

18.05.2022

Petitioner in person present. Syed Naseer ud Din Shah, Assistant Advocate General alongwith Mr. Babar, Assistant for respondents present.

Implementation report has not been submitted. The respondents were given time on their own request but neither implementation report has been submitted nor any plausible reason has been given, therefore, the respondents are directed to appear in person in Peshawar alongwith proper implementation report. Show cause notices be issued to the respondents as to why coercive measures should not be taken against them under Section 51 of the CPC. To come up for further proceeding on 16.06.2022 before S.B at Peshawar.

Q

(Kalim Arshad Khan)
Chairman
Camp Court Abbottabad


16th June 2022

Petitioner in person present. Mr. Kabirullah Khattak, Addl. A.G. alongwith Muhammad Ajmal, Assistant Secretary (Litigation) for the respondents present.

Representative of the respondents submitted implementation report, which is placed on file. Therefore, this petition is disposed of accordingly. Consign.

Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal this 16th day of June, 2022.




(Kalim Arshad Khan)
Chairman

16.05.2022

Learned counsel for the petitioner present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General alongwith Ms. Babar, Assistant for respondents present.

Representative of the respondents submitted written reply/comments to the implementation report which is placed on file. Proper implementation report not submitted. Representative of the respondents seeks further time to submit the same on the next date. Respondents are directed to submit proper implementation report failing which coercive measure in the shape of attachment of salary will be initiated against them. To come up for implementation report before S.B on 18.05.2022 at camp court Abbottabad.



(Kalim Arshad Khan)
Chairman
Camp Court Abbottabad



30.12.2021

Petitioner alongwith counsel present. Learned counsel for the appellant requested for listing the execution petition at hands for today instead of 31.12.2021. Request is accorded. Instant petition is listed for today.

Through the present execution petition the petitioner seeks implementation of the judgment dated 22.09.2021 passed in Service Appeal No. 1022/2019, whereby his appeal was accepted, holding him entitled for promotion to the post of Naib Tehsildar from the date when he became eligible for promotion. The judgment was passed on 22.09.2021 and if the respondents have filed CPLA but interim relief is not granted, they are supposed to implement the judgment conditionally on getting affidavit from the petitioner that he will restore the benefits back taken on account of implementation of judgment of this Tribunal if the same is set aside by the august Supreme Court of Pakistan. Notices be issued to the respondents for the next date. Case to come up for implementation report on 14.02.2022 before S.B at camp court, Abbottabad.



Chairman



Camp Court, A/Abad

Form- A

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 347/2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	25.11.2021	<p>The execution petition submitted by Mr. Munir Akhtar through Mr. Muhammad Aslam Tanoli Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This execution petition be put up before touring S. Bench at A.Abad on <u>31/12/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
2-		

**GOVERNMENT OF KHYBER PAKHTUNKHWA
REVENUE AND ESTATE DEPARTMENT**

AUTHORITY LETTER

Mr. Muhammad Ajmal (Assistant Secretary Litigation-II) Board of Revenue, is hereby authorized to attend Service Tribunal Peshawar, in Execution Petition No.347/2021 titled Munir Akhtar Versus Government of Khyber Pakhtunkhwa through Chief Secretary.



**Secretary-I
Board of Revenue
Khyber Pakhtunkhwa
Secretary - I
Board of Revenue
Khyber Pakhtunkhwa**

BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution petition No. 347/2021

Munir Akhtar Senior Clerk, Office of the Commissioner Hazard Division
Abbottabad(Petitioner)

Versus

1. Government of KPK through Chief Secretary, Civil Secretariat, Peshawar.
2. Senior Member Board of Revenue, KPK, Peshawar.
3. Secretary to Government of KPK, Revenue Department Peshawar..... (Respondents)

EXECUTION PETITION IN SERVICE APPEAL NO.1022/2019.

INDEX

S/No.	Description of documents	Anne-Xure	Page No.
1.	Execution petition.		01-05
2.	Service Appeal dated 05-08-2019	"A"	06-16
3.	KPK Service Tribunal Decision 22-09-2021	"B"	17-23
4.	Wakalatnama		

THROUGH

PETITIONER

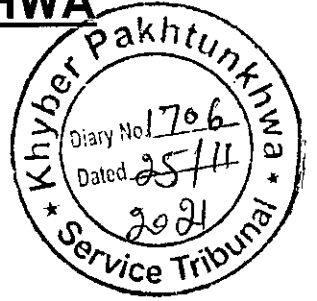
M. Aslam
MOHAMMAD ASLAM TANOLI
ADVOCATE HIGH COURT
AT PESHAWAR

Dated: 25-11-2021



BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution Petition No.....347/2021.....



Munir Akhtar Senior Clerk, Office of the Commissioner Hazard
Division Abbottabad(Petitioner)

Versus

1. Government of KPK through Chief Secretary, Civil Secretariat, Peshawar.
2. Senior Member Board of Revenue, KPK, Peshawar.
3. Secretary to Government of KPK, Revenue Department Peshawar..... **(Respondents)**

EXECUTION PETITION IN SERVICE APPEAL NO. 1022/2019 FOR IMPLEMENTATION OF JUDGMENT/DECISION DATED 22-09-2021 OF THIS HONOURABLE SERVICE TRIBUNAL.

PRAYER: ON ACCEPTANCE OF INSTANT EXECUTION PETITION THIS SERVICE TRIBUNAL MAY GRACIOUSLY BE PLEASED TO ISSUE ORDERS/INSTRUCTION TO THE RESPONDENTS TO IMPLEMENT THE JUDGMENT/DECISION DATED 22-09-2021 IN ITS TRUE LETTER AND SPIRIT AND GRANT THE PETITIONER HIS PROMOTION AS NAIB TEHSILDAR.

Respectfully Sheweth:

1. That petitioner/appellant filed subject titled service appeal before this Honorable Service Tribunal

2

against orders of Respondents whereby appellant was ignored his promotion as Naib Tehsildar and his departmental appeal was rejected in flagrant violation and negation of law, departmental rules and regulations. **(Copy of the service appeal is attached as Annex-"A")**.

2. That this Honorable Service Tribunal on acceptance of subject service appeal issued judgment/decision dated 22-09-2021 that "instant appeals are accepted. The appellants are held entitled for promotion to the post of Naib Tehsildar from the dates, when they became eligible for promoton". **(Copy of judgment/order dated 22-09-2021 is attached as Annex-"B")**.
3. That even after petitioner's increscent approaches and receipt of attested copies of the judgment/decision dated 22-09-2021 of this Honourable Service Tribunal the respondents are reluctant to implement the same on one or other pretext and using delaying tactics while petitioner is badly suffering his promotion and seniority in the rank of Naib Tehsildar.

3

4. That there is no stay order from the Apex Supreme Court of Pakistan against the order/judgment dated 22-09-2021 of this Honourable Service Tribunal and in such a condition respondents are legally bound to implement the orders/judgment of this Honourable Service Tribunal which is still in the field. Hence this Execution Petition on the following:

GROUNDS:

- A) That as this Honorable Service Tribunal in its judgment dated 22-09-2021 has ordered that "instant appeals are accepted. The appellants are held entitled for promotion to the post of Naib Tehsildar from the dates, when they became eligible for promotion". Hence respondents are legally bound to comply with the above judgment/decision.
- B) That there is no stay order from the Apex Supreme Court of Pakistan against the judgment and order dated 22-09-2021 of this Honourable Service Tribunal while order dated 22-09-2021 is in field. Respondents must comply with the said order.

4

- C) That departmental authorities/respondents are reluctant to pay heed to the decision dated 22-09-2021 of this Honorable Tribunal without any reason and justification, hence instant execution petition.
- D) That petitioner is badly suffering his promotion and seniority in the rank of Naib Tehsildar since long without any fault on his part. Petitioner deserves to be promoted as Naib Tehsildar in the light of decision dated 22-09-2021 of this Honorable Service Tribunal.
- E) That instant execution is well within time and this Honourable Service Tribunal has got every jurisdiction to entertain and adjudicate upon the same.

PRAYER:

It is, therefore, humbly prayed that this Honorable Service Tribunal may graciously be pleased to accept this Execution petition and issue necessary orders/directions to be respondents to implement and promote the petitioner as Naib

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Tehsildar in the light of judgment/decision dated 22-09-2021 of this Honourable Service Tribunal in its true letter and spirit.

Mudhi

PETITIONER

THROUGH

M. Aslam

MOHAMMAD ASLAM TANOLI
ADVOCATE HIGH COURT
AT PESHAWAR

Dated: 25-11-2021

AFFIDAVIT

I, Munir Akhtar petitioner do hereby undertake/solemnly affirm that the contents of fore-going petition are true and correct to the best of my knowledge and belief and nothing has been concealed or suppressed from this honorable court.

Mudhi

Dated: 25-11-2021

DEPONENT



6

Annex 'A'

BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal No.....

Munir Akhtar Senior Clerk, Office of the Commissioner
Hazara Division, Abbottabad.

(Appellant)

VERSUS

1. Government of KPK through Chief Secretary, Civil Secretariat, Peshawar.
2. Senior Member Board of Revenue, KPK, Peshawar.
3. Secretary to Government of KPK, Revenue Department, Peshawar.

(Respondents)

SERVICE APPEAL UNDER SECTION-4 OF KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 11-07-2019 OF BOARD OF REVENUE KPK, PESHAWAR WHEREBY APPELLANT'S DEPARTMENTAL APPEAL FOR PROMOTION AS NAIB TEHSILDAR HAS BEEN REJECTED AND NOTIFICATION DATED 13-05-2019 WHEREBY 15% RESERVED QUOTA OF MINISTERIAL STAFF FOR PROMOTION AS NAIB TEHSILDAR HAS BEEN DELETED FROM THE RULES.

PRAYER: ON ACCEPTANCE OF INSTANT SERVICE APPEAL ORDER DATED 11-07-2019 MAY GRACIOUSLY BE SET ASIDE AND ORDER DATED 13-05-2019 WHEREBY BY 15% RESERVED QUOTA OF MINISTERIAL STAFF FOR PROMOTION TO THE POST OF NAIB TEHSILDAR HAD BEEN DELETED MAY BE DECLARED AS ILLEGAL, UNLAWFUL, PERVERSE, AND INEFFECTIVE TO APPELLANT'S RIGHT OF PROMOTION AND THE APPELLANT MAY BE PROMOTED AS NAIB TEHSILDAR FROM THE DATE HE BECAME ELIGIBLE AND POST HAD FALLAN VACANT IN HAZARA DIVISION WITH ALL CONSEQUENTIAL SERVICE BACK BENEFITS.

Respectfully sheweth,

1. That consequent upon the recommendations of the Departmental Selection Committee, the

Attested
Mudhi



appellant was initially inducted in the Revenue Department as Junior Clerk on 13-01-1992 and elevated to the rank of Senior Clerk on 29-06-2010. The appellant has since rendered more than 27 years unblemished service.

2. That almost during his entire service the appellant remained posted in the Revenue Branch of the Commissioner's Office and gained tremendous experience in his field. Since his appointment the appellant always performed his assigned duties to the entire satisfaction of his superiors and there is no complaint against him.

3. That since the beginning of his service the appellant enjoyed 20% reserved quota of Ministerial Staff being feeding cadre of promotion to the post of Naib Tehsildar in the Revenue Department of KPK according to Tehsildari/Naib Tehsildari Service Rules -1962 (Land Revenue Act-1967) with the legitimate expectation of his promotion as Naib Tehsildar.

✓ 4. That in the year 2000, the appellant became eligible for promotion to the post of Naib Tehsildar and on the basis of aforementioned promotion rules his case for promotion as Naib Tehsildar was recommended and placed before the Departmental Promotion Committee's meeting held on 29-06-2000. **(Copy of the working papers alongwith list of candidates to the post of N/Tehsildar is attached as Annex-"A").**

Attested
Almadhi

8

5. That due to inaction, delayed and lethargic attitude, of the departmental authorities the aforesaid promotion process could not be completed till the time when in the year 2001 devolution process of Government Departments, Divisional & District Administration took place which resulted into further delay in appellant's promotion.

✓ 6. That in the year 2015, the method of recruitment, qualification and other conditions for the post of Tehsildar/Naib Tehsildar etc were laid down by the Government of KPK, Revenue Department, vide its Notification dated 23-01-2015 whereby reserved quota for promotion of Ministerial Staff to the post of Naib Tehsildar was reduced from 20% to 15%. **(Copy of Notification dated 23-01-2015 is as Annex-"B")**.

7. That in the year 2015, some posts of Naib Tehsildar became vacant in Hazara Division and the appellant fulfilling the requisite qualifications applied for his promotion as Naib Tehsildar vide application dated 09-03-2015 forwarded to the Board of Revenue by the Commissioner Hazara Division Abbottabad vide letter No. 4/9/Estb/1585 dated 25-03-2015. **(Copies of application dated 09-03-2015 and covering letter dated 25-03-2015 are attached as Annex- "C&D")**.

8. That in the light of above application, the Board of Revenue Peshawar vide letter No. Estt/V/Munir Akhtar/ Abbottabad/9500 dated 22-04-2015

Attested
M. Akhtar

9

directed the Commissioner, Hazara Division, Abbottabad to prepare and submit the working papers under the provisions of reserved quota of Ministerial staff for promotion of appellant as Naib Tehsildar which were also furnished. But promotion process could not take place due to inaction and malafide of the concerned departmental authorities. **(Copy of letter dated 22-04-2015 is attached as Annex-"E").**

9. That in the year 2019 some posts of Naib Tehsildar became vacant and the Commissioner Hazara Division Abbottabad vide letter No. CHD/Estb/ 2/ 3/ 2027-28 dated 27-02-2019 requested the Board of Revenue Peshawar for convening Departmental Promotion Committee meeting in order to fill-in the vacant posts of Naib Tehsildars through promotion of Ministerial staff against 15% reserved quota under rules 2015. The copy of a Final Seniority list of Senior Clerks of Hazara Division for the year 2018 was also attached there with the letter. The name of appellant stands at Serial No. 2 of the seniority list. **(Copies of the letter dated 27-02-2019 and Seniority List are attached as Annex-"F&G").**
10. That on **04-03-2019** the appellant through a joint application applied for his promotion as Naib Tehsildar under the provisions of Tehsildari/Naib Tehsildari Rules 2015 reserving 15% quota for Ministerial Staff whereupon Board of Revenue Peshawar vide letter No. Estt. V/PF/Seniority

Attested
Mudhi



List/2018/9588 dated **19-03-2019** demanded working papers alongwith seniority list & ACRs etc for constitution of DPC for said promotion and the Commissioner Hazara Division Abbottabad with his recommendation submitted the required documents vide letter No. 2//3/Estb/ACR/CHD/3824-25 dated **25-03-2019**. **(Copies of application dated 04-03-2019, letter dated 19-03-2019 and letter dated 25-03-2019 are as Annex "H, I & J")**.

11. That even in the aforesaid situation the concerned departmental authorities as usual once again adopted the lethargic attitude toward the finalization of appellant's promotion case which could not be completed till further amendment in Tehsildari/Naib Tehsildari Rules was introduced by the department vide impugned Notification dated 13-05-2019 by deleting the reserved quota of 15% of the Ministerial Staff to the post of Naib Tehsildar. **(Copy of the Notification dated 13-05-2019 is attached as Annex-"K")**.

12. That appellant vide his departmental appeal dated 17-06-2019 applied for his promotion as Naib Tehsildar against 15% reserved quota of Ministerial Staff according to Tehsildari/Naib Tehsildari Rules-2015 where under the terms and condition of appellant's promotion are governed and appellant also assailed the Notification dated 13-05-2019, for deletion of 15% reserved quota of Ministerial Staff to the post of Naib Tehsildar, being

Attested
Moadhi



illegal, unlawful, without lawful authority, perverse, whimsical, arbitrary and inapplicable to the terms and condition/rights of promotion of appellant. The said departmental appeal of the appellant was filed without any consideration by the Board of Revenue Peshawar vide letter dated 11-07-2019. **(Copies of departmental appeal dated 17-06-2019 and letter dated 11-07-2019 are as Annex-"L & M")**.

13. That by virtue of issuance of impugned Notification, the amendment has been made in Rules 2008, whereas after issuance of Rules-2015 in supersession of all previous rules, the Rules-2008 stand non-existence, therefore has no legal impact on the already accrued rights of promotion of appellant nor on the basis of such amendment in the non-existence rules any reserved quota for promotion of ministerial staff can be deleted. Hence instant service appeal, inter-alia, on the following:-

GROUNDS:

- A) That order dated 11-07-2019 is illegal, without lawful authority, void-an-initio, passed in slipshod, perfunctory and arbitrary manner, against the law, rules & regulations, facts & circumstances of the matter, hence is liable to be set aside.
- B) That Notifications dated 13-05-2019 of the Board of Revenue Peshawar whereby 15%

*Attested
Mudhi*

reserved quota of Ministerial Staff of promotion to the post of Naib Tehsildar has been deleted, is illegal, unlawful, perverse, arbitrary against the law and principle of natural justice and ineffective to the extent of appellant's rights of promotion's terms and conditions which were/are governed under Tehsildari/Naib Tehsildari Rules 2015.

- C) That on issuance of promotion rules 2015 in supersession of all previous rules, the rules 2008 stand non-existence, therefore the impugned amendment of 2019 has no legal impact on the already accrued rights of appellant nor on the basis of such amendment in the non-existence rules any reserved quoted for promotion of ministerial staff to the post of Naib Tehsildar can be deleted.
- D) That since the year 2000 by fulfilling the all the requirement, appellant had become entitled for promotion as Naib Tehsildar against 20 % quota reserved for Ministerial Staff for promotion to the post of Naib Tehsildar under the provisions of Tehsildari/Naib Tehsildari Rules-1962 and the posts of Naib Tehsildar were also fallen vacant in Hazara Division. Working papers were prepared according to seniority list of candidates and promotion cases of ministerial staff including appellant were placed before Departmental Promotion

Attested
M. K. K. K.

Committee constituted and headed by the then Commissioner Hazara.

- E) That similarly in the year 2015, the appellant again became eligible for promotion as Naib Tehsildar against the said 15% reserved quota of Ministerial Staff and the posts had also fallen vacant and his working papers were submitted to the Board of Revenue KPK Peshawar but of no use due to lethargic and protracted attitude of the departmental authorities.

- F) That early in the year 2019 the Commissioner Hazara Division Abbottabad vide his letter dated 27-02-2019 by explaining position vacant of posts requested the Board of Revenue KPK Peshawar for promotion of Senior Clerks to the post of Naid Tehsildar and asked for convening of DPC meeting for the purpose. In response the Board of Revenue KPK Peshawar vide its letter dated 19-03-2019 demanded the required documents of the Senior Clerks for promotion through special messenger within no time which were also furnished vide letter dated 25-3-2019 but once again there was no action like past on the part of departmental authorities. The Appellant has been deprived of his legitimate right of promotion by departmental authorities

Attested
Moadhi



14

and caused tremendous loss to his future service career without any fault on his part.

- G) That in the light of judgments of the superior courts of the country any change in the terms and conditions of service of the civil servant with retrospective effect by depriving him of his vested right cannot be made while the appellant remained eligible for promotion for considerable period of 20 years but through impugned notification his right of promotion has been taken away which is not sustainable in the eyes of law but the departmental authority has ignored this aspect of the case while filing departmental appeal of the appellant vide impugned notification dated 11-07-2019, *without giving opportunity of personal hearing.*
- H) That the respondents have not treated appellant in accordance with law, departmental rules, regulations and policy on the subject and have acted in violation of Article-4 of the constitution of Islamic Republic of Pakistan 1973 & unlawfully issued the impugned orders and notifications, which are unjust, unfair hence, are liable to be set aside/treated as ineffective to the extent appellant's promotion as Naib Tehsildar.
- I) That the respondents have failed to abide by the law and even did not take into

Allestal
A Lodhi

consideration the grounds advance by appellant in the memo of departmental appeal for his promotion as Naib Tehsildar against the 15# quota reserved for Ministerial Staff under rules 2015. Thus the impugned notification dated 13-05-2019 and order dated 11-07-2019 of respondents are contrary to the law as laid down in Tehsildari/Naib Tehsildari Rules 2015, other departmental rules regulations read with section 24-A of General Clause Act 1897 & Article 10-A of Constitution of Islamic Republic of Pakistan 1973.

- J) That the appellant being qualified and fulfilling all requirements was eligible for promotion as Naib Tehsildar since 2000 but has been deliberately deprived of his legitimate promotion despite of availability of posts without any reason, justification against the law, departmental rules and regulation. He deserves to be promoted as Naib Tehsildar since the date he became eligible and the post was available in Hazara Division with all consequential service back benefits.

- K) That instant appeal is well within time and this honorable Service Tribunal has got every jurisdiction to entertain and adjudication upon the same.

Accepted
Kodhi

PRAYER:

16

It is, therefore, humbly prayed that on acceptance of instant Service Appeal orders of the respondents dated 11-07-2019 may graciously be set aside and Notification dated 13-05-2019 may be treated as illegal, void ab-initio and ineffective to the extent of terms and conditions of appellant's promotion and the appellant may graciously be promoted as Naib Tehsildar against the 15% quota reserved for Ministerial Staff from the date the appellant became eligible and the post had fallen vacant with all consequential service back benefits. Any other relief which this Honourable Tribunal deems fit may also be granted.

M. Aslam
Appellant

Through:

M. Aslam
(Mohammad Aslam Tanoli)
Advocate High Court
At Haripur

Dated 05-08-2019

VERIFICATION

It is verified that contents of instant Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed thereof.

Dated 05-08-2019

M. Aslam
Appellant

*Atiqul
Khan*

(7)

Annex-B



BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Appeal No...1022/2019

Diary No. 1135

Dated 05/08/2019

Munir Akhtar Senior Clerk, Office of the Commissioner
Hazara Division, Abbottabad.

(Appellant)

VERSUS

1. Government of KPK through Chief Secretary, Civil Secretariat, Peshawar.
2. *Senior Member Board of Revenue KPK Peshawar*
3. Secretary to Government of KPK, Revenue Department, Peshawar.

(Respondents)

SERVICE APPEAL UNDER SECTION-4 OF KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 11-07-2019 OF BOARD OF REVENUE KPK, PESHAWAR WHEREBY APPELLANT'S DEPARTMENTAL APPEAL FOR PROMOTION AS NAIB TEHSILDAR HAS BEEN REJECTED AND NOTIFICATION DATED 13-05-2019 WHEREBY 15% RESERVED QUOTA OF MINISTERIAL STAFF FOR PROMOTION AS NAIB TEHSILDAR HAS BEEN DELETED FROM THE RULES.

PRAYER: ON ACCEPTANCE OF INSTANT SERVICE APPEAL ORDER DATED 11-07-2019 MAY GRACIOUSLY BE SET ASIDE AND ORDER DATED 13-05-2019 WHEREBY BY 15% RESERVED QUOTA OF MINISTERIAL STAFF FOR PROMOTION TO THE POST OF NAIB TEHSILDAR HAD BEEN DELETED MAY BE DECLARED AS ILLEGAL, UNLAWFUL, PERVERSE, AND INEFFECTIVE TO APPELLANT'S RIGHT OF PROMOTION AND THE APPELLANT MAY BE PROMOTED AS NAIB TEHSILDAR FROM THE DATE HE BECAME ELIGIBLE AND POST HAD FALLAN VACANT IN HAZARA DIVISION WITH ALL CONSEQUENTIAL SERVICE BACK BENEFITS.

Respectfully sheweth,

1. That consequent upon the recommendations of the Departmental Selection Committee, the

ATTESTED

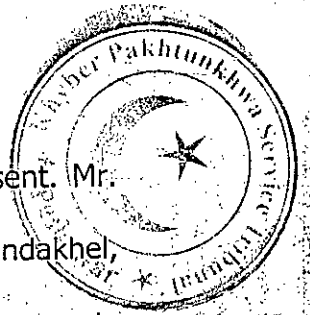
[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Filed to-day

[Signature]
Registrar

5/8/19

18





ORDER
22.09.2021

Mr. Aslam Khan Tanoli, Advocate for the appellant present. Mr. Muhammad Babar, Assistant alongwith Mr. Riaz Khan Paindakhel, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, passed in service appeal bearing No. 1021/2019 "titled Abdul Qayyum Tahir Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", the instant appeal is accepted. The appellant is held entitled for promotion to the post of Naib Tehsildar from the dates, when he became eligible for promotion. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
22.09.2021


(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT ABBOTTABAD


(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)
CAMP COURT ABBOTTABAD

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 06-10-21
Number of Words 800
Copying Fee 10/-
Urgent 9/-
Total 14/-
Name of Copyist _____
Date of Completion of Copy 06-10-21
Date of Delivery of Copy 06-10-21

19

BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR



Appeal No....1021/2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1136

Dated 05/8/2019

Abdul Qayyum Tahir S/O Qari Aziz-ur-Rehman, Senior Clerk,
Office of the Commissioner Hazara Division, Abbottabad.

(Appellant)

VERSUS

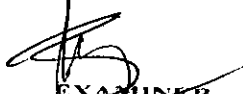
1. Government of KPK through Chief Secretary, Civil Secretariat, Peshawar.
2. Senior Member Board of Revenue, KPK, Peshawar
3. Secretary to Government of KPK, Revenue Department, Peshawar.

(Respondents)

SERVICE APPEAL UNDER SECTION-4 OF KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 11-07-2019 OF BOARD OF REVENUE KPK, PESHAWAR WHEREBY APPELLANT'S DEPARTMENTAL APPEAL DATED 24-06-2019 FOR PROMOTION AS NAIB TEHSILDAR HAS BEEN REJECTED AND NOTIFICATION DATED 13-05-2019 WHEREBY 15% RESERVED QUOTA OF MINISTERIAL STAFF FOR PROMOTION AS NAIB TEHSILDAR HAS BEEN DELETED FROM THE RULES.

PRAYER: ON ACCEPTANCE OF INSTANT SERVICE APPEAL ORDER DATED 11-07-2019 MAY GRACIOUSLY BE SET ASIDE AND ORDER DATED 13-05-2019 WHEREBY 15% RESERVED QUOTA OF MINISTERIAL STAFF FOR PROMOTION TO THE POST OF NAIB TEHSILDAR HAD BEEN DELETED MAY BE DECLARED AS ILLEGAL, UNLAWFUL, PERVERSE, AND INEFFECTIVE TO APPELLANT'S RIGHT OF PROMOTION AND THE APPELLANT MAY BE PROMOTED AS NAIB TEHSILDAR FROM THE DATE HE BECAME ELIGIBLE AND POST HAD FALLAN VACANT IN HAZARA DIVISION WITH ALL CONSEQUENTIAL SERVICE BACK BENEFITS.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Filed-to-day
Registrar
2/10

20

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT ABBOTTABAD.**

Service Appeal No. 1021/2019

Date of Institution ... 05.08.2019

Date of Decision ... 22.09.2021



Abdul Qayyum Tahir S/O Qari Aziz-ur-Rehman, Senior Clerk,
Office of the Commissioner Hazara Division, Abbottabad.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat,
Peshawar and two others.

... (Respondents)

MR. MOHAMMAD ASLAM TANOLI,
Advocate

... For Appellant

MR. RIAZ AHMED PAINDAKHEL
Assistant Advocate General

... For Respondents

SALAH-UD-DIN ...
ATIQU-UR-REHMAN WAZIR ...

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):- This single judgment shall dispose of the instant service appeal as well as the connected Service Appeal No 1022/2019 titled "Munir Akhtar Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", as common question of law and facts are involved therein.

2. Brief facts of the case are that the appellants namely Abdul Qayyum Tahir and Munir Akhtar initially joined the Revenue Department as Junior Clerks and subsequently were elevated to the post of Senior Clerk on 02-02-1983 and

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

21

29-06-2010 respectively. As per service rules, notified on 23-01-2015, 15% quota was reserved for promotion on the basis of joint seniority cum fitness from amongst the Senior Clerks of the office of Board of Revenue, Commissioners and Deputy Commissioners offices, for their further promotion to the post of Naib Tehsildar. Cases of promotion of the appellants were under process for quite some time, but could not materialize well in time and in the meanwhile, the respondents vide another notification dated 13-05-2019 amended the service rules and deleted the reserved quota of 15% for promotion of ministerial staff to the post of Naib Tehsildar. Feeling aggrieved, the appellants filed departmental appeals, which were filed without any consideration vide order dated 11-07-2019, hence the instant service appeals with prayers that the impugned order dated 11-07-2019 may be set aside and notification dated 13-05-2019, may be declared as illegal, void ab-initio and ineffective upon the appellants promotion rights and the appellants may be promoted to the post of Naib Tehsildar against the 15% quota reserved for ministerial staff, from the date when the appellants became eligible for such promotion and posts had fallen vacant in Hazara Division with all consequential benefits.

3. Learned counsel for the appellant has contended that the appellants were fully eligible for promotion to the post of Naib Tehsildar based on seniority cum fitness, but it was due to the lethargic and reckless attitude of the respondents that cases of promotion of the appellants lingered for years in the offices of respondents, which finally were refused under the pretext that the respondents has brought amendments in service rules vide notification dated 13-05-2019, thereby deleting the 15% quota reserved for ministerial staff; that by virtue of issuance of impugned notification dated 13-05-2019, the amendments has been made in Rules, 2008, whereas after issuance of Rules, 2015 in supersession of all previous rules, the rules, 2008 stands non-existent, therefore has no legal impact on the already accrued rights of promotion of appellants nor on the basis of such amendments in the non-existent rules, any reserved quota for promotion of ministerial staff can be deleted; that posts of Naib Tehsildar were lying vacant in Hazara Division, working paper for which were also submitted and cases of promotion in respect of the appellants were also included, which were also placed before the Departmental Promotion Committee(DPC); that again in 2015 cases of promotion in respect of the appellants came under consideration of the DPC, but were again ignored by the respondents due to their lethargic

ATTESTED
 [Signature]
 DEPUTY COMMISSIONER
 Board of Revenue
 Hazara Division
 Peshawar

behaviour; that in 2019, the Commissioner Hazara Division vide letter dated 27-02-2019, requested the board of revenue for promotion of the senior clerks to the post of Naib Tehsildar and in response, the board of revenue demanded for requisite documents of the senior clerks concerned, which were also provided, but in the meanwhile rules were amended and the appellants were not promoted, which was illegal unlawful and contrary to the norms of natural justice; that in the light of judgments of the superior courts, any change in the terms and condition of service of the civil servant with retrospective effect by depriving them of their vested rights cannot be done while the appellants remained eligible for considerable period of 20 years, but through impugned notification dated 13-05-2019, their right of promotion has been taken away which is not sustainable in the eye of law; that the respondents have not treated the appellants in accordance with law, departmental rules, regulation and policy on the subject and have acted in violation of Article-4 of the constitution and unlawfully issued the impugned order and notifications, which are unjust, unfair and are liable to be set at naught.

4. Learned counsel for respondents has contended that in 2015, under 15% quota reserved for senior clerks, cases of the appellants were placed before the DPC, but their cases were not considered for such promotion due to non-availability of post of Naib Tehsildar in their share at that time; that it is correct that the appellants were otherwise eligible for promotion on the basis of seniority cum fitness for promotion to the post of Naib Tehsildar, but in the meanwhile amendments were brought in the service rules and 15% quota reserved for their promotion was deleted.

5. We have heard learned counsel for the parties and have perused the record.

6. Record reveals that the appellants were otherwise fit for promotion based on seniority cum fitness and their cases were submitted for promotion more than once, but were not considered. Stance of the respondents to the effect that the appellants were not considered due to non-availability of posts is not correct, as record reveals that Commissioner Hazara vide letter dated 27-02-2019 had submitted cases of the appellants for convening meeting of DPC as well as mentioned that there are many vacancies available in the division to be filled in through promotion from amongst the senior clerks at the ratio of 15%, but the

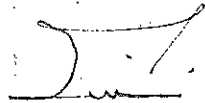
ATTESTED

COMMISSIONER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

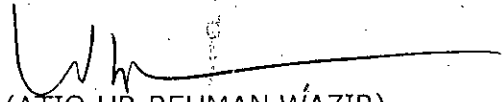
respondents as usual lingered the cases and finally refused on the grounds of amendments in service rules, which was not warranted. We are of the considered opinion that the appellants were fit for promotion in every respect and vacancies to that effect were also available, but it was due to malafide of the respondents that the appellants were kept deprived of their right of promotion. The amendments in service rules at a later stage, cannot deprive the appellants of their right of promotion already accrued to them as making the relevant amended rules applicable to the appellants would be against the law and natural justice.

7. In view of the foregoing discussion, the instant appeals are accepted. The appellants are held entitled for promotion to the post of Naib Tehsildar from the dates, when they became eligible for promotion. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
22.09.2021

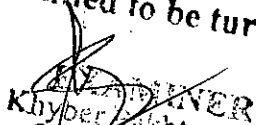


(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT ABBOTTABAD



(ATIQU-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)
CAMP COURT ABBOTTABAD

Certified to be true copy


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 06-10-21
Number of Words 2000
Copying Fee 20/-
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2021 کو 25 نومبر

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Handwritten text below the main body, possibly a date or a reference.



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**OFFICE OF THE
COMMISSIONER HAZARA DIVISION
ABBOTTABAD**

No.Lit.1/1(A)/ 5489-94
Dated: 16.5.2022

To

The Assistant Secretary (Estt),
Board of Revenue,
Revenue and Estate Department,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: **FILING OF COMMENTS IN EXECUTION PETITION NO.347/2021
TITLED MUNIR AKHTAR VERSUS GOVERNMENT OF KHYBER
PAKHTUNKHWA THROUGH CHIEF SECRETARY,CIVIL SECRETARIAT,
PESHAWAR AND OTHERS.**

I am directed to refer to your office letter No.Estt:V/Munir Akhtar/E. Petition No.347/2021/8488,dated:17.03.2022 on the subject cited above and to state that in compliance with aforementioned letter, representative of this office has filed comments (in original) in the Khyber Pakhtunkhwa Service Tribunal, Camp Court at Abbottabad on 16.05.2022.

While perusing the comments, the honourable Chairman has directed to implement the court order dated:22.09.2021 in Appeal No.1022/2019 conditionally, and submit the same before the Camp Court, Abbottabad on 18.05.2022,otherwise salary/budget will be attached and COC as well.

I am therefore directed to convey the court directions and to request you to do the needful and attend the Camp Court at Abbottabad on 18.05.2022 alongwith requisite documents, please.

Assistant to Commissioner (Poll/Dev)
Hazara Division, Abbottabad.

No. & Date Even.

Copy to the:-

1. Additional Advocate General, Khyber Pakhtunkhwa Service Tribunal, Judicial Complex (old),Khyber Road, Peshawar.
2. Registrar, Khyber Pakhtunkhwa Service Tribunal, Judicial Complex (old), Khyber Road, Peshawar.
3. Assistant Secretary (Lit-1),Board of Revenue, Revenue and Estate Department, Government of Khyber Pakhtunkhwa, Peshawar.
4. PS to the Senior Member Board of Revenue, Government of Khyber Pakhtunkhwa, Board of Revenue, Peshawar for information and necessary action, please.
5. PS to Commissioner Hazara Division, Abbottabad.

Assistant to Commissioner (Poll/Dev)
Hazara Division, Abbottabad.



KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

No. 1159-60 /ST Dated 25 / 5 /2022

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

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

To

The Secretary Revenue,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject:

SHOWCAUSE NOTICE IN EXECUTION PETITION NO: 347/2022 TITLED MUNIR AKHTER -VS- GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH CHIEF SECRETARY, PESHAWAR & OTHERS.

I am directed to say that execution petition No. 347/2022 was filed in this Tribunal against the respondents for disobedience of the order dated 22-09-2021 passed by this Tribunal in Service Appeal No. 1022/2019 titled Mr. Munir Akhter VS Government of Khyber Pakhtunkhwa through Chief Secretary and others.

That when the above execution petition came up for hearing before this Tribunal on 18th day of May, the following orders were passed:

"Petitioner in person present. Syed Naseer ud Din Shah, Assistant Advocate General alongwith Mr. Babar, Assistant for respondents present.

Implementation report has not been submitted. The respondents were given time on their own request but neither implementation report has been submitted nor any plausible reason has been given, therefore, the respondents are directed to appear in person in Peshawar alongwith proper implementation report. Show cause notices be issued to the respondents as to why coercive measures should not be taken against them under Section 51 of the CPC. To come up for further proceeding on 16.06.2022 before S.B at Peshawar."

You are, therefore, served with show cause notice to explain as to why appropriate action may not be initiated against you for non-compliance of order of this Tribunal dated 22-09-2021.

OLC

(WASEEM AKHTAR)
REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

No. _____/ST

Dated ____ / ____ /2022

Copies forwarded to:

1. PS to Worthy Chairman Khyber Pakhtunkhwa Service Tribunal, Peshawar

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR



KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

No. 1161-62 /ST Dated 25 / 5 /2022

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

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

To

The Senior Member Board of Revenue,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject:

SHOWCAUSE NOTICE IN EXECUTION PETITION NO: 347/2021 TITLED MUNIR AKHTER -VS- GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH CHIEF SECRETARY, PESHAWAR & OTHERS.

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You are, therefore, served with show cause notice to explain as to why appropriate action may not be initiated against you for non-compliance of order of this Tribunal dated 22-09-2021.

o/c


(WASEEM AKHTAR)
REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR


No. _____/ST

Dated ____/____/2022

Copies forwarded to:

1. PS to Worthy Chairman Khyber Pakhtunkhwa Service Tribunal, Peshawar


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

	GOVERNMENT OF KHYBER PAKHTUNKHWA BOARD OF REVENUE REVENUE & ESTATE DEPARTMENT. (Establishment Section)	
091-9213989	Estt: V/ Munir Akhtar/ E.P No.347/2021/ 1701749 Peshawar Dated the 15/06/2022	091-9214208


To

✓
The Registrar, Service Tribunal,
Khyber Pakhtunkhwa.

**SUBJECT: SHOW CAUSE NOTICE IN EXECUTION PETITION NO. 347/2021
TITLED MUNIR AKHTAR -VS- GOVERNMENT OF KHYBER
PAKHTUNKHWA THROUGH CHIEF SECRETARY KHYBER
PAKHTUNKHWA, PESHAWAR & OTHERS.**

Sir,

I directed to refer to you letter No.1159-60/ST dated 25.05.2022 on the subject noted above and to enclose herewith a copy of Minutes of Departmental Promotion Committee Meeting held on 13.06.2022 under the Chairmanship of Senior Member Board of Revenue, Khyber Pakhtunkhwa please.


Noor Khan
Assistant Secretary (Estt:)

Endos: No & dated Even:

Copy forwarded to the :

1. AS(Lit-II) Board of Revenue for information and further necessary action please.
2. PS to Senior Member Board of Revenue, Khyber Pakhtunkhwa.

✓
Noor Khan
Assistant Secretary (Estt:)

**GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT**

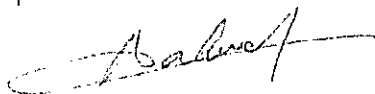
MINUTES OF THE DEPARTMENTAL PROMOTION COMMITTEE MEETING REGARDING PROMOTION OF MUNIR AKHTAR SENIOR CLERK OFFICE OF THE COMMISSIONER HAZARA DIVISION TO THE POST OF NAIB TEHSILDAR (BS-14) IN LIGHT OF SERVICE TRIBUNAL KHYBER PAKHTUNKHWA ORDER DATED 22.09.2021 IN EXECUTION PETITION NO. 347/2021 TITLED MUNIR AKHTAR VERSUS GOVERNMENT OF KPK ETC HELD AT THE OFFICE OF SENIOR MEMBER BOARD OF REVENUE ON 13.06.2022 AT 2.00 PM.

A meeting of the Departmental Promotion Committee was held on 13.6.2022 at the office of Senior Member Board of Revenue in light of Service Tribunal Judgment dated 22.09.2021 in service appeal No. 1022 and Execution Petition No. 347/2021 under his Chairmanship to consider the appointment/promotion of Mr. Munir Akhtar Senior Clerk office of the Commissioner Hazara Division to the post of Naib Tehsildar. The following attended: -


- | | | |
|----|---|--------|
| 1 | Mr. Afsar Ali Shah,
Secretary-I. Board of Revenue, | Member |
| 2 | Mr. Jawad Ali
Deputy Secretary
Board of Revenue | Member |
| 3. | Mr. Noor Khan,
Assistant Secretary (Estt;),
Board of Revenue, | Member |

During the discussion it was observed that as per service rules notified vide Notification dated 25.01.2016, 12% quota was reserved for promotion to the post of Naib Tehsildar on the basis of joint seniority cum fitness from amongst the Senior Clerks and Junior Scale Stenographer of the offices of Commissioners and Deputy Commissioners of the province. In the year 2019, there were total 20 sanctioned posts of Naib Tehsildar in Hazara Division (Flag-A) out of which 2.4 posts comes under promotion quota of Senior Clerks/Junior Scale Stenographers, offices of the Deputy Commissioners and Commissioner Hazara. The appellant was at Serial N. 9 of the Joint Seniority List of the Hazara Division (Flag-B). Suppose the Departmental Promotion Committee Meeting was convened even then the appellant could not be promoted to the post of Naib Tehsildar being at Serial No. 09 of the Joint Seniority List. The appellant has concealed the facts from the court as he was not in promotion zone in the year 2019. Besides, the officials at Serial No. 02 to 08 did not challenge the rules ibid, except official at Serial No. 1, who during proceeding of the appeal has retired from Government Service.


After detailed discussion it was unanimously decided that the official was not eligible for the appointment of Naib Tehsildar as he was at serial No. 09 on the Joint Seniority list of Junior Scale Stenographers and Senior Clerks for the year 2018 provided by Commissioner Hazara Division.




Afsar Ali Shah
Secretary-I.
(Member)



Noor Khan
Assistant Secretary (Estt;)
(Member)



Zakir Hussain Afridi
Senior Member
(CHAIRMAN)



Jawad Ali
Deputy Secretary
(Member)



OFFICE OF THE
COMMISSIONER HAZARA DIVISION
ABBOTTABAD

No: Estt/4/9/ 4012-13
Dated 27/10/2019

A
(FLAG-A)

To

The Assistant Secretary (Estab)
Board of Revenue, Revenue & Estate Department,
Khyber Pakhtunkhwa, Peshawar

Subject: DETAIL OF VACANT POSTS OF NAIB TEHSILDARS IN HAZARA DIVISION

I am directed to refer to the subject cited above and to intimate the detail of sanctioned posts of Naib Tehsildars in Hazara Division with their present status for information & further necessary action, please.

Division/ District	Detail of Naib Tehsildars Posts		
	Total Sanctioned posts	Filled	Vacant
CHD Office	Render/NT 01	Nil	01
Abbottabad	03	02	01
Haripur	02	02	Nil
Manselra	05	05	Nil
Butagram	02	02	Nil
Tor Ghar	02	01	01
Kohistan Upper	02	01	01
Kohistan Lower	02	Nil	02
Kolai Pallas	01	Nil	01
Total	20	13	07

S/E
27/10/19

Assistant to Commissioner (Rev/GA),
Hazara Division, Abbottabad.

Endst: Even No. & Date:

Copy to the PS to Commissioner, Hazara Division, Abbottabad.

Assistant to Commissioner (Rev/GA),
Hazara Division, Abbottabad.

FINAL JOINT SENIORITY LIST OF SENIOR CLERKS (BS-14)

JUNIOR SCALE STENO GRAPHERS (BS-14) OF THE OFFICES OF COMMISSIONER/DEPUTY COMMISSIONERS IN HAZARA DIVISION ON DIVISIONAL BASIS AS IT STOOD ON 31/12/2018

Name	Date Of Birth	Designation	Qualification	Date of first entry into govt service	Date of regular appointment of JSS/ Promotion as Senior Clerk	Method of Recruitment	District	Remarks
Muhammad Aslam	3-11-1964	JSS	O.Com	8-May-1983	8-May-1983	Direct	Manshehra	---
Abdul Qayyum Tahir	16-Mar-1961	Senior Clerk	B.A	13-May-1985	2-Feb-1993	By Promotion	CHD Office	---
Abdul Majeed	12-Aug-1973	JSS	B.A	27-Oct-1997	27-Oct-1997	Direct	Manshehra	---
Amjad Khan	21-Apr-1984	JSS	D.Com	19-Jun-2006	19-Jun-2006	Direct	Haripur	---
Mazhar Khan	16-Apr-1963	JSS	M.Sc	1-Dec-1994	21-Apr-2007	Direct	Abbottabad	---
Muhammad Iqbal	10-Jul-1982	JSS	B.A	6-Jun-2007	6-Jun-2007	Direct	Battagram	---
Samiullah Khan	16-Mar-1982	JSS	M.Sc	9-Sep-2006	26-Jun-2007	Direct	Haripur	---
Habib-ur-Rahman	8-Feb-1977	JSS	M.A(English)	20-Dec-1999	5-Jun-2008	Direct	Abbottabad	---
Muhammad Ali	10-May-1979	Senior Clerk	F.A	13-Jan-1992	29-Jun-2010	By Promotion	CHD Office ATD	---
Choudhury Rehan	5-Feb-1969	Senior Clerk	M.A	8-Feb-1987	30-Dec-2011	By Promotion	CHD Office ATD	---
Abdul Mateen	16-Jun-1980	JSS	M.A	10-Jan-2005	31-Dec-2011	Direct	Kotli Pallas	---
Muhammad Faisal	3-Jan-1985	JSS	MBA	21-Mar-2012	21-Mar-2012	Direct	CHD Office	---
Majid Ali Khan	26-Feb-1985	JSS	B.Com	14-Jun-2007	19-Jul-2012	Direct	Haripur	---
Fazal-Ahmed	28-Apr-1963	Senior Clerk	B.A	5-Oct-1991	2-Aug-2012	By Promotion	Haripur	---
Inayat Ullah	2-Jan-1987	JSS	MA	24-Feb-2007	22-Oct-2013	Direct	Battagram	---
Mam Ullah	2-Feb-1987	JSS	MA	24-Feb-2007	22-Oct-2013	Direct	Battagram	---
Muhammad	10-Apr-1977	Senior Clerk	F.A	25-Jun-1995	20-May-2014	By Promotion	Battagram	---
Muhammad Saeed	30-Jan-1960	Senior Clerk	M.Atric	1-Apr-1977	30-Jun-2015	By Promotion	CHD Office	---
Muhammad Ali	9-Sep-1995	JSS	B.A	13-Nov-2015	13-Nov-2015	Direct	Abbottabad	---
Muhammad Haneef	15-Mar-1995	Senior Clerk	M.Atric	9-Apr-1995	1-Feb-2016	By Promotion	Manshehra	---
Muhammad Iqbal	12-Mar-1986	JSS	M.A	4-Mar-2010	6-Apr-2016	Direct	Torhar	---
Fiaz Ahmed	15-Apr-1962	JSS	MA (Pol. S)	12-Nov-1980	6-Apr-2017	Direct	Manshehra	---
Saleem Khan	20-Feb-1970	Senior Clerk	M.Atric	28-Jul-1992	10-Aug-2017	By Promotion	Manshehra	---
Ghulam Mustafa	2-Apr-1971	Senior Clerk	F.A	28-Sep-1992	31-Aug-2017	By Promotion	Haripur	---
Ishan Zareen	1-Jan-1987	Senior Clerk	B.A	26-Jun-2007	5-Oct-2017	By Promotion	Kotli Pallas	---
Muhammad Khan	5-Dec-1985	Senior Clerk	MA	8-Sep-2011	25-Oct-2017	By Promotion	Torhar	---
Muzafer Khan	10-Oct-1981	Senior Clerk	FA	24-Feb-2007	27-Oct-2017	By Promotion	Battagram	---

1	Ziaullah	26-Mar-1985	Senior Clerk	BA	24-Feb-2007	27-Oct-2017	By Promotion	Battagram	--
2	Junaid Ahmed	17-Aug-1969	Senior Clerk	Matric	30-Sep-1992	1-Nov-2017	By Promotion	Haripur	---
3	Mujahid Ali	11-Jul-1996	JSS	B.Sc	29-Nov-2017	29-Nov-2017	Direct	Haripur	---
4	Inayat-ur-Rehman	4-Feb-1981	Senior Clerk	MA Islamiyat	26-Jul-2006	1-Dec-2017	By Promotion	Mansehra	---
5	Fiaz Ahmed	22-Mar-1968	Senior Clerk	Matric	26-Dec-1987	1-Dec-2017	By Promotion	Mansehra	---
6	Subhanullah	27-Feb-1997	JSS	B.A	14-Feb-2018	14-Feb-2018	Direct	Torhar	---
7	Abdul Wahab	9-Feb-1994	JSS	BSc	27-Feb-2018	27-Feb-2018	Direct	CHD Office	---
8	Muhammad Alam	1-Sep-1982	Senior Clerk	B.Com(IT)	2-Jan-2012	22-Mar-2018	By promotion	Kohistan Lower	---
9	Muhammad Anwar	8-Sep-1992	Senior Clerk	MA	2-Jan-2012	22-Mar-2018	By Promotion	Kohistan Lower	---
10	Nusrat Khan	8-Oct-1963	Senior Clerk	Matric	1-Jul-1985	28-Mar-2018	By Promotion	Abbottabad	---
11	Zahid Ali Khan	12-Apr-1967	Senior Clerk	Matric	1-Oct-1987	28-Mar-2018	By Promotion	Abbottabad	---
12	Waqar Aslam	6-Nov-1990	JSS	BBA(Hons)	6-Apr-2018	6-Apr-2018	Direct	Mansehra	---
13	Muhammad Ali	6-Mar-1985	Senior Clerk	B.A	1-Jan-2012	9-Apr-2018	By Promotion	Koilai Pallas	---
14	Ghulam Aksar	5-Jan-1964	Senior Clerk	Matric	18-Sep-1991	22-Jun-2018	By Promotion	Haripur	---
15	Fazal Wadood	27 Nov-1981	Senior Clerk	F.A	28-Aug-2007	13-Sep-2018	By Promotion	Kohistan Upper	---
16	Muhammad Shakeel	10-Feb-1966	Senior Clerk	B.A	30-Aug-1988	28-Sep-2018	By Promotion	Abbottabad	---
17	Arshad Mehmood	1-Mar-1966	Senior Clerk	B.A	25-Jun-1990	28-Sep-2018	By Promotion	Abbottabad	---
18	Syed Qasim Shah	5-Apr-1990	Senior Clerk	F.A	26-Mar-2011	17-Oct-2018	By Promotion	Torhar	---
19	Ghulam Ishaq	1-Jan-1988	Senior Clerk	F.Sc	12-Nov-2010	4-Jan-2019	By Promotion	Kohistan Upper	---
20	Ejaz Qaiser	3-Mar-1988	Senior Clerk	F.A	30-Nov-2011	4-Jan-2019	By Promotion	Kohistan Upper	---


Note: This Joint Final Seniority List on Divisional basis has been prepared on the basis of Final Seniority Lists of Senior Clerks and Junior Scale Stenographers

as stood on 31-12-2018 received from all Deputy Commissioners in Hazara Division.

No. 2/3-Estab 4014-20 dated Abbottabad 27/08-2019

copy forwarded to all the Deputy Commissioners, in Hazara Division with the request to circulate the Final seniority list amongst all concerned.

Assistant to Commissioner (Rev/GA),
Hazara Division, Abbottabad.

	GOVERNMENT OF KHYBER PAKHTUNKHWA BOARD OF REVENUE REVENUE & ESTATE DEPARTMENT. (Establishment Section)	
091-9213989	Estt: V/ Munir Akhtar/ E.P No.347/2021/1701749 Peshawar Dated the 15/06/2022	091-9214208

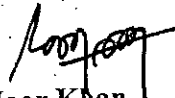
To

The Registrar, Service Tribunal,
Khyber Pakhtunkhwa.

**SUBJECT: SHOW CAUSE NOTICE IN EXECUTION PETITION NO. 347/2021
TITLED MUNIR AKHTAR -VS- GOVERNMENT OF KHYBER
PAKHTUNKHWA THROUGH CHIEF SECRETARY KHYBER
PAKHTUNKHWA, PESHAWAR & OTHERS.**

Sir,

I directed to refer to you letter No.1159-60/ST dated 25.05.2022 on the subject noted above and to enclose herewith a copy of Minutes of Departmental Promotion Committee Meeting held on 13.06.2022 under the Chairmanship of Senior Member Board of Revenue, Khyber Pakhtunkhwa please.


Noor Khan
Assistant Secretary (Estt:)

Endos: No & dated Even:

Copy forwarded to the :

1. AS(Lit-II) Board of Revenue for information and further necessary action please.
2. PS to Senior Member Board of Revenue, Khyber Pakhtunkhwa.


Noor Khan
Assistant Secretary (Estt:)

**GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT**

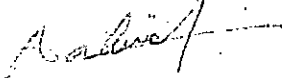
MINUTES OF THE DEPARTMENTAL PROMOTION COMMITTEE MEETING REGARDING PROMOTION OF MUNIR AKHTAR SENIOR CLERK OFFICE OF THE COMMISSIONER HAZARA DIVISION TO THE POST OF NAIB TEHSILDAR (BS-14) IN LIGHT OF SERVICE TRIBUNAL KHYBER PAKHTUNKHWA ORDER DATED 22.09.2021 IN EXECUTION PETITION NO. 347/2021 TITLED MUNIR AKHTAR VERSUS GOVERNMENT OF KPK ETC HELD AT THE OFFICE OF SENIOR MEMBER BOARD OF REVENUE ON 13.06.2022 AT 2.00 PM.

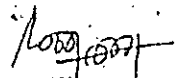
A meeting of the Departmental Promotion Committee was held on 13.6.2022 at the office of Senior Member Board of Revenue in light of Service Tribunal Judgment dated 22.09.2021 in service appeal No. 1022 and Execution Petition No. 347/2021 under his Chairmanship to consider the appointment/promotion of Mr. Munir Akhtar Senior Clerk office of the Commissioner Hazara Division to the post of Naib Tehsildar. The following attended: -


- | | |
|--|--------|
| 1. Mr. Afsar Ali Shah,
Secretary-I, Board of Revenue, | Member |
| 2. Mr. Jawad Ali
Deputy Secretary
Board of Revenue | Member |
| 3. Mr. Noor Khan,
Assistant Secretary (Estt;),
Board of Revenue. | Member |

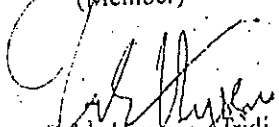
During the discussion it was observed that as per service rules notified vide Notification dated 25.01.2016, 12% quota was reserved for promotion to the post of Naib Tehsildar on the basis of joint seniority cum fitness from amongst the Senior Clerks and Junior Scale Stenographer of the offices of Commissioners and Deputy Commissioners of the province. In the year 2019, there were total 20 sanctioned posts of Naib Tehsildar in Hazara Division (Flag-A) out of which 2.4 posts comes under promotion quota of Senior Clerks/Junior Scale Stenographers, offices of the Deputy Commissioners and Commissioner Hazara. The appellant was at Serial N. 9 of the Joint Seniority List of the Hazara Division (Flag-B). Suppose the Departmental Promotion Committee Meeting was convened even then the appellant could not be promoted to the post of Naib Tehsildar being at Serial No. 09 of the Joint Seniority List. The appellant has concealed the facts from the court as he was not in promotion zone in the year 2019. Besides, the officials at Serial No. 02 to 08 did not challenge the rules ibid, except official at Serial No. 1, who during proceeding of the appeal has retired from Government Service.

After detailed discussion it was unanimously decided that the official was not eligible for the appointment of Naib Tehsildar as he was at serial No. 09 on the Joint Seniority list of Junior Scale Stenographers and Senior Clerks for the year 2018 provided by Commissioner Hazara Division.


Afsar Ali Shah
Secretary-I,
(Member)


Noor Khan
Assistant Secretary (Estt;)
(Member)


Jawad Ali
Deputy Secretary
(Member)


Zakir Hussam Afridi
Senior Member
(CHAIRMAN)





OFFICE OF THE
COMMISSIONER HAZARA DIVISION
ABBOTTABAD

No. Estt: 49/40/2018
Dated: 23/03/2019

118-A

The Assistant Secretary (Establ)
Board of Revenue, Revenue & Excise Department
House, Pakhtunkhwa, Peshawar

DETAIL OF VACANT POSTS OF NAIB TEHSILDARS IN HAZARA DIVISION

I am directed to refer to the subject cited above and to intimate the detail of sanctioned posts of Naib Tehsildars in Hazara Division with their vacant posts for information & further necessary to you, please.

Detail of Naib Tehsildars Posts			
Division/ District	Total Sanctioned posts	Filled	Vacant
CHD Office	Ready/NT 01	Nil	01
Abbottabad	03	02	01
Haripur	02	02	Nil
Manshera	05	05	Nil
Batagram	02	02	Nil
Tor Ghar	02	01	01
Kohistan Upper	03	01	01
Kohistan Lower	02	Nil	02
Kolai Pallas	01	Nil	01
Total	29	13	07

S/E
27/3/19

Assistant to Commissioner (Rev/GA),
Hazara Division, Abbottabad.

Endst: Even No. & Date:

Copy to the PS to Commissioner, Hazara Division, Abbottabad.

Assistant to Commissioner (Rev/GA),
Hazara Division, Abbottabad.



**CLERKS (BS-14) OF THE OFFICES OF COMMISSIONER/DEPUTY COMMISSIONERS
IN HAZARA DIVISION ON DIVISIONAL BASIS AS IT STOOD ON 31/12/2018**

#	Name	Date Of Birth	Designation	Qualification	Date of first entry into govt service	Date of regular appointment of JSS/ Promotion as Senior Clerk	Method of Recruitment	District	Remarks
1	Muhammad Aslam	3-Mar-1964	JSS	D.Com	8-May-1983	8-May-1983	Direct	Mansehra	---
2	Abdul Qayyum Tahir	16-Mar-1961	Senior Clerk	B.A	13-May-1985	2-Feb-1993	By Promotion	CHD Office	---
3	Abdul Majeed	12-Aug-1973	JSS	B.A	27-Oct-1997	27-Oct-1997	Direct	Mansehra	---
4	Amal Khan	21-Apr-1984	JSS	D.Com	19-Jun-2006	19-Jun-2006	Direct	Haripur	---
5	Ishtiaq Khan	16-Apr-1963	JSS	M.Sc	1-Dec-1994	21-Apr-2007	Direct	Abbottabad	---
6	Muhammad Iqbal	10-Jul-1932	JSS	MA	6-Jun-2007	6-Jun-2007	Direct	Battagram	---
7	Samia Bt Khan	16-Mar-1982	JSS	M.Sc	9-Sep-2006	26-Jun-2007	Direct	Haripur	---
8	Habib-ur-Rehman	8-Feb-1977	JSS	M.A(English)	20-Dec-1999	5-Jun-2008	Direct	Abbottabad	---
9	Munir Akhtar	1-May-1972	Senior Clerk	F.A	13-Jan-1992	29-Jun-2010	By Promotion	CHD Office ATD	---
10	Shah-ur-Rehman	5-Feb-1969	Senior Clerk	MA	8-Feb-1987	30-Dec-2011	By Promotion	CHD Office ATD	---
11	Abdul Matheen	16-Jun-1980	JSS	MA	10-Jan-2005	31-Dec-2011	Direct	Kollai Pallas	---
12	Muhammad Faizal	3-Jan-1955	JSS	MBA	21-Mar-2012	21-Mar-2012	Direct	CHD Office	---
13	Wajahat Ali Khan	26-Feb-1985	JSS	B.Com	14-Jun-2007	19-Jul-2012	Direct	Haripur	---
14	Fazal-ur-Attiyas	28-Apr-1963	Senior Clerk	B.A	5-Oct-1991	2-Aug-2012	By Promotion	Haripur	---
15	Inayat Ullah	2-Jan-1987	JSS	MA	24-Feb-2007	22-Oct-2013	Direct	Battagram	---
16	Mamun Ullah	2-Feb-1987	JSS	MA	24-Feb-2007	22-Oct-2013	Direct	Battagram	---
17	Noor Muhammad	10-Apr-1977	Senior Clerk	FA	25-Jun-1995	20-May-2014	By Promotion	Battagram	---
18	Muhammad Saeed	30-Jan-1960	Senior Clerk	Matric	1-Apr-1977	30-Jun-2015	By Promotion	CHD Office	---
19	Muhammad Ali	9-Sep-1995	JSS	B.A	13-Nov-2015	13-Nov-2015	Direct	Abbottabad	---
20	Muhammad Haneef	15-Mar-1985	Senior Clerk	Matric	9-Apr-1985	1-Feb-2016	By Promotion	Mansehra	---
21	Muhammad Iqbal	12-Mar-1986	JSS	MA	4-Mar-2010	6-Apr-2016	Direct	Torhar	---
22	Ejaz Ahmed	15-Apr-1962	JSS	MA (Pol. S)	12-Nov-1980	6-Apr-2017	Direct	Mansehra	---
23	Salim Khan	20-Feb-1970	Senior Clerk	Matric	28-Jul-1992	10-Aug-2017	By Promotion	Mansehra	---
24	Ghulam Mustafa	3-Apr-1971	Senior Clerk	F.A	28-Sep-1992	31-Aug-2017	By Promotion	Haripur	---
25	Khan Zareen	1-Jan-1987	Senior Clerk	B.A	26-Jun-2007	5-Oct-2017	By Promotion	Kollai Pallas	---
26	Muhammad Ali	5-Dec-1985	Senior Clerk	MA	8-Sep-2011	25-Oct-2017	By Promotion	Torhar	---
27	Muzafer Khan	10-Oct-1981	Senior Clerk	FA	24-Feb-2007	27-Oct-2017	By Promotion	Battagram	---

1	Ziaullah	26-Mar-1985	Senior Clerk	BA	24-Feb-2007	27-Oct-2017	By Promotion	Battagram	---
2	Junaad Ahmed	17-Aug-1969	Senior Clerk	Matric	30-Sep-1992	1-Nov-2017	By Promotion	Haripur	---
3	Mujahid Ali	11-Jul-1996	JSS	B.Sc	29-Nov-2017	29-Nov-2017	Direct	Haripur	---
4	Inayat-ur-Rehman	4-Feb-1981	Senior Clerk	MA Islamiyat	26-Jul-2006	1-Dec-2017	By Promotion	Mansehra	---
5	Fiaz Ahmed	22-Mar-1968	Senior Clerk	Matric	26-Dec-1987	1-Dec-2017	By Promotion	Mansehra	---
6	Subhanullah	27-Feb-1997	JSS	B.A	14-Feb-2018	14-Feb-2018	Direct	Torhar	---
7	Abdul Wahab	9-Feb-1994	JSS	BSc	27-Feb-2018	27-Feb-2018	Direct	CHD Office	---
8	Muhammad Alam	1-Sep-1982	Senior Clerk	B.Com(IT)	7-Jan-2012	22-Mar-2018	By promotion	Kohistan Lower	---
9	Muhammad Anwar	3-Sep-1992	Senior Clerk	MA	7-Jan-2012	22-Mar-2018	By Promotion	Kohistan Lower	---
10	Nusrat Khan	2-Oct-1981	Senior Clerk	Matric	1-Jul-1985	28-Mar-2018	By Promotion	Abbottabad	---
11	Zahid Ali Khan	12-Apr-1967	Senior Clerk	Matric	1-Oct-1987	28-Mar-2018	By Promotion	Abbottabad	---
12	Waqar Aslam	6-Nov-1990	JSS	BBA(Hons)	6-Apr-2018	6-Apr-2018	Direct	Mansehra	---
13	Muhammad Ali	6-Mar-1988	Senior Clerk	B.A	1-Jan-2012	9-Apr-2018	By Promotion	Kollai Pallas	---
14	Ghulam Aksar	5-Jan-1964	Senior Clerk	Matric	18-Sep-1991	22-Jun-2018	By Promotion	Haripur	---
15	Fazal Wadood	27-Nov-1981	Senior Clerk	F.A	28-Aug-2007	13-Sep-2018	By Promotion	Kohistan Upper	---
16	Muhammad Shakeel	10-Feb-1968	Senior Clerk	B.A	30-Aug-1988	28-Sep-2018	By Promotion	Abbottabad	---
17	Arshad Aetungil	1-Mar-1986	Senior Clerk	B.A	25-Jun-1990	28-Sep-2018	By Promotion	Abbottabad	---
18	Syed Qasim Shah	5-Apr-1990	Senior Clerk	F.A	26-Mar-2011	17-Oct-2018	By Promotion	Torhar	---
19	Ghulam Ishaq	1-Jan-1988	Senior Clerk	F.Sc	12-Nov-2010	4-Jan-2019	By Promotion	Kohistan Upper	---
20	Ejaz Qaiser	3-Mar-1988	Senior Clerk	F.A	30-Nov-2011	4-Jan-2019	By Promotion	Kohistan Upper	---

Note: This Joint Final Seniority List on Divisional basis has been prepared on the basis of Final Seniority Lists of Senior Clerks and Junior Scale Stenographers as stood on 31-12-2018 received from all Deputy Commissioners in Hazara Division.

No. 2/3-Estab 4014-20 dated Abbottabad 27/08-2019

copy forwarded to all the Deputy Commissioners, in Hazara Division with the request to circulate the Final seniority list amongst all concerned.

Assistant to Commissioner (Rev/GA),
 Hazara Division, Abbottabad.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Execution Petition No. 347/ 2021

Munir Akhtar Senior Clerk.....

.....APPELLANT

VERSUS

Government of, Khyber Pakhtunkhwa, Peshawar and others.

.....RESPONDENTS

INDEX

S#	Documents	<u>Page No./</u> <u>Annexure</u>
1	Joint Para-wise comments.	1
2	Copy of CPLA	A
3	Copy of Amended rules 2019.	B
4	Copy of Execution Petition	C

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Execution Petition No. 347/2021.

Munir Akhtar Senior Clerk..... Appellant.

VERSUS

Government of Khyber Pakhtunkhwa and other..... Respondents.

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 1, 2 and 3 ARE AS UNDER:-

RESPECTFULL SHEWETH.

PRELIMINARY OBJECTIONS.

1. That the appellant has got no cause of action.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the Appellant has been estopped by his own conduct to file the appeal.
4. That the appeal is time barred.

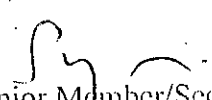
ON FACTS.

1. Pertains to record.
2. Correct to the extent of Judgment /Order dated 22.09.2021 but the Same has been challenged in the Supreme Court of Pakistan (copy of CPLA is Annex-A)
3. Correct to the extent of judgment dated 22.09.2021. He is not eligible for promotion to the post of Naib Tehsildar as the rules regarding promotion of clerical staff have been changed by the SSRC on 13.05.2019.
4. Incorrect. Application for early hearing/suspension of the impugned order is under process before the Supreme Court of Pakistan.

Grounds

- a As in para- 1 of the facts.
- b As in para-4 of the facts
- c Incorrect. The Judgment/order will be implemented in letter and spirit on receipt of Judgment of Supreme Court of Pakistan
- d Incorrect. His case cannot be placed before the Departmental Promotion Committee as the rules regarding promotion of clerical staff have been changed by the SSRC on 13.05.2019 (copy enclosed)
- e No comments.

Keeping in view of above, Execution Petition of the petitioner having no legal grounds may be dismissed with costs.


Senior Member/Secretary,
Revenue & Estate Department
(Respondent No. 1,2&3)

①

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CPLA NO. 705-P /2021

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar
2. Senior Member Board of Revenue Khyber Pakhtunkhwa Peshawar
3. Secretary to Government of Khyber Pakhtunkhwa, Revenue & Estate Department, Peshawar

-PETITIONERS

VERSUS

Abdul Qayyum Tahir S/o Qari Aziz-ur-Rehman Senior Clerk, Office of the Commissioner Hazara Division, Abbottabad

RESPONDENT

CIVIL PETITION FOR LEAVE TO APPEAL UNDER ARTICLE 212(3) OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973 AGAINST THE IMPUGNED JUDGMENT/ ORDER OF HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, CAMP COURT ABBOTTABAD DATED 22/09/2021 IN SERVICE APPEAL NO.1021/2019

RESPECTFULLY SHEWETH

Substantial questions of law of general public importance and grounds, inter alia, which falls for determination of this august Court are as under:-

1. Whether the impugned judgment and order of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Camp Court Abbottabad does suffer from material illegality, factually incorrect and require interference by this august Court?
2. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Camp Court Abbottabad has properly and legally exercised its jurisdiction in the matter in hand?

- (2)
3. Whether promotion is not a vested right and no person could same the same as right?
 4. Whether promotion did not fall/come under the policy decision in which Courts normally did not interfere but the Khyber Pakhtunkhwa Service Tribunal, Camp Court, Abbottabad has not taken into consideration this aspect of the case?
 5. Whether the petitioners has not tried to promote the respondent but there was no clear vacancy of the post of Naib Tehsidlar to the share of respondent to which respondent could be promoted?
 6. Whether the Service Rules of 2008 as amended vide Notification dated 23/1/2015 was not further amended vide Notification dated 13/5/2019 whereby promotion of the Senior Clerk to the post of Naib Tehsidlar was deleted/ omitted from the rules?
 7. Whether the respondent has challenged the viries of the amended rules issued vide Notification dated 13/5/2019?
 8. Whether it does not fall/come under the prerogative of the Government to change the Service and Promotion Rules at any time in the best interest of government service?
 9. Whether the respondent can be promoted to the post of Naib Tehsidlar when there is no rule for such promotion?
 10. Whether the Notification dated 13/5/2019 is not in accordance with law?
 11. Whether the Khyber Pakhtunkhwa Service Tribunal, Camp Court, Abbottabad has struck down the amending Notification dated 13/5/2019?
 12. Whether the Khyber Pakhtunkhwa Service Tribunal, Camp Court, Abbottabad has properly construed the record and material in its true perspective?
 13. Whether the Khyber Pakhtunkhwa Service Tribunal, Camp Court, Abbottabad has properly applied and interpreted the law in the subject case?

FACTS

II- Facts relevant to the above points of law, Inter alia, are as under:-

3

1. That the respondent was initially appointed as Junior Clerk in the Revenue Department and was subsequently promoted to the rank of Senior Clerk on 02/02/1983.
2. That vide Notification dated 23/1/2015 the Board of Revenue, Khyber Pakhtunkhwa/Revenue & Estate Department amended the Tehsidar, Naib Tehsidar/Subordinate Revenue Service Rules, 2008 wherein 15% quota was given to Senior Clerks of the Office of Board of Revenue, Divisional Commissioner and Deputy Commissioners Offices in the Division concerned for further promotion to the post of Naib Tehsidar. The said notification was further amended in the year 2019 vide Notification dated 13/5/2019 whereby 15% quota reserved for the Senior Clerks of the Office of the Board of Revenue, Commissioner and Deputy Commissioner Offices was deleted.
3. That the respondent alleged that his case for promotion was in process for quite some time but could not be materialized and the service rules were further amended whereby the reserved quota of 15% for promotion of ministerial staff to the post of Naib Tehdidar was deleted.
4. That the respondent being aggrieved filed departmental appeal but the same being merit less was filed vide letter dated 11/7/2019 by the appellate authority.
5. That the respondent then filed service appeal No.1021/2019 before the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar wherein Para-wise reply was asked from the petitioners which was filed and the stance of respondent was denied.
6. That the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Camp Court Abbottabad was pleased to allow the Service Appeal No.1021/2019 of the respondent vide impugned judgment dated 22/9/2021.
7. That the petitioners being aggrieved from the impugned judgment/order of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Camp Court Abbottabad dated 22/09/2021 in Service Appeal No.1021/2019 prefers this CPLA before this august Court.
8. That the petitioners seek leave to appeal against the impugned judgment and order of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Camp Court Abbottabad dated 22/09/2021 in Service Appeal No.1021/2019.

4

It is, therefore, prayed that on acceptance of this petition, leave to appeal against the impugned judgment and order of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Camp Court Abbottabad dated 22/09/2019 in Service Appeal No.1021/2019 may graciously be granted.

(Moin-ud-Din Humayun)
Advocate-on-Record
Supreme Court of Pakistan
For Government

NOTE:

Learned Advocate General, KPK/ Addl. AG /State Counsel shall appear at the time of hearing of this petition.

ADDRESS

Office of the Advocate General, KPK, High Court Building, Peshawar. (Telephone No.091-9210119, Fax No.091-9210270)

CERTIFICATE Certified that no such petition has earlier been filed by Petitioners/ Government against the impugned judgment mentioned above.

Advocate-On-Record

(1)

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CPLA NO. 706-P /2021

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar
2. Senior Member Board of Revenue Khyber Pakhtunkhwa Peshawar
3. Secretary to Government of Khyber Pakhtunkhwa, Revenue & Estate Department, Peshawar

-PETITIONERS

VERSUS

Munir Akhtar S/o Senior Clerk, Office of the Commissioner Hazara Division, Abbottabad

RESPONDENT

CIVIL PETITION FOR LEAVE TO APPEAL UNDER ARTICLE 212(3) OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973 AGAINST THE IMPUGNED JUDGMENT/ ORDER OF HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, CAMP COURT ABBOTTABAD DATED 22/09/2021 IN SERVICE APPEAL NO.1022/2019

RESPECTFULLY SHEWETH

Substantial questions of law of general public importance and grounds, inter alia, which falls for determination of this august Court are as under:-

1. Whether the impugned judgment and order of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Camp Court Abbottabad does suffer from material illegality, factually incorrect and require interference by this august Court?
2. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Camp Court Abbottabad has properly and legally exercised its jurisdiction in the matter in hand?

(2)

3. Whether promotion is not a vested right and no person could same the same as right?
4. Whether promotion did not fall/come under the policy decision in which Courts normally did not interfere but the Khyber Pakhtunkhwa Service Tribunal, Camp Court, Abbottabad has not taken into consideration this aspect of the case?
5. Whether the petitioners has not tried to promote the respondent but there was no clear vacancy of the post of Naib Tehsidlar to the share of respondent to which respondent could be promoted?
6. Whether the Service Rules of 2008 as amended vide Notification dated 23/1/2015 was not further amended vide Notification dated 13/5/2019 whereby promotion of the Senior Clerk to the post of Naib Tehsidlar was deleted/ omitted from the rules?
7. Whether the respondent has challenged the viries of the amended rules issued vide Notification dated 13/5/2019?
8. Whether it does not fall/come under the prerogative of the Government to change the Service and Promotion Rules at any time in the best interest of government service?
9. Whether the respondent can be promoted to the post of Naib Tehsidlar when there is no rule for such promotion?
10. Whether the Notification dated 13/5/2019 is not in accordance with law?
11. Whether the Khyber Pakhtunkhwa Service Tribunal, Camp Court, Abbottabad has struck down the amending Notification dated 13/5/2019?
12. Whether the Khyber Pakhtunkhwa Service Tribunal, Camp Court, Abbottabad has properly construed the record and material in its true perspective?
13. Whether the Khyber Pakhtunkhwa Service Tribunal, Camp Court, Abbottabad has properly applied and interpreted the law in the subject case?

FACTS

II- Facts relevant to the above points of law, inter alia, are as under:-

3

1. That the respondent was initially appointed as Junior Clerk in the Revenue Department and was subsequently promoted to the rank of Senior Clerk on 29-06-2010.
2. That vide Notification dated 23/1/2015 the Board of Revenue, Khyber Pakhtunkhwa/Revenue & Estate Department amended the Tehsildar, Naib Tehsildar/Subordinate Revenue Service Rules, 2008 wherein 15% quota was given to Senior Clerks of the Office of Board of Revenue, Divisional Commissioner and Deputy Commissioners Offices in the Division concerned for further promotion to the post of Naib Tehsildar. The said notification was further amended in the year 2019 vide Notification dated 13/5/2019 whereby 15% quota reserved for the Senior Clerks of the Office of the Board of Revenue, Commissioner and Deputy Commissioner Offices was deleted.
3. That the respondent alleged that his case for promotion was in process for quite some time but could not be materialized and the service rules were further amended whereby the reserved quota of 15% for promotion of ministerial staff to the post of Naib Tehsildar was deleted.
4. That the respondent being aggrieved filed departmental appeal but the same being merit less was filed vide letter dated 11/7/2019 by the appellate authority.
5. That the respondent then filed service appeal No.1022/2019 before the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar wherein Para-wise reply was asked from the petitioners which was filed and the stance of respondent was

4

It is, therefore, prayed that on acceptance of this petition, leave to appeal against the impugned judgment and order of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Camp Court Abbottabad dated 22/09/2021 in Service Appeal No.1022/2019 may graciously be granted.

(Moin-ud-Din Humayun)
Advocate-on-Record
Supreme Court of Pakistan
For Government

NOTE:

Learned Advocate General, KPK/ Addl. AG /State Counsel shall appear at the time of hearing of this petition.

ADDRESS

Office of the Advocate General, KPK, High Court Building, Peshawar. (Telephone No.091-9210119, Fax No.091-9210270)

CERTIFICATE Certified that no such petition has earlier been filed by Petitioners/ Government against the impugned judgment mentioned above.

Advocate-On-Record

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

SMBR
21/1/22

No.

E.P. No. 347/21

575

Appeal No. of 20

PS/SMBR
Dy No. 359
Date 20/1/22
Govt. of Khyber Pakhtunkhwa

..... *Munir Akhtar* Appellant/Petitioner
 Versus
 *Through Chief Secy, KPL Pesh* Respondent
 Respondent No. 2

AS-300

Asif

Notice to: -

*Senior Member Board of Revenue
Govt. of KPL Peshawar.*

509

21/1/22

S/E

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974; has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal on 14-2-2022 at 8:00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by an Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement along with any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. Copy of appeal has already been sent to you vide the

office Notice No. dated

Given under my hand and the seal of this Court, at Peshawar this 3rd

Day of Jan 2022

at Camp Court, Peshawar

Registrar,
Khyber Pakhtunkhwa Service Tribunal
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
 2. Always quote Case No. While making any correspondence.


BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 347/2021.....

Munir Akhtar Senior Clerk, Office of the Commissioner Hazard
Division Abbottabad **(Petitioner)**

Versus

1. Government of KPK through Chief Secretary, Civil Secretariat, Peshawar.
2. Senior Member Board of Revenue, KPK, Peshawar.
3. Secretary to Government of KPK, Revenue Department Peshawar..... **(Respondents)**

EXECUTION PETITION IN SERVICE APPEAL NO. 1022/2019 FOR IMPLEMENTATION OF JUDGMENT/DECISION DATED 22-09-2021 OF THIS HONOURABLE SERVICE TRIBUNAL.

PRAYER: ON ACCEPTANCE OF INSTANT EXECUTION PETITION THIS SERVICE TRIBUNAL MAY GRACIOUSLY BE PLEASED TO ISSUE ORDERS/INSTRUCTION TO THE RESPONDENTS TO IMPLEMENT THE JUDGMENT/DECISION DATED 22-09-2021 IN ITS TRUE LETTER AND SPIRIT AND GRANT THE PETITIONER HIS PROMOTION AS NAIB TEHSILDAR.

Respectfully Sheweth:

1. That petitioner/appellant filed subject titled service appeal before this Honorable Service Tribunal

against orders of Respondents whereby appellant was ignored his promotion as Naib Tehsildar and his departmental appeal was rejected in flagrant violation and negation of law, departmental rules and regulations. **(Copy of the service appeal is attached as Annex-"A")**.

2. That this Honorable Service Tribunal on acceptance of subject service appeal issued judgment/decision dated 22-09-2021 that "instant appeals are accepted. The appellants are held entitled for promotion to the post of Naib Tehsildar from the dates, when they became eligible for promotion". **(Copy of judgment/order dated 22-09-2021 is attached as Annex-"B")**.

3. That even after petitioner's incessant approaches and receipt of attested copies of the judgment/decision dated 22-09-2021 of this Honourable Service Tribunal the respondents are reluctant to implement the same on one or other pretext and using delaying tactics while petitioner is badly suffering his promotion and seniority in the rank of Naib Tehsildar.

That there is no stay order from the Apex Supreme Court of Pakistan against the order/judgment dated 22-09-2021 of this Honourable Service Tribunal and in such a condition respondents are legally bound to implement the orders/judgment of this Honourable Service Tribunal which is still in the field. Hence this Execution Petition on the following:

GROUND:

- A) That as this Honorable Service Tribunal in its judgment dated 22-09-2021 has ordered that "instant appeals are accepted. The appellants are held entitled for promotion to the post of Naib Tehsildar from the dates, when they became eligible for promotion". Hence respondents are legally bound to comply with the above judgment/decision.
- B) That there is no stay order from the Apex Supreme Court of Pakistan against the judgment and order dated 22-09-2021 of this Honourable Service Tribunal while order dated 22-09-2021 is in field. Respondents must comply with the said order.

- C) That departmental authorities/respondents are reluctant to pay heed to the decision dated 22-09-2021 of this Honorable Tribunal without any reason and justification, hence instant execution petition.
- D) That petitioner is badly suffering his promotion and seniority in the rank of Naib Tehsildar since long without any fault on his part. Petitioner deserves to be promoted as Naib Tehsildar in the light of decision dated 22-09-2021 of this Honorable Service Tribunal.
- E) That instant execution is well within time and this Honourable Service Tribunal has got every jurisdiction to entertain and adjudicate upon the same.

PRAYER:

It is, therefore, humbly prayed that this Honorable Service Tribunal may graciously be pleased to accept this Execution petition and issue necessary orders/directions to be respondents to implement and promote the petitioner as Naib

- C) That departmental authorities/respondents are reluctant to pay heed to the decision dated 22-09-2021 of this Honorable Tribunal without any reason and justification, hence instant execution petition.
- D) That petitioner is badly suffering his promotion and seniority in the rank of Naib Tehsildar since long without any fault on his part. Petitioner deserves to be promoted as Naib Tehsildar in the light of decision dated 22-09-2021 of this Honorable Service Tribunal.
- E) That instant execution is well within time and this Honourable Service Tribunal has got every jurisdiction to entertain and adjudicate upon the same.

PRAYER:

It is, therefore, humbly prayed that this Honorable Service Tribunal may graciously be pleased to accept this Execution petition and issue necessary orders/directions to be respondents to implement and promote the petitioner as Naib

Tehsildar in the light of judgment/decision dated 22-09-2021 of
this Honourable Service Tribunal in its true letter and spirit.

PETITIONER

THROUGH

MOHAMMAD ASLAM TANOLI
ADVOCATE HIGH COURT
AT PESHAWAR

Dated: 25-11-2021

AFFIDAVIT

I, Munir Akhtar petitioner, do hereby undertake/solemnly affirm
that the contents of fore-going petition are true and correct to
the best of my knowledge and belief and nothing has been
concealed or suppressed from this honorable court.

Dated: 25-11-2021

DEPONENT