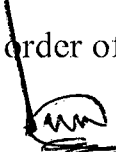


Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 1506/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	19/10/2022	<p>The appeal of Mr. Mumtaz Ahmed presented today by Mr. Noor Muhammad Khattak Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____. Notices be issued to appellant and his counsel for the date fixed.</p> <p>By the order of Chairman</p> <p> REGISTRAR, <i>cu</i></p>

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

APPEAL No. 1506/2022

MUMTAZ AHMED

VS

GOVT: OF KPK & OTHERS

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of Appeal with Affidavit	1-5
2.	Copy of the retirement notification is attached as annexure	A	6
3.	Copy of Seniority List, PSB minutes and Promotion Notification dated 23.12.2015	B, C & D	7-15
4.	Copies of the PSB and Working Paper	E	16-18
5.	Copies of the service appeal No. 342 and judgment dated 24-04-2017	F & G	19-23
6.	Copies of the implementation petition and order dated 20.06.2022	H	24-27
7.	Copy of the PSB minutes dated 25.09.2017	I	28
8.	Copy of the order sheet dated 03.07.2018	J	29
9.	Copy of the departmental appeal	K	30-31
10.	Vakalatnama		32


APPLICANT

Through:


**NOOR MOHAMMAD KHATTAK
ADVOCATE
SUPREME COURT OF PAKISTAN**

-1-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 1506 /2022

Mr. Mumtaz Ahmad, PMS Officer (BPS-17) (Retired),
Establishment Department Khyber Pakhtunkhwa Peshawar.

..... APPELLANT

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar
- 2- The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.

..... RESPONDENTS

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED MINUTES OF THE PROVINCIAL SELECTION BOARD DATED 25.09.2017 WHEREBY THE CASE OF THE APPELLANT FOR NOTIONAL PROMOTION TO THE POST OF BPS-18 HAS BEEN REJECTED AND AGAINST THE INACTION OF THE RESPONDENT BY NOT DECIDING THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:

That on acceptance of this appeal the impugned minutes dated 25.09.2017 may very kindly be set aside and the appellant may be considered for notional promotion to the post of BPS-18 w.e.f 30.11.2015 or before his retirement i.e. 09.01.2016 with all back benefits. Any other remedy which this august Tribunal deems fit, may also be awarded in favor of the appellant.

R/SHWETH:
ON FACTS:

-2-

1. That the appellant had served the respondents department with devotion throughout his career and was retired vide notification dated 18.12.2015 w.e.f 09.01.2016 on attaining the age of superannuation. Copy of the retirement notification is attached as annexure.....**A.**
2. That a PSB meeting was held on 30.11.2015 for promotion of PMS Officer to BPS-18 on 10 vacant posts of BPS-18. The PSB deferred 15 numbers of officers and promoted 10 numbers of officers from the seniority list of PMS BPS-17. Copy of Seniority List, PSB minutes and Promotion Notification dated 23.12.2015 are attached as Annexure**B, C & D.**
3. That before the retirement of the appellant i.e. 09.01.2016, there arose 06 clear vacancies as is evident from the working paper of the PSB for its meeting held on 18.02.2016. That in the panel of officers the name of the appellant was at serial No. 15 whereas officers at serial No. 1, to 11, 13 and 14 were again declared ineligible for promotion. That the ineligible officers were those who were deferred in the PSB Meeting held on 30.11.2015. That PSB however, could not promote the officers due to paucity of time vide minutes dated 18.02.2016. Had the PSB considered the officers then the appellant would have definitely been promoted because he was the second eligible amongst officers for promotion the post of PMS BPS-18. That it is pertinent to mention here that in the working paper it has categorically mentioned that one Muhammad Iqbal (PMS BS-18) was retired from service on 02.01.2016 i.e. before the retirement of the appellant meaning hereby that there was clear one vacancy of PMS BS-18 before the appellant's retirement i.e. 09.01.2016. Copies of the PSB and Working Paper are attached as Annexure.....**E.**
4. That appellant feeling aggrieved from the inaction of the respondents by not considering him for the post of PMS (BPS-18) preferred departmental appeal followed by service appeal No. 342/2016 and the same was decided in favour of the appellant vide judgment / order dated 24-04-2017. Copies of the service appeal No. 342 and judgment dated 24-04-2017 are attached as annexure**F & G.**
5. That by not complying/ implementing the judgment supra the appellant preferred execution petition No. 183/2017 but the said execution petition was consigned vide order dated 20.06.2022 after producing the impugned PSB minutes

dated 25.09.2017. Copies of the implementation petition and order dated 20.06.2022 are attached as annexureH.

6. That vide impugned minutes dated 25-09-2017 the appellant was again ignored on the reasons that there was no vacancy in BPS-18 till his retirement. Copy of the PSB minutes dated 25.09.2017 is attached as annexureI.
7. That during the implementation proceeding the matter regarding one clear vacancy vacated by Muhammad Iqbal on 02.01.2016 was brought to the notice of the Bench and had been mentioned in the order sheet dated 03.07.2018. Copy of the order sheet dated 03.07.2018 is attached as annexureJ.
8. That while consigning the implementation petition the Honorable tribunal held that the impugned minutes gives a fresh cause of action to the appellant, hence challenged the same through departmental appeal dated 07-07-2022. Copy of the departmental appeal is attached as annexureK.
9. That the appellant feeling aggrieved and having no other remedy filed the instant service appeal on following grounds inter alia.

GROUND:

- A- That the impugned minutes of PSB dated 25.09.2017 are against the spirit of the service law particularly Section 8 and Section 9 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 read with enabling law and rules on the hence the same are/ is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside and the appellant be promoted to PMS (BPS-18) before his retirement on notional base.
- B- That appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That according to the minutes of PSB meeting held on 30.11.2015 the officers at serial No. 1, 2, 4, 7, 9 to 14, 16 to 18, 22 and 23 were ineligible to the post of PMS BPS-18 on multiple grounds/reasons and thus they were deferred.

However, posts were not preserved for them as is evident from the recommendation of the PSB. That, as mentioned in the paras above there were 06 posts lying vacant and the appellant being eligible and was in line for promotion but due to paucity of time PSB 18.02.20216 did not consider anyone.

- D- That it is evident from the record that there were 06 vacant posts lying before the retirement of the appellant and only one other officer at Serial No. 12 of the PMS BPS-17 was eligible beside the appellant at Serial No. 15 therefore, by not considering in the PSB dated 18.02.2016 due to the alleged "paucity of time" is the lethargy on the part of respondents so why the appellant be scapegoated for their inaction and lethargy.
- E- That the respondent department has acted arbitrary and malafidely by not considering the appellant for promotion to the post of PMS (BPS-18) before his retirement as he was entitled for it on the reasons that there were vacant post but the PSB was not held before his retirement.
- F- That, the treatment meted out to the appellant is clearly based on discrimination and malafide and as such the respondents violated the principle of natural justice.
- G- That respondents violated Article 38(e) of the Constitution of Islamic Republic of Pakistan 1973, according to which state is bound to eliminate disparity in the income and earning of individuals including persons in the services of the Federation, thus in light of the above quoted constitutional provision the respondents are duty bound to grant ante dated promotion/ notional promotion to the post of PMS (BPS-18) to the appellant.
- H- That according to Section.9 of the Civil servant Act, 1973 read with Rule.17 of the appointment, promotion and transfer Rules and Notional promotion policy the appellant is fully entitled for the grant of notional promotion to the post of PMS (BPS-18).
- I- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

Dated: 13.10.2022

APPELLANT

M. Ahmad
MUMTAZ AHMAD

THROUGH:

N. Muhammad
NOOR MUHAMMAD KHATTAK

M. Adnan
WALEED ADNAN

U. Farooq
UMAR FAROOQ MOMAND

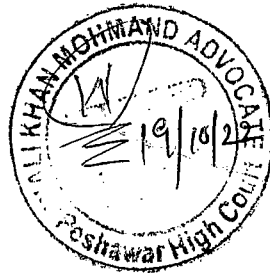
M. Ayub
MUHAMMAD AYUB

Khanzad Gul
**& KHANZAD GUL
ADVOCATES**

AFFIDAVIT

I, Mr. Mumtaz Ahmad, PMS Officer (BPS-17) (Retired), Establishment Department Khyber Pakhtunkhwa Peshawar., do hereby solemnly affirm and declare on Oath that the contents of this **Service Appeal** are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Court.

M. Ahmad
DEPONENT



"A" -6-

GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT



Dated Peshawar the December 18, 2015

NOTIFICATION

No. SOEII (ED)2(593)2010.

In terms of provision of Rule 20 of Khyber Pakhtunkhwa Civil Servants Revised Leave Rules, 1981 and instructions there under issued from time to time, sanction is hereby accorded to the encashment of leave preparatory to retirement, equal to 365 days in favour of Mr. Mumtaz Ahmad (PMS BS-17), Deputy Secretary (OPS), Labour Department, Khyber Pakhtunkhwa.

2. In terms of Section-13 of the Khyber Pakhtunkhwa Civil Servants Act 1973, the officer will retire from service on 09.01.2016 (A/N) on attaining the age of superannuation, as his date of birth is 10.01.1956.

SECRETARY ESTABLISHMENT

ENDST: NO. & DATE EVEN.

A copy is forwarded to:-

1. Secretary to Govt. of Khyber Pakhtunkhwa, Labour Department.
2. Accountant General, Khyber Pakhtunkhwa.
3. Deputy Director (IT)/SO(Secret)/SO(Admn)/E.O, E & A Department.
4. Officer concerned.
5. PS to Secretary, Establishment Department.
6. PS to Spcl: Secretary (Estt), Establishment Department.
7. PA to AS(Estt)/AS(HRD)/DS(Estt), Establishment Department.
8. Office order file.
9. Personal file of the officer concerned.

Wardahatij
18/12/2015
Section Officer (E-II)

Arta Ullah/**

"B"

⑦
ANNEXURE

UPDATED SENIORITY LIST OF PMS BS-17 OFFICERS

S.No	NAME OF OFFICER WITH ACADEMIC QUALIFICATION	DATE OF BIRTH AND DOMICILE	DATE OF 1ST ENTRY INTO GOVT. SERVICE	DATE OF APPOINTMENT / PROMOTION IN BS-16	REGULAR APPOINTMENT / PROMOTION TO PRESENT POSTS			PRESENT APPOINTMENT	REMARKS
					DATE	BPS	METHOD OF RECRUITMENT		
1.	Mr. Johar Ali Shah, B.A.	3.10.1965 Peshawar	23.10.1985	27.2.1998	19.2.2008	17	By promotion	Section Officer, PHE Deptt 23.08.2013	
2.	Mr. Shah Nadir, MA	2.1.1958, Chitral	23.5.1977	20.3.2008	27.5.2008	17	By promotion	Settlement Officer, Chitral 31.10.2009	
3.	Mr. Jehanzeb Khan, BSC, Engineering	12.4.1967, Nowshera	1.1.1992	20.3.2008	27.5.2008	17	By promotion	Land Acquisition Collector, SNGPL, Peshawar on deputation basis (20.03.2015)	
4.	Mr. Ijaz-ur-Rehman, MSC	9.2.1965, Abbottabad	1.1.1992	20.3.2008	27.5.2008	17	By promotion	Assistant Commissioner, Tangi, Charsadda (30.12.2014)	
5.	Mr. Samar Gul, MA	1.3.1965, Lakki Marwat	1.1.1992	20.3.2008	27.5.2008	17	By promotion	Secretary, District Public Safety Commission, Bannu (02.09.2014)	
6.	Mr. Mansoor Qaiser, MA	30.6.1966, DIKhan	1.1.1992	20.3.2008	27.5.2008	17	By promotion	Secretary to Commissioner, D.I.Khan 18.07.2013	
7.	Mr. Afsar Ali Shah, MA, LLB	15.10.1963, Nowshera	1.1.1992	6.9.2008	27.5.2008	17	By promotion	Assistant Commissioner, Swabi (30.12.2014).	Regained seniority w.e.f. 27.05.2008
8.	Mr. Maqsood Hassan, MSC (Maths)	10.3.1967, Kohat	1.1.1992	6.9.2008	27.5.2008	17	By promotion	Section Officer Officer (L/R) 28.08.2014	Regained seniority w.e.f. 27.05.2008
9.	Mr. Sajid Ahmad, MA	30.4.1965, Kohat	1.1.1992	20.3.2008	27.5.2008	17	By promotion	Section Officer, Health Deptt: (13.12.2013)	
10.	Mr. Abdul Ghafoor Shah, M.Sc.	6.8.1967, Lakki Marwat	1.1.1992	20.3.2008	27.5.2008	17	By promotion	Assistant Commissioner, Hangu 30.10.2013	
11.	Mr. Muhammad Asghar Khan, MA (Eng)	15.3.1966, Lakki Marwat	1.1.1992	20.3.2008	27.5.2008	17	By promotion	Assistant to Commissioner (Rev), Bannu Div. 07.11.2013	
12.	Mr. Fazi-e-Qadir, MSC	1.1.1969, Karak	1.7.1995	20.3.2008	27.5.2008	17	By promotion	APA Lower Kurram, Kurram Agency 11.10.2013	
13.	Mr. Abdul Hadi, B.A	2.2.1966/ Dir Upper	1.7.1990	20.03.2008	27.05.2008	17	By promotion	Section Officer, Zakat, Social Welfare, Special Education & Women Empower (23.10.2014)	

7-

SP

8

S.No	NAME OF OFFICER WITH ACADEMIC QUALIFICATION	DATE OF BIRTH AND DOMICILE	DATE OF 1ST ENTRY INTO GOVT. SERVICE	DATE OF APPOINTMENT / PROMOTION IN BS-16	REGULAR APPOINTMENT / PROMOTION TO PRESENT POSTS.			PRESENT APPOINTMENT	REMARKS
					DATE	BPS	METHOD OF RECRUITMENT		
14.	Mr. Naseem Khan, MA	12.3.1968, FR, Bannu	1.3.1986	20.3.2008	27.5.2008	17	By promotion	Section Officer, Agriculture Department (12.05.2014)	
15.	Syed Muhammad Suhail, BA	29.10.1967, Peshawar	19.11.1990	20.3.2008	27.5.2008	17	By promotion	S.O. Health Department (13.08.2015)	
16.	Mr. Khalid Mehmood, MA	15.3.1967, DIKhan	1.7.1995	20.3.2008	27.5.2008	17	By promotion	Finance Officer, Lakki Marwat (21-10-2014)	
17.	Mr. Hafizullah, M.Sc.	31.12.1970, DIKhan	1.7.1995	20.3.2008	27.5.2008	17	By promotion	LAC, NHA D.I.Khan 27.12.2011	
18.	Mr. Faridooon Khan, Matric	11.08.1956 Abbottabad	03.06.1977	07.02.1996	21.12.2011	17	By Promotion	Secretary District Public Safety Commission Mansehra 27-10-2014	Regained seniority w.e.f. 7.11.2008
19.	Mr. Javed Akhtar, FA	12.4.1958, Peshawar	16.4.1977	17.3.2006	7.11.2008	17	By promotion	PS to Special Assistant to CM KPK for Housing (27-10-2014)	
20.	Mr. Asadullah, FA	23.9.1955, Peshawar	26.7.1977	17.3.2006	7.11.2008	17	By promotion	SO, Elementary & Secondary Education Dept, 10.1.2007	
21.	Mr. Muhammad Kibaz, D.Com	2.2.1957 Bannu	5.7.1977	29.5.2006	7.11.2008	17	By promotion	Section Officer, Health Department (17.04.2015)	
22.	Mr. Abdul Malik, BA/LLB	3.1.1959 Peshawar	4.7.1977	29.5.2006	7.11.2008	17	By promotion	Pro-Cum-Protocol Officer, FATA Development Authority on deputation basis, 12.09.2013	
23.	Mr. Muhammad Saeed-I, Matric	12.1.1956 Peshawar	12.9.1975	5.4.2007	7.11.2008	17	By promotion	Section Officer, W&S Dept 19.11.2007	
24.	Ms. Farzana Afzal, LLB, MA (Pol. Sc), MA (Urdu)	27.3.1962 Peshawar	30.4.1984	5.4.2007	7.11.2008	17	By promotion	Section Officer, Administration Dept 3.5.2007	
25.	Mr. Qayyum Nawaz, MA	7.4.1958, Tank	1.1.1992	20.3.2008	7.11.2008	17	By Promotion	(he is under suspension) S.O(L/R)	
26.	Mr. Mumtaz Ahmad, BA	10.01.1956 Nowshera	20.04.1976	20.03.2008	21.12.2011	17	By Promotion	Asstt Commissioner, Peshawar (08.05.2014)	Regained seniority w.e.f.07.11.2008

[Handwritten Signature]
 ATTESTED

-8-

ESTABLISHMENT DEPARTMENT
(Meeting of PSB held on 30.11.2015)

"C"

-9-

SUBJECT: - PROMOTION OF PCS (EG)/PMS BS-17 OFFICERS TO BS-18.

Secretary Establishment apprised the Board that number of schedule posts in BS-18 falling to the share of PCS (EG)/PCS (SG) and PMS are one hundred and twenty seven (127) where one hundred and seventeen (117) officers are already working. Hence ten (10) posts of BS-18 are lying vacant.

2. According to Service Rules of PCS (EG)/PMS, post in BS-18 is required to be filled as under:-

"Promotion to the posts in BS-18 shall be made on the basis of seniority-cum-fitness from amongst the members of the service, holding posts in BS-17 who have successfully completed the prescribed training course at the Provincial Academy for Management and have passed the prescribed departmental examination (if any) and have completed the minimum length of service in BS-17 as notified by the Government from time to time".

PMS Service Rules

- i. By promotion, on seniority-cum-fitness basis, from amongst the officers of PMS in BS-17 having at least five years service and have passed the prescribed Departmental Training or Departmental Examination.
- ii. Under the policy of Provincial Government, six (6) months training is mandatory for promotion to BS-18. However the officers who attained the age of 50 years or above on 1st July of the year in which the training is scheduled or promotion is being considered shall be exempted from training.

3. The service record of the officers included in the panel were discussed one by one as under:-

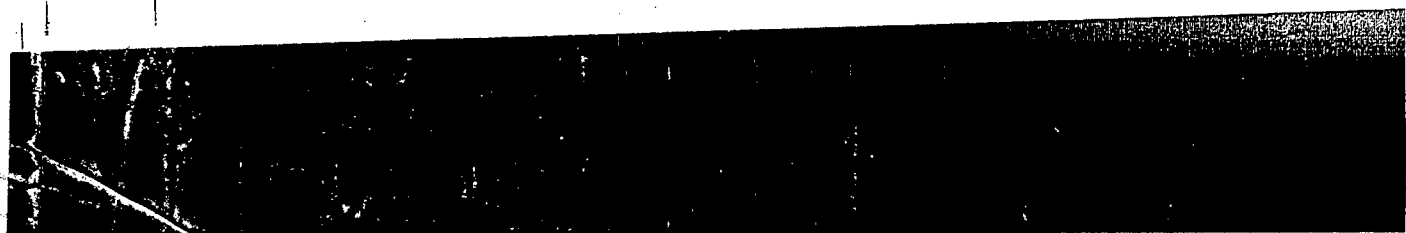
S No	NAME OF OFFICER	RECOMMENDATIONS OF THE BOARD
PCS (EG)		
1.	Mr. Azizullah Khan Mehsud	His date of birth is 19.10.1956. He joined government service on 02.07.1981. He was promoted to BS-17 on 13.01.2002. He was awarded a penalty of with-holding of 3 annual increments and recovery of Rs. 11.1 million on 26.10.2010. The Board in its meeting held on 5.9.2012 recommended his supersession and directed that factual position regarding depositing the amount in government treasury be ascertained and did not recommend him for promotion on 04.10.2012. The Board in its

Sd/-
Secretary

		<p>meeting held on 07.01.2014 and 13.02.2014 recommended to defer his promotion as the Secretary informed the Board that he deposited an amount of RS. 15, 75,000/= in the name of Chairman NAB Islamabad and his case is still pending with NAB. The Secretary had further informed the Board that advice of the Law department was sought as to whether disciplinary proceeding could be initiated against the officer. Law department had confirmed that availing the facility of volunteer return under Section 25 (a) of NAB Ordinance, action under Rules 8 (a) of Khyber Pakhtunkhwa, Govt Servant E&D Rules 2011 is also required. Necessary amendments in E&D Rules 2011 are being processed by Establishment department. Moreover the matter is still under process in NAB. The Board in its meeting held on 08.04.2015 recommended his supersession and asked for initiating disciplinary action against him. The Board observed that according to promotion policy if a civil servant is superseded he shall not be considered for promotion until he earns one PER for the ensuing one full year. Thus his promotion was not considered in PSB meeting held on 04.06.2015. The Board was intimated that a joint case regarding availing facility of voluntarily return by certain officers including him is under trial in Supreme Court of Pakistan. His PER for the year 2014 is also not available.</p> <p>The Board recommended to defer his promotion.</p>
PMS		
2.	Mr. Johar Ali Shah	<p>His date of birth is 03.10.1965. He joined government service on 23.10.1985. He was promoted to BS-17 on 19.02.2008. The Board in its meeting held on 5.9.2012, 04.10.2012 and 07.01.2014 and 13. 02.2014 did not consider his promotion and on 08.04,2015 recommended to defer his promotion as he had not undergone six (6) months mandatory training. He is now exempted from 06 months mandatory training due to age factor. No enquiry is pending against him. His service record upto 2014 is generally good.</p> <p>The Board recommended the officer for promotion to BS-18 on regular basis. He will be on probation for a period of one year.</p>
3.	Mr. Shah Nadir	<p>His date of birth is 02.01.1958. He joined government service on 23.05.1977. He was promoted to BS-17 on 27.05.2008. He is exempted from 06 months mandatory training due to age factor. The Board in its meeting held on 04.06.2015 recommended to defer his promotion as his PERs for the years 2010,2011, 2012 (P), 2013 and 2014 were not available. He has now produced the missing PERs. No enquiry is pending against</p>

		him. His service record upto 2014 is generally good. The Board recommended the officer for promotion to BS-18 on regular basis. He will be on probation for the period of one year.
4.	Mr. Jehanzeb Khan	His date of birth is 12.04.1967. He joined government service on 01.01.1992. He was promoted to BS-17 on 27.05.2008. The Board in its meeting held on 04.06.2015 recommended to defer his promotion as he had not undergone six months mandatory training. Position is still the same. The Board recommended to defer his promotion
5.	Mr. Ijaz ur Rehman	His date of birth is 09.02.1965. He joined government service on 01.01.1992. He was promoted to BS-17 on 27.05.2008. He is exempted from 06 months mandatory training due to age factor. The Board in its meeting held on 04.06.2015 recommended to defer his promotion as his PER for the years from 2008 to 2011 were not available. He has now produced the missing PERs. No enquiry is pending against him. His service record upto 2014 is generally good. The Board recommended the officer for promotion to BS-18 on regular basis. He will be on probation for the period of one year.
6.	Mr. Samer Gul	His date of birth is 01.03.1965. He joined government service on 01.01.1992. He was promoted to BS-17 on 27.05.2008. He is exempted from 06 months mandatory training due to age factor. The Board in its meeting held on 04.06.2015 recommended to defer his promotion as his PERs for the years 2013 & 2014 were not available. He has now produced the missing PERs. No enquiry is pending against him. His service record upto 2014 is generally good. The Board recommended the officer for promotion to BS-18 on regular basis. He will be on probation for the period of one year.
7.	Mr. Mansoor Qaiser	His date of birth is 30.06.1966. He joined government service on 01.01.1992. He was promoted to BS-17 on 27.05.2008. The Board in its meeting held on 04.06.2015 recommended to defer his promotion as he had not undergone six months mandatory training. Position is still the same. The Board recommended to defer his promotion
8.	Mr. Afsar Ali Shah	His date of birth is 15.10.1963. He joined government service on 01.01.1992. He was promoted to BS-17 on 27.05.2008. He is exempted from 06 months mandatory training due to age factor. The Board in its meeting held on 04.06.2015

Handwritten signature/initials



		<p>recommended to defer his promotion as his PERs for the period from 01.01.2009 to 31.03.2009, 08.09.2009 to 31.12.2009, 01.01.2010 to 06.09.2010, 01.01.2012 to 31.12.2012, 01.01.2013 to 31.07.2013 were not available. He has now produced the missing PERs. No enquiry is pending against him. His service record upto 2014 is generally good.</p> <p>The Board recommended the officer for promotion to BS-18 on regular basis. He will be on probation for the period of one year.</p>
9.	Mr. Maqsood Hassan	<p>His date of birth is 10.03.1967. He joined government service on 01.01.1992. He was promoted to BS-17 on 27.05.2008. The Board in its meeting held on 04.06.2015 recommended to defer his promotion as the Board was informed that he is under suspension. Position is still the same.</p> <p>The Board recommended to defer his promotion.</p>
10.	Mr. Sajid Ahmad	<p>His date of birth is 30.04.1965. He joined government service on 01.01.1992. He was promoted to BS-17 on 27.05.2008. He is exempted from 06 months mandatory training due to age factor. The Board in its meeting held on 04.06.2015 recommended to defer his promotion as his PERs for the period from, 01.01.2010 to 02.06.2010, 01.01.2011 to 31.12.2011, 01.01.2012 to 10.09.2012 and 01.01.2014 to 31.12.2014 were not available. He has now produced the missing PERs. However an enquiry has been initiated against him.</p> <p>The Board recommended to defer his promotion.</p>
11.	Mr. Abdul Ghafoor Shah	<p>His date of birth is 06.08.1967. He joined government service on 01.01.1992. He was promoted to BS-17 on 27.05.2008. The Board in its meeting held on 04.06.2015 recommended to defer his promotion as he has not undergone six months mandatory training. Position is still the same.</p> <p>The Board recommended to defer his promotion</p>
12.	Mr. Muhammad Asghar Khan	<p>His date of birth is 15.03.1966. He joined government service on 01.01.1992. He was promoted to BS-17 on 27.05.2008. The Board in its meeting held on 04.06.2015 recommended to defer his promotion as he has not undergone six months mandatory training. Position is still the same.</p> <p>The Board recommended to defer his promotion</p>
13.	Mr. Fazl-e-Qadir	<p>His date of birth is 01.01.1969. He joined government service on 01.07.1995. He was promoted to BS-17 on 27.05.2008. He has not undergone six months mandatory training.</p> <p>The Board recommended to defer his promotion.</p>

14.	Mr. Abdul Had	His date of birth is 02.02.1966. He joined government service on 01.07.1990. He was promoted to BS-17 on 27.05.2008. He has not undergone six months mandatory training. The Board recommended to defer his promotion.
15.	Mr. Naseem Khan	His date of birth is 12.03.1962. He joined government service on 01.03.1986. He was promoted to BS-17 on 27.05.2008. He is exempted from 06 months mandatory training due to age factor. No enquiry is pending against him. His service record upto 2014 is generally good. The Board recommended the officer for promotion to BS-18 on regular basis. He will be on probation for a period of one year.
16.	Syed Muhammad Suhail	His date of birth is 29.10.1967. He joined government service on 19.11.1990. He was promoted to BS-17 on 27.05.2008. He has not undergone six months mandatory training. The Board recommended to defer his promotion.
17.	Mr. Khalid Mehmood	His date of birth is 15.03.1967. He joined government service on 01.07.1995. He was promoted to BS-17 on 27.05.2008. He has not undergone six months mandatory training. The Board recommended to defer his promotion.
18.	Mr. Hafizullah	His date of birth is 31.12.1970. He joined government service on 01.07.1995. He was promoted to BS-17 on 27.05.2008. He has not undergone six months mandatory training. The Board recommended to defer his promotion.
19.	Mr. Faridoon Khan	His date of birth is 11.08.1956. He joined government service on 03.06.1977. He was promoted to BS-17 on 21.12.2011. He is exempted from 06 months mandatory training due to age factor. No enquiry is pending against him. His service record upto 2014 is generally good. The Board recommended the officer for promotion to BS-18 on regular basis. He will be on probation till retirement.
20.	Mr. Javed Akhtar	His date of birth is 12.04.1958. He joined government service on 16.04.1977. He was promoted to BS-17 on 07.11.2008. He is exempted from 06 months mandatory training due to age factor. No enquiry is pending against him. His service record upto 2014 is generally good. The Board recommended the officer for promotion to BS-18 on regular basis. He will be on probation for a period of one year.
21.	Mr. Muhammad Kibaz	His date of birth is 02.02.1957. He joined government service on 05.07.1977. He was promoted to BS-17 on 07.11.2008. He is exempted from 06 months mandatory training due to age

Signature
Date

		factor. No enquiry is pending against him. His service record upto 2014 is generally good. The Board recommended the officer for promotion to BS-18 on regular basis. He will be on probation for a period of one year.
22.	Mr. Abdul Malik	His date of birth is 03.01.1959. He joined government service on 04.07.1977. He was promoted to BS-17 on 07.11.2008. He is exempted from 06 months mandatory training due to age factor. His PERs for the year 2008 to 2014 are not available. The Board recommended to defer his promotion.
23.	Mr. Muhammad Saeed-I	His date of birth is 12.01.1956. He joined government service on 12.09.1975. He was promoted to BS-17 on 07.11.2008. He is exempted from 06 months mandatory training due to age factor. His PERs for the year 2008 to 2012 are not available. The Board recommended to defer his promotion.
24.	Mr. Farzana Afzal	Her date of birth is 27.03.1962. She joined government service on 30.04.1984. She was promoted to BS-17 on 07.11.2008. She is exempted from 06 months mandatory training due to age factor. No enquiry is pending against her. Her service record upto 2014 is generally good. The Board recommended the officer for promotion to BS-18 on regular basis. She will be on probation for a period of one year

Handwritten notes:
22
23
24
2015



"D" -15-

**GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT**

Dated Peshawar, the December 23, 2015

NOTIFICATION

NO.SO(E-I)E&AD/5-1/2015. Government of Khyber Pakhtunkhwa on the recommendations of the Provincial Selection Board is pleased to promote the following officers of Provincial Management Service (PMS) from BS-17 to BS-18, on regular basis with immediate effect:-

S. #.	NAMES OF OFFICERS
1.	Mr. Johar Ali Shah
2.	Mr. Shah Nadir
3.	Mr. Ijaz-ur-Rehman
4.	Mr. Samer Gul
5.	Mr. Afsar Ali Shah
6.	Mr. Naseem Khan
7.	Mr. Faridoon Khan
8.	Mr. Javed Akhtar
9.	Mr. Kibaz Khan
10.	Mr. Farzana Afzal

2. The officers on promotion will remain on probation for a period of one year in terms of Section 6(2) of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule-15(1) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, or till their retirement, whichever is earlier.

3. Posting/transfer of the above officers will be issued separately.

**CHIEF SECRETARY
GOVERNMENT OF KHYBER PAKHTUNKHWA**

ENDST. OF EVEN NO. & DATE

Copy forwarded to the:-

1. Senior Member Board of Revenue, Khyber Pakhtunkhwa.
2. Additional Chief Secretary, P&D Department.
3. Additional Chief Secretary (FATA), FATA Secretariat.
4. Principal Secretary to Governor, Khyber Pakhtunkhwa.
5. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
6. All Administrative Secretaries in Khyber Pakhtunkhwa
7. All Divisional Commissioners in Khyber Pakhtunkhwa
8. Accountant General, Khyber Pakhtunkhwa.
9. Deputy Commissioner, Chitral, Charsadda, Battagram, Bannu, Swabi, Swat, Hangu and Haripur.
10. Settlement Officer, Chitral.
11. District Accounts Officers, Chitral, Charsadda, Battagram, Bannu, Swabi, Swat, Hangu and Haripur..
12. PS to Chief Secretary, Khyber Pakhtunkhwa.
13. PS to Secretary to Govt. of Pakistan, Ministry of Interior, Islamabad.
14. PS to Secretary Establishment/PS to SS(E)/SS (Reg)/PA, AS(HRD)/AS(E)/DS(E.)/D.S(HRD Wing) SO(E.II), SO(HRD.I) SO(HRD.II) E&AD.
15. PS to Secretary (Admn.)/D.S(A)/SO(Secret)/Estate Officer/ACSO Cypher/Dy Director (IT) and Director Protocol Administration Department.
16. Officers concerned.
17. Controller, Govt. Printing Press, Peshawar.

(KASHIF IQBAL JILANI)
SECTION OFFICER (ESTT. I)
PHONE & FAX # 091-9210529

"E"



-16-

**IMMEDIATE
CONFIDENTIAL**



**GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT**

NO. SO(PSB)ED/1-1/2016/P-376
Dated Peshawar, the 04.03.2016

The Section Officer (E. I),
Government of Khyber Pakhtunkhwa,
Establishment Department

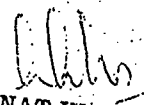
**SUBJECT: MINUTES OF THE MEETING OF PROVINCIAL SELECTION BOARD
HELD ON 18.02.2016.**

PROMOTION OF PCS (EG)/PMS BS-17 OFFICERS TO BS-18

I am directed to refer to Section Officer (E-I) letter No. U. O. NO. SO (E-1)/EWAD/5-1/2016 dated 03.02.2016 on the subject and to forward herewith an extract of **Item No (4)** of the minutes/recommendations of the meeting of Provincial Selection Board held on **18.02.2016** for further necessary action.

Working papers along-with other documents received in the section are returned in original.

As Above


(AMANAT ULLAH QURESHI,
SECTION OFFICER (PSB))

ITEM NO (4)

-17-

-10-

ESTABLISHMENT DEPARTMENT
(Meeting of PSB held on 18.02.2016)

SUBJECT: PROMOTION OF PCS (EG)/PMS BS-17 OFFICERS TO BS-18.

The Board did not consider the working paper due to paucity of time.

WORKING PAPER FOR PROVINCIAL SELECTION BOARD

PGB-I

Department		Establishment		
1.	Nomenclature of the post and Basic Scale.	BS-18 (Scheduled posts)		
2.	Service/Group/Cadre.	1) PCS EG BS-17 2) PMS BS-17		
3.	Sanctioned share of the cadre.	127 (according to revised schedule).		
		Direct	Promotion	Transfer
4. (i)	Percentage of share.	Nil	100%	Nil
(ii)	No. of posts allocated to the cadre	Nil	127	Nil
(iii)	Present occupancy position	Nil	PCS SG BS-18 = 3 PCS EG BS-18 = 29 PMS BS-18 = 91-4=87 3+29+87=119 127-119=8	Nil
(iv)	No. of vacancies in the cadre.	Nil	8	Nil
(v)	No. of resultant vacancies	Nil	4-posts to be occurred due to promotion of PCS EG BS-18 officers to BS-19.	Nil
(vi)	Total No. of vacancies for promotion.	Nil	12	Nil
(vii)	How did the vacancy (ies) under promotion quota occur and since when?	8-post due to down-gradation/retirement or retiring of following officers:- i. Mr. Mushtaq Ahmad (PCS SG BS-18) Removal from service. ii. Mr. Iftikhar Ahmad (PMS BS-18) retired on 19.11.2015 iii. Mrs. Ayesha Saeed (PCS SG BS-18) Removal from service on 31.12.2015. iv. Mr. Anwar-ul-Haq (PMS BS-18) retired on 11.12.2015 v. Mr. Fazle Rahim (PMS BS-18) pre-mature retirement from 14.12.2015 vi. Mr. Muhammad Iqbal (PMS BS-18) retired on 2.1.2016 vii. Mr. Umer Farooq (PMS BS-18) retired on 13.1.2016 viii. Mr. Azam Khan (PMS BS-18) retiring on 3.2.2016.		
(viii)	Relevant Rules	Promotion on the basis of Section-9(2)(a) of CSA 1973 (FIAB) read with Rule-9 of Khyber Pakhtunkhwa PCS (SG) Rules 1997 (FIAC) Rule-7 of APT Rules 1989 (FIAD); and promotion policy.		
(ix)	Required length of service.	5-Years		
(x)	Whether to be promoted on regular basis or appointed on acting charge basis?	Regular basis.		
(xi)	Mandatory training, if any.	On appointment to a post borne on the service in BS-17, whether by initial recruitment or by promotion, every officer so appointed shall successfully complete one and a half year's mandatory pre-service training course including twelve (12) months training as specified in Schedule-IV and six(06) months attachment as specified in Schedule-V. The training shall be followed by a passing out examination to be conducted by the selected Institution, Academy or Khyber Pakhtunkhwa Public Service Commission.		
(xii)	Minimum required score on Efficiency Index.	50		

(HASSAN MEHMOOD YOUSAFZAI)
SECRETARY ESTABLISHMENT

20/1/20

SECTION OFFICER (Est II)
Establishment & Admin.
Department Government
Khyber Pakhtunkhwa.

24-6-16.

"F" -19-

BEFORE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.

Khyber Pakhtunkhwa
Service Tribunal

Case No. 201

AMENDED SERVICE APPEAL NO: 342/2016 Date 04/8/2016

MUMTAZ AHMAD,
Retired PMS, BPS-17,
R/o House No. 240, Din Bahar Colony,
Charsadda Road, Peshawar.

..... Appellant

VERSUS

1. GOVERNMENT OF KPK,
Through Chief Secretary,
Government of Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar.
2. SECRETARY ESTABLISHMENT,
Government of Khyber Pakhtunkhwa,
Establishment Department, Peshawar.

..... Respondents

AMENDED SERVICE APPEAL UNDER SECTION 4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974:

- I. AGAINST NON CONSIDERATION OF APPELLANT IN
PSB MEETING DATED 30.11.2015 & 18.02.2016
DESPITE THE FACT THAT VARIOUS POSTS OF PMS BS-
18 WERE LYING VACANT / OCCURRED BEFORE AND
AFTER 30.11.2015.

- II. FOR PRESUMPTIVE PROMOTION TO THE POST OF PMS-BS-18 ON REGULAR BASIS, BEING COMPETENT, FIT & ELIGIBLE CIVIL SERVANT, FROM THE DATE WHEN THE POST BECAME VACANT / OCCURRED / AVAILABLE ALONGWITH THE RETIRING / TERMINAL BENEFITS, BACK BENEFITS PLUS RE-CALCULATION OF PENSION ETC, ACCORDINGLY.

PRAYER: THAT ON ACCEPTANCE OF THIS AMENDED APPEAL THE APPELLANT MAY BE CONSIDERED AND GRANTED PRESUMPTIVE PROMOTION TO THE VACANT POST OF PMS BS-18 FROM THE DATE WHEN POST BECAME VACANT AND BE ALLOWED THE RETIRING AND PENSIONARY BENEFITS ETC IN BPS-18 WITH SUCH OTHER RELIEF AS MAY DEEM FIT IN THE CIRCUMSTANCES OF THE CASE MAY ALSO BE GRANTED.

Respectfully Sheweth,

Short facts, giving rise to present Amended Service Appeal, are as under:

1. That, Appellant was a PMS BS-17 officer and was lastly working as Deputy Secretary Labour Department.
2. That, after rendering more than 39 years of unblemished service, Appellant got retired on attaining the age of superannuation on 09.01.2016.
3. That, prior to retirement, Appellant was at Serial No. 26 of the Seniority List and in a meeting held on 30.11.2015 the incumbent at Serial No. 24 namely Mrs. Farzana Afzal along with other incumbents were promoted but despite the clear vacant posts in promotion quota, Appellant was melafidely not considered for promotion, copies of the Seniority List & Minutes of the meeting dated 30.11.2015 are attached as Annexure A.
4. That, against non-consideration of the Appellant in the meeting of PSB, he submitted his Departmental Appeal before the

Competent Authority on 02.12.2015 whereby it was claimed that 2 posts of PMS BS-18 falling in Promotion Quota were lying vacant, copy of the Departmental Appeal is attached as Annexure B. It is important to mention here that the claim of the Appellant proved to be genuine / true as Working Papers presented before the PSB Meeting dated 18.02.2016 shows 12 clear vacancies of PMS BS-18.

5. That, the Competent Authority failed to decide the fate of the Departmental Appeal within statutory period hence, this Service Appeal on the following amongst other grounds: -

GROUNDS:

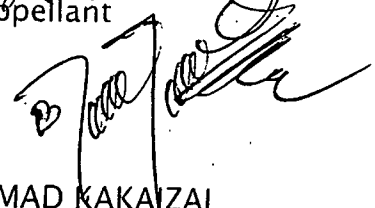
- A. That, not considering the Appellant for promotion in a meeting held on 30.11.2015 despite having clear / occurred / vacant posts prior to 30.11.2015 in promotion quota is illegal, unlawful, void and ineffective.
 - B. That, the same is against the principles of Natural Justice, also.
 - C. That, according to Rules the Appellant is competent, fit and eligible incumbent for the purpose of promotion to the post of PMS-BS-18.
 - D. That, it is important to mention here that the vacant post of PMS BS-18 falls in the promotion quota and as per Seniority List Appellant was at Serial No. 26.
 - E. That, the Respondent, mala fide, did not consider the Appellant for promotion before his retirement. It is important to mention here that right of the Appellant to be promoted to the higher grade was accrued to him when the post became vacant while he was in service.
 - F. That, now, Appellant, being retired Civil Servant, is only claiming the presumptive promotion for the purpose of retirement / pensionary benefits / monetary benefits without disturbing the seniority / sequence of the other Officers / Officials.
-

- G. That, Appellant has not been treated justly and fairly and Article 4, 25 & 27 of the Constitution of Islamic Republic of Pakistan, 1973 has been violated.
- H. That, even otherwise, besides 12 clear vacancies, on 18.02.2016 the name of the Appellant was sent to PSB for consideration to the post of PMS-BPS-18 but the said Working Papers were not considered by the PSB which shows melafide of the Respondents, copy of the Relevant Documents are attached as Annexure C.
- I. That, according to dictums laid down by the Superior Courts any Civil Servant can claim promotion after retirement when the right to be promoted was accrued to him but the Department / Government, due to the reasons best known to it, failed to convene the meeting of the Board for the purpose of promotion.
- J. That, according to Working Papers presented before PSB in its meeting held on 18.02.2016, the Appellant was at Serial No. 15 of the Seniority List being the 3rd eligible candidate for the purpose of promotion in the category. It is noteworthy to mention here that Serial No. 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 13, & 14 were ineligible for want of Training / Pending Inquiries etc.

It is, therefore, requested that subject Amended Appeal be accepted as prayed for.


Appellant

Through:

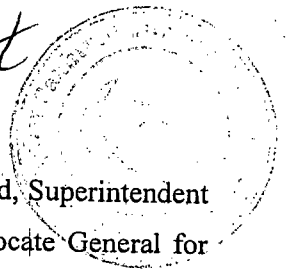


BILAL AHMAD KAKAZAI
(Advocate, Peshawar)

16

Mumtaz Ahmad vs Govt

- 23 -



24.04.2017

Appellant with counsel and Mr. Muhammad Saeed, Superintendent alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for respondents present. Arguments heard and record perused.

2. During the course of arguments the Tribunal was informed that the name of the appellant has already been sent to PSB for notional promotion and that result thereof is awaited.

3. In view of the above we dispose of the instant appeal with the directions that the case of the appellant be considered with reference to availability of vacancy and eligibility of the appellant for promotion on or before his date of retirement i.e 10.01.2016 and if a vacancy entitling the appellant to promotion is found available on or before his date of retirement then the appellant shall be considered against such vacancy for presumptive promotion. No order as to costs. File be consigned to the record room.

ANNOUNCED
24.04.2017

sd/-
Member
sd/-
Chairman

Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Deposition	25-4-17
Number of Pages	800
Copying Fee	6.00
Lighting	2.00
Printing	8.00
Total	<u>16.00</u>
Date of Payment	25-4-17
Date of Receipt	25-4-17

"H" -24-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 183 /2017

IN

Service Appeal No. 342 /2016

8-24
10-10-17

Mumtaz Ahmad,

Retired PMS (BPS-17)

R/o House No.240, Din Bahar Colony,

Charsadda Road, Peshawar

Petitioner

Versus

1. The Govt. of Khyber Pakhtunkhwa
through Chief Secretary,
Civil Secretariat, Peshawar.
2. The Secretary
Govt. of Khyber Pakhtunkhwa
Establishment Department
Civil Secretariat, Peshawar..... Respondents

Execution Petition for directing the Respondents to implement the judgment of this Hon'ble Tribunal dated 24.04.2017 passed in Service Appeal No.342/2016.

Respectfully Sheweth,

1. That petitioner had filed Service Appeal No.342/2016 before the Hon'ble Tribunal which was disposed of vide Order dated 24.04.2017 (*Annex:-A*) in the following terms:-

"In view of the above we disposed of the instant appeal with the directions that the case of the appellant be considered with the reference to availability of vacancy and eligibility of the appellant for promotion on or before his date of retirement i.e. 10.01.2016 and if a vacancy entitling the appellant to promotion is found available on or before his date of retirement then the appellant shall be considered against such vacancy for presumptive promotion. No order as to costs. File be consigned to the record room."

2. That after obtaining the attested copy of the order, petitioner submitted the same alongwith application (*Annex:-B*) on 27.04.2017 to Respondent No.2 for his implementation of the order of this Hon'ble Tribunal but so far the same has not been implemented without any justification muchless lawful.
3. That inspite of the clear-cut direction of the Hon'ble Tribunal, the Respondents are not implementing the same, hence the instant Execution Petition.

It is, therefore, humbly prayed that Execution proceedings may kindly be initiated against the Respondents for implementation of the lawful order of the Hon'ble Tribunal.

Through

Petitioner

Khaled Rahman,
Advocate,

Supreme Court of Pakistan

Dated: 10/10/2017

Verification

Verified that the contents of this Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Deponent

Execution Petition 183/2017

-26-

20th June, 2022

Learned counsel for the petitioner and learned Addl: AG have already been heard on the previous date.

02. Through this execution petition, the petitioner Mumtaz Ahmad a retired PMS Officer, has prayed for implementation of the judgment of the Tribunal dated 24.04.2017 passed in service appeal No. 342/2016.

03. It is appropriate to reproduce the order dated 24.04.2017 passed in service appeal No. 342/2016 which is as under:-

"In view of the above we dispose of the instant appeal with the directions that the case of the appellant be considered with the reference to availability of vacancy and eligibility of the appellant for promotion on or before his date of retirement i.e 10.01.2016 and if a vacancy entitling the appellant to promotion is found available on or before his date of retirement then the appellant shall be considered against such vacancy for presumptive promotion. No order as to costs. File be consigned to the record room."

04. The respondents were directed to implement the judgment. Respondents No. 1 and 2 submitted a brief implementation report. According to para-4 of the report the order of Khyber Pakhtunkhwa Service Tribunal, issued on 24.04.2017, was complied with and case of the petitioner was placed before the Provincial Selection Board in the meeting held on 25.09.2017, which was considered as agenda item No. 6 and the Board (PSB) decided as under:-

"The Board thoroughly considered his case and observed that there was no vacancy entitling the appellant for promotion to BS-18 till his retirement on 09.01.2016. the Board further observed that even if he had not been retired from service on 09.01.2016, he could not have been promoted in the subsequent PSB meeting held on 18.02.2016 as total vacancies till that point of time were limited to 08 members, while the appellants' names was

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

falling at S. No. 15 at that time. Thus the Board did not find him eligible for proforma promotion to BS-18."

05. Therefore, the petitioner could not have been granted the desired promotion. From the above it is found that the order of the Tribunal, directing consideration of the petitioner for promotion, in view of his eligibility etc, was duly complied with and he was not found fit/eligible for promotion. As after consideration of the case of the petitioner for the desired promotion, he could not have been promoted as per decision of the PSB dated 25.09.2017, therefore, there remains nothing to be done/determined in this petition. It is thus file. The petition may avail the remedy from the decision of the PSB which may have given him fresh cause of action. Consign.

06. *Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal this 20th day of June, 2022.*



(Kalim Arshad Khan)
Chairman

Copy to be three copy

S. GABRIEL
Chairman
Service Tribunal
Peshawar

1200
13/-
18/-
28/6/22
28/6/22

119
-28-

ITEM NO (6)

ESTABLISHMENT DEPARTMENT

(Meeting of PSB held on 25.09.2017)

SUBJECT: - NOTIONAL PROMOTION OF MR. MUMTAZ AHMAD WITH REFERENCE TO AMENDED SERVICE APPEAL NO. 342 OF 2016 (MR. MUMTAZ AHMAD VS GOVT OF KPK THROUGH CHIEF SECRETARY ETC.

Secretary Establishment apprised the Board that Mr. Mumtaz Ahmad was a PMS BS-17 Officer who retired from service on 09.01.2016 on attaining the age of superannuation. He filed an appeal in Service Tribunal on the grounds that posts in BS-18 were available during the meeting of PSB held on 30.11.2015 but he was not considered for promotion to BS-18. The Tribunal was erroneously informed that the name of the appellant has already been sent to PSB for notional promotion and result thereof is awaited. Thus the Tribunal vide its order dated 24.04.2017 directed that the case of the appellant be considered with reference to availability of the vacancy and eligibility of the appellant for promotion on or before his date of retirement i.e. 10.01.2016 and if a vacancy entitling the appellant to promotion is found available on or before his date of retirement then the appellant shall be considered against such vacancy for presumptive promotion. The case was referred to Law department for their advice for filing CPLA against the order of Service Tribunal. Law department advised that the Tribunal decided the case after receiving the information from the representative of Establishment department for placing the case of appellant before the PSB being a consenting order, hence no appeal lies against the consenting order before the upper forum.

The Secretary further apprised the Board that there were ten (10) vacant posts of BS-18 during the meeting of PSB held on 30.11.2015 which were filled. The name of the appellant was at S. No. 26 of the seniority list while the last Officer (Mrs. Farzana Afzal) recommended for promotion to BS-18 in PSB meeting held on 30.11.2015 was at S. No. 24 of the seniority list. Thus the vacant posts did not come to the name of the appellant. Before his retirement on 09.01.2016 the appellant submitted an application for consideration his promotion to BS-18. His application was considered and it was found that five (05) vacancies were available while the name of the appellant was at S. No. 15 of the seniority list of PMS BS-17 Officers, thus his promotion case was not presented before the PSB till his retirement on 09.01.2016.

The Board thoroughly considered his case and observed that there was no vacancy entitling the appellant for promotion to BS-18 till his retirement on 09.01.2016. The Board further observed that even if he had not been retired from service on 09.01.2016, he could not have been promoted in the subsequent PSB meeting held 18.02.2016 as total vacancies till that point of time were limited to 08 numbers, while the appellant's names was falling at S. No. 15 at that time. Thus the Board did not find him eligible for Proforma promotion to BS-18.

Attested
/ *M. Aslam*
Officer (PSB)
Muztunkhwa

-29-

"J"

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 123 /2017

IN

Service Appeal No. 342 /2016



824
11-10-17

Mumtaz Ahmad.

Retired PMS (BPS-17)

R/o House No.240, Din Bahar Colony,

Charsadda Road, Peshawar

Petitioner

Versus

1. The Govt. of Khyber Pakhtunkhwa
through Chief Secretary,
Civil Secretariat, Peshawar.

2. The Secretary
Govt. of Khyber Pakhtunkhwa
Establishment Department
Civil Secretariat, Peshawar.....

Respondents

Execution Petition for directing the Respondents to implement the judgment of this Hon'ble Tribunal dated 24.04.2017 passed in Service Appeal No.342/2016.

03.07.2018

Counsel for the petitioner and Addl: AG for respondents present. Learned counsel for the petitioner invited attention to a working paper dated 20.01.20, in which Eight clear vacancies were available for promotion of Officers of PCS (E.G) BPS-17 to BPS-18. He specifically referred to the officer at S.No.6 i.e Mr. Muhammad Iqbal who retired on 02.01.2016; while the appellant retired from service on 10.01.2016. It clearly indicated that a clear vacancy to consider the appellant was available but the item was not discussed in the meeting of PSB held on 18.02.2016. Respondents are directed to submit implementation report on or before the next date of hearing. To come up for further proceedings on 30.07.2018 before S.B.

Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Self Ahmad Hassan,
A Counsel

"K"

S.E. 5684
7-7-22
S.E. 15-7-22

CS No. 2280
07-07-2022

-30-

Soy: ESTE

0 8
07-7-22

To

The Honourable Chief Secretary,
Khyber Pakhtunkhwa, Peshawar.

Subject:

DEPARTMENTAL APPEAL AGAINST THE IMPUGNED
MINUTES OF THE PROVINCIAL SELECTION BOARD
DATED 25.9.2017 WHEREBY THE CASE OF THE
APPELLANT FOR NOTIONAL PROMOTION TO THE POST
OF BPS-18 HAS BEEN REJECTED

Respected Sir,

It is most humbly stated that appellant had served the Establishment Department as PMS BPS-17 and got retired from service on the basis of superannuation after rendering thirty nine years service vide Notification dated 9.1.2016.

That during service the promotion of the appellant to the post of BPS-18 was due but unfortunately the appellant was ignored in the PSB minutes dated 30.11.2015 and 18.2.2016. That feeling aggrieved the appellant after retirement filed Departmental appeal followed by service appeal No.342/2016 before the august service Tribunal for the grant of proforma promotion to the post of BPS-18.

That the service appeal of the appellant was disposed of by the august Service Tribunal vide judgment dated 14.4.2017 with the direction that the case of the appellant be considered with the reference to availability of vacancy and eligibility of the appellant for promotion on or before his date of retirement i.e. 10.1.2016 and if a vacancy entitling the appellant to promotion is found available on or before his date of retirement then the appellant shall be considered against such vacancy for presumptive promotion.

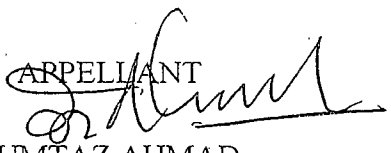
That due to non implementation of the judgment of the august Service Tribunal dated 24.4.2017 the appellant filed Implementation petition No. 183/2017 and finally the same was consigned vide judgment dated 20.6.2022 with the observation that vide minutes dated 25.9.2017 the case of the appellant has been considered by the PSB but he was not found eligible for promotion to the post of BPS-18, therefore, there remains nothing to be done/determined in this petition. It is thus file. The petitioner may avail the remedy from the decision of the PSB which may have given him fresh cause of action.

That the decision of the PSB in its minutes dated 25.9.2017 is not tenable on the ground that:

- 1- That according to the minutes of PSB meeting held on 30.11.2015 the officers at serial No.1, 2, 4, 7, 9 to 14, 16, to 18, 22 and 23 were ineligible for promotion to the post of BPS-18 on multiple grounds/reasons and thus they were deferred, however, posts were not reserved for them as is evident from the recommendation of the PSB.
- 2- That before the retirement of the appellant on 9.1.2016, there arose six clear vacancies as is evident from the working paper of the PSB for its meeting held on 18.2.2016. In the panel of officers the name of the appellant was at serial No.15 where as officers at serial No.1 to 11, 13 & 14 were again declared ineligible for promotion. These were the same officers whose petitions were deferred in the PSB meeting held on 30.11.2015. The PSB however could not promote the officers due to paucity of time vide minutes dated 18.2.2016. Had the PSB considered the officers then the appellant would have been definitely been promoted because he was the second eligible amongst officers for promotion to the post of BPS-18.
- 3- That it has been evident from the record that there were 6 clear vacancies before the retirement of the appellant and only one other officer at Serial No.12 of the PMS BPS-17 was eligible besides the appellant at S.No.15.

It is therefore most humbly requested that on acceptance of the instant Departmental appeal the impugned minutes of the PSB dated 25.9.2017 may kindly be set aside and the appellant may kindly be considered for promotion to the post of BPS-18 on or before his date of retirement i.e. 10.1.2016 with all monetary benefits.

Dated: 5.07.2022

APPELLANT

MUMTAZ AHMAD,
PMS OFFICER BPS-17®.
(Dy. Sec. - Labor Deptt.)
(Red)

VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO: _____ OF 20

Mumtaz Ahmed

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Govt of KP & Others

(RESPONDENT)
(DEFENDANT)

I/we (Appellant)

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Supreme Court** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/202


CLIENT

ACCEPTED

NOOR MOHAMMAD KHATTAK
(BC-10-0853)
15401-0705985-5


UMAR FAROOQ


WALEED ADNAN

& 
MUHAMMAD AYUB
ADVOCATES

OFFICE:

Flat No.(TF) 291-292 3rd floor
Deans trade centre Peshawar cantt:
Mobile No. 0334-5277323