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appointment of the appellant on promotion to BPS-19 was not made on probation. According to rule 15 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, persons appointed to posts by initial recruitment, promotion or transfer shall be on probation for a period of one year and the appointing authority, if considers necessary, may extend the probation period for one year as may be specified at the time of appointment. On successful completion of probation period, the appointing authority shall, by specific order, terminate the probation provided that if no specific order is issued on the expiry of the first year probation period, the period of probation shall be deemed to have been extended for one year, and, on the expiry of extended period of probation, the period of probation shall be deemed to have been successfully completed.

8. The afore-stated provisions of law do not provide for termination of probation period at any earlier stage which, in case of appellant was one year from the date of his promotion. No doubt that on the basis of notification dated Peshawar the May 24, 2010, the competent authority had waived off the bar of one year probation period after the promotion of 17 Executive Engineers (BS-18) of Public Health Engineering Department for consideration of their promotion by the Provincial Selection Board to the rank of Superintending Engineer BS-19 but in support of the said order no rule or law was referred to by learned counsel for the appellant to observe that the said competent authority was vested with the discretion to waive off the mandatory provision of probation. A decision devoid of merit cannot be adopted as precedent for extending its benefits to similarly placed employees. Even otherwise

(11)

the probationary period and extension thereof is the discretion of the competent authority and, therefore, such an authority can neither be refrained nor compelled to exercise authority vested in it by the law. We therefore hold that the appellant claim for termination of probation period before completion of one year is not in accordance with law and rules and as such we find no force in the instant appeal. The same is therefore dismissed leaving the parties to bear their own costs. File be consigned to the record room.

Announced
16.08.2016 *self*- M. Azim Khan Afridi,
Chairman

self- Abdul Latif,
Member

Certified to be true copy
 Khusro Pathan
 Secretary
 Peshawar

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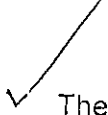
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GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGULATION WING)
NO. SOR.III(E&AD)1-2/2012
Dated Peshawar the February 26, 2013.

To



The Secretary to Govt of Khyber Pakhtunkhwa,
Agriculture, Livestock & Coop: Department.

Subject: APPEAL FOR CONDONATION (TERMINATION) OF PROBATION PERIOD AND PROMOTION TO NEXT HIGHER GRADE BS-20

Dear Sir,

I am directed to refer to the Agriculture department letter No.SOE(AD)21-174/2012 dated February 7, 2013 on the subject and to say that the probation period cannot be terminated before successful completion of one year and there is no provision whatsoever for condonation of deficit period.

2. Therefore, the request of the officer for termination of probation period before completion of one year cannot be acceded to under the rules.

Yours faithfully,

(SHAFIQL-AHMAD)
SECTION OFFICER(R-III)

Attested

No 12/189/Estt/ *8035* /DG
Dated Peshawar: the *22/5* /2013

Amir-AB

119

Mr. Muhammad Younas,
Ex-District Director Agriculture, Abbottabad
P.O. Box No.44. GPO Abbottabad.

Subject. APPEAL FOR CONDONATION (TERMINATION) OF PROBATION
REMAINING PERIOD (I.E.3.5 MONTHS) AND PROMOTION TO NEXT
HIGHER GRADE B-20

Memo:

Reference your application No. Nil dated 22.4.2013.

In this connection it is to inform that the competent authority i.e. Establishment Department Khyber Pakhtunkhwa had rejected your request for Condonation of probation period endorsed vide this office endst. No.4784-86 dated 22.3.2013. (Photo copy attached for ready reference).

[Signature]
DIRECTOR GENERAL
AGRICULTURE (EXTENSION)
KHYBER PAKHTUNKHWA, PESHAWA

21/5/2013

*MML
21/5*

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GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGULATION WING)
NO. SOR.III(E&AD)1-2/2012
Dated Peshawar the February 26, 2013.

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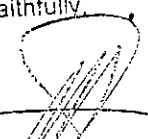
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Yours faithfully,


(SHAFUL-AHMAD)
SECTION OFFICER(R-III)

SEIK
15/3

Copy to all concerned



Secretary Agriculture
15/3/13

1922
15/3/15

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

Appeal No. 775/2018

Muhammad Younas.

....PETITIONER

VERSUS

Chief Secretary Govt. of Khyber Pakhtunkhwa Peshawar & others.

...RESPONDENTS

REJOINDER ON BEHALF OF THE APPELLANT

Respectfully Sheweth;-

PRELIMINARY OBJECTIONS:

1. Para No. 1 of comments is incorrect and denied, It is further submitted that period of probation in case of appellant shall start from the date of Provincial Selection Board (P.S.B) meeting i.e 17/02/2012 as per vide judgment of Honourable Service Tribunal in appeal No. 386/2012 which was upheld by the Apex Court vide order dated 18/04/2014. Copies of judgments are placed at page No. 63-A to 63-C and 65 of the appeal.

2. Para No. 2 is incorrect and denied.
3. Para No. 3 is incorrect and denied. Valuable right of promotion and increase in pension of the appellant are involved.
4. Para No. 4 is incorrect and denied.
5. Para No. 5 is incorrect and denied.
6. Para No. 6 is incorrect. The appellant got retirement on superannuation on 02/04/2013 whereas probation period for promotion in BPS-19 to BPS-20 has expired on 16/02/2013. The appellant is eligible for promotion from BPS-19 to BPS-20.
- ✓ 7. Para No. 7 is correct to the extent of dismissal of service appeal dated 16/08/2016. It is further submitted that the appellant filed C.P.L.A No. 3682 of 2016 before the apex court which was converted into departmental appeal on 01/01/2018. Therefore, within statutory period, the appellant filed the service appeal before this Honourable Tribunal under law.
8. Para No. 8 is incorrect and denied.

REJOINDER ON FACTS:-

- i. Para No "i" need no reply.
- ii. Para No. "ii" need no reply.
- iii. Para No. "iii" to the extent of notification dated 21/04/2012 is correct but the probation period shall start from the date of P.S.B which is 17/02/2012.
- iv. Para No. "iv" to the extent of notification and judgment dated 16/08/2016 of this Tribunal is correct. Regarding rest of the para detailed reply has been given in para iii above.
- v. Para No. "v" is incorrect and denied.
- vi. Para No "vi" is incorrect and denied. It is submitted that the probationary period of the appellant was expired on 16/02/2013.
- vii. Para No. "vii" is incorrect and denied. Detail reply has already been given in the preceding para.
- viii. Para No "viii" needs no rejoinder.

REJOINDER ON GROUNDS:-

- a. Para "a" is incorrect and denied.
- b. Para "b" is incorrect and denied.
- c. Para "c" is incorrect and denied.
- d. Para "d" is incorrect and denied.

In view of the above the appeal of the appellant
may be accepted as prayed for.


...PETITIONER

Through

Dated: 6/7/2019


(**MUHAMMAD ARSHAD KHAN TANOLI**)
Advocate High Court, Abbottabad

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

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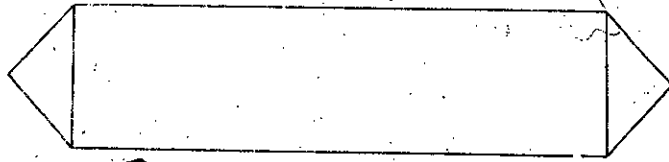

...PETITIONER

Through

Dated: 6/17 /2019
(**MUHAMMAD ARSHAD KHAN TANOLI**)
Advocate High Court, Abbottabad

Before the Honorable Chairman, KPK Service Tribunal, Peshawar.

بعدالت



Service Appeal No. 775/2018

(مخانب) 2
بنام

Muhammad Younas
VS
Chief Secretary etc

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام Abbatabad/پشاور کیلئے رسواں الٹے 2020
Appellate No. 9/3/2020

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت
مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے
اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے
سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں
گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

Attest by
[Signature]
Be-09-0050

المرقوم 9th March 2020

مقام لٹاور / ایسٹ آباد کے لئے منظور ہے۔