

Sr. No. Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
1	3
14.09.2017	<p style="text-align: center;"><b>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</b></p> <p style="text-align: center;"><b>Service Appeal No. 952/2014</b></p> <p style="text-align: center;">Date of Institution ----14.07.2014 Date of Decision ----14.09.2017</p> <p>Ghulam Sarwar, presently working as Additional Secretary, Provincial Assembly Secretariat, Khyber Pakhtunkhwa Peshawar, Appellant</p> <p style="text-align: center;"><b>VERSUS</b></p> <p>1. The Speaker Provincial Assembly of Khyber Pakhtunkhwa Peshawar  2. The Secretary Provincial Assembly Secretariat Khyber Pakhtunkhwa Peshawar.  3. Mr. Nasrullah Khan, Additional Secretary, Provincial Assembly Khyber Pakhtunkhwa.....<b>Respondents</b></p> <p style="text-align: center;"><b>JUDGMENT</b></p> <p style="text-align: center;"><b>MUHAMMAD HAMID MUGHAL, MEMBER: - Appellant</b></p> <p>Present. Representative of officials respondents present.</p> <p>2. Appellant has filed the present appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the notification dated 18.08.2007 whereby while superseding the appellant, his junior colleague Nasrullah Khan (respondent No. 3) was promoted as Additional Secretary Provincial Assembly and against the order dated 01.10.2009 whereby the appellant was allowed promotion as Additional Secretary but with immediate effect and against the order dated 25.06.2014 whereby the review</p>

Samin

Prayer

petition/appeal of the appellant was rejected.

3. Prayer of the appellant is that the order dated 25.06.2014 be set aside and the promotion order of the appellant be antedated w.e.f 18.08.2007 when his junior colleague (respondent No.3) was promoted as Additional Secretary and that the appellant may also be allowed seniority as well as consequential benefits.

4. Learned counsel for the appellant contended that the appellant as well as respondent No. 3 were initially appointed as Assistant Secretaries (BPS-17) in the year 1993. Further contended that originally the appellant is senior to the respondent No. 3 and this fact is evident from the appointment notification dated 11.03.1993 as well as notification dated 4.3.1997 wherein seniority wise the appellant has been placed at Sr. No. 1 while respondent No. 3 was placed at Sr. No. 2. Further argued that both the appellant and respondent No.3 were promoted as Deputy Secretaries BPS-18 vide notification dated 27.02.2003 and in the said notification the appellant was also placed senior to the respondent No. 3. Further argued that the appellant holding Master Degree in Public Administration and his experience in legislation and administration in much higher than respondent No. 3. Further argued that the performance of appellant as per ACR Dossiers is also up to the mark. Further argued that for filling of the vacancy of Additional Secretary (BPS-19) working paper was prepared by respondent No. 3 Nasrullah Khan wherein the respondent No.3 recommended his own promotion in supersession of the appellant despite fact that he

was not only the junior to the appellant but also earned adverse ACR in the year 1997 and was also belatedly granted selection grade in the year 2003 while the appellant was granted selection grade in the year 1998. Further argued that the appellant was fit for promotion to the post of Additional Secretary (BPS-19) in all respect on merit and on the basis of seniority cum-fitness criteria also mentioned in Notification bearing No. PA/NWFP/Admn:/2007/19866 dated 25.09.2007. Further argued the departmental promotion/selection Committee unlawfully and by having been influenced from the working paper prepared by the respondent No. 3 arbitrarily appointed respondent No. 3 as Additional Secretary in Supersession of appellant. Further argued that the Departmental Promotion Committee has not at all considered the factum of seniority of appellant and wrongly proceeded on the notion of equal length of service. Further argued that if in the ACR forms of the appellant training was recommended then in the ACRs forms of respondent No. 3 the same was also suggested. Further argued that the appellant received good ACRs wherein the reporting and the countersigning officers declared him fit for promotion. Further argued that the Speaker Provincial Assembly in reference to the order of the Honorable Peshawar High Court, Peshawar dated 19.12.2003 issued in writ petitioner bearing No. 963 of 2010 again passed non-speaking order dated 25.06.2014 and arbitrarily decided the matter of appointment of Additional Secretary as well as seniority against the appellant.

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Further argued that the authority, deprived the appellant of his legitimate right of promotion in an illegal manner and by improper exercise of discretion, hence this Tribunal has got the jurisdiction to grant relief of the appellant as prayed for. Further argued that the Departmental promotion Committee has not found the appellant unfit for promotion. In support of his case, the learned counsel for the appellant relied upon the judgments titled SARFRAZ ALI KHAN---Appellant Versus FEDERATION OF PAKISTAN and others---Respondents (PLD 2006 Supreme Court 246) titled MUHAMMAD RAHIM KHAN---Appellant Versus THE CHIEF SECRETARY, NWFP and others---Respondents (PLD 2004 Supreme Court 65) titled MUHAMMAD ZAHIR RAJA---Appellant Versus FEDERATION OF PAKISTAN and others---Respondents (2012 S C M R 971) titled MUHAMMAD AMJAD and others---Appellants Versus Dr. Israr Ahmad and others Respondents (2010 P L C (C.S) 760) titled ABDUL GHAFAR MIAN Versus GOVERNMENT OF PAKISTAN, CABINET SECRETARIAT, ESTABLISHMENT DIVISION through Secretary to Government of Pakistan, Islamabad and 6 others---Respondents (2006 P L C (C.S) 1081) titled AZHAR HASSAN NADEEM and others---Appellant Versus FEDERATION OF PAKISTAN through Secretary, Establishment Division, Islamabad and 6 others---Respondents (2007 P L C(C.S)1246.

5. Learned Additional Advocate General assisted by the learned counsel for respondent No.3 contented that by virtue of proviso (b)

Dr. Israr

of section-4 of Khyber Pakhtunkhwa Service Tribunal Act, the present appeal is not maintainable. Further argued that the present appeal is also barred by limitation. Further argued that the promotion of respondent No.3 to the post of Additional Secretary was strictly made on merits in accordance with the promotion policy. Further argued that the impugned orders do not warrant any interference.

6. Learned counsel for respondent No.3 is support of his arguments relied upon the judgments titled ABDUL HAMEED---Petitioner Versus MINISTRY OF HOUSING AND WORKS, GOVERNMENT OF PAKISTAN, ISLAMABAD through Secretary and others---Respondents (P L D 2008 Supreme Court 395) titled ABID HUSSAIN SHERAZI---Petitioner Versus SECRETARY M/O INDUSTRIES AND PRODUCTION, GOVERNMENT OF PAKISTAN, ISLAMABAD---Respondents (2005 S C M R 1742) titled GOVERNMENT OF PAKISTAN through Establishment Division, Islamabad and 7 others---Appellants Versus HAMEED AKHTAR NIAZI, ACADEMY OF ADMINISTRATIVE, WALTON TRAINING, LAHORE and others---Respondents (P L D 2003 Supreme Court 110) Judgment of Honorable Peshawar High Court Peshawar titled Enginner Musharaf Shah Versus Government of Khyber Pakhtunkhwa through Chief Secretary and others (Writ Petition No. 2440-P/2012)

7. Arguments of learned counsel for appellant learned Additional Advocate General and learned counsel for respondent

Dr. M. A. N.

Lawyer

No. 3 heard, filed perused.

8. Consequent upon the direction of the Honorable Peshawar High Court, Peshawar dated 19.12.2013 passed in writ petition No. 963 of 2010, the Speaker Khyber Pakhtunkhwa Provincial Assembly issued the impugned order dated 25.06.2014. The operative and concluding paras of the impugned order dated 25.06.2014 are reproduced as under

*"An examination of the above facts, available on record, reveal to uncontroverted facts: (a) of Nasrullah Khan's promotion on merit on 18.08.2007 and (b) Ghulam Sarwar's promotion subsequently on 01.10.2009; both by the competent authority in accordance with the rules".*

*"Having gone through the record and having applied my mind, Mr. Ghulam Sarwar claim of seniority against Nasrullah Khan is baseless".*

9. The present appeal having been filed within thirty days of the final/impugned order dated 25.06.2014 hence the present appeal cannot be termed as barred by limitation

10. It is not disputed that both the appellant and respondent No. 3 were initially appointed as Assistant Secretaries (BPS-17) of Khyber Pakhtunkhwa Provincial Assembly Secretariat vide notification dated 11.03.1993 and the appellant was placed at a senior position i.e. Sr. No. 1 as compared to the respondent No. 3 who was placed at Sr. No. 2 of the appointment notification. Similarly in the notification dated 4.03.1997 whereby numbers

7/1/2003

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were allotted to Assistant Secretaries of Khyber Pakhtunkhwa Provincial Assembly Secretariat on the basis of seniority, the name of the appellant was placed at Sr. No. 1 as Asstt: Secretary-I while the name of respondent No. 3 was placed at Sr. No. 2 as Asstt: Secretary-II, likewise the promotion notification dated 27.02.2003 to the post of Deputy Secretaries (BPS-18) the name of the appellant was placed at Sr. No. 1 and name of respondent No. 3 was placed at Sr. 2. Hence it is evident that the appellant was senior to the respondent No. 3 as Asstt: Secretary as well as Deputy Secretary of Khyber Pakhtunkhwa Provincial Assembly Secretariat. It is also pertinent mention that the name of the appellant is also at Sr. No. 1 while name of the respondent No. 3 is at Sr. No. 2 in the working paper prepared for filling up the post of Additional Secretary (BPS-19).

11. It is also settled principle that right to be considered for promotion is a vested right and such consideration has to be in accordance with rules and regulations.

12. Perusal of minutes of the meeting of the Departmental Promotion Committee would show that the committee has not considered the fact that the appellant is senior to the respondent No. 3 rather observed that both the officer have equal length of service similarly the Departmental Promotion Committee has not found the appellant unfit for promotion. Similarly the Department Promotion Committee did not observed that the appellant has not gone through any mandatory training or that the ACR dossiers of

Lawyer

the appellant were not up to the mark or that he enjoyed bad reputation. Similarly the Departmental Promotion Committee did not observe that the appellant was not capable to shoulder higher responsibilities. Departmental Promotion Committee has not noticed that any adverse remarks or counseling ever communicated to the appellant about any lapse or deficiency in the performance of his duties. The reasons given by the Departmental Promotion Committee to promote respondent No. 3 in supersession of the appellant found utterly vague and the authority floated the criteria of promotion on the basis of seniority cum-fitness. Even otherwise bald assertions given by the Departmental Promotion Committee were not sufficient to supersede the senior most Civil Servants on the basis of criteria of promotion on merit.

13. Interestingly after the out of turn promotion of respondent No. 3 in supersession of the appellant, the appellant was also promoted as Additional Secretary.

14. In the light of above this Tribunal is of the view that the authority deprived the appellant of his due right of promotion as senior most Deputy Secretary in an illegal manner and by improper exercise of discretion. Ironically the impugned order dated 25.06.2014 of the Speaker Khyber Pakhtunkhwa Provincial Assembly is also non speaking in as much as no cogent reason was assigned justifying the supersession of the senior most Deputy Secretary.

15. It is also settled principle of law that Service Tribunal is fully



competent to examine the question of fitness for promotion, if it is alleged that the appellant has been by passed/superseded in violation of the criteria for promotion.

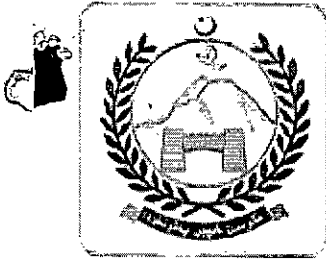
16. It may be mentioned that vide notification bearing No. PA/NW/P/Admn:/2007/19866 dated 25, September, 2007 the method of recruitment of Additional Secretary (BPS-19) of Khyber Pakhtunkhwa Provincial Assembly Secretariat has been prescribed as follows:

*"By promotion on the basis of seniority cum fitness amongst the Deputy Secretaries with five years service as such or 12 years service in BPS-17 and above"*

17. In the light of above discussion the present appeal as prayed for is accepted and the appellant is promoted as Additional Secretary (BPS-19) Khyber Pakhtunkhwa Provincial Assembly from the date his junior colleague (respondent No. 3) was promoted as Additional Secretary with back benefits/consequential benefits. 18. Perusal of the notification bearing No. PA/NW/P/Admn:/2007/19866 dated 25.09.2007 mentioned above would also reveal that criteria of promotion to the higher post of Senior Additional Secretary (BPS-20) and Secretary (BPS-21) Khyber Pakhtunkhwa Provincial Assembly Secretariat is also based on seniority cum-fitness as such subsequent promotions if any of junior colleagues of appellant to the higher post i.e the post of

Amir

<p>senior Additional Secretary of Secretary, during the pendency of present appeal, is also set aside as a consequential benefit. Parties are left to bear their own costs. File be consigned to the record room.</p> <p><i>Hamid Mughal</i>  (MUHAMMAD HAMID MUGHAL) MEMBER</p> <p><i>Muhammad Amin Khan Kundi</i>  (MUHAMMAD AMIN KHAN KUNDI) MEMBER</p> <p><b>ANNOUNCED</b>  <u>14.09.2017</u></p>		
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**KHYBER PAKHTUNKWA**  
**SERVICE TRIBUNAL, PESHAWAR**

No. 2150 /ST Dated: 31/10/2017

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281  
Fax:- 091-9213262


To,

The Secretary Provincial Assembly,  
Government of Khyber Pakhtunkhwa,  
Peshawar.

Subject: - **JUDGMENT IN APPEAL NO. 952/2014, GHULAM SARWAR.**

I am directed to forward herewith a certified copy of judgment dated 14/09/2017 passed by this tribunal on the above subject for strict compliance.

**Encl: as above**

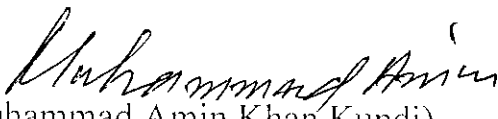
  
REGISTRAR,  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR

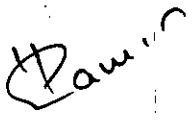
14.09.2017

Appellant present. Representative of officials respondents present. Vide separate judgment of today of this Tribunal placed on file, the present appeal as prayed for is accepted and the appellant is promoted as Additional Secretary (BPS-19) Khyber Pakhtunkhwa Provincial Assembly from the date his junior colleague (respondent No. 3) was promoted as Additional Secretary with back benefits/consequential benefits. Perusal of the notification bearing No. PA/NWFP/Admn:/2007/19866 dated 25.09.2007 mentioned above would also reveal that criteria of promotion to the higher post of Senior Additional Secretary (BPS-20) and Secretary (BPS-21) Khyber Pakhtunkhwa Provincial Assembly Secretariat is also based on seniority cum-fitness as such subsequent promotions, if any, of junior colleagues of appellant to the higher post i.e the post of senior Additional Secretary or Secretary, during the pendency of present appeal, is also set aside as a consequential benefit. Parties are left to bear their own costs. File be consigned to the record room.

**ANNOUNCED**

14.09.2017

  
(Muhammad Amin Khan Kundi)  
Member

  
(Muhammad Hamid Mughal)  
Member

09.08.2017

Appellant with counsel present. Mr. Ziaullah, Deputy District Attorney for official respondents No. 1 & 2 and private respondent No. 3 in person present. Arguments of appellant and learned Deputy District Attorney for official respondents No. 1 & 2 heard. Private respondent No. 3 seeks adjournment for arguments. Adjourned. To come for arguments on behalf of private respondent No. 3 on 17.08.2017 before D.B.



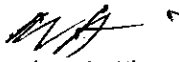
(Muhammad Amin Khan Kundi)  
Member (J)



(Muhammad Hamid Mughal)  
Member (J)

17.08.2017

Appellant with counsel present. Mr. Ziaullah, Deputy District Attorney for official respondents No. 1 & 2 and counsel for private respondent No. 3 present. Arguments heard. To come up for order on 06.09.2017 before D.B.



(Muhammad Amin Khan Kundi)  
Member (J)



(Muhammad Hamid Mughal)  
Member (J)

06.09.2017

Bench is incomplete. To come up on 14.09.2017 before D.B.




Member  
(Judicial)

25.07.2017

Appellant alongwith counsel, Addl. AG for the official respondents and private respondent No. 3 with counsel present. Arguments on the point of jurisdiction heard and record perused.

Vide our detailed judgment of to-day, this Tribunal has the jurisdiction in the matter. To come up for arguments on merits of the case on 08.08.2017 before the D.B.

  
Member


  
Chairman

ANNOUNCED

25.07.2017

08.08.2017


Appellant in person present. Mr. Ziaullah, Deputy District Attorney for official respondents No. 1 & 2 and private respondent No. 3 in person present. Arguments could not be heard as lawyer community is on general strike. Adjourned. To come up for arguments on 09.08.2017 before D.B.

  
(Muhammad Amin Khan Kundi)  
Member (J)

(Muhammad Hamid Mughal)  
Member (J)

29. 03.07.2017 Appellant in person present. Mr. Muhammad Adeel Butt, Additional AG and private respondent No. 3 also present. Private respondent requested for adjournment. Adjourned. To come up for arguments on 10.07.2017 before D.B.

(Gul Zeb Khan)  
Member

  
(Muhammad Hamid Mughal)  
Member

10.07.2017 Appellant in person, Addl. AG for the official respondents and private respondent No. 3 in person present. An application is submitted by private respondent No. 3 for adjournment. The appellant strongly objected to the adjournment application on the ground that private respondent No. 4 is applying delaying tactics in order to make present appeal infructuous. He requested for early date and also for restraining the department not to promote any person till the decision of the present appeal.

The Tribunal while perusing the case has noticed that parties in the present appeal are members of the service of Provincial Assembly. This Tribunal shall also decide the question of jurisdiction that whether the members of the service of Provincial Assembly falls in the definition of civil servants for the purpose of invoking the jurisdiction of this Tribunal. Case is adjourned to 25.07.2017 before this D.B for arguments on the point of jurisdiction. The request for restraining the respondents is not accepted at present. Last chance is given to private respondent No. 3 to procure attendance of his counsel on the date fixed.

  
Member

  
Chairman

1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.

Appeal No. 952/2015

Date of Institution... 14.07.2014  
Date of Decision. .. 25.07.2017

Ghulam Sarwar, presently working as Additional Secretary, Provincial Assembly Secretariat, Khyber Pakhtunkhwa, Peshawar. (Appellant)

VERSUS

1. Speaker Provincial Assembly of Khyber Pakhtunkhwa Peshawar and  
2 others. ... (Respondents)

MR. MUHAMMAD YASIR,  
Advocate ... For appellant

MR. MUHAMMAD ADEEL BUTT,  
Addl. Advocate General, ... For official respondents.

MR. MUHAMMAD ZAFAR TAHIRKHELI,  
Advocate ... For private respondent-3.

MR. NIAZ MUHAMMAD KHJAN, ... CHAIRMAN.  
MR. MUHAMMAD HAMID MUGHJAL, ... MEMBER.

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN.-


To-day the case was fixed for arguments on the point of jurisdiction regarding the service of the staff of the Provincial Assembly.

Arguments.

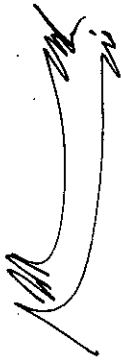
2. The learned counsel for the appellant argued that this Tribunal has the jurisdiction as the matter has been resolved by the august Supreme Court of Pakistan in a case reported as 2010-SCMR-1886.

3. On the other hand the learned counsel for private respondent No. 3 argued that in this particular case the jurisdiction had already been assumed by the Hon'ble Peshawar High Court four times in between the same parties.





He referred to the judgment of the Hon'ble Peshawar High Court passed on 07.08.2008 in a Writ Petition filed by the appellant. Then another judgment was passed on 17.12.2008 in Writ Petition filed by private respondent No. 3. Then another judgment was passed on 16.2.2010 in Writ Petition filed by the present appellant and then finally another judgment passed on 19.12.2013 in a Writ Petition filed by the appellant. The learned counsel for private respondent No. 3 was of the view that since the Worthy Peshawar High Court had assumed the jurisdiction in the service matters of the present parties four times concerning almost the subject matters, the question of jurisdiction shall be presumed to have been decided by the Worthy High Court and now this Tribunal lacks the jurisdiction to entertain the issue of terms and conditions of the service of the members of the Secretariat of the Provincial Assembly and particularly the present case.



4. The learned Additional Advocate General while endorsing the arguments of the learned counsel for private respondent No. 3 further added that the ratio settled in the reported judgment of the august Supreme Court of Pakistan is not applicable to the Khyber Pakhtunkhwa Provincial Assembly for the reason that the service of the civil servants are being regulated by the Khyber Pakhtunkhwa Civil Servants Act, 1973 (promulgated on the strength of Article 240 of the Constitution) and rules framed there-under. That the terms and conditions of the members of the Khyber Pakhtunkhwa Secretariat of Provincial Assembly are being regulated not by above mentioned Act and rules. He further added that no opportunity of hearing was afforded to the Provincial Government of the Khyber Pakhtunkhwa before the august Supreme Court of Pakistan therefore, the judgment is not binding viz-a-viz the staff of Secretariat of the Provincial Assembly of Khyber Pakhtunkhwa. He further argued that the

reported case is of Baluchistan Assembly and in the law of Baluchistan Assembly the status of staff of Provincial Assembly is different than this province.

### Conclusion

5. After hearing the arguments of the learned counsel for the parties and consulting the relevant laws on the subject this Tribunal is of the view that there had been a chequered history regarding the issue as to whether the members of the Secretariat of the Parliament and for that matter the Provincial Assemblies are civil servants or not. This issue has remained the subject of decisions in many cases including the following:-

6. In the judgment reported as 1994-PLD Supreme Court 532 it was held that the employees of the Provincial Assembly of Sindh are civil servants. In the second judgment in 1995-SCMR-660 it was held that the employees of the National Assembly are not civil servants. Then the august Supreme Court of Pakistan granted leave to appeal in a case reported as 1998-PLC(C.S) 1 which is also reported in 1997-PLD-Supreme Court-877 to determine this issue finally.

7. This issue which was pending since 1996 has finally been decided by the judgment pressed into service by the learned counsel for the appellant. Since this controversy is resolved by holding that the employees of the Secretariat of the Parliament or Provincial Assemblies were civil servants and it was also held that the jurisdiction of the Service Tribunal could not be ousted and judgment of Service Tribunal declining to exercise the jurisdiction was set aside.

8. So far as the assumption of jurisdiction by the Peshawar High Court is concerned nowhere in any judgment of the Peshawar High Court referred

to above point of jurisdiction was raised or decided. All these judgments had not discussed the point of jurisdiction and are therefore, *sub silentio* on jurisdiction and it cannot be presumed that since the Worthy High Court had assumed jurisdiction ~~for~~ times, the jurisdiction of the Service Tribunal is excluded.

9. Now coming to the arguments of learned Addl. A.G this Tribunal is of the view that Article 240 of the Constitution of Islamic Republic of Pakistan empowers the concerned legislature to enact the laws regarding the terms and conditions of the person in Service of Pakistan. Article 87 deals with the powers of the concerned legislature to enact law regarding terms and conditions of the staff of the Secretariat of the concerned legislature which has thoroughly been discussed in this judgment and it has been held that the concerned legislature may by law regulate the recruitment and the conditions of service of persons appointed to the Secretariat staff of either House and for that matter the Provincial Assembly. If we go through Article 240 of the Constitution it never speaks about the "Civil Servants" but of "Service of Pakistan". Secondly if the law is made under Article 240 of the Constitution (like all Acts of 1973 regarding Civil Servants) it does not mean that no other law under Article 240 for persons in Service of Pakistan can be framed. Article 240 r/w Article 87 does empower legislature to frame separate laws for all type of person in service of Pakistan and it does not mean that the persons regulated under Article 87 are not Civil Servants.


10. The august Supreme Court of Pakistan in the reported judgment has clearly held that the servants of those constitutional bodies for which concerned legislature cannot make laws are not civil servants for the purpose of Service Tribunal and those for which concerned legislature can make law are civil servants for the purpose of Service Tribunal.

11. So far as the objection of the learned Addl. A.G regarding non applicability of the ratio to the Khyber Pakhtunkhwa Assembly is concerned this Tribunal is not inclined to agree with the learned A.A.G on the ground that the terms and conditions of service of Staff of Secretariat of the concerned legislature in Pakistan are being regulated by Article 87 read with Article 127 of the Constitution and the ratio is based on these two Articles and not on the individual rules or Acts of the province. This judgment is equally applicable to all the legislatures in Pakistan. So far as the right of fair trial is concerned the Provincial Assembly of Khyber Pakhtunkhwa if aggrieved can seek redressal from the august Supreme Court of Pakistan and this Tribunal cannot refuse to comply with the ratio of the august Supreme Court of Pakistan on the ground that a necessary party was not heard.

12. This Tribunal, therefore, has the jurisdiction in the matter. To come up for arguments on merits of the case on 8.8.2017.

  
MUGHAL

(MUHAMMAD HAMID MUGHAL)  
Member

  
(NIAZ MUHAMMAD KHAN)  
Chairman

ANNOUNCED  
25.07.2017

**Approved for Reporting.**

30.01.2017

Counsel for the appellant and Mr. Ziaullah, GP for official respondents present. None present on behalf of private respondent No. 3. Notices be issued to private respondent No. 3 and his counsel. To come up for final hearing on 20.06.2017 before D.B.

noted  
3/2/17



  
Member

  
Chairman

20.06.2017

Appellant present in person. Mr. Muhammad Jan, Deputy District Attorney and counsel for private respondents No.3 also present. Appellant requested for short adjournment. Adjourned. To come up for arguments on 03.07.2017 before D.B.

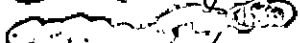


  (Muhammad Adil Khan Kuddi) 

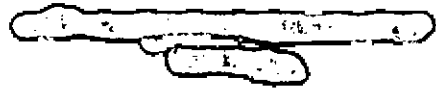
Member







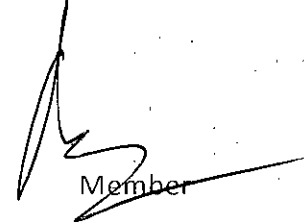




2.6.2016

Counsel for the appellant and Ziaullah, GP for respondents present. None present on behalf of the private respondent No. 3. Notice be issued to private respondent No. 3. To come up for arguments on 26.7.2016.

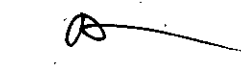
  
Member

  
Member

26.07.2016


None for the appellant present. Mr. Usman Ghani, Sr. GP for respondents present. The case is adjourned. To come up for arguments on 18.10.2016.

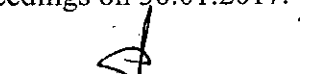
  
Member

  
Member

18.10.2016

Appellant in person and Mr. Ziaullah, GP for official respondents present. While inviting attention of the Tribunal to the order sheet dated 11.02.2016, it was requested that the appeal may be put up before the Worthy Chairman for to be assigned to another D.B. To come up for further proceedings on 30.01.2017.

  
(ABDUL LATIF)  
MEMBER

  
(PIR BAKHSH SHAH)  
MEMBER

23.12.2015

Appellant with counsel and Mr. Adeel But, AAG for respondents present. Since another bench is not constituted as such the same could not be assigned to D.B. To come up for arguments/final hearing on 11.02.2016 before a bench in which Mr. Abdul Latif Khan is not sitting.

  
Member

11.02.2016

None present for appellant. Addl. A.G for respondents present. D.B could not be constituted due to non-availability of Members. To come up for final hearing/arguments on 14.4.2016 before a D.B in which Mr. Abdul Latif, learned Member (Executive) is not sitting.

  
Chairman

14.4.2016

Counsel for the appellant and Addl. AG for the respondents present. D.B could not be constituted due to non-availability of Members. To come up for final hearing/arguments on 02.06.2016 before a D.B in which Mr. Abdul Latif, learned Member (Executive) is not sitting.

  
Chairman

952/2014

8.06.2015

Appellant with counsel and Addl. AG for the respondents present. The learned Addl. AG stated that the case was prepared by Mr. Muhammad Jan, GP who is on leave to-day. Therefore, case is adjourned to 10.09.2015 for arguments.

  
MEMBER

  
MEMBER

10.09.2015

Appellant in person and Mr. Muhammad Jan, GP for the official respondents present. The appeal is at critical stage being ripe for arguments. In order to remove anxiety of one of the parties, wishing that the appeal be heard by another bench to the exclusion of the learned Executive Member, the appeal be submitted to the Worthy Chairman of the Tribunal for appropriate order.

  
MEMBER

  
MEMBER

21.09.2015

Agent of counsel for the appellant and Assistant AG for respondents present. Let this appeal be fixed before a Bench in which the learned Executive Member Mr. Abdul Latif would not sit; on 12-10-15.

  
Chairman

12.10.2015

Counsel for the appellant and Addl: A.G for respondents present. Since another bench to the exclusion of learned Executive Member, Mr. Abdul Latif Khan, is not constituted as such the same could not be assigned to D.B. To come up for arguments/final hearing on 23.12.2015 before a Bench in which Mr. Abdul Latif Khan is not setting.

  
Chairman



06.11.2014

The Hon'ble Bench is on tour. Therefore, case adjourned to  
24.11.2014.

  
Reader

24.11.2014

Appellant in person, Mr. Fakhre Alam, Law Officer for Official respondents No.1 and 2 with Mr. Muhammad Adeel Butt, AAG and counsel for private respondent No.3 present. The Tribunal is incomplete. To come up for written reply on main appeal as well as reply/arguments on stay application on 26.02.2015.

  
Reader

26.02.2015

Appellant with counsel, Addl. A.G for official respondents No. 1 and 2 and private respondent No. 3 in person present. Written reply submitted.

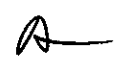
While hearing arguments on application for grant of temporary injunction, learned counsel for the appellant informed the court that respondent No.3 has been illegally promoted despite the restrain order of this Court and that he would therefore prefer to submit contempt petition and would not press the stay application for the time being as the same, according to his arguments, has become infructuous. The stay application is disposed of accordingly.

The appeal is assigned to D.B for rejoinder and final hearing for 8.6.2015.

  
Chairman

Appellant deposited  
Process fee & Security  
Rs. 250/- Bank Receipt  
attached with file  
of

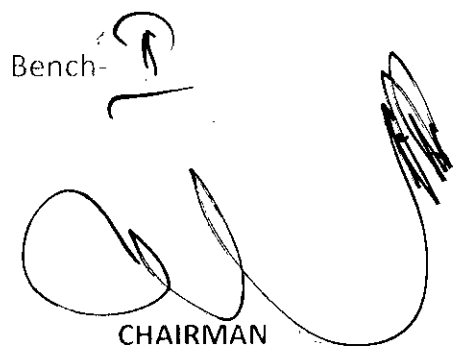
Since the points raised at the Bar by the learned counsels for the parties need considerations, therefore, the appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, Notices be issued to the respondents for submission of written reply/ Comments on 21-10-2014. Notice of stay application should also be issued to the respondents for reply and arguments on the date fixed.



MEMBER

26.9.2014

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



CHAIRMAN

21.10.2014

Appellant with counsel, Mr. Muhammad Adeel Butt, AAG with Fakhre Alam, Law Officer for the official respondents present and requested for further time to file written reply. Private respondent No: 3 in person present. He also requested for time to file written reply. Since the case was fixed for submission of written reply on main appeal as well as reply/arguments on stay application but the respondents have not filed written reply, therefore, status quo be maintained till the date fixed. To come up for written reply on main appeal as well as reply/arguments on stay application on 06.11.2014.



MEMBER

Appeal No. 952/2014  
Mr. Ghulam Sarwar

26.09.2014

Counsel for appellant and Mr. Ziaullah, Government Pleader for respondents present. Preliminary arguments heard and record perused.

Counsel for the appellant stated that appellant is a civil servant and this Tribunal has got the jurisdiction to entertain the present appeal, that the appeal is within time and the appellant has got cause of action to file the instant appeal.

Counsel for the appellant also prayed for status quo by stressing that the appellant has a prima-facie case in his favour, balance of convenience also lies in his favour and if the status quo is not granted, the appellant will suffer irreparable loss. The learned Counsel for the appellant placed Reliance on 2009 SCMR 194, 2002 PLC(C.S)1388, 2009 PLC(C.S) 178, 2007 PLC(C.S) 1267, 1995 SCMR 16, 1995 SCMR 950, 1997 PLC(C.S) 512, 2010 SCMR 1886 , 2006 PLD (SC) 602.

On the other hand, the learned Government Pleader rebutted the contentions of the learned counsel for the appellant and stated that appellant is not a civil servant and according to the appointment notification, N.W.F.P Provincial Assembly Secretariat (Recruitment) Rules 1974 are applicable to the appellant, therefore this Tribunal has got no jurisdiction to entertain the present appeal; that the appeal is badly time barred and no application for condonation of delay has been submitted by the appellant; that antedated promotion does not come within the ambit of Service Tribunal; and that the appellant challenged orders dated 18-08-2007, 01-10-2009 and 25-06-2014 before the Tribunal while no departmental appeal has been filed against order dated 01-10-2009, therefore, the appeal is not maintainable under section 4 of the Khyber Pakhtunkhwa, Service Tribunal Act 1974.

The learned Government Pleader also contended that all the three ingredients for granting status quo is in favour of respondents. He relied on the judgments as reported in 2011 SCMR 1111, 2013 SCMR 911, 2005 SCMR 1742, 2009 SCMR 980.

70.  
22.09.2014

Appellant alongwith his counsel and Mr. Kabirullah Khattak, Asst: Advocate General for the respondents present. Preliminary arguments to some extent heard. Counsel for the appellant requested for adjournment to assist the Tribunal on the point of maintainability. To come up for preliminary hearing on 26.09.2014.



Member



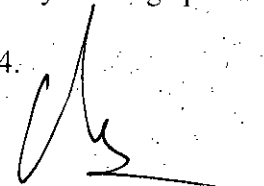
4,  
18.07.2014

Counsel for the appellant present and filed an application for early hearing. Case file requisitioned. Application allowed. Preliminary arguments partly heard. The matter required further clarification, therefore, pre-admission notice be issued to the learned GP to assist the Tribunal specially on the point of maintainability. To come up for preliminary hearing on 04.08.2014.

  
Member

5.  
04.08.2014

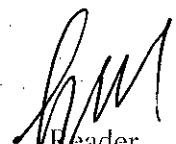
Appellant in person and Mr. Muhammad Jan, GP for the respondents present. Appellant filed an application for placing on record necessary documents, which is placed on file. He requested for adjournment. To come up for preliminary hearing specially on the point of maintainability on 07.08.2014.

  
Member

6  
Reader Note:

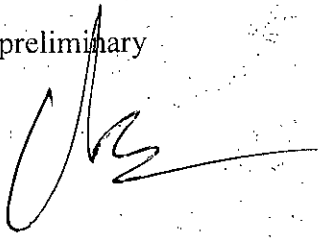
07.08.2014

Appellant with counsel present. The learned Member is on leave, therefore case to come up for preliminary hearing on 11.08.2014.

  
Reader

7.  
11.08.2014

Appellant alongwith his counsel and Muhammad Jan, GP for the respondents present. Counsel for the appellant requested for adjournment. Request accepted. To come up for preliminary hearing on 27.08.2014.

  
Member

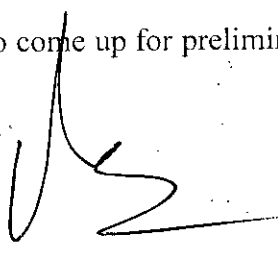
8.  
27.08.2014

Appellant alongwith counsel and Mr. Kabeerullah, Asstt. A.G present. Preliminary arguments partly heard. The learned Asstt. A.G requested for time to assist the court as to whether this Tribunal has got the jurisdiction or otherwise. To come up for further preliminary hearing on 01.09.2014.

  
MEMBER

9.  
01.09.2014

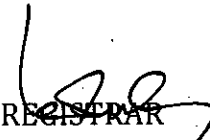

Appellant in person and Mr. Ziaullah, GP for the respondents present. Appellant requested for adjournment due to General Strike of the Bar. To come up for preliminary hearing on 22.09.2014.

  
Member

Form-A  
FORM OF ORDER SHEET

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

Case No. 952/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	14/07/2014	<p>The appeal of Mr. Ghulam Sarwar presented today by Mr. Ijaz Anwar Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	18-7-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>12-8-2014</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>



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

Appeal No. 952 /2014

Ghulam Sarwar..... (Appellant)

VERSUS

Speaker Provincial Assembly and others.....(Respondents)

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6	Copy of working paper	E	14
7	Copy of promotion order	F	15
8	Copy of appeal	G	16-19
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16	Copy of the judgment and order dated 19.12.2013	R	51-56
17	Copy of the rejection order	S	57-60
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Through

  
Appellant

**IJAZ ANWAR**  
Advocate Peshawar

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

Appeal No. 952 /2014

Ghulam Sarwar..... (Appellant)

VERSUS

Speaker Provincial Assembly and others.....(Respondents)

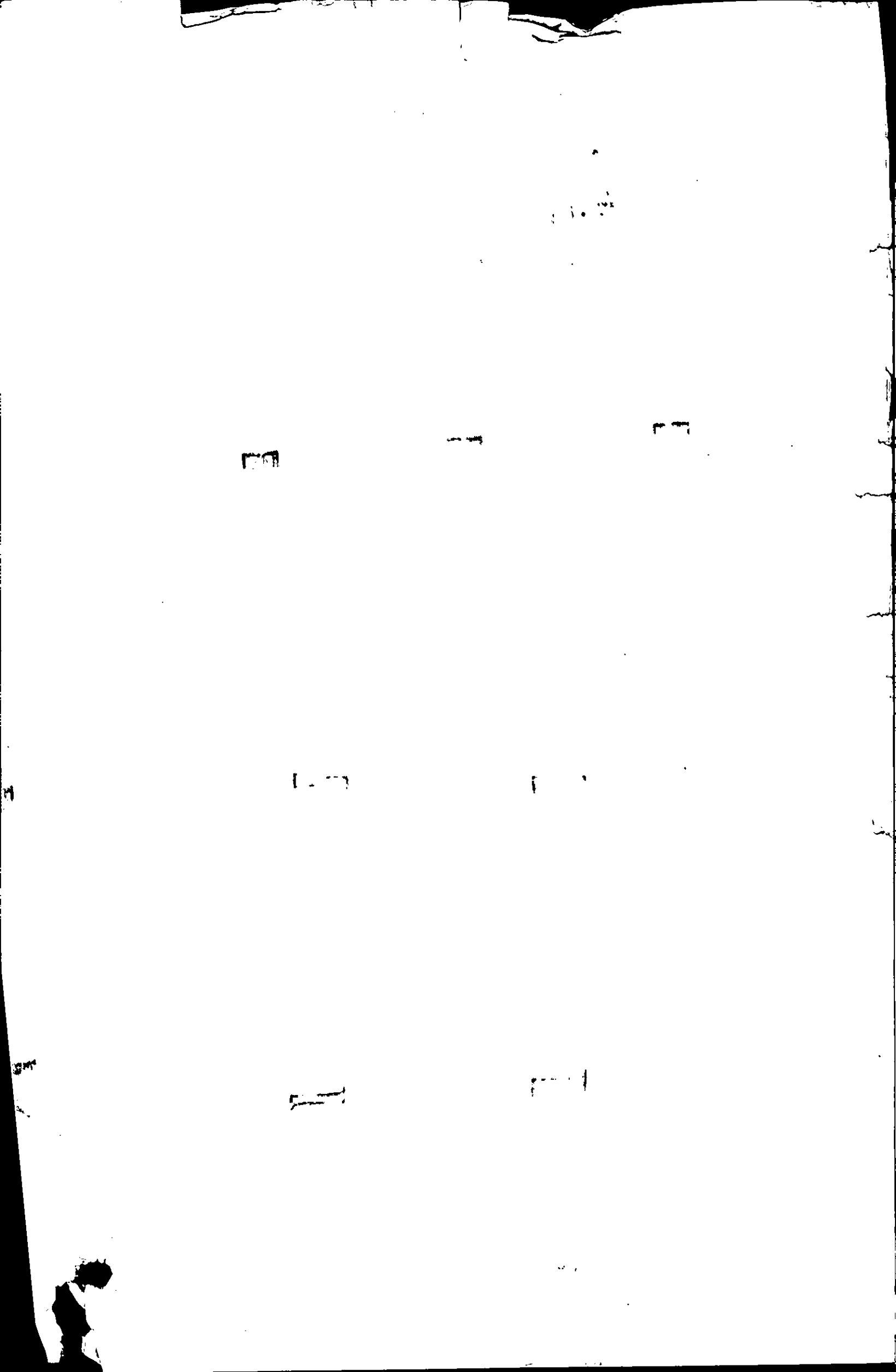
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Through

*Appellant*

**IJAZ ANWAR**  
Advocate Peshawar



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

Appeal No. 952 /2014

990  
14-7-2014

Ghulam Sarwar, presently working as Additional Secretary,  
Provincial Assembly Secretariat, Khyber Pakhtunkhwa Peshawar.

(Appellant)

VERSUS

- ( 1. Speaker Provincial Assembly of Khyber Pakhtunkhwa Peshawar. )  
( 2. Secretary Provincial Assembly Secretariat Khyber Pakhtunkhwa Peshawar.  
3. Mr. Nasrullah Khan, Additional Secretary, Provincial Assembly Khyber Pakhtunkhwa, Peshawar.

(Respondents)

**Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the Notification dated 18.8.2007 whereby the respondent No. 3 was promoted as Additional Secretary in supersession of the rights of the appellant, similarly against the order dated 1.10.2009 whereby the appellant was allowed promotion as Additional Secretary but with immediate effect, against which his review petition was rejected vide order dated 25.6.2014 conveyed to the appellant vide letter dated 30.6.2014.**

Prayer in Appeal: -

**On acceptance of this appeal the order dated 25.6.2014 may please be set-aside, the promotion order of the appellant be ante-dated w.e.f 18.8.2007 when respondent No. 3 was promoted as Additional Secretary BPS-19 and the appellant may please be allowed seniority as well as all consequential benefits.**

Respectfully Submitted:

1. That appellant holding Master degree in Public Administration was appointed as Assistant Secretary-I BPS-17 in the Secretariat of Provincial Assembly on 11.3.1993 through proper selection and he reported his arrival on the same day. An another vacancy of the Assistant Secretary namely Assistant Secretary-II, respondent Nasrullah Khan was appointed on the same day on 11.3.1993 and

he reported his arrival on 13.3.1993. (Copy of appointment order and seniority list are attached as annexure A & B).

2. That appellant was granted selection grade in BPS-18 on 27.7.1998 while respondent Nasrullah Khan was granted selection grade in BPS-18 on 27.2.2003. (Copy of the order in favor of appellant is attached as annexure C).
3. That appellant was promoted to the post of deputy Secretary-I on 27.2.2003 and on the other vacancy of Deputy Secretary-II respondent Nasrullah Khan was promoted on 27.2.2003. (Copy of the promotion order is attached as annexure D).
4. That on the vacancy of Additional Secretary in Grade-19 working paper was prepared by respondent Nasrullah Khan, because he was holding the office of Deputy Secretary Admn and in the working paper he intentionally omitted the condition that name of candidate who had ever been given adverse entry in the ACR was not to be included still he included his own name at S.No. 2 suppressing adverse entry in ACR of 1997 and in para-5 of the working paper, of which he is author he recommended himself for consideration of the Departmental Promotion/ Recruitment committee, though in the working paper name of appellant was at S.No. 1. (Copy of working paper is attached as annexure E).
5. That departmental promotion/recruitment committee was influenced by working paper and appellant was superseded and respondent Nasrullah Khan was promoted as Additional Secretary on 18.8.2007. (Copy of promotion order is attached as annexure F).
6. That appellant submitted appeal to the Speaker Provincial Assembly on 01.9.2007 which was rejected on 26.9.2007. (Copy of appeal is attached as annexure G).
7. That appellant invoked the jurisdiction of Peshawar High Court Peshawar in writ petition No. 1955/2007. The Division Bench of Peshawar High Court Peshawar vide orders dated 7.8.2008 partially accepted the petition and restored the appeal of appellant before the Speaker and directed the Speaker to decide the appeal of appellant afresh. (Copy of the petition and orders dated 7.8.2008 are attached as annexure H & I).
8. That Mr. Khushdil Khan, the then Deputy Speaker of the Khyber Pakhtunkhwa Provincial Assembly while performing functions of Speaker in the absence of the Speaker accepted the review/appeal on 29.9.2008 and in consequence thereof Mr. Nasrullah Khan was reverted from the post of Additional Secretary to that of Deputy Secretary on 30.9.2008. (Copy of the order dated 30.9.2008 is attached as annexure J).

9. That Mr. Nasrullah Khan filed writ petition NO. 1795/2008 before the Peshawar High Court Peshawar against the aforesaid decision. The matter came before the High Court on 17.12.2008 and since Mr. Khushdil Khan, Deputy Speaker had remained counsel of appellant, therefore, the High Court vide orders dated 17.12.2008 set aside the order of Deputy Speaker and remanded the matter back to the Speaker for decision afresh. (Copy of the order dated 17.12.2008 is attached as annexure K).
10. That respondent Nasrullah Khan had also filed CM No. 1343/2008 in writ petition No. 1955/2007 which was disposed by the High Court on 11.2.2009 repeating its order referred in the aforesaid paragraph. (Copy of the CM and order dated 11.2.2009 are attached as annexure L & M).
11. That the then Speaker Provincial Assembly on 28.3.2009 rejected the appeal/review of appellant and directed withdrawal of the demotion order of Nasrullah Khan, consequence thereon his promotion as Additional Secretary was restored. (Copy of order dated 28.3.2009 is attached as annexure N).
12. That the appellant thereafter filed writ petition No. 744/2009 questioning the illegal promotion of respondent No. 3, however vide notification dated 01.10.2009 the appellant was promoted as Additional Secretary BPS-19 with immediate effect. (Copy of writ petition and notification dated 01.10.2009 are attached as annexure O & P).
13. That the appellant in view of his promotion as Additional Secretary BPS-19 with immediate effect appraise the court and thus submitted an application for the withdrawal of the writ petition with permission to file afresh to claim antedation of his promotion and seniority accordingly vide judgment and order dated 16.2.2010 the necessary permission was so granted and the petition was dismissed as withdrawn. (Copy of orders dated 16.2.2010 is attached as annexure Q).
14. That the appellant filed amended writ petition in the Honourable Peshawar High Court, which came up for hearing on 19.12.2013, and the Division bench of the Peshawar High Court, accepted the writ petition and directed the Speaker to decide the appeal of the appellant with proper reasoning in accordance with law. (Copy of the judgment and order dated 19.12.2013 is attached as Annexure R).
15. That reluctantly vide forwarding letter dated 30.6.2014 the decision of the Speaker rejecting the representation of the appellant was conveyed to the appellant. (Copy of the rejection order is attached as annexure S)

16. That the appellant prays for acceptance of his appeal inter alia on the following grounds: -

**GROUND OF APPEAL:**

- A. That the appellant has not been treated in accordance with law. The respondents have not followed the Law and Rules governing promotion, thus the secured and guaranteed rights of the appellant have been violated.
- B. That the working paper which was considered by the Departmental Promotion/Recruitment Committee No. 1 of the Provincial Assembly for filing the vacancy of Additional Secretary BPS-19 was prepared by respondent Nasrullah Khan who was holding the office of Deputy Secretary (Admn) and in said working paper by demonstrating dishonesty while reproducing pre-requisites he had not mentioned that said Nasrullah Khan was late in getting selection grade for 05 years for the reason that his unsatisfactory performance and his efficiency was below the required standard. Said pre-requisites were circulated by the Establishment & Administration Department (Regulation Wing), Govt of Khyber Pakhtunkhwa on 20.9.2004.
- C. That respondent Nasrullah Khan had also not mentioned in the working paper that he was given adverse entries in the ACR in the year 1997, Honest demanded that adverse entries of the year 1997 should have been mentioned with the note that the same were expunged on his representation subsequently.
- D. That officer who prepared the working paper (Respondent Nasrullah Khan) in para-5 of the working paper has recommended himself for promotion referring to his experience in legislation and administration, suppressing better qualification and experience of appellant who was at S.No. 1 in the working paper. It may be mentioned that appellant holds Master Degree in Public Administration and the vacancy being that of Additional Secretary, relate to administration + legislating. The experience of appellant both in legislation and administration was much higher than respondent Nasrullah Khan. No word has been said about the experience of appellant in the working paper.
- E. That appellant was senior to respondent Nasrullah Khan in the Seniority list and he could be by passed/superseded only if he was found unfit for promotion. No such finding has been recorded by the departmental Promotion/Recruitment Committee. Fair play and justice demands that if the officer at S.No. 1 of the seniority list is otherwise eligible for promotion, qualifications/experience wise and has clean record of service

then it was his right to be promoted but if for any reason the Departmental Promotion/Recruitment Committee intended to supersede him such super session is an order in excess of lawful authority and jurisdiction. The Departmental Promotion/Recruitment Committee infact has to perform functions of a judge where he has to administer justice in the manner that it should not only be done but it should be shown to have been administered. The decision/recommendations of Departmental promotion/Recruitment Committee recommending promotion of Mr. Nasrullah Khan by superseding appellant are therefore, based on no valid ground and are illegal, improper and unjust.

- F. That the notification No. PA/NWFP/Admn/2007/17249 dated 18.8.2007 where under respondent Nasrulalh Khan was promoted to the post of Additional Secretary BPS-19 is an invalid order as the same is based on invalid, improper and unjust recommendation of the Departmental promotion/Recruitment Committee.
- G. That it is unfortunate that grounds mentioned in the review petition of appellant against the aforesaid order have gone un-rebutted and the honorable Speaker inspite of the fact that matter was twice referred to him by the High Court has not considered any of the ground of review petition and has not disclosed any reason/justification for rejection of the same. The Division Bench of High Court while setting aside the order dated 26.9.2007 referred above review petition/representation on merits and the High Court further directed that application be decided through proper speaking order. Infact after the aforesaid remand by the High Court the deputy Speaker Provincial Assembly while acting as Speaker of the Assembly on 29.9.2008 passed a speaking order based on merits. Said order though could not be passed by Deputy Speaker order on the ground that he had once been counsel for the appellant but the reasons advanced by him in his order have gone unattended. Fresh order had to wash away his order by discussing the wisdom and prudence of the arguments advanced by him in support of his orders and accordingly notification dated 30.9.2008 was issued by the assembly Secretariat NWFP in favor of appellant.
- H. That the aforesaid order of the Deputy Speaker was challenged before the High Court in writ petition No. 1795/2008 and the D.B of Peshawar High Court on 17.12.2008 ordered setting aside the order of Deputy Speaker on the ground of his personal disqualification to hear the representation and the matter was sent back to the speaker for passing such order as were directed by the High Court in its earlier order but the Honorable Speaker has ignored the directions of the High Court and has neither



advanced any reason in favor of respondent Nasrullah Khan nor here is any reason justifying super session of appellant. Notification NO. PA/ NWFP/ Admn/ 2009 /11788, dated 28.3.2009 restoring the impugned notification dated 18.8.2007 is therefore, in excess of lawful authority and jurisdiction and was in conflict with the orders of the High Court.

- I. That where the departmental Promotion Committee has found the appellant eligible for promotion to the post of Additional Secretary BPS-19 he should have been allowed antedation of his promotion w.e.f the date when he was illegally denied promotion and a junior officer was promoted in supersession of the appellant.
- J. That the appellant was senior respondent No. 3 in all respect, the promotion of the respondent No. 3 for extraneous consideration is not sustainable in law, the appellant was having prior right for his consideration to the post of additional secretary BPS-19.
- K. That the appellant is fit and eligible for promotion to BPS-19 on acting charge basis with effect from the date when his juniors officer were allowed promotion, however, he was not dealt in accordance with law.
- L. That the appellant seeks the permission of this Honorable Court to rely on additional grounds at the hearing of this Petition.

*It is, therefore, humbly prayed that on acceptance of this appeal the order dated 25.6.2014 may please be set-aside, the promotion order of the appellant be ante-dated w.e.f 18.8.2007 when respondent No. 3 was promoted as Additional Secretary BPS-19 and the appellant may please be allowed seniority as well as all consequential benefits.*

Through

*Appellant*

**IJAZ ANWAR**  
Advocate Peshawar

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

Appeal No. \_\_\_\_\_/2014

Ghulam Sarwar, presently working as Additional Secretary,  
 Provincial Assembly Secretariat, Khyber Pakhtunkhwa Peshawar.  
(Appellant)

VERSUS

Speaker Provincial Assembly of Khyber Pakhtunkhwa Peshawar and  
 others.....(Respondents)


**Application under Order 39 Rule 1& 2 of the CPC for  
 restraining the respondents from making further  
 promotion of the respondent No. 3 & not to fill the  
 post carrying BPS-19 from outsiders till the decision  
 of the above noted Appeal**

Respectfully Submitted:

1. That the above noted appeal is pending adjudication in this Honourable Tribunal in which no date of hearing is fixed so far.
2. That the appellant has challenged the non grant of seniority to him and the promotion of the respondent No. 3 besides claimed ante-dation in promotion in the noted appeal, the facts and grounds mentioned in the appeal be read as integral part of this application.
3. That the applicant has got a good prima facie case and there is likelihood of it success.
4. That the applicant would be exposed to great hard ship and inconvenience in case further promotion of the respondent No. 3 is made or higher posts are filled through deputation etc.
5. That since the matter is pending in this honourable Service Tribunal, therefore, it would also serve the interest of justice if the respondents are restrained from filling the posts till the decision of the appeal.

It is, therefore, humbly prayed that on acceptance of this application the interim relief as prayed for may please be allowed as prayed for till the decision of the above noted Appeal.

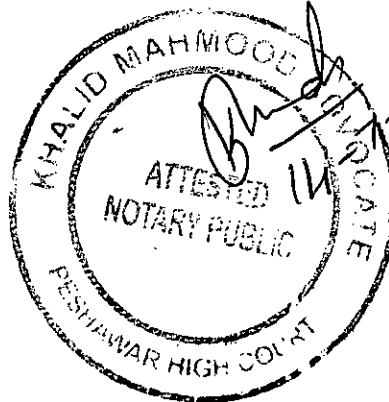
  
Applicant


Through 

**IJAZ ANWAR**  
Advocate Peshawar

*AFFIDAVIT*

**I, Ghulam Sarwar, presently working as Additional Secretary, Provincial Assembly Secretariat, Khyber Pakhtunkhwa Peshawar, do hereby solemnly affirm and declare on oath that the contents of the above noted appeal are true and correct and that nothing has been kept back or concealed from this Honourable Tribunal.**



  
Deponent

Amended - A. 9

PROVINCIAL ASSEMBLY OF N.W.F.P.

NOTIFICATION

Dated Peshawar, the 11 / 3 / 1993.

NO.PA/NWFP/Admn:/93/6202 - On the recommendation of the Departmental Selection Committee and in exercise of the powers conferred on him by Rule 10 of the North West Frontier Province Provincial Assembly Secretariat (Recruitment) Rules, 1974, Mr. Speaker has been pleased to appoint the following candidates against the newly created posts of Assistant Secretaries in BPS-17 on purely temporary basis with immediate effect :-

<u>S.NO.</u>	<u>NAME</u>	<u>ADDRESS</u>
1.	Mr. Ghulam Sarwar S/O Haji Amir Afzal.	Village Bhari Loban Bandi, Tehsil and District Haripur.
2.	Mr. Nasrullah Khan S/O Sakhi Badshah.	Village and P.O. Mandawah, Tehsil and District Karak.

- 1- Their employment in this Secretariat is purely temporary and their services are liable to be terminated without assigning any reason at 14 days notice or on payment of 14 days salary in lieu of the notice period.
- 2- In case they wish to resign they will be required to give 14 days notice or deposit 14 days salary in lieu thereof.
- 3- They will be governed by such rules and orders relating to leave, travelling allowance, medical attendance, pay etc., as may be issued by the Government for the category of Government Servants to which they will belong.
- 4- They will be governed by the N.W.F.P. Provincial Assembly Secretariat (Recruitment) Rules, 1974 and such other orders issued from time to time as are made applicable to the staff of this Secretariat.
- 5- They will produce medical fitness certificate from the Standing Medical Board, they will also produce original certificates in connection with qualification besides domicile, character, and antecedents, health and age certificates as required under the rules.
- 6- They will join duty at his own expense.

BY ORDER OF MR. SPEAKER.

*Attest*  
*G*

*M. M. Mushtaq*  
(MUHAMMAD MUSHTAQ)  
Deputy Secretary,  
Provincial Assembly of N.W.F.P.

.P/2...

*PT2*  
Better Copy.

PROVINCIAL ASSEMBLY OF NWFP.

NOTIFICATION

Dated Peshawar the 11.3.1993

No.PA/NWFP/Admn:/93/6202. On the recommendation of the Departmental Selection Committee and in exercise of the powers conferred on him by Rules 10 of the North West Frontier Province Provincial Assembly Secretariat (Recruitment) Rules, 1974, Mr. Speaker has been pleased to appoint the following candidates against the newly created posts of Assistant Secretaries in BPS-17 on purely temporary basis with immediate effect:

S.No	Name	Address
1	Mr. Ghulam Sarwar S/o Haji Amir Afzal	Village Bhari Laban Bandi, Tehsil and District, Haripur
2	Mr. Nasrullah Khan S/o Sakhi Badshah	Village and P.O Mandawah, Tehsil and District, Karak

1. Their employment in this Secretariat is purely temporary and their services are liable to be terminated without assigning any reason at 14 days notice or on payment of 14 days in lieu of the notice period.
2. In case they wishes to resign they will be required to give 14 days notice or deposit 14 days salary in lieu thereof.
3. They will be governed by such rules and orders relating to leave, travelling allowance, medical attendance, pay etc, as may be issued by the Government for the category of Government Servants to which they will belong.
4. They will be governed by the NWFP, Provincial Assembly Secretariat (Recruitment) Rules, 1974 and such other orders issued from time to time as are made applicable to the staff of this Secretariat.
5. They will produce medical fitness certificate from the Standing Medical Board, they will also produce original certificate in connection with qualification besides domicile, character, and attendances, health and age certificate as required under the rules.
6. They will join duty as his own expense.

By order of Mr. Speaker

(Muhammad Mushtaq)  
Deputy Secretary,  
Provincial Assembly of NWFP,

**ATTESTED**

*[Signature]*  
Qazi Muhammad Anwar  
Advocate

**ATTESTED**

*[Signature]*  
Qazi Muhammad Anwar (SI)  
Senior Advocate  
Supreme Court of Pakistan.

10

A/B

PROVINCIAL ASSEMBLY OF N.W.F.P.

NOTIFICATION.

Dated Peshawar, the 4/3/1997.

No. PA/NWFP/Admn:/97/4219 The competent authority has been pleased to place the Assistant Secretaries of the Provincial Assembly Secretariat of NWFP, against the posts noted against their names and allot them their numbers in order of seniority to facilitate smooth running of office routine work, as under:-

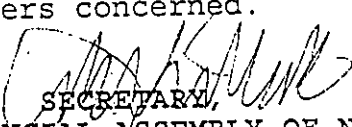
S.No.	NAME OF THE INCUMBENT	POST SPECIFIED IN SCHEDULE I AND II APPENDANT TO THE RULES	NUMBER
1.	Mr. Ghulam Sarwar.	Permanent.	Asstt: Secretary-I
2.	Mr. Nasrullah Khan.	Permanent.	Asstt: Secretary-II
3.	Mr. Zahoor Ahmad.	Temporary.	Asstt: Secretary-III
4.	Mr. Amjad Ali.	Temporary.	Asstt: Secretary-IV
5.	Mr. Dost Muhammad.	Temporary.	Asstt: Secretary-V
6.	Mr. Masam Khan.	Temporary.	Asstt: Secretary-VI
7.	Mr. Inamullah Khan.	Temporary.	Asstt: Secretary-VII
8.	Mr. Ghufranullah.	Temporary.	Asstt: Secretary-VIII
9.	Syed Muhammad Mahir	Temporary.	Asstt: Secretary-IX
10.	Mr. Mumtaz Ahmad.	Temporary.	Asstt: Secretary-X
11.	Mr. Mirza Khan.	Temporary.	Asstt: Secretary-XI


  
SECRETARY,  
PROVINCIAL ASSEMBLY OF NWFP.


E.No. PA/NWFP/ Admn:/97/42203 Dated 4/3/1997.

Copy to:-

1. Accountant General, NWFP, Peshawar.
2. The Manager Government Printing Press Peshawar.
3. The Officers Concerned.
4. Personal files of the officers concerned.

  
SECRETARY,  
PROVINCIAL ASSEMBLY OF NWFP.

ATTESTED  
  
Qazi Muhammad Anwar (SI)  
Senior Advocate  
Supreme Court of Pakistan.

  
2

ANNEX C  
11  
B

PROVINCIAL ASSEMBLY OF N.W.F.P.

NOTIFICATION

Dated Peshawar, the 27/7/1998.

No.PA/NWFP/Admn:/98/ 18526 On the recommendation of the Department Promotion/Recruitment Committee No-I and in exercise of the powers conferred on him by Rule-10 read with Rule-6 of the North West Frontier Province Provincial Assembly Secretariat (Recruitment) Rules, 1974, Mr.Speaker is pleased to award selection grade BPS-18 to the following Assistant Secretaries, Provincial Assembly Secretariat of NWFP, with immediate effect :-

- 1- Mr.Ghulam Sarwar,  
Assistant Secretary BPS-17
- 2- Mr.Zahoor Ahmad,  
Assistant Secretary BPS-17.

BY ORDER OF MR.SPEAKER.

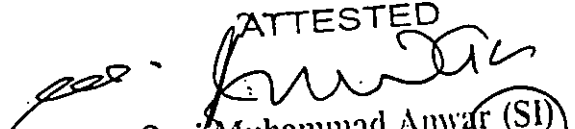
SECRETARY,  
PROVINCIAL ASSEMBLY OF N.W.F.P.


E.No.PA/NWFP/Admn:/98/ 18527-33 Dated 27/7/1998.

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

- 1- The Accountant-General, NWFP, Peshawar.
- 2- The Officers Concerned.
- 3- The Manager, Government Printing Press, Peshawar.
- 4- The Assistant Secretary (Accounts),  
Provincial Assembly of NWFP.
- 5- Pay Bill Clerk, Provincial Assembly of NWFP.
- 6- Personal files of the officers concerned.

ATTESTED

  
Qazi Muhammad Anwar (SI)  
Senior Advocate  
Supreme Court of Pakistan.

  
ASSISTANT SECRETARY,  
PROVINCIAL ASSEMBLY OF N.W.F.P.



ANNEX D

(12)

B/1

PROVINCIAL ASSEMBLY OF N.W.F.P.

NOTIFICATION

Dated Peshawar, the 27/2/2003

No. PA/NWFP/Admn: / 6046 On the recommendation of the Departmental Promotion/Recruitment Committee No-I, and in exercise of the powers conferred on him by Rule-10 read with Rule-6 of the North West Frontier Province Provincial Assembly Secretariat (Recruitment) Rules, 1974, Mr. Speaker is pleased to award selection grade BPS-18 to the following Assistant Secretaries of the Provincial Assembly Secretariat of NWFP, from the dates as noted against each:-

1. Mr. Nasrullah Khan,  
Assistant Secretary BPS-17. 27-07-1998.
2. Mr. Amjad Ali,  
Assistant Secretary BPS-17. 08-03-1999.

BY ORDER OF MR. SPEAKER.

(NAZIR AHMAD)  
SECRETARY,  
PROVINCIAL ASSEMBLY OF NWFP

E.No. PA/NWFP/Admn: / 6047-53 Dated 27/2/2003.

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

1. The Accountant-General, NWFP, Peshawar.
2. The Manager, Government Printing Press, Peshawar.
3. The Officers concerned.
4. Pay Bill Clerk, Provincial Assembly of NWFP.
- 5- Personal files of the officers/official concerned.

ASSISTANT SECRETARY (A)  
PROVINCIAL ASSEMBLY OF NWFP.

ATTESTED

*Qazi Muhammad Anwar (SI)*  
Senior Advocate  
Supreme Court of Pakistan.

*Attest*



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~~APR 2~~ ①

PROVINCIAL ASSEMBLY OF NWFP

NOTIFICATION

Dated Peshawar, the 27/2/2003.

No. PA/NWFP/Admn:/2003/5847 On the recommendation of Departmental Promotion/Recruitment Committee and in exercise of the powers conferred on him by Rule 10 read with Rule 6 of the North West Frontier Province Provincial Assembly Secretariat (Recruitment) Rules, 1974, Mr. Speaker has been pleased to promote the following Assistant Secretaries to the posts of Deputy Secretaries (BPS-18), with immediate effect:-

- 1✓ Mr. Ghulam Sarwar
2. Mr. Nasrullah Khan

BY ORDER OF MR. SPEAKER

  
(NAZIR AHMAD)  
Secretary,

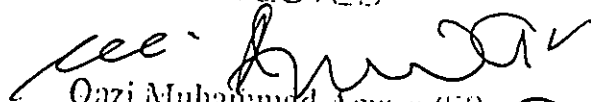
Provincial Assembly of NWFP

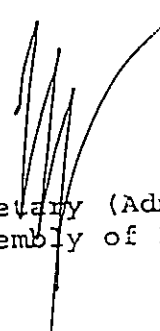
No. PA/NWFP/Admn:/2003/5848 - 9/2 Dated 27/2/2003.

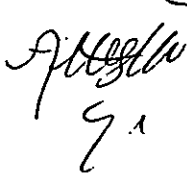
Copy of the above is forwarded for information and necessary action to:-

1. All the Administrative Secretaries to Govt: of NWFP.
2. All Heads of Attached Departments in NWFP.
3. The Accountant General, NWFP, Peshawar.
- 4✓ The officers concerned.
5. The Manager, Government Printing Press, Peshawar, for publication in the next issue of Government Gazette.
6. The Assistant Secretaries (Admn)/(Accounts), Provincial Assembly of NWFP.
7. Personal files of the officers concerned.

ATTESTED

  
Qazi Muhammad Anwar (SI)  
Senior Advocate  
Supreme Court of Pakistan

  
Assistant Secretary (Admn),  
Provincial Assembly of NWFP

  
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Approved = E

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WORKING PAPER FOR MEETING OF THE DEPARTMENTAL PROMOTION/RECRUITMENT COMMITTEE NO.1 OF THE PROVINCIAL ASSEMBLY OF N.W.F.P.

ITEM NO.1

PROMOTION TO THE POST OF ADDITIONAL SECRETARY (BPS-19)

In the Finance Committee meeting held on 28<sup>th</sup> July 2007, one post of Additional Secretary (BPS-19) has been created for smooth running of the Assembly Business. The post of Additional Secretary (BPS-19) is required to be filled in by way of promotion from amongst the holders of the posts of existing Deputy Secretaries (BPS-18) on the basis of merit and fulfillment of all other codal formalities i.e. 12 years length of service in BPS-17 and above as prescribed for promotion to BPS-19.

2- As per promotion policy of the Government of N.W.F.P, circulated vide Establishment and Administration Department (Regulation Wing) SOR-IV (E&AD) 1-16/2004 dated 20-09-2004 (Flag "A") promotion may be made only on the merit keeping in view the following pre-requisites: -

- 1- Higher educational qualification, professional capabilities & experience in the relevant field.
- 2- Annual confidential reports.
- 3- Administrative experience & capability in case of Administration related posts.
- 4- General reputation.
- 5- Seniority.
- 6- Honesty.
- 7- Capability & suitability of shouldering higher responsibilities.

ATTESTED

Muhammad Anwar (S)  
Senior Advocate  
Supreme Court of Pakistan.

3- In the aforesaid Finance Committee Meeting it was decided that "the post may be filled in accordance with the provisions of the NWFP Provincial Assembly Secretariat (Recruitment) Rules, 1974. Preference may, however, be given to the officers of the NWFP Assembly Secretariat having experience in Legislation and Administration".

4- The following Deputy Secretaries working in this Secretariat are shown in order of their seniority: -

S. No	Name	Qualification	Date of entry into service	Date of promotion to the present post
1.	Mr. Ghulam Sarwar	M.P.A.	11/3/1993	28/2/2003
2.	Mr. Nasrullah Khan Khattak	M.A.IR	13/3/1993	28/2/2003
3.	Mr. Zahoor Ahmad	B.A	4/9/1973	25/8/1993

5- Keeping in view the merit policy of the Government, the decision of the Finance Committee referred to above and the ACRs dossiers of the officers, the Deputy Secretary at S.No.2, has experience both in Legislation and Administration side and fulfils the criteria for promotion against the above post.

6- Their ACR dossiers are placed before the committee for perusal please.

Approval of the committee is therefore solicited.

Handwritten notes: D.S. (Adm) NWFP

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PROVINCIAL ASSEMBLY OF N.W.F.P.

NOTIFICATION

Dated Peshawar, the 18/08/2007.

No.PA/N.W.F.P/Admn:/2007 17249 On recommendation of the Departmental Promotion / Recruitment Committee No.1 and in exercise of the powers conferred on him by rule 10 read with rule 6 of the North West Frontier Province, Provincial Assembly Secretariat (Recruitment) Rules, 1974, Mr. Speaker has been pleased to promote the following officers of the Provincial Assembly Secretariat of N.W.F.P, against the posts as mentioned against each, with immediate effect:-

S. No	Name with Designation & BPS No.	Post against which promoted
1.	Mr. Nasrullah Khan, Deputy Secretary (BPS-18).	Additional Secretary (BPS-19).
2.	Mr. Masam Khan, Deputy Director (Finance & Accounts) BPS-18.	Director (Finance & Accounts) BPS-19.
3.	Mr. Abdur Rehman, Librarian (BPS-18).	Director (Library & Research) BPS-19.
4.	Mr. Ghufanullah, Assistant Secretary (BPS-17).	Deputy Secretary (BPS-18)
5.	Mr. Arsala Khan, Assistant Director (Finance & Accounts) BPS-17.	Deputy Director (Finance & Accounts) BPS-18.
6.	Mr. Tilawat Khan, Assistant Librarian (BPS-17)	Librarian (BPS-18).
7.	Mr. Khalid Shaheen, Superintendent (BPS-16)	Assistant Secretary (BPS-17).

BY ORDER OF MR. SPEAKER

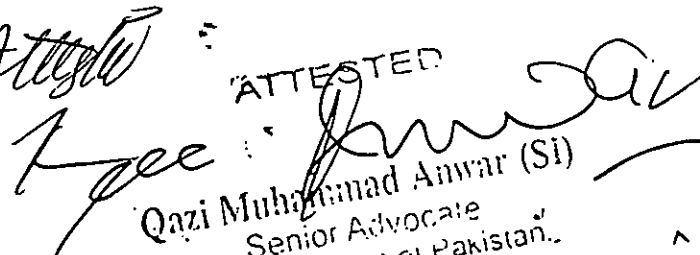
  
(MUHAMMAD MUSHTAQ)  
SECRETARY

PROVINCIAL ASSEMBLY OF NWFP.

E. No. PA/NWFP/Admn:/2007/ 17250-89 Dated 18/08/2007.

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

1. All the Administrative Secretaries to Govt: of N.W.F.P.
2. The Accountant General, N.W.F.P, Peshawar.
3. All the officers concerned.
4. The Manager, Government Printing Press. Peshawar, for publication in the next issue of Government Gazette.
5. The Superintendent (Budget & Accounts), Provincial Assembly of N.W.F.P.
6. Personal files of the officers concerned.

Attested  
  
Qazi Muhammad Anwar (SI)  
Senior Advocate  
Supreme Court of Pakistan.

  
ASSISTANT SECRETARY(Admn),  
PROVINCIAL ASSEMBLY OF N.W.F.P.

(16)

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Approved in G  
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The Worthy Speaker,  
Provincial Assembly of NWFP.

Provincial Assembly of NWFP

Diary No. 1793

Date 4/9/2007

THROUGH PROPER CHANNEL

Earnest application for review/ reconsideration of Notification No.PA/NWFP/Admn/2007/17249 dated 18.08.2007 whereby the undersigned was not promoted from Deputy Secretary-I (BPS-18) to Additional Secretary (BPS-19) despite being more senior and more fit/ qualified from Deputy Secretary-II (BPS-18) now promoted as Additional Secretary (BPS-19).

**Respected Sir,**

The following humble submissions are submitted for your kind and favourable consideration, please.

**Brief facts:**

1. The applicant alongwith Mr. Nasrullah Khan were appointed as Assistant Secretary (BPS-17) in the Provincial Assembly of NWFP on 11.3.1993. According to Notification bearing No.PA/NWFP/ Admn/97/4219 dated 4.3.1997, the applicant was declared the most senior Assistant Secretary and was allotted number of Assistant Secretary-I on the basis of seniority. Mr. Nasrullah Khan was at serial No.2 as Assistant Secretary-II. As such the applicant is senior to Mr. Nasrullah Khan.
2. That the applicant is a post graduate holding a degree in Master of Public Administration whereas Mr. Nasrullah Khan holds a degree of M.A (International Relations).
3. Due to his endless efforts, zeal and fervor with an impeccable reputation, the applicant was granted selection grade in BPS-

Alleged  
to

18 on 27.7.1998 whereas Mr. Nasrullah Khan was deprived of selection grade due to certain adverse A.C.R "for shifting his responsibilities upon others". He, however, was granted the selection grade by your good-self on 27.2.2003 and thereafter attained BPS-18 on 28.2.2003.

- 4. That uptill now the applicant has served in BPS-18 for nine long years whereas Mr. Nasrullah Khan has served in BPS-18 not more than 4½ years.
- 5. That vide Notification No.PA/NWFP/Admn/2007/7512 dated 18.4.2007 the applicant was held and declared as the most senior Deputy Secretary was allotted number as Deputy Secretary-I on the basis of seniority, however, Mr. Nasruallah Khan was allotted number as Deputy Secretary-II.
- 6. That vide notification No.PA/NWFP/Admn/2007 dated 2.8.2007 a temporary post of Additional Secretary (BPS-19) among other post was created which was to be filled by way of promotion from amongst the holders of the posts of existing Deputy Secretaries (BPS-18). The applicant besides being the senior most, had the right and legitimate expectation to be promoted, however the applicant has been surprised indeed dismayed to learn that Mr. Nasruallah Khan Deputy Secretary-II has been promoted as Additional Secretary instead of the applicant vide Notification No.PA/NWFP/Admn/17249 dated 18.8.2007. Unfortunately the candidature of applicant though considered but was not approved for promotion for unknown reason.
- 7. That being Deputy Secretary (Admn), the working paper prepared by the promoted officer is biased and tilted in his favour without taking into account the principles of justice and fair play with his other colleagues.

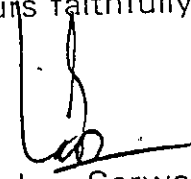
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- 8. That the working paper has not highlighted the relevant higher qualification as envisaged in the promotion policy of the S&GAD referred in the said working paper, for example I hold the qualification of Master in Public Administration which is quite relevant and professional qualification related to the post of Additional Secretary Administration as compared to the Master degree in International Relations possessed by the promoted officer Mr. Nasrullah Khan.
- 9. That the applicant holds an unblemished service record having no adverse entry/ACR against him. Moreso, admittedly applicant Deputy Secretary-I is senior in service from Deputy Secretary-II (now promoted).

In light of the submission tendered above, it is humbly prayed that your Honour may review/ reconsider the Notification No.PA/NWFP/Admn/17249 dated 18.8.2007 as I believe and am quite hopeful that your good-self being the custodian of law in the province will personally look into the matter and would graciously extend justice in my case as well And promote the undersigned being more senior and fit/ qualified, deserving besides.

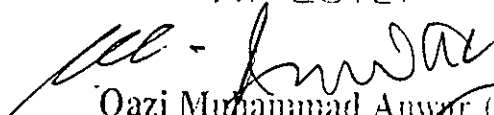
1st Sep: 2007

Yours faithfully,



Ghulam Sarwar,  
Deputy Secretary-I,  
Provincial Assembly  
of NWFP, Peshawar.

ATTESTED

  
Qazi Muhammad Anwar (SI)  
Senior Advocate  
Supreme Court of Pakistan.

01/9/07

Attest  
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(18)

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PROVINCIAL ASSEMBLY OF N.W.F.P

No.PA/NWFP/Admn:/2007/ 19871

Dated Peshawar, the 26 /09/2007

To

Mr. Ghulam Sarwar,  
Deputy Secretary,  
Provincial Assembly of NWFP.

Subject: Review Petition against Promotion Order dated 18/08/2007

Dear Sir,

I am directed to refer to your Review Petition dated 1/09/2007 and to say that the competent authority has considered the review petition and rejected.

Yours faithfully,

(MIAN ALTAF-UR-REHMAN)  
ASSISTANT SECRETARY,  
PROVINCIAL ASSEMBLY OF NWFP

E.NO.PA/NWFP/Admn:/ 19872


Dated 26/09/2007

Copy to:

- 1. File of Officer Concerned

ASSISTANT SECRETARY,  
PROVINCIAL ASSEMBLY OF NWFP

ATTESTER

  
Qazi Muhammad Anwar (SI)  
Senior Advocate  
(Supreme Court of Pakistan. A)



(50)

ANNEX 1 Q 11  
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IN THE PESHAWAR HIGH COURT, PESHAWAR

WRIT PETITION No. 1955 /2007

Ghulam Sarwar,  
Deputy Secretary-I,  
Provincial Assembly of N.W.F.P.,  
Peshawar.....Petitioner

V E R S U S

- 1. The Chief Secretary,  
Govt. of N.W.F.P.,  
Civil Secretariat, Peshawar.
- 2. The Speaker,  
Provincial Assembly,  
N.W.F.P., Peshawar.
- 3. The Secretary to Governor,  
Governor's Secretariat,  
N.W.F.P, Peshawar.
- 4. The Secretary,  
Provincial Assembly,  
N.W.F.P., Peshawar.
- 5. Nasrullah Khan,  
Deputy Secretary-II,  
Provincial Assembly,  
N.W.F.P., Peshawar.  
Recently promoted to the post  
of Additional Secretary.....Respondents

WRIT PETITION UNDER ARTICLE 199 OF THE  
CONSTITUTION OF ISLAMIC REPUBLIC OF  
PAKISTAN, 1973. Read with the provincial  
Constitutional ORDER-1, 2007.

*Alister*



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Respectfully Sheweth:

The facts giving rise to the present petition are as under:-

1. That the petitioner initially joined the services of the N.W.F.P. Provincial Assembly (hereinafter called the Assembly) as Assistant Secretary (B-17) on 11.03.1993 (Annex:-A) and by the same order Respondent No.5 was also appointed as Assistant Secretary (BPS-17). Petitioner was assigned seniority over the Respondent No.5 by the Departmental Selection Committee in order of merit. The terms and conditions of the service of petitioner and other employees are governed by the N.W.F.P. Provincial Assembly Secretariat (Recruitment) Rules, 1974 (hereinafter called the Rules) (Annex:B).
2. That since the N.W.F.P. Provincial Assembly has been dissolved on 10.10.2007 and the Respondent No.2 also resigned from his portfolio which is now vacant thus in such circumstances, Para-3(b) of the dissolved Legislative Bodies (exercise of Administrative and Financial Powers) Order, 2001 empowers the Governor to exercise such authority so he arrayed as Respondent No.3 through his Secretary. (Copy of the Notification Annex:-C)
3. That eleven (11) Assistant Secretaries are working in different branches of Secretariat and in order to run the business of the Secretariat smoothly, Respondent No.4 allotted numbers to all Assistant

*Ally*

Secretaries in view of their seniority interse and accordingly petitioner was allotted S.No.1 as per his senior position among others as per Notification dated 04.03.1997 (Annex:-D).

- 4. That by Notification dated 27.07.1998 (Annex:-E) selection grade BPS-18 was also awarded to petitioner on the basis of his senior position and good service record while Respondent No.5 was ignored due to his indifferent service record. However, later on he was also allowed the same vide Notification dated 27.02.2003 (Annex:-F).
- 5. That on 27.02.2003 (Annex:-G), the petitioner and Respondent No.5 were promoted to the post of Deputy Secretary (BPS-18) on the recommendation of Departmental Promotion Committee and on their promotion they retained their interse seniority as in the lower post and similarly by Notification dated 18.04.2007 (Annex:H) allotted them numbers in order of seniority and on the basis of his senior position the petitioner was numbered as Deputy Secretary-I while Respondent No.5 numbered as Deputy Secretary-II.
- 6. That the Respondent No.2 had created three (03) posts of Additional Secretary, Director (Finance & Accounts) and Director (Library & Research) carrying BPS-19 vide Notification dated 02.08.2007 (Annex:-I). The Respondent No.2 has favoured the Respondent No.5 and promoted him by order dated 18.08.2007 (Annex:-J) in violation

*Alga*

of rules and ignored the petitioner without valid reason though he is senior to him and also fulfilled all the conditions of eligibility required for such promotion.

- 7. That the petitioner being aggrieved of the illegal promotion of Respondent No.5 so he filed a review petition (Annex:-K) before the Respondent No.2 which was rejected without mentioning any reason on 26.09.2007 (Annex:I).
- 8. That the impugned orders have adversely affected the service career of petitioner and deprived him of his due right of promotion of which he is aggrieved and finding no adequate remedy is constrained to file the present writ petition on the following amongst other grounds:

Grounds:

- A. That Respondent No.2 has not treated the petitioner in accordance with law and rules on subject and acted in violation of Article 4 of the Constitution, 1973 and unlawfully promoted Respondent No.5 in violation of rules and ignored the seniority and eligibility of petitioner and deprived him of his right of promotion without legal justification. Thus the impugned promotion order is without lawful authority, of no legal effect and liable to be set aside.
- B. That the post of Additional Secretary B-19 comes in the purview of non selection post which is filled

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in by promotion on the basis of seniority-cum-fitness as per rule 6(1)(b) of the Rules. Since petitioner is the senior most Deputy Secretary-I and he was in the line of promotion but Respondent No.2 acted in violation of aforesaid rules and junior (Respondent No.5) to him was promoted to the post of Additional Secretary (BPS-19) without legal justification. Thus the promotion of Respondent No.5 is unjustified and not sustainable.

C. That according to rule 12 of the Rules when matters not specifically provided in the rules then the employee of Assembly be governed by such rules and orders for the time being enforced and applicable to the employees holding corresponding posts in the Provincial Secretariat. Thus nothing has been mentioned in the rules regarding the procedure and function of Departmental Promotion Committee thus the procedure laid down for the employees of Provincial Secretariat is applicable and as per Para 3 of Sr.No.2 of the Esta Code N.W.F.P, 2000 Volume-I Page-89 the procedure/function of Departmental Promotion Committee is either:-

- (a) recommended a Civil Servant for promotion to the next higher post;
- OR
- (b) recommended a Civil Servant for suppression;
- OR
- (c) defer consideration of a Civil Servant's promotion provided that this step will be taken only if:-

*Fuller*

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- (i) The Civil Servant's inter-se-seniority is under dispute/subjudice.
- (ii) Disciplinary or Departmental proceedings are pending against the civil servant whose promotion case comes for consideration before the Provincial Selection Board/ Departmental Promotion Committee.
- (iii) The CR dossier is incomplete or any other document/information required by the PSB/DPC for determining a Civil Servant's suitability for promotion is not available for reasons beyond the control of the person concerned.

D. That vide notification dated 01.03.2007 (Annex:M) thereby Respondent No.2 constituted a Departmental Promotion Committee comprising of Respondent No.2 himself as Chairman and two members namely Shalizada Gustasip, Ex-MPA and Abdul Akbar Khan, Ex-MPA though they were not competent to be member of the committee because they were not on the strength of the Assembly Secretariat rather they were the members of the Assembly having their own obligations, functions, business and privileges provided them under the law. Moreover, the induction of the above two members was made purposely and malafidely just to accommodate their own persons, for example one Inamullah Khan who is the nephew of Abdul Akbar Khan, promoted from the post of Assistant Secretary to the post of Deputy Secretary on 10.03.2007 by the same DPC, similarly one Kifayatullah Afridi,

*Alleged*

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Deputy Secretary promoted as Additional Secretary who was favoured by Shahzada Gustasip being brother of Mr. Hidayatullah Khan Ex-MPA/Minister. Therefore this Departmental Committee was incompetent and unlawfully constituted and thus its recommendations were also illegal and of no legal effect.

E. That petitioner is senior to Respondent No.5 and also fulfilled all the conditions of eligibility required for promotion to the post of Additional Secretary (BPS-19) but Respondent No.2 acted in arbitrary manner and promoted Respondent No.5 being his favourite in violation of rules and malafidely ignored the petitioner and deprived him of his right of promotion without valid reasons. Thus impugned order of promotion of Respondent No.5 is malafide, unlawful and incompetent.

F. That the Respondent No.2 decided the review petition of petitioner against the impugned order without providing him any proper hearing and the order passed by him neither contained reasons nor mentioned any word qua the objections and grounds taken by the petitioner in his review petition. Under Section 24-A of the General Clause Act, 1897 it is the duty and obligation of public functionaries to decide representation of their subordinates with reason. Thus the order/letter whereby the Review Petition of petitioner was rejected is also invalid being violative of the provisions of above referred law and not warranted.

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It is therefore humbly prayed that on acceptance of this Writ Petition, the impugned order of promotion of Respondent No.5 and subsequent rejection order of review petition may graciously be declared illegal, unlawful, coram-non-judice, incompetent and malafide and be set aside with further direction to respondents to consider the petitioner for promotion to the post of Additional Secretary (BPS-19) on the basis of seniority-cum-fitness.

Any other relief as deemed appropriate in circumstances of the case, not specifically asked for, may also be granted to the petitioner.

Interim Relief:

The impugned promotion order is illegal and without lawful authority, the same may please be suspended till the disposal of main writ Petition.

Petitioner

Through

Khush Dil Khan

&

Khaled Rehman  
Advocates, Peshawar.

Dated: \_\_\_ / \_\_\_ /2007.

**ATTESTED**

**ATTESTED**

Qazi Muhammad Anwar  
Advocate

Qazi Muhammad Anwar (SI)  
Senior Advocate  
Supreme Court of Pakistan.

IN THE PESHAWAR HIGH COURT, PESHAWAR

~~16~~

288

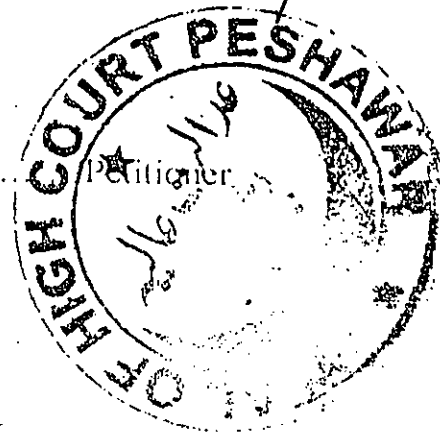
289

WRIT PETITION No. 1955 /2007

Armed Forces

I

Ghulam Sarwar,  
Deputy Secretary-I,  
Provincial Assembly of N.W.F.P.,  
Peshawar.....



V E R S U S

1. The Chief Secretary,  
Govt. of N.W.F.P.,  
Civil Secretariat, Peshawar.
2. The Speaker,  
Provincial Assembly,  
N.W.F.P., Peshawar.
3. The Secretary to Governor,  
Governor's Secretariat,  
N.W.F.P., Peshawar.
4. The Secretary,  
Provincial Assembly,  
N.W.F.P., Peshawar.
5. Nasrullah Khan,  
Deputy Secretary-II,  
Provincial Assembly,  
N.W.F.P., Peshawar.  
Recently promoted to the post  
of Additional Secretary..... Respondents

WRIT PETITION UNDER ARTICLE 199 OF THE  
CONSTITUTION OF ISLAMIC REPUBLIC OF  
PAKISTAN, 1973 READ WITH THE PROVISIONAL  
CONSTITUTIONAL ORDER-I, 2007.

*Allegu*

ATTESTED

EXAMINER  
Peshawar High Court

09/07/07



(29) 30

JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT PESHAWAR  
JUDICIAL DEPARTMENT

JUDGMENT

W.P. No. 1955 of 2008

Date of hearing 7-8-2008

Petitioners/Appellants By Shalazada Shahpur Jan Advocate

Respondent By Mr. Iqbal Khan B.A.S.

MUHAMMAD RAZA KHAN C.J. Through this

Constitutional petition the order dated 18.8.2007 relating to the selection for the post of Additional Secretary has been challenged whereby respondent No.5 has been appointed as Additional Secretary and the petitioner has been deprived of his alleged right of promotion.

2. The learned counsel for the petitioner argued that firstly the petitioner was highly qualified and experienced officer ranking senior to the respondent No.5 and was fit for promotion as per regulations dated 20.9.2004. However, the Departmental Promotion Committee has not promoted him and, therefore, his right of seniority has been affected. Secondly that the Departmental Promotion Committee was not properly constituted and thirdly that the representation dated 1.9.2007 has been dismissed on 26.9.2007 by a non-speaking order.

*Justice*

*Attested*  
EXAMINER  
Peshawar High Court

3. Mr. Ikramullah Khan, Addl. A.G. contested the petition and referred to Rule 5 (3) coupled with Rule 15 of the NWFP Provincial Assembly Secretariat (Recruitment) Rules 1974 and argued that the Departmental Promotion Committee was properly constituted and that the Committee had taken a decision after considering all aspects of the candidates stated in the panel contained in the working paper. He also pointed out that nobody has got a right to be promoted to a particular post.

4. We are of the view that certainly no employee or a civil servant has got a vested right to demand promotion, however, the right to be considered for promotion is certainly a vested right and such consideration has to be in accordance with rules and regulations. If a person is deprived of the said consideration he may file a departmental representation or review which has to be decided in accordance with law because the aggrieved person has a right to know the reasons on which he was not considered eligible for promotion.

5. Without commenting on the merits of the case relating to the entitlement of the petitioner, seniority and constitution of Selection Committee, we feel that the order dated 26.9.2007 was a non-speaking order as it does not contain the reasons for the rejection of the representation of the present petitioner. Every functionary of the Federal and Provincial Governments is supposed to pass speaking order while exercising the administrative authority and the simple

CHIEF JUSTICE  
Federal High Court  
1/9/07

*Signature*

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Supreme Court of Pakistan

Senior Advocate

Qazi Muhammad Awwaz (SI)

ATTESTED

Poshawn  
Authorised Signatory  
20 ACS Order

CERTIFIED TO BE TRUE COPY

*Handwritten notes and signatures*  
Date of presentation of application  
Date of presentation of evidence  
Date of presentation of arguments  
Date of presentation of final arguments  
Date of presentation of final orders  
Date of presentation of final orders

Announced  
7.8.2008

*Chief Justice  
Muhammad Yousaf Raza Gilani*

decided through a speaking order.

order he re-considered on merits and his application be

19.2007 submitted by the petitioner, against the promotion

and direct that the review petition/representation dated

accept this writ petition, set aside the order dated 26.9.2007

Hence without any further observations we partly

(constitution, the Law and the Rules.

action of the authorities concerned is violative of the

without indicating the details about the justification of the

refusal of a representation by a stereo type letter of refusal

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(33)

Anwar J - JHC 45


PROVINCIAL ASSEMBLY OF N.W.F.P

NOTIFICATION

Dated Peshawar, the 30/09/2008.

No.PA/NWFP/Admn:/2008/ 22958 In pursuance of the order of Peshawar High Court, Peshawar dated 07-08-2008 passed in writ petition No. 1955/2007, the Competent Authority is pleased to accept the review petition of Mr. Ghulam Sarwar, Deputy Secretary, Provincial Assembly Secretariat of NWFP and consequent upon its acceptance, the Notification No.PA/NWFP/Admn/2007/17249 dated 18-08-2007, is partially amended and the name of Mr. Nasrullah Khan, Additional Secretary BPS-19 appearing at Serial No. 1 be deemed to have been deleted ibinitio.

BY ORDER OF MR. SPEAKER

  
(MUHAMMAD MUSHTAQ)  
SECRETARY

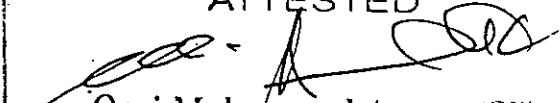
PROVINCIAL ASSEMBLY OF NWFP

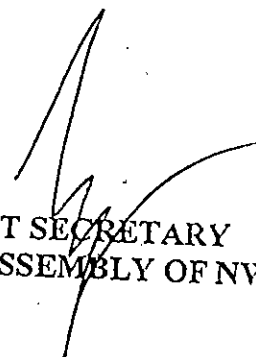
E. No.PA/NWFP/Admn:/2008/ 22959-94 Dated 30/09/2008.

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

1.  All the Administrative Secretaries to Govt: of N.W.F.P.
2.  The Accountant General, NWFP, Peshawar.
3.  The Director (Finance & Accounts), Provincial Assembly of NWFP.
4.  Mr. Ghulam Sarwar, Deputy Secretary, Provincial Assembly of NWFP.
5.  Mr. Nasrullah Khan, Deputy Secretary, Provincial Assembly of NWFP.
6.  The Manager, Government Printing Press, Peshawar.
7.  The Superintendent (Budget & Accounts), Provincial Assembly of NWFP.

ATTESTED

  
Qazi Muhammad Anwar (SI)  
Senior Advocate  
Supreme Court of Pakistan.

  
ASSISTANT SECRETARY  
PROVINCIAL ASSEMBLY OF NWFP



(33)

ANNEXURE K  
K

IN THE PESHAWAR HIGH COURT, PESHAWAR

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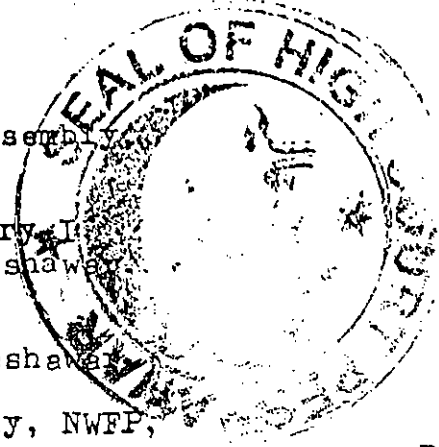
Writ Petition No. 1795 /2008

Nasrullah Khan, Additional Secretary(B-19),  
Provincial Assembly, NWFP, Peshawar.

.... Petitioner

VERSUS

1. Mr. Khushdil Khan, Advocate,  
Deputy Speaker, Provincial Assembly,  
NWFP, Peshawar.
2. Ghulam Sarwar, Deputy Secretary,  
Provincial Assembly, NWFP, Peshawar.
3. Mr. Speaker,  
Provincial Assembly, NWFP, Peshawar.
4. Secretary, Provincial Assembly, NWFP,  
Peshawar.



.... Respondents

\*\*\*\*\*

Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973: for an order declaring Respondent No. 1's Order dated 30-09-2008 (copy annexed hereto marked "A") being arbitrary, discriminatory, malafide and without jurisdiction, without lawful authority, and as such illegal and void ab-initio.

\*\*\*\*\*

RESPECTFULLY SHEWETH

1. The Finance Committee of the Provincial Assembly, NWFP in its meeting held on 28th July, 2007 under the Chairmanship of Mr. Speaker in his Chamber decided "creation of one post of Additional Secretary in BPS-19" in the Assembly Secretariate. It was also decided in the same meeting that the post may be filled in accordance with the provision of NWFP Provincial Assembly Secretariate (Recruitment) Rules, 1974. It was further added that preference may, however, be given to the officer of the NWFP Provincial Assembly Secretariate having experience in Legislation and Administration. An Extract from the Minutes of the said meeting is annexed hereto marked "B".

Through an earlier Notification of the Provincial Assembly of NWFP (copy annexed hereto marked "C"), the competent authority was pleased to constitute a departmental promotion/recruitment committee to advise the appointing authority of the Provincial Assembly Secretariate of NWFP with regard to promotions and appointments to the posts in BPS-17 and above.

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PESHAWAR HIGH COURT PESHAWAR

ORDER SHEET

Serial No. of Order or Proceedings	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or that of parties or counsel where necessary
1	2	3
	17-12-2008	<p><u>W.P.No.1795/2008 with Interim Relief.</u></p> <p>Present: Mr. Atiqur Rehman Qazi, Advocate for the petitioner.</p> <p>Qazi Muhammad Anwar, Advocate for the respondent No.2.</p> <p>Mr. Zahid Yousaf, A.A.G for official-respondents.</p> <p style="text-align: center;">—————</p> <p><u>DOST MUHAMMAD KHAN, J:-</u> After deliberation on the point of substantial justice and the principle that justice should not only be done but it must seem/appear to have been done and no aggrieved person shall have any lurking doubt in his mind albeit a misplaced one that he was wronged because of certain bias/interest although he may be wrong in his thoughts, the learned counsel for the parties agreed that let the universal principle of justice shall prevail and to secure the ends of justice firmly, this petition be allowed and the impugned order be set aside, however, the incumbent Speaker, Provincial Assembly NWFP, Peshawar be asked to decide the matter</p>

APPROVED  
MEMBER  
Peshawar High Court

Alghu

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afresh according to law and rules on the subject within a shortest period.

Accordingly, this petition is allowed. The impugned order is set aside and the case is sent back to the Speaker, Provincial Assembly, NWFP to decide it afresh within a period of one month.

Justice Dost Mahmud Khan  
Justice Zia-ud-Din Khan

Pl. seen  
Adm: Registered  
18/12/08

CERTIFIED TO BE TRUE COPY  
Examiner  
Peshawar High Court Peshawar  
Authorised Under Section 75 Acts Order  
18/12/08

ATTESTED

Qazi Muhammad Anwar (SI)  
Senior Advocate  
Supreme Court of Pakistan.

Attest

37

Amir L

W.P.

IN THE PESHAWAR HIGH COURT, PESHAWAR

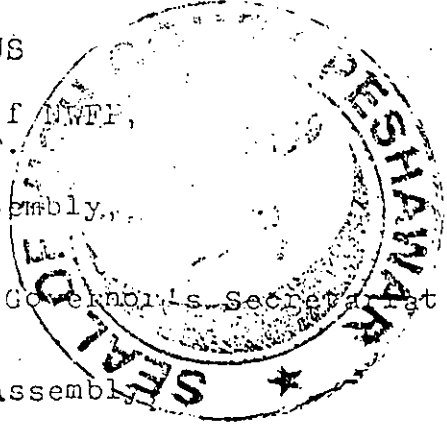
C.M. No. 1343/2008  
in  
W.P. No. 1955 /2007 : Decided on 7-8-2008

Ghulam Sarwar, Deputy Secretary-I,  
Provincial Assembly of NWFP, Peshawar.

.... Petitio

VERSUS

1. The Chief Secretary, Govt of NWFP,  
Civil Secretariat, Peshawar.
2. The Speaker, Provincial Assembly,  
NWFP, Peshawar.
3. The Secretary to Governor, Governor's Secretariat,  
NWFP, Peshawar.
4. The Secretary, Provincial Assembly,  
NWFP, Peshawar.
5. Nasrullah Khan, Deputy Secretary-II,  
Provincial Assembly, NWFP, Peshawar  
(Recently promoted to the post of  
Additional Secretary).



- X 6. The Registrar, Peshawar High Court,  
Peshawar.

.... Respond

*Respondent No 6  
is directed  
from the Panel  
of Respondent  
while cases of  
the Hon.ble court*

Application U/S 12(2) CPC by Nasrullah Khan,  
Respondent No.5, for setting aside the order  
dated 7-8-2008 passed in W.F.No.1955/2007  
ex-parte against him, on the ground of  
mis-representation and fraud. (Copy marked "A").

At 15-1-09. RESPECTFULLY SHEWETH

1. The Finance Committee of the Provincial Assembly, NWFP in  
its meeting held on 28th July, 2007 under the Chairmanship of  
Mr. Speaker in his Chamber decided "creation of one post of  
Additional Secretary in BFS-19" in the Assembly Secretariat.  
It was also decided in the same meeting that the post may be  
filled in accordance with the provision of NWFP Provincial  
Assembly Secretariat (Recruitment) Rules, 1974. It was further  
added that preference may, however, be given to the officer of  
the NWFP Provincial Assembly Secretariat having experience in  
Legislation and Administration. An Extract from the Minutes  
of the said meeting is annexed hereto marked "B".

*Amir L*  
*Amir L*  
Date: 15-1-2009

**ATTESTED**  
EXAMINER  
Peshawar High Court

/Thro



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Approved: M

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# PESHAWAR HIGH COURT PESHAWAR

## ORDER SHEET

Serial No. of Order or Proceedings	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or that of parties or counsel where necessary
1	2	3
	11-2-2009	<p><u>C.M.No.1343/2008 in W.P.No.1955/2007.</u></p> <p>Present: Mr. Attiq-ur-Rehman Qazi, Advocate for applicant/respondent No.5 in the writ petition.</p> <p>Mr. Ikramullah Khan, A.A.G for respondents 1 to 4.</p> <p>Ghulam Sarwar petitioner in the writ petition in person.</p> <p><u>DOST MUHAMMAD KHAN, J:-</u> In this petition the main grievance of the applicant/respondent No.5 is that the earlier order passed by the Speaker, Provincial Assembly was in detailed and self contained, therefore, while directing him to pass a speaking order was not required.</p> <p>We have gone through the petition and the provision of 12(2) C.P.C which in the circumstances of the case is not attracted. We have already left to the discretion of the Speaker, Provincial Assembly to reconsider and decide the matter one way or the other according to law and rules on the subject.</p> <p>This petition is disposed of accordingly.</p> <p>ATTESTED: Oazi Muhammad Anwar (Sd) Senior Advocate Supreme Court of Pakistan.</p>

CERTIFIED TO BE TRUE COPY

13/2/09

13/2/09

war  
Order

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Official Order  
12.2.09

Sd/- Dost Mohammad Khan Judge

Sd/- Said Mirza Judge

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Annex N. L.

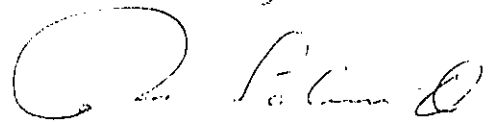
PROVINCIAL ASSEMBLY OF N-W.F.P

NOTIFICATION

Dated Peshawar, the 28/03/2009.

No.PA/NWFP/Admn:/2009/ 11288 Pursuant to the judgment of the Peshawar High Court Peshawar in W.P No. 1795/2008 and C.M No. 1343/2008 in W.P No. 1955/2007 announced on 17/12/2008 & 11/02/2009 respectively, this Secretariat Notification No.PA/NWFP/Admn:/2008/~~92958~~ dated 30-09-2008 is hereby withdrawn from the date of its issuances.

BY ORDER OF THE SPEAKER



(MUHAMMAD SALEEM KHAN)  
SECRETARY


PROVINCIAL ASSEMBLY OF NWFP

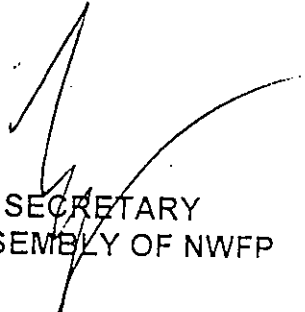
E.No.PA/NWFP/Admn:/2009/ 11789-832 Dated 28/03/2009.

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

1. All the Administrative Secretaries to the Govt of NWFP.
2. The Accountant-General of NWFP, Peshawar.
3. The Secretary to Mr. Speaker, for information of Hon. Speaker, Provincial Assembly of NWFP.
4. Mr. Nasrullah Khan, Additional Secretary, Provincial Assembly Secretariat of NWFP.
5. The Director (Finance & Accounts), Provincial Assembly Secretariat of NWFP.
6. Mr. Ghulam Sarwar, Deputy Secretary, Provincial Assembly Secretariat of NWFP.
7. The PS to Secretary, for information of worthy Secretary, Provincial Assembly Secretariat of NWFP.
8. The Manager, Government Printing Press Peshawar.
9. The Superintendent (Admn), Provincial Assembly Secretariat of NWFP.
10. The Superintendent (Budget & Accounts), Provincial Assembly Secretariat of NWFP.
11. The PA to Deputy Secretary (Admn), Provincial Assembly Secretariat of NWFP.
12. The PA to Assistant Secretary (Admn), Provincial Assembly Secretariat of NWFP.
13. Personal file of the officer concerned.

ATTESTED

  
Qazi Muhammad Anwar (SI)  
Senior Advocate  
Supreme Court of Pakistan

  
ASSISTANT SECRETARY  
PROVINCIAL ASSEMBLY OF NWFP



(40)

Annex 1 O

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BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.

Writ petition No. \_\_\_\_\_ 2009

Ghulam Sarwar,  
Presently working as Deputy Secretary-I  
Provincial Assembly Secretariat, NWFP, Peshawar.

.....Petitioner

Versus

1. Speaker, Provincial Assembly, NWFP, Peshawar.
2. Provincial Assembly Secretariat NWFP Peshawar through its Secretary of the same.
3. Mr. Nasrullah Khan, Additional Secretary, Provincial Assembly NWFP, Peshawar.

Respondents

PETITION UNDER ARTICLE 199 OF THE  
CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN

Respectfully Sheweth :-

Short facts giving rise to the present constitutional petition are as under :-

1. That petitioner holding Master degree in Public Administration was appointed as Assistant Secretary-I BS-17 in the Secretariat of Provincial Assembly on 11.03.1993 through proper selection and he reported his arrival on the same day. On another vacancy of the Assistant Secretary namely Assistant Secretary-II, respondent Nasrullah Khan was appointed on the same day namely 11.03.1993 and he reported his arrival on 13.03.1993. Copy of the appointment order is Annex-A. The seniority list issued on 04.03.2007 of Assistant Secretaries is Annex-A/I.
2. That petitioner was granted selection grade in BS-18 on 27.07.1998 while respondent Nasrullah Khan was granted selection grade in BS-18 on

*[Handwritten signature]*

27.02.2003. Copy of the order in favour of petitioner is Annex-B, and respondent is Annex-B/1.

3. That petitioner was promoted to the post of Deputy Secretary-I on 27.02.2003 and on the other vacancy of Deputy Secretary-II respondent Nasrullah Khan was promoted on 27.02.2003. Copy of the promotion order of is Annex-C and the seniority list of Deputy Secretaries issued on 20.10.2007 is Annex-C/1

4. That on the vacancy of the Additional Secretary in Grade-19 working paper was prepared by Respondent Nasrullah Khan, because he was holding the office of Deputy Secretary Admn and in the working paper he intentionally omitted the condition that name of candidate who had ever been given adverse entry in the ACR was not to be included still he included his own name at S.NO.2 suppressing adverse entry in ACR of 1997 and in para-5 of the working paper, of which he is author he recommended himself for consideration of the Departmental Promotion/Recruitment Committee, though in the working paper name of petitioner is at S.NO.1 and has name is at S.NO.2. Copy of the working paper is Annex-D.

5. That Departmental Promotion/Recruitment Committee was influenced by working paper and petitioner was superseded and respondent Nasrullah Khan was promoted as Additional Secretary on 18.08.2007. The promotion order is Annex-E.

6. That petitioner submitted appeal to the Speaker Provincial Assembly on 01.09.2007, which was rejected on 26.09.2007. Copy of the appeal is Annex-F and the rejection order is Annex-F/1.

7. That petitioner invoked the jurisdiction of Peshawar High Court in writ petition No.1955/2007. Copy of the petition is Annex-G. The Division Bench of Peshawar High Court vide orders dated 07.08.2008 partially accepted the petition and restored the appeal of petitioner before the Speaker and directed the Speaker to decide the appeal of petitioner afresh. Copy of the order is Annex-H.

8. That Mr. Khushdil Khan, Deputy Speaker of the NWFP Provincial Assembly while performing functions of Speaker in the absence of the Speaker accepted the review/appeal on 29.09.2008 and in consequence thereof Mr. Nasrullah Khan was reverted from the post of Additional

*[Handwritten signature]*

Secretary to that of Deputy Secretary on 30.09.2008. Copy of the order of Deputy Speaker is Annex-J and the demotion order of respondent is Annex-J/1.

9. That Mr. Nasrullah Khan filed writ petition No.1795/2008 before the Peshawar High Court against the aforesaid decision. The matter came before the High Court on 17.12.2008 and since Mr. Khushdil Khan, Deputy Speaker had remained counsel of petitioner, therefore, the High Court vide orders dated 17.12.2008 set aside the order of Deputy Speaker and remanded the matter back to the Speaker for decision afresh. Copy of the order dated 17.12.2008 is Annex-K.

10. That Respondent Nasrullah Khan had also filed CM No.1343/2008 in writ petition No.1955/2007 which was disposed by the High Court on 11.02.2009 repeating its order referred in the aforesaid paragraph. Copy is Annex-K/1.

11. That the Speaker Provincial NWFP on 28.03.2009 rejected the appeal/review of petitioner and directed withdrawal of the demotion order of Nasrullah Khan, consequence thereon his promotion as Additional Secretary was restored. Copy of the same is Annex-L.

12. That no other adequate remedy is available, hence this petition.

GROUNDS:-

A. That the working paper which was considered by the Departmental Promotion/Recruitment Committee No.1 of the Provincial Assembly for filling the vacancy of Additional Secretary BS-19 was prepared by Respondent Nasrullah Khan who was holding the office of Deputy Secretary (Admn) and in said working paper by demonstrating dishonesty while reproducing pre-requisites he had not mentioned that said Nasrullah Khan was late in getting selection grade for 5-years for the reason that his unsatisfactory performance and his efficiency was below the required standard. Said pre-requisites were circulated by the Establishment & Administration Department (Regulation Wing), Govt. of NWFP on 20.09.2004. Copy of the same is Annex-M. He included his name in the working paper at S.NO.2 suppressing his disqualification.

B. That Respondent Nasrullah Khan had also not mentioned in the working paper that he was given adverse entries in the ACR in the year 1997. Honesty

demanded that adverse entries of the year 1997 should have been mentioned with the note that the same were expunged on his representation subsequently. Copy of the representation of Nasrullah Khan in respect of adverse entries in the ACRs of 1997 is Annex-N.

C. That officer who prepared the working paper (respondent Nasrullah Khan) in para-5 of the working paper has recommended himself for promotion referring to his experience in legislation and administration, suppressing better qualifications and experience of petitioner who was at S.NO.1 in the working paper. It may be mentioned that petitioner holds Master degree in Public Administration and the vacancy being that of Additional Secretary, relate to administration + legislating. The experience of petitioner both in legislation and administration was much higher than respondent Nasrullah. No word has been said about the experience of petitioner in the working paper.

D. That petitioner was senior to respondent Nasrullah Khan in the seniority list and he could be bypassed/superseded only if he was found unfit for promotion. No such finding has been recorded by the Departmental Promotion/Recruitment Committee. Fair play and justice demands that if the officer at S.NO.1 of the seniority list is otherwise eligible for promotion, qualifications/experience wise and has clean record of service then it was his right to be promoted but if for any reason the Departmental Promotion/Recruitment Committee intended to supersede him such supersession could not be recorded unless it was justified by reasons appealable to prudent mind. Supersession without disclosing reasons justifying supersession is an order in excess of lawful authority and jurisdiction. The Departmental Promotion/Recruitment Committee infact has to perform functions of a Judge where he has to administer justice in the manner that that it should not only be done but it should be shown to have been administered. The decision/recommendations of Departmental Promotion/Recruitment Committee recommending promotion of Mr. Nasrullah Khan by superseding petitioner are therefore, based on no valid ground and are illegal, improper and unjust.

E. That the notification No.PA/NWFP/Admn/2007/17249 dated 18.08.2007 whereunder respondent Nasrullah Khan was promoted to the post of Additional Secretary BS-19 is an invalid order as the same is based on invalid, improper and unjust recommendations of the Departmental Promotion/Recruitment Committee.

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F. That it is unfortunate that grounds mentioned in the review petition of petitioner against the aforesaid order have gone rebutted and the Hon' able Speaker inspite of the fact that matter was twice referred to him by the High Court has not considered any of the ground of review petition and has not disclosed any reason/justification for rejection of the same. The Division Bench of high Court while setting aside the order dated 26.09.2007 of the Speaker whereby review/representation dated 01.09.2007 referred above was rejected had directed reconsideration of the above review petition/representation on merits and the High Court further directed that application be decided through proper speaker order. Infact after the aforesaid remand by the High Court the Deputy Speaker Provincial Assembly while acting as Speaker of the Assembly on 29.09.2008 passed a speaking order based on merits. Said order Though could not be passed by Deputy Speaker on the ground that he had once been counsel of the petitioners but the reasons advanced by him in his order have gone unattended. Fresh order had to wash away his order by discussing the wisdom and prudence of the arguments advanced by him in support of his orders and accordingly notification dated 30.09.2008 was issued by the Assembly Secretariat NWFP in favour of petitioner.

G. That the aforesaid order of the Deputy Speaker was challenged before the High Court in writ petition No.1795/2008 and the D.B of Peshawar High Court on 17.12.2008 ordered setting aside the order of Deputy Speaker on the ground of his personal disqualification to hear the representation and the matter was sent back to the Speaker for passing such order as were directed by the High Court in its earlier order but the Hon'able Speaker has ignored the directions of the high Court and has neither advanced any reason in favour of respondent Nasrullah khan nor there is any reason justifying supersession of petitioner. Notification No.PA/NWFP/Admn/2009/11788, dated. 28.03.2009 restoring the impugned notification dated 18.08.2007 is therefore, in excess of lawful authority and jurisdiction and is in conflict with the orders of the High Court.

PRAYER:-


It is, therefore, most humbly prayed that on acceptance of this petition, Notification No.PA/NWFP/Admn/2007/17249, dated.18.08.2007 (whereby petitioner who was at S.No.1 of the seniority list was superseded for promotion to the post of Additional Secretary and respondent Nasrullah Khan who was at

*[Handwritten signature]*

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S.No.2 of the seniority list was promoted) be declared in excess of lawful authority and jurisdiction thus illegal and unjust and similarly none speaking order of the Hon'able Speaker on the representation/review of petition vide notification No. No.PA/NWFP/Admn/2009/11788, dated.28.03.2009 be also declared improper, illegal unjust and void for the additional reason that it has not been passed in accordance with the directions of the High Court and such other relief as may be deemed proper in the circumstances of the case may also be granted.

  
Petitioner

Through

Di.06.04.2009

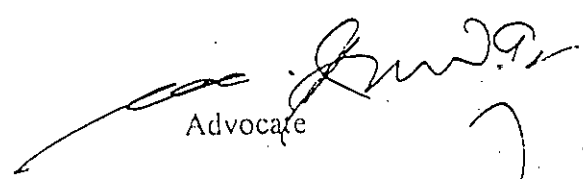
  
( QAZI MUHAMMAD ANWAR )  
(Sitara-i-Imtiaz)  
Advocate  
10-A Nasir Mansion, Peshawar

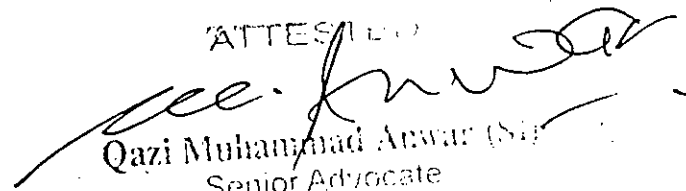
BOOKS REFERENCE

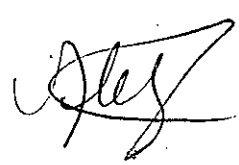
Constitution of Islamic Republic of Pakistan 1973.

CERTIFICATE

Certified that no other writ petition on the subject between the subject parties is pending before this Hon'able Court.

  
Advocate

ATTESTED  
  
Qazi Muhammad Anwar (S)  
Senior Advocate  
Supreme Court of Pakistan.





(46) N

PROVINCIAL ASSEMBLY OF N.-W.F.P

NOTIFICATION

Amjad P  
Dated Peshawar, the 1/10/2009. (88)

No.PA/NWFP/Admn:/2009/ 35165 On the recommendation of Departmental Promotion/Recruitment Committee No.1 and exercise of the Power conferred on him by Rule 10 read with Rule 6 of the North-West Frontier Province, Provincial Assembly Secretariat (Recruitment) Rules, 1974, Mr. Speaker has been pleased to promote the following officers of the Provincial Assembly Secretariat of NWFP, against the posts as mentioned against each, with immediate effect :-

S.No.	Name with Designation & BPS No.	Post against which promoted
1.	Mr. Amanullah, Senior Additional Secretary (BPS-20)	Secretary (BPS-21)
2.	Mr. Javed Latif, Additional Secretary (BPS-19)	Special Secretary (BPS-20)
3.	Mr. Kifayatullah Khan Afridi, Additional Secretary (BPS-19)	Senior Additional Secretary (BPS-20)
4.	Mr. Ghulam Sarwar, Deputy Secretary (BPS-18)	Additional Secretary (BPS-19)
5.	Mr. Amjad Ali, Deputy Secretary (BPS-18)	Additional Secretary (BPS-19)
6.	Syed Muhammad Mahir, Assistant Secretary (BPS-17)	Deputy Secretary (BPS-18)
7.	Mr. Mumtaz Ahmad, Assistant Secretary (BPS-17)	Deputy Secretary (BPS-18)
8.	Mr. Mirza Khan, Assistant Secretary (BPS-17)	Deputy Secretary (BPS-18)
9.	Mr. Abdul Majeed, Superintendent (BPS-16)	Assistant Secretary (BPS-17)
10.	Mr. Abdul Wahab, Superintendent (BPS-16)	Assistant Secretary (BPS-17)

BY ORDER OF THE SPEAKER

-SD-

SECRETARY

PROVINCIAL ASSEMBLY OF NWFP


E.No.PA/NWFP/Admn:/2009/ 35166-236

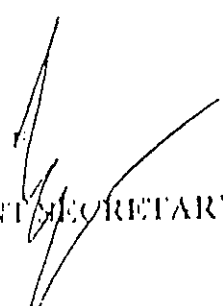
Dated 1/10/2009.

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

1. All the Administrative Secretaries to Govt of NWFP.
2. All the Officers concerned.
3. All the Heads of Attached Departments in NWFP.
4. The Accountant General, NWFP, Peshawar.
5. The Manager, Govt Printing Press, Peshawar, for publication in the next issue of Government Gazette.
6. The Superintendent (Budget & Accounts), Provincial Assembly of NWFP.
7. Personal files of the officers concerned.

ATTESTED

  
Qazi Muhammad Anwar (SI)  
Senior Advocate  
Supreme Court of Pakistan.

  
ASSISTANT SECRETARY (Admn)

(47)

Amended  
filed in court  
20/11/09

BEFORE PESHAWAR HIGH COURT, PESHAWAR.

0  
59

W.P.No. 744 /2009

Ghulam Sarwar..... Petitioner

Versus

Speaker, Provincial Assembly, NWFP Peshawar  
& others..... Respondents

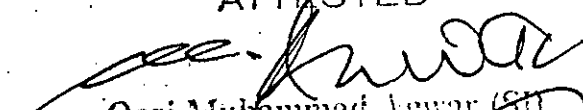
APPLICATION FOR WITHDRAWAL OF  
THE WRIT PETITION WITH PERMISSION  
TO FILE AFRESH FOR ANTEDATION OF  
PROMOTION AND SENIORITY.

Respectfully Sheweth;

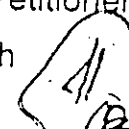
- 1) That the above noted writ petition has been filed before this hon'ble court in which no date of its hearing has yet been fixed.
- 2) That petitioner has been promoted with immediate effect and he wants to withdraw his petition with permission to claim antedation of promotion and seniority in a fresh petition.

It is, therefore, humbly prayed that on acceptance of this application, petitioner may kindly be allowed to withdraw the above noted writ petition with permission to file afresh.

ATTESTED

  
Qazi Muhammad Anwar (SI)  
Senior Advocate  
Supreme Court of Pakistan.

Petitioner  
Through

  
Ijaz Anwar  
Advocate, Peshawar



48

66

BEFORE PESHAWAR HIGH COURT, PESHAWAR.

W.P.No. 744 /2009

Ghulam Sarwar..... Petitioner


Versus

Speaker, Provincial Assembly, NWFP Peshawar  
& others..... Respondents

AFFIDAVIT

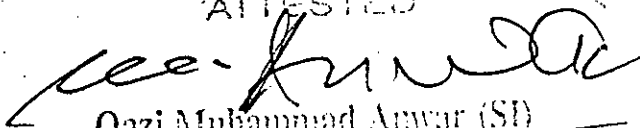
I, Ghulam Sarwar, presently working as ~~Deputy~~ <sup>Additional</sup> Secretary-~~I~~ Provincial Assembly Secretariat, NWFP, Peshawar, do hereby solemnly affirm and declare on Oath that the contents of the accompanying Application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

Identified by:

  
Ijaz Anwar  
Advocate, Peshawar

  
Deponent

ATTESTED

  
Qazi Muhammad Anwar (SI)  
Senior Advocate  
Supreme Court of Pakistan.



(48) P. 61

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR



Writ petition No. 744 2009

Ghulam Sarwar,  
Presently working as Deputy Secretary-I  
Provincial Assembly Secretariat, NWFP, Peshawar.

.....Petitioner

Versus

1. Speaker, Provincial Assembly, NWFP, Peshawar.
2. Provincial Assembly Secretariat NWFP Peshawar through its Secretary of the same.
3. Mr. Nasrullah Khan, Additional Secretary, Provincial Assembly NWFP, Peshawar.

Respondents

PETITION UNDER ARTICLE 199 OF THE  
CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN

Respectfully Sheweth :-


Short facts giving rise to the present constitutional petition are as under :-

1. That petitioner holding Master degree in Public Administration was appointed as Assistant Secretary-I BS-17 in the Secretariat of Provincial Assembly on 11.03.1993 through proper selection and he reported his arrival on the same day. On another vacancy of the Assistant Secretary namely Assistant Secretary-II, respondent Nasrullah Khan was appointed on the same day namely 11.03.1993 and he reported his arrival on 13.03.1993. Copy of the appointment order is Annex-A. The seniority list issued on 04.03.2007 of Assistant Secretaries is Annex-A/I.

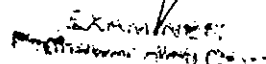
2. That petitioner was granted selection grade in BS-18 on 27.07.1998 while respondent Nasrullah Khan was granted selection grade in BS-18 on

FILED TODAY

Deputy Registrar  
7 APR 2009



ATTORNEY

  
EXAMINER  
Peshawar High Court

(50)

62


PESHAWAR HIGH COURT, PESHAWAR  
FORM OF ORDER SHEET

Court of.....

Case No.....of.....

Date of Order of Proceedings	Order of other Proceedings with Signature of Judge.
1	2
16.02.2010.	<p><u>W.P.No. 744/2009 with C.M.No. 83/2010.</u></p> <p>Present: Mr. Ijaz Anwar, Advocate, for the petitioner. Mr. Fazal-ur-Rehman, AAG and Mr. Attiq-ur-Rehman Qazi, Advocate, for respondents. ***</p> <p><u>DOST MUHAMMAD KHAN, J.</u>- Learned counsel for the petitioner wants to withdraw this petition with permission to file a fresh one, if need be. Dismissed as withdrawn along with C.M. Permission granted.</p>

sof Dost Muhammad Khan J  
sof Abdul Aziz Comd. J

 19/2/2010

9373

19/2/2010

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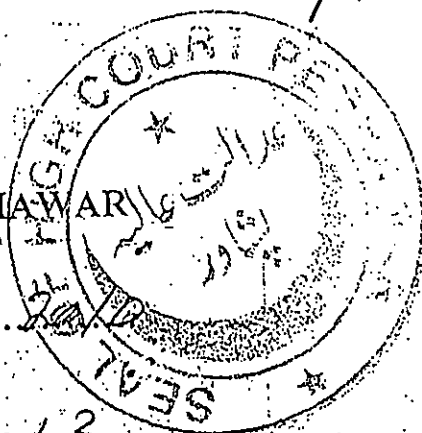
19/2/2010

علا سرور

Adulster

Judgment Sheet

PESHAWAR HIGH COURT, PESHAWAR  
JUDICIAL DEPARTMENT



W.P. No. 963 of 2013

JUDGMENT

Date of hearing 19-12-2013

Appellant/Petitioner(s) Ghulam Sarwar vs. M. Anwar, Advocate

Respondent(s) Speaker Provincial Assembly, Mian Anshad Khan AAS and Qazi Atiqur Rehman, Adv. for private respondents.

MIAN FASIH-UL-MULK, J. Instant case has a

chequered history to the effect that petitioner Ghulam Sarwar and respondent No.3 Nasrullah Khan were appointed in the Provincial Assembly on 11.03.1993 as Assistant Secretaries I & II respectively. Petitioner on the same date joined his duties whereas respondent No.3 joined the same on 13.03.1993 i.e after two days of joining the petitioner, which resulted in making the petitioner senior to respondent No.3 in the matter of seniority. When the matter of grant of selection grade in BS-18 to the deserving officers came up for consideration before the competent authority, petitioner being senior to respondent No.3 was granted the same on 27.07.1998 and it was after that

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ATTESTED  
*[Handwritten signature]*  
EXAMINER  
Peshawar High Court

(52)

when such selection grade was granted to respondent No.3 on 27.02.2003. However, both the officers were then promoted to the posts of Deputy Secretaries on one and the same date i.e. 27.02.2003. A post of Additional Secretary was created on which summary for promotion was submitted to the competent authority wherein name of petitioner was at S.No.1 but instead respondent No.3 was promoted as Additional Secretary on 18.08.2007. Petitioner thus filed an appeal but the same was rejected by the Speaker on 26.09.2007.

2. Petitioner, feeling aggrieved, filed Writ Petition No.1955/2007 before this Court, which was accepted on 07.08.2008 with direction to the Speaker to decide the appeal of petitioner afresh, which was found to have not been decided through a speaking order. The case was laid before the Deputy Speaker, who was functioning as Speaker at the relevant time. He vide an elaborate order dated 29.09.2008 accepted the appeal of petitioner, which resulted into reversion.

*Adil Khan*

ATTESTED  
*May*  
 EXAMINER  
 Peshawar High Court

of respondent No.3 to the post of Deputy Secretary and promotion of petitioner as Additional Secretary vide order dated 30.09.2008.

3. This time, the respondent filed W.P. No.1795/2008 against the order of Deputy Speaker, which was set aside on the ground that let the universal principle of justice shall prevail and to secure the ends of justice firmly, the incumbent Speaker should decide the matter afresh as the Deputy Speaker had remained counsel of petitioner at some stage of litigation between the parties.

4. The Speaker, Provincial Assembly vide order dated 28.03.2009 withdrew the notification dated 30.09.2008 whereby petitioner was promoted as Additional Secretary from the date of its issuance.

5. Petitioner again invoked the constitutional jurisdiction of this Court impugning therein the order of Speaker, Provincial Assembly on various legal factual grounds, however, during the pendency of said writ petition, petitioner was also

*Atty*

ATTESTED  
*Maj*  
EXAMINER  
Peshawar High Court



promoted as Additional Secretary with immediate effect vide notification dated 01.10.2009. Petitioner withdrew his writ petition in the circumstances with permission to file a fresh one if needed, which permission was granted to him and the writ petition was dismissed as withdrawn vide order dated 16.02.2010.

6. Petitioner has now filed instant writ petition for his anti-date promotion and seniority from 18.08.2007 instead of 01.10.2009.

7. We have heard arguments of learned counsel for the parties and have also gone through the available record.

8. The elaborate and speaking order of Deputy Speaker was set aside by this Court without touching merits of the case as the Deputy Speaker had remained counsel of petitioner at some stage of litigation and the matter was sent to the incumbent Speaker to decide the appeal afresh in accordance with law. The notification dated 28.03.2009 only



ATTESTED  
*M. J.*  
EXAMINER  
Peshawar High Court

reveals that the order of promotion of petitioner dated 30.09.2008 was withdrawn. As there were no reasons behind the above orders to show that in what manner the appeal of petitioner was decided, we asked the learned AAG to collect the relevant record pertaining to decision on the appeal of petitioner. The same was produced today, but there is nothing to show that any speaking order has been passed by the Speaker on appeal of petitioner while withdrawing his order of promotion. As stated above, the order of Deputy Speaker was only set aside for the reasons stated therein and for taking a different view from the findings of Deputy Speaker, the Speaker was required to have decided the appeal of petitioner through a well reasoned speaking order, which is not the case here, rather no official correspondence in this regard has been produced from the record of Provincial Assembly to justify such order of reversion of petitioner from the post of Additional Secretary.

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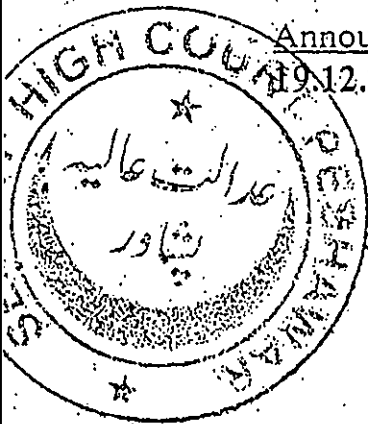
ATTESTED  
*[Handwritten signature]*  
 EXAMINER  
 Peshawar High Court

9. In the circumstances, we again deem it proper to accept this writ petition with direction to the Speaker to decide the appeal of petitioner with proper reasoning in accordance with law, so that the matter coming before this Court time and again should come to an end according to the dictates of law and rules on the subject. No order as to costs.

*Edy Mian Faridul Malik - J*

*Edy Yahya Afridi - J*

Announced  
19.12.2013



CERTIFIED TO BE TRUE COPY

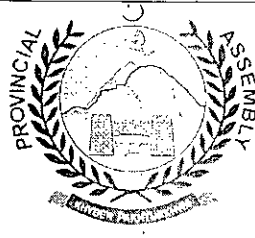
*A. Khan*  
*Majid*  
Examiner  
Peshawar High Court Peshawar  
Authorised Under Article 87 of  
the Qanun-e-Shaheed Order 1984

9547  
Date of Presentation of Application..... 26/12/13  
No. of Pages.....  
Copying fee.....  
Argent Fee.....  
Total.....  
Date of Preparation of Copy..... 26/12/13  
Date Given For Delivery..... 26/12/13  
Date of Delivery of Copy..... 26/12/13  
Received By.....  
*M. J. Khan*

*M. J. Khan*

57

Approved: - S



**PROVINCIAL ASSEMBLY SECRETARIAT**  
**KHYBER PAKHTUNKHWA**

NO.PA/K.P/Admn:/2014/21338-39  
Dated Peshawar, the 30/06/2014.

To

- 1 Mr. Nasrullah Khan, Additional Secretary (Admn :),  
Provincial Assembly of Khyber Pakhtunkhwa.
- 2 Mr. Ghulam Sarwar, Additional Secretary (Legislation ),  
Provincial Assembly of Khyber Pakhtunkhwa.

Subject: **REFERENCE PESHAWAR HIGH COURT ORDER DATED**  
**19-12-2013 PASSED IN GHULAM SARWAR WRIT**  
**PETITION NO.963/2010.**

Dear Sir,

I am directed to refer to the subject cited above and to enclose herewith an order dated 25-06-2014 made by the Hon'ble Speaker, Provincial Assembly of Khyber Pakhtunkhwa pursuant to the order of the Peshawar High Court Peshawar dated 19-12-2013 passed in writ Petition No. 963/2010 (Mr. Ghulam Sarwar ) for your information please.

Your's faithfully,

(IBRAHIM KHAN)

Assistant Secretary (Admn)

Provincial Assembly of Khyber Pakhtunkhwa

(SC)

Reference Peshawar High Court Order Dated 19-12-2013 passed in Mr. Ghulam Sarwar's Writ Petition No.963/2010.

**ORDER**

1. It is an old case pertaining to selection, promotion and appointment made on merit.

A perusal of the minutes of the meeting of Departmental Promotion/ Recruitment Committee No. 1 of the Provincial Assembly Secretariat of Khyber Pakhtunkhwa held on 17/08/2007 at 11:30 a.m. in the Chamber of Mr. Speaker.

A meeting of the Departmental Promotion/Recruitment Committee No.1 of the Provincial Assembly Secretariat of Khyber Pakhtunkhwa was held on 17/08/2007 at 11:30 A.M. under the Chairmanship of Mr. Speaker in his Chamber to consider the promotion cases of various officers/officials of the Assembly Secretariat. The following were present:-


**DPC-I**

- |      |   |   |                               |
|------|---|---|-------------------------------|
| i.   | Shahzada Muhammad Gustasip Khan,<br>MPA/Leader of Opposition                    | : | Member                        |
| ii.  | Mr. Abdul Akbar Khan, M.P.A.  | : | Member                        |
| iii. | Mr. Muhammad Mushtaq,<br>Secretary Provincial Assembly of<br>Khyber Pakhtunkhwa | : | Secretary to<br>the Committee |

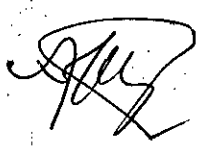
2. The meeting commenced with recitation from the Holy Quran by the Chairman.
3. The Chairman informed the Committee that the DPC-I has the privilege to take all the decisions in the past on merit basis and keeping in view the Govt. Policy on the subject matter. He also briefed the Committee on the new promotion policy of the Govt. according to the promotion policy of the Govt. of Khyber Pakhtunkhwa, circulated vide Establishment and Administration Deptt. (Regulation wing) SOR-IV(E&AD) 1-16/2004 dated 20/09/2004, promotion shall be made on merit basis, keeping in view the pre-requisites:-

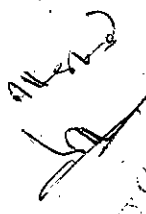
- i. Higher educational qualification, professional capabilities & experience in the relevant field.
- ii. Annual confidential reports.
- iii. Administrative experience & capability in case of Administration related posts.
- iv. General reputation.
- v. Seniority.
- vi. Honesty.
- vii. Capability & suitability of shouldering higher responsibilities.

4. Mr. Abdul Akbar Khan, MPA started the discussion with the view that being a legislative organ of the state, the Khyber Pakhtunkhwa Assembly is a role model for other Departments to follow, therefore, the DPC-I should take bold decisions purely on merit basis in the public interest for the benefits of the Institution and not for personal interest and benefits of individuals.

  
Asad Qaiser,  
Speaker,  
Khyber Pakhtunkhwa Assembly

SCA)  
12  
30/6



  
Assistant Secretary (Adm)  
Khyber Pakhtunkhwa

(59)

5. Shahzada Muhammad Gustasip Khan, MPA agreed with the remarks of Mr. Mr. Abdul Akbar Khan, MPA and stated that the Assembly Secretariat is a peculiar organization, its employees help the elected representatives in framing law for the welfare of the general public and smooth running of the Govt. functionaries, therefore, competent, efficient and devoted workers should be encouraged rather than perusing the unrealistic criteria of seniority for promotion.

6. The agenda was discussed item-wise and following decisions were arrived at:-

Items No.I. **PROMOTION TO THE POST OF ADDITIONAL SECRETARY IN BPS-19.**

7. The Committee was informed about the Finance Committee meeting held on 28<sup>th</sup> July, 2007, in which it was decided that the post of Additional Secretary may be filled in accordance with the provisions of the Khyber Pakhtunkhwa Provincial Assembly Secretariat (Recruitment) Rules, 1974, preference may, however, be given to the officers of the Khyber Pakhtunkhwa Assembly Secretariat having experience in Legislation and Administration. The Committee considered the following officers for promotion against the newly created post of Additional Secretary BPS-19:-

S.No	Name	Qualification	Date of entry into service	Date of promotion to the present post
1.	Mr. Ghulam Sarwar	M.P.A	11/3/1993	28/2/2003
2.	Mr. Nasrullah Khan Khattak.	M.A.IR	13/3/1993	28/2/2003
3.	Mr. Zahoor Ahmad	B.A	4/9/1973	10/6/2006

The Committee noticed that the officer at Serial No. 1 and 2 above have been promoted to the present post of Deputy Secretary on the same day i.e. 28/03/2003. However, the officer at Serial No.1 has entered into Govt. service on 11/03/1993 whereas the officer at Serial No.2 on 13/03/1993. However, both the officers have equal length of service against the present posts.

9. ACRs of the officers were also critically examined. The ACRs of the officer at Serial No. 2 were found better on rating basis. It was noticed that in the ACRs from 2002 to 2006 of Mr. Ghulam Sarwar, it was mentioned that the officer needs further training and experience in parliamentary practice/procedure and Rules so as to shoulder higher responsibilities. It was also observed that the officer at Serial No. 2 has sufficient experience both on Legislation and Administration side which is one of the prerequisite fixed by the Finance Committee in its meeting referred to above, for promotion to the post of Additional Secretary BPS-19.

10. After detailed discussion and keeping in view the ACRs, qualification and experience of the officers, the Committee unanimously decided to promote Mr. Nasrullah Khan Khattak against the post of Additional Secretary BPS-19.

11. All the above promotions/change of cadre will take place with immediate effect.

*(Signature)*

*(Signature)*  
Assistant Secretary (Admin)  
Khyber Pakhtunkhwa Asse

*(Signature)*  
Sad Qaiser,  
Speaker,  
Pakhtunkhwa Assembly

(60)

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9

**BAKHT JEHAN KHAN**

Speaker Provincial Assembly of Khyber Pakhtunkhwa  
17/08/2007

**CHAIRMAN**

Departmental Promotion/Recruitment Committee-I  
Provincial Assembly of Khyber Pakhtunkhwa

**SHAHZADA MUHAMMAD GUSTASIP KHAN**

Leader of Opposition/MPA  
MEMBER

**ABDUL AKBAR KHAN, MPA**  
MEMBER

Handwritten signature and stamp: "Assistant Secretary (Adm) Khyber Pakhtunkhwa Assembly"

12. Accordingly promotion order dated 18/08/2007 was issued. Thus Mr. Nasrullah Khan was promoted as Additional Secretary.

13. Mr. Ghulam Sarwar, Deputy Secretary requested for review of the above proceedings. His review petition was rejected by the Speaker and he was accordingly informed on 26/09/2007.

14. Mr. Ghulam Sarwar, Deputy Secretary then filed w.p 1955/2007 whereby order dated 26/09/2007 was set aside, directing reconsideration of the matter. On reconsideration the review was allowed by the then Deputy Speaker in the absence of the Speaker.

15. The above proceedings were challenged by Mr. Nasrullah Khan through W.P No. 1795/2008, which was accepted, reversing the decision of the Deputy Speaker and restoring/reinstating Mr. Nasrullah Khan as Additional Secretary w.e.f 18/08/2007. This position has continued uptill this time.

16. Mr. Ghulam Sarwar, Deputy Secretary again went to the Court but his Writ Petition was dismissed as withdrawn. Thereafter Mr. Ghulam Sarwar was also promoted and appointed Additional Secretary Vide Order dated 01/10/2009.

17. After his promotion Mr. Ghulam Sarwar again reverted to litigation for securing seniority against Nasrullah Khan and managed to obtain an order for reconsideration of the claim through his Writ Petition No.963/2010.

18. An examination of the above facts, available on record, reveal to uncontroverted facts: (a) of Nasrullah Khan's promotion on merit on 18/08/2007 and (b) Ghulam Sarwar's promotion subsequently on 01/10/2009; both by the competent authority in accordance with the rules.

19. Having gone through the record and having applied my mind, Mr. Ghulam Sarwar claim of seniority against Nasrullah Khan is baseless.

Handwritten signature

Handwritten signature and date: "Asad Qaiser, 25/6/2014"

**Asad Qaiser**  
SPEAKER  
PROVINCIAL ASSEMBLY OF KHYBER  
PAKHTUNKHWA

POWER OF ATTORNEY

In the Court of KPK Service Tribunal Peshawar  
Gulam Sarwar

} For  
} Plaintiff  
} Appellant  
} Petitioner  
} Complainant

VERSUS

Speaker Provincial Assembly  
and others

} Defendant  
} Respondent  
} Accused

Appeal/Revision/Suit/Application/Petition/Case No. \_\_\_\_\_ of \_\_\_\_\_

Fixed for \_\_\_\_\_

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

**IJAZ ANWAR ADVOCATE, SUPREME COURT OF PAKISTAN.**

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

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

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

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

IN WITNESS whereof I/we have hereto signed at Peshawar the \_\_\_\_\_ day to \_\_\_\_\_ the year \_\_\_\_\_

Executant/Executants \_\_\_\_\_

Accepted subject to the terms regarding fee \_\_\_\_\_

Sayid Amir Azeem

**Ijaz Anwar**

Advocate High Courts & Supreme Court of Pakistan



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

In the matter of Appeal No. <sup>952</sup> /2014

Ghulam Sarwar, Additional Secretary, Provincial Assembly Secretariat, KPK, Peshawar.  
Appellant

**VERSUS**

Speaker Provincial Assembly and others. .... Respondents

**Application for early hearing in the titled Appeal.**

**Respectfully submitted**

1. That the titled appeal of the appellant is sub-judice in this Learned Tribunal, and is now fixed for preliminary hearing on 12.08.2014.
2. That as a case of promotion is under process as such fixation of seniority essential so that I may not be deprived of promotion give to pendency of the case.
3. That my case is under litigation for the last 7 years and despite the facts that the Peshawar High Court, Peshawar has been given relief to me yet the Higher Authority i.e Speaker Provincial Assembly has again rejected my claim for seniority which is prompted this appeal.

*It is therefore prayed that an early date may please be fixed for preliminary hearing so as to save me of the irreparable loss of seniority and promotion.*

Applicant

GHULAM SARWAR

Dated: 18.07.2014:

*Submitted to  
Today  
18/7/14*

1

2

#

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

Appeal No. 952/2014

Ghulam Sarwar.....Appellant

VS

Speaker Provincial Assembly and others .....Respondents

Parawise comments on behalf of Respondents No.1&2

**Preliminary objections:**

1. That the Appellant has no cause of action.
2. That the Appellant has been estopped by his own conduct to file the instant appeal.
3. That the Appellant is not a civil servant so this Hon'ble Tribunal has got no jurisdiction to entertain the appeal.
4. That the appeal is not maintainable in its present form.
5. That the Appellant has concealed material facts from this Hon'ble Tribunal.
6. That requisites of Section 4 of Service Tribunal Act 1974 has not been fulfilled, hence not maintainable.
7. That the appeal is bad for non joinder and mis-joinder of necessary parties.
8. That the appeal is badly time-barred.

**Reply to the facts:**

1. No Comment.
2. Respondent No. 3 was also granted Selection grade in BPS-18 w.e.f 27/7/1998  
Copy of office order is enclosed as **Annexure A.**
3. Correct, therefore no comment.
4. In response to Para No.4 it is submitted that working papers have been prepared by the Assembly Secretariat in light of the decision taken by the Finance Committee. On 28-07-2007, a meeting of the Finance Committee of the Provincial Assembly of N.W.F.P was held under the Chairmanship of the Hon'ble Speaker in his Chamber. After detailed discussion the Committee agreed to the creation of one post of Additional Secretary BPS-19. The Committee decided that the post may be filled in accordance with the provision of the N.W.F.P Provincial Assembly Secretariat (Recruitment) Rules, 1974, and preference may however be given to the officer having experience both in legislation and administration. Minutes of the meeting of Finance Committee held on 28-07-2007 are enclosed as **Annexure B.**

On 17-08-2007, meeting of the Departmental Promotion/Recruitment Committee No.I of the Provincial Assembly Secretariat was held under the Chairmanship of the Hon'ble Speaker in his Chamber.

The following were present:-

- (i) Shahzada Mohammad Gustasip Khan Member.  
MPA/Leader of Opposition.

0-13  
26-02-15

(ii) Mr. Abdul Akbar Khan,MPA

Member.

(iii) Mr. Muhammad Mushtaq,  
Secretary Provincial Assembly of NWFP.

Secretary to the Committee

Mr. Abdul Akbar Khan,MPA, stated that being a legislative organ of the state, the Provincial Assembly is a role model for other departments to follow. Therefore, the DPC-I should take bold decision purely on merit basis in the public interest, for the benefit of the Institution and not for personal interest and benefits of individuals.

Shahzada Mohammad Gustasip Khan MPA agreed with the remarks of Mr. Abdul Akbar Khan and stated that competent, efficient, and devoted workers should be encouraged rather than persisting the unrealistic criteria of seniority for promotion.

The Committee noticed that the officer at Serial No. 1 and 2 (appellant and Respondent No.3) have been promoted to the present post of Deputy Secretary on the same day i.e. 28-03-2003.

ACR's of both the officers were critically examined. The ACR of officer at Serial No. 2 (Respondent No.3) were found better on rating basis. It was noticed that in the ACRs from 2002 to 2006 of Appellant it was mentioned that Appellant needs further training and experience in Parliamentary Practice/Procedure and Rules so as to shoulder higher responsibilities. It was also observed that the officer at Serial No. 2 i.e. Respondent No.3 has sufficient experience both in legislation and administration which is one of the pre-requisite fixed by the Finance Committee in its meeting for promotion to the post of Additional Secretary BPS-19.

After detailed discussion and keeping in view the ACRs and experience of the officer, the Committee unanimously decided to promote Respondent No. 3 (copy of the minutes of Departmental Promotion/Recruitment Committee is enclosed as **Annexure C.**

As far as adverse remarks in the ACRs of Respondent No. 3 for the year 1997 are concerned, the same was expunged on the ground, that the said Adverse Remarks were not communicated to Respondent No. 3 (Copy of the officer order dated 15-03-2000 is enclosed as **Annexure D.**

5. In response to Para No. 5 of the appeal it is submitted that Respondent No.3 was not in a position to influence the Departmental Promotion/Recruitment Committee, comprising of the top class legislatures of the province for his own promotion/benefits.

6. Para No. 6 of the appeal is true, hence no comment.
- 7-11. Para No. 7 to 11 needs no comments, except that the reversion was set aside, which fact has been admitted.
- 12-13. Appellant has admitted that his writ petition was dismissed as withdrawn.
14. Reference Peshawar High Court Order dated 19-12-2013 passed in Ghulam Sarwar's writ petition No. 963/2010, Speaker Provincial Assembly has passed an elaborate order on 25-06-2014 mainly based on the minutes of DPC(Annexure E)
15. The order does not support the Appellant alleged "Reluctance".

#### **REPLY TO THE GROUNDS.**

- A. In response to Para A of the ground it is submitted that Respondents have fully followed the law and rules governing promotion. In a case where a person is un-suitable and unfit for a particular post as determined by the competent authority, his eligibility and seniority are of no avail to him as against another person who is also qualified and eligible and has been found fit for the post.
- B. In response to Para B, it is submitted that the working papers have been prepared by the Assembly Secretariat and not by Respondent No.3. As far as Selection grade is concerned both, the appellant as well as Respondent No. 3 were granted Selection grade in BPS-18, w.e.f 27-07-1998, but through separated Notifications/officer orders.
- C. In response to Para No.C of the appeal it is submitted that, the adverse entries in the ACR's for the year 1997 were expunged on the grounds that the said adverse entries were not communicated to Respondent No.3
- D. In response to Para No. D, it is submitted that ACR's of both the officers were critically examined by the Committee. The ACR's of Respondent No. 3 were found better on rating basis. It was also noticed that in the ACR's from 2002 to 2006 of Appellant, it was mentioned that the officer at Serial No.1 needs further training and experience in Parliamentary Practice/Procedure and Rules, so as to shoulder higher responsibilities. It was also observed that the officer at Serial No.2 has sufficient experience both in legislation and Administration which was one of the pre-requisite fixed by the Committee in its meeting for promotion to the post of Additional Secretary BPS-19.
- E. Detailed reply has been given in Para D of the grounds.
- F. In response to Para F of the grounds it is submitted that, Notification dated 18-08-2007 is valid as the same is based on the recommendation of a competent forum i.e. Departmental Promotion/Recruitment Committee.

- G & H. In response to these two Paras, the Hon'ble Speaker has never ignored the directions of High Court and always acted in accordance with the recommendations of DPC as the reasons for promotion to the said post has already been given in their detailed minutes.
- I. DPC has recommended Respondent No. 3 for promotion to the post of Additional Secretary BPS-19 and the appellant was not illegally denied promotion, which is evident from the minutes of Finance Committee and DPC.
- J&K. Keeping in view the ACR's, qualification and experience both in legislation and administration which was one of the prerequisite fixed by the Finance Committee for the said post, DPC promoted Respondent No. 3 according to law.

It is, therefore, requested that the appeal be dismissed with cost.

Respondent No.1

Speaker, Provincial Assembly, Khyber Pakhtunkhwa ✓

Respondent No. 2

Secretary, Provincial Assembly of Khyber Pakhtunkhwa

**AMANULLAH**  
SECRETARY  
Provincial Assembly of  
Khyber Pakhtunkhwa

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

Appeal No. 952/2014

Ghulam Sarwar.....Appellant

VS

Speaker Provincial Assembly and others .....Respondents

**Reply of stay application on behalf of Respondent No. 1&2:**

1. No comments.
2. Reply to main appeal may kindly be considered a part of this reply.
3. Incorrect. The Appellant has no prima facie case.
4. Incorrect. If stay has been granted, the public will suffer irreparable loss.
5. The Appellant wants to deprive the replying Respondent No. 3 of his right before the decision of the appeal.

In view of the above, the petition for the grant of interim relief may kindly be dismissed.

**Respondent No.1**

Speaker, Provincial Assembly, Khyber Pakhtunkhwa ✓

**Respondent No. 2**


Secretary, Provincial Assembly Secretariat, Khyber Pakhtunkhwa

**AMANULLAH**  
SECRETARY  
Provincial Assembly of  
Khyber Pakhtunkhwa

**AFFIDAVIT**

I, Mr. Fakhr-e-Alam, Law Officer Provincial Assembly of Khyber Pakhtunkhwa, do hereby solemnly affirm and declare on oath that the contents of the above reply are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'able Court.



DEPONENT

17301-6078318-5

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

**Appeal No. 952/2014**

**Ghulam Sarwar.....Appellant**

**VS**

**Speaker Provincial Assembly and others .....Respondents**

**AFFIDAVIT**

I Mr. Fakhr-e-Alam, Law Officer Provincial Assembly of Khyber Pakhtunkhwa do hereby solemnly affirm and declare on oath that the contents of the accompanying Para-wise comments submitted by Respondents No.1 & 2 are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'able Court.



**DEPONENT**

**17301-6078318-5**

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Annexure (A)

PROVINCIAL ASSEMBLY OF N.W.F.P.

NOTIFICATION

Dated Peshawar, the 27/2/2003

No. PA/NWFP/Admn:/ 6046 On the recommendation of the Departmental Promotion/Recruitment Committee No-I, and in exercise of the powers conferred on him by Rule-10 read with Rule-6 of the North West Frontier Province Provincial Assembly Secretariat (Recruitment) Rules, 1974, Mr. Speaker is pleased to award selection grade BPS-18 to the following Assistant Secretaries of the Provincial Assembly Secretariat of NWFP, from the dates as noted against each:-

1. Mr. Nasrullah Khan,  
Assistant Secretary BPS-17. 27-07-1998.
2. Mr. Amjad Ali,  
Assistant Secretary BPS-17. 08-03-1999.

BY ORDER OF MR. SPEAKER.

(NAZIR AHMAD)  
SECRETARY,

PROVINCIAL ASSEMBLY OF NWFP

E.No. PA/NWFP/Admn:/ 6047-53 Dated 27/2/2003.

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

1. The Accountant-General, NWFP, Peshawar.
2. The Manager, Government Printing Press, Peshawar.
3. The Officers concerned.
4. Pay Bill Clerk, Provincial Assembly of NWFP.
5. Personal files of the officers/official concerned.

ASSISTANT SECRETARY (A)  
PROVINCIAL ASSEMBLY OF NWFP.

ATTESTED

*Qazi Muhammad Anwar (SI)*  
Senior Advocate  
Supreme Court of Pakistan.

*Attested*  
*(Signature)*  
**FAKIR ZAAM**  
Law Office  
Provincial Assembly of Peshawar  
Pakhtunkhwa



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Annexure B  
N.S/I

PROVINCIAL ASSEMBLY OF N.W.F.P.

MINUTES OF THE MEETING OF FINANCE COMMITTEE  
HELD ON 28<sup>th</sup> JULY, 2007 AT 11:00 A.M. IN THE  
CHAMBER OF MR. SPEAKER.

A meeting of the Finance Committee of the Provincial Assembly of N.W.F.P. was held on 28<sup>th</sup> July, 2007 at 11:00 A.M. under the chairmanship of Mr. Speaker in his chamber. The following were present:-

FINANCE COMMITTEE.

- |     |                              |   |         |
|-----|------------------------------|---|---------|
| i.  | Mr. Attiqur Rehman, M.P.A.   | : | Member. |
| ii. | Mr. Abdul Majid Khan, M.P.A. | : | Member. |

FINANCE DEPARTMENT.

Mr. Aurangzeb-ul-Haq, Special Secretary,  
Finance Department.

PROVINCIAL ASSEMBLY OF N.W.F.P.

- i. Mr. Muhammad Mushtaq,  
Secretary.
- ii. Mr. Masam Khan Mohmand,  
Deputy Director (Finance & Accounts).
- iii. Mr. Nasrullah Khan Khattak,  
Deputy Secretary (Admn:).

2. The meeting commenced with recitation from the Holy Qur'an by the Chairman.

3. The Chairman welcomed the Members in the meeting. He informed the Committee that due to the on going series of PAC meetings, he convened the meeting of Finance Committee on short notice. He thanked the members for attending the meeting on such a short notice.

4. The Agenda was discussed item wise and the following decisions were

Attested  
FARUQ E ALAM  
Law Officer  
Provincial Assembly of North  
Pakhtunkhwa

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5. The Committee was informed that the Deputy Secretary (Admn) is responsible to carry out a number of duties. He is the overall incharge of branches of Administration, Establishment, Sound System, Telephone Exchange, Dispatch, Printing, Protocol, Electrical wing, Estate office and external & internal security of the Assembly. He has to make arrangements like requisition of Police Force, Medical cover for MPAs', Press coverage and uninterrupted supply of Electricity & Telephone during the Assembly session. He is also member of the DPC-II, Auction Committee, Purchase Committee and Rules of Business Committee. Since the work load of various natures has been increased manifold, therefore, it can not be controlled by Deputy Secretary (Admn:)

✓ 6. After detailed discussion the Committee agreed to the creation of one post of Additional Secretary in BPS-19 to supervise the affairs of the Administration and other matters mentioned above. The post may be filled in accordance to the provision of the N.W.F.P Provincial Assembly Secretariat (Recruitment) Rules, 1974. Preference may, however, be given to the officer of the N.W.F.P Assembly Secretariat having experience in Legislation and Administration.

ITEM NO.02.

CREATION OF ONE POST OF DIRECTOR (FINANCE & ACCOUNTS) IN BPS-19 IN THE ASSEMBLY SECRETARIAT.

7. The Committee was informed that due to increase in the number of MPAs' from 83 to 124, the responsibilities of the Deputy Director (Finance & Accounts) have also been increased manifold. In brief the Deputy Director (Finance & Accounts) is responsible for supervision of branches of Accounts I, Accounts-II, General Admn: and Store. He is also assisting the Secretary Provincial Assembly in financial and accounting matters assigned to him in accordance with the provisions under sub rule (3) of rule 14 of the N.W.F.P (Finance Committee) Rules, 1974. In addition to the above, he is responsible for preparation of Budget and Revised Estimates both "CHARGED" and "VOTED", reconciliation of expenditure figures with AG N.W.F.P, processing of salary, TA/DA, medical claims of MPA's and Assembly Secretariat staff, purchase/repairs of vehicles, machinery and furniture etc, installation of telephones at the residences of MPAs', correspondence with DG Audit regarding audit of Accounts of Assembly Secretariat, correspondence with Income tax/Sales tax departments. He also deals with the affairs i.e. conferences, seminars, workshops of Commonwealth Parliamentary Association and foreign tour programs of Mr. Speaker, Deputy Speaker and Parliamentary Delegations abroad. He is also member of the Auction Committee, Purchase Committee and DPC II of Assembly Secretariat. Keeping in

Attested  
28/10/2014  
FAKIR ALAM  
Law Officer  
Provincial Assembly of Khyber  
Pakhtunkhwa

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Annexure

(C)

17/08/07

20/8

PROVINCIAL ASSEMBLY OF N.W.F.P.MINUTES OF THE MEETING OF DEPARTMENTAL PROMOTION/RECRUITMENT COMMITTEE NO.1 OF THE PROVINCIAL ASSEMBLY SECRETARIAT OF N.W.F.P. HELD ON 17/08/2007 AT 11:30 A.M. IN THE CHAMBER OF MR. SPEAKER.

A meeting of the Departmental Promotion/Recruitment Committee No.1 of the Provincial Assembly Secretariat of N.W.F.P was held on 17/08/2007 at 11:30 A.M under the chairmanship of Mr. Speaker in his chamber to consider the promotion cases of various officers/officials of the Assembly Secretariat. The following were present:-

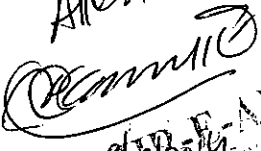
DPC-1

- |      |   |   |                               |
|------|---|---|-------------------------------|
| i.   | Shahzada Muhammad Gustasip Khan,<br>MPA/Leader of Opposition      | : | Member                        |
| ii.  | Mr. Abdul Akbar Khan , M.P.A.                                     | : | Member                        |
| iii. | Mr. Muhammad Mushtaq,<br>Secretary Provincial Assembly of N.W.F.P | : | Secretary to the<br>Committee |

2. The meeting commenced with recitation from the Holy Qur'an by the Chairman.

3. The Chairman informed the Committee that the DPC-I has the privilege to take all the decisions in the past on merit basis and keeping in view the Govt. policy on the subject matter. He also briefed the Committee on the new promotion policy of the Govt. According to the promotion policy of the Govt. of N.W.F.P circulated vide Establishment and Administration Deptt. (Regulation wing) SOR-IV(E&AD) 1-16/2004 dated 20/09/2004, promotion shall be made on merit basis, keeping in view the following pre-requisites:-

- |      |   |
|------|---|
| i.   | Higher educational qualification, professional capabilities & experience in the relevant field. |
| ii.  | Annual confidential reports.  |
| iii. | Administrative experience & capability in case of Administration related posts.                 |
| iv.  | General reputation.   |
| v.   | Seniority   |

Attested  
  
 FAKHURUDDIN E-ALAM  
 Law Officer  
 Provincial Assembly of Khyber  
 Pakhtunkhwa

departments to follow, therefore, the DPC-I should take bold decisions purely on merit basis in the public interest for the benefits of the institution and not for personal interest and benefits of individuals.

5. Shahzada Muhammad Gustasip Khan MPA agreed with the remarks of Mr. Abdul Akbar Khan and stated that the Assembly Secretariat is a peculiar organization; its employees help the elected representatives in framing law for the welfare of the general public and smooth running of the Govt. functionaries, therefore, competent, efficient and devoted workers should be encouraged rather than persuing the unrealistic criteria of seniority for promotion.

6. The Agenda was discussed item-wise and following decisions were arrived at:-

Item No. I. **PROMOTION TO THE POST OF ADDITIONAL SECRETARY IN BPS-19.**

7. The Committee was informed about the Finance Committee meeting held on 28<sup>th</sup> July, 2007, in which it was decided that the post of Additional Secretary may be filled in accordance with the provisions of the NWFP Provincial Assembly Secretariat (Recruitment) Rules, 1974. Preference may, however, be given to the officers of the NWFP Assembly Secretariat having experience in Legislation and Administration. The Committee considered the following officers for promotion against the newly created post of Additional Secretary BPS-19:-

S.No	Name	Qualification	Date of entry into service	Date of promotion to the present post
1.	Mr. Ghulam Sarwar	M.P.A.	11/3/1993	28/2/2003
2.	Mr. Nasrullah khan khattak	M.A.IR	13/3/1993	28/2/2003
3.	Mr. Zahoor Ahmad	B.A	4/9/1973	10/6/2006

8. The Committee noticed that the officer at Serial No.1 and 2 above have been promoted to the present post of Deputy Secretary on the same day i.e. 28/03/2003. However, the officer at Serial No.1 has entered into Govt. service on 11/03/1993 whereas the officer at Serial No.2 on 13/03/1993. However, both the officers have equal length of service against the present posts.

Attested  
 FAKIR E ALAM  
 28/03/2009  
 Provincial Assembly of Khyber  
 Pakhtunkhwa

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experience both on Legislation and Administration side which is one of the prerequisite fixed by the Finance Committee in its meeting referred to above, for promotion to the post of Additional Secretary BPS-19.

10. After detailed discussion and keeping in view the ACRs, qualification and experience of the officers, the Committee unanimously decided to promote Mr. Nasrullah Khan Khattak against the post of Additional Secretary BPS-19.

Item No. II. PROMOTION AGAINST THE POST OF DEPUTY SECRETARY IN BPS-18.

11. Due to promotion of Mr. Nasrullah Khan Khattak to the post of Additional Secretary in BPS-19, the post of Deputy Secretary BPS-18 will become vacant. This post is required to be filled in by way of promotion from amongst the officers of the Assembly Secretariat.

12. The bio data and documents of the following officers were placed before the Committee for consideration for promotion against the vacant post of Deputy Secretary BPS-18:-

S.No	Name	Qualification	Date of entry into service	Date of promotion to the present post
1.	Mr. Ghufranullah	B.A (LLB)	12/10/1995	12/10/1995
2.	Syed Muhammad Mahir	B.A	12/10/1995	15/10/1995
3.	Mr. Mumtaz Ahmad	Matric	14/07/1973	11/02/1997

13. After lengthy discussion the Committee approved the officer at Serial No.1 for promotion against the vacant post of Deputy Secretary BPS-18 on the basis of seniority-cum-fitness, qualification and experience in the relevant field.

Item No. III. PROMOTION TO THE POST OF ASSISTANT SECRETARY IN BPS-17

14. Similarly on promotion of Mr. Ghufranullah to the post of Deputy Secretary, the post of Assistant Secretary will become vacant which needs to be filled in by way of promotion.

*Meded*  
*Qasim*  
**SAKIB-E-ALAM**  
15/10/2014  
Provincial Assembly of  
Pakhtunkhwa

The Committee examined the ACRs & documents of all the candidates shown in the following panel:-

S. No	Name	Qualification	Date of entry Into service	Date of promotion To the present post
1.	Mr. Ghulam Akbar	Matric	7/11/1975	6/2/1997
2.	Mr. Zarwali	Matric	26/4/1973	26/8/1998
3.	Mr. Khalid Shaheen	B.A	16/5/1993	26/5/2005

(13)

(12)

Annexure (D)

PROVINCIAL ASSEMBLY OF N.W.F.P.

No.PA/NWFP/Admn:/ 1082

Dated Peshawar, the 15/3/2000.


To

Mr.Nasrullah Khan,  
Assistant Secretary,  
Provincial Assembly of NWFP.

SUBJECT:- EXPUNCTION OF ADVERSE REMARKS.


Memo:

With reference to your appeal for expunction of adverse remarks recorded in your ACR for the year,1997, the Competent Authority has been pleased to expunge all the adverse remarks/entries recorded in your ACR for the year 1997.

  
ASSISTANT SECRETARY,  
PROVINCIAL ASSEMBLY OF N.W.F.P

E.No.PA/NWFP/Admn:/ 1083 Dated 15/3/2000.

Copy to ACR file.

  
ASSISTANT SECRETARY,  
PROVINCIAL ASSEMBLY OF N.W.F

*Alleged*  
*Demerit*  
**FAHRIE-ALAM**  
Law Office  
Provincial Assembly of Peshawar  
Pakhtunkhwa

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Annexure (E)

Reference Peshawar High Court Order Dated 19-12-2013 passed in Mr. Ghulam Sarwar's Writ Petition No.963/2010.

ORDER

1. It is an old case pertaining to selection, promotion and appointment made on merit.

A perusal of the minutes of the meeting of Departmental Promotion/ Recruitment Committee No. 1 of the Provincial Assembly Secretariat of Khyber Pakhtunkhwa held on 17/08/2007 at 11:30 a.m. in the Chamber of Mr. Speaker.

A meeting of the Departmental Promotion/Recruitment Committee No.1 of the Provincial Assembly Secretariat of Khyber Pakhtunkhwa was held on 17/08/2007 at 11:30 A.M. under the Chairmanship of Mr. Speaker in his Chamber to consider the promotion cases of various officers/officials of the Assembly Secretariat. The following were present:-

DPC-I

- i. Shahzada Muhammad Gustasip Khan, MPA/Leader of Opposition : Member
- ii. Mr. Abdul Akbar Khan, M.P.A. : Member
- iii. Mr. Muhammad Mushtaq, Secretary Provincial Assembly of Khyber Pakhtunkhwa : Secretary to the Committee

2. The meeting commenced with recitation from the Holy Qur'an by the Chairman.

3. The Chairman informed the Committee that the DPC-I has the privilege to take all the decisions in the past on merit basis and keeping in view the Govt. Policy on the subject matter. He also briefed the Committee on the new promotion policy of the Govt. according to the promotion policy of the Govt. of Khyber Pakhtunkhwa, circulated vide Establishment and Administration Deptt. (Regulation wing) SOR-IV(E&AD) 1-16/2004 dated 20/09/2004, promotion shall be made on merit basis, keeping in view the pre-requisites:-

- i. Higher educational qualification, professional capabilities & experience in the relevant field.
- ii. Annual confidential reports.
- iii. Administrative experience & capability in case of Administration related posts.
- iv. General reputation.
- v. Seniority.
- vi. Honesty.
- vii. Capability & suitability of shouldering higher responsibilities.

4. Mr. Abdul Akbar Khan, MPA started the discussion with the view that being a legislative organ of the state, the Khyber Pakhtunkhwa Assembly is a role model for other Departments to follow, therefore, the DPC-I should take bold decisions purely on merit basis in the public interest for the benefits of the Institution and not for personal interest and benefits of individuals.

*Handwritten signature and stamp*  
Secretary to the Committee  
Khyber Pakhtunkhwa

*Asad Qaiser,*  
Speaker,  
Khyber Pakhtunkhwa Assembly

SCA  
12  
3/9/6

*Muhammad*  
*Qasim*  
Law Officer,  
Provincial Assembly of Khyber  
Pakhtunkhwa

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Handwritten signature and initials.

Assistant Secretary  
Khyber Pakhtunkhwa Assembly

5. Shahzada Muhammad Gustasip Khan, MPA agreed with the remarks of Mr. Mr. Abdul Akbar Khan, MPA and stated that the Assembly Secretariat is a peculiar organization, its employees, help the elected representatives in framing law for the welfare of the general public and smooth running of the Govt. functionaries, therefore, competent, efficient and devoted workers should be encouraged rather than perusing the unrealistic criteria of seniority for promotion.

6. The agenda was discussed item-wise and following decisions were arrived at:-

Items No.1. PROMOTION TO THE POST OF ADDITIONAL SECRETARY IN BPS-19.

7. The Committee was informed about the Finance Committee meeting held on 28<sup>th</sup> July, 2007, in which it was decided that the post of Additional Secretary may be filled in accordance with the provisions of the Khyber Pakhtunkhwa Provincial Assembly Secretariat (Recruitment) Rules, 1974, preference may, however, be given to the officers of the Khyber Pakhtunkhwa Assembly Secretariat having experience in Legislation and Administration. The Committee considered the following officers for promotion against the newly created post of Additional Secretary BPS-19:-

S.No	Name	Qualification	Date of entry into service	Date of promotion to the present post
1.	Mr. Ghulam Sarwar	M.P.A	11/3/1993	28/2/2003
2.	Mr. Nasrullah Khan Khattak.	M.A.IR	13/3/1993	28/2/2003
3.	Mr. Zahoor Ahmad	B.A	4/9/1973	10/6/2006

Sad Qaiser,  
Speaker,  
Khyber Pakhtunkhwa Assembly

The Committee noticed that the officer at Serial No. 1 and 2 above have been promoted to the present post of Deputy Secretary on the same day i.e. 28/03/2003. However, the officer at Serial No.1 has entered into Govt. service on 11/03/1993 whereas the officer at Serial No.2 on 13/03/1993. However, both the officers have equal length of service against the present posts.

9. ACRs of the officers were also critically examined. The ACRs of the officer at Serial No. 2 were found better on rating basis. It was noticed that in the ACRs from 2002 to 2006 of Mr. Ghulam Sarwar, it was mentioned that the officer needs further training and experience in parliamentary practice/procedure and Rules so as to shoulder higher responsibilities. It was also observed that the officer at Serial No. 2 has sufficient experience both on Legislation and Administration side which is one of the prerequisite fixed by the Finance Committee in its meeting referred to above, for promotion to the post of Additional Secretary BPS-19.

10. After detailed discussion and keeping in view the ACRs, qualification and experience of the officers, the Committee unanimously decided to promote Mr. Nasrullah Khan Khattak against the post of Additional Secretary BPS-19.

11. All the above promotions/change of cadre will take place with immediate effect.

Handwritten signature and stamp: **PROVINCIAL ASSEMBLY MEMBER**, Law Officer, Khyber Pakhtunkhwa.



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BAKHT JEHAN KHAN  
Speaker Provincial Assembly of Khyber Pakhtunkhwa  
17/08/2007

CHAIRMAN  
Departmental Promotion/Recruitment Committee-I  
Provincial Assembly of Khyber Pakhtunkhwa

SHAHZADA MUHAMMAD GUSTASIP KHAN  
Leader of Opposition/MPA  
MEMBER

ABDUL AKBAR KHAN, MPA  
MEMBER

*Alfred*  
*[Signature]*  
Assistant Secretary  
Khyber Pakhtunkhwa

12. Accordingly promotion order dated 18/08/2007 was issued. Thus Mr. Nasrullah Khan was promoted as Additional Secretary.

13. Mr. Ghulam Sarwar, Deputy Secretary requested for review of the above proceedings. His review petition was rejected by the Speaker and he was accordingly informed on 26/09/2007.

14. Mr. Ghulam Sarwar, Deputy Secretary then filed w.p 1955/2007 whereby order dated 26/09/2007 was set aside, directing reconsideration of the matter. On reconsideration the review was allowed by the then Deputy Speaker in the absence of the Speaker.

15. The above proceedings were challenged by Mr. Nasrullah Khan through W.P No. 1795/2008, which was accepted, reversing the decision of the Deputy Speaker and restoring/reinstating Mr. Nasrullah Khan as Additional Secretary w.e.f 18/08/2007. This position has continued uptill this time.

16. Mr. Ghulam Sarwar, Deputy Secretary again went to the Court but his Writ Petition was dismissed as withdrawn. Thereafter Mr. Ghulam Sarwar was also promoted and appointed Additional Secretary Vide Order dated 01/10/2009.

17. After his promotion Mr. Ghulam Sarwar again reverted to litigation for securing seniority against Nasrullah Khan and managed to obtain an order for reconsideration of the claim through his Writ Petition No.963/2010.

18. An examination of the above facts, available on record, reveal to uncontroverted facts: (a) of Nasrullah Khan's promotion on merit on 18/08/2007 and (b) Ghulam Sarwar's promotion subsequently on 01/10/2009; both by the competent authority in accordance with the rules.

Having gone through the record and having applied my mind, Mr. Ghulam Sarwar claim of seniority against Nasrullah Khan is baseless.

*Alfred*  
*[Signature]*  
27/10/2014  
FAKIR-E-ALAM  
Provincial Assembly of  
Pakhtunkhwa

*[Signature]*  
25/8/2014  
Asad Qaiser  
SPEAKER  
Khyber Pakhtunkhwa Assembly

PROVINCIAL ASSEMBLY OF KHYBER  
PAKHTUNKHWA