

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 734/2016

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MISS FAREEHA PAUL ... MEMBER(E)

Mr. Abid Khan, Secretary Union Council, Swabi.

.... (Appellants)

Versus

1. The Secretary, Government of Khyber Pakhtunkhwa, Local Government & Rural Development Department, Civil Secretariat, Peshawar.
2. The Director General, Local Government & Rural Development Department, Khyber Pakhtunkhwa, Peshawar.
3. Mr. Amjid Ali, Supervisor, O/O the Assistant Director, Local Government & Rural Development Department, Swabi.

.... (Respondents)

Mr. Asif Yousafzai
Advocate

...

For appellants

Mr. Nasser-Ud-Din Shah
Asstt. Advocate General

...

For respondents

Date of Institution.....19.07.2016

Date of Hearing.....11.05.2022

Date of Decision.....14.07.2022

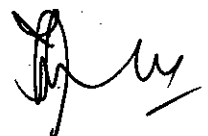
JUDGEMENT

FAREEHA PAUL MEMBER (E): The service appeal in hand has been instituted under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1975 against the impugned order dated 26.05.2015, whereby a junior official was promoted to the post of Supervisor by ignoring the appellants and against not taking any action on his departmental appeal within the statutory period of 90 days, with the prayer that he may be promoted to the post of Supervisor (BPS-9) from the date when the post was available for him or any due date with all back benefits.



2. This judgment shall also dispose off another connected Service Appeal No. 847/2016 titled "Muhammad Shoaib Vs I.G&RD Department" as similar question of law and facts are involved in both the appeals.

3. Brief facts of the case, as per memorandum of appeal, are that the appellants was initially appointed as Village Secretary/ Secretary Union Council (BPS-06) on 14.01.1981 in Swabi. As per seniority list of Secretaries Union Council, District Swabi, appellants was at Serial No. 1 whereas, Mr. Amjid Ali, (Respondent No. 3) was at Serial No. 20. According to the rules, the post of Supervisor was to be filled in 25% by initial recruitment and 75% by selection on merit with due regard to the seniority list from amongst the holders of the post of the Village Secretary/ Secretary Union Council with at least 5 years service as such. Respondent department promoted Mr. Amjid Ali to the post of Supervisor vide its order dated 26.05.2015 which was agitated in Writ Petition No. 3719-P/2015 before Hon'able Peshawar High Court which in its judgment dated 01.03.2016, observed, "since the petitioners have not filed the Departmental Appeals against the impugned order dated 26.05.2015, and as such the statutory provision of Section 4 of the Service Tribunal Act cannot be violated by sending the instant and connected petition as appeals before the Services Tribunal. In addition thereto, under Rule 5 of the Appeal Rules, 1977 every aggrieved person has to file a separate and independent Appeal, which in the instant and connected petitions is lacking. Moreover, this and the connected petitions as per request of learned counsel for petitioners cannot be remitted to the Departmental Appellate Authority as the same have been filed by eight petitioners whereas the Departmental Appeal has to be filed by an aggrieved person in individual capacity, however, it is observed that since the petitioners are claiming allocation of 75% share in the promotion quota in the appointment of next higher grade, which on the face of it is a recurring cause of action and for that



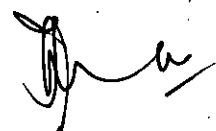
matter they can file a Departmental Appeal any time as such this and the connected petitions, noted above, are not maintainable and dismissed accordingly". In the light of that observation, appellants preferred a departmental appeal on 15.03.2016, which was not responded; hence this service appeal.

4. Respondents were put on notice who submitted written replies/ comments on the appeal. We have heard the learned counsel for the appellants as well as the Assistant Advocate General and perused the case file with connected documents minutely and thoroughly.

5. Learned counsel of the appellants contended that according to rules, the appellants was fully eligible for promotion to the post of Supervisor in 1996 when two posts were available and he was holding charge on the post of Supervisor also by virtue of order dated 18.04.1998. He further contended that promotion order dated 26.05.2015, was utter violation of rules and seniority as the appellants was at Serial No. 1 and fit for promotion, whereas a junior at Serial No. 20 was promoted.

6. The learned Assistant Advocate General referred to the seniority list attached with the reply of respondents at Annexure G and informed that it had been prepared in the light of Rule 6(d) of Esta Code (Surplus Pool Policy) which provided for adjustment of surplus pool employees and fixation of their seniority.

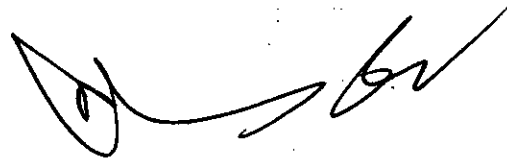
7. The record produced before us provides two seniority lists of Secretaries Union council, both bearing no date or any covering letter, one provided by the appellants in which he is placed at Serial No. 2 with (BPS-7) and Mr. Amjid Ali is at Serial No. 20 with (BPS-9). The same list indicates that Mr. Amjid Ali was promoted to (BPS-9) on 01.07.2007. The other seniority list provided by respondents No. 1 & 2 indicate Mr. Amjid Ali, Senior Clerk (BPS-9) at serial No. 1 and appellants with (BPS-7) at serial No. 3. That seniority list, as per respondents,



has been prepared in the light of Rule 6 (d) of Esta Code (Surplus Pool Policy) which says that in case of adjustment against a post lower than his original scale, he shall be placed at the top of seniority list of that cadre, so as to save him from being rendered surplus again and becoming junior to his juniors. In this case the Establishment Department of the Government of Khyber Pakhtunkhwa had rendered its advice also, according to which those employees, adjusted against the post of Secretary Union Council (BPS-6), being lower than their original scale, were placed on top of that list and those, adjusted as Secretary Union Council (BPS-6), who were already having the same scale in the surplus pool or parent department, were placed at the bottom of seniority list in the same grade. As Mr. Amjid Ali was already in a high scale as compared to others, he was placed at the top of seniority list and hence eligible for promotion. While the appellants of this and connected appeals could not make out their case accordingly.

8. In view of above the appeal in hand is dismissed, however, the respondents may consider promotion of the appellant based on seniority-cum-fitness whenever a post becomes available. Parties are left to bear their own costs. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 14th day of July, 2022.*



(KALIM ARSHAD KHAN)
Chairman



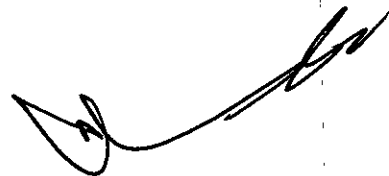
(FAREEHA PAUL)
Member (E)

Service Appeal No. 734/2016

Mr. Muhammad Asif Yousafzai, Advocate for the appellant present. Mr. Naseer Ud Din Shah, Assistant Advocate General for the respondents present. Arguments heard and record perused.

2. Vide our detailed judgement of today containing 04 pages, the appeal in hand is dismissed, however, the respondents may consider promotion of the appellant based on seniority-cum-fitness whenever a post becomes available.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 14th day of July, 2022.*



(KALIM ARSHAD KHAN)
Chairman



(FAREEHA PAUL)
Member (E)

SA 734/2016

20th June, 2022

Counsel for the appellant present. Mr. Naseerud Din Shah,
Asstt. Advocate General for the respondents present.

Because of other multifarious engagement we could not
record the judgment. To come up on 28.07.2022 for order.



(Fareeha Paul)
Member(E)



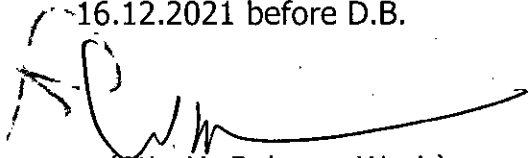
(Kalim Arshad Khan)
Chairman

To come up for proper further
proceeding before proper DB on 14-7-2022

11.10.2021 Clerk to counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Learned Members of the DBA are observing Sogh over the demise of Dr. Abdul Qadeer Khan (Scientist) and in this regard request for adjournment was made; allowed. To come up for arguments on

16.12.2021 before D.B.



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

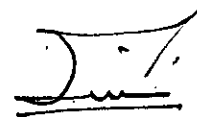

(Rozina Rehman)
Member (J)

16.12.2021 Junior of learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for respondents present.

Junior of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy before Hon'ble Peshawar High Court, Bannu Bench.

Adjourned. To come up for arguments before the D.B on 16.02.2022.


(Atiq Ur Rehman Wazir)
Member (E)


(Salah-ud-Din)
Member (J)

16-2-22


Due to Retirement of the Hon'ble Chairman
The case is adjourned to come up for law
Same as before on 11-5-22.


Reddur

11.05.2022

Counsel for the appellant. Mr. Naseer-ud-din Shah, Assistant Advocate General for the respondents present.

Arguments heard. To come up for order on 13.05.2022 before the D.B.


(Fareeha Paul)
Member (E)


Chairman

ORDER
13.05.2022


Deleted for reconstitution of Bench. To come up for order on 26.05.2022.



Reader

26th May, 2022

Counsel for the appellant present. Mr. Naseer Ud Din, Assistant Advocate General for respondents present.

To come up for order on 20.06.2022 before D.B.


(Fareeha Paul)
Member(E)


(Kalim Arshad Khan)
Chairman

10-4.2020

Due to COVID19, the case is adjourned to 8/7/2020 for the same as before.


Reader

08.07.2020

Due to COVID19, the case is adjourned to 31.08.2020 for the same as before.


Reader

31.08.2020

Due to summer vacation, the case is adjourned to 06.11.2020 for the same as before.


Reader

06.11.2020

Junior to counsel for the appellant and District Attorney for the respondents present.

The Bar is observing general strike, therefore, the matter is adjourned to 15.01.2021 for hearing before the D.B.

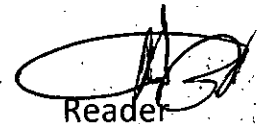

(Mian Muhammad)
Member


Chairman

15.01.2021 Junior to counsel for the appellant present. Addl: AG for respondents present. Due to pandemic of Covid-19, the case is adjourned to 02.04.2021 for the same.



Reader


02.04.2021 Due to non availability of the concerned D.B, the case is adjourned to 30.06.2021 for the same.


Reader

30.06.2021 Appellant alongwith clerk of counsel present. Muhammad Riaz Ahmed Paindakheil, Assistant Advocate General for the respondents present.

Appellant requested for adjournment on the ground that learned counsel for the appellant is busy before Peshawar High Court, Mingora Bench Swat. Adjourned. To come up for arguments before the D.B. on 11.10.2021.


(ATIQ UR REHMAN WAZIR)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

20.06.2019 Learned counsel for the appellant present. Mr. Zia Ullah learned Deputy District Attorney present.. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 21.08.2019 before D.B.


Member



Member

21.08.2019 Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 30.09.2019 for arguments before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

30.09.2019 Due to general strike of Khyber Pakhtunkhwa Bar Council learned counsel for the appellant is not available today. Mr. Kabirullah Khattak, Additional AG for the respondents present. Adjourned to 31.10.2019 for arguments before D.B.


(HUSSAIN SHAH)
MEMBER


(M. AMIN KHAN KUNDI)
MEMBER


31.10.2019 Counsel for the appellant present. Addl: AG for respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 04.12.2019 before D.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

04.12.2019

Learned for the appellant present. Mr. Usman Ghani learned District Attorney alongwith Mr. Abdul Manan Computer Operator for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 09.01.2020 before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

09.01.2020

Due to general strike of the Khyber Pakhtunkhwa Bar Council, the case is adjourned. To come up for arguments on 03.03.2020 before D.B.


Member


Member

03.03.2020

Counsel for the appellant present. Mr. Ziaullah, DDA for respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 10.04.2020 before D.B.



Member


Member

21.12.2018

Learned counsel for the appellant and Mr. Riaz Painsdakhel learned Assistant Advocate General for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned. To come for arguments on 19.02.2019 before D.B


(Hussain Shah)
Member


(Muhammad Amin Kundi)
Member

19.02.2019

Learned counsel for the appellant and Mr. Zia Ullah learned DDA for the respondents present. Notice be issued to respondent No.3 for next date of hearing. Adjourned to 03.04.2019^{before}/D.B.


Member


Chairman

03.04.2019

Counsel for the appellant and Mr. Ziaullah, DDA for official respondents present. Nemo for respondent No. 3.

On the last date of hearing notice was ordered to be issued to respondent No. 3 for hearing today. The record suggests that the requisite notice was duly issued however, the said respondent is unrepresented. He is, therefore, placed ex-parte.

To come up for arguments before the D:B on 30.04.2019.


Member


Chairman

30.04.2019

Mr. Noor Muhammad Khattak, Advocate for the appellant present and submitted his Vakalat Nama. Mr. Ziaullah, Deputy District Attorney for official respondents No. 1 & 2 present. Newly engaged learned counsel for the appellant seeks adjournment. Adjourned to 20.06.2019 for arguments before D.B.


(AHMAD HASSAN)
MEMBER


(M. AMIN KHAN KUNDI)
MEMBER

Service Appeal No. 734/2016

04.01.2018

Counsel for the appellant present. Mr. Muhammad Jan, Deputy District Attorney for official respondents No. 1 & 2 present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 05.03.2018 before D.B.



(Ahmad Hassan)
Member(E)



(M.Amin Khan Kundi)
Member (J)

05.03.2018

Junior counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney for official respondents No. 1 & 2 present. Junior counsel for the appellant seeks adjournment on the ground that learned senior counsel for the appellant is not available today. Adjourned. To come up for arguments on 07.05.2018 before D.B.



(Muhammad Hamid Mughal)
Member



(Muhammad Amin Khan Kundi)
Member

07.05.2018

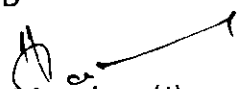
Due to retirement of the worthy Chairman, the Tribunal is incomplete, therefore the case is adjourned. To come up for same on 20.07.2018 before D.B.



Registrar

20.07.2018

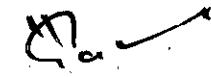
Due to engagement of the undersigned in judicial proceeding before S.B, further proceeding in the case in hand could not be conducted. To come on 14.09.2018 ^{before} D.B


Member (J)

14.09.2018

Junior to counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 08.11.2018 before D.B


(Hussain Shah)
Member


(Muhammad Hamid Mughal)
Member

08.11.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 21.12.2018.


READER


13.03.2017

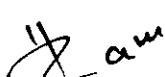
Mr. Taimur Khan learned counsel for appellant, Mr. Muhammad Jamshid Khan, Litigation Officer alongwith Mr. Muhammad Adeel Butt, Additional AG for official respondents No. 1 & 2 and private respondent No. 3 with counsel present. Rejoinder not submitted. Learned counsel for appellant requested for time for filing of rejoinder. Request accepted. To come up for filing of rejoinder and arguments on 05.07.2017 before D.B.


(AHMAD HASSAN)
MEMBER


(ASHFAQUE TAJ)
MEMBER

08. 05.07.2017 Counsel for the appellant and Mr. Muhammad Adeel Butt, Additional AG for the respondent present. Counsel for the appellant submitted rejoinder which is placed on file.. To come up for arguments on 03.11.2017 before D.B.


(Gul Zeb Khan)
Member


(Muhammad Hamid Mughal)
Member

03.11.2017

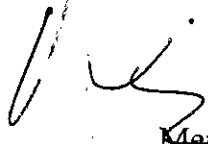
Junior to counsel for the appellant and Addl:AG for official respondents and clerk to counsel for private respondent no.3 present. Junior to counsel seeks adjournment. Adjourned. To come up for arguments on 04.01.2018 before D.B.


(Ahmad Hassan)
Member


(Muhammad Amin Khan Kundi)
Member

08.11.2016

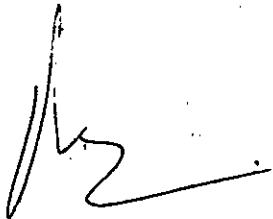
Clerk to counsel for the appellant and Mr. Jamshed Khan, Assistant alongwith Addl. AG for respondents present. Written reply submitted by respondents No. 1, 2 and private respondent No. 3 not submitted written reply. Requested for adjournment. Request accepted. To come up for written reply/comments on 19.12.2016 before S.B.



Member

19.11.2016

Appellant in person and Jamshed Khan, Assistant for respondents No. 1 and 2 alongwith Assistant AG for official respondents and private respondent No. 3 in person present and submitted written reply. The appeal is assigned to D.B for rejoinder and arguments on 13.03.2017.



Member

22.07.2016

Counsel for the appellant present. The learned counsel for the appellant argued that the appellant was appointed as Secretary Union Council on 14.01.1981 he was at serial No. 1 of the seniority list of Secretary Union Council of District Swabi while private respondent No. 3 Mr. Amjid Ali was at serial No. 20 of the said seniority list. That in utter violation of the rules private respondent was promoted as Supervisor and the appellant was ignored from promotion for no valid reasons. The appellant first approached the Peshawar High Court in Writ Petition No. 3719-P/2015 which was decided on 01.03.2016 on the ground of lack of jurisdiction. Meanwhile Peshawar High Court observed that promotion was recurring cause of action therefore the petitioner may approach the relevant forum without any bar of time. The appellant accordingly approached departmental authority on 29.03.2016 which representation was not responded in the statutory period, hence the instant service appeal on 19.07.2016 which is within time.

Points urged at the Bar need further consideration. The appeal is admitted for regular hearing subject to deposit of security and process fee within 10 days where-after notices be issued to the respondents for written reply/comments for 22.09.2016 before S.B.

Appellant Deposited
Security & Process Fee


Member

22.09.2016



Counsel for the appellant, Mr. Jamshid, Assistant alongwith Additional AG for official respondents No. 1 & 2 and private respondent No. 3 in person present. Written reply by official respondents as well as private respondent not submitted. Official respondents and private respondent requested for time to file written reply. Request accepted. To come up for written reply/comments on 08.11.2016 before S.B.


Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 734/2016

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	19/07/2016	The appeal of Mr. Abid Khan presented today by Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution Register and put up to Learned Member for proper order please.  REGISTRAR
2-	20-7-16	This case is entrusted to S. Bench for preliminary hearing to be put up there on. <u>22-7-16</u>  MEMBER

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

Appeal No. 734 /2016

Mr. Abid Khan

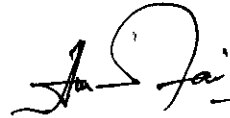
V/S LG&RD Department, KPK.

INDEX

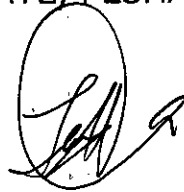
S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	-----	01-04
2.	Copy of Seniority List of 2012	- A -	05-08
3.	Copy of rules.	- B -	9-12
4.	Copy of order	- C -	13
5.	Copy of W.P.	- D -	14-17
6.	Copy of judgment.	- E -	18-29
7.	Copy of appeal.	- F -	30
8.	Vakalat Nama	-----	31

APPELLANT

THROUGH:



(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.



(TAIMUR ALI KHAN)
ADVOCATE, PESHAWAR.

(SYED NAUMAN BUKHARI)
ADVOCATE, PESHAWAR.

1

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 734 /2016

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 722

Dated 19-7-2016

Mr. Abid Khan,
Secretary Union Council, Swabi.

APPELLANT

VERSUS

1. The Secretary, Government of Khyber Pakhtunkhwa, Local Government & Rural Development Department, Civil Secretariat, Peshawar.
2. The Director General, Local Government & Rural Development Department, Khyber Pakhtunkhwa, Peshawar. - *Asst. Dir. Gen.*
3. Mr. Amjid Ali, Supervisor, O/O the Assistant Director, Local Government & Rural Development Department, Swabi.

RESPONDENTS

.....

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 26.5.2015 WHEREBY THE JUNIOR TO THE APPELLANT (PRIVATE RESPONDENT) HAS BEEN PROMOTED AS SUPERVISOR BY IGNORING THE APPELLANT AND AGAINST NOT TAKING ANY ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN STIPULATED PERIOD OF 90 DAYS.

.....

PRAYER:

THAT ON ACCEPTANCE OF THIS APPEAL, THE IMPUGNED ORDER DATED 26.5.2015 MAY BE SET-ASIDE AND THE RESPONDENTS MAY BE DIRECTED TO CONSIDER THE APPELLANT FOR PROMOTION TO THE POST OF SUPERVISOR (BPS-9) FROM THE DATE WHEN THE POST WAS AVAILABLE FOR HIM OR FROM ANY DUE DATE WITH ALL BACK AND CONSEQUENTIAL BENEFITS . ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

Filed to-day

[Signature]
Registrar

19/7/16

2/1

RESPECTFULLY SHEWETH:

1. That the appellant joined the respondent department on 14.1.1981 as Secretary Union Council / Village Secretary. The appellant is at Serial No.1 of the Seniority list whereas the private respondent who joined the department in the year 2007 and is at Serial No.20 of the seniority list. Copies of Seniority list is attached as Annexure-A.

2. That according to the rules, the post of supervisor is to be filled in as 25% by initial recruitment and 75% by selection on merit with due regard to the seniority from amongst the holders of the post of the Village Secretary / Union council Secretary with at-least 5 years service as such. The appellant according to these rules, was fully eligible for promotion to the post of supervisor in the year 1996 when two posts were available at that time and the appellant was also holding the post of supervisor by virtue of order dated 18.4.1998. Copy of Riles is attached as Annexure-B.

3. That on 26.5.2015, the respondent department in utter violation of rules and seniority promoted the junior most officers (private respondent) to the post of Supervisor by ignoring the appellant. The said promotion order along other orders was agitated in Writ Petition No.3719-P/2015 etc before the Hon'ble Peshawar High Court, Peshawar. The said Writ Petition was finally heard on 1.3.2016 and the Honourable High Court while dismissing the Writ Petition on basis of jurisdiction had observed that "Since the petitioners have not filed the Departmental Appeals against the impugned order dated 26.5.2015 and as such the statutory provision of Section 4 of the Services Tribunal Act cannot be violated by sending the instant and connected petition as appeals before the Services Tribunal. In addition thereto, under Rules 5 of the Appeal Rules, 1977 every aggrieved person has to file a separate and independent Appeal, which in the instant and connected petitions is lacking. Moreover, this and the connected as per request of learned counsel for petitioners cannot be remitted to the Departmental

A

3

Appellate Authority as the same have been filed by eight petitioners whereas the Departmental Appeal has to be filed by an aggrieved person in individual capacity; however, it is observed that since the petitioners are claiming allocation of 75% share in the promotion quota in the appointment of next higher grade, which on the fate of it is a recurring cause of action and for that matter they can file a Departmental Appeal any time as such this and the connected petitions, noted above, are not maintainable and dismissed accordingly'. Copies of Order, Writ Petition and Judgment are attached as Annexure-C,D,E.

4. That then the appellant in light of observations of the Hon'ble Peshawar High Court preferred Departmental Appeal on 15.3.2016 which was not responded despite of lapse of statutory period of 90 days, hence the present appeal on the following grounds amongst the others. Copy of Appeal is attached as Annexure-F.

GROUND:

- A) That the promotion order dated 26.5.2015 whereby the junior most official has been promoted by ignoring the appellant and not taking action on the department appeal of the appellant within statutory period of 90 days, is against the law, rules, norms of justice and material on record, therefore, not tenable.
- B) That the appellant has not been treated according to law and rules and has been kept deprive from his genuine rights of promotion in an arbitrary manner.
- C) That the appellant is senior most and at serial No.1 of the seniority list whereas the private respondent was at serial No.20 of the seniority list and the appellant has also good service record but despite that the respondents have violated the basic principle of "**with due regard to seniority**" as mentioned in the rules.
- D) That the appellant has more than 34 years service and also has good record through-out but despite

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that the appellant was never considered for promotion even in the year 1998 when the post was available and the appellant was eligible being senior most for that post.

- E) That the Honourable Supreme Court of Pakistan has also held in many cases that a promotion in a quota will always be made from the date when the post was available for an official in his quota and the official cannot be deprived from his rights merely because the concerned department did not carry out the process of promotion in time.
- F) That the appellant has been kept deprived from his due right of his promotion for the fault of others and lethargy of the department which is not sustainable in the eyes of law.
- G) That the appellant was legally entitled for promotion to the post of Supervisor (BPS-9) with effect from when the post was available and the appellant was entitled being senior most officials.
- H) That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is, therefore, most humbly prayed that the appeal of the appellant maybe accepted as prayed for.

APPELLANT
Abid Khan



THROUGH:



(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.



(TAIMUR ALI KHAN)
ADVOCATE, PESHAWAR.

(SYED NAUMAN BUKHARI)
ADVOCATE, PESHAWAR.

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Annex - ~~1~~ **2**

SENIORITY LIST OF SECRETARIES UNION COUNCILS DISTRICT SWABI

S No	Name	Q/S	Date of Birth	Qualification	Date of Initial Appointment	Date of Promotion (if applicable)	Remarks Name of parent Deptt Date of Adjustment as Secretary U/C	No Objection Certificate on the following Seniority list
1	Muhammad Shuaib	07	08-09-1954	BA	28-07-1976		Secretary, UC, LG & RDD, Swabi	
2	Abid Khan	07	20-02-1956	BA	14-01-1981		Secretary, UC, LG & RDD, Swabi	
3	Sher Afzar Khan	07	10-12-1959	FA	13-07-1985		Secretary, UC, LG & RDD, Swabi	
4	Habib Ur Rehman	07	04-01-1957	MA	30-04-1988		Secretary, UC, LG & RDD, Swabi	
5	Muhammad Shafiq	07	09-10-1964	FA	30-04-1988		Secretary, UC, LG & RDD, Swabi	
6	Rohal Amin	07	11-11-1956	BA	10-05-1988		Secretary, UC, LG & RDD, Swabi	
7	Zahir Muhammad	07	25-03-1962	BA	05-05-1990		Secretary UC, LG & RDD, Swabi	
8	Imtiaz Ali	07	08-04-1965	MA	08-06-1990		Secretary, UC, LG & RDD, Swabi	
9	Niaz Muhammad	07	12-03-1965	MA	17-07-1990		Secretary, UC, LG & RDD, Swabi	
10	Muhammad Hussain	07	01-01-1969	MA	17-07-1990		Secretary, UC, LG & RDD, Swabi	
11	Muhammad Nawaz	07	01-04-1967	BA	21-07-1990		Secretary, UC, LG & RDD, Swabi	

ATTESTED

No Objection Certificate on the following Seniority list

[Handwritten signatures and initials in the right margin]

ATTESTED

12	Muhammad Saleem	07	03-11-1967	FA	26-03-1991	Secretary, UC, LG & RDD, Swabi
13	Sajid Ali Khan	07	15-03-1968	BA	26-03-1991	Secretary, UC, LG & RDD, Swabi
14	Saeed Ur Rehman	07	20-04-1967	BA	23-02-1992	Secretary, UC, LG & RDD, Swabi
15	Sadiq Muhammad	07	01-01-1970	BA	22-11-1994	Secretary, UC, LG & RDD, Swabi
16	Javed Khan	07	08-04-1970	BA	22-11-1994	Secretary, UC, LG & RDD, Swabi
17	Ajmal Shah	07	15-09-1964	FA	23-11-1994	Secretary, UC, LG & RDD, Swabi
18	Muhammad Tahir	07	17-02-1970	FA	23-11-1994	Secretary, UC, LG & RDD, Swabi
19	Tajamul Hussain	09	01-03-1955	SSC	27-10-1980	Senior Clerk, LG & RDD, 08-08-2001
20	Amyd Ali	09	26-04-1961	SSC	31-10-1985	Senior Clerk, DC Office 08-08-2001
21	Muhammad Islam	09	13-11-1969	SSC	28-08-1988	Senior Clerk, DC Office 08-08-2001
22	Munawar Khan	07	17-07-1964	SSC	02-06-1983	Junior Clerk, DC Office 08-08-2001
23	Abdul Samad	07	11-11-1964	BA	03-12-1989	Junior Clerk, DC Office 08-08-2001
24	Miaz Wali Shah	07	15-03-1965	FA	03-12-1989	Junior Clerk, DC Office 08-08-2001
25	Javed Khan	07	15-04-1969	BA	03-12-1989	Junior Clerk, DC Office 08-08-2001
26	Muhammad Raem	07	10-04-1972	BA	03-12-1989	Junior Clerk, DC Office 08-08-2001

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Handwritten signatures and initials are present in the left margin of the table, including names like 'Sajid', 'Ajmal', and 'Tajamul'. There are also some illegible scribbles and marks.

27	Muhammad Iqbal	07	10-01-1965	SSC	05-12-1989		Junior Clerk, DC Office 03-03-2001	<i>[Signature]</i> (7)
28	Arshid Ahmad	07	09-04-1969	MA	05-12-1989		Junior Clerk, DC Office 03-03-2001	<i>[Signature]</i>
29	Abdullah	07	03-03-1963	FA	17-12-1985		Junior Clerk, DC Office 03-03-2001	<i>[Signature]</i>
30	Wisal Muhammad	07	01-01-1969	SSC	29-05-1990		Junior Clerk, DC Office 03-03-2001	<i>[Signature]</i>
31	Anwar Saeed	07	15-03-1962	BA	21-07-1990		Junior Clerk, LG & RDD, 03-03-2001	<i>[Signature]</i>
32	Muhammad Iqbal	07	20-01-1968	SSC	12-09-1990		Junior Clerk, DC Office 03-03-2001	<i>[Signature]</i>
33	Anwar Ali	07	21-03-1966	SSC	13-09-1990		Junior Clerk, DC Office 03-03-2001	<i>[Signature]</i>
34	Muhammad Ismail	07	01-03-1966	BA	09-08-1988	15-09-1990	Junior Clerk, DC Office 03-03-2001	<i>[Signature]</i>
35	Riaz Ali	07	12-05-1964	BA	09-08-1988	15-09-1990	Junior Clerk, DC Office 03-03-2001	<i>[Signature]</i>
36	Zulfiqar Ali	07	15-04-1968	FA	01-08-1991		J/C, Cooperative Deptt. 15-03-2001	<i>[Signature]</i>
37	Zakir Shah	07	15-04-1971	BA	28-10-1991		Junior Clerk, DC Office 03-03-2001	<i>[Signature]</i>
38	Sajjad Ali	07	11-10-1968	FA	18-08-1992		Junior Clerk, DC Office 03-03-2001	<i>[Signature]</i>
39	Muhammad Ismail	07	15-04-1973	BA	07-01-1993		Junior Clerk, LG & RDD, 03-03-2001	<i>[Signature]</i>
40	Sikandar Zaib	07	15-04-1970	BA	24-04-1993		Junior Clerk, LG & RDD, 03-03-2001	<i>[Signature]</i>
41	Abdul Rasheed	07	20-05-1968	FA	02-09-1990	02-10-1993	Junior Clerk, DC Office 03-03-2001	<i>[Signature]</i>

ATTESTED

SECRET

[Handwritten marks]

12	Sajjad Muhammad	07	14-02-1988	SSC	15-11-1985	19-01-1994	Junior Clerk, LG & RDD, 28-03-2001	
43	Noor ul Bashir	07	20-01-1958	SSC	09-08-1988	31-05-1994	Junior Clerk, DC Office 08-08-2001	I-1-1994
44	Yasir Ali	07	30-03-1983	FA	16-06-2008		Secretary, UC, LG & RDD, Swabi.	Rtd
45	Kaman Afser	07	03-03-1976	FA	05-03-2009		Secretary, UC, LG & RDD, Swabi.	Rtd
46	Shahab ali	07	06-04-1980	FA	05-03-2009		Secretary, UC, LG & RDD, Swabi.	Rtd
47	Qaisar Khan	07	16-02-1982	FA	05-03-2009		Secretary, UC, LG & RDD, Swabi.	Rtd
48	Muhammad Ayaz Khan	07	07-04-1984	FA	05-03-2009		Secretary, UC, LG & RDD, Swabi.	Rtd
49	Majid Khan	07	26-01-1985	FA	05-03-2009		Secretary, UC, LG & RDD, Swabi.	Rtd
50	Zulfiqar Ali	07	01-01-1988	FA	05-03-2009		Secretary, UC, LG & RDD, Swabi.	Rtd

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LISTED

[Signature]
 ASSISTANT DIRECTOR,
 LG & RDD, SWABI. 11/11

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B (12)

GOVERNMENT OF NORTH-WEST FRONTIER PROVINCE
LOCAL GOVERNMENT, COOPERATION, SOCIAL WELFARE,
TOURISM AND RURAL DEVELOPMENT DEPARTMENT.
=O=O=O=O=O=O=O=O=O=O=

Dated Peshawar the 26th January, 1978.

NOTIFICATION

OG(PWP)7(2)/73. In exercise of the powers conferred by sub-rule(2) of rule 3 of the North-West Frontier Province Civil Servants (Appointment, promotion and Transfer) Rules, 1975, and in consultation with the Information, Services and General Administration Department and the Finance Department, the Local Government Cooperation, Social Welfare, Tourism and Rural Development Department is pleased to lay down the method of appointment, qualifications and other conditions specified in column 3 to 6 of the Appendix to this Notification, which shall be applicable to posts borne on the Rural Development Department specified in column 2 of the said Appendix.

Sd/- (ATTAUR REHMAN KHAN)
Secretary to Government of N.W.F.P.
Local Government, Cooperation,
Social Welfare, Tourism and Rural
Development Department.

NO. OG(PWP)7(2)/73.

Copy of the above forwarded to the:-

- 1- All Administrative Secretaries to Government of NWFP
- 2- All Divisional Commissioner in NWFP.
- 3- Secretary to Governor, NWFP.
- 4- Secretary, Public Service Commission, NWFP, Peshawar.
- 5- All Heads of Attached Departments in NWFP.
- 6- All Deputy Commissioner/Political Agents in NWFP.
- 7- All District and Session Judges in NWFP.
- 8- Registrar, Peshawar High Court, Peshawar.
- 9- Deputy Secretary-II, ISS&GAD.
- 10- All Section Officers in ISS&GAD.
- 11- Section Officer(Legis), Government of NWFP, Law Department with reference to his U.O. No.Reg:1(4)76/452, dated 5th October, 1977.
- 12- Section Officer(Inform:) Govt: of NWFP, ISS&GAD with reference to his letter No.SOS-III(S&GAD)4-6/75, dated 21st January, 1978.
- 13- The Manager, Government Printing Press, Peshawar for publication in the next Govt: Gazette Notification.
- 14- 30 copies of the Notification may be sent to this Deptt: Deputy Director(PWP), Rural Development, NWFP, Peshawar for information with reference to SO Services-III, ISS&GAD No.SOS-III(S&GAD)4-6/75, dated 21st January, 1978.

Sd/- As above.

Attested

Ansar Ahmad

(ANSAR AHMAD) 8/8/1978
Asstt: Director(Administration),
Rural Development Department,
NWFP, Peshawar.

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TABLE OF APPOINTMENT QUALIFICATIONS AND AGE LIMITS APPLICABLE TO POSTS IN RURAL DEVELOPMENT DEPARTMENT.

Sl. No. of post.	Nomenclature	Qualifications for initial recruitment.	Qualifications for promotion.	Age limit for initial recruitment.	Method of appointment.
1	2	3	4	5	6
1- DEPUTY DIRECTOR.	a) 2nd Class Master's Degree	from a recognised University in Economics, Statistics, Social Works/Sociology, Animal Husbandry, Agriculture, Political Science, Public Adm: Geography or Social Psychology: and b) Five years experience in Agriculture, Animal Husbandry Education, Social Welfare, Planning & Dev: or Forest in Grade-16 or above.	-	Not less than 3 years and not more than 40 years.	i) 25% by initial recruitment; and 75% by selection on merit with due regard to seniority from amongst the holders of the posts of Assistant Directors, Rural Development (including those of defunct Basic Democracies Deptt:) Project Managers & Progress Officers, with at least eight years experience as such.
2- ASSISTANT DIRECTOR/ PROJECT MANAGER/ PROGRESS OFFICERS.	2nd Class Master's Degree from	a recognised University in Economics, Statistics, Social Works/Sociology, Animal Husbandry, Agriculture, Political Science, Public Administration, Geography or Social Psychology, Physics, Chemistry, Mathematics.	-	Not less than 21 years and not more than 30 years.	i) 50% by initial recruitment and ii) 50% by selection on merit with due regard to seniority from amongst holders of the posts of Development Officers and Sub-Divisional Officers (Assistant Engineers).
3- ACCOUNTS OFFICER.	2nd Class Master's Degree in	Commerce/Business Administration, or B.A.S. qualified persons of Pakistan Audit Deptt: or Provincial Local Audit Deptt:	-	Not less than 21 years and not more than 30 years.	i) 50% by initial recruitment; and 50% by selection on merit with due regard to seniority holders of posts Superintendents in the Deptt: with a least three years service as such.
4- DEVELOPMENT OFFICER.	2nd Class Master Degree from a	recognised University in Economics, Statistics, Social Works/Sociology, Animal Husbandry, Agriculture, Public Adm: Political Science, Geography or Social Psychology.	-	Not less than 21 years and not more than 30 years.	i) 50% by initial recruitment; and 50% by selection on merit with due regard to seniority from amongst holders of the posts of Supervisors, RD in the Deptt: with at least ten years service.

Note: Service in defunct Vill: Aid Deptt: and etc. for the purpose of service under this clause, shall be treated as service in the Department.

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5- SUB-DIVISIONAL OFFICER/ASST. ENGINEER.

Degree in Engineering or equivalent qualification from a recognised University.

Not less than i) 75% by initial recruitment; and 21 years and ii) 25% by selection on merit with due regard to seniority from amongst holders of the posts of Overseers, not more than 30 years.

6- SUPERINTENDENT.

By selection on merit with due regard to seniority from amongst holders of the posts of Asstts./Accountants/Senior Stenographers/ Senior Auditors, with at least five years experience as such.

7- ASSISTANT/ACCOUNTANT.

Degree from a recognised University.

Not less than i) 25% by initial recruitment; and 21 years and ii) 75% by selection on merit with due regard to seniority from amongst holders of the posts of Senior Clerks, Junior Auditors in the Deptt: with at least five years service as such. not more than 25 years.

8- STENOGRAPHER, (SENIOR SCALE)

a) Matriculation or equivalent qualification from a recognised board; and
b) Speed of 100 words per minute in shorthand in English and 40 words per minute in typing.

Not less than i) 25% by initial recruitment; and 18 years and ii) 75% by selection on merit with due regard to seniority from amongst holders of the posts of Stenographers (Junior Scale). not more than 25 years.

9- OVERSEER.

Diploma in Engineering from a recognised Institutes.

Not less than 21 years and not more than 25 years. By initial recruitment.

10- SUPERVISOR, RURAL DEV.

Degree from a recognised University.

Not less than i) 25% by initial recruitment; and 21 years and ii) 75% by selection on merit with due regard to seniority from amongst holders of the posts of Vill:Secys in the Deptt; with at least five years experience as such. not more than 25 years.

Handwritten initials in circles.

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Handwritten marks: a circled '2', a circled '16', and a signature.

11- SENIOR EDITOR

Degree from a recognised University.

Note:-

Preference will be given to persons holding Degree with Commerce as one of the subjects or equivalent qualification in Accounts.

Not less than 10 years and not more than 25 years.

i) 50% by initial recruitment; and ii) 50% by selection on merit with due regard to seniority from amongst holders of the posts of Junior Auditors/Senior Clerks in the Deptt; with at least (3) years service as such.

12- STENOGRAPHER, (JUNIOR SCALE)

- a- Matriculation or equivalent qualification from a recognised Board and b- Speed of 80 words per minute in Short-hand in English and 35 words per minute in typing.

Not less than 3 years and not more than 25 years.

i) 50% by initial recruitment; and ii) 50% by selection on merit with due regard to seniority from amongst holders of the posts of Steno-typists in the Deptt;

13- STENO-TYPISTS.

- a- Matriculation or equivalent qualification from a recognised Board; and b- Speed of 60 words per minute in Short-hand in English and 35 words per minute in typing.

Not less than 10 years and not more than 25 years.

i) Not less than 50% by initial recruitment and ii) Not more than 50% by selection on merit from amongst the holders of the posts of Junior Clerks in the Deptt; with three years service as such, who have the minimum qualifications prescribed for initial recruitment.

14- JUNIOR AUDITOR.

Matriculation or equivalent qualification from a recognised Board.

Not less than 10 years and not more than 25 years.

By initial recruitment.

15- SENIOR CLERKS.

By selection on merit with due regard to seniority from amongst the holders of the posts of Junior Clerks in the Deptt; with at least three years service as such.

16- VILLAGE SECRETARIES

Intermediate from a recognised Board.

Not less than 8 years and not more than 5 years.

By initial recruitment.

ATTACHED



13 C Annex - 15
OFFICE OF THE DIRECTOR GENERAL
LOCAL GOVERNMENT & RURAL DEVELOPMENT
DEPARTMENT KHYBER PAKHTUNKHWA

Dated the Peshawar 26th May, 2015

OFFICE ORDER

No. Director (L.G.)/3-12/DPC/2012-13/ Consequent upon the recommendations of the Departmental Promotion Committee in its meeting held on 13.04.2015, the Competent Authority has been pleased to promote Mr. Amjad Ali, Village Secretary Union Council (BPS - 07) to the post of Supervisor (BPS - 09) with immediate effect and to post him as Supervisor (BPS - 09) against the vacant post in the office of Assistant Director LG&RDD, Swabi. On his promotion, the terms & conditions of his appointment will remain the same on which he was appointed.

-sd/-
Director General
LG&RDD

Endst of Even No & Date

Copy of the above is forwarded to the:

1. Accountant General, Khyber Pakhtunkhwa Peshawar.
2. Section Officer (Estab), LGE&RDD, Khyber Pakhtunkhwa.
3. Assistant Director, LG&RDD Swabi.
4. District Accounts Officer Swabi.
5. PA to Director General, LG&RDD Peshawar.
6. Mr. Amjad Ali, Supervisor, LG&RDD Swabi.

Said Ali
Deputy Director (Admin)
LG&RDD

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Attest

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR



W.P. No. 3719P/2015

Abid Khan
Secretary Union Council (BPS-07),
Local Government & Rural Development Department, District
Swabi

.....Petitioner

Versus

1. Govt of Khyber Pakhtunkhwa through Secretary, Local Government of Rural Development KPK, Peshawar.
2. District General, Directorate General of Local Government & Rural Development Department, KPK, Peshawar.
3. Director, Department of Local Government and Rural Development Department, Swabi
4. Amjad Ali, Supervisor, Local Government & Rural Development Department, Swabi

.....Respondents

WRIT PETITION UNDER ARTICLE 199 OF
THE CONSTITUTION OF THE ISLAMIC
REPUBLIC OF PAKISTAN, 1973

Sheweth;

- 1) That petitioner was appointed as Secretary Union Council (BPS-06) in the year 1981, who was upgraded to BPS-07, in the year 2010, after a span of 03 decades and since then has been rendering services in the same scale.
- 2) That conversely, respondent No.4 was inducted as Junior Clerk (BPS-05) in the year 1985 in the office of Deputy

FILED TODAY

Deputy Registrar

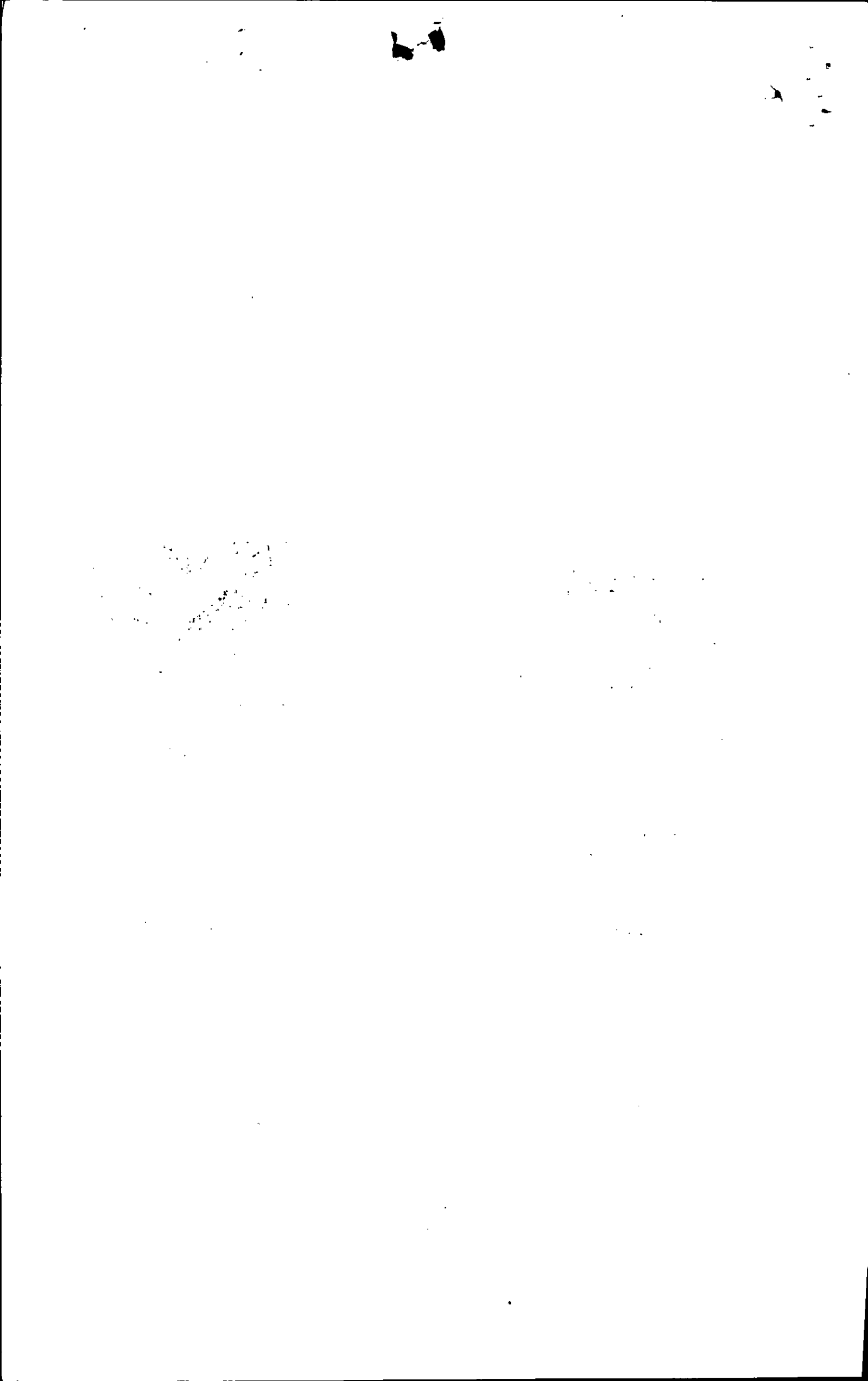
29 OCT 2015

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EXAMINER
Peshawar High Court

12 MAR 2016



Commissioner, Swabi and by virtue of notification dated 28.07.2007 (Annexure-A) was given upgradation to BPS-07.

- 3) That vide office order (Annexure-B), respondent No.4 was adjusted against the post of Secretary Union Council at Swabi and within a few days was upgraded to BPS-09 vide office order dated 19.08.2011. (Annexure-C)
- 4) That earlier a seniority list was circulated to the Secretaries Union Councils, District Swabi (Annexure-D) which was carrying right entries and, therefore, all the officials put their signatures in the corresponding column of no objection as a token of its correctness.
- 5) That for no valid reason, within a short time after the circulation of the seniority list, referred to in the preceding para, a tentative seniority list was circulated vide letter dated 04.08.2014 (Annexure-E), which was not correct and was purposely manipulated.
- 6) That the affected employees, including the petitioner filed objections (Annexure-F), but the official respondents sat on the same and neither offered any reply thereto, nor circulated the final seniority list. On the basis of same tentative seniority list, the respondent No.4 was promoted to the post of supervisor (BPS-09), vide office order dated 26.05.2015. (Annexure-G)
- 7) That petitioner preferred departmental appeal dated 24.06.2015 (Annexure-H) which remained unresponded.
- 8) That feeling mortally aggrieved and having no other adequate and efficacious remedy, the petitioner seeks indulges of this Court, inter alia, on the following:-

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Deputy Registrar
29 OCT 2015

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EXAMINER
Peshawar High Court
12 MAR 2016

GROUND:

- A. That petitioner, for all purposes and intents, is senior to respondent No.4, as petitioner had joined the respondent department as Secretary Union Council on 14.1.1981, whereas respondent No.4 was brought from surplus pool and adjusted as Secretary Union Council very later.
- B. That not only being Junior to the petitioner by having been adjusted in the respondent Department decades later than the former, the respondent No.4 was absorbed from the surplus pool, therefore, as per policy on the subject he has to be placed at the bottom of the Seniority list.
- C. That after recording no objection on the earlier seniority list, there was no need for circulation of another tentative seniority list, particularly, when there was no legal infirmity in previous list.
- D. That the impugned office order of promotion of respondent No.4 is also liable to be struck down for the simple reason of having been based on a tentative seniority list.
- E. That petitioner has not been dealt with in accordance with law rather has been discriminated.
- F. That there is no reason other than political that respondent No.4 being most junior has been promoted while the petitioner being the senior most has been left out from promotion.
- G. That petitioner seeks leave of the court to urge additional grounds, after the stance of the respondents becomes know to him.

FILED TODAY
 Deputy Registrar
 29 OCT 2015

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 EXAMINER
 Highways & Light Court
 12 MAR 2016

In view of the foregoing, it is, therefore, prayed that on acceptance of this petition, this Hon'ble Court may be pleased to issue appropriate writ thereby:

- i. to declare the impugned action, taken, conduct demonstrated and order passed by the respondents as illegal, unlawful, void ab initio and of no legal effect;
- ii. to direct the respondents to allocate to the petitioner his due share of 75% and consider him for appointment through promotion from the date the vacancies have become available with all back benefits; and
- iii. to grant any other remedy to which the petitioner is found fit in law, justice and equity.

INTERIM RELIEF:-

Graciously, the impugned order dated 26.05.2015, may ~~writ~~ ~~petition~~ be suspend till final disposal of the writ petition.

Petitioner
Through

[Signature] 26.10.15
Muhammad Isa Khan Khalil
Advocate,
Supreme Court of Pakistan

&

[Signature]
Akhtar Ilyas
High Court, Peshawar

CERTIFICATE:

Certified as per information furnished by my client that no such writ petition has earlier been filed before this Hon'ble Court by him.

LIST OF BOOKS:

- 1) Constitution of Pakistan, 1973.
- 2) Case law according to need.

[Signature]
Advocate

FILED TODAY
Deputy Registrar
29 OCT 2015

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[Signature]

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EXAMINER
Peshawar High Court
12 MAR 2016

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JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)

W.P No.3719-P of 2015 with I.R.

Date of hearing: 1.3.2016.

Petitioner (Abid Khan) by Mr. Muhammad Isa Khan
Khalil, advocate.

Respondents Government of Khyber Pakhtunkhwa
etc) by Mr.

JUDGMENT

MUSARRAT HILALI, J.- In view of our
judgment recorded in W.P No.2625-P of 2015, this
petition is dismissed.

Wazir Ahmad Sothi
Musarrat Hilali

JUDGE

JUDGE

Announced
1.3.2016.

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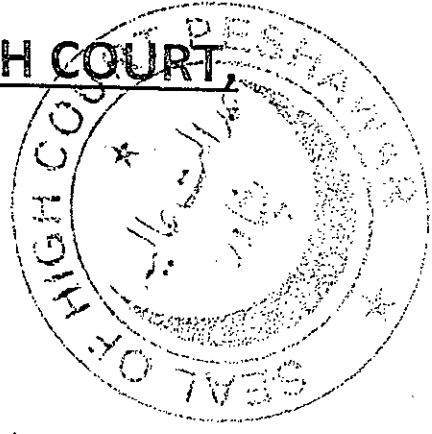
EXAMINER
Peshawar High Court

10 MAR 2016

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JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)



W.P. 2625-P of 2015.

Date of hearing: 1.3.2016.

Petitioner (Muhammad Roedar Khan) by
Mr. Muhammad Isa Khan Khalil,
advocate.

Respondents 1 to 3 (Government of Khyber
Pakhtunkhwa etc) by Mr.

Respondents 5, 6, 8 and 9 by Mr. Khaled Rehman,
advocate.

JUDGMENT

MUSARRAT HILALI, J.- This judgment shall
also decide connected COC 346-P of 2015 in
W.P No.2957 of 2012 and W.P. 3719-P of 2015 as
common question of law and fact is involved in all
these petitions.

2. Facts of the present petition are that petitioners
were appointed as Secretaries, Union Council on
different dates and have been rendering services in

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EXAMINER
Peshawar High Court
12 MAR 2016

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their respective Union Councils since the date of their appointment. According to the petitioners, their services are governed by the rules notified vide Notification dated 26.1.1978. At Sr.No.10 of the appendix to the said Notification, the post of Supervisor, Rural Development has to be filled through 25% by initial recruitment and 75% by promotion on the basis of seniority from amongst holders of the posts of Village Secretaries in the Department with at least 5 years experience as such with the requisite qualification of B.A. The policy of promotion of Secretary, Union Council was done away with, which was assailed before this court in W.P. 293-P of 2013 decided on 7.6.2011, whereby 75% quota of the promotees was affirmed. However, while ignoring the 75% quota to promotees, the respondents advertised certain vacancies of Supervisor on 26.7.2012 by filling up the same

ATTESTED

Sadiq Shah PS

ATTESTED
EXAMINER
Peshawar High Court
12 MAR 2016

through initial recruitment and placed the condition of academic qualification as Higher Secondary Certificate instead of a Degree as required under the rules/policy on the subject. Petitioner No.2 made a representation on 30.7.2012 whereby not only the anomaly of academic qualification required through the impugned advertisement was pointed out but also the quota of 75% for promotion by the rules was claimed for the Village Secretaries. The Notification, referred to above, was questioned by a number of Secretaries, including petitioners 1 and 2 in W.P.2957-P of 2012 before this court, which was disposed of vide order dated 15.5.2013 with certain directions to the respondents. The matter did not end after passage of two years. In the meanwhile, some promotions have been made in different districts vide separate orders dated 26.5.2015 and instead of petitioners, who happen to be at the top of their

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respective seniority lists, the most junior persons have been promoted.

3. Facts of connected COC 346-P of 2015 in W.P. 2957-P of 2012 are that the petitioners have filed W.P.2957-P of 2012 before this court, which was allowed on 15.5.2013 with some direction to the respondents. They approached the respondents for compliance of the said order time and again but no decision has been taken by them as yet, hence prayed for initiation of contempt of court proceedings against the respondents and to punish them in accordance with law.

4. In W.P. 3719-P of 2015, it is stated by petitioner that he was appointed as Secretary, Union Council (BPS-6) in the year, 1981 and later on upgraded to (BPS-7) in the year, 2010 after a span of three decades and since then has been rendering services in the same capacity. To the contrary,

ATTESTED

Sadia Shah PS

ATTESTED
EXAMINER
HONORABLE JUDGE
MAR 2016

respondent No.4 was inducted as Junior Clerk (BPS-5) in the year, 1985 in the office of Deputy Commissioner, Swabi and by virtue of Notification dated 28.7.2007 was upgraded to (BPS-7). Vide Office Order (Annex-B), respondent No.4 was adjusted against the post of Secretary, Union Council at Swabi and within a few days was upgraded to (BPS-9) vide Office Order dated 19.8.2011. It is averred that earlier a seniority list was circulated to the Secretaries, Union Councils, District Swabi (Annex-D), which was carrying right entries, therefore, all the officials including the petitioner put their signatures in the corresponding column of no objection as a token of its correctness. However, for no valid reason, within a short time after circulation of the seniority list referred to above, a tentative seniority list was circulated vide letter dated 4.8.2014, which was not correct and was

ATTESTED

Sadia Shoh PS

ATTESTED
EXAMINER
Peshawar High Court
24/8/2015



purposely manipulated. The affected employees, including the petitioner, filed objections but the official/respondents sat over the same and neither offered any reply thereto nor circulated the finality seniority list. On the basis of same tentative seniority list, respondent No.4 was promoted to the post of Supervisor (BPS-9) vide Office Order dated 26.5.2015. Feeling aggrieved, the petitioner filed Departmental Appeal but with no reply from the concerned authority.

We have heard learned counsel for the parties and gone through the record appended with the present petitions.

5. Heard. The petitioners in all the three petitions are seeking promotion to the post of Supervisor being fully qualified, well experienced and efficient enough but despite that as per order passed by this court on 15.5.2013, the petitioners have been left out



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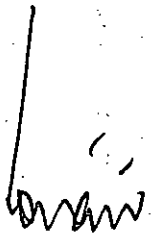
EXAMINER
Peshawar High Court

12 MAR 2016

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purposely with malafide intention whereas on the other hand, the stance of respondents is that the grievance of petitioners relates to the consideration for promotion, which is a part of terms and conditions of the service of petitioners, therefore, in view of the bar contained in Article 212 of the Constitution of Islamic Republic of Pakistan 1973, this court has no jurisdiction to interfere.

6. From perusal of the comments as well as minutes of the meeting held on 15.2.2013, it appears that cases of the petitioners were considered by the Department but they were found not eligible being junior to private respondents, thus, it can be safely held that cases of the petitioners fell within the ambit of determination of eligibility for promotion, which for all intents and purposes, is a matter relating to the terms and conditions of service of petitioners.

**ATTESTED****ATTESTED**EXAMINER
Peshawar High Court

12 MAR 2016

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7. There is no cavil to the proposition that under Article 212 of the Constitution, Service Tribunal has the exclusive jurisdiction in the matter falling within the terms and conditions of civil servant. The High Court cannot exercise the power of judicial review over the cases in which it has no jurisdiction on any ground whatsoever. In the case of Rafique Ahmad Chaudhry Vs. Ahmad Nawaz Malik and others (1997 SCMR 170), while remanding back the case to the High Court, the august Supreme Court held as follows:-

“The matters relating to the posting and transfer of a civil servant relate to the terms and conditions of his service. Disputes about these matters fall within the exclusive jurisdiction of the appropriate Service Tribunal. The jurisdiction of High Court is barred in these matters by the express provisions of Article 212 (2) of the Constitution. We are, therefore, unable to support the interim order made by it in this case. Accordingly, we convert this petition into

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EXAMINER
Peshawar High Court

12 MAR 2016

appeal and set aside the said order. The High Court should first determine the question of its jurisdiction before making any interim order in this case.

8. Similarly, in the case of Ali Azhar Khan Baloch Vs. Province of Sindh (2015 SCMR 456), the august Supreme Court ruled out *that the matter relating to terms and conditions cannot be challenged under Article 212 of the Constitution of Islamic Republic of Pakistan 1973*. The relevant portion of the judgment mentioned hereinabove is reproduced as under:-

"We have noticed that the High Court of Sindh, while overlooking the mandates of Article 189 and 212 of the Constitution, has started entertaining petition under Article 199 of the Constitution filed by civil servants, which has paralyzed the Service Tribunal".

9. Since the petitioners have not filed the Departmental Appeals against the impugned order

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dated 26.5.2015 and as such the statutory provision of Section 4 of the Services Tribunal Act cannot be violated by sending the instant and connected petition as appeals before the Services Tribunal. In addition thereto, under Rule 5 of the Appeal Rules, 1977 every aggrieved person has to file a separate and independent Appeal, which in the instant and connected petitions is lacking. Moreover, this and the connected as per request of learned counsel for petitioners cannot be remitted to the Departmental Appellate Authority as the same have been filed by eight petitioners whereas the Departmental Appeal has to be filed by an aggrieved person in individual capacity, however, it is observed that since the petitioners are claiming allocation of 75% share in the promotion quota in the appointment of next higher grade, which on the fate of it is a recurring cause of action and for that matter they can file a

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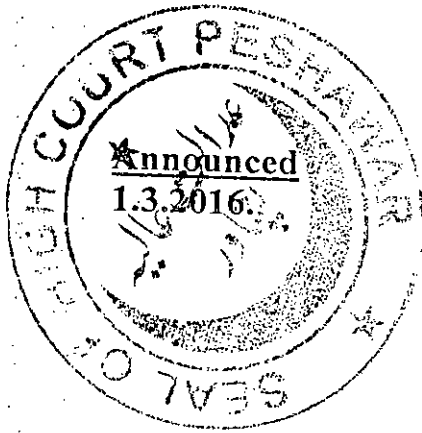
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Departmental Appeal any time as such this and the connected petitions, noted above, are not maintainable and dismissed accordingly.

for wees Ahmad sothi.
for Musabbat Hileli.

JUDGE

JUDGE



CERTIFIED TO BE TRUE COPY

Examiner
Peshawar High Court, Peshawar
Authorized Under Article 87 of
The Qanun-e-Shariat Order 1999

12 MAR 2016

No. 19220
Date of Presentation of Application 03/3/16
No of Pages 16P
Copying fee /
Urgent Fee /
Total 32.00
Date of Preparation of Copy 12-3-16
Date Given For Delivery 12-3-16
Date of Delivery of Copy 12-3-16
Received By G. G. /

ATTESTED

11/3

بکھنور جناب سیکرٹری صاحب محکمہ لوکل گورنمنٹ و دیہی ترقیات صوبہ خیبر پختونخواہ پشاور

جناب عالی

محکمہ اپیل دربارہ غلط تقرری سپروائزر حسب ذیل عرض ہے۔

۱۔ یہ کہ میں مسمی عابد خان بحیثیت سیکرٹری یونین کونسل محکمہ لوکل گورنمنٹ و دیہی ترقیات میں 14-01-1981 سے سکیل نمبر 6 میں بھرتی ہو چکا ہوں۔
 ۲۔ یہ کہ محکمہ لوکل گورنمنٹ و دیہی ترقیات ضلع صوابی نے سیکرٹری یونین کونسلز سے 75% کوٹہ پہ عہدہ سپروائزر پر موشن کی عرض سے ضلع صوابی کی سطح پر تمام سیکرٹری یونین کونسلز بہ شمول دیگر ڈیپارٹمنٹ کے سرپلس پول سے ایڈجسٹ شدہ افراد کا ایک جامع سناریائی لسٹ مرتب کر کے تمام افراد کو جاری کی گئی جس پر تمام افراد نے No Objection کی کالم میں اپنے نام کے سامنے اپنے دستخط ثبت کئے جو اس بات کی دلالت کرتا ہے کہ مجوزہ سناریائی لسٹ درست اور صحیح ہے کیونکہ کسی نے بھی اس پر کوئی اعتراض نہیں اٹھایا۔ جس کی حساب سے سیکرٹری محمد شعیب کے بعد میں (عابد خان) سب سے سینئر یعنی ٹاپ پر ہوں۔ جبکہ مسمی امجد علی سیریل نمبر 20 پر ہے۔

۳۔ جناب عالی! مگر کچھ دنوں بعد محکمہ لوکل گورنمنٹ و دیہی ترقیات ضلع صوابی نے دوسری سناریائی لسٹ (عارضی لسٹ) مرتب کر کے جاری کی۔ جس کی رو سے مجھے ٹاپ سے ہٹا کر سیریل نمبر 4 پر لایا گیا۔ جبکہ مسمی امجد علی کو سیریل نمبر 20 سے سیریل نمبر 1 پر لایا گیا۔ جو کہ ہرگز درست اور صحیح نہیں ہے۔
 Tentative لسٹ پہلی جاری شدہ و منظور شدہ سناریائی لسٹ سے متصادم ہے بلکہ انصاف کے خون کی مترادف ہے کیونکہ میں نے Tentative سناریائی لسٹ پر انڈر میاڈاٹگری تحفظات و اعتراضات اٹھا کر اپنے ضلعی سربراہ کے دفتر میں جمع کئے۔ مگر کوئی شنوائی نہیں ہوئی حتیٰ کہ فائنل لسٹ بھی مرتب نہیں کی گئی۔
 ۴۔ یہ کہ امجد علی کی پہلی باضابطہ تقرری بحیثیت جو نیر کلرک ڈی سی آفس صوابی سکیل نمبر 5 سن 1985ء میں ہو چکی ہے۔ جبکہ سرپلس پول سے آکر محکمہ لوکل گورنمنٹ و دیہی ترقیات صوابی میں بحیثیت سیکرٹری یونین کونسل 2007 میں ایڈجسٹ کیا گیا۔ بحیثیت سیکرٹری یونین کونسل ایڈجسٹ ہو کر بھی چند دن بعد جو نیر کلرک سے سینئر کلرک کے عہدے پر اپ گریڈ کیا گیا۔ یعنی ایک ہی محکمہ میں دوہری نظام اپنایا گیا۔

۵۔ جناب عالی! صرف اس پر اکتفا نہیں کیا گیا بلکہ Tentative لسٹ کی رو سے مسمی امجد علی (جو نیر ترین) بندے کو سینئر ترین کر کے مورخہ 26-05-2015 سپروائزر کے عہدے پر ترقی دیدی گئی۔ جس پر سائل نے مذکورہ آرڈر کے خلاف ہائی کورٹ پشاور میں رٹ پٹیشن دائر کی۔
 ۶۔ یہ کہ مسمی امجد علی پر موشن آرڈر مورخہ 26-05-2015 کو منسوخ فرما کر مجھے عابد خان تاریخ متاثرہ سے سپروائزر کے عہدے پر تقرری و مراعات جاری کرنے کا حکم صادر فرمایا۔ تاکہ 35 سال خدمات انجام دینے کا کچھ وادری مل سکیں۔
 جناب عالی ا فیصلہ پشاور ہائی کورٹ ساٹھ ٹسک ہے۔

مورخہ: 29-03-2016

العارض

عابد خان سیکرٹری یونین کونسل ہیکا

محمد عیسیٰ لاہور ضلع صوابی

ATTESTED

VAKALATNAMA

THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal
Application
Revision
Execution
Const. Petition

No: 734 of 2016

Mr. Abid Ali KHAN.

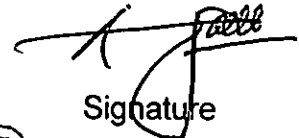
Plaintiffs
Petitioners
Applicants
Decree/
Holders
Appellants

VERSUS


SECRETARY LG & RD KPIC etc.

Defendants
Respondents
Judgment /
Debtors

I/We: Amjad Ali the Respondent No-3
in the above Service Appeal do hereby
appoint **MR. MUKHTAR AHMAD MANERI, ADVOCATE HIGH COURT;** to
appear and act for me/us in the above mentioned proceedings and to conduct,
prosecute and/or defend and/or compromise the same and any other proceedings
that may arise out of or be connected with the same, with full power and authority to
sign all necessary pleadings, petitions, applications, papers and documents, to pay
all proper fees and costs, to file and withdraw all documents and to apply for and
receive payment of all moneys that may be or become due and payable to me/us
during the course or after the completion or conclusion of the said proceedings and
settle, compromise or to withdraw the said proceedings. I, therefore, sign/thumb
press this vakalatnama as token of correctness.


Signature

dated on 08/11/2016 from Amjad Ali Resp. No. 3


MUKHTAR AHMAD MANERI,
High Court
Masir Mansion,
Ghoba Bazaar,
Peshawar
Phone: 011-1744

Sub-Office:
Office # 28, Lawyers Complex
At Swabi Judicial Complex, Swabi.
Phone # Office: 091-2214385
Mobile: 0333-215-6006
Email: mukhtaradvocate@yahoo.com

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 734 of 2016

Abid Ali Appellant

Versus

Secretary LG&RD, KPK & others..... Respondents

I N D E X

S.NO.	DESCRIPTION OF DOCUMENTS	ANNUEXURE	PAGES
1	Memo of Reply/Comments	4	1-4
2	Affidavit in support of Comments.	1	5
3	Copies of the adjustment order is attached as	A	6-8
4	Copy of Office Order dated 26-05-2015	B	9
5	Copy of Minutes of DPC, dated 13-04-2015	C	10-14
6	Copy of Letter dated 05-06-2014	D	15
7	Copy of letter dated 22-08-2014	E	16-17
8	Copy of letter dated 15-09-2014	F	18
9	Copy of letter dated 23-12-2014	G	19
10	Copy of circular letter dated 12-02-2015	H	20
11	Copy of tentative list with covering letter dated 04-08-2014	I	21-23

Peshawar.

Dated: 19-12-2016

Respondents No.3

(Amjad Ali)

Through:



Mukhtar Ahmad Manerwal.
Advocate High Court,
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 734 of 2016

Abid Ali Appellant

Versus

Secretary LG&RD, KPK & others..... Respondents

PARA-WISE COMMENTS ON BEHALF
OF RESPONDENTS NOS. 3.

Preliminary Legal Objections:

1. That Appellant has got no cause of action to file the appeal under reply.
2. That appeal of the present appellant is not maintainable.
3. That the appellant has since then been retired from his service and has been awarded all the benefits admissible under the law, hence his appeal is liable to be dismissed on this score alone.
4. That no vested rights of the Appellant have been infringed, thus he has got no right or remedy is not available to the appellant.
5. That the Appellant has not come to honourable court with clean hands and his case also suffers from gross concealment of facts, legal infirmities, and mis-statements, hence he is not entitled for any relief.
6. That the Appellant is estopped by his own conduct to prefer the present appeal as he has not called in question the promotion orders of his seniors in the proper fora in accordance with law, hence he is precluded from the relief prayed for.
7. That appeal of the present appellant is hopelessly time barred.

Para-Wise Reply to the facts:

1. That the contents of Para No.1 of the facts of appeal under reply are wrong and misconceived, hence denied. It is respectfully submitted that Respondent No.3 was inducted / appointed as Junior Clark in BPS-5 in the office of Deputy Commissioner on 31-10-1985 and then promoted to the post of Senior Clark in BPS-7 on the basis of his seniority after due process of law i.e. Departmental Promotion Committee (DPC), held under the chairmanship of DC, Swabi on 17-09-1995 and later on the respondent No.3 was adjusted as Secretary Union

Council on 08-08-2001 due to re-structuring of department by the provincial government. (Copies of the adjustment order is attached as **Annexure A**)

2. Para No.2 of the appeal is misconceived, hence denied. It is submitted that the appellant was lying in deep slumber when he himself admits that he was eligible in the year 1998 but he did not raise the issue in order redress his grievances in respect of the subject matter. The posts of Junior/Senior Clerks were restructured and as such the appellant since retired has got no vested rights, vide Office Order No.443-63/12-DCO, Dated 08-08-2001 at Annexure A in which it has categorically been mentioned that **“Consequent upon the re-structuring of Provincial Government Departments, the following Junior Clerks, B-5 of the office of the District Establishment, Swabi are hereby adjusted against the newly created / vacant posts of Secretary Union Councils, B-6 in their own pay and scale in the following Union Councils Noted against each with immediate effect”** the name of the Respondent No.3 in lying on the top of the order i.e. at Serial No.1.
3. That the contents of Para No.3 of the appeal is denied to the extent of violation of rules by the answering respondents as no rules have been violated and the answering respondent has been promoted to the post of Secretary Union Council in accordance with law. It is respectfully submitted that the answering respondent has been promoted to the post of Supervisor BPS-9 vide Order No. Director General LG / 3-12/DPC/2012-13, Dated 26-05-2015 issued by the Office of the Director General, Local Government and Rural Development, Department Khyber Pakhtunkhwa. Rest of the contents are matter of record, hence need no reply from the answering respondent. (**Copy of Order is attached at Annexure B**)
4. That the contents of para No.4 need no reply, however the appellant has got no cause of action in respect of the subject matter.

PRA-WISE REPLY ON GROUNDS:

- a. That the contents of Ground A & B of the grounds are wrong, hence denied. It is respectfully submitted that the appellant has neither filed any departmental appeal against the promotion order dated 26-05-2015 nor has impugned the seniority list on the basis of which Promotion Order dated 26-05-2015 as such he is estopped to sue the answering respondent and is not entitled to the relief prayed for. (**Copy of Minutes of the DPC meeting held on 13-04-2015 is attached as Annexure C**)

- b. That contents of para No. C of the grounds are misconceived and based on self-assessment of the appellant, hence denied vehemently. It is respectfully that the alleged seniority list of the appellant is not trustworthy as it has not been notified by the competent authority because it has neither been dated nor numbered as such the appellant has tried to misguide this honourable court in order to take benefit from the same. On 05-06-2014 the requisite particulars of the secretaries' union councils were called from the attached department at district level(**Copy is attached as Annexure-D**). After submission of such particulars and the seniority list, some confusion arose with regard to the seniority of the Secretaries Union Councils and the case has been referred to the Section Officer (Estb.) LG&RD, KPK, Peshawar, vide letter No. Director (LG) /3-1/Establishment/2013, dated 22-08-2014(**Copy is attached as Annexure-E**) for seeking advise of the competent forum followed by another letter dated 15-09-2014 ((**Copy is attached as Annexure-F**), referring to para-6(d) of the surplus pool policy. Finally, the issue was referred to the Establishment Department Govt: of KPK (Regulation Wing) for proper guidance vide letter dated 18-11-2014 which was replied vide letter dated 23-12-2014 (**copy annexure-G**), and hence the issue of seniority inter se the secretaries union councils stood resolved and the concerned quarters were informed accordingly vide circular letter dated 12-02-2015, (**Annexure-H**). Then outstanding promotion cases were proceeded in light of the final seniority list (**Annexure-I**) on the basis of which the appellant could not qualify for promotion and 32 senior most eligible secretaries including the respondent No.3 were promoted to available 32 vacant posts of Supervisors BPS-9, in the promotion quota, as such it is crystal clear that each and every step has been adopted according law and rules/regulations, hence the appeal of the present appellant is liable to be dismissed with cost.
- c. That the contents of Para No. D of the grounds has got no concern with the answering respondents, however anything thing which adversely affects the rights of the answering respondent are denied. The detail reply has been given in the preceding Para.
- d. That the contents of Para under reply i.e. para E & F are not related to the answering respondents, hence need no reply, however the answering respondents have committed no illegality or irregularity and the entire process has been made in accordance with rules and regulations.
- e. That the contents of para G of the grounds are wrong and based on hearsay, hence denied. As submitted in the preceding paras, the entire process has been carried out in accordance with law and the appellant has never been deprived of his rights and had he been so deprived as alleged by him, he should have challenged by the time he was so affected.

- f. That the appellant is not entitled for any grounds as his appeal is based on mala fide and time barred in order to pressurise the answering respondent for his ulterior motives otherwise he has badly failed to made out a case against the answering respondent.
- g. As far as prayer clause, the appellant is not entitled for any relief.

It is, therefore, prayed that the appeal of the appellant may be dismissed with cost.

Peshawar.

Dated: 19-12-2016

Respondent No.3
 Amjad
 (Amjad Ali)

Through



Mukhtar Ahmad Manerwal.
 Advocate High Court,
 Peshawar

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.

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Service Appeal No. 734 of 2016


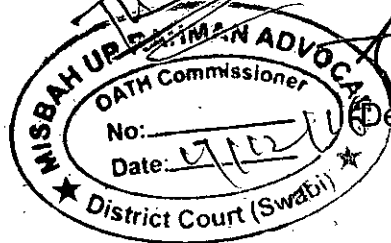
Abid Ali Appellant

Versus

Secretary LG&RD, KPK & others..... Respondents

AFFIDAVIT

I, Amjad Ali S/o Shad Ali, R/o Village Zaida, Tehsil & District Swabi, do hereby state on solemn affirmation that the contents of the written reply/comments are true and correct to the best of my knowledge and belief and nothing has concealed from this honourable court.


 Deponent.

ANNEXURE - "A"

6

OFFICE ORDER

Consequent upon the re-structuring of Provincial Government Departments, the following Junior Clerks B-5 of the office of District Establishment, Swabi are hereby adjusted against the newly created/vacant posts of Secretary Union Councils B-6 in their own pay and scale in the following Union Councils noted against each with immediate effect.

<u>S.No.</u>	<u>Name of Official</u>	<u>Designation</u>	<u>BPS</u>	<u>Name of Union Council</u>
// 1.	Amjad Ali	S/Clerk	7	UC Maneri Bala
2.	Muhammad Naeem	J/Clerk	5	UC Tordheri
// 3.	Munawar Khan	-do-	5	UC Anbar
// 4.	Abdul Samad	-do-	5	UC Maini
5.	Muhammad Iqbal-II	-do-	5	UC Karnal Sher Killi
6.	Niaz Wali Shah	-do-	5	UC Matani Changan
// 7.	Arshad Ahmad	-do-	5	UC Pabani
// 8.	Javed Khan	-do-	5	UC Topi West
9.	Abdullah Khan	-do-	5	UC Kalu Khan
// 10.	Wisal Muhammad	-do-	5	UC Ismaila
// 11.	Muhammad Iqbal-III	-do-	5	UC Jaisar
// 12.	Anwar Ali	-do-	5	UC Maneri Pawan
13.	Shamsul Islam	-do-	5	UC Ghabasni
14.	Riaz Ali Khan	-do-	5	UC Dhoblan
// 15.	Muhammad Ismail	-do-	5	UC Sodheri
// 16.	Zakir Shah	-do-	5	UC Yar Hussain (E)
17.	Sajjad Ahmad	-do-	5	UC Yar Hussain (W)
18.	Noorul Bashir	-do-	5	UC Bachai
19.	Abdur Rashid	-do-	5	UC Tarakai

Note: The official at S.No. 1 will draw his salary against the post of B-6 and not against his own scale of BPS-7.


District Coordination Officer
Swabi

OFFICE OF THE DISTRICT COORDINATION OFFICER, SWABI

No. 443-63 112-DCO Dated 8/18/2001

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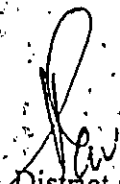
1. Secretary Establishment & Admn Department NWFP, Peshawar.
2. Section Officer (Estab) LGE & RDD, NWFP, Peshawar.
3. *Acting* Deputy Commissioner, Swabi
4. District Accounts Officer, Swabi.
5. Officials concerned.


District Coordination Officer,
Swabi

CORRIGENDUM

The last para (Note) contained in this office order bearing No.443-63/12-DCO dated 8/8/2001 may please be amended as under:-

“ That the pay of the official has been protected in the light of Government of NWFP, Law Department’s notification No.Legis:1(21)73/2953/2995 dated 4/6/200.

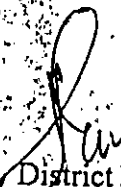

District Coordination Officer,
Swabi

OFFICE OF THE DISTRICT COORDINATION OFFICER, SWABI

No. /12-DCO 876-78 Dated 27/8/2001

Copy forwarded to:-

1. The Secretary Establishment and Administration Department NWFP Peshawar.
2. The Section Officer (Estab) LGE & RDD, NWFP, Peshawar.
3. The District Accounts Officer, Swabi for information and necessary action.
4. The official concerned.


District Coordination Officer,
Swabi

(Better copy)

ANNEXURE - A

OFFICER ORDER

Consequent upon the re-structuring of provincial Government Departments, the following Junior Clerks B-5 of the office District Establishment, Swabi are hereby adjusted against the newly created/vacant posts of secretary Union Council B-6 in their own pay scale in the following Union Councils noted against each with immediate effect.

S.No	Name of Official	Designation	BPS	Name of Union Council
1	Amjad Ali	S/Clerk	7	UC Maneri Bala
2	Muhammad Naeem	J/Clerk	5	UC Tordher
3	Munawar Khan	-do-	5	UC Anbar
4	Abdul Samad	-do-	5	UC Maini
5	Muhammad Iqbal II	-do-	5	UC Kernal Sher Kalli
6	Niaz Wali Shah	-do-	5	UC Matani Changan
7	Arshad Ahmad	-do-	5	UC Pabaini
8	Javid Khan	-do-	5	UC Topi West
9	Abdullah Khan	-do-	5	UC Kalu Khan
10	Wisal Muhammad	-do-	5	UC Ismaila
11	Muhammad Iqbal II	-do-	5	UC Jalsai
12	Anwar Ali	-do-	5	UC Maneri Payan
13	Shamsul Islam	-do-	5	UC Ghabasni
14	Riaz Ali Khan	-do-	5	UC Dobian
15	Muhammad Ismail	-do-	5	UC Sodher
16	Zakir Shah	-do-	5	UC Yar Hussain (E)
17	Sajjad Ahmad	-do-	5	UC Yar Hussain (W)
18	Noor ul Bashir	-do-	5	UC Bachai
19	Abdur Rashid	-do-	5	UC Tarakai

Note: The officer at S.No.1 will draw his salary against the post of B-6 and not against his own scale of BPS-7.

SD
District Coordination Officer
Swabi

OFFICE OF THE DISTRICT COORDINATION OFFICER SWABI

No. 443-63/12-DCO Dated 8/8/2001

Copy Forwarded to the

1. Secretary Establishment and Admin Department NWFP Peshawar
2. Section Officer (Estab) LGE & RDD, NWFP Peshawar.
3. Deputy Commissioner, Swabi
4. District Accounts officer Swabi.
5. Official Concerned

SD
District Coordination Officer,
Swabi.

CORRIGENDUM

The last para (Note) contained in this office order bearing No. 443-63/12-DCO dated 8/8/2001 may please be amended as under:

"That the pay of the officials has been protected in the light of Government of NWFP, Law Department's notification No. Legis:1(21) 73/2953/2995 dated 4/6/2001.

SD
District Coordination Officer,
Swabi.

OFFICE OF THE DISTRICT COORDINATION OFFICER,

No. 876-79 /12-DCO

Dated 27/8/2001

Copy forwarded to:-

1. The secretary Establishment and Administration Department NWFP Peshawar.
2. The section officer (Estab) LGE & RDD, NWFP, Peshawar.
3. The District Accounts Officer, Swabi for information and necessary action.
4. The official concerned.

SD
District Coordination Officer,
Swabi



OFFICE OF THE DIRECTOR GENERAL
LOCAL GOVERNMENT & RURAL DEVELOPMENT
DEPARTMENT KHYBER PAKHTUNKHWA

9

Dated the Peshawar 26th May, 2015

OFFICE ORDER

No. Director(LG)/3-12/DPC/2012-13/. Consequent upon the recommendations of the Departmental Promotion Committee in its meeting held on 13.04.2015, the Competent Authority has been pleased to promote Mr. Amjad Ali, Village Secretary Union Council (BPS - 07) to the post of Supervisor (BPS - 09) with immediate effect and to post him as Supervisor (BPS - 09) against the vacant post in the office of Assistant Director LG&RDD, Swabi. On his promotion, the terms & conditions of his appointment will remain the same on which he was appointed.

-sd/-

Director General
LG&RDD

Endst of Even No & Date

Copy of the above is forwarded to the:

1. Accountant General, Khyber Pakhtunkhwa Peshawar.
2. Section Officer (Estab), LGE&RDD, Khyber Pakhtunkhwa.
3. Assistant Director, LG&RDD Swabi.
4. District Accounts Officer Swabi.
5. PA to Director General, LG&RDD Peshawar.
6. Mr. Amjad Ali, Supervisor, LG&RDD Swabi.


Deputy Director (Admin)
LG&RDD

Subject: MINUTES OF DEPARTMENTAL PROMOTION COMMITTEE
(DPC) MEETING HELD ON 13.04.2015 AT 10:30 A.M.

The Departmental Promotion Committee (DPC) met on 13.04.2015 at 10.30 AM under the Chairmanship of Director General LG&RDD, the following attended:

- | | | |
|----|---|-----------|
| 1. | Mr. Adil Siddiq, Director General
LG&RDD Peshawar. | Chairman. |
| 2. | Mrs. Tahira Yasmin, Director
LG&RDD Peshawar. | Member. |
| 3. | Mr. Izaz Ullah Section Officer (Estab)
LG&RDD, Khyber Pakhtunkhwa. | Member. |
| 4. | Mr. Shibli Khan, Deputy Director (Admin)
LG&RDD Peshawar. | Member. |
| 5. | Israr Ullah
AO LG & RDD Swabi. | Member. |

The chairman welcomed the participants. He apprised the participants regarding convening of the meeting of DPC. The participants were also introduced. Thereafter, the meeting proceeded as per agenda of the meeting i.e. promotion of Village Secretary Union Council (BPS - 7) to the post of Supervisor (BPS-9). The Deputy Director LG&RDD explained that the total strength of the posts of Supervisor (BPS 9) inclusive of F.T.A Secretariat is 43. Out of 43, 25% posts shall be filled through initial recruitment and 75 % shall be filled through promotion amongst the lot of the Village Secretaries of the respective District, therefore, 32 posts of Supervisors shall be filled through promotion. He further added that being a District Cadre post, the promotion shall be decided on the basis of District quota i.e. one Village Secretary UC shall be considered for promotion on the basis of fitness cum seniority. He stressed that the respective Assistant Director, Local Government shall present the Final Seniority List with Synopses and Working Paper. The respective Assistant Director shall also submit a certificate / NOC that there was no inquiry in any establishment pending against the incumbent Village Secretary who falls at top of the said Seniority List and the Seniority List prepared by him was accordingly circulated amongst all concerned in light of the policy / rules in vogue. This was seconded by the Section Officer Establishment, representative of the Administrative Department.

During discussion on the agenda item, Israr Ullah, Assistant Director, Local Government & Rural Development Swabi presented the Final Seniority List of Village Secretaries Union Councils District Swabi with Synopses. The Assistant Director, LG&RDD Swabi informed the committee that:

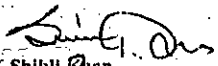
- a) As per policy governing the seniority list of the Govt employees, the final seniority list of Village Secretaries Union Councils District Swabi was prepared and circulated amongst all concerned, annexed P/A.


b) As per F/A, Mr. Amjad Ali, Village Secretary (BPS-7) falls at top of the Seniority List i.e. serial number 1.


c) He also submitted a certificate regarding no pending enquiry against the said Village Secretary in any establishment including Anti Corruption etc.


After detailed discussion, the Committee unanimously recommended and approved Mr. Amjad Ali, Village Secretary Union Council District Swabi for promotion against the vacant post of Supervisor BPS -9 subject to the condition that the promotion shall be granted with immediate effect as per rules.

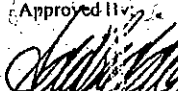
The meeting ended with a note of thanks.


Shibli Khan,
Deputy Director (Admin)
LG&RDD Peshawar


Israr Ullah
AD LG&RDD
Swabi.


Section Officer (E)
LG&RDD Peshawar.

Recommended By:

Tabira Yasini
Director
Local Govt. & U.D
Peshawar.

Approved By:

Adil Siddiq
Director General
Local Govt. & RDD
Peshawar.

Annex / I

5 (6) 11



OFFICE OF THE DIRECTOR GENERAL
LOCAL GOVERNMENT, ELECTIONS & RURAL
DEVELOPMENT DEPARTMENT
KHYBER PAKHTUNKHWA

No. Director (LG) 3-12/DPC/2012-13
Dated Peshawar, the 28th October, 2013

To

All the Assistant Directors,
LG&RDD in Khyber Pakhtunkhwa.

Subject: -

MINUTES OF THE MEETING HELD ON 15-07-2013 UNDER THE
CHAIRMANSHIP OF ADDITIONAL SECRETARY LG&RDD
REGARDING PROMOTION CASE OF SECRETARIES UNION
COUNCILS TO THE POST OF SUPERVISOR AGAINST THE
PROMOTION QUOTA IN LG&RDD.

Enclosed please find herewith minutes of the meeting held on 15-07-2013 under the chairmanship of additional secretary LG&RDD regarding promotion case of secretaries union councils to the post of supervisor against the promotion quota in LG&RDD for your record and information.

Encl: as above.


(TAHIRA YASMIN)
Director

Minutes of the meeting held on 15-07-2013 under the chairmanship of
Additional Secretary LG&RDD regarding promotion case of Secretaries
Union Councils to the post of Supervisors against the promotion quota in
LG&RDD

A meeting was held on the subject under the chairmanship of
Additional Secretary, LGE&RDD, Khyber Pakhtunkhwa on 15-07-2013 at
his office. The following attended:-

1. Mr. Atta Ur Rehman, Additional Secretary LGE&RDD Khyber
Pakhtunkhwa
2. Mr. Atif ur Rehman Director General LGE&RDD Khyber
Pakhtunkhwa
3. Mr. Ismail Qureshi Deputy Secretary LGE&RDD
4. Miss Tahira Yasmeen, Director LG&RDD
5. Mr. Said Rehman Deputy Director LG&RDD
6. Mr. Aizaz Ullah Section Officer (I) LGE&RDD

2. The meeting discussed in detail the judgment announced by the
Peshawar High Court, Peshawar on 15-05-2013 in the Writ Petition No 2957-
P/2012 directing the LGE&RDD to process the cases of petitioners in the
light of seniority list for filling up the vacant posts of supervisors meant for
promotion quota as per rules within a period of 45 days. The meeting also
discussed the list of secretaries of union councils compiled by the respective
AD LG&RDD and examined the rules relevant to the promotion of
Secretaries Union Councils. It was observed that the list of the secretary
union councils provided by the AD LG&RDD and compiled by the DG
LG&RDD was not the final seniority list and therefore prior to making any
promotion the cited list needs to be finalized and certified by the respective
AD LG&RDD as the final seniority list. Matters related to determining the
competent authority (in the aftermath of Divisional Directors since 1998) for
such promotion, total number of seats available both under the direct and
promotion quota and fate of the vacancies advertisement made by the DG
LG&RDD in 2012 (the process of which was stayed by the Peshawar High
Court, Peshawar until petition disposal) were also discussed.

3. After detail discussion, the following decisions were made:-

Decisions:-

- i. It was explained that under Rule 4 (3) (b) (ii) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Director General, LG&RDD, being head of the attached department, is the Appointing Authority for posts in Basic Pay Scales 3 to 15:
- ii. District level seniority list of Secretaries Union Councils shall be prepared through wide publicity of the existing list of the Secretaries Union Councils by the respective Assistant Directors. Final seniority list, duly certified by the respective AD LG&RDD, after entertaining all the objections, suggestions, hearings and representations made to this effect shall be provided to the Director General, LG&RDD at the earliest which is the basic requirement for the promotion of Secretary Union Councils to the post of Supervisors (BS-9). This process should be completed by the Assistant Directors concerned within a period of one month:
- iii. There are 37 sanctioned posts of supervisors (25 in districts and 12 in FATA/FR). According to the Service Rules, 27 posts at 75% falls under the promotion quota and 10 posts at the ratio of 25% falls under the direct recruitment quota. Posts under the direct quota are to be filled by the Director General, LG&RDD following standard recruitment process already advertised in the press but the process was stopped due to status-quo maintained by the Peshawar High Court, Peshawar, which may also be taken into consideration.
- iv. It was also brought into the notice of participants of the meeting that one Mr. Junaid Qureshi, a candidate for the post of Supervisor claims/requests that he has applied for the post of Supervisor for which tests/interviews were held and he secured higher marks and placed at Sl.No.3 of the merit list, but he could not be appointed and the case was kept pending due to stay granted by the Peshawar High Court, Peshawar in writ petition filed by the Secretaries Union Councils for their promotion to the post of Supervisor reserved against promotion quota. The meeting was informed that the writ petition has been disposed of by the learned High Court, therefore, the appointment case of Supervisor under initial quota may be processed for its logical conclusion by the concerned office so as to avoid un-necessary litigation. Any clarification if required in the case may be sought from the Administrative Department.
- v. The Directorate General, LG&RDD will apprise the Peshawar High Court, Peshawar initiating the promotion process of Secretary Union Councils in the light of judgement of the Peshawar High Court. However due to large number of the employees, spread all over the province and in order to avoid subsequent litigation about the disputed seniority, finalization of the seniority list of Secretaries Union Councils, although a lengthy process, is pre-requisite for carrying out undisputed promotion of the deserving candidates. The Peshawar High Court may also be apprised that the list provided by

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the department during the previous hearing was a statement prepared by the Directorate General, LG&RD containing names of Secretaries Union Councils and not the final seniority list as required under the rules upon which the promotion cases of Supervisors were to be decided. This will help to avoid any contempt of court proceedings against the department as the learned High Court has given 45 days deadline which has already expired on 30-06-2013.

14

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4. Meeting ended with vote of thanks.



GOVERNMENT OF KHYBER PAKHTU
DIRECTOR GENERAL LOCAL GOVERNMENT ELE
AND RURAL DEVELOPMENT DEPAR

ANNEXURE D

No. Dir (LG) 3-12/DR/2014

Dated 5th June, 2014

15

To

All the Assistant Directors, LG&RDD
Khyber Pakhtunkhwa

Subject: Departmental Promotion Committee (DPC) of Secretaries Union
Councils

Kindly refer to the subject noted above and to state that competent Authority has been pleased to schedule the meeting of Departmental Promotion Committee (DPC) for promotion of Secretaries Union Councils to the post of Supervisors, on 23.06.2014 at 1100 hours under the Chairmanship of Director General, LG&RDD at his office.

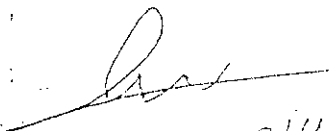
You are hereby directed to attend the meeting along with working paper and 5 years ACRs of the top five senior most Secretaries Union Councils of your respective Districts for further consideration in the DPC meeting.


Deputy Director
LG&RDD

Copy to:-

1. The Section Officer, LG&RDD with request to attend the meeting on date and time mentioned above.
2. PA to Director General, LG&RDD


Deputy Director
LG&RDD


11-6-2014

ANNEXURE



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16

OFFICE OF THE DIRECTOR GENERAL
LOCAL GOVERNMENT & RURAL DEVELOPMENT
DEPARTMENT KHYBER PAKHTUNKHWA

No. Director (L.G) 3-1/Establishment/2013
Dated Peshawar, the 22th August, 2014

680



To

The Section Officer (Estab),
LG, E&RDD, Khyber Pakhtunkhwa.

Annex/III

11

Subject: - PROMOTION OF SECRETARIES UNION COUNCIL TO THE POST OF SUPERVISOR LOCAL GOVERNMENT & RURAL DEVELOPMENT.

I am directed to refer to the subject noted above and to inform that for the promotion of secretary union councils all the Assistant Directors LG&RDD were asked to submit final seniority list of secretary union councils of their respective districts.

Most of the Assistant Directors prepared the requisite seniority list on the basis already serving secretary union councils (prior to devolution 2001) were placed on top of seniority, while those clerical staff rendered surplus and subsequently adjusted against the vacant post of secretary union councils (BPS-06) were placed at the bottom of the seniority lists.

But those at the bottom raised objection over the said seniority list on the basis that as they were working as Senior Clerk in the office of Assistant Directors LG&RDD, Deputy Commissioners office and other departments in the districts and were adjusted/absorbed against lower grade (BPS-6) than their original scale (BPS-7). In support of their objection they produce a copy of ESTA Code Surplus pool Policy Section 6 (d), fixation of seniority list that says "in case of adjustment against a post lower than his original, he shall be placed at the top of seniority list that cadre, so as to save him from being rendered surplus again and becoming junior to his juniors."

Keeping in view the above, all the Assistant Directors were informed to prepare their respective seniority list in light of surplus pool policy rule 6 (d) of the ESTA code.

All the Assistant Directors reconsidered their seniority lists of secretary union councils and new seniority list were prepared accordingly. After finalization of seniority of secretaries union councils, Departmental Promotion Committee (DPC) meeting of all Assistant Directors offices were convened in the month of July & August. In the DPC meeting 11/08/2014 the Assistant Director Lakki Marwat submitted a note (attached at annex B) were the ESTA code Surplus Pool Policy Section 6 (d) has been objected by those

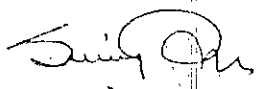

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secretaries union councils who were negatively affected on application on the said ESTA code section 6 (d). In support of their objection they produced a judgment of the Honorable Supreme Court of Pakistan dated 12/06/2013 circulated by Government of Pakistan Cabinet Secretariat Establishment Division on 31/01/2014 photocopy attached at Annex (C). The said judgment of the Honorable Supreme Court of Pakistan contained in the second last Part of the Judgment that says " any back dated seniority cannot be granted to any absorbee and his inter-se-seniority, on absorption in the cadre shall be maintained at the bottom as provided under the rule regulating the seniority.

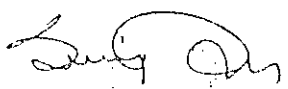
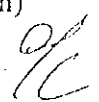
In view of the above stated fact I am further directed to request you to seek the advice of the competent forum as to which one of the above referred two different rule/judgment, is applicable in preparing the seniority list of the secretaries union councils in Khyber Pakhtunkhwa.

Submitted please.


Deputy Director (Admin)
DG.LG&RDD 

Cc:

- 1. PA to Director General LG&RDD, Khyber Pakhtunkhwa.


Deputy Director (Admin)
DG.LG&RDD 

~~1/1~~
25/8



OFFICE OF THE DIRECTOR GENERAL
LOCAL GOVERNMENT & RURAL DEVELOPMENT
DEPARTMENT KHYBER PAKHTUNKHWA

No. Director (L.G) 3-1/Establishment/2013
Dated Peshawar, the 15th September, 2014

283
13
287
ANNEXURE
"F"
18

To

The Section Officer (Establishment),
LG, E&RDD, Khyber Pakhtunkhwa.

Subject: - PROMOTION OF SECRETARIES UNION COUNCILS TO THE POST OF SUPERVISOR IN LG&RDD.


I am directed to refer to your letter No. SO(LG-1)2-176/2014/Vol:V dated 28th August, 2014 and to inform that those Secretaries who have raised objection over the final seniority lists issued by the respective Assistant Directors LG&RDD have been asked to submit the attested copy of the judgment of the Supreme Court of Pakistan vide this office letter No. Director (LG) 3-12/DPC/2012-13 dated 15th September, 2014.

Regarding the issuance of final Seniority list of Secretaries Union Councils, it is submitted that all the Assistant Directors have issued Seniority lists of the Secretaries Union Councils of their respective district in light of the JESTA Codes surplus pool policy section 6 (d), but those Secretaries who have gone to bottom or have become junior to those adjusted from the surplus pool during 2001, have raised objection over those Seniority lists and have submitted the circular that refers to the Supreme Court's judgment already sent to your office vide this office letter of even number dated 22nd August, 2014 dated.


Deputy Director (Admin)
DG: LG&RDD

Cc:

PA to Director General LG&RDD, Khyber Pakhtunkhwa.


Deputy Director (Admin)
DG: LG&RDD

ANNEXURE

G

30-12-14

Government of Khyber Pakhtunkhwa
ESTABLISHMENT DEPARTMENT
(Regulation Wing)

19

No.SOR.IV(ED)/6-1/2014/

Dated, Peshawar, 23rd December, 2014

Amir

To

The Secretary to Government of Khyber Pakhtunkhwa,
Local Government & RD Department.

SUBJECT: PROMOTION OF SECRETARIES UC TO THE POSTS OF SUPERVISOR

Dear Sir,

I am directed to refer to Local Government Department letter No.SO(LG-I)2-176/2014/Vol-V dated 18th November, 2014, on the subject noted above and to state that para 8 (d) of the Surplus Pool Policy covers adjustment of a surplus employee against a lower post in his parent department/cadre, which he previously held before his promotion to the higher post rendered surplus. As regards the contention of the judgment of the Supreme Court of Pakistan, forbidding backdating seniority, it covers the absorption of employees of another departments/cadres. Therefore, both the provision of the Policy and the judgment can go side by side. There is nothing contradictory.

Yours faithfully,

(ISHTIAQ AHMAD)
Section Officer (R-IV)

Spl: Secy
f
30-12-14

SO (E)

[Signature]
3/12/2014

SA
[Signature]
2/11



OFFICE OF THE DIRECTOR GENERAL
LOCAL GOVERNMENT & RURAL DEVELOPMENT
DEPARTMENT KHYBER PAKHTUNKHWA

No. Director (LG) 3-1/Establishment/2013/1679
Dated Peshawar, the 12th Feb, 2015

20

To

✓ All the Assistant Directors,
LG&RDD, Khyber Pakhtunkhwa.

Subject: - **PROMOTION OF SECRETARY UNION COUNCILS TO THE POST OF SUPERVISOR LG&RDD.**

I am directed to refer to the subject noted above and to inform you that during the DPC meeting of promotion of Secretary Union Council to Supervisor LG&RDD, Assistant Director Lakki Marwat and some other districts raised objection over the formula adopted for preparation of seniority lists of Secretaries Union Councils and produced a copy of the Supreme Court Judgment in support of their objection.

Due to the above objection the proceedings of the DPC meeting were stopped and a case was sent to administrative department for advice.

Resultantly the advice has been received from Establishment department, through Section Officer (Estb.) stating that "Para 6(d) of the Surplus Pool policy covers adjustment of a surplus employee against a lower post in his parent department/ cadre which he previously held before his promotion to the higher post rendered surplus. As regards the contention of the judgment of the Supreme Court of Pakistan, forbidding back dated seniority, it covers the absorption of employee of another department/ cadres. Therefore both the provisions of the policy and judgment go side by side. There is nothing contradictory".

I am further directed to inform that in light of the advice of the Establishment Department as referred above, you are requested to review your respective seniority lists of Secretary Union Councils in a manner that those surplus employees adjusted against the post of Secretary Union Council BPS-06 being lower than their original scale may be placed on top of the seniority list (as per surplus pool policy 6 (d)) and those adjusted as Secretary Union Councils BPS-06 who were already having same scale in the surplus pool / parent department may be placed at bottom of seniority as Supreme Court decision forbid back dated seniority of employees of another department/ cadre in the same grade, and submit the finalized seniority list of your respective secretaries union councils alongwith working paper within a week to this office so that DPC may be arranged accordingly.

Deputy Director (Admin)
D.G: LG&RDD

Cc:

1. PA to Director General, LG&RDD, Khyber Pakhtunkhwa

Deputy Director (Admin)
D.G: LG&RDD

ANNEXURE I

LOCAL GOVERNMENT, ELECTION & RURAL DEVELOPMENT DEPARTMENT
OFFICE OF ASSISTANT DIRECTOR DISTRICT SWABI

941-889
No. _____ AD (SB-LG)/Ucs/ 2014
Dated Swabi the 04/08/2014

21

✓ All Secretaries Union Councils,
District Swabi.

Subject:- TENTATIVE SENIORITY LIST OF SECRETARIES UNION COUNCILS DISTRICT SWABI.

Enclosed find herewith a copy of Tentative Seniority List of Secretaries Union Councils District Swabi with the remarks that reservations on the said list, if any may be conveyed to this office on or before 18th August 2014 for consideration/ settlement before final declaration thereof.

In case no objection is received by the target date, it would be presumed that no individual has any objection on the tentative seniority list.



ASSISTANT DIRECTOR
LOCAL GOVT & RURAL DEVELOPMENT DEPARTMENT
DISTRICT SWABI.

dst. Even No. & Date.

copy alongwith copy of the Seniority list is forwarded to:-

1. The Director, LG & R&D, Khyber Pakhtunkhwa, Peshawar, with reference to Discussion/ directions in the DPC meeting held on 24th July, 2014 please.

ASSISTANT DIRECTOR
LOCAL GOVT & RURAL DEVELOPMENT DEPARTMENT
DISTRICT SWABI.

TENTATIVE SENIORITY LIST OF SECRETARIES UNION COUNCILS, DISTRICT SA

S.No	Name	BPS	Date of Birth	Qualification	Date of Initial Appointment	Rem Name of parent Adjustment as S
1	Tajamul Hussain	09	01-03-1955	SSC	27-10-1980	Senior Clark, LG &
2	Amjid Ali	09	26-04-1961	SSC	31-10-1985	Senior Clark, DC C
3	Muhammad Islam	09	13-11-1969	SSC	28-08-1988	Senior Clark, DC C
4	Muhammad Shuaib	07	08-09-1954	BA	28-07-1976	Secretary, UC, LG
5	Abid Khan	07	20-02-1956	BA	14-01-1981	Secretary, UC, LG
6	Sher Afsar Khan	07	10-12-1959	FA	13-02-1985	Secretary, UC, LG
7	Habib Ur Rehman	07	04-01-1957	MA	30-04-1988	Secretary, UC, LG
8	Muhammad Shafiq	07	09-10-1964	FA	30-04-1988	Secretary, UC, LG
9	Rohal Amin	07	11-11-1956	BA	10-05-1988	Secretary, UC, LG
10	Zahir Muhammad	07	25-03-1962	BA	06-06-1990	Secretary, UC, LG
11	Imtiaz Ali	07	08-04-1965	MA	06-06-1990	Secretary, UC, LG
12	Niaz Muhammad	07	12-03-1965	MA	17-07-1990	Secretary, UC, LG
13	Muhammad Hussain	07	01-04-1969	MA	17-07-1990	Secretary, UC, LG
14	Muhammad Nawaz	07	01-04-1962	BA	21-07-1990	Secretary, UC, LG
15	Muhammad Saleem	07	03-11-1967	FA	26-03-1991	Secretary, UC, LG
16	Sajid Ali Khan	07	15-03-1968	BA	26-03-1991	Secretary, UC, LG
17	Saeed Ur Rehman	07	20-04-1967	BA	23-02-1992	Secretary, UC, LG
18	Sadiq Muhammad	07	01-01-1970	BA	22-11-1994	Secretary, UC, LG

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P. 4072/111
9/14/2016

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

Service Appeal No. 734 of 2016

Abid Khan Appellant

Versus

Secretary LG&RD, KPK & others..... Respondents

I N D E X

S.NO.	DESCRIPTION OF DOCUMENTS	ANNUEXURE	PAGES
1	Memo of Comments		1-3
2	Copy of letter to the All Assistant Director, LG& RDD, KPK dated 05/06/2014	A	4
3	Copy of letter to the Section Officer (Estab), LG&RDD, KPK dated 22/08/2014	B	5
4	Copy of letter to the Section Officer (Estab), LG&RDD, KPK, dated 15/09/2014	C	6
5	Copy of Surplus Pool Policy	D	7-11
6	Copy of letter by Section Officer (R-IV) Estab: Deptt: KPK, dated 23/12/2014	E	12
7	Copy of letter to the All Assistant Director, LG& RDD, KPK, dated 12/02/2015	F	13
8	Copy of Seniority List	G	14
9	Affidavit in support of Comments.		15

Peshawar.

Dated:

Respondents Nos. 1 & 2

Through:

Addl Advocate General
Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 734 of 2016

Abid Khan Appellant

Versus

Secretary LG&RD, KPK & others..... Respondents

PARA-WISE COMMENTS ON BEHALF
OF RESPONDENT NO. 1 & 2

Respectfully Sheweth,

Preliminary Legal Objections:

1. That Appellant has got no cause of action to file the appeal under reply.
2. That appeal of the present appellant is not maintainable.
3. That the appellant has since then been retired from his service and has been awarded all the benefits admissible under the law, hence his appeal is liable to be dismissed on this score alone.
4. That no vested rights of the Appellant have been infringed, thus he has got no right or remedy is not available to the appellant.
5. That the Appellant has not come to court with clean hands and his case also suffers from gross concealment of facts, legal infirmities, and mis-statements, hence he is not entitled for any relief.
6. That the Appellant is estopped by his own conduct to prefer the present appeal as he has not called in question the promotion orders of his seniors in the proper forum in accordance with law, hence he is precluded from the relief prayed for.

Para-Wise Reply to the facts:

1. Incorrect. According to seniority list prepared as per the Rule 6 (d) of Esta Code (Surplus Pool Policy) Respondent No.3 is on the top of the seniority. (Copy of final seniority is attached as **(annexure-G)** and copy of Rule 6(d) Surplus Pool Policy attached as **(annexure-D)**).
2. Incorrect. As referred in Para.1

3. That the contents of Para No.3 of the appeal is denied to the extent of violation of rules by the answering respondents as no rules have been violated and the private respondent has been promoted to the post of Supervisor Union Council in accordance with law. Rest of the contents are matter of record, hence need no reply from the answering respondents.
4. That the contents of para No.4 need no reply, however the appellant has got no cause of action in respect of the subject matter.

PRA-WISE REPLY ON GROUNDS:

- A. That the contents of Ground A & B are wrong, hence denied. It is respectfully submitted that the appellant has not filed any appeal and he has never been discriminated as such the appeal under reply is liable to be dismissed.
- B. That contents of paras Nos. C & D are misconceived and based on self-assessment of the appellant, hence denied. That on 05-06-2014 the requisite particulars of the secretaries' union councils were called from the attached department at district level vide letter No. Dir (LG) 3-12/DPC, dated 05/06/2014 (**Annexure A**). After submission of such particular and the seniority list, some confusion arose with regard to the seniority of the Secretaries Union Councils and the case has been referred to the Section Officer (Estb.) LG&RD, KPK, Peshawar, vide letter No. Director (LG) /3-1/Establishment/2013, dated 22-08-2014 for seeking advise of the competent forum followed by another letter dated 15-09-2014 (**Copy annexure-B & C**) referring to para-6(d) of the surplus pool policy (**Copy annexure-D**). Finally, the issued was referred to the Establishment Department Govt. of KPK (Regulation Wing) for proper guidance vide letter dated 18-11-2014 which was replied vide letter dated 23-12-2014 (**copy annexure-E**), and hence the issue of seniority inter se the secretaries union councils stood resolved and the concerned quarters were informed accordingly vide circular letter dated 12-02-2015, (**Annexure-F**). Then outstanding promotion cases were proceeded in light of the final seniority list (**Annexure-G**) on the basis of which the appellant could not qualify for promotion and 32 senior most eligible secretaries including the respondent No.3 were promoted to available 32 vacant posts of Supervisors BPS-9, in the promotion quota.
- C. That the contents of para under reply i.e. para E is not related to the answering respondents, hence need no reply, however the answering respondents have committed no illegality or irregularity and the entire process has been made in accordance with rules and regulations.

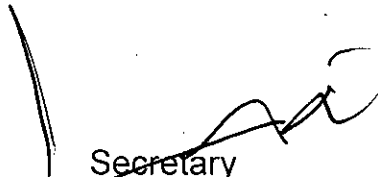
D. That the contents of Para F & G of the grounds are wrong and based on hearsay, hence denied. As submitted in the preceding Paras, the entire process has been carried out in accordance with law and the appellant has never been deprived of his rights.

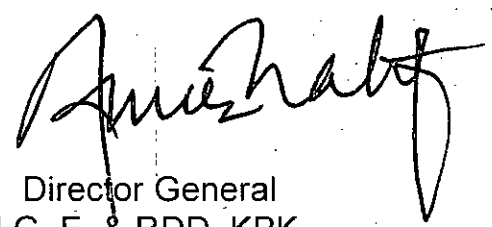
E. That the appellant is not entitled for any grounds as his appeal is based on mala fide in order to pressurise the answering respondents for his ulterior motives. The respondents also seek leave to raise additional grounds at the time of arguments. Moreover, the appellant is not entitled for any relief.

It is, therefore, prayed that the appeal of the appellant may be dismissed with cost.

Peshawar.

Dated: 7th November 2016


Secretary
LG, E, & RDD, KPK
Peshawar (Respondent No.1)


Director General
LG, E, & RDD, KPK
Peshawar (Respondent No.2)

Annex/4

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GOVERNMENT OF KHYBER PAKHTU
DIRECTOR GENERAL LOCAL GOVERNMENT ELE
AND RURAL DEVELOPMENT DEPAR

No. Dir (LG) 3-12/Dr/2014,

Dated 5th June, 2014

To

All the Assistant Directors, LG&RDD
Khyber Pakhtunkhwa

Subject: Departmental Promotion Committee (DPC) of Secretaries Union
Councils

Kindly refer to the subject noted above and to state that competent Authority has been pleased to schedule the meeting of Departmental Promotion Committee (DPC) for promotion of Secretaries Union Councils to the post of Supervisors, on 23.06.2014 at 1100 hours under the Chairmanship of Director General, LG&RDD at his office.

You are hereby directed to attend the meeting along with working paper and 5 years ACRs of the top five senior most Secretaries Union Councils of your respective Districts for further consideration in the DPC meeting.

Deputy Director
LG&RDD

Copy to:-

1. The Section Officer, LG&RDD with request to attend the meeting on date and time mentioned above.
2. PA to Director General, LG&RDD

Deputy Director
LG&RDD

11-6-2014



OFFICE OF THE DIRECTOR GENERAL
LOCAL GOVERNMENT & RURAL DEVELOPMENT
DEPARTMENT KHYBER PAKHTUNKHWA

No. Director (LG) 3-1/Establishment/2013
Dated Peshawar, the 22nd August, 2014

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To

The Section Officer (Estab),
LG, E&RDD, Khyber Pakhtunkhwa.

Annex/III

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Subject: -

PROMOTION OF SECRETARIES UNION COUNCIL TO THE POST
OF SUPERVISOR LOCAL GOVERNMENT & RURAL
DEVELOPMENT.

I am directed to refer to the subject noted above and to inform that for the promotion of secretary union councils all the Assistant Directors LG&RDD were asked to submit final seniority list of secretary union councils of their respective districts.

Most of the Assistant Directors prepared the requisite seniority list on the basis already serving secretary union councils (prior to devolution 2001) were placed on top of seniority, while those clerical staff rendered surplus and subsequently adjusted against the vacant post of secretary union councils (BPS-06) were placed at the bottom of the seniority lists.

But those at the bottom raised objection over the said seniority list on the basis that as they were working as Senior Clerk in the office of Assistant Directors LG&RDD, Deputy Commissioners office and other departments in the districts and were adjusted/absorbed against lower grade (BPS-6) than their original scale (BPS-7). In support of their objection they produce a copy of ESTA Code Surplus pool Policy Section 6 (d), fixation of seniority list that says "in case of adjustment against a post lower than his original, he shall be placed at the top of seniority list that cadre, so as to save him from being rendered surplus again and becoming junior to his juniors."

Keeping in view the above, all the Assistant Directors were informed to prepare their respective seniority list in light of surplus pool policy rule 6 (d) of the ESTA code.

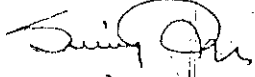

All the Assistant Directors reconsidered their seniority lists of secretary union councils and new seniority list were prepared accordingly. After finalization of seniority of secretaries union councils, Departmental Promotion Committee (DPC) meeting of all Assistant Directors offices were convened in the month of July & August. In the DPC meeting 11/08/2014 the Assistant Director Lakki Marwat submitted a note (attached at annex B) were the ESTA code Surplus Pool Policy Section 6 (d) has been objected by those

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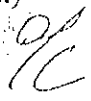
secretaries union councils who were negatively affected on application on the said ESTA code section 6 (d). In support of their objection they produced a judgment of the Honorable Supreme Court of Pakistan dated 12/06/2013 circulated by Government of Pakistan Cabinet Secretariat Establishment Division on 31/01/2014 photocopy attached at Annex (C). The said judgment of the Honorable Supreme Court of Pakistan contained in the second last Para of the Judgment that says " any back dated seniority cannot be granted to any absorbee and his inter-se-seniority, on absorption in the cadre shall be maintained at the bottom as provided under the rule regulating the seniority.

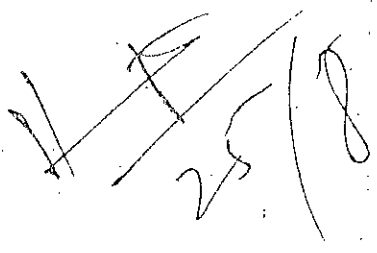
In view of the above stated fact I am further directed to request you to seek the advice of the competent forum as to which one of the above referred two different rule/judgment, is applicable in preparing the seniority list of the secretaries union councils in Khyber Pakhtunkhwa.

Submitted please.


Deputy Director (Admin)
DG.LG&RDD 

Cc:
1. PA to Director General LG&RDD, Khyber Pakhtunkhwa.


Deputy Director (Admin)
DG.LG&RDD 





Annex II (13) 283
OFFICE OF THE DIRECTOR GENERAL
LOCAL GOVERNMENT & RURAL DEVELOPMENT
DEPARTMENT KHYBER PAKHTUNKHWA

No. Director (LG) 3-1/Establishment/2013/287
Dated Peshawar, the 15th September, 2014

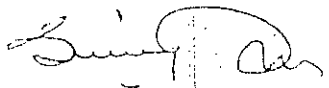
To

The Section Officer (Estab.),
LG, E&RDD, Khyber Pakhtunkhwa.

Subject: - PROMOTION OF SECRETARIES UNION COUNCILS TO THE POST OF SUPERVISOR IN LG&RDD.

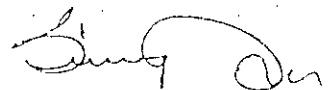
I am directed to refer to your letter No.SO(LG-I)2-176/2014/Vol:V dated 28th August, 2014 and to inform that those Secretaries who have raised objection over the final seniority lists issued by the respective Assistant Directors LG&RDD have been asked to submit the attested copy of the judgment of the Supreme Court of Pakistan vide this office letter No. Director (LG) 3-12/DPC/2012-13 dated 15th September, 2014.

Regarding the issuance of final Seniority list of Secretaries Union Councils, it is submitted that all the Assistant Directors have issued Seniority lists of the Secretaries Union Councils of their respective district in light of the ESTA Codes surplus pool policy section 6 (d), but those Secretaries who have gone to bottom or have become junior to those adjusted from the surplus pool during 2001, have raised objection over those Seniority lists and have submitted the circular that refers to the Supreme Court's judgment already sent to your office vide this office letter of even number dated 22th August, 2014 dated.


Deputy Director (Admin)
DG: LG&RDD

Cc:

PA to Director General LG&RDD, Khyber Pakhtunkhwa.


Deputy Director (Admin)
DG: LG&RDD

Surplus Pool Policy

A/12/2016 / 14

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Policy for declaring government servants as surplus and their subsequent absorption/ adjustment.

I am directed to refer to the subject noted above and to say that the Provincial Government has been pleased to make the following policy for absorption/adjustment of Government Servants declared as surplus in view of the transition of District System and resultant re-structuring of the Government Organizations/Departments etc.

1. POWER WITH REGARD TO THE DECLARATION OF POSTS AS SURPLUS.
The Finance Department in consultation with Department concerned and with the approval of competent authority would decide with regard to the declaration of a particular organization, set up or individual post as redundant or inessential.

2. CREATION OF SURPLUS POOL

There will be a surplus pools cell in the E&AD. After abolition of such posts in the concerned department, duly notified by the Finance Department, equal number of posts in the corresponding basic pay scales would be created in the E&AD for the purpose of drawl of pay and allowances etc by the employees declared surplus as such.

3. IMPLEMENTATION/MONITORING CELL

For the purpose of coordination and to ensure proper and expeditious adjustment/absorption of surplus staff, the Government of NWFP has been pleased to constitute the following committee:-

- a. Additional Secretary (Establishment) E&AD..... Chairman.
- b. Deputy Secretary LG&RD Department..... Member
- c. Deputy Secretary Finance Department..... Member
- d. Deputy Secretary (Establishment) E&AD..... Secretary

4. CRITERIA FOR DECLARING A GOVERNMENT SERVANT AS SURPLUS AS A RESULT OF ABOLITION OF POST.

Consequent upon the abolition of a post in a particular cadre of a department, the junior most employee in that cadre would be declared as surplus. Such posts should be abolished in the respective departments and created in the surplus pool as indicated in para 2 above for the purpose of drawl of pay and allowances and also for consideration for subsequent adjustment.

5. PROCEDURE FOR ADJUSTMENT OF SURPLUS EMPLOYEES

Notwithstanding anything contained in any other law, rules or regulation to the contrary, for the time being in force, the following procedure for the adjustment of surplus staff would be followed:-

- (a) Before transferring an employee to the surplus pool, he should be given option by the concerned department.

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- (i) to proceed on retirement with normal retiring benefits under the existing rules;
- OR
- (ii) to opt for readjustment/absorption against a future vacancy of his status/BPS which may not necessarily be in his original cadre/department.
- b) Those who opt for retirement would be entitled for usual pension and gratuity according to the existing Government Servants Pension and Gratuity Rules of the Provincial Government. Those who opt for absorption/re-adjustment, a category-wise seniority list will be caused in the surplus pool for their gradual adjustment against the future vacancies as and when occurred in any of the Government Departments. These adjustments shall be on seniority-cum-fitness basis. For this purpose, the seniority list will be caused category-wise with reference to their respective dates of appointment in the cadre. In case where dates of appointment of two or more persons are the same, the person older in age shall rank senior and shall be adjusted first.
- c) Adjustment shall be made on vacant post pertaining to initial recruitment quota from those in the surplus pool in the following manner:-
- (i) In case of occurrence of vacancies in their corresponding posts in any Government Department/Organization, the senior most employee in the surplus pool should be adjusted first.
 - (ii) In case of cross cadre adjustment, the persons with such minimum qualification as prescribed in the relevant Service Rules for the post in question shall be adjusted keeping in view their seniority position.
 - (iii) If an employee possesses the basic academic qualification but lacks the professional/technical qualification, he may be adjusted against such post subject to imparting the requisite training.
 - (iv) (a) The surplus employees holding such posts which fall to promotion quota in about all the Departments, he shall remain in the surplus pool till the availability of a post in the parent department.
- OR
- (b) Where no equivalent post is available the civil servant may be offered a lower post in such manner, and subject to such conditions, as may be prescribed and where such civil servant is appointed to a lower post the pay being drawn by him in the post immediately preceding his appointment to a lower post shall remain protected.
- (v) ⁵⁴In case an employee already adjusted against a lower post is declared surplus again, he shall regain his original pay scale.
- (vi) ⁵⁵Surplus employees, who voluntarily opt, may be allowed adjustment in Autonomous/Semi-autonomous bodies with the concurrence of these bodies, where the job is pensionable. The Government will pay pension contribution for the period they rendered regular service under the Government.

⁵⁴ Sub para c (v) added to para 5 vide circular letter No.SORVI(B&AD)5-1/2005, dated 15.2.2006.

⁵⁵ Sub para c (vi) added to para 5 vide circular letter No.SORVI(B&AD)5-1/2005, dated 31.5.2006.

(v) No civil servant of a non-cadre post can be transferred

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- 1) If no suitable person is available in the surplus pool to be adjusted against the vacant/revised post, such a post would be filled up by initial recruitment manner after getting clearance from the E&AD.
- 2) ³⁶Surplus Staff in BPS-01 to 15 shall not be adjusted in the district other than their district of domicile.
- 3) To facilitate the adjustment of surplus staff, it will be incumbent upon the Administrative Department to take up the case with Finance Department for revival of the essential posts so retrenched as a result of general directive issued by Finance Department from time to time, giving cogent reasons/justification. Against the resultant revival/restoration of the post, the concerned Department will place a requisition on the E&AD for transferring of suitable surplus employee against the said post.
- 3) Unless the surplus employees in Class-IV are fully adjusted/ absorbed against their respective graded posts in various Government Departments/Organizations, the general policy of the Finance Department regarding conversion of BPS-1 & 2 posts to posts in fixed salary @ Rs.2000/- per month for contractual appointed should be restricted to the above extent.

FIXATION OF SENIORITY

the inter-se seniority of the surplus employees after their adjustment in various posts will be determined according to the following principles:-

- (a) In case a surplus employee could be adjusted in the respective cadre of his parent Department he shall regain his original seniority in that cadre.
- (b) In case, however, he is adjusted in his respective cadre but in a Department other than his parent Department, he shall be placed at the bottom of seniority list of that cadre.
- (c) In case of his adjustment against a post in a corresponding basic pay scale with different designation/nomenclature of the post, either in his parent Department or in any other department, he will be placed at the bottom of seniority list.

- (d) In case of adjustment against a post lower than his original scale, he shall be placed at the top of seniority list of that cadre, so as to save him from being rendered surplus again & becoming junior to his juniors.

³⁶ (3) Sub para (c) added to para 5 vide circular letter No. SORVI(E&AD)5-1/2005, dated 19.1.2007.

³⁷ Sub para d added to para 6 vide circular letter No. SORVI(E&AD)5-1/2005, dated 15.2.2006

In case the officer/official declines to be adjusted/absorbed in the above manner in accordance with the priority fixed as per his seniority in the integrated list, he shall lose the facility/right of adjustment/absorption and would be required to opt for pre-mature retirement from Government service.

Provided that if he does not fulfill the requisite qualifying service for premature retirement he may be compulsorily retired from service by the competent authority.

COMPETENT AUTHORITY TO NOTIFY/ORDER ADJUSTMENT/ABSORPTION.

After the transfer of services of surplus employee to a Department for adjustment/absorption against a vacant/revived post, the Competent Authority to notify/order his absorption/adjustment, shall be the respective appointing authority under the relevant rules for the post.

Provided that the decision of adjustment/absorption of surplus employees by the E&AD shall be binding upon the respective appointing authorities.

(Authority: letter NO.SOR-1(E&AD)1-200/98, Dated 3rd June, 2001)

Decision of the meeting of chief secretary with district coordination officers, on the issue of surplus pool.

I am directed to refer to the subject noted above and to say that a meeting was held on 4.8.2001 in the Cabinet Room Civil Secretariat under the Chairman of Chief Secretary, NWFP to discuss the issues relating to adjustment of employees rendered surplus due to restructuring of the Government Departments and Devolution of Power Plan, 2000. The following decisions were taken in the said meeting:-

- i) Administrative Departments may reconsider adjustments already made against the available posts at District level. The guiding principle for reviewing the adjustment would be aimed at avoiding dislocation of the employees to the possible extent.
- ii) The DCOs will maintain the surplus pool of the employees, declared surplus in the District cadres and their subsequent adjustment against the vacant posts (District Cadres). It must be ensured that only the junior most employees in the scale in the cadre be declared surplus. At the stage of adjustment of Class-IV posts, the senior most be adjusted first. However, for the other posts besides seniority, the background of the individual and requisite experience of the posts shall be kept in view. The surplus pool of Divisional cadres be maintained by the DCOs posted at divisional headquarters.
- iii) The surplus pool of the employees of the Head Offices be maintained by the Head of the concerned Attached Department. Declaring employees surplus and their subsequent adjustment be made strictly according to the spirit of the policy of the Provincial Government issued vide circular letter No.SORI (S&GAD)1-200/98, dated 3.6.2001.

... on absorption in the cadre shall be maintained at the bottom as provided under the Rules regulating the seniority.

(iv) No civil servant of a non-cadre post can be transferred

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- v) The surplus pool of the Secretariat be maintained by the Establishment Department in consultation with the Department concerned.
- vi) The salaries of the surplus employees be disbursed through their relevant offices for the time being.
- vi) It was also felt that the sanctioned staff for the office of DCO and other offices is not sufficient. The ministerial staff has no appropriate tiers for the purpose of control and promotion i.e. Senior Clerk and Superintendent etc. The post of Chowkidar/ Sweeper does not exist in the office of DCOs and other offices. Even the other required staff does not meet the bare minimum. The DCOs will, therefore, forward the required proposal for consideration of Finance Department. The budget for the same can be arranged from the available savings due to phasing away of magistracy etc.
- vii) The L.R&RD Department may reconsider the adjustment of the employees of the Local Council Board, so as to find out whether any such employees have been adjusted against the regular Government posts funded from the Provincial Consolidated Fund.
- viii) For adjustment of regular Class-IV (BS-1-4) Government Servant in surplus pool, Finance Department may consider conversion of fixed pay/ contract posts into regular.

It is requested that decisions taken during the meeting held on 4.8.2001 may kindly be implemented by all concerned in letter and spirit and compliance report be furnished accordingly.

(Authority; letter NO.SOR-I(S&GAD)1-200/98 (Vol.I), Dated 13th August, 2001)

... is meant for the
... through competitive process.

Any backdated seniority cannot be granted to any
absorbee and his inter-se seniority, on absorption in the
cadre shall be maintained at the bottom as provided
under the Rules regulating the seniority.

(v) No civil servant of a non



Government of Khyber Pakhtunkhwa
ESTABLISHMENT DEPARTMENT
(Regulation Wing)

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No.SOR.IV(ED)/6-1/2014/
Dated, Peshawar, 23rd December, 2014

Annex III

To

The Secretary to Government of Khyber Pakhtunkhwa,
Local Government & RD Department.

SUBJECT: PROMOTION OF SECRETARIES UC TO THE POSTS OF SUPERVISOR

Dear Sir,

I am directed to refer to Local Government Department letter No.SO(LG-I)2-176/2014/Vol-V dated 18th November, 2014, on the subject noted above and to state that para 6 (d) of the Surplus Pool Policy covers adjustment of a surplus employee against a lower post in his parent department/cadre which he previously held before his promotion to the higher post rendered surplus. As regards the contention of the judgment of the Supreme Court of Pakistan, forbidding backdating seniority, it covers the absorption of employees of another departments/cadres. Therefore, both the provision of the Policy and the judgment can go side by side. There is nothing contradictory.

Yours faithfully,

(ISHTIAQ AHMAD)
Section Officer (R-IV)

Spd: Secy
30-12-14

SO(E)

SAA
3/11

3/11/2015



OFFICE OF THE DIRECTOR GENERAL
LOCAL GOVERNMENT & RURAL DEVELOPMENT
DEPARTMENT KHYBER PAKHTUNKHWA

No. Director (LG) 3-1/Establishment/2013/11579
Dated Peshawar, the 12th Feb, 2015

To

All the Assistant Directors,
LG&RDD, Khyber Pakhtunkhwa.

Amner/III

(20)

Subject: - PROMOTION OF SECRETARY UNION COUNCILS TO THE POST OF SUPERVISOR LG&RDD.

I am directed to refer to the subject noted above and to inform you that during the DPC meeting of promotion of Secretary Union Council to Supervisor LG&RDD, Assistant Director Lakki Marwat and some other districts raised objection over the formula adopted for preparation of seniority lists of Secretaries Union Councils and produced a copy of the Supreme Court Judgment in support of their objection.

Due to the above objection the proceedings of the DPC meeting were stopped and a case was sent to administrative department for advice.

Resultantly the advice has been received from Establishment department, through Section Officer (Estb.) stating that "Para 6(d) of the Surplus Pool policy covers adjustment of a surplus employee against a lower post in his parent department/ cadre which he previously held before his promotion to the higher post rendered surplus. As regards the contention of the judgment of the Supreme Court of Pakistan, forbidding back dated seniority, it covers the absorption of employee of another department/ cadres. Therefore both the provisions of the policy and judgment go side by side. There is nothing contradictory".

I am further directed to inform that in light of the advice of the Establishment Department as referred above, you are requested to review your respective seniority lists of Secretary Union Councils in a manner that those surplus employees adjusted against the post of Secretary Union Council BPS-06 being lower than their original scale may be placed on top of the seniority list (as per surplus pool policy 6 (d)) and those adjusted as Secretary Union Councils BPS-06 who were already having same scale in the surplus pool / parent department may be placed at bottom of seniority as Supreme Court decision forbid back dated seniority of employees of another department/ cadre in the same grade, and submit the finalized seniority list of your respective secretaries union councils alongwith working paper within a week to this office so that DPC may be arranged accordingly.

Sudh An

Deputy Director (Admin)
D.G: LG&RDD

Cc:

1. PA to Director General, LG&RDD, Khyber Pakhtunkhwa.

L. An

Annex VIII

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SENIORITY LIST OF SECRETARIES UNION COUNCILS, DISTRICT SWABI

No	Name	BPS	Date of Birth	Qualification	Date of Initial Appointment	Remarks Name of parent Deptt: Date of Adjustment as Secretary U/C
1	Amjid Ali	09	26-04-1961	SSC	31-10-1985	Senior Clark, DC Office 08-08-2001
2	Muhammad Islam	09	13-11-1969	SSC	28-08-1988	Senior Clark, DC Office 08-08-2001
3	Abid Khan	07	20-02-1956	BA	14-01-1981	Secretary, UC, LG & RDD, Swabi.
4	Sher Afsar Khan	07	10-12-1959	FA	13-02-1985	Secretary, UC, LG & RDD, Swabi.
5	Habib Ur Rehman	07	04-01-1957	MA	30-04-1988	Secretary, UC, LG & RDD, Swabi.
6	Muhammad Shafiq	07	09-10-1964	FA	30-04-1988	Secretary, UC, LG & RDD, Swabi.
7	Rohal Amin	07	11-11-1955	BA	10-05-1988	Secretary, UC, LG & RDD, Swabi.
8	Zahir Muhammad	07	25-03-1962	BA	06-06-1990	Secretary, UC, LG & RDD, Swabi.
9	Imtiaz Ali	07	08-04-1965	MA	06-06-1990	Secretary, UC, LG & RDD, Swabi.
10	Niaz Muhammad	07	12-03-1965	MA	17-07-1990	Secretary, UC, LG & RDD, Swabi.
11	Muhammad Nawaz	07	01-04-1962	BA	21-07-1990	Secretary, UC, LG & RDD, Swabi.
12	Muhammad Saleem	07	03-11-1967	FA	26-03-1991	Secretary, UC, LG & RDD, Swabi.
13	Sajid Ali Khan	07	15-03-1968	BA	26-03-1991	Secretary, UC, LG & RDD, Swabi.
14	Saeed Ur Rehman	07	20-04-1967	BA	23-02-1992	Secretary, UC, LG & RDD, Swabi.
15	Sadiq Muhammad	07	01-01-1970	BA	22-11-1994	Secretary, UC, LG & RDD, Swabi.
16	Javed Khan	07	08-04-1970	BA	22-11-1994	Secretary, UC, LG & RDD, Swabi.
17	Ajmal Shah	07	15-09-1964	FA	23-11-1994	Secretary, UC, LG & RDD, Swabi.
18	Muhammad Tahir	07	17-02-1970	FA	23-11-1994	Secretary, UC, LG & RDD, Swabi.
19	Munawar Khan	07	17-07-1964	SSC	02-06-1983	Junior Clark, DC Office 08-08-2001
20	Abdul Samad	07	11-11-1964	BA	03-12-1989	Junior Clark, DC Office 08-08-2001
21	Niaz Wali Shah	07	15-03-1965	FA	03-12-1989	Junior Clark, DC Office 08-08-2001
22	Javed Khan	07	15-04-1969	BA	03-12-1989	Junior Clark, DC Office 08-08-2001
23	Muhammad Naeem	07	10-04-1972	BA	03-12-1989	Junior Clark, DC Office 08-08-2001
24	Muhammad Iqbal	07	10-02-1965	SSC	05-12-1989	Junior Clark, DC Office 08-08-2001

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25	Arshid Ahmad	07	09-04-1969	MA	05-12-1989	Junior Clark, DC Office 08-08-2001
26	Abdullah	07	03-03-1963	FA	17-12-1989	Junior Clark, DC Office 08-08-2001
27	Wisal Muhammad	07	01-01-1969	SSC	29-05-1990	Junior Clark, DC Office 08-08-2001
28	Anwar Saeed	07	15-03-1962	BA	21-07-1990	Junior Clark, LG & RDD, 08-08-2001
29	Muhammad Iqbal	07	20-01-1968	SSC	12-09-1990	Junior Clark, DC Office 08-08-2001
30	Anwar Ali	07	21-03-1966	SSC	13-09-1990	Junior Clark, DC Office 08-08-2001
31	Muhammad Ismail	07	01-03-1966	BA	09-08-1988	Junior Clark, DC Office 08-08-2001
32	Riaz Ali	07	12-05-1964	BA	09-08-1988	Junior Clark, DC Office 08-08-2001
33	Zulfiqar Ali	07	15-04-1968	FA	01-08-1991	J/C, Cooperative Deptt: 16-08-2001
34	Zakir Shah	07	15-04-1971	BA	28-10-1991	Junior Clark, DC Office 08-08-2001
35	Sajjad Ali	07	11-10-1968	FA	18-08-1992	Junior Clark, DC Office 08-08-2001
36	Muhammad Ismail	07	15-04-1973	BA	07-01-1993	Junior Clark, LG & RDD, 10-08-2001
37	Sikandar Zaib	07	15-04-1970	BA	24-04-1993	Junior Clark, LG & RDD, 10-08-2001
38	Abdul Rasheed	07	20-05-1968	FA	02-09-1990	Junior Clark, DC Office 08-08-2001
39	Sajjad Muhammad	07	14-02-1968	SSC	15-11-1985	Junior Clark, LG & RDD, 28-08-2001
40	Yasir Ali	07	30-03-1983	FA	16-06-2008	Secretary, UC, LG & RDD, Swabi.
41	Kaman Afsar	07	03-03-1976	FA	05-03-2009	Secretary, UC, LG & RDD, Swabi.
42	Shahab ali	07	06-04-1980	FA	05-03-2009	Secretary, UC, LG & RDD, Swabi.
43	Qaisar Khan	07	16-02-1982	BA	05-03-2009	Secretary, UC, LG & RDD, Swabi.
44	Muhammad Ayaz Khan	07	07-04-1984	BA	05-03-2009	Secretary, UC, LG & RDD, Swabi.
45	Zulfiqar Ali	07	01-01-1988	FA	05-03-2009	Secretary, UC, LG & RDD, Swabi.
46	Sheraz Ahmed	07	11-03-1993	F.Sc	14-02-2014	Secretary, UC, LG & RDD, Swabi.


ASSISTANT DIRECTOR,
Local Govt: & Rural Dev: Deptt; SWABI.

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 734 of 2016


Abid Khan Appellant

Versus

Secretary LG&RD, KPK & others..... Respondents

AFFIDAVIT

I, Jamshed Khan, Assistant, LG & RDD, Swabi , do hereby state on solemn affirmation that the contents of the written comments are true and correct to the best of my knowledge and belief and nothing has concealed from this honourable court.


Deponent

Jamshed Khan, Assistant
o/o AD, LG& RDD, Swabi
(17301-7712119-5)

Identified by me

BEFORE THE KPK, SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 734/2016

Abid Khan

VS

LG&RD dept:

.....

REJOINDER ON BEHALF OF APPELLANT

.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

(1-7) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

- 1 Incorrect. While para-1 of the appeal is correct as mentioned in the main appeal of the appellant.
- 2 Incorrect. While para-2 of the appeal is correct as mentioned in the main appeal of the appellant.
- 3 Incorrect. While para-3 of the appeal is correct as mentioned in the main appeal of the appellant.
- 4 Incorrect. The appellant has good cause of action to file the instant appeal which is liable to be accepted on the following grounds.

GROUND:


- A) Incorrect. The impugned order 26.5.2015 of the respondents was against the law, rules and norms of justice therefore not tenable and liable to be set aside.

- B) Incorrect. While para-B of the ground of appeal is correct as mentioned in the main appeal of the appellant.
- C) Incorrect. While para-C of the ground of appeal is correct as mentioned in the main appeal of the appellant.
- D) Incorrect. While para-D of the ground of appeal is correct as mentioned in the main appeal of the appellant.
- E) Incorrect. While para-E of the ground of appeal is correct as mentioned in the main appeal of the appellant.
- F) Incorrect. While para-F of the ground of appeal is correct as mentioned in the main appeal of the appellant.
- G) Incorrect. While para-G of the ground of appeal is correct as mentioned in the main appeal of the appellant.
- H) Legal.

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

ATTESTED
Oath Commissioner
Tahir Khan Advocate
Sitt: Court Peshawar

Through:

APPELLANT
Abid KHan

(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

AFFIDAVIT

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


Deponent.