

14.05.2015

Appellant in person present. During the course of hearing, it transpired that the appellant was granted pre-mature increment when his post up-graded from BPS-7 to BPS-12 on 1.10.2007 but on the strength of notification dated 30.5.2014 he was deprived of the benefits of up-gradation in the shape of arrears of salary. Earlier the appellant has preferred departmental appeal for pre-mature increment as well as the afore-stated arrears. Since the appellant has been granted the pre-mature increment as such it is deemed appropriate to direct the appellant to first submit departmental appeal against the notification dated 30.5.2014 issued during the pendency of the appeal and in case his grievances are not redressed in the departmental appeal then he may file fresh appeal in respect of the afore-stated issue before this Tribunal.

With the above observations, the appeal is disposed of in limine. File be consigned to the record.

ANNOUNCED
14.5.2015

Chairman
14.05.15

7
26.02.2015

Appellant in person present. Requested for adjournment.
Adjourned to 31.03.2015 for preliminary hearing before S.B.


Chairman

8
31.03.2015

Appellant in person present. He has submitted application ~~for~~ amendment of his appeal on 30.3.2015 according to which he has been allowed one pre-mature increment with effect from 1.6.2014 instead of 1.10.2007. Appellant intend to modify the appeal for confining his claim to the extent of arrears. Application is allowed subject to all just and legal objections. To come up for amended appeal on 17.4.2015 before S.B.


Chairman

9
17.04.2015

Appellant in person present. Amended appeal submitted.
To come up for preliminary hearing on 30.04.2015 before S.B.


Chairman

10
30.04.2015

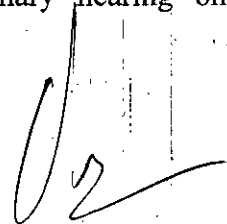
Appellant in person present. Seeks adjournment. Adjourned to 14.05.2015 for preliminary hearing before S.B.


Chairman

3.
23.06.2014

Appellant in person present and requested for adjournment.

Request accepted. To come up for preliminary hearing on 11.08.2014.



Member

4.
11.08.2014

Appellant in person present and requested for adjournment.

Request accepted. To come up for preliminary hearing on 15.10.2014.



Member

5.
15.10.2014

Appellant in person present. Preliminary arguments partly heard. The matter required further clarification, therefore, pre-admission notice be issued to the AAG/GP to assist the Tribunal. To come up for preliminary hearing on 23.12.2014.



Member

6.
Reader Note:

23.12.2014

Appellant in person and Mr. Kabirullah Khattak, Asst: Advocate General for the respondents present. Since the Tribunal is incomplete, therefore, case is adjourned to 26.02.2015 for the same.





Reader

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 595 /2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	28/04/2014	<p>The appeal of Mr. Manzoor Ahmad presented today by him, 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	7-5-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>23-6-2014</u></p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Appeal No. 595 of 2014.

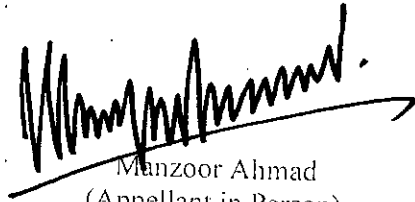
Manzoor Ahmad

V/S Secretary of (E&SE) Deptt; to KPK Govt;

INDEX

S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	-----	1-5
2.	Memo of Addresses of Parties	-----	6
3.	Affidavit	-----	7
4.	Copy of Notification dated 26-1-2008	A	8
5.	Copy of Service Book	B	9
6.	Copy of Notification dated 31-12-2013	C	10
7.	Copy of letter dated 18-4-1992	D	11
8.	Copy of Departmental Appeal dated 5-1-2014	E	12-14

Dated: 28-4-14



Manzoor Ahmad
(Appellant in Person)
M.A. Political Science LLB
Mobile: 0345-9503142

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No. 595 / of 2014.

Manzoor Ahmad PST
Primary School Teacher,
Government Primary School Soganday, (Kotha)
Tehsil Topi, District Swabi. Appellant.

Versus

1. Government of Khyber Pakhtunkhwa,
Department of Elementary & Secondary Education,
Through its Secretary.
2. Government of Khyber Pakhtunkhwa,
Department of Finance,
Through its Secretary.
3. Government of Khyber Pakhtunkhwa,
Department of Law, Justice and Parliamentary Affairs,
Through its Secretary.
4. Director,
Elementary & Secondary Education,
Khyber Pakhtunkhwa,
Peshawar.
5. Accountant General,
Khyber Pakhtunkhwa,
Peshawar. Respondents

630
28/4/2014

U/S 4 of The KPK Service Tribunal Act, 1974

APPEAL FOR ONE PREMATURE INCREMENT TO THE APPELLANT ON HIS UP-GRADATION ON 1-10-2007 FROM BPS-7 TO BPS-12.

28/4/14

The Appellant respectfully submits as under,

FACTS LEADING TO APPEAL

- 1) That the appellant was promoted from BPS-7 to BPS-12 vide Finance Department Notification No. FD/SO(FR)10-22/2007 Dated Peshawar, the 26th January 2008. In this notification it was provided that "In Supercession of this Department's letter No. SO(FR) 10-22(B)/2005 dated 01-10-2007 and in pursuance of the decisions of the meeting held under the Chairmanship of Secretary Establishment on 2-1-2008, the Competent Authority is pleased to allow up-gradation for the incumbents of the posts (emphasis provided) as per details given below w.e.f. 1-10-2007".

(Photocopy of the Notification dated 26-1-2008 is attached at Annexure-"A").

- 2) That the appellant was promoted on the basis of a "**prescribed condition**" of "having 10 years service" given in the said Notification but it was not treated as a promotion and was not awarded one premature increment of BPS-12 as is done in the case of promotion of an employee from the lower pay scale to higher pay scale.

- 3) That the pay of the appellant was fixed in BPS-12 Rs. 6490/- PM.

(Photocopy of the Service book bearing the entry is attached at Annexure "B").

- 4) That the Government of Khyber Pakhtunkhwa Finance Department (Regulation Wing) has issued a Notification NO. FD (SOSR-1) 2-123/2013 Dated Peshawar the 31-12-2013 under the subject "CLARIFICATION REGARDING GRANT OF ONE SPECIAL ADVANCE INCREMENT TO THE EMPLOYEES HOLDING SELECTION GRADE PRIOR TO UPGRADATION OF THEIR POSTS IN BPS ALREADY HELD BY THEM". In this notification it has been provided that certain queries had been received to the Respondent 2 as to whether the employees, who were holding selection grade prior to up-gradation of their of their posts in BPS already held by them, were also eligible to the benefit of premature increment on up-gradation of their posts.

In this connection, the Provincial Government in consultation with Government of Pakistan, Finance Division, has to clarify that one special advance increment is admissible also to the employees who were holding Selection Grade prior to up-gradation of their posts in

BPS already held be them, just as in the case of same scale promotion.

(Photocopy of the Notification dated 31-12-2013 is attached at Annexure "C").

- 5) That the selection-graded employees have been allowed to enjoy the premature increment twice, once at the time of their selection grade from lower pay scale to the higher pay scale and now when their posts have been upgraded.
- 6) That the up-gradation of the appellant was neither considered as the personal promotion of the appellant in shape of promotion from lower pay scale to higher pay scale nor the up-gradation of the post of the appellant and thus was kept in an uncertain condition which led to his deprivation from one premature increment.
- 7) That the respondents are not ready to accept the reality in light of the Supreme Court's judgments that promotion is not only promotion from one post to another but from one scale to another. If they had accepted the reality they would have never deprived the appellant from one premature increment on his up-gradation from BPS-7 to BPS-12.
- 8) That according to letter of the Office of the Accountant General (PR) sub-office Peshawar G.T.K (F) / T-40/Vol-VM/91-92/2378 dated 18-4-1992, that Promotion is not only promotion from a lower post to higher post but also from lower pay scale to higher pay scale by whatsoever means it may be.

(Photocopy of the letter dated 18-4-1992 is attached at Annexure "D").

- 9) That the appellant submitted Departmental appeal on 5-1-2014 to the Respondent No. 4 but he took no action on the appeal within the statutory period. Hence there was no alternative with the appellant but to submit service appeal before this Tribunal.

(Photocopy of the Departmental Appeal dated 5-1-2014 is attached at Annexure "E").

ON GROUNDS:

1. That the BPS-12 was given to only those teachers who had rendered service up to 10 years or more. This enhanced scale was given selectively on the basis of a specific condition, "having 10 years service".

2. That this up-gradation is actually a "Selection Grade" in disguise on the basis of Seniority-cum-fitness. On the question of "Prescribed Condition", the following Court's Judgment (Irshad-ur-Rehman v. Govt; of Pakistan, 1993 PLC (C.S) 39) is relevant. In this Judgment, it was held that *when there were mandatory conditions that a candidate must have qualified in written examination as also in viva voice test for appointment to specified post and the respondent having failed to satisfy the mandatory condition, his appointment was not warranted, while petitioner having qualified in that mandatory test was entitled to an appointment to that post. Department had no jurisdiction to deviate from the same and evolve its own formula for recruitment. Any deviation from the condition prescribed, to the detriment of one or some of the candidates, would render the act of Department as violative of Art. 25 of the Constitution which lays down that all citizens are equal before law and are entitled to equal protection of law*".

3. That the said notification was issued to clarify the ambiguity regarding the Selection Graded employees because the word "also" implies that the matter was clear regarding the other employees. The non-selection graded employees have not been excluded either expressly or impliedly.

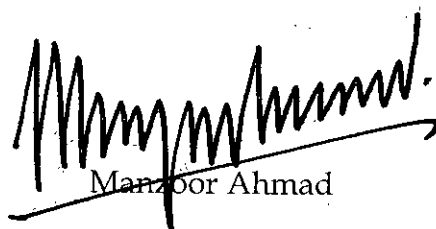
4. That Selection grade is not supported by any rule nor in selection grade the post of the employee is changed nor given higher responsibility to him but when selection grade is given the scale is changed from the lower pay scale to higher pay scale, he is given one premature increment of the higher pay scale. A Court's authority is relevant on the point, 2001 SCMR 252. According to this selection grade was not a promotion in strict sense of the word though the same had overtones of promotion in view of the financial benefit involved. Expression "selection grade" was confined to revision of basic pay scale and did not find mention in S. 8 of Civil Servants Act, 1973 and Civil Servants (Seniority) Rules, 1993 under which seniority list of civil servants was required to be prepared with reference to a service, cadre, or post and not grade".

5. That in up-gradation, the scale of the appellant has changed for better and he is equally entitled to one premature increment as has been clarified in the case of selection-graded employees.
6. That the change of grade to higher pay scale amounted to promotion as is supported by Court's authorities (PLD 1993 SC 187; 1991 SCMR 696 and 2002 PLC (CS) 427).
7. That according to letter of the Office of the Accountant General (PR) sub-office Peshawar G.T.K (F) / T-40/Vol-VM/91-92/2378 dated 18-4-1992, that Promotion is not only promotion from a lower post to higher post but also from lower pay scale to higher pay scale by whatsoever means it may be.

Prayer:-

It is therefore prayed that the appeal of the appellant may please be accepted and the appellant may please be given one premature increment since 1-10-2007 and arrears thereof.

Dated: 28 / 4 / 2014 /



Manzoor Ahmad

Appellant in person.
M.A Political Science, LLB
Mob: 03459503142

6

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Appeal No. _____ of 2014.

Manzoor Ahmad

V/S Secretary of (E&SE) Deptt; to KPK Govt;

AFFIDAVIT IN SUPPORT OF SERVICE APPEAL

I, Manzoor Ahmad son of Amir Jalal resident of Village Marghuz, District Swabi do hereby state on oath that the contents of the accompanying Service Appeal are correct to the best of my knowledge and belief and nothing has been concealed from this honourable Tribunal.

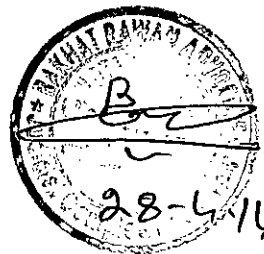
Peshawar.

DEPONENT: 

CNIC# 16202-1032282-5

Dated: 28-4-14

ATTESTED



(7)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Appeal No. _____ of 2014.

Manzoor Ahmad V/S Secretary of (E&SE) Deptt; to KPK Govt;

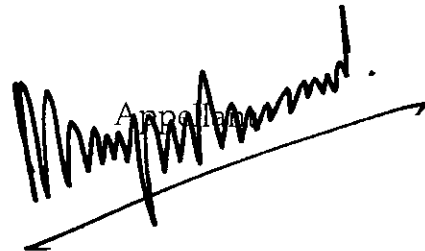
MEMO OF THE ADDRESSES OF PARTIES

A); ADDRESS OF APPELLANT

Manzoor Ahmad
Primary School Teacher,
Government Primary School Soganday (Kotha).
Tehsil Topi District Swabi.

B); ADDRESSES OF RESPONDENTS

- 1) Government of Khyber Pakhtunkhwa,
Department of Elementary & Secondary Education,
Through its Secretary, Peshawar.
- 2) Government of Khyber Pakhtunkhwa,
Department of Finance,
Through its Secretary, Peshawar.
- 3) Government of Khyber Pakhtunkhwa,
Department of Law, Justice and Parliamentary Affairs,
Through its Secretary, Peshawar.
- 4) Director,
Elementary & Secondary Education,
Khyber Pakhtunkhwa,
Peshawar.
- 5) Accountant General,
Khyber Pakhtunkhwa,
Peshawar.


Manzoor Ahmad

Annexure 4
8

Letter copy of the Notification NO. DF/SO(FR)10-22/2007 dated 26-1-2009.

FINANCE DEPARTMENT
(REGULATION WING)

Dated Peshawar, the 26th January, 2008

NOTIFICATION

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

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

} ✓

SECRETARY TO GOVT; OF NWFP
FINANCE DEPARTMENT

Endst No. & Date even.

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

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

(NAIB KHAN)
SECTION OFFICER (FR)

Attested
Mmm

Annexure (B)

(9)

1 Name of post درجہ ملازمت	2 Whether substantive or officiating, and whether permanent or temporary عارضی مستقل تائم مقام	3 If officiating, state— (i) substantive appointment or (ii) whether service counts for pension under rule 3.20 of C.S.R. (Pb.) volume II اگر عارضی ہے تو کیا وہ رول کے مطابق پنشن کا مستحق ہے	4 Pay in substantive post تنخواہ بطور عارضی ملازمت		5 Additional pay for officiating زائد تنخواہ بطور تائم مقام		6 Other emoluments falling under the term "pay" ماسوائے تنخواہ دیگر الادرس	7 Date of appointment تاریخ تقرری	8 Signature of Government servant دستخط سرکاری ملازم
<p>P.P.C. G.P.S. No. 3</p>	<p>uoma</p>	<p>BPS-7 (R-207/100-160-77400)</p>	<p>Rs. P. 6140/- P.M.</p>	<p>Rs. P. 6300/-</p>	<p>12/07</p>	<p>12/07</p>	<p>12/07</p>		
<p>do</p>	<p>do</p>	<p>Revised BPS-07 (353-70-9250)</p>	<p>Rs. 7520/- P.M.</p>	<p>Revised entries BPS 12</p>	<p>07/08</p>	<p>07/08</p>	<p>07/08</p>		
<p>do</p>	<p>do</p>	<p>pay in existing BPS 07 on 01/07 Rs. 6300/P.M.</p>	<p>pay fixed in BPS 12 on 02/07 Rs. 6490/P.M.</p>	<p>Revised BPS-12 (4355-310-13655)</p>	<p>01/07</p>	<p>01/08</p>	<p>01/08</p>		
<p>do</p>	<p>do</p>	<p>pay fixed in BPS-12 on 01/07 Rs. 7765/P.M.</p>	<p>do</p>	<p>Rs. 8075/P.M.</p>	<p>19/08</p>	<p>19/08</p>	<p>19/08</p>		

Attested
MAM

D.S. &



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

Annexure 'C'

10

No. FD (SOSR-1) 2-123/2013
Dated Peshawar (Dt: 31-12-2013)

To

1. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. The Senior Member, Board of Revenue Khyber Pakhtunkhwa.
3. The Secretary of Government, Khyber Pakhtunkhwa.
4. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
6. The Secretary Finance FATA, FATA Secretariat, Peshawar.
7. All Heads of Attached Department in Khyber Pakhtunkhwa.
8. All Divisional Commissions in Khyber Pakhtunkhwa.
9. All Political Agents/District & Sessions Judges in Khyber Pakhtunkhwa.
10. The Registrar, Peshawar High Court, Peshawar.
11. The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
12. The Chairman, Services Tribunal, Khyber Pakhtunkhwa.
13. The Accountant General, Khyber Pakhtunkhwa, Peshawar.

Subject:

CLARIFICATION REGARDING GRANT OF ONE SPECIAL
ADVANCE INCREMENT TO THE EMPLOYEES HOLDING
SELECTION GRADE PRIOR TO UPGRADATION OF THEIR
POSTS IN BPS ALREADY HELD BY THEM.

Dear Sir,

I am directed to refer to this department's notification No. FD (SR-1) 2-4/2008 dated 04-04-2008 and to state the certain queries have been received from different quarters as to whether the employees, who were holding selection grade prior to up-gradation of their posts in BPS already held by them, are also eligible to the benefit of premature increment on up-gradation of their posts.

2. In this connection, the Provincial Government in consultation with Government of Pakistan, Finance Division, has to clarify that one special advance increment is admissible also to the employees who were holding Selection Grade prior to up-gradation of their posts in BPS already held by them, just as in the case of same scale promotion.

3. This order will take effect from 01-09-2007.

Attested

[Signature]

[Signature]
(RAZAULLAH KHAN)

Addl. Secretary (Regulation)

(Com'd...P/2)

Better copy

Annexure-D
①

No. 171 -Reg. I/11/C/85 KM
DEPARTMENT OF THE
AUDITOR-GENERAL OF PAKISTAN,
GULBERG -III, LAHORE

Dated. 01-04-1992.

To

1. All Accountant Generals.
2. All Director-General/Directors of Audit etc.

Subject: FIXATION OF PAY ON REVISION OF PAY SCALE

Government of Pakistan Finance Division O.M. No. F. 1 (12) Im-11/91 dated 19-6-91 and F. 1 (12) IM, -11/91, dated 19-8-91 on the above subject refer

As provided in para 4(i) of the above cited Finance Division.....promotion from a lower to a higher post/scale before the introduction of these scales, the pay of the senior employees in the same scale may be fixed and so enhanced that it would not be less than the pay that would have been admissible to him if his promotion to the higher post/pay scale had been taken place after the introduction of revised pay scale.....1-6-1991. A doubt has been felt in certain quarters whether the aforesaid provision will be applicable in the Selection grade.....also. The matter has been duly considered and it has been decided that the word "promotion" used in this context will include not only promotion from a lower post to higher post but also from lower pay scale to higher pay scale by whatsoever means it may be. All such cases submitted to the Accounts/Audit officers by the respective Ministries/Divisions/Department/offices along with the statement showing.....fixation of pay under the above provision would be beneficial may be dealt with accordingly.

All concerned in your department as well as Ministries /Divisions/Department/offices falling in your Audit jurisdiction may be apprised of the above position through circular letter under.....

Please acknowledge receipt.

.....Sd/.....
(Shakeel ahmad)

D. Director-General (Inspection).

OFFICE OF THE ACCOUNTANT GENERAL (PR) SUB-OFFICE PESHAWAR.
G.T.K (F)/T-40/VOL.-VM/91-92/2378 dated 18-4-1992.

Copy forwarded for necessary action to:-

1. All the D.A.Os / A.A.Os in NWFP.
2.GAD Section, special Section.....

Accounts officer (PR)
Sub office Peshawar.

Attested
MM



Amexale-E
12

Manzoor Ahmad

M.A. Political Science.

B.Sc.; L.L.B. (Pesh.)

Mobile: 0345-9503142.

Email: manzoorahmadjalalmailb@gmail.com.

To

The Director of Elementary and Secondary Education
Khyber Pakhtunkhwa, Peshawar.

**Subject: Appeal for one premature increment to the Appellant on his up-
gradation from BPS-7 to BPS-12 since 1-10-2007.**

Through Proper Channel,

Respected Sir,

The appellant submits Departmental Appeal on the following facts and grounds.

- 1) That the appellant was promoted from BPS-7 to BPS-12 vide Finance Department Notification No. FD/SO(FA)10-22/2007 Dated Peshawar, the 26th January 2007.
- 2) That the appellant was promoted on the basis of a "prescribed condition" of "having 10 years service" but the Government's concerned departments did not treated it as a promotion and did not award one premature increment of BPS-12 as is admissible under The NWFP Civil Services Pay Fixation Rules 1978 in such like promotion.
- 3) That the functionaries of the concerned departments failed in acting upon the rules and Supreme Court's judgments relating to such like cases.
- 4) That the BPS-12 was given to only those teachers who had rendered service up to 10 years or more. This enhanced scale was given selectively on the basis of a specific condition, "having 10 years service" but still the Education Department did not consider it as promotion of the appellant so did not award one premature increment to the appellant. This up-gradation is actually a "Selection Grade" in disguise on the basis of

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Seniority-cum-fitness. On the question of "Prescribed Condition", the following Court's Judgment (Irshad-ur-Rehman v. Govt; of Pakistan, 1993 PLC (C.S) 39) is relevant. In this Judgment, it was held that *when there were mandatory conditions that a candidate must have qualified in written examination as also in viva voce test for appointment to specified post and the respondent having failed to satisfy the mandatory condition, his appointment was not warranted, while petitioner having qualified in that mandatory test was entitled to an appointment to that post. Department had no jurisdiction to deviate from the same and evolve its own formula for recruitment. Any deviation from the condition prescribed, to the detriment of one or some of the candidates, would render the act of Department as violative of Art. 25 of the Constitution which lays down that all citizens are equal before law and are entitled to equal protection of law*".

- 5) That the Government of Khyber Pakhtunkhwa Finance Department (Regulation Wing) has issued a Notification NO. FD (SOSR-1) 2-123/2013 Dated Peshawar the 31-12-2013 under the subject "CLARIFICATION REGARDING GRANT OF ONE SPECIAL ADVANCE INCREMENT TO THE EMPLOYEES HOLDING SELECTION GRADE PRIOR TO UPGRADATION OF THEIR POSTS IN BPS ALREADY HELD BY THEM". The said notification might have clarified the ambiguity in a certain document for certain employees, has granted an opportunity to the appellant to raise the question that why discrimination has been made in the upgraded employees only on the basis of selection grade? The appellant is not selection graded employee but is an upgraded employee. The point has not been clarified that why selection graded employees are entitled and non-selection graded employees are not entitled to one premature increment? Selection grade is not supported by any rule nor in selection grade the post of the employee is changed or given higher responsibility but when selection grade is given the scale is changed from the lower pay scale to higher pay scale, he is given one premature increment of the higher pay scale. A Court's authority is relevant on the point, 2001 SCMR 252. According to this selection grade was not a promotion in strict sense of the word though the same had overtones of promotion in view of the financial benefit involved. Expression "selection grade" was confined to revision of basic pay scale and did not find mention in S. 8 of Civil Servants Act, 1973 and Civil Servants (Seniority) Rules, 1993 under which seniority list of civil servants was required to be prepared with reference to a service, cadre, or post and not grade".
- 6) That the change of grade to higher pay scale amounted to promotion as is supported by Court's authorities (PLD 1993 SC 187; 1991 SCMR 696 and 2002 PLC (CS) 427).

Attested
MMM

7) That according to letter of the Office of the Accountant General (PR) sub-office Peshawar G.T.K (I) / T-10/Vol-VM/91-92/2378 dated 18-1-1992, that Promotion is not only promotion from a lower post to higher post but also from lower pay scale to higher pay scale by whatsoever means it may be.

Prayer:-

It is, therefore, humbly prayed that the appeal of the appellant may please considered sympathetically in light of the above Rules and Court's authorities and the appellant may please be given one premature increment of BPS-12 with effect from 1-10-2007 and its arrears on his up-gradation from BPS-7 to BPS-12.

DATED:-5-1-2014.

Yours Obediently,
Manzoor Ahmad PST
M.A. Political Science LLB
GPS Soganday, Tehsil Topi, District Swabi.
Mobile: 03459503142.

Attested
MM

J.W.F. Province
Service Tribunal
Diary No. 944
Date 30/3/15

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Manzoor Ahmad PST Appellant.

Versus

Government of KPK (E&SE) through its Secretary & Others..... Respondents.

**APPLICATION FOR AMENDMENT IN APPEAL NO. 595/ OF
2014 UNDER O.6., R. 17 OF THE CIVIL PROCEDURE CODE,
1908.**

The applicant respectfully submits as under:-

- 1) That 31-3-2015 has been fixed as the next date of hearing in the appeal by this honourable Tribunal
- 2) That the applicant submitted the above mentioned appeal on 24-4-2014 before this honourable Tribunal.
- 3) That the applicant had challenged Government of Khyber Pakhtunkhwa Finance Department (Regulation Wing) vide Notification NO. FD (SOSR-I) 2-123/2013 dated Peshawar the 31-12-2013 in the above mentioned appeal. → *Amekule A?*
- 4) That the appeal was pending before this honourable Tribunal and the Respondent No. 2 issued another Notification on 30-5-2014 vide Government of Khyber Pakhtunkhwa Peshawar Finance Department (Regulation Wing) NO. FD (SOSR-I) 2-123/2014. → *Amekule B?*
- 5) That the main question in the Appeal before this Tribunal was that **whether the appellant was entitled to one premature increment and arrears thereof when he was upgraded from BPS-7 to BPS-12 w.e.f. 1-10-2007?**
- 6) That the respondents themselves partially resolved the admissibility of premature increment on 30-5-2014, by allowing one premature increment of BPS-12 to the applicant with effect from 1-10-2007 but arrears w.e.f. 1-6-2014 and thus committed a legal error **which now is the actual question that whether a civil servant entitled to a premature increment from 1-10-2007 is not entitled from that date and is entitled from 1-6-2014?** It is nothing but to accepting and denying one thing and the same thing at the same breath.
- 7) That the appellant seeks the permission of this honourable for amending the appeal by mentioning the fact in the amended appeal of the notification dated 30-5-2014 of the Finance Department, deleting the first part of the

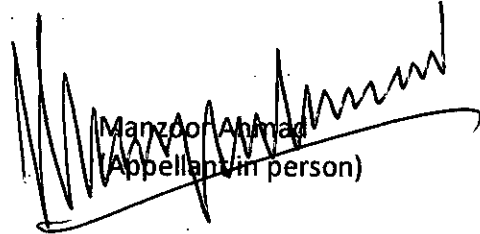
prayer i.e. request for one premature increment since 1-10-2007 which has now been allowed to the appellant since 1-10-2007 and also making other necessary amendments so that to make it clear to this Tribunal that the real question between the appellant and the respondents is that of the admissibility of the arrears of the premature increments since 1-10-2007 as the respondents have accepted the admissibility of the premature increment of BPS-12 since that date.

- 8) That the denial of the arrears of premature increment of BPS-12 prior 1-6-2014 is the gross violation of the Constitutional Articles and is not supported by provision of law.

Prayer:-

It is, therefore, humbly prayed that the applicant may please be allowed to amend his appeal for the clear submission of his legal right before this Tribunal.

Dated: 18-3-2015.


Manzoor Ahmad
(Appellant in person)

AFFIDAVIT IN SUPPORT OF APPLICATION

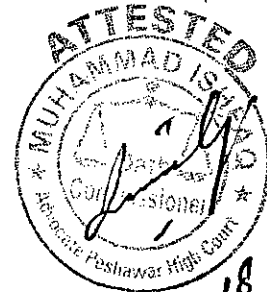
I, Manzoor Ahmad son of Amir Jalal resident of Village Marghuz District Swabi do hereby state on oath that the contents of the accompanying Application are correct to the best of my knowledge and belief and nothing has been concealed from this honourable Tribunal.

Peshawar.

DEPONENT: 

CNIC# 16202-1032282-5

Dated: 18-3-2015.



18/03/15



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

Annexure - 1

No. FD (SOSR-1) 2-123/2013
Dated Peshawar the: 31-12-2013

To

1. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. The Senior Member, Board of Revenue Khyber Pakhtunkhwa.
3. The Secretary of Government, Khyber Pakhtunkhwa.
4. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
6. The Secretary Finance FATA, FATA Secretariat, Peshawar.
7. All Heads of Attached Department in Khyber Pakhtunkhwa.
8. All Divisional Commissions in Khyber Pakhtunkhwa.
9. All Political Agents/District & Sessions Judges in Khyber Pakhtunkhwa.
10. The Registrar, Peshawar High Court, Peshawar.
11. The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
12. The Chairman, Services Tribunal, Khyber Pakhtunkhwa.
13. The Accountant General, Khyber Pakhtunkhwa, Peshawar.

Subject:

CLARIFICATION REGARDING GRANT OF ONE SPECIAL
ADVANCE INCREMENT TO THE EMPLOYEES HOLDING
SELECTION GRADE PRIOR TO UPGRADATION OF THEIR
POSTS IN BPS ALREADY HELD BY THEM.

Dear Sir,

I am directed to refer to this department's notification No. FD (SR-1) 2-4/2008 dated 04-04-2009 and to state the certain queries have been received from different quarters as to whether the employees, who were holding selection grade prior to up-gradation of their posts in BPS already held by them, are also eligible to the benefit of premature increment on up-gradation of their posts.

2. In this connection, the Provincial Government in consultation with Government of Pakistan, Finance Division, has to clarify that one special advance increment is admissible also to the employees who were holding Selection Grade prior to up-gradation of their posts in BPS already held by them, just as in the case of same scale promotion.

3. This order will take effect from 01-09-2007.

(RAZAULLAH KHAN)
Addl: Secretary (Regulation)

(Cont'd...2/2)

FINANCE DEPARTMENT
(REGULATION WING)

Annexure B

Dated Peshawar the 30th May, 2014

Notification:-

No.FD (SO SR-1) 2-123/2014 In pursuance of Government of Pakistan, Finance Division O.M No.11(4)R-2/2011-1153/2013 dated 31-05-2013, the competent authority has been pleased to approve amendment in Rule 9 of Pay Revision Rules 1978 and sanction premature increment on up-gradation of posts w.e.f 28th January, 2002 onward. It would take effect from the actual date of up-gradation of each post or charge assumption of concerned employee whichever is later. Furthermore, Rule 9 of Pay Revision Rules 1978 shall stand amended with effect from the date and to extent indicated in Notification No.FD. S.O. (PRC)/1-2/77 dated 30-05-2014.

2. The employees already availed the benefit of one special advance increment granted vide this Department Notification No.SO (SR-1) 2-4/2008 dated 04-04-2009 and SO (SR-1) 2-123/2013 dated 3-03-2014 shall not be entitled for premature increment on their upgradation under Notification No.SO (FR) 7-2/2007 dated 28-07-2007.

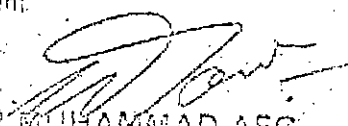
The pay of the concerned employee shall be fixed in accordance with premature increment and he shall not be entitled to any arrears in this behalf.

Secretary to Govt. of Khyber Pakhtunkhwa
Finance Department

Endst: No. & Date Even

Copy is forwarded for information & necessary action to the:-

1. PS to Addl. Chief Secretary, FATA.
2. All Administrative Secretaries, Government of Khyber Pakhtunkhwa
3. Senior Member, Board of Revenue, Khyber Pakhtunkhwa
4. All Commissioners in Khyber Pakhtunkhwa.
5. Accountant General, Khyber Pakhtunkhwa.
6. Secretary to Governor, Khyber Pakhtunkhwa
7. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
8. Secretary provincial Assembly, Khyber Pakhtunkhwa.
9. All Heads of Attached Departments in Khyber Pakhtunkhwa
10. Registrar, Peshawar High Court, Peshawar
11. All Deputy Commissioners, Political Agents, District & Sessions Judges / Executive District Officers in Khyber Pakhtunkhwa.
12. Chairman, Khyber Pakhtunkhwa, Public Service Commission Peshawar
13. Registrar, Service Tribunal, Khyber Pakhtunkhwa.
14. All the Autonomous and Semi Autonomous Bodies in Khyber Pakhtunkhwa
15. Secretary to Government of Punjab, Sindh & Balochistan, Finance Department, Lahore, Karachi & Quetta
16. The District Comptroller of Accounts, Peshawar, Mardan, Kohat, Bannu, Abbottabad, Swat and Dir Khan.
17. The Senior District Accounts Officer Nowshera, Swabi, Charsadda, Haripur, Manshera & Dera Ismail Khan.
18. The Treasury Officer, Peshawar.
19. All District / Agency Accounts Officers in Khyber Pakhtunkhwa / FATA
20. PSO to Senior Minister for Finance, Khyber Pakhtunkhwa.
21. PSO to Chief Secretary, Khyber Pakhtunkhwa.
22. Director, Local Fund Audit, Khyber Pakhtunkhwa Peshawar.
23. PS to Finance Secretary.
24. PAs to All Addl. Secretaries / Deputy Secretaries in Finance Department.
25. Director, FMU with the request to upload the same Notification on website.
26. All Section Officers / Budget Officers in Finance Department.


(WAZIR MUHAMMAD AFC)
Section Officer (SR-1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Manzoor Ahmad PST Appellant.

Versus

Government of KPK (E&SE) through its Secretary & Others..... Respondents.

APPLICATION FOR AMENDMENT IN APPEAL NO. 595/ OF
2014 UNDER O.6., R. 17 OF THE CIVIL PROCEDURE CODE,
1908.

The applicant respectfully submits as under:-

- 1) That 31-3-2015 has been fixed as the next date of hearing in the appeal by this honourable Tribunal
- 2) That the applicant submitted the above mentioned appeal on 24-4-2014 before this honourable Tribunal.
- 3) That the applicant had challenged Government of Khyber Pakhtunkhwa Finance Department (Regulation Wing) vide Notification NO. FD (SOSR-I) 2-123/2013 dated Peshawar the 31-12-2013 in the above mentioned appeal.
- 4) That the appeal was pending before this honourable Tribunal and the Respondent No: 2 issued another Notification on 30-5-2014 vide Government of Khyber Pakhtunkhwa Peshawar Finance Department (Regulation Wing) NO. FD (SOSR-I) 2-123/2014.
- 5) That the main question in the Appeal before this Tribunal was that **whether the appellant was entitled to one premature increment and arrears thereof when he was upgraded from BPS-7 to BPS-12 w.e.f. 1-10-2007?**
- 6) That the respondents themselves partially resolved the admissibility of premature increment on 30-5-2014, by allowing one premature increment of BPS-12 to the applicant with effect from 1-10-2007 but arrears w.e.f. 1-6-2014 and thus committed a legal error **which now is the actual question that whether a civil servant entitled to a premature increment from 1-10-2007 is not entitled from that date and is entitled from 1-6-2014?** It is nothing but to accepting and denying one thing and the same thing at the same breath.
- 7) That the appellant seeks the permission of this honourable for amending the appeal by mentioning the fact in the amended appeal of the notification dated 30-5-2014 of the Finance Department, deleting the first part of the

prayer i.e. request for one premature increment since 1-10-2007 which has now been allowed to the appellant since 1-10-2007 and also making other necessary amendments so that to make it clear to this Tribunal that the real question between the appellant and the respondents is that of the admissibility of the arrears of the premature increments since 1-10-2007 as the respondents have accepted the admissibility of the premature increment of BPS-12 since that date.

- 8) That the denial of the arrears of premature increment of BPS-12 prior 1-6-2014 is the gross violation of the Constitutional Articles and is not supported by provision of law.

Prayer:-

It is, therefore, humbly prayed that the applicant may please be allowed to amend his appeal for the clear submission of his legal right before this Tribunal.

Dated:

Manzoor Ahmad
(Appellant in person)

AFFIDAVIT IN SUPPORT OF APPLICATION.

I, Manzoor Ahmad son of Amir Jalal resident of Village Marghuz District Swabi do hereby state on oath that the contents of the accompanying Application are correct to the best of my knowledge and belief and nothing has been concealed from this honourable Tribunal.

Peshawar.

DEPONENT: _____

Dated:

CNIC# 16202-1032282-5



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

10

No. FD (SOSR-1) 2-125/2003
Dated Peshawar the 31-12-2003

To

1. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. The Senior Member, Board of Revenue Khyber Pakhtunkhwa.
3. The Secretary of Governor, Khyber Pakhtunkhwa.
4. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
6. The Secretary Finance FATA, FATA Secretariat, Peshawar.
7. All Heads of Attached Department in Khyber Pakhtunkhwa.
8. All Divisional Commissions in Khyber Pakhtunkhwa.
9. All Political Agents/District & Sessions Judges in Khyber Pakhtunkhwa.
10. The Registrar, Peshawar High Court, Peshawar.
11. The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
12. The Chairman, Services Tribunal, Khyber Pakhtunkhwa.
13. The Accountant General, Khyber Pakhtunkhwa, Peshawar.

Subject:

CLARIFICATION REGARDING GRANT OF ONE SPECIAL
ADVANCE INCREMENT TO THE EMPLOYEES HOLDING
SELECTION GRADE PRIOR TO UPGRADATION OF THEIR
POSTS IN BPS ALREADY HELD BY THEM.

Dear Sir,

I am directed to refer to this department's notification No. FD (SR-1) 2-17/2003 dated 05-04-2003 and to state the certain queries have been received from different quarters as to whether the employees, who were holding selection grade prior to up-gradation of their posts in BPS already held by them, are also eligible to the benefit of premature increment on up-gradation of their posts.

In this connection, the Provincial Government in consultation with Government of Pakistan, Finance Division, has to clarify that one special advance increment is admissible also to the employees who were holding Selection Grade prior to up-gradation of their posts in BPS already held by them, just as in the case of same scale promotion.

This order will take effect from 01-09-2007.

(RAZAULLAH KHAN)

Addl. Secretary (Regulation)

(Cont'd... 2/2)

FINANCE DEPARTMENT
(REGULATION WING)

Dated Peshawar the 30th May, 2014

Notification:-

No.FD (SO SR-1) 2-123/2014. In pursuance of Government of Pakistan, Finance Division O.M No.11(4)R-2/2011-1153/2013 dated 31-05-2013, the competent authority has been pleased to approve amendment in Rule 9 of Pay Revision Rules 1978 and sanction premature increment on up-gradation of posts w.e.f 28th January, 2002 onward. It would take effect from the actual date of up-gradation of each post or charge assumption of concerned employee whichever is later. Furthermore, Rule 9 of Pay Revision Rules 1978 shall stand amended with effect from the date and to extent indicated in Notification No.FD, S.O. (PRC)/1-2/77 dated 30-05-2014.

2. The employees already availed the benefit of one special advance increment granted vide this Department Notification No.SO (SR-1) 2-4/2006 dated 04-04-2009 and SO (SR-1) 2-123/2013 dated 31-03-2014 shall not be entitled for premature increment on their upgradation under Notification No.SO (FR) 7-2/2007 dated 28-07-2007.


The pay of the concerned employee shall be fixed in accordance with premature increment and he shall not be entitled to any arrear in this behalf.

Secretary to Govt. of Khyber Pakhtunkhwa
Finance Department

Endst; No. & Date Even

Copy is forwarded for information & necessary action to the:-

1. PS to Addl; Chief Secretary, FATA.
2. All Administrative Secretaries, Government of Khyber Pakhtunkhwa
3. Senior Member, Board of Revenue, Khyber Pakhtunkhwa
4. All Commissioners in Khyber Pakhtunkhwa.
5. Accountant General, Khyber Pakhtunkhwa.
6. Secretary to Governor, Khyber Pakhtunkhwa
7. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
8. Secretary provincial Assembly, Khyber Pakhtunkhwa.
9. All Heads of Attached Departments in Khyber Pakhtunkhwa
10. Registrar, Peshawar High Court, Peshawar
11. All Deputy Commissioners, Medical Agents, District & Sessions Judges / Executive District Officers in Khyber Pakhtunkhwa.
12. Chairman, Khyber Pakhtunkhwa, Public Service Commission Peshawar
13. Registrar, Service Tribunal, Khyber Pakhtunkhwa.
14. All the Autonomous and Semi Autonomous Bodies in Khyber Pakhtunkhwa
15. Secretary to Government of Punjab, Sindh & Balochistan, Finance Department Lahore, Karachi & Quetta
16. The District Comptroller of Accounts, Peshawar, Mardan, Kohat, Bannu, Abbottabad, Swat and Gilgit
17. The Senior District Accounts Officer Nowshera, Swabi, Charsadda, Hanjour, Mansehra & Dir Lower
18. The Treasury Officer, Peshawar.
19. All District / Agency Accounts Officers in Khyber Pakhtunkhwa / FATA
20. PSO to Senior Minister for Finance, Khyber Pakhtunkhwa.
21. PSO to Chief Secretary, Khyber Pakhtunkhwa.
22. Director, Local Fund Audit, Khyber Pakhtunkhwa Peshawar.
23. PS to Finance Secretary.
24. PAs to All Addl; Secretaries / Deputy Secretaries in Finance Department.
25. Director, FMU with the request to upload the same Notification on website.
26. All Section Officers / Budget Officers in Finance Department


(WAZIR MUHAMMAD AFTAB)
Section Officer (SR-1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Manzoor Ahmad PST Appellant.

Versus

Government of KPK (E&SE) through its Secretary & Others..... Respondents.

APPLICATION FOR AMENDMENT IN APPEAL NO. 595/ OF
2014 UNDER O.6., R. 17 OF THE CIVIL PROCEDURE CODE,
1908.

The applicant respectfully submits as under:-

- 1) That 31-3-2015 has been fixed as the next date of hearing in the appeal by this honourable Tribunal
- 2) That the applicant submitted the above mentioned appeal on 24-4-2014 before this honourable Tribunal.
- 3) That the applicant had challenged Government of Khyber Pakhtunkhwa Finance Department (Regulation Wing) vide Notification NO. FD (SOSR-I) 2-123/2013 dated Peshawar the 31-12-2013 in the above mentioned appeal.
- 4) That the appeal was pending before this honourable Tribunal and the Respondent No. 2 issued another Notification on 30-5-2014 vide Government of Khyber Pakhtunkhwa Peshawar Finance Department (Regulation Wing) NO. FD (SOSR-I) 2-123/2014.
- 5) That the main question in the Appeal before this Tribunal was that whether the appellant was entitled to one premature increment and arrears thereof when he was upgraded from BPS-7 to BPS-12 w.e.f. 1-10-2007?
- 6) That the respondents themselves partially resolved the admissibility of premature increment on 30-5-2014, by allowing one premature increment of BPS-12 to the applicant with effect from 1-10-2007 but arrears w.e.f. 1-6-2014 and thus committed a legal error which now is the actual question that whether a civil servant entitled to a premature increment from 1-10-2007 is not entitled from that date and is entitled from 1-6-2014? It is nothing but to accepting and denying one thing and the same thing at the same breath.
- 7) That the appellant seeks the permission of this honourable for amending the appeal by mentioning the fact in the amended appeal of the notification dated 30-5-2014 of the Finance Department, deleting the first part of the

prayer i.e. request for one premature increment since 1-10-2007 which has now been allowed to the appellant since 1-10-2007 and also making other necessary amendments so that to make it clear to this Tribunal that the real question between the appellant and the respondents is that of the admissibility of the arrears of the premature increments since 1-10-2007 as the respondents have accepted the admissibility of the premature increment of BPS-12 since that date.

- 8) That the denial of the arrears of premature increment of BPS-12 prior 1-6-2014 is the gross violation of the Constitutional Articles and is not supported by provision of law.

Prayer:-

It is, therefore, humbly prayed that the applicant may please be allowed to amend his appeal for the clear submission of his legal right before this Tribunal.

Dated:

Manzoor Ahmad
(Appellant in person)

AFFIDAVIT IN SUPPORT OF APPLICATION

I, Manzoor Ahmad son of Amir Jalal resident of Village Marghuz District Swabi do hereby state on oath that the contents of the accompanying Application are correct to the best of my knowledge and belief and nothing has been concealed from this honourable Tribunal.

Peshawar.

DEPONENT: _____

Dated:

CNIC# 16202-1032282-5



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

10

No. FD (SOSR-I) 2-123/2013
Dated Peshawar the: 31-12-2013

To
To
To

1. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. The Senior Member, Board of Revenue Khyber Pakhtunkhwa.
3. The Secretary of Governor, Khyber Pakhtunkhwa.
4. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
6. The Secretary Finance FATA, FATA Secretariat, Peshawar.
7. All Heads of Attached Department in Khyber Pakhtunkhwa.
8. All Divisional Commissions in Khyber Pakhtunkhwa.
9. All Political Agents/District & Sessions Judges in Khyber Pakhtunkhwa.
10. The Registrar, Peshawar High Court, Peshawar.
11. The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
12. The Chairman, Service Tribunal, Khyber Pakhtunkhwa, Peshawar.
13. The Accountant General, Khyber Pakhtunkhwa, Peshawar.

Subject:

CLARIFICATION REGARDING GRANT OF ONE SPECIAL
ADVANCE INCREMENT TO THE EMPLOYEES HOLDING
SELECTION GRADE PRIOR TO UPGRADATION OF THEIR
POSTS IN BPS ALREADY HELD BY THEM.

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In this connection, the Provincial Government in consultation with Government of Pakistan, Finance Division, has to clarify that one special advance increment is admissible also to the employees who were holding Selection Grade prior to up-gradation of their posts in BPS already held by them, just as in the case of same scale promotion.

This order will take effect from 01-09-2007.

(Signature)
(RAZAULLAH KHAN)
Add: Secretary (Regulation)

(Com: 3...2)

FINANCE DEPARTMENT
(REGULATION WING)

Dated Peshawar the 30th May, 2014

Notification:-

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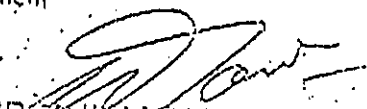
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(WAZIR MUHAMMAD AFRIDI)
Section Officer (SR-1)

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- 5) That the main question in the Appeal before this Tribunal was that **whether the appellant was entitled to one premature increment and arrears thereof when he was upgraded from BPS-7 to BPS-12 w.e.f. 1-10-2007?**
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Dated:

Manzoor Ahmad
(Appellant in person)

AFFIDAVIT IN SUPPORT OF APPLICATION

I, Manzoor Ahmad son of Amir Jâlal resident of Village Marghuz District Swabi do hereby state on oath that the contents of the accompanying Application are correct to the best of my knowledge and belief and nothing has been concealed from this honourable Tribunal.

Peshawar:

DEPONENT: _____

Dated:

CNIC# 16202-1032282-5



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

10

No. FD (SOSR-1) 2-123/2013
Dated Peshawar the: 31-12-2013

1. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. The Senior Member, Board of Revenue Khyber Pakhtunkhwa.
3. The Secretary of Government, Khyber Pakhtunkhwa.
4. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
6. The Secretary Finance FATA, FATA Secretariat, Peshawar.
7. All Heads of Attached Department in Khyber Pakhtunkhwa.
8. All Divisional Commissions in Khyber Pakhtunkhwa.
9. All Political Agents/District & Sessions Judges in Khyber Pakhtunkhwa.
10. The Registrar, Peshawar High Court, Peshawar.
11. The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
12. The Chairman, Services Tribunal, Khyber Pakhtunkhwa.
13. The Accountant General, Khyber Pakhtunkhwa, Peshawar.

Subject:

CLARIFICATION REGARDING GRANT OF ONE SPECIAL
ADVANCE INCREMENT TO THE EMPLOYEES HOLDING
SELECTION GRADE PRIOR TO UPGRADATION OF THEIR
POSTS IN BPS ALREADY HELD BY THEM.

Dear Sir,

I am directed to refer to this department's notification No. FD (SR-1) 2-4/2008 dated 06-01-2009 and to state the certain queries have been received from different quarters as to whether the employees who were holding selection grade prior to up-gradation of their posts in BPS already held by them, are also eligible to the benefit of premature increment on up-gradation of their posts.

2. In this connection, the Provincial Government in consultation with Government of Pakistan, Finance Division, has to clarify that one special advance increment is admissible also to the employees who were holding Selection Grade prior to up-gradation of their posts in BPS already held by them, just as in the case of same scale promotion.

3. This order will take effect from 01-09-2007.

(RAZAULLAH KHAN)
Addl. Secretary (Regulation)

(Cons: 3...2/2)

FINANCE DEPARTMENT
(REGULATION WING)

Dated Peshawar the 30th May, 2014

Notification:-

No.FD (SO SR-1) 2-123/2014. In pursuance of Government of Pakistan, Finance Division O.M No.11(4)R-2/2011-1153/2013 dated 31-05-2013, the competent authority has been pleased to approve amendment in Rule 9 of Pay Revision Rules 1978 and sanction premature increment on up-gradation of posts w.e.f 28th January, 2002 onward. It would take effect from the actual date of up-gradation of each post or charge assumption of concerned employee whichever is later. Furthermore, Rule 9 of Pay Revision Rules, 1978, shall stand amended with effect from the date and to extent indicated in Notification No.FD. S.O. (PRC)/1-2/77 dated 30-05-2014.

2. The employees already availed the benefit of one special advance increment granted vide this Department Notification No.SO (SR-1) 2-4/2008 dated 04-04-2009 and SO (SR-1) 2-123/2013 dated 3-03-2014 shall not be entitled for premature increment on their upgradation under Notification No.SO (FR) 7-2/2007 dated 28-07-2007.


The pay of the concerned employee shall be fixed in accordance with premature increment and he shall not be entitled to any arrear in this behalf.

Secretary to Govt. of Khyber Pakhtunkhwa
Finance Department

Endst: No. & Date Even

Copy is forwarded for information & necessary action to the:-

1. PS to Addl; Chief Secretary, FATA.
2. All Administrative Secretaries, Government of Khyber Pakhtunkhwa
3. Senior Member, Board of Revenue, Khyber Pakhtunkhwa
4. All Commissioners in Khyber Pakhtunkhwa.
5. Accountant General, Khyber Pakhtunkhwa.
6. Secretary to Governor, Khyber Pakhtunkhwa
7. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
8. Secretary provincial Assembly, Khyber Pakhtunkhwa.
9. All Heads of Attached Departments in Khyber Pakhtunkhwa
10. Registrar, Peshawar High Court, Peshawar
11. All Deputy Commissioners, Political Agents, District & Sessions Judges (Executive) District Officers in Khyber Pakhtunkhwa.
12. Chairman, Khyber Pakhtunkhwa, Public Service Commission Peshawar
13. Registrar, Service Tribunal, Khyber Pakhtunkhwa.
14. All the Autonomous and Semi Autonomous Bodies in Khyber Pakhtunkhwa
15. Secretary to Government of Punjab, Sindh & Balochistan, Finance Department Lahore Karachi & Quetta
16. The District Comptroller of Accounts, Peshawar, Mardan, Kohat, Bannu, Abbottabad, Swat and Dir Upper
17. The Senior District Accounts Officer Nowshera, Swabi, Charsadda, Haripur, Manshera & Dir Lower
18. The Treasury Officer, Peshawar.
19. All District / Agency Accounts Officers in Khyber Pakhtunkhwa / FATA
20. PSO to Senior Minister for Finance, Khyber Pakhtunkhwa.
21. PSO to Chief Secretary, Khyber Pakhtunkhwa.
22. Director, Local Fund Audit, Khyber Pakhtunkhwa Peshawar.
23. PS to Finance Secretary.
24. PAs to All Addl; Secretaries / Deputy Secretaries in Finance Department.
25. Director, FMU with the request to upload the same Notification on website.
26. All Section Officers / Budget Officers in Finance Department


(WAZIR MUHAMMAD AFRIDI)
Section Officer (SR-1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Manzoor Ahmad PST Appellant.

Versus

Government of KPK (E&SE) through its Secretary & Others..... Respondents.

APPLICATION FOR AMENDMENT IN APPEAL NO. 595/ OF
2014 UNDER O.6., R. 17 OF THE CIVIL PROCEDURE CODE,
1908.

The applicant respectfully submits as under:-

- 1) That 31-3-2015 has been fixed as the next date of hearing in the appeal by this honourable Tribunal
- 2) That the applicant submitted the above mentioned appeal on 24-4-2014 before this honourable Tribunal.
- 3) That the applicant had challenged Government of Khyber Pakhtunkhwa Finance Department (Regulation Wing) vide Notification NO. FD (SOSR-I) 2-123/2013 dated Peshawar the 31-12-2013 in the above mentioned appeal.
- 4) That the appeal was pending before this honourable Tribunal and the Respondent No. 2 issued another Notification on 30-5-2014 vide Government of Khyber Pakhtunkhwa Peshawar Finance Department (Regulation Wing) NO. FD (SOSR-I) 2-123/2014.
- 5) That the main question in the Appeal before this Tribunal was that whether the appellant was entitled to one premature increment and arrears thereof when he was upgraded from BPS-7 to BPS-12 w.e.f. 1-10-2007?
- 6) That the respondents themselves partially resolved the admissibility of premature increment on 30-5-2014, by allowing one premature increment of BPS-12 to the applicant with effect from 1-10-2007 but arrears w.e.f. 1-6-2014 and thus committed a legal error which now is the actual question that whether a civil servant entitled to a premature increment from 1-10-2007 is not entitled from that date and is entitled from 1-6-2014? It is nothing but to accepting and denying one thing and the same thing at the same breath.
- 7) That the appellant seeks the permission of this honourable for amending the appeal by mentioning the fact in the amended appeal of the notification dated 30-5-2014 of the Finance Department, deleting the first part of the

prayer i.e. request for one premature increment since 1-10-2007 which has now been allowed to the appellant since 1-10-2007 and also making other necessary amendments so that to make it clear to this Tribunal that the real question between the appellant and the respondents is that of the admissibility of the arrears of the premature increments since 1-10-2007 as the respondents have accepted the admissibility of the premature increment of BPS-12 since that date.

- 8) That the denial of the arrears of premature increment of BPS-12 prior 1-6-2014 is the gross violation of the Constitutional Articles and is not supported by provision of law.

Prayer:-

It is, therefore, humbly prayed that the applicant may please be allowed to amend his appeal for the clear submission of his legal right before this Tribunal.

Dated:

Manzoor Ahmad
(Appellant in person)

AFFIDAVIT IN SUPPORT OF APPLICATION

I, Manzoor Ahmad son of Amir Jalal resident of Village Marghuz District Swabi do hereby state on oath that the contents of the accompanying Application are correct to the best of my knowledge and belief and nothing has been concealed from this honourable Tribunal.

Peshawar.

DEPONENT: _____

Dated:

CNIC# 16202-1032282-5



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

90

No. FD (SOSR-1) 2-123/2007
Dated Peshawar the: 31-12-2007

To

1. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. The Senior Member, Board of Revenue Khyber Pakhtunkhwa.
3. The Secretary of Government, Khyber Pakhtunkhwa.
4. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
6. The Secretary Finance PATA, PATA Secretariat, Peshawar.
7. All Heads of Attached Department in Khyber Pakhtunkhwa.
8. All Divisional Commissions in Khyber Pakhtunkhwa.
9. All Political Agents/District & Sessions Judges in Khyber Pakhtunkhwa.
10. The Registrar, Peshawar High Court, Peshawar.
11. The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
12. The Chairman, Services Tribunal, Khyber Pakhtunkhwa.
13. The Accountant General, Khyber Pakhtunkhwa, Peshawar.

Subject:

CLARIFICATION REGARDING GRANT OF ONE SPECIAL
ADVANCE INCREMENT TO THE EMPLOYEES HOLDING
SELECTION GRADE PRIOR TO UPGRADATION OF THEIR
POSTS IN BPS ALREADY HELD BY THEM.

Dear Sir,

I am directed to refer to this department's notification No. FD (SP-1) 2-4/2007 dated 04-01-2007 and to state the certain queries have been received from different quarters as to whether the employees, who were holding selection grade prior to up-gradation of their posts in BPS already held by them, are also eligible to the benefit of premature increment on up-gradation of their posts.

In this connection, the Provincial Government in consultation with Government of Pakistan, Finance Division, has to clarify that one special advance increment is admissible also to the employees who were holding Selection Grade prior to up-gradation of their posts in BPS already held by them, just as in the case of same scale promotion.

This order will take effect from 01-09-2007.

(RAZAULLAH KHAN)
Addl: Secretary (Regulation)

(Cons'd...2/2)

FINANCE DEPARTMENT
(REGULATION WING)

Dated Peshawar the 30th May, 2014

Notification:-

No.FD (SO SR-1) 2-123/2014. In pursuance of Government of Pakistan, Finance Division O.M No.11(4)R-2/2011-1153/2013 dated 31-05-2013, the competent authority has been pleased to approve amendment in Rule 9 of Pay Revision Rules 1978 and sanction premature increment on up-gradation of posts w.e.f 28th January, 2002 onward. It would take effect from the actual date of up-gradation of each post or charge assumption of concerned employee whichever is later. Furthermore, Rule 9 of Pay Revision Rules, 1978, shall stand amended with effect from the date and to extent indicated in Notification No.FD. S.O. (PRC)/1-2/77 dated 30-05-2014.

2. The employees already availed the benefit of one special advance increment granted vide this Department Notification No.SO (SR-1) 2-4/2008 dated 04-04-2009 and SO (SR-1) 2-123/2013 dated 3-2-2014 shall not be entitled for premature increment on their upgradation under Notification No.SO (FR) 7-2/2007 dated 28-07-2007.

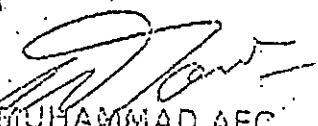
The pay of the concerned employee shall be fixed in accordance with premature increment and he shall not be entitled to any arrear in this behalf.

Secretary to Govt. of Khyber Pakhtunkhwa
Finance Department

Endst: No. & Date Even

Copy is forwarded for information & necessary action to the:-

1. PS to Addl; Chief Secretary, FATA.
2. All Administrative Secretaries, Government of Khyber Pakhtunkhwa
3. Senior Member, Board of Revenue, Khyber Pakhtunkhwa
4. All Commissioners in Khyber Pakhtunkhwa.
5. Accountant General, Khyber Pakhtunkhwa.
6. Secretary to Governor, Khyber Pakhtunkhwa
7. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
8. Secretary provincial Assembly, Khyber Pakhtunkhwa.
9. All Heads of Attached Departments in Khyber Pakhtunkhwa
10. Registrar, Peshawar High Court, Peshawar.
11. All Deputy Commissioners, Political Agents, District & Sessions Judges / Executive District Officers in Khyber Pakhtunkhwa.
12. Chairman, Khyber Pakhtunkhwa, Public Service Commission, Peshawar
13. Registrar, Service Tribunal, Khyber Pakhtunkhwa.
14. All the Autonomous and Semi Autonomous Bodies in Khyber Pakhtunkhwa
15. Secretary to Government of Punjab, Singh & Associates, Finance Department Lahore, Karachi & Quetta
16. The District Controller of Accounts, Peshawar, Mardan, Kohat, Dera, Abbottabad, Swat and Dir Khan
17. The Senior District Accounts Officer Nowshera, Swabi, Charsadda, Haripur, Mansehra & Dir Lower
18. The Treasury Officer, Peshawar.
19. All District / Agency Accounts Officers in Khyber Pakhtunkhwa / FATA
20. PSO to Senior Minister for Finance, Khyber Pakhtunkhwa.
21. PSO to Chief Secretary, Khyber Pakhtunkhwa.
22. Director, Local Fund Audit, Khyber Pakhtunkhwa Peshawar.
23. PS to Finance Secretary.
24. PAs to All Addl; Secretaries / Deputy Secretaries in Finance Department.
25. Director, FMU with the request to upload the same Notification on website.
26. All Section Officers / Budget Officers in Finance Department.


(WAZIR MUHAMMAD AFG)
Section Officer (SR-1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Amended Appeal No. 595 of 2014.

Manzoor Ahmad

Versus

The Secretary of (E&SE) Deptt.,
Government of KPK & Others.

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Dated: _____/_____/_____

Manzoor Ahmad

(Appellant in Person)
M.A. Political Science LLB
Mobile: 0345-9503142.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Amended Service Appeal No. 595/ of 2014.

Manzoor Ahmad PSHT
Primary School Head Teacher
Government Primary School Dewal Garhi Bala (Gadoon Area)
Tehsil Topi, District Swabi.....**Appellant.**

Versus

1. Government of Khyber Pakhtunkhwa, Department of Elementary & Secondary Education, Through its Secretary.
2. Government of Khyber Pakhtunkhwa, Department of Finance, Through its Secretary.
3. Government of Khyber Pakhtunkhwa, Department of Law, Justice & Parliamentary Affairs, Through its Secretary.
4. Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
5. Accountant General, Khyber Pakhtunkhwa, Peshawar.
.....**Respondents.**

Amended Appeal U/S 4 of the KPK Service Tribunal Act, 1974 for the arrears of one premature increment to the appellant on his up-gradation on 1-10-2007 from BPS-7 to BPS-12 and declaring para-3 of the Finance Department's Notification No. FD (SO SR-1)2-123/2014 DATED 30-5-2014 as illegal, void ab initio, unlawful, ultra vires of the Constitution and Superior Courts' Judgments.

The appellant respectfully submits as under:-

ON FACTS:

- 1) That the appellant was promoted/ up-graded from BPS-7 to BPS-12 vide Finance Department Notification No. FD/SO(FR)10-22/2007 Dated Peshawar, the 26th January 2008. (Photocopy of the Notification dated 26-1-2008 is attached at Annexure-"A").

- 2) That the appellant was promoted on the basis of a "prescribed condition" of "having 10 years service" given in the said Notification but it was not treated as a promotion of the appellant and the appellant was not awarded one premature increment of BPS-12 as is done in the case of promotion of an employee from lower pay scale to higher pay scale.
- 3) That the Pay of the appellant was fixed in BPS-12 Rs. 6490/- P.M. without allowing him one premature increment of BPS-12. (Photocopy of the Service Book bearing the entry is attached at Annexure-"B").
- 4) That the up-gradation of the appellant was neither considered as the personal promotion of the appellant in shape of promotion from BPS-7 to BPS-12 nor the up-gradation of the post of the appellant and thus was kept in an uncertain condition since 2-12-2008 till 30-5-2014 which led to his deprivation of one premature increment.
- 5) That the respondents were not ready to accept the reality in year 2007 in light of the Supreme Court's Judgments that promotion is not only promotion from one post to another but from one scale to another. If they had accepted the reality they would have never deprived the appellant from one premature increment at that time on his up-gradation from BPS-7 to BPS-12.
- 6) That according to letter of the office of the Accountant General (PR) sub-office Peshawar G.T.K (F) T-40/vol-vm/91-92/2378 dated 18-4-1992, "that promotion is not only promotion from a lower post to higher post but also from lower pay scale to higher pay scale by whatsoever means it may be". (Photocopy of the letter dated 18-4-1992 is attached at Annexure-"C").
- 7) That the Government of Khyber Pakhtunkhwa Finance Department (Regulation Wing) issued a Notification NO. FD (SORS-1) 2-123/2013 Dated Peshawar the 31-12-2013 under the subject "CLARIFICATION REGARDING GRANT OF ONE SPECIAL ADVANCE INCREMENT TO THE EMPLOYEES HOLDING SELECTION GRADE PRIOR TO UPGRADATION OF THEIR POSTS IN BPS ALREADY HELD BY THEM". In this notification it has been provided that certain queries had been received to the Respondent No. 2 as to whether the employees, who were holding selection grade prior to up-gradation of their posts in BPS already held by them, were also eligible to the benefit of premature increment on up-gradation of their posts. (Photocopy of the notification dated 31-12-2014 is attached at Annexure-"D").
- 8) That the appellant submitted Departmental appeal on the basis of the above mentioned notification on 5-1-2014 to the Respondent No. 4 for one premature increment but he took no action on the appeal within the

statutory period. Hence there was no alternative with the appellant but to submit service appeal before this Tribunal. (Photocopy of the Departmental Appeal dated 5-1-2014 is attached at Annexure-"E").

- 9) That the Service Appeal was pending hearing in this Tribunal when the Respondent No. 2 issued a notification vide Government of Khyber Pakhtunkhwa Peshawar Finance Department (Regulation Wing) No. FD (SO-SR-1) 2-123/2014 dated 30-5-2014. According to the said notification one premature increment of BPS-12 was accepted since 1-10-2007 but denied arrears from 1-10-2007 and thus partially accepted the right of the appellant in shape of one premature increment but was given arrears from 1-6-2014. (Photocopy of the Notification is attached at Annexure-"F").
- 10) That the entries in the Service Book of the appellant were revised allowing one premature increment from 2-12-2007 but the arrears were given only from 1-6-2014. (Photocopy of the Service Book bearing revised entries is attached at Annexure-"G").
- 11) That the appellant submitted application to this Tribunal for the amendment of the Service Appeal for praying only for the Arrears since 2-12-2007 which was accepted and the appellant submitted the amended Service Appeal only for the Arrears and resolving only one issue that **when one premature increment was accepted since 1-10-2007 then under which provision of law the arrears of the accepted premature increment since 2-12-2007 to 30-5-2014 is denied?**

ON GROUNDS:

- 1) That the respondents have accepted the premature increment and denied its arrears which is not supported by any law, rule or Judgment of the Superior Courts.
- 2) That the para-3 in the Notification dated 30-5-2014 issued in contravention of the Constitutional Articles, rules and numerous Judgments of the Superior Courts has no legality in the eye of any law.
- 3) That once a Civil Servant is declared entitled to a certain right from the back date in the past then he cannot be deprived of the back benefits in shape of arrears of Pay due to re-fixation/revision of Pay.
- 4) That there are numerous Judgments of the Superior Courts on the admissibility of back benefits/arrears once the order of the authorities was declared illegal, void ab initio and of no legal effect.

- 5) That the appellant cannot be made to suffer without any fault on his part due to the blunder committed by the respondent No. 2 in the year of 2008 which is regrettable and speak volume about the efficiency and good governance of the Finance Department Government of Khyber Pakhtunkhwa.
- 6) That the respondent No. 2 has made it a fashion, first to deny a right of the Civil Servants and then when accepts the same right then the arrears are denied due to re-fixation of Pay especially for the teachers. It is nothing but gross violation of the Constitution of Islamic Republic of Pakistan, Statutory laws and the Judgments of the Superior Courts on back benefits in shape of salaries, increments etc which are equally binding on the respondents.
- 7) That when a Notification is issued for the benefit of a party it will operate retrospectively and if it is issued for disadvantage of a party it will operate prospectively.
- 8) That normally a Notification takes effect prospectively i.e. from the date it was issued. Where, however, Notification, whereby monetary benefit was allowed to a Civil Servant from the date it legally accrued to him, was delayed or was not issued at the time of accrual of such benefit, same could be given with retrospective effect for the reason that **Civil Servant could not be made to suffer for the lethargy or delay made on the part of the departmental authorities.**
- 9) That where the case involves vires of a particular Service Rule or a Notification or the question, whether an accused civil servant can claim the right to be represented by a Counsel before the enquiry officer. If a statutory rule or a notification adversely affects the terms and conditions of a civil servant, the same can be treated an order in terms of Section 4(1) in order to file an appeal before the Service Tribunal. (1991 SCMR 1041).
- 10) That effect of the Supreme Court's Judgment cannot be eroded or nullified through any executive or an administrative instrumentality.
- 11) That in substance when manner of administration of law is found arbitrary and discriminatory the Tribunal has to declare the action of the administrative authorities as being without lawful authority such declaration will not have the effect of nullifying the law but only to annulling the Government action taken under the guise of that law.
- 12) That on the matter of **BACK BENEFITS**, the Supreme Court of Pakistan, in the case of Syed Sultan Shah vs Government of Baluchistan (1985 SCMR 1395), held in the following words: "**The effect of promotion is to recognise the fact**

that the official concerned was entitled to be promoted from a date in the past, that he was wrongfully deprived of it, that the wrong must be redressed by giving him proforma promotion and his due seniority a day in the past. The logical consequence of it is that all the ancillary benefits which follow the ante-dating of the promotion and seniority must be allowed to the official concerned unless of course, there appears ex-officio some justification for denying him such a benefit".

- 13) That in the case of Qadeer Ahmad vs Punjab Appellate Tribunal (PLD 1990 SC 787) the essential conditions governing the back benefits have been discussed in the following words: "As regards the question of entitlement to back benefits the established proposition is that where the order of dismissal or removal has been set aside unconditionally found to be without jurisdiction and uncalled for, necessarily the back benefits have to be paid. It has to be paid under the authority of the Tribunal or person setting aside the order of dismissal and if no such order is passed, there under the orders of the competent authority in the matter, where full relief is not granted, the proper course in the absence of express order to that effect is to seek appropriate redress either under the industrial relations ordinance or under civil servants Act, as the case may be. Where, however, the order of re-instatement is conditional; as was in the case of the appellant, an inquiry could still be made into his conduct and his conduct was considered such as to call for a departmental inquiry then the entitlement with regard to back benefits had necessarily to wait till the final determination with regard to his conduct. If he was found at fault then the competent authority could justifiably deny him part of the back benefits. Mere setting aside of the order of dismissal, irrespective of whether it is set aside conditionally or unconditionally, would not, as claimed by the appellant, entitle the affected functionary to claim arrears of pay and back benefits. Similarly, the continuance of the inquiry on the same charges would also disentitle him, till the conclusion of the inquiry and the determination of the responsibility, to back benefits".

- 14) That it is doubtful that the respondent no. 2 might have issued the impugned Para 3 in the notification with prior consultation with respondent no. 3 as provided by the Sub-rule (5) of the Rule 12 of the Government of Khyber Pakhtunkhwa Business Rules 1985 which is mandatory for the issuance of such like notifications involving title to a right in shape of Pay, Increment or their arrears. It is a question of law and the respondent no. 3 is the only source to apprise the respondent no. 2 about the substantive law or any judgment of the Superior Courts in this regard. If the respondent no. 2 had consulted the respondent no. 3 then the respondent no. 3 would have never allowed the respondent n. 2 to insert the unlawful para-3 in the notification.

- 15) That the Para 3 of the impugned notification is discriminatory and violative of the Article 25 of the Constitution of Pakistan. Issuance of a notification by the respondent no. 2 has no proper parameter. There are many notifications in which it has accepted the right of the civil servants from back date but has no mention of denying the back benefits but when the matter of teachers comes for the consideration then it has made it a fashion to deny the arrears.
- 16) That the Pay, Increment and their arrears are the property of the Appellant. The Property Right has been protected by Article 24 of the Constitution. The respondent no. 2 has issued the notification which has violated Article 24 of the Constitution and has deprived the appellant of his property.
- 17) That it is the clear proof of the fraud that the said para 3 in the notification was included in the presence of the Constitutional Articles and Supreme Court's judgments on back benefits.

Prayer:-

It is, therefore, very humbly prayed that this honourable Tribunal should declare the impugned Para 3 of the Finance Department's Notification No. FD (SO SR-1)2-123/2014 DATED 30-5-2014 regarding denying the arrears of one premature increment to the appellant on his up-gradation on 1-10-2007 from BPS-7 to BPS-12 as illegal, void ab initio, unlawful, ultra vires of the Constitution and Superior Courts' Judgments and further to declare that the appellant being entitled to the arrears of one premature increment since 2-12-2007 according to the re-fixation/ revision of pay in the Service Book be paid the arrears since 2-12-2007 to 30-5-2014.

Any other relief/s which this honourable Tribunal may deem fit and proper in the circumstances of the case like interest etc. on the arrears of the one premature increments illegally withheld since 2-12-2007 to 30-5-2014.

Dated: ____/____/____.

Manzoor Ahmad
M.A. Political Science LLB
Mob: 0345-9503142.

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA PESHAWAR
Amended Service Appeal No. 595 of 2014

Manzoor Ahmad.....Appellant.

Versus

Government of Khyber Pakhtunkhwa & Others.....Respondents.

AFFIDAVIT IN SUPPORT OF SERVICE APPEAL.

I, Manzoor Ahmad son of Amir Jalal resident of Village Marghuz, District Swabi do hereby state on oath that the contents of the accompanying Amended Service Appeal are correct to the best of my knowledge and belief and nothing has been concealed from this honourable Tribunal.

Peshawar.

DEPONENT.

(Manzoor Ahmad)

CNIC # 16202-103228-5

Dated: _____/.

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA PESHAWAR
Amended Service Appeal No. 595 of 2014

Manzoor Ahmad.....Appellant.

Versus

Government of Khyber Pakhtunkhwa & Others.....Respondents.

ADDRESSES OF PARTIES.

A): ADDRESS OF APPELLANT

Manzoor Ahmad PSHT
Primary School Head Teacher
Government Primary School Dewal Garhi Bala (Gadoon Area)
Tehsil Topi, District Swabi.

B) ADDRESS OF RESPONDENTS

1. Government of Khyber Pakhtunkhwa, Department of Elementary & Secondary Education, Through its Secretary.
2. Government of Khyber Pakhtunkhwa, Department of Finance, Through its Secretary.
3. Government of Khyber Pakhtunkhwa, Department of Law, Justice & Parliamentary Affairs, Through its Secretary.
4. Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
5. Accountant General, Khyber Pakhtunkhwa, Peshawar.

Appellant.

A
8 9

FINANCE DEPARTMENT
(REGULATION WING)

Dated Peshawar, the 26th January, 2008.

NOTIFICATION

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

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

SECRETARY TO GOVT. OF NWFP
FINANCE DEPARTMENT

Endst No. & Date even.

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

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

(NAIB KHAN)
SECTION OFFICER (FR)

1	2	3	4	5	6	7	8
Name of post درجہ ملازمت	Whether substantive or officiating, and whether permanent or temporary عارضی مستقل یا تائم مقام	If officiating, state— (i) substantive appointment or (ii) whether service counts for pension under rule 3.29 of C.S.R. (Pb.) volume II اگر عارضی ہے تو کیا دوسرے کے مطابق پیش کا مستحق ہے	Pay in substantive post عقرو اور بطور عارضی ملازمت	Additional pay for officiating زائد تصدیر زائد تنخواہ بطور تائم مقام	Other emoluments falling under the term "pay" ماسوائے تنخواہ دیگر الادارے	Date of appointment تاریخ تقرر	Signature of Government servant دستخط سرکاری ملازم
<p>P.P.C. RPS No. 3 uo/ka</p>	<p>Pay fixed on 7/07</p> <p>do do</p> <p>Revised BPS-07 (353-770-913) Rs. 7520/PM</p> <p>Revised entries BPS 12 pay in existing BPS 07 on 07/07 Rs. 6300/PM pay fixed in BPS 12 on 02/07 Rs. 6490/PM</p> <p>Revised BPS-12 (4355-310-13655) Pay fixed in BPS-12 on 01/08 Rs. 7765/PM</p> <p>do</p>	<p>R.P.S. - 7 (R)</p>	<p>RS. P.</p> <p>6140/- PM</p> <p>Rs. 6300/-</p>	<p>RS. P.</p> <p>1600/-</p> <p>6490/- PM</p>	<p>12/07</p> <p>12/07</p> <p>07/08</p> <p>01/08</p> <p>12/08</p>	<p>7700/-</p>	<p>Handwritten signatures</p>

D.D. 2

Better copy.

11

No 171-Reg. W/11/C/85 KM
DEPARTMENT OF THE
AUDITOR-GENERAL OF PAKISTAN,
GULBERG--III, LAHORE

Dated: 01-01-1992

To

1. All Accountant Generals.
2. All Director-General/Directors of Audit etc.

Subject: FIXATION OF PAY ON REVISION OF PAY SCALE.

Government of Pakistan Finance Division O.M. No. F. 1 (12) Im-11-91 dated 19-6-91 and F. 1 (12) IM, -11/91, dated 19-8-91 on the above subject refer

As provided in para 4(i) of the above cited Finance Division promotion from a lower to a higher post/scale before the introduction of these scales, the pay of the senior employees in the same scale may be fixed and so enhanced that it would not be less than the pay that would have been admissible to him if his promotion to the higher post/pay scale had been taken place after the introduction of revised pay scale..... 1-6-1991. A doubt has been felt in certain quarters whether the aforesaid provision will be applicable in the Selection grade..... also. The matter has been duly considered and it has been decided that the word "promotion" used in this context will include not only promotion from a lower post to higher post but also from lower pay scale to higher pay scale by whatsoever means it may be. All such cases submitted to the Accounts/Audit officers by the respective Ministries/Divisions/Department offices along with the statement showing..... fixation of pay under the above provision would be beneficial may be dealt with accordingly.

All concerned in your department as well as Ministries /Divisions, Department offices falling in your Audit jurisdiction may be apprised of the above position through circular letter under.....

Please acknowledge receipt.

.....Sd

(Shakeel ahmad)

D. Director-General (Inspection)

OFFICE OF THE ACCOUNTANT GENERAL (PR) SUB-OFFICE PESHAWAR,
G.T.K (F)/T-40/VOL-VM/91-92/2378 dated 18-4-1992.

Copy forwarded for necessary action to:-

1. All the D.A.Os / A.A.Os in NWFP.
2.GAD Section, special Section

Accounts officer (PR)

Sub office Peshawar.



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

12/10

No. FD (SOSR-3) 2-123/2013
Dated Peshawar the: 31-12-2013

To

1. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. The Senior Member, Board of Revenue Khyber Pakhtunkhwa.
3. The Secretary of Government, Khyber Pakhtunkhwa.
4. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
6. The Secretary Finance PATA, PATA Secretariat, Peshawar.
7. All Heads of Attached Department in Khyber Pakhtunkhwa.
8. All Divisional Commissions in Khyber Pakhtunkhwa.
9. AS Political Agency/District & Sessions Judges in Khyber Pakhtunkhwa.
10. The Registrar, Peshawar High Court, Peshawar.
11. The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
12. The Chairman, Services Tribunal, Khyber Pakhtunkhwa.
13. The Accountant General, Khyber Pakhtunkhwa, Peshawar.

Subject:

CLARIFICATION REGARDING GRANT OF ONE SPECIAL
ADVANCE INCREMENT TO THE EMPLOYEES HOLDING
SELECTION GRADE PRIOR TO UPGRADATION OF THEIR
POSTS IN BPS ALREADY HELD BY THEM.

Dear Sir,

I am directed to refer to this department's notification No. FD (SR-1) 2-4/2008 dated 04-04-2009 and to state the certain queries have been received from different quarters as to whether the employees, who were holding selection grade prior to up-gradation of their posts in BPS already held by them, are also eligible to the benefit of premature increment on up-gradation of their posts.

2. In this connection, the Provincial Government in consultation with Government of Pakistan, Finance Division, has to clarify that one special advance increment is admissible also to the employees who were holding Selection Grade prior to up-gradation of their posts in BPS already held by them, just as in the case of same scale promotion.

3. This order will take effect from 01-09-2007.

(RAZAULLAH KHAN)

Addl. Secretary (Regulation)

(Copy 3/2/2)



12

Manzoor Ahmad
M.A. Political Science.
B.Sc; L.L.B. (Pesh)
Mobile: 03-15-9503142.
Email: manzoorahmadjalalmallb@gmail.com

To

The Director of Elementary and Secondary Education
Khyber Pakhtunkhwa, Peshawar.

Subject: Appeal for one premature increment to the Appellant on his up-gradation from BPS-7 to BPS-12 since 1-10-2007.

Through Proper Channel,
Respected Sir,

The appellant submits Departmental Appeal on the following facts and grounds.

- 1) That the appellant was promoted from BPS-7 to BPS-12 vide Finance Department Notification No. FD/SO(FA)10-22/2007 Dated Peshawar, the 26th January 2007.
- 2) That the appellant was promoted on the basis of a "prescribed condition" of "having 10 years service" but the Government's concerned departments did not treated it as a promotion and did not award one premature increment of BPS-12 as is admissible under The NWFP Civil Services Pay Fixation Rules 1978 in such like promotion.
- 3) That the functionaries of the concerned departments failed in acting upon the rules and Supreme Court's judgments relating to such like cases.
- 4) That the BPS-12 was given to only those teachers who had rendered service up to 10 years or more. This enhanced scale was given selectively on the basis of a specific condition, "having 10 years service" but still the Education Department did not consider it as promotion of the appellant so did not award one premature increment to the appellant. This up-gradation is actually a "Selection Grade" in disguise on the basis of

Seniority-cum-fitness. On the question of "Prescribed Condition", the following Court's Judgment (Irshad-ur-Rehman v. Govt. of Pakistan, 1993 PLC (C.S) 39) is relevant. In this judgment, it was held that *when there were mandatory conditions that a candidate must have qualified in written examination as also in viva voce test for appointment to specified post and the respondent having failed to satisfy the mandatory condition, his appointment was not warranted, while petitioner having qualified in that mandatory test was entitled to an appointment to that post. Department had no jurisdiction to deviate from the same and evolve its own formula for recruitment. Any deviation from the condition prescribed, to the detriment of one or some of the candidates, would render the act of Department as violative of Art. 25 of the Constitution which lays down that all citizens are equal before law and are entitled to equal protection of law*".

- 5) That the Government of Khyber Pakhtunkhwa Finance Department (Regulation Wing) has issued a Notification NO. FD (SOSR-1) 2-123/2013 Dated Peshawar the 31-12-2013 under the subject "CLARIFICATION REGARDING GRANT OF ONE SPECIAL ADVANCE INCREMENT TO THE EMPLOYEES HOLDING SELECTION GRADE PRIOR TO UPGRADATION OF THEIR POSTS IN BPS ALREADY HELD BY THEM". The said notification might have clarified the ambiguity in a certain document for certain employees, has granted an opportunity to the appellant to raise the question that why discrimination has been made in the upgraded employees only on the basis of selection grade? The appellant is not selection graded employee but is an upgraded employee. The point has not been clarified that why selection graded employees are entitled and non-selection graded employees are not entitled to one premature increment? Selection grade is not supported by any rule nor in selection grade the post of the employee is changed or given higher responsibility but when selection grade is given the scale is changed from the lower pay scale to higher pay scale, he is given one premature increment of the higher pay scale. A Court's authority is relevant on the point, 2001 SCMR 252. According to this selection grade was not a promotion in strict sense of the word though the same had overtones of promotion in view of the financial benefit involved. Expression "selection grade" was confined to revision of basic pay scale and did not find mention in S. 8 of Civil Servants Act, 1973 and Civil Servants (Seniority) Rules, 1993 under which seniority list of civil servants was required to be prepared with reference to a service, cadre, or post and not grade".
- 6) That the change of grade to higher pay scale amounted to promotion as is supported by Court's authorities (PLD 1993 SC 187; 1991 SCMR 696 and 2002 PLC (CS) 427).

- 7) That according to letter of the Office of the Accountant General (PR) sub-office Peshawar C.T.K (F) / T-40/Vol-VM/91-92/2378 dated 18-1-1992, that Promotion is not only promotion from a lower post to higher post but also from lower pay scale to higher pay scale by whatsoever means it may be.

Prayer:-

It is, therefore, humbly prayed that the appeal of the appellant may please considered sympathetically in light of the above Rules and Court's authorities and the appellant may please be given one premature increment of BPS-12 with effect from 1-10-2007 and its arrears on his up-gradation from BPS-7 to BPS-12.

DATED:-5-1-2014.

Yours Obediently,
Manzoor Ahmad PSI
M.A. Political Science LLB
GPS Soganday, Tehsil Topi, District Swabi.
Mobile: 03459503142.

FINANCE DEPARTMENT
(REGULATION WING)

16

Dated Peshawar the 30th May, 2014

Notification:-

No.FD (SO SR-1) 2-123/2014. In pursuance of Government of Pakistan, Finance Division O.M No.11(4)R-2/2011-1153/2013 dated 31-05-2013, the competent authority has been pleased to approve amendment in Rule 9 of Pay Revision Rules 1978 and sanction premature increment on up-gradation of posts w.e.f 28th January, 2002 onward, it would take effect from the actual date of up-gradation of each post or charge assumption of concerned employee whichever is later. Furthermore, Rule 9 of Pay Revision Rules 1978, shall stand amended with effect from the date and to extent indicated in Notification No.FD: S.O. (PRC)/1-2/77 dated 30-05-2014

2. The employees already availed the benefit of one special advance increment granted vide this Department Notification No SO (SR-1) 2-4/2008 dated 04-04-2009 and SO (SR-1) 2-123/2013 dated 31-03-2014 shall not be entitled for premature increment on their upgradation under Notification No SO (FR) 7-2/2007 dated 26-07-2007.

3. The pay of the concerned employee shall be fixed in accordance with premature increment and he shall not be entitled to any arrear in this behalf.

Secretary to Govt. of Khyber Pakhtunkhwa
Finance Department

Endst: No. & Date Even

Copy is forwarded for information & necessary action to the:-

1. PS to Addl. Chief Secretary, FATA.
2. All Administrative Secretaries, Government of Khyber Pakhtunkhwa.
3. Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
4. All Commissioners in Khyber Pakhtunkhwa.
5. Accountant General, Khyber Pakhtunkhwa.
6. Secretary to Governor, Khyber Pakhtunkhwa.
7. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
8. Secretary provincial Assembly, Khyber Pakhtunkhwa.
9. All Heads of Attached Departments in Khyber Pakhtunkhwa.
10. Registrar, Peshawar High Court, Peshawar.
11. All Deputy Commissioners, Political Agents, District & Sessions Judges / Executive District Officers in Khyber Pakhtunkhwa.
12. Chairman, Khyber Pakhtunkhwa, Public Service Commission, Peshawar.
13. Registrar, Service Tribunal, Khyber Pakhtunkhwa.
14. All the Autonomous and Semi Autonomous Bodies in Khyber Pakhtunkhwa.
15. Secretary to Government of Punjab, Sindh & Balochistan, Finance Department, Lahore, Karachi & Quetta.
16. The District Comptroller of Accounts, Peshawar, Mardan, Kohat, Janna, Abbottabad, Swat and Gilgit.
17. The Senior District Accounts Officer Nowshera, Swabi, Charsadda, Haripur, Manjhera & Dir Lower.
18. The Treasury Officer, Peshawar.
19. All District/ Agency Accounts Officers in Khyber Pakhtunkhwa / FATA.
20. PSO to Senior Minister for Finance, Khyber Pakhtunkhwa.
21. PSO to Chief Secretary, Khyber Pakhtunkhwa.
22. Director, Local Fund Audit, Khyber Pakhtunkhwa Peshawar.
23. PS to Finance Secretary.
24. PAs to All Addl. Secretaries / Deputy Secretaries in Finance Department.
25. Director, FMU with the request to upload the same Notification on website.
26. All Section Officers / Budget Officers in Finance Department.

(WAZIR MUHAMMAD AFR
Section Officer (SR-1)

1	2	3	4	5	6	7	8
Name of Post	Whether Substantive or officiating any whether permanent or temporary	If officiating state (i) substitution appointment of (ii) whether service counts for pension under rule 3-20 C.S.R. (P) Volume II	Pay in Substantive position	Additional pay for officiating	Time allowances, leave under the term pay	Date of appointment	Signature of government servant
Subst. Sd. Officer	Subst. Sd. Officer	Subst. Sd. Officer	Rs. 17150/- PM	Rs. 2300/-		01/07/13	
Subst. Sd. Officer	Subst. Sd. Officer	Subst. Sd. Officer	Rs. 17760/- PM			01/12/13	
Subst. Sd. Officer	Subst. Sd. Officer	Subst. Sd. Officer	Rs. 7530/- PM			01/12/13	
Subst. Sd. Officer	Subst. Sd. Officer	Subst. Sd. Officer	Rs. 905/- PM			01/07/13	
Subst. Sd. Officer	Subst. Sd. Officer	Subst. Sd. Officer	Rs. 935/- PM			01/12/13	
Subst. Sd. Officer	Subst. Sd. Officer	Subst. Sd. Officer	Rs. 965/- PM			01/12/13	
Subst. Sd. Officer	Subst. Sd. Officer	Subst. Sd. Officer	Rs. 995/- PM			01/12/13	
Subst. Sd. Officer	Subst. Sd. Officer	Subst. Sd. Officer	Rs. 1600/- PM			01/07/13	
Subst. Sd. Officer	Subst. Sd. Officer	Subst. Sd. Officer	Rs. 1650/- PM			01/12/13	
Subst. Sd. Officer	Subst. Sd. Officer	Subst. Sd. Officer	Rs. 1700/- PM			01/12/13	
Subst. Sd. Officer	Subst. Sd. Officer	Subst. Sd. Officer	Rs. 1750/- PM			01/12/13	
Subst. Sd. Officer	Subst. Sd. Officer	Subst. Sd. Officer	Rs. 1770/- PM			01/12/13	
Subst. Sd. Officer	Subst. Sd. Officer	Subst. Sd. Officer	Rs. 18370/- PM			01/12/13	
Subst. Sd. Officer	Subst. Sd. Officer	Subst. Sd. Officer	Rs. 18980/- PM			01/12/14	

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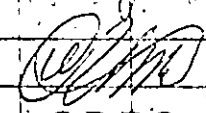
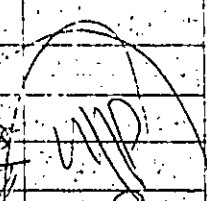
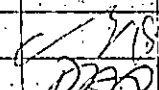
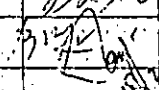
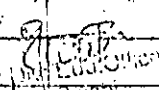
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9	10	11	12	13	14	15	
Signature and designation of the Head of the office or other attesting officer in attestation of column 1 to 8	Date of termination or appointment	reason of termination (such as promotion transfer, dismissal etc.)	Signature of the head of the officer or other Attesting Officer	Nature and duration of leave taken	Allocation of period of leave of average pay up to four months (or earned leave not exceeding 120 days) to which leave salary is debitable to another Government	Signature of the Head of the office other attesting officer	Reference to any recorded punishment of censure, or reward, or praised o the Government servants
دستخط افسر مجاز	تاریخ انقطاع ملازمت	دوبابت انتقال و ترقی یا برطرفی	دستخط افسر مجاز	رضعت کی توعیت وسعیار	پارہ دستخط کے تحتیاً اس کے Period Government to which debitabla ہوگا	دستخط افسر مجاز	سزا یا جزا یا غیر مناسب کارکردگی کا ریکارڈ
Allowed one Premature Dismissment							
wef 01/10/2017 or Arrear wef 01/11/2014							
vide Govt of KPK Peshawar Finance							
Depdt. (Regulation wing)							
No. FD (SC-SR-1) 2-123/2014							
Dated: 30 May 2014							
					 S.D.F.O. (M) TOPI		
					 TPAO		
					<p>1358/157</p> <p>CC Serial No. 11241/14</p> <p>due to P. Arrears of Pay</p> <p>& ALC for the month</p> <p>10, 11, 12 & Activation</p> <p>2/11/14</p> <p>TPAO</p> <p>8/2/14</p>		
					<p>cc 392-6/12</p> <p>Drawn Rs = 148398/-</p> <p>pay waf 01/10/14 to 31/11/15</p> <p></p> <p></p>		
					<p>(Service Verification)</p> <p>Service verified wef 28/06/2014</p> <p>to 12/10/2015 (M) for the</p> <p>office record</p>		
					<p>Sub: </p> <p>M. Swaid</p>		

Signature of government servant

دستخط
سرکاری ملازم

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1907 (M)