Pakhtunkhwa Peshawar High Court on 03.10.2000 restoring our regularization of appointment. It is therefore requested that I may be allowed to hold the upgraded post of Senior Instructor in BPS-17 from 01.03.2008 like others.

Date 27.03.2012.



You're obediently



NAWAZ NATHAINAL  
Senior Instructor  
GTVC.Peshawar.

(37)

GOVERNMENT TECHNICAL & VOCATIONAL  
CENTRE, GUL BAHAR PESHAWAR.

NO.GTVC /P/P/PE/ 1010

Dated 27/10/2010

To

The Secretary,  
Govt. of Khyber Pakhtunkhwa,  
Industries, Commerce, & Technical Education,  
Department.

**THROUGH: PROPER CHANNEL**

**SUBJECT:- UP GRADATION FROM BPS-16 TO BPS-17.**

Sir,

With respectfully it is stated that I am working as a Senior Instructor BPS-16 in Government Technical & Vocational Centre, (B) Gul Bahar Peshawar while, the post of Senior Instructor is up graded from BPS-16 to BPS-17 on 30.04.2008. Most of Senior Instructors are upgraded.  
My case was deferred; due to regularization case was pending in honorable Supreme Court of Pakistan.  
The case was decided on 23.06.2009 in my favor.

Therefore it is requested that please up grade my post from that date.

Thank you

yours obediently

*Nawaz Nathaniel*  
(NAWAZ NATHANIEL)  
Senior Instructor GTVC (B) Peshawar.

*Yes*

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ANNEX-2

Tele: \_\_\_\_\_



**GOVERNMENT OF KHYBER PAKHTUNKHWA  
INDUSTRIES, COMMERCE AND TECHNICAL  
EDUCATION DEPARTMENT**

*Dated Peshawar, the* \_\_\_\_\_

**NOTIFICATION**

**No. SOIII(IND)TE/1-17/2012/DPC.** On the recommendations of the Departmental Promotion Committee meeting held on 17-05-2012, the Competent Authority is pleased to order the up-gradation of the following Senior Instructors from BPS-16 to BPS-17 against the up-graded posts of Senior Instructors in the Directorate of Technical Education, Khyber Pakhtunkhwa Peshawar with immediate effect:-

S.No	Name of Incumbents	Post upgraded
1	Mr. Muhammad Razin Senior Instructor (Machinist) BPS-16.	Senior Instructor (Machinist) BPS-17
2	Mr. Raj Wali, Senior Instructor (Machinist) BPS-16.	Senior Instructor (Machinist) BPS-17
3	Syed Nusrat Shah Senior Instructor (Machinist) (BPS-16)	Senior Instructor (Machinist) BPS-17
4	Mr. Muhammad Jan Senior Instructor (Welding) (BPS-16)	Senior Instructor (Welding) BPS-17
5	Mr. Manzoor Elahi, Senior Instructor (RAC) BPS-16	Senior Instructor (RAC) BPS-17
6	Mr. Nawaz Nathenial Senior Instructor (Radio/TV) BPS-16	Senior Instructor (Radio/TV) BPS-17
7	Mr. Muhammad Farid Senior Instructor (Electrical) BPS-16	Senior Instructor (Electrical) BPS-17
8	Mr. Baidullah Jan Senior Instructor (Electrical) BPS-16	Senior Instructor (Electrical) BPS-17

Secretary to Govt. of Khyber Pakhtunkhwa,  
Industries, Commerce & Technical Education  
Department.

**Endst: No. SOIII(IND)TE/1-17/2012/DPC**

**Dated Pesh, the 26<sup>th</sup> Sep, 2012**

Copy is forwarded to:-

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Director General, Technical Education & Manpower Training, Peshawar.
3. The concerned District Accounts Officers.
4. The concerned Principals GTVC.
5. The Officers concerned.
6. O/O file.

*u* *Yd*

(ANWAR-UL-HAQ)  
SECTION OFFICER-III

POWER OF ATTORNEY

In The COURT of K.P.K Service Tribunal Peshawar  
Nawaz Nethenial

For:  
Plaintiff  
Appellant  
Petitioner  
Complainant

VERSUS

Govt of KPK etc

Defendant  
Respondent  
Accused

Appeal/Revision/Suit/Application/Petition/Case No: \_\_\_\_\_ of \_\_\_\_\_  
Fixed for \_\_\_\_\_

I/WE, the undersigned, do hereby nominate and appoint

MR. IJAZ ANWAR, ADVOCATE, HIGH COURT, PESHAWAR

Sajid Anwar my true and lawful attorney, for me in my name and on my behalf to appear at \_\_\_\_\_ to appear, plead, act and answer in the above Court or any appellate Court on any Court to which the business is transferred in the above matter and is agreed to sign and file PETITIONS. An appeal, statements, accounts; exhibits, compromises or other documents whatsoever, in connection with the said matter or any matter arising there-from and also to apply for and receive all documents or copies of documents, depositions etc and to apply for and issue summons and other writs or sub-poena and to apply for and get issued and arrest, attachment or other execution, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other Legal Practitioner authorizing him to exercise the power and authorities hereby conferred on the Advocate whenever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to do all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may per proper and expedient.

AND I/We hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/We undertake at time of calling of the case by the court/ my authorized agent shall inform the Advocate and make him appear in court, if the case may dismissed in default, if it be proceeded ex-parte the said counsel shall not held responsible for the same. All cost awarded in favour shall the right of Counsel or his nominee, and if awarded against shall payable by me/us.

IN WITNESS whereof I/We have hereto signed at Peshawar the \_\_\_\_\_ day to \_\_\_\_\_ in the year \_\_\_\_\_  
Executant/Executants \_\_\_\_\_  
Accepted subject to the terms regarding fee \_\_\_\_\_

Nawaz Nethenial

Ijaz Anwar

Advocate High Courts & Supreme Court of Pakistan

ADVOCATES, LEGAL ADVISORS, SERVICE & LABOUR LAW CONSULTANT  
FR-3, 4<sup>th</sup> Floor, Bilour Plaza, Saddar Road, Peshawar Cantt.  
Ph: 091-52772054 Mobile: 0333-9107225

Sajid Anwar

PROVINCIAL

ORIGINAL

GS&PD.NWFP.-1123/25-Form Store-1000 P.cds 100L-12.5.2007/PIV(Z)

(This portion to be transmitted by the Bank Agent to the Treasury Officer in support of the credit in his daily account.)

3004

To THE MANAGER, STATE BANK OF PAKISTAN  
PR 4029  
the following details are stated on the reverse of the cheque

State Bank of Pakistan (S.B.P.) Peshawar  
Dated the 04 NOV 2013  
Duty on endorser's signature (a)  
Duty on Document (b)

Received from the bearer the sum of Rs. 80/- Eighty only.

to be credited to Government account under the head CO-38-44

on account of Process fee in Case No. 569/13  
Head of A/C Verified

Nawaz Bangh  
Assistant Treasury Officer  
Peshawar.

Signature and full official designation of the officer ordering the money to be paid in



In case of "Duty on Impressing Documents" the amounts creditable to each of the following detailed heads should be noted:

- (a) Duty on embossing one anna receipt and cheques stamps.
- (B) Duty on Documents voluntarily brought for adjudication (Section 31, Act II of 1899)
- (c) Duty on unstamped or insufficiently stamped documents levied under Chapter IV of Act II of 1899.
- (d) Other items.

**ORIGINAL**

GS&PD—NWFP—959 F.S. 1,000P OF 100—14.06.2000—(9)

*Wazir*

**PROVINCIAL**

*Peshawar*  
Treasury / Sub-Treasury  
*Peshawar*

Chalan of Cash paid into the.....

State Bank of Pakistan

*NBS MISC*  
**CHALAN NO.**

*3004/11*

To be filled in by the remitter				To be filled in by the Departmental officer or the Treasury	
By whom tendered	Name or Designation and address of the person on whose behalf money is paid	Full particulars of the remittances and of authority (if any)	Amount	Head of Account	Order to the Bank *
				<i>611215</i>	
				<i>350/1007</i>	

Name

**CHAIRMAN**  
**Service Tribunal**  
**SPK, Peshawar**

*Security Refundable*  
*Rs. 100/- deposited*  
*Nawaz Bangish A No 25/11/13*

Date  
Correct  
Received and grant  
receipts.  
Signature and full  
designation of the  
officer ordering the  
money to be paid in

Signature

Total (A) *100/-*

(a). (in words) Rupees

*One Hundred*

To be used only  
in the case of  
remittances to Bank  
through an officer  
of the Government.

Received

*Rs. 100/-*

Date

Treasury Officer

Treasurer

Accountant

Manager

State Bank of Pakistan  
SBP BSC (Bank) Peshawar  
**RECEIVED IN CASH**  
04 NOV 2013  
A.T.O.

Particulars

Amount  
Rs. Paise.

Coin.

Notes (with details)

Cheques (with details)

Total:

Head of A/C *Verified*

Assistant Treasury Officer  
*Peshawar.*

*Note 1 :* In the case of payments at the Treasury Receipts for sums less than Rs. 500 do not require the signature of the Treasury Officer but only of the Accountant and the Treasury Receipts however for cash and cheques paid for service stamps should always be signed by Treasury Officer Act of C.A. Code Vol. I

*Note 2 :* Particulars of money tendered should be given on the reverse.

*Note 3 :* In case where direct credit at Bank are permissible the columns. "Head of account" will be filled in by the Treasury Officers, or the Accounts Officers as the case may be on receipts of the Bank Daily Sheet.

---

In case of "Duty on Impressing Documents" the amount creditable to each of the following detailed heads be noted :

- (a) Duty on embossing on anna receipt and cheque stamps.
- (b) Duty "On documents voluntarily brought" for adjudication (Section 31, Act II of 1899).
- (c) Duty on unstamped or insufficiently stamped documents levied under Chapter IV of Act II of 1899.
- (d) Other Items.

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

**Appeal No. 569/2013**

Mr. Nawaz Nathaniel, Senior Instructor (Radio/ TV) BPS-17  
Government Technical & Vocational Centre Peshawar.

.....APPELLANT.

**VERSUS**

- 1) Government of Khyber Pakhtunkhwa through Secretary Industries,  
Technical Education & Manpower Training K. P. Peshawar.
- 2) Director General, Technical Education and Manpower  
Training of Khyber Pakhtunkhwa.

.....RESPONDENTS

**REPLY ON BEHALF OF RESPONDENT NO.1,2,**

**PRELIMINARY OBJECTIONS:**

- A- That the appeal is badly time barred.
- B- That the appellant has no cause of action.
- C- That the appellant has got no locus standi.
- D- That the appeal is incompetent in its present form.
- E- That the appeal is bad in its present form for non-joinder  
and mis-joinder of the necessary parties.

**Respectfully Sheweth,**

**FACTS:**

- 1) Pertains to record.
- 2) Pertains to record.
- 3) Pertains to record.
- 4) Correct is per record.
- 5) Correct. It is clarified, since the appeal against the Judgment of Service Tribunal was pending before the August Court of Pakistan the case for up-gradation was defer by the Departmental Promotion Committee.
- 6) Pertains to record.
- 7) Correct as per judgment of Supreme Court, the de-regularization order dated 8.5.1996 was withdrawn and order of regularization dated 13.7.1993 was restored.
- 8) In correct, it is clarified that on restoration of de-regularization order under the Judgment of Apex Court, the appellant was granted up-gradation in BPS-17 with immediate effect.
- 9) As explain in para-8 above the appellant was allowed up-gradation with immediate effect.
- 10) In correct, the impugned order is according to law & rules on the subject and liable to be upheld.

29/9/

**G R O U N D S**

- a) In correct. The appellant has been treated in accordance with law and his right secured & guaranteed under the law and constitution has not been violated.
- b) In correct. Evidently the up-gradation was allowed to his similarly placed colleague with effect from through notification when the case was defer due to pendency of appeal in the August Court. The benefit of Up-gradation has to be consider with effect from the date his junior colleague were granted promotion under FR-53.
- c) Pertains to law points.
- d) As explained in para-B ibid.
- e) Needs no comments.
- f) The promotion of the appellant was made.

It is therefore requested that in view of the above facts, the instant appeal for having no force of law and facts may be dismissed with cost.

**RESPONDENT NO.1)**

Secretary Industries, Technical Education  
Khyber Pakhtunkhwa

**RESPONDENT NO.2)**

Director General Technical Education and  
Manpower Training, Peshawar.

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

In the matter of  
Appeal No. 569/2013

Nawaz Nathaniel, Senior Instrutor (Radio/TV) BPS-17, Govt.  
Technical & Vocational Center Peshawar.

(Appellant)

**VERSUS**

Govt. of Khyber Pakhutukhwa, Peshawar & others.

(Respondents)

**REJOINDER TO THE PARA WISE REPLY ON**  
**BEHALF OF THE APPELLANT**

Respectfully submitted:

The appellant submits his rejoinder as under:

**ON PRELIMINARY OBJECTIONS:**

1. Contents incorrect and misleading, the instant appeal is filed well within the prescribed period of limitation.
2. Contents incorrect and misleading, the appellant has illegal been upgradation from his due date, hence he has got the necessary cause of action to file the instant appeal.
3. Contents incorrect and misleading, the appellant has illegal been upgradation from his due date, he being an aggrieved civil servant hence he has got the necessary locus standi to file the instant appeal.
4. Contents incorrect and misleading the appeal being field well in accordance with the prescribed rules and procedure hence the competent in its present form.
5. Contents incorrect and misleading all parties necessary for the disposal of the appeal are arrayed in the instant appeal.

**ON FACTS**

1. Contents need no reply, however contents of Para-1. of the appeal are true and correct.
2. Contents need no reply, however contents of Para-2 of the appeal are true and correct.

3. Contents need no reply, however contents of Para-3 of the appeal are true and correct.
4. Contents being admitted hence need no reply.
5. Contents being admitted hence need no reply.
6. Contents need no reply, however contents of Para-6 of the appeal are true and correct.
7. Contents being admitted hence need no reply.
8. Contents of Para-8 of the appeal are correct, the reply submitted to the Para is incorrect and misleading.
9. Contents of Para-9 of the appeal are correct, the reply submitted to the Para is incorrect and misleading.
10. Contents of Para-10 of the appeal are correct, the reply submitted to the Para is incorrect and misleading.

### GROUNDS

The Grounds (A to F) taken in the memo of appeal are legal and will be substantiated at the time of arguments.

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

*[Signature]*  
Appellant

Through

*[Signature]*  
IJAZ ANWAR  
Advocate, Peshawar.

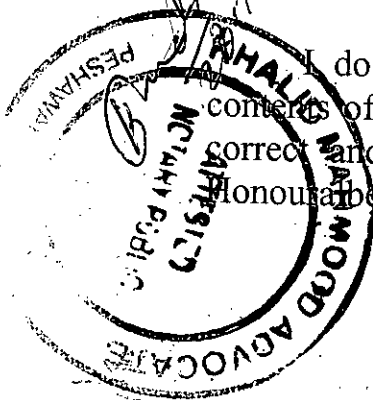
&

*[Signature]*  
SAJID AMIN  
Advocate, Peshawar.

### AFFIDAVIT

I do, hereby solemnly affirm and declare on oath that the contents of the above rejoinder as well as titled appeal are true and correct and nothing has been kept back or concealed from this Honourable Tribunal.

*[Signature]*  
Deponent



05/13  
28.01.11