


01.08.2022

Appellant present in person. Mr. Kabir Ullah Khattak, Additional Advocate General for respondents present.


Written reply/comments not submitted. Learned Additional Advocate General seeks time for submission of written reply/comments. Adjourned. To come up for written reply/comments on 17.10.2022 before S.B.


(Fareeha Paul)
Member (E)

17.10.2022

Junior to counsel for the appellant present. Mr. Kabir Ullah Khattak, Additional Advocate General for respondents present.




Written reply on behalf of respondents not submitted. Learned Additional AG seeks time for submission of written reply. Adjourned. To come up for written reply on 22.11.2022 before S.B.


(Fareeha Paul)
Member (E)

FORM OF ORDER SHEET

Court of _____

Case No.- 868/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	01/06/2022	<p>The appeal of Mr. Muhammad Karim resubmitted today Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	<p>14-6-22</p> <p><i>NOTED - Ker</i></p> <p><i>Clarke</i></p> <p><i>SMS</i></p> <p><i>15/6/2022</i></p>	<p>This case is entrusted to Single Bench at Peshawar for preliminary hearing to be put there on <u>20-6-22</u>. Notices be issued to appellant and his counsel for the date fixed.</p> <p style="text-align: right;"> CHAIRMAN</p>
	<p>20.06.2022</p> <p><i>Rs-700/-</i></p> <p>Appellant Deposited Security & Process Fee</p> <p><i>A. J. 23/6/22</i></p>	<p>Counsel for the appellant present. Preliminary arguments heard. Record perused.</p> <p>Points raised need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of reply/comments. To come up for reply/comments on 01.08.2022 before S.B.</p> <p style="text-align: right;"> (Fareeha Paul) Member(E)</p>

The appeal of Mr. Muhammad Karim Associate Professor Postgraduate College Kohat received today i.e. on 25.05.2022 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

Page nos. 26, 27, 30 and 31 of the appeal are illegible which may be replaced by legible/better one.

No. 1163 /S.T,

Dt. 25/5 /2022


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. M. Asif Yousafzai Adv. Pesh.

Better copies have been added. Submitted.
Dated 01.06.2022
Again after removing objections

BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 868 /2022

Muhammad Karim

V/S

Govt: of KP etc.

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APPELLANT

THROUGH:

(M. ASIF YOUSAFZAI)

ADVOCATE SUPREME COURT OF PAKISTAN

(SYED NOMAN ALI BUKHARI)

ADVOCATE HIGH COURT,

(ASAD MEHMOOD)

ADVOCATE HIGH COURT,

(SHAHKAR KHAN YOUSAFZAI)

ADVOCATE PESHAWAR.

Room No.FR-08, 4th Floor,
Bilour Plaza Peshawar Cantt:
Cell # 03339103240

BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR

APPEAL NO. _____/2022

Muhammad Karim, Associate Professor (Statistics),
Government Postgraduate College, Kohat.

(APPELLANT)

VERSUS

1. The Govt: of Khyber Pakhtunkhwa through the Chief Secretary, Civil Secretariat, Peshawar.
2. The Chief Secretary, Govt: of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Secretary Establishment Department, Govt of Khyber Pakhtunkhwa Civil Secretariat, Peshawar.
4. The Secretary Higher Education Department, Civil Secretariat, Peshawar.
5. The Director Higher Education, Directorate of Higher Education, Peshawar.

(RESPONDENTS)

**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 FOR
ANTEDATING PROMOTION TO BPS-20 (PROFESSOR)
FROM THE DATE WHEN HE WAS FIRST DEFFERRED
(10.07.2017) WITH ALL BACK AND CONSEQUENTIAL
BENEFITS AND AGAINST NOT TAKING ACTION ON THE
APPEAL OF APPELLANT WITHIN STATUTORY PERIOD
OF 90-DAYS.**

PRAYER:

THAT ON ACCEPTANCE OF THIS APPEAL THE
RESPONDENTS MAY VERY GRACIOUSLY BE DIRECTED

TO CONSIDER THE APPELLANT FOR ANTEDATED PROMOTION TO BPS-20 W.E.FROM THE DATE OF FIRST DEFFERMENT AND WHEN HIS JUNIORS WERE PROMOTED TO BPS-20 (10.07.2017) UNDER THE PRINCIPLES OF LAW, RULES AND JUDGMENTS OF APEX COURT GOVERNING THE ISSUE OF DEFFERMENT WITH ALL BACK AND CONSEQUENTIAL BENEFITS BY MODIFYING ORDER DATED 18.1.2022 TO THE EXTENT OF APPELLANT. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF THE APPELLANT.

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant has joined the Higher Education Department in the Year 1991 and with the passage of time the appellant was recruited to *through* Public Service Commission in BPS-19 on 01.02.2011.
2. That the meeting of PSB was convened on 24.03.2017 for considering the promotion to BPS-20; the appellant was considered but deferred for the reasons of (i) pending inquiry & (ii) Adverse PER for the Year 2015. Copy of the minutes of PSB dated 24.03.2017 is attached as Annex-A.
3. That again on 28.12.2017, the appellant's promotion was deferred for the above two reasons. It is worth to mention here that the service appeal No. 530/2017 regarding PER was subjudice before the KP Service Tribunal, which was finally decided on 16.02.2018 and the Service Appeal of the appellant was accepted. Copies of psb Minutes dated 28.12.2017 and Service Tribunal Judgment dated 16.02.2018 are attached as Annex-B & C.
4. That the PSB, again for the 3rd time, deferred the promotion of the appellant to BPS-20 vide its decision dated 03.05.2018 for the above mentioned two reasons (i) Pending Inquiry & (ii) Adverse PER of the Year 2015, without taking into consideration the decision fo Service Tribunal dated 16.02.2018 regarding expunction of Adverse PER for

the year 2015. Copies of PSB Minutes dated 03.05.2018 is attached as Annex-D.

5. That in the meantime, the pending inquiry was conducted and the penalty of :Censure: was imposed upon the appellant, vide order dated 3.10.2018. the appellant filed departmental review against that which was also rejected on 07.01.2019. the appellant filed Service Appeal No. 221/2019 against that in the KP Service Tribunal. Copies of orders dated 03.10.2018, 07.01.2019 and memo of S.A are attached as Annex-E, F, & G.
6. That for the 4th time, the PSB recommended deferment of the appellant vide PSB meeting dated 17.09.2018, mere on the basis of recommendation of the penalty of Censure, which was not yet finally confirmed till 03.10.2018. Copy of the PSB minutes dated 17.09.2018 is attached as Annex-H.
7. That on 26.12.2018 (5th time) the PSB again made the base of "Censure" and deferred the promotion of the appellant despite the fact that the review petition of the appellant against censure was pending decision before the worth chief minister, KP. Copy of PSB Minutes is attached as Annex-I.
8. That vide decision dated 19.04.2019 of the PSB, the promotion of the appellant was deferred again for the 6th time, on the basis of pending inquiry in which penalty of Censure was imposed and weak record (without any specifications). Copy of minute dated 19.04.2019 is attached as Annex-J.
9. That on 23.09.2019, (7th time), the PSB considered the appellant and recommended "Supersession" on the basis of pending inquiry in which penalty of "Censure" was awarded to appellant weak record (without specification). It is also worth to mention here that the S.A No. 221/19, against the penalty Censure was accepted in favor of appellant on 29.11.2019. Copies of PSB minutes and Service Tribunal Judgment are attached as Annex-K & L.

10. That the appellant filed Review against the PSB's decision of "Supersession" on 16.02.2019 which was finally decided on 07.05.2020 wherein, the penalty of "Censure" was set aside, the appellant was exonerated, but the view of "Supersession" was maintained. Copies of Review Petition and decision dated 7.5.2020 are attached as Annex-M & N.

11. That thereafter, the appellant filed Writ Petition No.2670/2020 against the decision of Supersession. That W.P was responded by respondents and the Writ Petition was finally heard on 03.11.2021 and the "Supersession" was converted into deferment. Copies of W.P, Comments, and Judgment are attached as Annex-O, P & Q.

12. That, the appellant was promoted to BPS-20, vide order/notification dated 18.01.2022, but with immediate effect. The appellant filed appeal/review against that order dated 18.1.2022 for antedating the same w.e.from 10.07.2017, and waited for 90-days but no response has been received by the appellant till date. Copy of order and appeal/review are attached as Annex-R & S.

13. That having no other remedy against the acts/omissions of the respondents and the appellant is constrained to come to this august Tribunal on the following grounds amongst the others.

GROUND:-

- A) That the inaction of the respondents and not considering the appellant for antedated promotion to BPS-20 w.e.f 10.07.2017 and not taking any action on the appeal/review of the appellant within statutory period are against the law, facts, norms of justice, principles governing deferment cases. Therefore, such inaction of the respondents is not tenable under the law.
- B) That the reasons on the basis of which the appellant was deferred from promotion 6th times and Supersession, were no more in existence, especially when the decision regarding PER of the KP Service Tribunal come on 16.02.2018 and regarding Censure come on 16.02.2019, followed by the order of "Exoneration" passed by Competent Authority on 07.05.2020. Thus the appellant was penalized and superseded for no fault on his part.

- C) That the illegal decision of Supersession against the appellant is totally unlawful, and without any cogent reasons, which will ultimately affect the seniority of the appellant and that too for no convincing reasons. Thus the orders of supersession are against the spirit of verdict of Honorable Supreme Court of Pakistan, reported as 1991 SCMR-2330 (d).
- D) That there are many judgments of this august Court and Honorable Apex Court, wherein in its has been held that promotion cannot be denied on the basis of "Pending Inquiry" judgment reported as 2016 PLC (C.S) 569, 2000 SCMR-645 & 2008 PLC (C.S) 551.
- E) That even in various judgments reported as 2009 PLC (C.S) P#40, 2008 PLC (C.S) 637, 2006 (PLJ) SC-1429 & 2013 PLC (C.S) 223 the promotion has been deprived from his genuine rights of promotion since 2017 by illegal exercise of powers by the respondents.
- F) That appellant has been penalized several times for the one and same reason which has already been struck down by the competent authority forum. Thus the acts/omissions of the respondents are against the spirit of Article-2A, 4, 9, 25 & 38 OF THE Constitution.
- G) That the Honorable Supreme Court of Pakistan is case reported as 2010 SCMR-1301 has held that in matter of promotion, rules are to be followed and where the discretion of authority is involved then that must be exercised with fairness. It is also held in the said judgment that promoting the juniors by ignoring seniors will not advance the object of achieving good governess. It is further pointed out in the said judgment that the Constitution is the Supreme Law and there is no room to allow the authority to make departure from law, rules and Article 4 and 25 of the Constitution.
- H) That the august Supreme Court of Pakistan in case reported as 2013 SCMR Page-1752 (d) had held that the term "Life" also includes reputation, status and all other ancillary privileges confront on a citizens by law. Thus the decisions of not treating the petitioners

PROMOTION OF MALE ASSOCIATE PROFESSOR BS-19 TO THE POST OF PROFESSOR BS-20

Secretary Higher Education, Archives and Libraries apprised the Board due to retirement and 4 tier structure in FATA, eighty two (82) posts of Male Professor BS-20 are lying vacant.

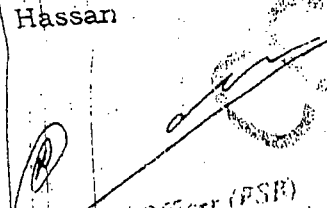
According to service rules the post is required to be filled as under:-

- i. By promotion on the basis of seniority cum fitness from amongst the persons holding the post in BS-19 in the college cadre Higher Education Department, with atleast seventeen (17) years service in BS-17 and above; provided that in case of persons initially appointed in BS-18 or BS-19, the length of service for promotion in their cases shall atleast be twelve (12) years in BS-18 and above or five (05) years in BS-19, as the case may be.
 - ii. Successful completion of mandatory training prescribed by the Govt for Colleges Teachers in BS-19 from time to time.
 College cadre teachers in BS-19 and BS-20 will also be exempted from the mandatory training after attaining the age of 58 years or above.
- The service record of the officers included in the panel was discussed as follows:-

NAME OF OFFICER	RECOMMENDATIONS OF THE BOARD
Mr Muhammad Amir Senior Officer (PSB) Khyber Pakhtunkhwa Fisheries Department	His date of birth is 15.05.1957. He joined government service on 14.10.1981 and appointed as Lecturer BS-17 on 2.10.1984. He was promoted as Associate Professor BS-19 on 26.05.2010. The Board in its meeting held on 07.08.2013 and 30.06.2014 recommended to defer his promotion as an enquiry was pending against him. According to Higher Education department he was awarded a minor penalty of censure on 03.11.2015. The Board in its meeting held on 30.11.2015 recommended to defer his promotion as the Board observed that his service record is weak and his promotion will be considered after he earns one more PER. According to Higher Education department he earned PER for the year 2015. A minor penalty was imposed on him due to which three marks were deducted from his score. The Board observed that his score is still very low. The Board recommended to defer his promotion.
Sakhi Muhammad Khan	His date of birth is 06.03.1960. He joined government service on 01.03.1986 and appointed as Lecturer BS-17 on 11.03.1987. He was promoted as Associate Professor

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		<p>mandatory training required for promotion. No enquiry is pending against him. His service record upto 2015 is generally good.</p> <p>The Board recommended the officer for promotion to the post of Professor BS-20 on regular basis. He will be on probation for a period of one year</p>
16.	Mr. Mumtaz Hussain	<p>His date of birth is 21.05.1966. He joined government service as Lecturer BS-17 on 22.10.1992. He was appointed to BS-19 on 18.02.2011. He has undergone mandatory training required for promotion. No enquiry is pending against him. His service record upto 2015 is generally good.</p> <p>The Board recommended the officer for promotion to the post of Professor BS-20 on regular basis. He will be on probation for a period of one year</p>
17.	Mr. Muhammad Raza Shah	<p>His date of birth is 15.10.1973. He joined government service as Lecturer BS-17 on 14.09.1998. He was appointed to BS-19 on 01.02.2011. He has undergone mandatory training required for promotion. No enquiry is pending against him. His service record upto 2015 is generally good.</p> <p>The Board recommended the officer for promotion to the post of Professor BS-20 on regular basis. He will be on probation for a period of one year</p>
18.	Mr. Muhammad Hassan	<p>His date of birth is 09.02.1992. He joined government service as Lecturer BS-17 on 03.11.1988. He was appointed to BS-19 on 26.02.2011. He has undergone mandatory training required for promotion. No enquiry is pending against him. His service record upto 2015 is generally good.</p> <p>The Board recommended the officer for promotion to the post of Professor BS-20 on regular basis. He will be on probation for a period of one year</p>
19.	Mr. Muhammad Karim	<p>His date of birth is 01.02.1966. He joined government service as Lecturer BS-17 on 01.09.1991. He was appointed to BS-19 on 01.02.2011. He has undergone mandatory training required for promotion. The Board was informed that an enquiry is pending against him and his service record is also weak.</p> <p>The Board recommended to defer his promotion.</p>
20.	Mr. Noor Habib	<p>His date of birth is 02.06.1958. He joined government service as Lecturer BS-17 on 12.10.1989. He was</p>


 Officer (PSR)
 Govt. of Punjab, Pakistan
 Establishment Department

Annex B

10

IMMEDIATE



**GOVERNMENT OF KHYBER PAKHTUKHWA
ESTABLISHMENT DEPARTMENT**

No. SO(PSB)ED/1-4/2017/P-179
Dated Peshawar, the 02.01.2018

To

The Secretary to
Government of Khyber Pakhtukhwa,
HIGHER EDUCATION, ARCHIVES AND LIBRARIES DEPARTMENT

**SUBJECT: - MINUTES' OF THE MEETING OF PROVINCIAL SELECTION BOARD
HELD ON 28.12.2017**

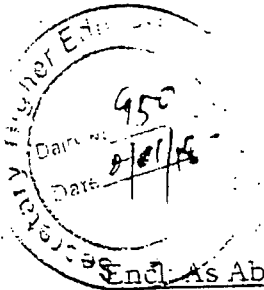
**PROMOTION OF MALE ASSOCIATE PROFESSOR BS-19 TO THE
POST OF PROFESSOR BS-20**

Dear Sir,

I am directed to refer to Higher Education Department letter No. SO (C-II HE/Promotion/19-20/Male/2017 dated 13.12.2017 on the subject and to forward herewith an extract of item No (29) of the minutes/recommendations of the meeting of Provincial Selection Board held on 28.12.2017 as well as copy of approved summary wherein the Chief Minister being competent authority in terms of Rules 4 (1) (a) of the Khyber Pakhtunkhwa has approved the recommendation of the PSB for further necessary action.

Yours faithfully


MAULAT KHAN)
SECTION OFFICER (PSB)



Encl. As Above

Endst. of even No. & date.

A copy is forwarded to the Section Officer (C-I), Govt of Khyber Pakhtukhwa, **Higher Education Department**. He is requested to depute his representative to collect working papers from this office immediately.


SECTION OFFICER (PSB)

D/11/1
14

HIGHER EDUCATION DEPARTMENT

(Meeting of PSB held on 28.12.2017)

SUBJECT: **PROMOTION OF MALE ASSOCIATE PROFESSOR BS-19 TO THE POST OF PROFESSOR BS-20**

Secretary Higher Education, Archives and Libraries apprised the Board that due to leftover posts in last PSB meeting held on 24.03.2017 and retirement, thirty four (34) posts of Male Professor BS-20 are lying vacant.

2. According to service rules the post is required to be filled as under:-

i. By promotion on the basis of seniority cum fitness from amongst the persons holding the post in BS-19 in the college cadre Higher Education Department, with atleast seventeen (17) years service in BS-17 and above; provided that in case of persons initially appointed in BS-18 or BS-19, the length of service for promotion in their cases shall atleast be twelve (12) years in BS-18 and above or five (05) years in BS-19, as the case may be.

ii. Successful completion of mandatory training prescribed by the Govt for Colleges Teachers in BS-19 from time to time.

College cadre teachers in BS-19 and BS-20 will also be exempted from the mandatory training after attaining the age of 58 years or above.

The service record of the officers included in the panel was discussed as follows: -

S. NO	NAME OF OFFICER	RECOMMENDATIONS OF THE BOARD
1.	Mr. Sakhi Muhammad Khan	His date of birth is 06.03.1960. He joined government service on 01.03.1986 and appointed as Lecturer BS-17 on 11.03.1987. He was promoted as Associate Professor BS-19 on 26.05.2010. The Board in its meeting held on 30.06.2014 recommended to defer his promotion as his PER for the period from 22.07.2004 to 31.12.2004 was not available and his PER for the year 2005 was adverse. The Board also observed that his efficiency index is below the threshold required for promotion. The Board in its meeting held on 30.11.2015 was informed that he had earned PER for the missing period and his adverse PER was also expunged but the Board observed that his service record is weak and his promotion will be considered after he earns one more PER. Hence the Board recommended to defer his promotion. The Board in its meeting held on 24.03.2017 recommended to defer his promotion as the Board directed the department to re-

[Handwritten signature and text]

Anna = 13

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 530/2017

Date of Institution ... 22.05.2017

Date of Decision ... 16.02.2018



Muhammad Karim, Principal/Associate Professor (BPS-19),
Govt. Degree College, Lachi, District Kohat.

(Appellant)

VERSUS

1. The Govt. of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat,
Peshawar and 2 others.
(Respondents)

MR. KAILED REHMAN,
Advocate

--- for appellant.

MR. MUHAMMAD JAN,
Deputy District Attorney

--- for respondents.

MR. AHMAD HASSAN,
MR. MUHAMMAD HAMID MUGHAL

MEMBER (Executive)
MEMBER (Judicial)


JUDGMENT

AHMAD HASSAN, MEMBER. Arguments of the learned counsel for the
parties heard and record perused.

FACTS

2. The brief facts are that that the appellant was posted as Principal, Govt.
Degree College, Lachi on 1.01.2015. That in the FIR from 01.01.2015 to
31.12.2015 adverse remarks were recorded including unfit for further promotion. He
filed departmental appeal on 17.02.2017 which was rejected on 18.04.2017, hence,
the instant the service appeal.

ATTESTED


AHMAD HASSAN
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ARGUMENTS

3. Learned counsel for the appellant argued that the appellant was posted as Principal, Govt. Degree College, Lachi on 1.01.2015. That in the PER from 01.01.2015 to 31.12.2015 adverse remarks were recorded including unfit for further promotion. He filed departmental appeal on 17.02.2017 which was rejected on 18.04.2017, hence, the instant the service appeal. The reporting officer rated him as very good, while countersigning marked his performance, as below average without recording any justification. Para 3.7 of instructions of ACR makes prior counseling mandatory before recording adverse remarks in the PER of a civil servant. His representation was rejected without recording reason and same goes against Sec-24-A of the General Clauses Act 1897. Reliance was placed on case law reported as 2010 PLC (C.S) 1357 and 1999 SCMR 1587.

4. On the other hand learned Deputy District Attorney argued that all codal formalities were observed before passing the impugned order. He was treated according to law and rules, hence, there is no illegality in the said order. The appeal is not maintainable and be dismissed..

CONCLUSION

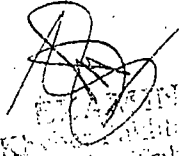
5. Careful perusal of record would reveal that para 3.6 of instructions for writing PER provides that the requirements of warning/ counseling. The same are reproduced below:

It has been noted that the requirements of warning/counseling are not being fulfilled before recording adverse remarks in the PERs of the Government Servants. Resultantly, these are expunged under the orders of the Khyber Pakhtunkhwa Service Tribunal.

In order to minimize litigation, the Provincial Government have reviewed the position and have decided that:

- a. Counseling may be ensured in all cases before initiation an adverse report or grading the PERS;

ATTESTED


 CLERK
 Khyber Pakhtunkhwa
 Service Tribunal.

- b. The officers who give adverse remarks without any solid grounds shall be personally held responsible for deviation from rules;
- c. Non-Observance of the Government instructions amounts misconduct under clause (e) of sub-rule (1) of rule 2 of the Khyber Pakhtunkhwa Civil Servants (Efficiency and Discipline) Rules, 1973 and can attract disciplinary action;

In view of the foregoing instructions, it clear beyond doubt that adverse remarks were recorded by the countersigning officer from 01.01.2015 to 31.12.2015 without prior warning/counseling, hence, the same have no legal effect and are liable to be expunged.

6. As a sequel to above, the appeal is accepted, impugned order dated 16.02.2017 is set aside. Parties are left to bear their own costs. File be consigned to the record room.

Announced
16.02.2018

SD/- Ahmad Hassan,
Member

SD/- M. Hamid Nughal,
Member

Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application: 07-03-2018
 Number of Pages: 1200
 Copying Fee: 8-00
 Urgent: 2-00
 Total: 10-00
 Name of Officer: [Signature]
 Date of Issue: 07-03-2018
 Date of Delivery of Copy: 07-03-2018

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**GOVERNMENT OF KHYBER PAKHTUKHWA
ESTABLISHMENT DEPARTMENT**

No. SG(PSE)ED/1-4/2018/P-191
Dated Peshawar, the 17.05.2018

To,

The Secretary to
Government of Khyber Pakhtukhwa.

HIGHER EDUCATION, ARCHIVES AND LIBRARIES DEPARTMENT

**SUBJECT: MINUTES OF THE MEETING OF PROVINCIAL SELECTION BOARD
HELD ON 03.05.2018**

**PROMOTION OF MALE ASSOCIATE PROFESSOR BS-19 TO THE
POST OF PROFESSOR BS-20**

Dear Sir:

I am directed to refer to Higher Education Department letter No SO (C-1)/HE/1-13/PSB Meeting/2018 dated 12.04.2018 on the subject and to forward herewith an extract of item No (38) of the minutes/recommendations of the meeting of Provincial Selection Board held on 03.05.2018 as well as copy of approved summary wherein the Chief Minister being competent authority in terms of Rules 4 (1) (a) of the Khyber Pakhtunkhwa has approved the recommendation of the PSB for further necessary action.

Yours faithfully


(DAULAT KHAN)
SECTION OFFICER (PSB)

17

NO (38)

HIGHER EDUCATION ARCHIVES AND LIBRARIES DEPARTMENT

(Meeting of PSB held on 03.05.2018)

SUBJECT: - PROMOTION OF MALE ASSOCIATE PROFESSOR BS-19 TO THE POST OF PROFESSOR BS-20

Secretary Higher Education, Archives and Libraries apprised the Board that due to retirement and four tier formula, thirty six (36) posts of Male Professor BS-20 are lying vacant.

According to service rules the post is required to be filled as under:-

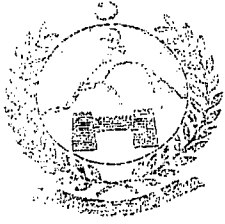
By promotion on the basis of seniority cum fitness from amongst the persons holding the post in BS-19 in the college cadre Higher Education Department, with atleast seventeen (17) years service in BS-17 and above: provided that in case of persons initially appointed in BS-18 or BS-19, the length of service for promotion in their cases shall atleast be twelve (12) years in BS-18 and above or five (05) years in BS-19, as the case may be.

Successful completion of mandatory training prescribed by the Govt for Colleges Teachers in BS-19 from time to time.

The service record of the officers included in the panel was discussed as follows:-

S. NO	NAME OF OFFICER	RECOMMENDATIONS OF THE BOARD
1	Mr. Muhammad Kanun	His date of birth is 01.02.1966. He joined government service as Lecturer BS-17 on 01.09.1991. He was appointed to BS-19 on 01.02.2011. He has undergone mandatory training required for promotion. The Board in its meeting held on 24.03.2017 & 28.12.2017 recommended to defer his promotion as the Board was informed that an enquiry was pending against him and his service record was also weak. Position is still the same.
2	Mr. Ghulam Mustafa	The Board recommended to defer his promotion. His date of birth is 02.08.1961. He joined government service as Lecturer BS-17 on 01.03.1986. He was promoted to BS-19 on 09.01.2012. The Board in its meeting held on 24.03.2017 & 28.12.2017 recommended to defer his promotion as he had not undergone mandatory training required for promotion, which he has now undergone. No enquiry is pending against him. His service record upto 2017 is generally good.
Section Officer (PSB) Govt of Khyber Pakhtunkhwa Establishment Department		The Board recommended the Officer for promotion to the post

CONFIDENTIAL



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

NO. SO(PSE)ED/1-4/2019/P-238
Dated Peshawar, the 02.10.2019

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To
The Secretary to Govt. of Khyber Pakhtunkhwa,
Higher Education Department.

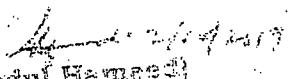
SUBJECT: MINUTES OF THE MEETING OF PROVINCIAL SELECTION BOARD
HELD ON 23.09.2019.

PROMOTION OF MALE ASSOCIATE PROFESSOR BS-19 TO THE
POST OF PROFESSOR BS-20 OF COLLEGE CADRE

Dear Sir,

I am directed to refer to Higher Education Department letter No. SOIC-
D/HE/1-13/PSB meeting/2019 dated 31.07.2019 on the subject and to forward
herewith an extract of Item No 154 of the minutes/recommendations of the
meeting of Provincial Selection Board held on 23.09.2019 as well as copy of
approved summary wherein the Chief Minister being competent authority in
terms of Rule 4 (1) (a) of the Khyber Pakhtunkhwa (Appointment, Promotion &
(transfer) Rules, 1989 has approved the recommendations of the PSB. for further
necessary action.

Yours faithfully,


(Abdul Hameed)
SECTION OFFICER (PSB)

Encl: As Above

HIGHER EDUCATION ARCHIVES AND LIBRARIES DEPARTMENT

(Meeting of PSB held on 19.04.2019)

SUBJECT: PROMOTION OF MALE ASSOCIATE PROFESSOR BS-19 TO THE POST OF PROFESSOR BS-20.

Secretary Higher Education, Archives and Libraries apprised the Board that due to retirement, sixteen (16) posts of Male Professor BS-20 are lying vacant.

According to service rules the post is required to be filled as under:-

- i. "By promotion on the basis of seniority cum fitness from amongst the persons holding the post in BS-19 in the college cadre Higher Education Department, with atleast seventeen (17) years service in BS-17 and above; provided that in case of persons initially appointed in BS-18 or BS-19, the length of service for promotion in their cases shall atleast be twelve (12) years in BS-18 and above or five (05) years in BS-19, as the case may be.
- ii. Successful completion of mandatory training prescribed by the Govt for Colleges Teachers in BS-19 from time to time.

The service record of the officers included in the panel was discussed as follows: -

S.#	NAME OF OFFICER	RECOMMENDATIONS OF THE BOARD
1.	Mr. Muhammad Karim	<p>His date of birth is 01.02.1966. He joined government service as Lecturer BS-17 on 01.09.1991. He was promoted to BS-19 on 01.02.2011. He has undergone training mandatory for promotion. The Board in its meeting held on 24.03.2017, 28.12.2017, 03.05.2018, 17.09.2018 and 26.12.2018 recommended to defer his promotion as the Board was informed that an enquiry was pending against him in which he has been awarded a penalty of censure and his service record was also weak. Hence, the Board desired to further watch his performance. Position is still the same.</p> <p>The Board recommended to defer his promotion.</p>
2.	Mr. Hidayatullah Jan	<p>His date of birth is 30.03.1965. He joined government service as Lecturer BS-17 on 17.07.1990. He was promoted to BS-19 on 09.01.2012. The Board in its meeting held on 24.03.2017 and 28.12.2017 recommended to defer his promotion as he had not undergone training mandatory for promotion, which he has now undergone. The Board in its meeting held on 03.05.2018, 17.09.2018 and 26.12.2018 recommended to defer his promotion as his service record was weak and the Board desired to further watch his performance. He has now earned Very Good PER for the year 2018. No enquiry is pending against him. His service record upto 2018 is generally good.</p> <p>The Board recommended the Officer for promotion to the post of Professor BS-20 on regular basis. He will be on probation for a</p>

**IMMEDIATE
CONFIDENTIAL**



**GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT**

NO. SO(PSB)ED/1-4/2019/P-216
Dated Peshawar, the 07.05.2019

To

The Secretary to Govt. of Khyber Pakhtunkhwa,
Higher Education Department

**SUBJECT: - MINUTES OF THE MEETING OF PROVINCIAL SELECTION BOARD
HELD ON 19.04.2019**

**PROMOTION OF ASSOCIATE PROFESSOR BS-19 (MALE) TO THE
POST OF PROFESSOR BS-20 OF COLLEGE CADRE**

Dear Sir,

I am directed to refer to Higher Education Department letter No. SO(C-1)/HE/1-13/PSB meeting/2019 dated 26.03.2019 on the subject and to forward herewith an extract of item No (55) of the minutes/recommendations of the meeting of Provincial Selection Board held on 19.04.2019 as well as copy of approved summary wherein the Chief Minister being competent authority in terms of Rule 4 (1), (a) of the Khyber Pakhtunkhwa (Appointment, Promotion & Transfer) Rules, 1989 has approved the recommendation of the PSB for further necessary action.

Yours faithfully,

Handwritten signature
(Abdul Hameed)

SECTION OFFICER (PSB)

Encl: As Above

Urgent
SO (C-1)

08/05/19

(NO 34)

HIGHER EDUCATION ARCHIVES AND LIBRARIES DEPARTMENT

(Meeting of PSB held on 26.12.2018)

SUBJECT: PROMOTION OF MALE ASSOCIATE PROFESSOR BS-19 TO THE POST OF PROFESSOR BS-20.

Secretary Higher Education, Archives and Libraries apprised the Board that due to retirement nine (09) posts of Male Professor BS-20 are lying vacant.

2. According to service rules the post is required to be filled as under:-

- i. By promotion on the basis of seniority cum fitness from amongst the persons holding the post in BS-19 in the college cadre Higher Education Department, with atleast seventeen (17) years service in BS-17 and above; provided that in case of persons initially appointed in BS-18 or BS-19, the length of service for promotion in their cases shall atleast be twelve (12) years in BS-18 and above or five (05) years in BS-19, as the case may be.
- ii. Successful completion of mandatory training prescribed by the Govt. for Colleges Teachers in BS-19 from time to time.

3. The service record of the officers included in the panel was discussed as follows:-

S. NO	NAME OF OFFICER	RECOMMENDATIONS OF THE BOARD
1	Mr Muhammad Karim	His date of birth is 01.02.1966. He joined government service as Lecturer BS-17 on 01.09.1991. He was appointed to BS-19 on 01.02.2011. He has undergone training mandatory for promotion. The Board in its meeting held on 24.03.2017, 18.12.2017, 03.05.2018 and 17.09.2018 recommended to defer his promotion as the Board was informed that an enquiry was pending against him. He has now been imposed a minor penalty of Censure. However, the Board observed that his service record is weak and desired to further watch his performance. The Board recommended to defer his promotion.
2	Mr. Hidayatullah Jan	His date of birth is 30.03.1965. He joined government service as Lecturer BS-17 on 17.07.1990. He was promoted to BS-19 in 09.11.2002. The Board in its meeting held on 24.03.2017 and 18.12.2017 recommended to defer his promotion as he had not undergone training mandatory for promotion, which he has now undergone. The Board in its meeting held on

CONFIDENTIAL
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26

GOVERNMENT OF KHYBER PAKHTUKHWA
ESTABLISHMENT DEPARTMENT



No. SO(PSB)ED/1-4/2018/P-20
Dated Peshawar, the 02.01.201

To
The Secretary to
Government of Khyber Pakhtunkhwa,
Higher Education Department

SUBJECT: - MINUTES OF THE MEETING OF PROVINCIAL SELECTION BOARD
HELD ON 26.12.2018.

PROMOTION OF ASSOCIATE PROFESSOR BS-19 (MALE) TO THE
POST OF PROFESSOR BS-20 OF COLLEGES CADRE.

Dear Sir,

I am directed to refer to Higher Education Department letter No. SO(C
1)/HE-1-3/PSB Meeting 2018 dated 30.11.2018 on the subject and to forward
herewith an extract of item No (34) of the minutes/recommendations of the
meeting of Provincial Selection Board held on 26.12.2018 as well as copy
approved summary wherein the Chief Minister being competent authority in terms
of Rules 4 (1) (a) of the Khyber Pakhtunkhwa has approved the recommendation
the PSB for further necessary action.

Yours faithfully

(Signature)
(Abdul Hameed)
SECTION OFFICER (PS)

5088
filed up
1/03/11

(61)

HIGHER EDUCATION, ARCHIVES AND LIBRARIES DEPARTMENT

(Meeting of PSB held on 17.09.2018)

25

SUBJECT: - PROMOTION OF MALE ASSOCIATE PROFESSOR BS-19 TO THE POST OF PROFESSOR BS-20

Secretary Higher Education, Archives and Libraries apprised the Board that due to retirement, twenty (20) posts of Male Professor BS-20 are lying vacant.

2. According to service rules the post is required to be filled as under:-

- i. By promotion on the basis of seniority cum fitness from amongst the persons holding the post in BS-19 in the college cadre Higher Education Department, with atleast seventeen (17) years service in BS-17 and above; provided that in case of persons initially appointed in BS-18 or BS-19, the length of service for promotion in their cases shall atleast be twelve (12) years in BS-18 and above or five (05) years in BS-19, as the case may be.
- ii. Successful completion of mandatory training prescribed by the Govt for Colleges Teachers in BS-19 from time to time.

The service record of the officers included in the panel was discussed as follows: -

S. NO	NAME OF OFFICER	RECOMMENDATIONS OF THE BOARD
1.	Mr. Muhammad Karim	His date of birth is 01.02.1966. He joined government service as Lecturer BS-17 on 01.09.1991. He was appointed to BS-19 on 01.02.2011. He has undergone mandatory training required for promotion. The Board in its meeting held on 24.03.2017, 28.12.2017 and 03.05.2018 recommended to defer his promotion as the Board was informed that an enquiry was pending against him. Position is still the same. The Board recommended to defer his promotion.
2.	Mr. Hidayatullah Jan	His date of birth is 30.03.1965. He joined government service as Lecturer BS-17 on 17.07.1990. He was promoted to BS-19 on 09.01.2012. The Board in its meeting held on 24.03.2017 28.12.2017 recommended to defer his promotion as he had not undergone mandatory training required for promotion, which he has now undergone. The Board in its meeting held

Signature
Secretary (PCR)



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**GOVERNMENT OF KHYBER PAKHTUKHWA
ESTABLISHMENT DEPARTMENT**

No. SO(PSB)ED/1-4/2018/P-201
Dated Peshawar, the 27.09.2018

To

The Secretary to
Government of Khyber Pakhtukhwa,
HIGHER EDUCATION, ARCHIVES AND LIBRARIES DEPARTMENT

**SUBJECT: - MINUTES OF THE MEETING OF PROVINCIAL SELECTION BOARD
HELD ON 17.09.2018.**

**PROMOTION OF MALE ASSOCIATE PROFESSOR BS-19 TO THE
POST OF PROFESSOR BS-20**

Dear Sir,

I am directed to refer to Higher Education Department letter No SO (C-
I)/HE/1-13/PSB Meeting/2018 dated 01.08.2018 on the subject and to forward
herewith an extract of **item No (61)** of the minutes/recommendations of the
meeting of Provincial Selection Board held on **17.09.2018** as well as copy of
approved summary wherein the Chief Minister being competent authority in terms
of Rules 4 (1) (a) of the Khyber Pakhtunkhwa has approved the recommendation of
the PSB for further necessary action.

Yours faithfully

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11/15

27/9/2018
(Abdul Hameed)
SECTION OFFICER (PSB)

- F) That two fact finding inquiries were conducted against the appellant on the same allegations in which 1st was concluded with the recommendation of formal inquiry while in the 2nd fact finding recommendation it was mentioned that the charges against the appellant are baseless, which means that the that in all inquiries allegations were not proved and the appellant was declared innocent but despite that minor punishment was imposed upon the appellant which effect his promotion to BPS-20.
- G) That the adverse remarks was mentioned in the ACR of the appellant which was also expunged by this august Service tribunal in Appeal No.530/2017 in its judgment dated 16.02.2018. (Copy of judgment dated 16.02.2018 is attached as Annexure-P)
- H) That the appellant has been condemned unheard and has not been treated according to law and rules.
- I) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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

APPELLANT
 MUHAMMAD KAFIM

THROUGH:

M. ASIF YOUSAFZAI
 ADVOCATE SUPREME COURT
 (TAIMUR ALI KHAN)
 ADVOCATE HIGH COURT,
 &
 (S. NOMAN ALI BUKHARI)
 ADVOCATE HIGH COURT

6. That on the basis of inquiry report show cause notice was issued to the appellant which was duly replied by the appellant in which he again denied the allegations. (Copies of show cause notice and reply to show cause notice are attached as annexure-K&L)
7. That minor punishment of censure was imposed upon the appellant vide order dated 03.10.2018 despite the fact that warning was recommended by the inquiry committee, against which the appellant filed review petition on 24.10.2018 which was rejected on 07.01.2019 for no good grounds. (Copies of order dated 03.10.2018, review petition and rejection order dated 07.01.2019 are attached as annexure- M,N&O.)
8. That now the appellant has no other remedy except to file this service appeal in this august Service Tribunal on the following grounds amongst others.

GROUND:

- A) That the impugned orders dated 07.01.2019 and 03.10.2018 are against the law, facts, norms of justice and material on record, therefore not tenable and liable to be set aside.
- B) That the inquiry was not conducted against the appellant according to the prescribed procedure as neither statements were recorded in the presence of the appellant nor gave him opportunity of cross examination which is violation of law and rules.
- C) That the inquiry committee did not prove the appellant guilty, but despite that warning of more careful to be in future was recommended by the inquiry which is against the norms justice and fair play.
- D) That although no charge was proved on the appellant and only warning was recommended by the inquiry committee, but despite that minor punishment of censure was imposed upon the appellant due to which 3 marks were deducted from the PER of the appellant which effected promotion of the appellant to BPS-20, which means that the appellant was deprived from the legal right of promotion for no fault on his part.
- E) That the appellant was deferred in PSB hold on 24.03.2017 due to pendency of inquiry against the appellant and on the basis of that inquiry report, minor punishment of censure was imposed upon the appellant and as per superior court judgments promotion cannot be deferred on the basis of minor punishment.

Amma (F)
19

MOST IMMEDIATE



GOVERNMENT OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES &
LIBRARIES DEPARTMENT
CIVIL SECRETARIAT

NO.SO(C-I)HE/1-2/2016/Lachi Kohat/Karim Khan
Dated Peshawar the 07/01/2019

460-62

To

The Director,
Higher Education Khyber Pakhtunkhwa,
Peshawar.

Subject: REVIEW PETITION AGAINST IMPOSITION OF MINOR PENALTY OF
"CENSURE".

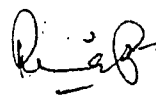
I am directed to refer to the subject noted above and to inform that the Chief Minister, Khyber Pakhtunkhwa being appellate authority has rejected the appeal of Mr. Karim Khan, Associate Professor (BPS-19) / Principal, Government Degree College, Lachi (Kohat) and retain the penalty "Censure" already imposed.

(RIAZ)
SECTION OFFICER (COLLEGES-I)

ENDST: NO. & DATE EVEN.

Copy forwarded to the:

1. Section Officer-I, Chief Minister's Secretariat, Khyber Pakhtunkhwa, Peshawar w/r to her letter No.SO-I/CMS/KPK/3-i/2018/20463 dated 29.10.2018.
- ✓ 2. Mr. Karim Khan, Associate Professor (BPS-19) / Principal, Government Degree College, Lachi (Kohat) w/r to his Review Petition dated 24.10.2018.
3. PS to Secretary to Govt. of Khyber Pakhtunkhwa, Higher Education Department.
4. Master File.


SECTION OFFICER (COLLEGES-I)



GOVERNMENT OF KHYBER PAKHTUNKHWA
 HIGHER EDUCATION, ARCHIVES &
 LIBRARIES DEPARTMENT
 CIVIL SECRETARIAT

q/E (18)

Annex

No.SO(C-I)HE/1-2/Summary for CM/2017/Karim Khan/
 Dated Peshawar the 03/10/2018

To

The Director,
 Higher Education Khyber Pakhtunkhwa,
 Peshawar.

Subject: INQUIRY REGARDING CORRUPTION / EMBEZZLEMENT OF
 MR. KARIM KHAN, PRINCIPAL, GDC LACHI (KOHAT).

I am directed to refer to the subject noted above and to state that the competent authority (*Chief Minister*) has been pleased to confirm the minor penalty "*censure*" upon Mr. Karim Khan, Principal, Government Degree College Lachi (*Kohat*). The said Principal may kindly be directed to be careful in future.

(RIAZ)
 SECTION OFFICER (COLLEGES-I)

ENDST: NO. & DATE EVEN.

Copy forwarded to the:

1. PS to Secretary to Govt. of Khyber Pakhtunkhwa, Higher Education Department.
2. Mr. Karim Khan, Principal, Government Degree College Lachi (*Kohat*).
3. Master File.

SECTION OFFICER (COLLEGES-I)

DD/E
 For o/a
 [Signature]
 03/10/18

UA-I
 [Signature]
 9/10/18

ITEM NO (64)

HIGHER EDUCATION, ARCHIVES AND LIBRARIES DEPARTMENT
(Meeting of PSE held on 23.09.2019)

SUBJECT:- PROMOTION OF MALE ASSOCIATE PROFESSOR BS-19 TO THE POST OF PROFESSOR BS-20.

Secretary Higher Education, Archives and Libraries apprised the Board that due to retirement, eighteen (18) posts of Male Professor BS-20 are lying vacant.

- 2. According to service rules the post is required to be filled as under:-
 - i. "By promotion on the basis of seniority, cum fitness from amongst the persons holding the post in BS-19 in the college cadre Higher Education Department, with atleast seventeen (17) years service in BS-17 and above; provided that in case of persons initially appointed in BS-18 or BS-19, the length of service for promotion in their cases shall atleast be twelve (12) years in BS-18 and above or five (05) years in BS-19, as the case may be.
 - ii. Successful completion of mandatory training prescribed by the Govt for Colleges Teachers in BS-19 from time to time.

3. The service record of the officers included in the panel was discussed as follows:-

S.#	NAME OF OFFICER	RECOMMENDATIONS OF THE BOARD
1.	Mr. Muhammad Karim	<p>His date of birth is 01-02-1966. He joined government service as Lecturer BS-17 on 01.09.1991. He was promoted to BS-18 on 01.02.2011. He has undergone training mandatory for promotion. The Board in its meeting held on 24.05.2017, 28.12.2017, 03.05.2018, 17.09.2018, 26.12.2018 and 19.04.2019 recommended to defer his promotion as the Board was informed that an enquiry was pending against him in which he has been subsequently awarded a penalty of censure and his service record was also weak. Hence, the Board desired to further watch his performance. Position is still the same.</p> <p>The Board recommended his supersession.</p>
2.	Mr. Shafi ur Rehman	<p>His date of birth is 01.04.1963. He joined government service as Lecturer BS-17 on 19.09.1989. He was promoted to BS-19 on 09.01.2012. The Board in its meeting held on 24.03.2017, 28.12.2017 recommended to defer his promotion as he had not undergone training mandatory for promotion which he has now undergone. Previously, his promotion was deferred due to his weak service record and the Board desired to further watch his performance. Now, his quantification of PERs has been re-calculated as per promotion policy, 2009, according to which, he secured 49 marks instead of 48. No enquiry is pending against him, his service record upto 2018 is generally good.</p> <p>The Board recommended the Officer for promotion to the post of Professor BS-20 on regular basis. He will be on probation for a</p>

287=51
2nd = 48+ACR

Dec-18 = 51-3
48
May-19 = 48+ACR
Sep-19 = 48

bellis comm. *L* *me* **39**
BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 22/2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 144

Dated. 01-2-2019

Muhammad Karim, Principal/Associate Professor, (BPS-19)
Govt: Degree College Lachi, Kohat.

(APPELLANT)

VERSUS

1. The Govt: of KPK. through Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. The Chief Secretary Khyber Pakhtunkhwa, Peshawar
3. The Secretary Higher Education Khyber Pakhtunkhwa, Peshawar.
4. The Director Higher Education Khyber Pakhtunkhwa, Peshawar.

(RESPONDENTS)

day
12/15
APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 07.01.2019, WHEREBY THE REVIEW PETITION OF THE APPELLANT WAS REJECTED AGAINST THE ORDER DATED 03.10.2018 WHEREBY THE MINOR PENALTY OF CENSURE WAS IMPOSED UPON THE APPELLANT FOR NO GOOD GROUNDS.

PRAYER:

Re-submitted to -day
and filed.
Registrar
19/2/19
THAT ON THE ACCEPTANCE OF THIS APPEAL. THE ORDER DATED 07.01.2019 AND 03.10.2018 MAY BE SET ASIDE AND THE APPELLANT MAY BE CONSIDERED FOR PROMOTION TO THE POST OF PROFESSOR PBS-20 FROM THE DATE I.E 10.07.2017 WHEN HIS JUNIORS WERE PROMOTED ON THE PSB HELD ON 24.03.2017. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT. MAY ALSO, BE AWARDED IN FAVOUR OF APPELLANT.

AS

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 221/2019

Date of Institution ... 01.02.2019

Date of Decision ... 29.11.2019

Muhammad Karim, Principal/Associate Professor, (BPS-19), Govt. Degree College
Lachi, Kohat. (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa, through Chief Secretary, Khyber
Pakhtunkhwa, Peshawar and three other. (Respondents)

MR. TAIMUR ALI KHAN,
Advocate

For appellant.

MR. M. RIAZ KHAN PAINDAKHEL,
Assistant Advocate General

For respondents

MR. AHMAD HASSAN
MR. MUHAMMAD HAMID MUGHAL

MEMBER (Executive)
MEMBER (Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the
parties heard and record perused.

ARGUMENTS:

(2) Learned counsel for the appellant argued that while posted as Principal, GDC
Lachi Kohat, a written complaint was lodged against him and the matter was
initially probed through a fact finding enquiry. Thereafter, disciplinary proceedings
under E&D Rules were conducted against the appellant and upon winding up minor
penalty of censure was awarded to him vide letter dated 3.10.2018. Feeling
aggrieved, he filed review petition on 24.10.2018, which was regretted vide order
dated 07.01.2019, hence, the present service appeal. Learned counsel for the

appellant went through the contents of the enquiry report and informed that allegations leveled against him were not established and thereafter, the enquiry committee recommended to warn him to be careful in future.

03. Learned Assistant Advocate General argued that all the codal formalities were observed before passing the impugned order.

CONCLUSION:

04. We have minutely examined the enquiry report and observed that most of the allegations leveled against the appellant were not proved during the enquiry proceedings. Moreover, allegations of financial corruption/embezzlement etc. were not leveled against him and prima-facie he appeared to be guilty and procedural lapses. Even procedural lapses committed by the appellant were not deliberate, intentional and with an aim to get some undue financial gains during the course of performance of official duty. Our observation is backed by recommendations contained in para-6 of the enquiry report, wherein it was recommended that he be warned to be careful in future.

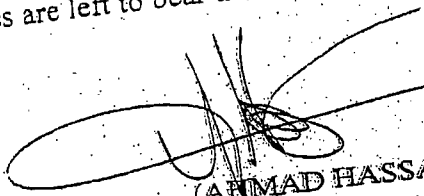
05. In spite of the fact that charges were not established against the appellant but minor penalty of "censure" was awarded to him. Equity and fairness demands that he should not be penalized for the sins he did not commit. Even the minor penalty would stigmatize his career and will carry stain till retirement.

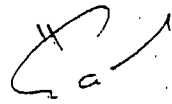
APPROVED

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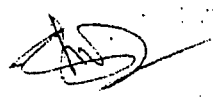
35

As a sequel to the above the appeal is accepted and the impugned order dated 3.10.2018 and 07.01.2019 are set aside. Parties are left to bear their own costs. File be consigned to the record room.


(AHMAD HASSAN)
Member


(MUHAMMAD HMAID MUGHAL)
Member

ANNOUNCED
29.11.2019



10-12-19
1800
400
2200
~~10-12-19~~
~~10-12-19~~

To

The Chief Minister,

Govt; of Khyber Pakhtunkhwa, Peshawar

Through Proper Channel

Subject:- Review Petition against Supersession of Mr. Muhammad Karim,

Associate Professor BS-19 in the PSB meeting of 23/09/2019

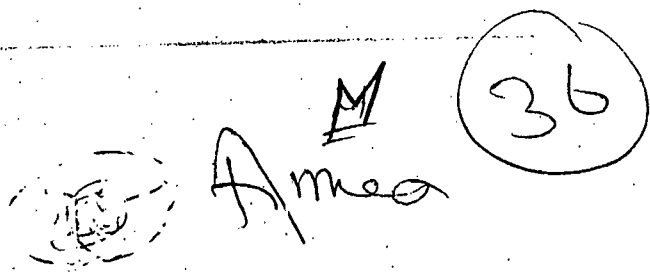
Respected Sir, (Assalam-o-alaykum)

With humble submission it is stated that I have been serving in Higher Education Department since 01/09/1991. My promotion to the post of Professor BS - 20 was deferred for the first time in the PSB meeting of 24/03/2017 because an inquiry was pending against me and the then Secretary Higher Education had recorded adverse remarks in December 2016 while countersigning my ACR/PER for the year 2015 and departmental appeal for expunction of those adverse remarks was in process. Annexure- A is submitted.

My promotion to the post of Professor BS-20 was deferred for the second time in the PSB meeting of 28/12/2017 because my service appeal No. 530/2017 for expunction of the above mentioned adverse remarks in the PER/ACR of 2015, was in process in the Khyber Pakhtunkhwa Service Tribunal, Peshawar as well as due to pendency of inquiry against the applicant. Photocopy is fixed as annexure-B.

The Provincial selection Board recommended my deference for the post of Professor BS-20 in its meeting of 03/05/2018, for the third time due to above two mentioned factors. Though my service appeal No. 530/2017 for expunction of the above adverse remarks of PER/ACR of 2015 had been accepted by the Khyber Pakhtunkhwa Service Tribunal, Peshawar on 16/02/2018, and thereafter, the provincial Scrutiny Committee had also declared that judgment as not fit for CPLA in its meeting of 04/04/2018. Relevant photocopies are enclosed as annexure -C.

My promotion to the post of Professor BPS-20 was deferred for fourth time in the PSB meeting of 17/09/2018, though inquiry had been conducted and "Warning" had been recommended to me because no financial loss to the Govt: exchequer had been occurred. It is to be noted that warning is not a penalty according to the Esta-code. The Competent authority had converted "warning" into "Censure" without recording cogent reasons which is against the judgment of the Supreme Court of Pakistan. Show Cause notice of 21/06/2018 regarding a penalty of Censure had been replied on 04/07/2018, thereafter I had been provided personal hearing with the Senior Member Board of Revenue (SMBR). The Chief Secretary, Khyber Pakhtunkhwa



(appellate authority) had already approved the proposal of the Higher Education Department in light of the judgment of the Khyber Pakhtunkhwa Service Tribunal, Peshawar for the expunction of adverse remarks in the PER/ACR of 2015. Relevant documents are attached as annexure -D.

The Provincial Selection Board once again recommended my deferment for the post of Professor BS-20 in its meeting held on 26/12/2018 because a minor penalty of Censure had been confirmed on me on 03/10/2018. Review petition against the penalty of Censure had been submitted to the Chief Minister, Khyber Pakhtunkhwa on 24/10/2018. Resultantly, three marks had been deducted from the total Quantification Score of my total ACRs/PERs up to December 2018. So, by that deduction my total quantification Score became less than the minimum required threshold for the post of Professor BS -20. Photocopy of PSB minutes is enclosed as annexure -E.

My promotion to the post of Professor BS-20 was deferred for the sixth time in the PSB meeting of 19/04/2019 due to repeated deduction of three marks again from the total quantified Score of my ACRs/PERs because my review petition against the imposition of minor penalty of Censure had been rejected by the Chief Minister Govt; of Khyber Pakhtunkhwa. Furthermore, my service appeal No. 221/2019 against the imposition of penalty of Censure had been submitted to the Khyber Pakhtunkhwa Service Tribunal, Peshawar on 01/02/2019. After the initial arguments, the Chairman Khyber Pakhtunkhwa Service Tribunal, Peshawar accepted my service appeal for further proceedings and summon had been sent to the respondents for reply. Documents are fixed as annexure-F.

Now surprisingly the provincial Selection Board have recommended my supersession in its meeting which was held on 23/09/2019 due to repeated deduction of three marks for the 3rd time which was totally against the fundamental of protection against "Double Jeopardy" under article-13 of the Constitution of Pakistan. According to which nobody can be punished more than once for the same offence. This principle has also been endorsed by the Supreme Court of Pakistan. As my service appeal against the penalty of Censure was still in process in the KPK Service tribunal, Peshawar then how was i superseded?

The right of appeal is a substantive right. Further, appeal is a continuation of trial and it can prolong up to the Supreme Court of Pakistan because it is the final arbiter and interpreter of all legal and constitutional disputes.

The officer superseded by the CSB/PSB be informed about the reasons for his/her supersession/deferment to enable such officers to improve their performance to complete their record/any other case may be, is written in the section-9 of the promotion policy of 2007 of the federal government of Pakistan. Ironically i have not been received any intimation about

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my supersession from the Secretariat as well as from the Directorate of Higher Education till date.

When factors are beyond one's control then nobody can be penalized. Supersession is a penalty in which the officer concerned loses his/her seniority as well as his/her eligibility for promotion unless he/she earns an ACR/PER for one complete year.

The Latin maxim, "Audi Alteram Partem" is the principle of natural justice which says that Nobody can be condemned unheard because it is against fundamental right under article 10-A of the Constitution of Pakistan. The principles and procedures of due process of law and fair trial have not been followed by the competent authority in my case.

The shifting of Higher Education Directorate from Peshawar to Rano Garhi(Chamkani) resulted in undue delay in the submission of reply which prolonged the proceedings. Finally arguments date was fixed on 29/11/2019 and after all my service appeal No. 221/2019, was accepted by the Khyber Pakhtunkhwa Service tribunal, Peshawar.

The expression "Law" as explained in the article-4 of the Constitution is of wider importance which includes the Duty of every public functionary to act in the matter justly and fairly and in accordance with the principles of natural justice.

The concept of administration of justice has been interpreted by the apex Court of Pakistan as "Administration of justice is not confined only to judicial system. Every person discharging functions in relation to the rights of people is bound to act fairly, justly, and in accordance with law. Exercise of power by public functionaries in derogation of direction of law would amount to disobeying the command of law and Constitution."

When there is no guideline in guiding rules provided for the discretion. It is not unbridled or unfettered but the same is to be exercised reasonably, fairly and justly without giving any cause of complaint to any person who may be interested in exercise of such discretion. Seven instruments that are most useful in structuring of discretionary power are "open plans, open policy statements, open rules, open findings, open reasons, open precedents and fair informal procedures." Relative documents are enclosed as annexure-G

In the light of the above facts it is humbly requested that my supersession in the PSB meeting of 23/09/2019 may please be declared as deferment because all the factors mentioned above were totally beyond my control.

Yours Sincerely

Muhammad Karim A. Prof of Stat: GPGC Kohat.



**DIRECTORATE OF HIGHER EDUCATION
KHYBER PAKHTUNKHWA
Rano Garhi, Peshawar**

Tel # 091-2650025 / 2650024

E-mail: dhekpesh@gmail.com Facebook.com/dhekpeshawar Twitter.com/dhekpeshawar1
No. / CA-I/ Estt: Branch/A-12/Mohd Karim/Statistics Dated Peshawar the 26/12/2019

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To

The Secretary
Govt; of Khyber Pakhtunkhwa,
Higher Education Department Peshawar.

SUBJECT

REVIEW PETITION AGAINST SUPERSESSION OF
MR. MOHAMMAD KARIM, ASSOCIATE PROFESSOR IN THE
PSB MEETING OF 23.09.2019.

Respected Sir,

السلام عليكم

I am directed to enclose herewith a self-explanatory appeal in respect of Mr. Mohammad Karim, Associate Professor of Statistics, Govt; Post Graduate College, Kohat on the subject cited above and to state that the promotion case from B-19 to B-20 in respect of the officer concerned was placed before PSB in its meeting held on 23.09.2019 and PSB recommended his supersession.

2. Now the officer concerned has requested that his supersession may be converted into deferment which may be considered as per policy, please.

Yours Faithfully,

(Mohammad Bashir)

BY: DIRECTOR (ESTABLISHMENT)

Endst; No. 5956

Copy of the above is forwarded to the Principal Govt; Post Graduate College, Kohat with reference to his letter No. 2236-37 dated 16.12.2019.

BY: DIRECTOR (ESTABLISHMENT)

ste - Muhammad Karim / Prof. M. Karim

D. No. 827-28

2/12/19
with the officer concerned
26/12/19

40

CHIEF MINISTER'S SECRETARIAT
KHYBER PAKHTUNKHWA
PESHAWAR

NO.SO-I/CMS/KPK/3-15/2019 ²⁰²⁰
Dated Peshawar the, 02 January, ~~2019~~ /189



To

The Secretary to Government of Khyber Pakhtunkhwa,
Higher Education Department.

Subject: -

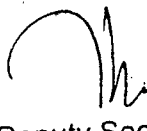
**REVIEW PETITION AGAINST SUPERSESSON OF MR. MUHAMMAD
KARIM ASSOCIATE PROFESSOR BS-19 IN THE PSB MEETING OF
23-09-2019**

Dear Sir,

I am directed to refer to the subject cited above and to forward herewith copy of self-explanatory appeal, alongwith enclosures, submitted by Muhammad Karim, Associate Professor, Govt. Postgraduate College Kohat, against review petition, regarding his supersession in the PSB meeting of 23-09-2019, for examination, please.

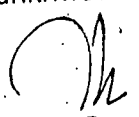
Encls: As above.

Yours faithfully,

S/c 
Deputy Secretary - IV

Endst: No. and Date Even:
Copy for information to:

PS to Principal Secretary to the Chief Minister, Khyber Pakhtunkhwa.


Deputy Secretary - IV



GOVERNMENT OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES &
LIBRARIES DEPARTMENT
CIVIL SECRETARIAT

Am

Dated Peshawar the 07/05/2020

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NOTIFICATION

NO.SO(C-I)/HE/1-2/Summary for CM/2017/Karim Khan. WHEREAS Muhammad Karim, Associate Professor (BS-19) of Statistics, Government Postgraduate College, Kohat was proceeded under the Khyber Pakhtunkhwa. Government Servants (*Efficiency & Discipline*) Rules 2011. for the charges mentioned in the Charge Sheet and Statement of Allegations.

S#	Name & Designation	Penalty imposed
1	Muhammad Karim, Associate Professor (BS-19) of Statistics, Government Postgraduate College, Kohat.	"Censure"

2. AND WHEREAS an inquiry committee comprising of Mr. Tariq Rashid (SG BS-20), Secretary to Government of Khyber Pakhtunkhwa, Irrigation Department, Peshawar and Prof. Abdul Wahab (BS-20), Principal, Government Postgraduate College, Haripur was constituted to conduct inquiry into the allegations.

3. AND WHEREAS the Inquiry Committee after having examined the charges. evidence on record and explanation of accused officer, submitted report.

4. NOW THEREFORE, the Chief Minister, Khyber Pakhtunkhwa (*being Competent Authority*) in light of Service Tribunal Judgment dated 29.11.2019 and in exercise of the powers conferred upon him under **Rule-04** of the Khyber Pakhtunkhwa, Government Servants (*Efficiency & Discipline*) Rules 2011, has been pleased to set aside the penalty of "Censure" imposed upon the officer concerned vide this Department's Notification of even number dated 03.10.2018:-

S#	Name & Designation	Present Position
1	Muhammad Karim, Associate Professor (BS-19) of Statistics, GPGC, Kohat.	"Exonerated" ✓

5. The Competent Authority is further been pleased to reject the Review Petition of officer concerned regarding conversion of his supersession into deferment.

SECRETARY
HIGHER EDUCATION DEPARTMENT

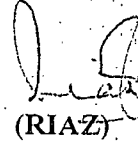
P.T.O

ENDST: NO. & DATE EVEN.

Copy forwarded to the:

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1. Director, Higher Education Khyber Pakhtunkhwa, Peshawar.
2. Principal, Government Postgraduate College, Kohat.
3. Principal, Government Degree College, Lachi, Kohat.
4. Muhammad Karim, Associate Professor (BS-19) of Statistics, Government Postgraduate College, Kohat.
5. PS to Secretary to Govt. of Khyber Pakhtunkhwa, Establishment Department.
6. PS to Secretary to Govt. of Khyber Pakhtunkhwa, Higher Education Department.
7. Master File.



(RIAZ)

SECTION OFFICER (COLLEGES-I)

M. Nadeem

Aneeq

0

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BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.

Writ Petition No. 2670P /2020



Muhammad Karim, Associate Professor (Statistics),
Government Postgraduate College, Kohat.

PETITIONER

VERSUS

1. The Government of Khyber Pakhtunkhwa through the Chief Secretary, Civil Secretariat, Peshawar.
2. The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Secretary Establishment Department, Govt of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
4. The Secretary Higher Education Department Govt: of Khyber Pakhtunkhwa, Peshawar.
5. The Director Higher Education, Directorate of Higher Education, Peshawar.

RESPONDENTS

.....

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF THE ISMLAIC REPUBLIC OF PAKISTAN , 1973 AS AMENDED UPTO DATE FOR ISSUING APPROPRIATE WRIT AGAINST THE RESPONDENTS TO CONSIDER THE PETITIONER FOR PROMOTION TO BPS-20 FROM HIS DUE DATE BY DECLARING THE DECISION OF SUPERSESION OF PSB DATED 23.09.2019 AND ORDER DATED 07.05.2020 PASSED ON REVIEW AS ILLEGAL, UNLAWFUL, DISCRIMINATORY AND AGAINST THE PROTECTED RIGHTS OF THE PETITIONER. ANY OTHER REMEDY DEEMS APPROPRIATE THAT MAY ALSO BE GRANTED IN FAVOUR OF PETITIONER.

FILED TODAY

Deputy Registrar

05 JUN 2020

ATTESTED

EXAMINER
Peshawar High Court

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RESPECTFULLY SHEWETH:

Brief facts giving rise to present petition are as under:-

1. That the petitioner is a Law abiding citizen of Pakistan and has every Legal and Constitutional rights duly protected under the Law of Land. The petitioner joined the Higher Education Department in the year 1991 and with the passage of time the petitioner was recruited to Public Service Commission in BPS-19 on 01.02.2011.
2. That the meeting of PSB was convened on 24.03.2017 for considering the promotion to BPS-20; the petitioner was considered but deferred for the reasons of (i) Pending Inquiry, & (ii) Adverse PER for the Year 2015. Copy of the Minute of PSB dated 24.03.2017 is attached as Annexure-A.
3. That again on 28.12.2017, the petitioner's promotion was deferred for the above two reasons. It is worth to mention here that the service appeal No. 530/2017 regarding PER was subjudice before the Khyber Pakhtunkhwa Service Tribunal, which was finally decided on 16.02.2018 and the Service Appeal of the petitioner was accepted. Copies of PSB Minutes 28.12.2017 and Service Tribunal Judgment dated 16.02.2018 are attached as Annexure- B & C.
4. That the PSB, again for the 3rd time, deferred the promotion of the petitioner to BPS-20 vide its decision dated 03.05.2018 for the above mentioned two reasons (i) Pending Inquiry & (ii) Adverse PER of the Year 2015, without taking into consideration the decision of Service Tribunal dated 16.02.2018 regarding expunction of Adverse PER for the Year, 2015. Copies of PSB Minutes dated 03.05.2018 is attached as Annexure-D.
5. That in the meantime, the pending inquiry was conducted and the penalty of "Censure" was imposed upon the petitioner, vide order dated 03.10.2018. The petitioner filed Departmental Review against that which was also rejected on 07.01.2019. The petitioner filed Service Appeal No. 221/2019 against that in the Khyber Pakhtunkhwa Service Tribunal. Copies of orders dated 3.10.2018, 07.01.2019 and Memo of Service Appeal are attached as Annexure-E, F & G.

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ATTESTED
EXAMINER
Peshawar High Court

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6. That for the 4th time, the PSB recommended deferment of the petitioner vide PSB meeting dated 17.09.2018, mere on the basis of recommendation of the penalty of Censure, which was not yet finally confirmed till 03.10.2018. Copy of the PSB minutes dated 17.09.2018 is attached as Annexure-H.
7. That on ²⁶02.12.2018 (5th time) the PSB again made the base of "Censure" and deferred the promotion of the petitioner despite the fact that the review petition of the petitioner against censure was pending decision before the worthy Chief Minister, Khyber Pakhtunkhwa. Copy of PSB minutes is attached as Annexure-I.
8. That vide decision dated 19.04.2019 of the PSB, the promotion of the petitioner was deferred again for the 6th time, on the basis of pending inquiry in which penalty of Censure was imposed and weak record (without any specifications). Copy of the minute dated 19.04.2019 is attached as Annexure-J.
9. That on 23.09.2019, (7th time), the PSB Considered the petitioner and recommended "Supersession" on the basis of pending inquiry in which penalty of "Censure" was awarded to petitioner weak record (without specification). It is also worth to mention here that he service Appeal No. 221/2019, against the penalty Censure was accepted in favour of petitioner on 29.11.2019. Copies of PSB minutes and Service Tribunal Judgment are attached as Annexure-K & L.
10. That the petitioner filed Review against the PSB's decision of "Supersession" on 16.12.2019 which was finally decided on 07.05.2020 wherein, the penalty of "Censure" was set aside, the petitioner was exonerated, but the view of "Supersession" was maintained. Copies of Review Petitioner and decision dated 07.05.2020 are attached as Annexure-M & N.
11. That having no other remedy against the acts/omissions of the respondents and the bar contained in Section 4(b)(i) of Khyber Pakhtunkhwa Service Tribunals Act, 1974, the petitioner is constrained to come to this august Court on the following grounds amongst the others.

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ATTESTED
Peshawar High Court

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GROUNDS:

- A) That the decision dated 23.09.2019 of PSB Supersession for petitioner and the order dated 07.05.2020 to the extent of maintaining supersession are illegal, against the Law, facts and norms of justice, therefore, liable to be set-aside.
- B) That the reasons on the basis of which the petitioner was deferred from promotion 6th times and supersession, were no more in existence, especially when the decision regarding PER of the Khyber Pakhtunkhwa Service Tribunal come on 16.02.2018 and regarding Censure come on 16.02.2019, followed by the order of "Exoneration" passed by Competent Authority on 07.05.2020. Thus the petitioner was penalized and superseded for no fault on his part.
- C) That the illegal decision of Supersession against the petitioner is totally unlawful, and without any cogent reasons, which will ultimately affect the seniority of the petitioner and that too for no convincing reasons. Thus the orders of supersession are against the spirit of verdict of Honorable Supreme Court of Pakistan, reported as 1991 SCMR, 2330(d).
- D) That there are many judgments of this august Court and Honorable Apex Court, where in it has been held that promotion cannot be denied on the basis of "Pending Inquiry" judgment reported as 2016 PLC (C.S) 569, 2000 SCMR 645 & 2008 PLC (C.S) 551.
- E) That even in various judgments reported as 2009 PLC (C.S) P#40, 2008 PLC (C.S) 637, 2006 (PLJ) SC-1429 & 2013 PLC (C.S) 223 the promotion being not a hindrance in way of promotion. Thus the petitioner has been deprived from his genuine rights of promotion since 2017 by illegal exercise of powers by the respondents.
- F) That the petitioner has been penalized several times for the one and same reason which has already been struck down by the competent forum. Thus the acts/omissions of the respondents are against the spirit of Article-2A, 4, 9, 25 & 38 of the Constitution.
- G) That the Honorable Supreme Court of Pakistan is case reported as 2010 SCMR-1301 has held that in matter of promotion, rules are to be followed and where the discretion of authority is involved then that must be exercised with fairness. It is also held in the said judgment that promoting the juniors by ignoring seniors will not advance the object of achieving good governess. It is further

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EXAMINED
Peshawar High Court

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pointed out in the said judgment that the Constitution is the supreme Law and there is no room to allow the authority to make departure from law, rules and Article 4 and 25 of the Constitution.

- H) That the august Supreme Court of Pakistan in case reported as 2013 SCMR 1752(d) had held that the term "life" also includes reputation, status and all other ancillary privileges conferred on a citizen by law. Thus the decisions of not promoting the petitioner without any just and fair reasons is violative to the Article 9 of the Constitution of Pakistan because the same affected the status and reputation of petitioner amongst the batch mates and other service fellows.
- I) That even in latest Judgment of the Honorable Supreme Court reported as PLD 2013 (SC)-195. (Case of Anita Turab), it is held that the statutory provisions, rules regulations which govern the matter of appointment of civil servants must be followed honestly and scrupulously. Whereas the respondents have violated the Rules of 1997 which governs the petitioner's rights and as such, the notification dated 20.11.2014 whereby juniors have been promoted, is liable to be set-aside.
- J) That recently this august Court has dealt with the matter of similar nature on 27.02.2018 in writ petition No: 21/2015 titled Mazhar Sajjad wherein in Para-4 the august Court held that *"In view of the aforementioned material brought on record, cases of both the petitioners (Mazhar Sajjad & Musa Wazir) would require reconsideration in the light of their service record for their notional promotion since they have retired from service in the meantime. As such, the cases of both the petitioners are referred again to the PSB for reconsideration in the light of material brought by them on the record, after objective assessment of their service record, where-after the authority i.e. the Chief Secretary, Khyber Pakhtunkhwa shall pass a speaking order, with reason, within a reasonable time frame, enabling the petitioners to avail remedy available to them under the law, if they still felt aggrieved from the final order in their case."* The writ petitions are disposed off, accordingly. Copy of judgment is attached as Annexure-O.
- K) That the petitioner has been made to suffer for his promotion in an illegal and fanciful manner, which is not permissible in the eyes of Law.

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05 JUN 2020

ATTESTED

Peshawar High Court

L) That the petitioner seeks permission to advance other grounds and proof at the time of hearing.

It is, therefore, most humbly prayed that on acceptance of this writ Petition, the august Court may be pleased to:-

- I. **Declare** the PSB decision dated 23.09.2019 and order dated 07.05.2020 to the extent of maintaining supersession as illegal, unlawful, discriminatory, without any justification, as the petitioner's PER was expunged & Censure was converted into Exoneration by the Tribunal and authority and there exists no reason to deny the promotion to BPS-20 to the petitioner from his due date (2017).
- II. **Direct** the respondents to consider the petitioner for promotion to BPS-20 w.e.from 2017 with all back and consequential service benefits.
- III. Any other remedy deems appropriate that may also be awarded in favour of petitioner.

PETITIONER

Muhammad Karim

THROUGH:

(M. ASIF YOUSAFZAD)
ADVOCATE SUPREME COURT,
OF PAKISTAN.

[Signature]
FILED TO BE TRUE COPY

General, District, Peshawar
Magistrate Under Article 87 of
the Constitution Order 1997

10 NOV 2021

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Deputy Registrar
05 JUN 2020

Annex P

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BEFORE THE HONORABLE PESHAWAR HIGH COURT, PESHAWAR.

W.P. No. 2670-P/2020
Muhammad KarimPetitioner

Versus

Govt. of Khyber Pakhtunkhwa
Through Secretary & Director,
Higher Education Department & OthersRespondents

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10.	Minutes of PSB Dated 23.09.2019	H	19
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Deputy Registrar

06 JAN 2021

RE-FILED TODAY

Deputy Registrar

27 JAN 2021

Respondents

Superintendent

Directorate of Higher Education
Khyber Pakhtunkhwa Peshawar

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**DIRECTORATE OF HIGHER EDUCATION
KHYBER PAKHTUNKHWA
RANO GHARI, CHAMKANI STOP, PESHAWAR**


Tel # 091-2650024 / Fax # 091-2260181
E-mail:- dhekpsh@gmail.com Facebook.com/dhekpshawar Twitter.com/dhekpshawar1

AUTHORITY LETTER

Mr. Jehanzeb Awan, Superintendent, Directorate of Higher Education, Peshawar bearing CNIC No. 17301-1534019-7 is hereby authorised to submit parawise comments in WP No. 2670-P/2020 Muhammad Karim versus Govt. of Khyber Pakhtunkhwa on behalf of respondents.



Director,
Directorate of Higher Education
Respondent No. 08

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Deputy Registrar
06 JAN 2021

(SL)

BEFORE THE HONOURABLE PESHAWAR HIGH COURT, PESHAWAR.

WP # 2670-P/2020

Muhammad Karim..... Petitioner

Versus

Govt. of Khyber Pakhtunkhwa
Through Secretary, Director,
Higher Education &
others.....

Respondents

SUBJECT: PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO.4 & 5

PRELIMINARY OBJECTIONS: -

Respectfully Sheweth: -

1. That, the Petitioner has got no locus standi/cause of action, to file the instant petition.
2. That, the petitioner has not come to the court with clean hands and trying to conceal material facts.
3. That this Honourable Court lacks jurisdiction to entertain the present petition in hand and best available remedy with the petitioner is Service Tribunal because it relates to service matter.
4. That the present petition is hit by doctrine of Laches.
5. That the petitioner is estopped by his own conduct to file the present petition.

Facts: -

- 1- Pertains to record.
- 2- Correct to the extent that the promotion case of the petitioner was placed before the Provincial Selection Board (PSB) in its meeting held on 24.03.2017 but the Board recommended to defer his case for promotion to BPS-20 due to pending inquiry and weak service record. (Annex-A)
- 3- Correct to the extent that the case of the petitioner was again deferred by the Provincial Selection Board that an inquiry was pending against him and his service record was also weak as his efficiency index was 45.47 which is below the required threshold. (Annex-B) The required threshold for BPS-20 is 70.
- 4- Correct to the extent that the petitioner was deferred for 3rd time due to same reason i.e. pending inquiry and weak service record. (Annex-C)
- 5- Correct.
- 6- Correct to the extent that the case of the petitioner was again placed before the Provincial Selection Board in its meeting held on 17.09.2018 as the Board was informed that an inquiry was pending against him. At the time of meeting of Provincial Selection Board, the disciplinary proceedings were not finalized and lastly a minor penalty "censure" was imposed upon the petitioner vide notification dated 03.10.2018. (Annex-D)
- 7- Correct to the extent that Provincial Selection Board in its meeting held on 26.12.2018, deferred the promotion of the petitioner as his efficiency index was 48.17 which is below the required threshold. (Annex-E)

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Deputy Registrar

06 JAN 2021

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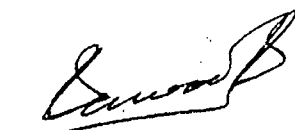
- 8- Correct to the extent that the Provincial Selection Board in its meeting held on 19.04.2019, deferred the promotion of the petitioner due to his weak service record as his efficiency index was 48.05 below the required threshold. (Annex-F) The Board recommended to watch the performance of the petitioner. (Annex-G)
- 9- Correct to the extent that the Provincial Selection Board in its meeting held on 23.09.2019 superseded the petitioner due to his weak service record as his efficiency index was 48.05 below the required threshold and the Board desired to further watch the performance of the petitioner (Annex-H). Moreover, as per ESTA Code, if a civil servant is superseded he shall not be considered for promotion until he earns one year PER for the ensuing one full year. (Annex-I)
- 10- Correct to the extent that the petitioner has been exonerated from minor penalty of censure vide notification dated 07.05.2020 in light of Service Tribunal decision but as far as the Supersession is concerned, it is the domain of the Provincial Selection Board.
- 11- Needs no comments.


Grounds: -


- A) Incorrect. The Provincial Selection Board acted in accordance with rules/law.
- B) Already explained in preceding paras of Facts.
- C) Already explained in preceding paras of Facts.
- D) Each and every case has its own facts and grounds which needs to be decided on merit. The petitioner is trying to mislead the Hon'ble court. The petitioner was deferred due to pending inquiry as well as weak service record.
- E) Already explained in preceding paras of Facts & Grounds.
- F) Already explained in preceding paras of Facts & Grounds.
- G) Already explained in preceding paras of Facts & Grounds.
- H) Already explained in preceding paras of Facts & Grounds.
- I) Already explained in preceding paras of Facts & Grounds.
- J) Needs no comments.
- K) Incorrect as already explained in the preceding paras of facts and grounds.
- L) That respondent may be allowed to raise additional grounds at the time of arguments.

Prayers: -

It is, therefore, humbly prayed that the instant writ Petition is based on misconception/misstatements, hence may graciously be dismissed withcosts.


Secretary,
 Higher Education Department
 Respondent No.4


Director,
 Higher Education Department
 Respondent No.5

FILED TODAY

 Deputy Registrar
 06 JAN 2021



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BEFORE THE HONORABLE PESHAWAR HIGH COURT, PESHAWAR.

W.P. No. 2670-P/2020

Muhammad KarimPetitioner

Versus

Govt. of Khyber Pakhtunkhwa
Through Secretary & Director,
Higher Education Department & Others Respondents

AFFIDAVIT

I, Jehanzeb Awan, Superintendent (Litigation), Higher Education Department do hereby declare and affirm on oath that the contents of Para Wise Comments are correct to the best of my knowledge and belief and that nothing has been concealed from this Honourable Court.

Identified by:

[Signature]
Adm. General
K-R-K-Per
06/11/21

[Signature]
Deponent

Superintendent
Directorate of Higher Education
Khyber Pakhtunkhwa Peshawar

17301-1534018-7

0300-5901399

FILED TODAY
[Signature]
Deputy Registrar
06 JAN 2021

16509

Certified that the contents is verified on solemn affirmation before me this 06 day of Jan 21 Jehanzeb Awan s/o Supdt Peshawar who was A.G. Who is person, name:

[Signature] 06/11/2021
Commissioner
Peshawar High Court

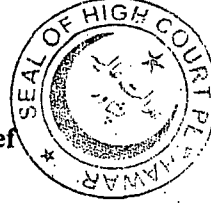
JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

W.P. No.2670-P/2020

Muhammad Karim

Vs.

**The Government of Khyber Pakhtunkhwa through its Chief
Secretary, Peshawar and others**



Anex Q
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Date of hearing **03.11.2021**
Petitioner(s) by: **Muhammad Asif Yousafzai, Advocate.**
Respondent(s) by: **Muhammad Riaz Khan, AAG.**

JUDGMENT

IJAZ ANWAR, J. This writ petition has been filed
under Article 199 of the Constitution of Islamic Republic of
Pakistan, 1973, with the following prayer:-

*"It is, therefore, most humbly prayed that on acceptance
of this writ petition, the august Court may be pleased
to:-*

- i. Declare the PSB decision dated 23.09.2019 and
order dated 07.05.2020 to the extent of
maintaining supersession as illegal, unlawful,
discriminatory, without any justification, as the
petitioner's PER was expunged & Censure was
converted into Exoneration by the Tribunal and
authority and there exists no reason to deny the
promotion to BPS-20 to the petitioner from his
aue date (2017).*
- ii. Direct the respondents to consider the petitioner
for promotion to BPS-20 w.e.f. 2017 with all
back and consequential service benefits.*
- iii. Any other remedy deems appropriate that may
also be awarded in favour of the petitioner".*

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ATTESTED

EXAMINER
Peshawar High Court

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2. In essence, petitioner is aggrieved of the actions of the respondents who time and again denied him promotion to the post of Professor (BPS-20) on the ground of pending inquiry against him, entry of adverse remarks in ACR for the year, 2015, weak service record and penalty of censure.

3. Comments were called from respondents who submitted the same, wherein, they opposed the issuance of desired writ asked for by the petitioner.

4. Arguments heard. Record perused.

5. Perusal of the record reveals that petitioner has called in question the decision of the Provincial Selection Board dated 23.09.2019 (hereinafter to be referred as "the PSB"), whereby, he was, though, considered for promotion but recommended for supersession. It would be relevant to reproduce the relevant para pertaining to the recommendations of "the PSB" as under:-

"His date of birth is 01.02.1966. He joined Government service as Lecturer on 01.09.1991. He was promoted to BS-19 on 01.02.2011. He has undergone training mandatory for promotion. The Board in its meeting held on 24.03.2017, 28.12.2017, 03.05.2018, 17.09.2018, 26.12.2015 and 19.04.2019 recommended to defer his promotion as the Board was informed that an enquiry was pending against him in which he has been subsequently awarded a penalty of censure and his service record was also weak. Hence, the Board desired to further watch his performance. Position is still the same".

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ATTESTED

EXAMINER

PESHAWAR JUDICIAL OFFICE

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6. From the perusal of the minutes of "the PSB" meeting dated 23.09.2019, it appears that initially on 24.03.2017, 28.12.2017, 03.05.2018, 17.09.2018, 26.12.2018 and 19.04.2019, the petitioner's case for promotion was deferred by "the PSB" on the ground that an inquiry is pending against him; however, vide the impugned recommendations of "the PSB", he was superseded on the ground that a penalty of censure was awarded to him and that his service record was also weak.

7. Admittedly, petitioner was awarded a minor penalty of "censure" vide order dated 03.10.2018, pursuant to departmental proceedings initiated against him under the Government Servants (Efficiency & Discipline) Rules, 2011, however, against the said order, he has approached the Khyber Pakhtunkhwa Service Tribunal, Peshawar by filing Appeal No.221/2019 which was decided on 29.11.2019 and accordingly, the order of penalty of censure dated 03.10.2018 was set-aside. The Competent Authority, accordingly, implemented the said judgment of the Khyber Pakhtunkhwa Service Tribunal vide Notification dated 07.05.2020 and exonerated the petitioner of the charges, however, his request for conversion of supersession into deferment was declined vide the said Notification.

8. In the comments, it has been disclosed that petitioner was again considered for promotion by "the PSB" in its meeting held on 12.06.2020 and this time, the Board

ATTESTED

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Peshawar High Court

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has decided to keep him on performance watch till the next PSB meeting and the Board did not consider him for promotion.

9. The main case of the petitioner is pertaining to his promotion from the post of Associate Professor (BPS-19) to the post of Professor (BPS-20). According to the Service Rules, the following pre-requisite criteria is mentioned:-

- i. *By promotion on the basis of seniority cum fitness from amongst the persons holding the post in BS-19 in the college cadre Higher Education Department, with atleast seventeen (17) years service in BS-17 and above; provided that in case of persons initially appointed in BS-18 or BS-19, the length of service for promotion in their cases shall atleast be twelve (12) years in BS-18 and above or five (05) years in BS-19, as the case may be.*
- ii. *Successful completion of mandatory training prescribed by the Govt. for Colleges Teachers in BS-19 from time to time. College cadre teachers in BS-19 and BS-20 will also be exempted from the mandatory training after attaining the age of 58 years or above.*

10. The question before this Court is not regarding the eligibility of the petitioner for promotion, because, admittedly, he is a senior most officer and fulfills the criteria, mentioned in the recruitment rules; however, the objection of the respondents is on his fitness. The reasons, mentioned in the minutes of "the PSB" meeting are that ever since his earlier consideration on 24.03.2017, inquiry is

ATTESTED
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pending against the petitioner and similarly, his adverse ACR for the period starting from 01.01.2015 to 31.12.2015. The judgment dated 16.02.2018 of the Khyber Pakhtunkhwa Service Tribunal, Peshawar passed in Appeal No.530/2017 transpires that the said ACR for the year, 2015 was set aside.

11. Now the only reason on the basis of which petitioner has not been considered for promotion in the last PSB meeting, is that his service record is weak. The synopsis of the ACRs of the petitioner, commencing from the year 1991 till the year 2015, transpires that except for the year, 2015, he was throughout rated as "good" and "very good officer" and besides, adverse ACR for the year, 2015 has since been set-aside by the Khyber Pakhtunkhwa Service Tribunal, Peshawar, as such, remarks of the Reporting Officer are to be given weight where he has ranked him as "very good officer".

12. In view of the above, when neither there is any penalty against the petitioner left in the entire service record nor any adverse entries then there was no reason for the respondents to have declined his request for the conversion of his supersession into deferment.

13. The learned AAG representing the respondents remained unable to bring on the record anything in black and white to support the allegation that petitioner has weak service record.

ATTESTED

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14. For what has been discussed above, we are of the considered opinion that Notification dated 07.05.2020 issued by the Secretary, Higher Education Department, Peshawar to the extent, whereby, petitioner's request for conversion of his supersession into deferment was declined, is not sustainable. He shall be deemed deferred for promotion at the relevant time. Accordingly, we allow and dispose of this writ petition with direction to the respondents to place the case of the petitioner for promotion to the post of Professor (BPS-20) in the forthcoming meeting of "the PSE" and to consider his case for promotion strictly in accordance with law.

Announced
Dt:03.11.2021

[Signature]
Senior Puisne Judge

[Signature]
Judge

(DB) Hon'ble Mr. Justice Rooh-ul-Amin Khan and Hon'ble Mr. Justice Ijaz Anwar

Muhammadullah

[Signature]
CERTIFIED TO BE TRUE COPY

Examiner,
Peshawar High Court, Peshawar
Authorized Under Article 97 of
the Qanun-e-Shahadat Order 1988

10 NOV 2021

1300/-
Date of Presentation of Application 05/11/2021
No of Pages 12-1
Copying fee 12/-
Total 48/-
Date of Preparation of Copy 10/11/2021
Date of Delivery of Copy 10/11/2021
Received By Mr. Nadeem



**GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(Establishment Wing)**

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TO BE SUBSTITUTED WITH THE NOTIFICATION BEARING THE SAME NO. & DATE

DATED PESHAWAR, THE JANUARY 18, 2022

NOTIFICATION

NO. SO(E)-IE&AD/9-88/HED/2022. The Competent Authority on the recommendations of the Provincial Selection Board in its meeting held on 02.12.2021, is pleased to promote the following Male Associate Professors (BS-19) to the post of Professors (BS-20) (College Cadre) of Higher Education Department on regular basis, with immediate effect.

S. No.	NAME OF OFFICER	S. No.	NAME OF OFFICER
1.	Mr. Muhammad Karim	39.	Mr. Hussain Ahmad
2.	Mr. Zaman Sher	40.	Mr. Mumtaz Ali
3.	Mr. Muhammad Sadiq	41.	Mr. Sadiq Akbar
4.	Mr. Jehan Sher	42.	Mr. Muhammad Sadiq
5.	Dr. Muhammad Afab	43.	Mr. Iqbal Hussain
6.	Mr. Jawas Khan	44.	Mr. Salfat Malik
7.	Mr. Akhtar Jan	45.	Mr. Rustam Khan
8.	Hafiz Naeem Ur Rehman	46.	Mr. Hamayun Khan
9.	Mr. Shahid Ahmad	47.	Mr. Arab Ali
10.	Mr. Muhammad Bilal	48.	Mr. Akhtar Gul
11.	Mr. Umar Nawaz	49.	Mr. Altaf Jan
12.	Mr. Nawazish Ali	50.	Mr. Akram Khan
13.	Mr. Naeemullah	51.	Qazi Abbas Subhan
14.	Mr. Badruz Zaman	52.	Mr. Muhammad Ibrahim Khalid
15.	Mr. Muhammad Basir Khan	53.	Syed Hasnain Abbas
16.	Mr. Damsaz Khan	54.	Mr. Zahoor Ud Din
17.	Mr. Muhammad Jehan	55.	Mr. Shafi Ur Rehman
18.	Mr. Muhammad Riaz	56.	Mr. Aurangzeb
19.	Mr. Saadullah Khan	57.	Mr. Sarfaraz Khan
20.	Mr. Muhammad Raees Khan	58.	Mr. Sher Zaman
21.	Mr. Muhammad Azam	59.	Mr. Azad Khan
22.	Mr. Abdul Jilil	60.	Syed Amjad Ali
23.	Mr. Muhammad Nazir	61.	Mr. Arshid Hervez
24.	Mr. Jehan Khan	62.	Mr. Ibrahim Khan
25.	Mr. Ghulam Nabi	63.	Syed Aftab Raza Zaidi
26.	Mr. Sher Muhammad Khan	64.	Mr. Abdul Karim
27.	Syed Adil Hussain Shah	65.	Mr. Muhammad Ismail
28.	Mr. Gul Munir Khan	66.	Mr. Sherif Farooq
29.	Mr. Shafiq Ur Rehman	67.	Mr. Moeen Ullah Khan
30.	Mr. Muhammad Javed	68.	Mr. Mumtaz Haider
31.	Mr. Muhammad Sadiq	69.	Syed Irfan Saffar
32.	Mr. Rafiq Ahmad	70.	Mr. Nowhser Khan
33.	Mr. Mushtaq Ahmad	71.	Mr. Abbas Gul
34.	Mr. Mukammil Khan	72.	Malik Nair Daud
35.	Mr. Bedar Munir	73.	Mr. Abdur Rehman
36.	Mr. Tasbiullah	74.	Mr. Bakht Ali Khan
37.	Mr. Ayub Zarin	75.	Mr. Abdul Shakil
38.	Mr. Aman Ullah Khan		

(Continued at Page-2)



GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(Establishment Wing)

(Page-2)

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.

3. Posting/Transfer of officers will be issued later on.

CHIEF SECRETARY
GOVERNMENT OF KHYBER PAKHTUNKHWA

Endst. No. SOIE-I) E&AD/9-88/HED/2022

DATED 19.01.2022

Endst. No. and date even.

Copy forwarded to the:-

1. Principal Secretary to Governor, Khyber Pakhtunkhwa.
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. Secretary to Government of Khyber Pakhtunkhwa, Higher Education Department.
4. Accountant General, Khyber Pakhtunkhwa.
5. Director, Higher Education, Khyber Pakhtunkhwa, Peshawar.
6. Director General, Information, Khyber Pakhtunkhwa.
7. PSO to Chief Secretary, Khyber Pakhtunkhwa.
8. PS to Chief Secretary, Khyber Pakhtunkhwa.
9. PS to Secretary Establishment.
10. PS to Special Secretary (Estt.) (Regulation) Establishment Department.
11. Officers concerned.
12. Manager, Govt. Printing Press, Peshawar.

(ZIA-UL-HAQ)

SECTION OFFICER (ESTT. I)

PH: # 091-9210529

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To,

The Chief Minister,

Govt. of Khyber Pakhtunkhwa, Peshawar.

SUBJECT:- REVIEW PETITION AGAINST NOTIFICATION NO.

SO(E-I) E &AD/9-88/HED/2022,DATED PESHAWAR,

THE JANUARY 18,2022

Through proper channel

Respected Sir,

(Assalam-o-Alaykum)

With best regards and respect it is stated that I was superseded in the PSB meeting held on 23/09/2019 due to repeated deduction of three marks on the basis of minor penalty of censure from my total quantified score on the basis of grading of ACRs/PERs(Annexure-A). Consequently I lost my seniority among the male associate Professors of Higher Education Department. A departmental appeal in the form of review petition, was submitted through proper channel to the competent authority, which was rejected vide notification NO.SO(C-1/HE/1-2/Summary For CM/2017/Muhammad Karim, on 07/05/2020 by the Secretary Higher Education Department.(Annexure- B)

It is further stated that I filed writ petition No. 2670/2020 in the August Peshawar High Court, Peshawar with the following three prays.

- (i).Consideration of the Petitioner for promotion to BPS-20 from due date.
- (ii).To declare the decision of supersession of the PSB meeting held on 23/09/2019 and consequently order of 07/05/2020 passed on review petition as illegal, unlawful, discriminatory and against the protected rights of the petitioner.
- (iii).Any other remedy deemed appropriate.

The above mentioned writ petition was decided on 03/11/2021 which says,

“For what has been discussed above we are of the considered opinion that notification dated 07/05/2020, issued by the Secretary Higher Education Department, Peshawar to the extent, whereby, petitioner request for conversion of his supersession into deferment was declined, is not sustainable. He shall be deemed deferred for promotion at the relevant time.

That appellant, Mr. Muhammad Karim, Associate Professor of Statistics was posted as Principal Govt. Degree College Lachi (Kohat) on 01/01/2015. That in the PER (Performance Evaluation Report) for the year 2015, from 01/01/2015 to 31/12/2015, adverse remarks (Below Average) were recorded, including unfitness for promotion by the Countersigning officer, the then Secretary Higher Education without any prior warning and counseling to the appellant. Departmental appeal against adverse remarks was filed on 17/02/2017 which was rejected on 18/04/2017 by the then Chief Secretary Govt. of Khyber Pakhtunkhwa, Peshawar. Therefore, Service Appeal No. 530/2017 was submitted on 16/02/2018 in the Khyber Pakhtunkhwa Service Tribunal, Peshawar, which was accepted and the impugned order of 16/02/2017 was set aside on 16/02/2018 and resultantly the said adverse remarks were expunged the Govt. of Khyber Pakhtunkhwa vide office order of dated 02/07/2018 in the light of the judgment of the Khyber Pakhtunkhwa Service Tribunal, Peshawar.

That a written anonymous complaint against the Principal GDC Lachi (Kohat) was sent to various concerned quarters, and then disciplinary proceedings under E & D rules were conducted against the appellant and finally minor penalty of "Censure" was awarded to him vide official letter of dated 03/10/2018, feeling aggrieved departmental appeal in the form of review petition was submitted on 24/10/2018, which was regretted by the competent authority on 07/01/2019. Therefore service appeal No. 221/2019 was filed in the Khyber Pakhtunkhwa Service Tribunal on 01/02/2019, which was finally accepted on 29/11/2019 and the impugned orders of 03/10/2018 and 07/01/2019 were set aside which was implemented by the Competent Authority on 07/05/2020 in the light of judgment of 29/11/2019.

That in the mean while the appellant was superseded by the Provincial Selection Board during the promotion of Male Associate Professor BS-19 to the post of Professor BS-20 of College Cadre on 23/09/2019 due to illegal, unlawfull repeated deduction of three marks on the basis of minor penalty of Censure which was against the fundamental Right No.13 which simply says that nobody can be penalized more than once on the basis of the same penalty, therefore Reiew Petition for conversion of supersession into deferment was submitted to the Govt. of Khyber Pakhtunkhwa which was rejected by the Competent Authority vide office order of dated 07/05/2020. Feeling aggrieved Writt Petition No. 2670/2020 was submitted in the Peshawar High Court and was finally decided by converting Supersession into deferment on 03/11/2021.

That Review Petition for the implementation of the judgment of the Peshawar High Court was submitted on 08/02/2022 to the Govt. of Khyber Pakhtunkhwa and three months (90 days) has been expired but nothing has been received in this regard.

Accordingly we allow and dispose of this writ with direction to the respondents to place the case of the petitioner for promotion to the post of professor (BPS-20) in the forthcoming meeting of the PSB and to consider his case for promotion strictly in accordance with Law." (Annexure-C)

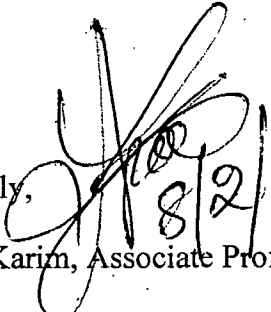
It is further brought into your kind notice that a meeting of the Scrutiny Committee was held on 08/12/2021 in the office of the Secretary Law, Parliamentary Affairs & Human Rights Department where the above mentioned writ No. 2670/2020 of the petitioner was declared as unfit for filing of Appeal/CPLA in the Supreme Court of Pakistan.(Annexure-D)

Sir, it is pertinent to note that current promotion notification of seventy five male Associate Professors (BPS-19)(College Cadre) of Higher Education Department to the post of Professors (BPS-20) on the recommendation of PSB meeting held on 02/12/2021, has been issued by the Chief Secretary Govt of Khyber Pakhtoonkhwa on 18/01/2022. As I am at the serial No.01 of the notification, all the Professors have been promoted with immediate effect.(Annexure-E)

Since my supersession of 23/09/2019 has been converted into deferment by the Peshawar High Court in the light of the judgment, announced on 03/11/2021 which is still in field and the Govt. is bound to implement the judgment in letter and spirit.

In the view of the above, it is, therefore, stated that in deferment of promotion, seniority is not damaged and it remains intact. During my deferment many junior male associate professors (BPS-19) have been promoted to the post of Professors (BPS-20). It is therefore requested to antedate my promotion to EPS-20 with effect from 10/07/2017 with all back and consequential benefits because I was at serial No 19 after Mr. Muhammad Hassan according to the notification of the PSB meeting held on 24/03/2017 when my promotion was deferred for the first time.

HED.
Distry No. 1803
Dated. 8-2-2022.

Yours Sincerely,

8/2/2022
Muhammad Karim, Associate Professor of Statistics
Govt Post Graduate College Kohat, Dated 05/02/2022

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**JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT**

W.P No.21-P/2015

JUDGMENT

Date of hearing.....27.02-2018.....

Petitioner: (Mazhar Sajjad) By Mr. Muhammad Asif Yousafzai,
Advocate.

Respondents: (The Government of Khyber Pakhtunkhwa
through the Chief Secretary, Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar) By Mr. Arshad Ahmad
Khan, AAG.

QALANDAR ALI KHAN, J.- Mazhar Sajjad,
petitioner in the instant writ petition, and Musa Wazir,
petitioner in the connected W.P No.1111-P/2015,
were in PCS (Executive Group) in BPS-19 and shared
the common characteristics of names of both the
petitioners having been placed before the PSB, name
of the petitioner in the instant writ petition at Sr.No.1
of the final seniority list of officers of PCS
(Executive Group) BS-19, whereas name of petitioner
in the connected W.P No.1111-P/2015, Musa Wazir,
at Sr.No.6 of the said seniority list; but both of them
were superseded and officers junior to them
promoted to BPS-20 by the PSB in its meeting held on
14.11.2014. There is another common feature in the
cases of both the said petitioners that they both have

since retired from service on attaining the age of superannuation. In these writ petitions, they have assailed decision of the PSB to supersede them, and promote officers junior to them. Therefore, this single judgment shall dispose of both the writ petitions, involving identical issues for determination.

2 In their para-wise comments in both the writ petitions, respondents No.1 and 2 i.e. the Chief Secretary and Secretary Establishment resisted the writ petitions on the ground that both the petitioners failed to meet the threshold for promotion and were therefore not fit for promotion only on the basis of their seniority; because for promotion an officer was required to meet the criteria of seniority-cum-fitness.

In the instant writ petition, the stance of the respondents was that the officer had a blend of average and good PERs in the present and preceding grade, while pointing out other weak points in the personality, work and conduct of the petitioner; whereas, in the case of Musa Wazir, the petitioner in the connected W.P No.1111-P/2015, the Board had observed that the officer during the last ten years remained good only.

3 The petitioners, on the other hand, claimed that they were not only senior most but also had unblemished record of service and integrity at their

credit, which was not taken into consideration by the PSB, and officers junior to them were promoted in violation of the relevant law/rules and judgments of the superior Courts. In the instant writ petition, the petitioner claimed that earlier too, in the year 2006, he was promoted to BPS-18 with immediate effect, and that his appeal to the Khyber Pakhtunkhwa Service Tribunal was accepted with direction to the respondents to antedate his promotion from the date when his juniors were promoted and further that the judgment in his favour was also upheld by the Honourable Supreme Court of Pakistan. In the connected writ petition, petitioner Musa Wazir brought on record the synopsis of his PERs from the year 2008 to the year 2014, also showing very good ACR to his credit, which would belie assertion of the respondents and observation of the PSB "*that the officer during the last ten years remained good only*".

4 In view of the aforementioned material brought on record, cases of both the petitioners would require reconsideration in the light of their service record for their notional promotion since they have retired from service in the meantime. As such, the cases of both the petitioners are referred again to the PSB for reconsideration in the light of material brought by them on the record, after objective

assessment of their service record, where-after the authority i.e. the Chief Secretary, Khyber Pakhtunkhwa, shall pass a speaking order, with reasons, within a reasonable time frame, enabling the petitioners to avail remedy available to them under the law, if they still felt aggrieved from the final order in their case. The writ petitions are disposed of, accordingly, in the above stated terms.

Announced
27-02-2018


JUDGE


JUDGE

Ayub

(D.B)

Hon'ble Mr. Justice Ikramullah Khan.
Hon'ble Mr. Justice Qalandar Ali Khan.

VAKALAT NAMA

NO. _____/20

IN THE COURT OF KP Service Tribunal, Peshawar.

Muhammed Kareem (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Govts of KP & others (Respondent)
(Defendant)

I/We, Muhammed Kareem appellant

Do hereby appoint and constitute **M. Asif Yousafzai, Advocate Supreme Court Peshawar**, 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 costs.

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. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/20

ASAD MAHMOOD
Advocate High Court

(CLIENT)

ACCEPTED

M. ASIF YOUSAFZAI
Advocate Supreme Court Peshawar.

&
TAIMUR ALI KHAN
Advocate High Court, Peshawar

&
SYED NOMAN ALI BUKHARI
Advocate High Court

S. Khan &
SHAHKAR KHAN YOUSAFZAI
Advocate.

OFFICE:

Room # FR-8, 4th Floor,
Bilour Plaza, Peshawar,
Cantt: Peshawar

"A"

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

No.

APPEAL No. 868 of 20 22

Mukhammad Kazim

Appellant/Petitioner

Versus

The Govt of KP through Chief Secy

RESPONDENT(S)

Respondent no 1 The Govt of KP through
Notice to Appellant/Petitioner Chief Secretary Peshawar

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 1/8/22 at 9:00 am

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

For Reply
copy of Appeal
is Attached

[Signature]
26-7-22

[Signature]
Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

"A"

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

No.

APPEAL No.....868..... of 20 22

Muhammad Kasim

Appellant/Petitioner

Versus

The Govt. of KPK through Chief Secy.

RESPONDENT(S)

Notice to Respondent No. 2
Appellant/Petitioner

The Chief Secretary
Govt. of KPK Peshawar

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 1/8/22 at 9:00 am

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

for Reply

[Signature]
26-7-22

Registrar

Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

copy of Appeal is
Attached

"A"

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

No.

APPEAL No..... 268 of 20 22

Muhammad Karim

Appellant/Petitioner

Versus

The Govt. of KPN through Chief Secy.

RESPONDENT(S)

Respondent No. 3 the Secretary Establishment
Notice to Appellant/Petitioner.....
Deptt. Peshawar.

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You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

for Reply

copy attached is
Attached

[Signature]

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

267/22
PS/Secy E&AD KP

Diary No. _____
FTS No. _____
Date. _____

"A"

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

No.

868

APPEAL No..... of 20

20

Muhammad Karim

Appellant/Petitioner

Versus

The Govt. of KPK through Chief Secy.

RESPONDENT(S)

Respondent No. 4

Notice to Appellant/Petitioner

The Secretary Higher Education
Deptt. KPK Peshawar.

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 1/8/22 at 9:00 am

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

for Reply

copy of appeal is attached

Recd

26/7/22

Registrar,

Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

“A”

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

No.

APPEAL No. 868 of 20 22

SB

Muhammad Karim

Appellant/Petitioner

Versus

Govt of KP through Chief Secy Peshawar
RESPONDENT(S)

Respondent (S)
Notice to Appellant/Petitioner Director Higher Education
Directorate of Higher Education Peshawar.

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 17/10/2022 at 9:00 am

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

For Reply
Copy of appeal
is attached

[Signature]
Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.