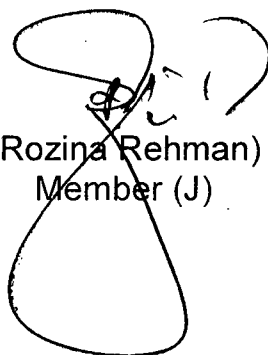


11.04.2022

Appellant present through counsel.

Perusal of record would reveal that respondent No.2 had filed Service Appeal No.4874/2021 against the present appellant and two others which was heard and decided by the D.B comprising Mr. Ahmad Sultan Tareen (Chairman) and the undersigned, therefore, it would be in the fitness of things to adjourn the case for fixation before any other S.B for orders.

Case file is respectfully sent to the Hon'ble Chairman for appropriate orders. Appellant is directed to appear before the Hon'ble Chairman on 13.04.2022.

  
(Rozina Rehman)  
Member (J)

13.04.2022

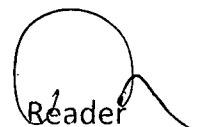
Counsel for the appellant present.

Let a pre-admission notice be issued to the respondents for reply. To come up for reply/preliminary hearing before the S.B on 08.07.2022.

  
Chairman

08.07.2022

Due to Public Holiday on account of Eid-UI-Adha case to come for the same on 13.09.2022.

  
Reader

The appeal of Mr. Nasr Ullah Khan received today i.e. on 04.04.2022 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1. Copies of Annexure A & L attached with the appeal are illegible which may be replaced by legible/better one.

No. 852 /S.T,

Dt. 5-4- /2022

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Muhammad Zafar Tahirkheli  
Advocate High Court, Peshawar.

11-04-2022

*Duly completed and re-submitted.*  
*A. A. A. A.*  
*Asc*

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

Service Appeal No. 537 /2022

Nasrullah Khan

**Versus**

Speaker etc.

=====  
**I N D E X**  
=====

S.No	Particulars	Annexure	Pages
1	Memo of Petition		1-4
2	Affidavit		5
3	Notification	dated 01-11-2021	"A" 6
4	Notification	dated 05-11-2021	"B" 7
5	Departmental appeal	dated 24-11-2021	"C" 8-10
6	Rejection Order	dated 07-03-2022	"D" 11
7	S.A No. 1324/2017	dated 10-12-2018	"E" 12-19
8	Notification	dated 25-09-2018	"F" 20
9	C.P No 354 & 120 of 2019	dated 02-07-2019	"G" 21-27
10	Notification	dated 03-09-2019	"G1" 28
11	Judgment in SA No. 937/20	dt 17-12-2020	"H" 29-36
12	Notification	dated 11-01-2021	"I" 37
13	Judgment in SA 4874/21	dated 24-09-2021	"J" 38-53
14	CPLA No. 5969/2021		"K" 54-65
15	Departmental proceedings against Resp.No. 2		"L" 66-79
16	WP No. 2914/2019	dated 21-05-2019	"M" 80-82
17	Wakalatnama		83

Peshawar, dated  
2<sup>nd</sup> April-2022

(MUHAMMAD ZAFAR TAHIRKHELI)  
ASC

(Ansar Ullah Khan)  
Advocate

①

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

Service Appeal No. 537 /2022

Nasrullah Khan  
Ex-Secretary (presently Additional Secretary) Provincial Assembly  
Secretariat of Khyber Pakhtunkhwa, Presently Additional Secretary.  
.....Appellant

**Versus**

1. Speaker Provincial Assembly Khyber Pakhtunkhwa, Peshawar.
2. Kifayatullah Khan Afridi, Secretary,  
Provincial Assembly Khyber Pakhtunkhwa, Peshawar.
3. Departmental Promotion / Recruitment Committee, through its Secretary  
Mr. Attaullah Khan Provincial Assembly of Khyber Pakhtunkhwa.  
.....Respondents

=====

**SERVICE APPEAL U/S 4 OF NWFP SERVICE TRIBUNAL ACT, 1974,  
AGAINST IMPUGNED NOTIFICATION DATED 01-11-2021, (ANNEX  
"A"), WHEREBY THE EARLIER PROMOTION ORDER OF THE  
APPELLANT WAS WITHDRAWN AND HE WAS REVERTED TO THE  
POST OF ADDITIONAL SECRETARY BPS-20, WHILE APPOINTING  
RESPONDENT NO. 2 AS SECRETARY PROVINCIAL ASSEMBLY  
SECRETARIAT KPK VIDE NOTIFICATION DATED  
05-11-2021 (ANNEX "B"), AND THE APPELLANT'S DEPARTMENTAL  
APPEAL DATED 23-11-2021 (ANNEX "C") WAS REFUSED VIDE  
ORDER DATED 07-03-2022 (ANNEX "D").**

=====

**PRAYER:** By accepting this appeal, the impugned orders dated 01-11-2021,  
05-11-2021 and 07-03-2022 may kindly be set aside and the  
appellant may be reinstated as Secretary Provincial Assembly  
BPS-21 (Now upgraded as BPS-22) with retrospective effect along  
with all the benefits of continuous service

=====

**RESPECTFULLY SHEWETH,**

1. That the appellant was selected and appointed as Secretary BPS-21 Provincial  
Assembly KPK vide notification dated 15-08-2017. The said promotion order was  
challenged by Kifayat Ullah Khan Afridi (respondent No. 2) before the KP Service  
Tribunal vide SA No. 1324 / 2017, which was accepted vide judgment and order  
dated 10-12-2018. (Copy annexed "E")
2. That it is necessary to mention, the appellant's promotion as Additional Secretary  
KP Assembly BPS-20 was also challenged by one Ghulam Sarwar vide Service  
Appeal No. 952 / 2014, which was accepted vide order dated  
14-09-2017. That the matter of appellant's promotion was once again placed  
before the DPC who was duly recommended again while allowing him promotion  
vide notification dated 25-09-2018 as Secretary BPS-21. (Copy annexed "F")

2

3. The appellant had preferred a CP No. 354/2019 before the august Supreme Court of Pakistan followed by CP No. 120-P / 2019 against the judgment and order dated 10-12-2018 passed in SA No. 1324 / 2017 by KP Service Tribunal. On the basis consensus of both the parties before the Supreme Court of Pakistan, the matter was placed once again before the DPC and resultantly, the appellant was promoted as Secretary BPS-21 on regular basis vide notification dated 03-09-2019. **(Copy annexed "G" & "G1" )**
4. The notification dated 03-09-2019 was once again challenged by respondent No. 2 before the KP Service Tribunal in Service Appeal No. 937 / 2020, wherein the Hon'ble Tribunal vide judgment dated 17-12-2020 directed to reconstitute the DPC. **(Copy annexed "H")**
5. That the DPC was convened which held its meeting on 10-01-2021, wherein the appellant being found fit and eligible was unanimously recommended for promotion as Secretary BPS-21 by a high profile selection committee. Resultantly, the promotion of the appellant was notified on 11-01-2021. **(Copy annexed "I")**
6. That the promotion of the appellant was challenged vide service appeal No. 4874 / 2021, which was also accepted vide judgment dated 24-09-2021, keeping aside the fact that the case was argued on the part of maintainability but the Hon'ble Tribunal decided the appeal on merits without even affording the opportunity of submission of arguments on the entire factum of the case to the respondent / present appellant. **(Copy annexed "J")**
7. The appellant approached the august Supreme Court of Pakistan against the order dated 24-09-2021 through CPLA No. 5969/2021, which is still pending adjudication. **(Copy annexed "K")**
8. That the respondent No. 1 vide impugned order dated 01-11-2021 recalled the promotion order of the appellant without any prior notice or intimation and convened a DPC for promotion to the post of Secretary KP Assembly BPS-21.

The DPC vide its minutes of meeting dated 05-11-2021 approved the appointment of respondent No. 2 as Secretary on the very same day vide notification dated 05-11-2021. The whole process was carried out in a swift and hurried manner without considering the material facts on record. **(Copies annexed "A" & "B")**

9. The appellant preferred his departmental appeal against the impugned arbitrary action vide dated 23-11-2021, which was however refused vide order dated 07-03-2022. **(Copies annexed "C" & "D")**

Feeling aggrieved and finding no other remedy, the appellant has been constrained to approach the Hon'ble Khyber Pakhtunkhwa Service Tribunal for the redress of his grievance, inter-alia, on the following,

### Grounds;

- a. That the worthy authority has ignored the appellant's departmental appeal without any plausible explanation, which needs immediate attention of the Hon'ble Service Tribunal for the just conclusion of the matter in question.
- b. In addition to above, it is necessary to mention that respondent No. 2 was appointed as Assistant Secretary on 23/11/1992. He applied for appointment as Assistant Secretary BPs-17 on 22-11-1992 and on the very next day i.e. 23/11/1992 he was appointed as Assistant Secretary Provincial Assembly Secretariat Khyber Pakhtunkhwa without any DPC which is the basic requirement for appointment to the post of BPs-17 and above, according to the Provincial Assembly Recruitment Rules 1974. In fact the appointment of Mr. Kifayat Ullah as Assistant Secretary BPS-17 was made by bulldozing the said Rules. **(Copy annexed "L")**
- c. The very appointment of the respondent No.2 has been challenged in Writ Petition No. 1847-P of 2019 titled "Shahid Mehmood Vs Kifayat Ullah Afridi etc" before august Peshawar High Court, which is still pending adjudication.  
  
That since the new strong and reliable evidence regarding the illegality in respondent No. 2 initial appointment, being overage at the relevant time, loan defaulter, promotion to BPS-18 before completion of 5 years of mandatory service, had also surfaced, therefore considering him for promotion to the post Secretary Provincial KP Assembly BPS-21, without thorough probe through an independent inquiry was not only illegal, unlawful, collusive but also ineffective upon the valuable rights of the present appellant, which is thus subject to correction. **(Copy annexed "M")**
- d. The worthy DPC, astonishingly ignored the service record of respondent No. 2, while considering him for promotion to the post Secretary BPS-21, in spite of the fact that a disciplinary proceeding was pending against him and fate was hanging in balance on the basis an interim relief allowed by Peshawar High Court in WP No. 1847-P / 2019.
- e. The worthy DPC ignored the fact that the appellant was time and again recommended for promotion while superseding Mr. Kifayat Ullah due to his lack luster service record, as mentioned in the preceding paras.
- f. The impugned demotion order of the appellant dated 01-11-2021 and subsequent promotion order of Mr. Kifayat Ullah dated 05-11-2021 was absolutely uncalled for and very harsh action against the appellant, which is not only arbitrary, discriminatory but also against the principles of equity, law, justice, propriety and fairness, calling for interference by the august Appellate Authority.
- g. The appellant has almost 30 years of continuous service at his credit and neither any complaint was ever filed against him nor was any disciplinary proceedings initiated against him during entire period of his service.

In utter disregard and in violation of the principles of equity and justice, the appellant has been subjected to arbitrary and discriminatory treatment.

(4)

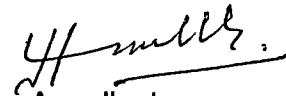
- h. Thus the impugned action is thus not only arbitrary but also discriminatory and is against the principles of equity, law, justice and propriety calling for interference by the Hon'ble Tribunal.

Appellant seeks leave of the Hon'ble Tribunal to take additional grounds at the time of arguments.

**Prayer:**

In view of the above, it is requested that by accepting this appeal, the impugned reversion order dated 01-11-2021, appointment of respondent No. 2, vide order dated 05-11-2021 and rejection of appellant's departmental appeal vide order dated 07-03-2022 may kindly be set aside, while re-instating the appellant to the post of Secretary Provincial Assembly BPs-21 (now upgraded as BPS-22) with retrospective effect with benefits of continuous service.

Any other relief deemed appropriate may also be granted.

  
Appellant

Through,

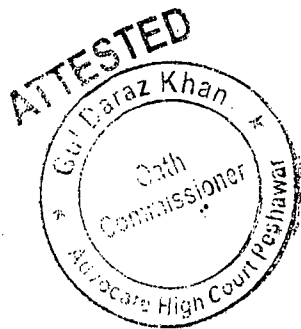
(MUHAMMAD ZAFAR TAHIRKHELI)  
ASC

(Ansar Ullah Khan)  
Advocate

Peshawar, dated  
2<sup>nd</sup> April-2022

**Verification**

I, the appellant, do hereby verify that no appeal on the subject matter has been filed before the Hon'ble Tribunal before the instant appeal.



  
Appellant

5

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

Service Appeal No. \_\_\_\_\_/2022

Nasrullah Khan  
Ex-Secretary (presently Additional Secretary) Provincial Assembly  
Secretariat of Khyber Pakhtunkhwa, Presently Additional Secretary.  
.....Appellant

**Versus**

1. Speaker Provincial Assembly Khyber Pakhtunkhwa, Peshawar.
2. Kifayatullah Khan Afridi, Secretary,  
Provincial Assembly Khyber Pakhtunkhwa, Peshawar.
3. Departmental Promotion / Recruitment Committee, through its Secretary  
Mr. Attaullah Khan Provincial Assembly of Khyber Pakhtunkhwa.  
.....Respondents

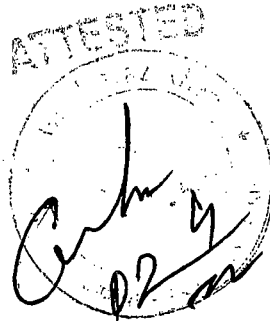
=====

**I N D E X**

\_\_\_\_\_

**Affidavit**

I, the appellant, Nasrullah Khan, Additional Secretary Provincial Assembly Secretariat of Khyber Pakhtunkhwa, Presently Additional Secretary, do hereby state on Oath that the contents of the accompanying appeal are true and correct to the best of my knowledge and belief, and nothing has been concealed from this Hon'ble Tribunal.



*Nasrullah Khan*  
DEPONENT  
CNIC No. 17301-3087051-9

Date:- 2<sup>nd</sup> April-2022



**PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA**

**NOTIFICATION**

Dated Peshawar, the 01/11/2021

No. PA/K.P/Admn:/2021/6867 Pursuant to the judgment of Hon'ble Service Tribunal of Khyber Pakhtunkhwa, Peshawar dated 24-09-2021, in appeal No. 4874/2021 this Secretariat Notification No. PA/KP/Admn:/2021/449 dated 11-01-2021 promoting Mr. Nasrullah Khan Khattak, as Secretary (BPS-21), Provincial Assembly Secretariat of Khyber Pakhtunkhwa, is hereby withdrawn with immediate effect and consequently he is reverted to the post of Additional Secretary BPS-20 (personal).

**BY ORDER OF MR. SPEAKER**

**(SYED MUHAMMAD MAHIR)**  
ADDITIONAL SECRETARY (ADMN:)  
PROVINCIAL ASSEMBLY OF KHYBER  
PAKHTUNKHWA

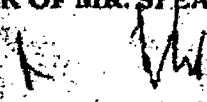
PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 01/11/2021

No. PA/K.P./Admn./2021/ 6867 Pursuant to the Judgment of Hon'ble Service Tribunal of Khyber Pakhtunkhwa, Peshawar dated 24-09-2021, in appeal No.4874/2021 this Secretariat Notification No. PA/KP/Admn./2021/449 dated 11-01-2021 promoting Mr. Nasrullah Khan Khattak, as Secretary (BPS-21), Provincial Assembly Secretariat of Khyber Pakhtunkhwa, is hereby withdrawn with immediate effect and consequently he is reverted to the post of Additional Secretary BPS-20 (personal).

BY ORDER OF MR. SPEAKER




(SYED MUHAMMAD MAHIR)  
ADDITIONAL SECRETARY (ADMN.)  
PROVINCIAL ASSEMBLY OF KHYBER  
PAKHTUNKHWA

E.No. PA/K.P./Admn./2021/ 6868-72 Dated Peshawar, the 01/11/2021

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

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Officer concerned.
3. The Manager, Government Printing Press, Peshawar.
4. Pay Bill Clerk, Provincial Assembly of Khyber Pakhtunkhwa.
5. Personal file of the officer concerned.

TRUE COPY  


  
DEPUTY SECRETARY (ADMN.)  
PROVINCIAL ASSEMBLY OF KHYBER  
PAKHTUNKHWA

**PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA**

**NOTIFICATION**

Dated Peshawar, the 05/11/2021

No. PA/K.P/Admn:/2021/7169 On the recommendation of Department Promotion Committee No. 1 and in exercise of the powers conferred on him by Rule-10 read with Rule-6 of the Khyber Pakhtunkhwa Provincial Assembly Secretariat (Recruitment) Rules, 1974, Mr. Speaker has been pleased to promote Mr. Kifayatullah Khan Afridi, Senior Additional Secretary (BPS-20) of the provincial Assembly Secretariat of Khyber Pakhtunkhwa, against the vacant post of Secretary (BPS-21) on regular basis with immediate effect.

**BY ORDER OF MR. SPEAKER**

Sd/-

**ACTING SECRETARY  
PROVINCIAL ASSEMBLY OF KHYBER  
PAKHTUNKHWA**

**ANNEXURE B**

**PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA**

**NOTIFICATION**

Dated Peshawar, the 05/11/2021.

No.PA/KP Admn/2021/7169 On the recommendation of Departmental Promotion Committee No.1 and in exercise of the powers conferred on him by Rule-10 read with Rule-6 of the Khyber Pakhtunkhwa Provincial Assembly Secretariat (Recruitment) Rules, 1974, Mr. Speaker has been pleased to promote Mr. Kifayatullah Khan Afridi, Senior Additional Secretary (BPS-20) of the Provincial Assembly Secretariat of Khyber Pakhtunkhwa, against the vacant post of Secretary (BPS-21) on regular basis with immediate effect.

**BY ORDER OF MR. SPEAKER**

Sd/-  
**ACTING SECRETARY**  
**PROVINCIAL ASSEMBLY OF KHYBER**  
**PAKHTUNKHWA**

Dated 05/11/2021

J.NO.PA/K.P/Admn/2021/7170-EC

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

1. All the Administrative Secretaries to Government of Khyber Pakhtunkhwa, Peshawar.
2. The officer concerned.
3. The Secretary to Mr. Speaker, Provincial Assembly of Khyber Pakhtunkhwa.
4. All Heads of Attached Departments, Khyber Pakhtunkhwa.
5. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
6. The Director (Finance & Accounts), Provincial Assembly of Khyber Pakhtunkhwa.
7. The Manager, Government Printing Press, Peshawar, for publication in the next issue of Government Gazette.
8. The PS to Deputy Speaker, Provincial Assembly of Khyber Pakhtunkhwa.
9. Pay Bill Clerk, Provincial Assembly of Khyber Pakhtunkhwa.
10. Personal file of the officer concerned

**TRUE COPY**

*Handwritten signature*

**DEPUTY SECRETARY (ADMN)**  
**PROVINCIAL ASSEMBLY OF KHYBER**  
**PAKHTUNKHWA**

**TRUE COPY**

*Handwritten signature*

To,

The Hon'ble Speaker,  
Provincial Assembly, Khyber Pakhtunkhwa,  
Peshawar.

Subject:

DEPARTMENTAL APPEAL / REVIEW / REPRESENTATION  
AGAINST THE IMPUGNED NOTIFICATION DATED  
01-11-2021, WHEREBY THE EARLIER PROMOTION ORDER  
OF THE APPELLANT WAS WITHDRAWN AND HE WAS  
REVERTED TO THE POST OF ADDITIONAL SECRETARY  
BPS-20, WHILE APPOINTING MR. KIFAYAT ULLAH KHAN  
AFRIDI AS SECRETARY PROVINCIAL ASSEMBLY  
SECRETARIAT KPK VIDE NOTIFICATION DATED  
05-11-2021, ILLEGALLY, UNLAWFULLY AND WITHOUT A  
LAWFUL JUSTIFICATION.

=====

Respectfully Sheweth:

Nasar Ullah Khan Khattak, Ex-Secretary Provincial Assembly Secretariat  
Khyber Pakhtunkhwa, presently Additional Secretary (BPS-20) the appellant  
submits most respectfully, the following for your kind consideration and favor  
of acceptance.

1. That the appellant was selected and appointed as Secretary BPS-  
Provincial Assembly KPK vide notification dated 15-08-2017. The said  
promotion order was challenged by Kifayat Ullah Khan Afridi before the  
Service Tribunal vide SA No. 1324 / 2017, which was accepted vide judgment  
and order dated 10-12-2018.
2. It is necessary to mention that the appellant's promotion as Additional  
Secretary KP Assembly BPS-20 was also challenged by one Ghulam Sarwar  
vide Service Appeal No. 952 / 2014, which was accepted vide order dated  
14-09-2017. That the matter of appellant's promotion was once again placed  
before the DPC who was duly recommended again while allowing his  
promotion vide notification dated 25-09-2018 as Secretary BPS-21.
3. The appellant had preferred a CP No. 354/2019 before the august Supreme  
Court of Pakistan followed by CP No. 120-P / 2019 against the judgment and  
order dated 10-12-2018 passed in SA No. 1324 / 2017 by KP Service Tribunal.  
On the basis of consensus of both the parties before the Supreme Court  
Pakistan, the matter was placed once again before the DPC and resultant  
the appellant was promoted as Secretary BPS-21 on regular basis vide  
notification dated 03-09-2019.
4. The notification dated 03-09-2019 was once again challenged by Kifayat Ullah  
Khan Afridi before the KP Service Tribunal in Service Appeal No. 937 / 2020  
wherein the Hon'ble Tribunal vide judgment dated 17-12-2020 directed  
reconstitute the DPC.

5. That the DPC convened held its meeting on 10-01-2021, wherein the appellant being found fit and eligible was unanimously recommended for promotion as Secretary BPS-21 by a high profile selection committee. Resultantly, the promotion of the appellant was notified on 11-01-2021.
6. That the promotion of the appellant was challenged vide service appeal No. 4874 / 2021, which was also accepted vide judgment dated 24-09-2021, keeping aside the fact that the case was argued on the part of maintainability but the Hon'ble Tribunal decided the appeal on merits without even affording the opportunity of submission of arguments on the entire factum of the case to the respondent / present appellant.
7. The worthy authority vide impugned order dated 01-11-2021 recalled the promotion order of the appellant without any prior notice or intimation and convened a DPC for promotion to the post of Secretary KP Assembly BPS-21. The DPC vide its minutes of meeting dated 05-11-2021 approved the appointment of Mr. Kifayat Ullah as Secretary on the very same day vide notification dated 05-11-2021. The whole process was carried out in a swift and hurried manner without considering the material facts on record.
8. In addition to above, it is necessary to mention that Mr. Kifayat Ullah was appointed as Assistant Secretary on 23/11/1992. He applied for appointment as Assistant Secretary EPs-17 on 22-11-1992 and on the very next day i.e. 23/11/1992 he was appointed as Assistant Secretary Provincial Assembly Secretariat Khyber Pakhtunkhwa without any DPC which is the basic requirement for appointment to the post of BPs-17 and above, according to the Provincial Assembly Recruitment Rules 1974. In fact the appointment of Mr. Kifayat Ullah as Assistant Secretary BPS-17 was made by bulging the said Rules.
9. The very appointment of the appellant has been challenged in Writ Petition No. 1847-P of 2019 before august Peshawar High Court, which is still pending adjudication.
- That since the new strong and reliable evidence regarding the illegality in appellant's initial appointment, being overage at the relevant time, loan defaulter, promotion to BPS-18 before completion of 5 years of mandatory service, had also surfaced, therefore considering him for promotion to the post Secretary Provincial KP Assembly BPS-21, without thorough probe through an independent inquiry was not only illegal, unlawful, collusive but also ineffective upon the valuable rights of the present appellant, which is thus subject to correction.
10. The worthy DPC, astonishingly ignored the service record of Mr. Kifayat Ullah, while considering him for promotion to the post Secretary BPS-21, in spite of the fact that a disciplinary proceeding was pending against him and fate was hanging in balance on the basis an interim relief allowed by Peshawar High Court in WP No. 1847-P / 2019.

TRUE COPY

*[Handwritten signature]*

12. The impugned demotion order of the appellant dated 01-11-2021 and subsequent promotion order of Mr. Kifayat Ullah dated 08-11-2021 was absolutely uncalled for and very harsh action against the appellant, which is not only arbitrary, discriminatory but also against the principles of equity, law, justice, propriety and fairness, calling for interference by the august Appellate Authority.

In view of the above, it is humbly submitted that by accepting this departmental appeal, the impugned orders dated 01-11-2021 & 05-11-2021, may kindly be set aside and the appellant may be reinstated as Secretary Provincial Assembly BPS-21 with retrospective effect along with all the benefits of continuous service.

Dated. 23 / November / 2021 / 3245

*Nasir Ullah Khan Khattak*  
Nasir Ullah Khan Khattak,  
Ex-Secretary Provincial  
Assembly Secretariat of  
Khyber Pakhtunkhwa,  
Presently Additional Secretary

Received

*M. Sarin*  
~~24/11/2021~~

MIAN MOHAMMAD SARIN  
Member Secretary to Mr. Speaker  
Provincial Assembly of  
Khyber Pakhtunkhwa Peshawar

TRUE COPY  
*Y/m*



**PROVINCIAL ASSEMBLY SECRETARIAT  
KHYBER PAKHTUNKHWA**

NO.PA/KP/Admn/2022/ 6311  
Dated Peshawar, the 07/03/2022

To

Mr. Nasrullah Khan Khattak,  
Additional Secretary,  
Provincial Assembly of Khyber Pakhtunkhwa.

**Subject: DEPARTMENTAL APPEAL / REVIEW / REPRESENTATION  
NO. 8246 DATED 23-11-2021**

Memo:

Reference your appeal No.8245 dated 23-11-2021 on the subject cited above submitted to the Hon'ble Speaker, Provincial Assembly of Khyber Pakhtunkhwa, on 08-12-2021 and to inform you that the appeal was forwarded to the Hon'ble Speaker through proper channel and after thorough consideration the appeal has been rejected by the competent authority in the light of the Judgment of Hon'ble Service Tribunal of Khyber Pakhtunkhwa, Peshawar dated 24-09-2021, in appeal No.4874/2021.

**BY ORDER OF THE SPEAKER**

*h W*

(SYED MUHAMMAD MAHIR)  
ADDITIONAL SECRETARY (ADMN)  
PROVINCIAL ASSEMBLY OF KHYBER  
PAKHTUNKHWA

Endt No.PA/KP/Admn/2022/ 6312-16 dated 07/03/2022.

Copy of the above is forwarded for information to:-

1. The APS to Mr. Speaker, Provincial Assembly of Khyber Pakhtunkhwa.
2. The PA to Secretary, Provincial Assembly of Khyber Pakhtunkhwa.
3. The PA to Addl: Secretary-Admn, Provincial Assembly of Khyber Pakhtunkhwa.
4. The PA to Deputy Secretary-Admn, Provincial Assembly of Khyber Pakhtunkhwa.
5. Personal file of the officer concerned.

**TRUE COPY**  
*h W*

*h W*

ADDITIONAL SECRETARY (ADMN)  
PROVINCIAL ASSEMBLY OF KHYBER  
PAKHTUNKHWA



(12) ANNEXURE E

~~ANNEXURE (B)~~

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 1324/2017

Date of Institution ... 28.11.2017

Date of Decision ... 10.12.2018



Kifayatullah Khan, Afridi presently serving as Senior Additional Secretary,  
Provincial Assembly Khyber Pakhtunkhwa, Peshawar. ... (Appellant)

VERSUS

1. The Speaker Provincial Assembly of Khyber Pakhtunkhwa Peshawar.
2. The Departmental Promotion Committee through its Secretary Provincial Assembly of Khyber Pakhtunkhwa, Peshawar.
3. Mr. Nasrullah Khan, presently serving as Secretary Provincial Assembly Khyber Pakhtunkhwa, Peshawar. ... (Respondents)

MR. ALI AZIM AFRIDI,  
Advocate

--- For appellant.

MR. ZIA ULLAH,  
Deputy District Attorney

--- For official respondents.

MR. MUHAMMAD ASIF YOUSAFZAI,  
Advocate

--- For respondent no.3

MR. AHMAD HASSAN,

--- MEMBER(Executive)

MR. MUHAMMAD HAMID MUCHAL

--- MEMBER(Judicial)

MR. MUHAMMAD AMIN KHAN KUNDI

--- MEMBER(Judicial)

JUDGMENT

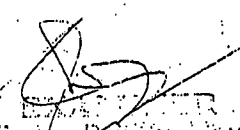
AHMAD HASSAN, MEMBER. - Arguments of the learned counsel for the parties heard and record perused.




FACTS

2. The appellant has impugned the decision of DPC dated 11.08.2017 and the notification dated 15.08.2017, whereby respondent no.3 despite being junior to the appellant was promoted as Secretary Provincial Assembly Khyber, Pakhtunkhwa.

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Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar


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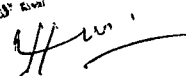
Feeling aggrieved, he filed departmental appeal on 30.08.2017 which remained unanswered, hence, the instant service appeal on 28.11.2017.

### ARGUMENTS

3. Learned counsel for the appellant argued that he was serving as Senior Additional Secretary (BPS-20) and on the directions of the respondents also shouldered responsibilities of Secretary Provincial Assembly from time to time. Upon retirement of Mr. Amanullah Khan the then Secretary Provincial Assembly on 14.08.2017, a slot became available for promotion. Working paper was prepared and placed before the DPC to consider one of the officer out of the panel for promotion to the post of Secretary Provincial Assembly. He further argued that he was the senior most officer in the panel and was fully eligible for promotion. According to notification dated 25.9.2007 the post of Secretary (BPS-21) was required filled in by promotion on the basis of seniority-cum-fitness from amongst the Sr. Addl: Secretary and Addl: Secretary with three years service or 22 years service in 17 and above. Mr. Nasurllah (respondent no.3) though junior to him was promoted to the post of Secretary in the meeting of the DPC held on 11.08.2017 and notified on 15.08.2017. Justification given for supersession of the appellant vividly exhibited malafide, favoritism, nepotism and undue favour extended to the handpicked officer by the respondents. Moreover, in service appeal no. 952/2014 titled "*Ghulam Sarwar Additional Secretary Provincial Assembly-vs- The Speaker Provincial Assembly Khyber Pakhtunkhwa and others*" decided on 14.09.2017, notification dated 15.08.2017 through which promotion of respondent no.3 as Secretary Provincial Assembly during the pendency of the above appeal was also set aside.

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Service Tribunal.

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Resultantly, in order to implement the aforementioned judgment notification dated 15.08.2017 was withdrawn by the respondents on 07.09.2018.

4. Learned counsel for the appellant further contended that the respondents had audacity/temerity to trample court orders under their feet by again convening meeting of the DPC on 25.09.2018 and promoting Mr. Nasrullah Khan to the post of Secretary (BPS-21) bypassing the appellant without any solid justification/reasoning and notified promotion vide notification dated 25.09.2018. Reasons recorded by the DPC for supersession of the appellant were against the invogue rules and deliberate attempt on the in part to deprive him of right of promotion to next higher scale. Findings were also in line with the criteria laid down in the service rules for promotion. It may not be out of place to mention that the case of promotion of respondent no.3 was still subjudice in this Tribunal and respondents without waiting for the outcome/decision of the said appeal notified his promotion. Reliance was placed on case law reported as 2010 SCMR 1886, 1996 SCMR 218, 1999 SCMR 1605, 2005 SCMR 695, PLD 2004 (S.C)65, 2007 PLC(C.S) 1246, 2002 SCMR 1056 and 1996 SCMR 1185.

5. On the other hand learned counsel for private respondent no.3, while controverting the arguments of learned counsel for the appellant raised some preliminary objections on the maintainability of the present service appeal. He urged that no order for constitution of the present bench passed by the Chairman to hear this service appeal was available on case file. That in pursuance of judgment of this Tribunal dated 14.09.2017 promotion order of respondent no.3 was withdrawn vide notification dated 07.09.2018. Subsequently, on the recommendations of DPC, he was again promoted to the post of Secretary (BPS-21) vide notification dated 25.09.2018 against which departmental appeal filed by the appellant was pending.

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before the competent authority for decision. In these circumstances the present appeal had become infructuous and was also hit by Rule-23 of the Khyber Pakhtunkhwa Service Tribunal Rules 1974. In the light of proviso (b)(1) of Section 4 of Khyber Pakhtunkhwa Service Tribunal Act 1974, this Tribunal lacks jurisdiction to adjudicate on issues of fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher post or grade. He further contended that the appellant and private respondent no.3 were considered by the DPC in its meeting held on 25.09.2018 in which the former was not found fit for promotion to the post of Secretary (BPS-21). Reliance was placed on case law reported as PLD 2008 (SC)769, PLD 2008 (SC)395, 2014 PLC (C.S) 982 and 2015 PLC (C.S)215.

6. Learned Deputy District Attorney for official respondents concurred with the arguments advanced by the learned counsel for private respondent no.3.

### CONCLUSION

7. The bone of contention in the present appeal is promotion of private respondent no.3 (Mr. Nasrullah Khan) to the post of Secretary Provincial Assembly (BPS-21), who was otherwise junior to the appellant but cleared/ recommended by the DPC in its meeting held on 11.08.2017 and notified on 15.08.2017. On perusal of minutes of the said meeting, it transpired that the appellant was ignored on flimsy, whimsical and nonsensical grounds and in utter disregard to the criteria for promotion laid down in Service Rules of the Provincial Assembly notified on 25.09.2007 and for ready reference is reproduced below:-

*"By promotion on the basis of seniority cum fitness amongst the senior Additional Secretary and Additional Secretaries with three years service as such or 22 years service in BPS-17 and above"*

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Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

8. A plain reading of the said rule depicts that seniority cum fitness was the sole criteria/ principle for promotion to the post of Secretary Provincial Assembly (BPS-21). The appellant was senior most Additional Secretary fully eligible for promotion. Perusal of the minutes of the DPC revealed that during the course of consideration nothing adverse was found against the appellant. Reasons given by the DPC for supersession of the appellant were figment of imagination of the members and contrary to law and rules. Though promotion was not a vested right of the appellant, but meaningful consideration in accordance with law/rules was his vested right. Subsequently, as per judgment of this Tribunal dated 14.09.2017 promotion order of respondent no.3 to the post of Secretary made during the pendency of the said appeal was also set aside. In pursuance of the said orders promotion order of respondent no.3 was withdrawn on 07.09.2018.

9. Subsequently, on the recommendations of Departmental Promotion Committee, Mr. Nasrullah Khan (respondent no.3) was again promoted to the post of Secretary (BPS-21) vide notification dated 25.09.2017 against which departmental appeal of the appellant before the competent authority was still pending. Again the appellant became a victim of favoritism, nepotism and unholy alliance of DPC to accommodate their blue eyed chap by hook or crook. It was a deliberate attempt on the part of the respondents to frustrate the efforts of the appellant for his due right of promotion.

10. As regards objection of the learned counsel for respondent no.3 regarding specific order for constitution of larger bench was concerned, as per laid down procedure different cases are assigned to the concerned bench by the Registrar of this Tribunal after getting approval from the Chairman Service Tribunal. Now turning to the issue of maintainability of the present appeal, it was exhaustively

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 Service Tribunal  
 Peshawar

argued by both the parties and vide order dated 11.10.2018, this Tribunal held that the present appeal was maintainable for regular hearing. Crux of the order was that appeal of the appellant against impugned order dated 15.08.2017 and for promotion as Secretary Provincial Assembly, Khyber Pakhtunkhwa was still subjudice in this Tribunal and respondents without waiting for decision promoted respondent no.3 to the post of Secretary, hence, their action was against the law/rules. View/stance of this Tribunal is affirmed by the case law reported as 2005 CLC 689 (AJ&K) in which the court held that:-

*"Rules of procedure were meant for advancement of justice and parties could not be non-suited on technicalities when their valuable rights were subjudice before the court".*

11. Attention is also invited to Para-V of the Khyber Pakhtunkhwa Civil Servant Promotion Policy pertaining to deferment of promotion. Para(a)(iii) of above paras worth perusal. It says that:-

*"The PER dossier is incomplete or any other documents/information required by the PSB/DPC for determining his suitability for promotion is not available for reasons beyond his control."*

12. Deficiencies in A.C.R dossier pointed out above were on the one hand beyond the control of the appellant and on other hand spoke of malice, bias, prejudice and jaundiced eye view taken by the respondents. Strictly going by the rules as only one post was available and appellant was at sr. no.1 of the panel, so the saner course was defer the promotion case.

13. We are afraid that assertions of the learned counsel for private respondent no.3 that under Section-4(b)(i) of Khyber Pakhtunkhwa Service Tribunal Act, 1974 the question of fitness of a civil servant is outside the pale of jurisdiction of this Tribunal but directions of superior courts in PLD 2008 (SC) 769, PLD 2008 (SC) 395, 2014 PLC (C.S) 982 and 2015 PLC (C.S) 215 are not conclusive and against

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Service Tribunal,  
Peshawar

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the consistent views expressed by the superior courts in numerous judgments relied upon by the learned counsel for the appellant. Similarly in PLC (C.S) 1161 (b) and 1999 SCMR 1605, issue of fitness and promotion has also been settled by the apex court in 2005 SCMR 695, PLD 2004 65, 2002 SCMR 1056, 1996 SCMR 1185. In 2002 SCMR (S.C) 1056; the august Supreme Court held that:-

*"Where a right to consider the civil servant has been claimed on the ground that he has been bypassed in violation of the promotion policy, the Service Tribunal can examine the question of fitness of civil servant".*

*"Concept of absolute discretion does not exist in law as it was wholly incompatible with the guarantee provided by Article-4 of the Constitution of Pakistan, 1973. "Absolute discretion" was a ruthless master and unless it was structured, it was likely to be abused. Such a provision would be ex-facie discriminatory". (2007 PLC (C.S) 1246)*

14. Before parting with the judgment, apprehensions are lurking in our mind that adverse findings of this Tribunal may plique the ego of respondents and inline with their tradition possibility of again violating the court/tribunal orders cannot be ruled out. Learned counsel for the appellant also brought to the notice of this Tribunal cases of illegal appointment of Special Secretary and Director (Automation & IT) Provincial Assembly were struck down by the Peshawar High Court, Peshawar vide judgment dated 13.11.2018 in writ petition no. 2512/2018 & 13.11.2018 in writ petition no. 3101-P/2018. By now it has been established beyond any shadow of doubt that the former and the present Speaker etc. have one point agenda to promote cronyism, nepotism and favoritism at the cost of merit, transparency, fairness, equality and justice. It amounts to misuse of official authority and is open to cognizance/ judicial scrutiny by the quarters concerned. In order to sensitize the concerned relevant excerpt of PLD 2014 SC 47 is reproduced below:-

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*[Signature]*  
 MEMBER  
 Khyber Pakhtunkhwa  
 Service Tribunal.

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"It is now a well-settled principle of law that all public functionaries must exercise public authority, Especially while dealing with the public property, public funds or assets in a fair, just, transparent and reasonable manner, untainted by malafide without discrimination and in accordance with law, keeping in view the constitutional rights of the Citizens".

15. As a sequel to above the appeal is accepted, the impugned order alongwith successive order of promotion of respondent no.3 to the post of Secretary Provincial Assembly, Khyber Pakhtunkhwa passed during the pendency of the present service appeal is set aside. Consequently, notification no. PA/KP/Admin/2018/2242 dated 30.08.2018 assigning acting charge of the post of Secretary Provincial Assembly to the appellant is restored. Parties are left to bear their own costs. File be consigned to the record room.

SD/-

(MUHAMMAD HAMID MUGHAL)  
MEMBER

SD/-


(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

SD/-

(AHMAD HASSAN)  
MEMBER

ANNOUNCED  
10.12.2018.

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Officer  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Appeal 11-12-18  
 Number of Words 3200  
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 Date of Delivery of Copy 01-01-19

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ANNEXURE 'F'

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ANNEXURE-(F)

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PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 25 /09/2018.

NO.PA./KP/Admn:/2018/ 3798 On the recommendation of Departmental Promotion/Recruitment Committee No.I and in exercise of the powers conferred on him by Rule-10 read with Rule-6 of the Khyber Pakhtunkhwa Provincial Assembly Secretariat (Recruitment) Rules, 1974, Mr. Speaker has been pleased to promote Mr. Nasrullah Khan, Additional Secretary BPS-20 (Personal) of the Provincial Assembly Secretariat of Khyber Pakhtunkhwa, against the vacant post of Secretary (BPS-21) with immediate effect.

BY ORDER OF MR. SPEAKER

Sd/-

DEPUTY SECRETARY (ADMN)  
PROVINCIAL ASSEMBLY OF KHYBER  
PAKHTUNKHWA

E.NO.PA./K.P/Admn:/2018/ 3799-807 Dated 25 /09/2018.

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

1. All the Administrative Secretaries to Govt of Khyber Pakhtunkhwa, Peshawar.
2. The officer concerned.
3. The Special Secretary to Mr. Speaker, Provincial Assembly of Khyber Pakhtunkhwa.
4. All Heads of Attached Departments, Khyber Pakhtunkhwa.
5. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
6. The Director (Finance & Accounts), Provincial Assembly of Khyber Pakhtunkhwa.
7. The Manager, Government Printing Press, Peshawar, for publication in the next issue of Government Gazette.
8. The PS to Deputy Speaker, Provincial Assembly of Khyber Pakhtunkhwa.
9. Pay Bill Clerk, Provincial Assembly of Khyber Pakhtunkhwa.
10. Personal file of the officer concerned.

*[Signature]*  
ASSISTANT SECRETARY (ADMN)  
PROVINCIAL ASSEMBLY OF KHYBER  
PAKHTUNKHWA

*[Handwritten signature]*

IN THE SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Sh. Azmat Saeed  
Mr. Justice Umar Ata Bandial

CIVIL PETITION NO.354 OF 2019 &  
CIVIL PETITION NO.120-P OF 2019

(On appeal from the judgment/order dated 10.12.2018  
passed by KP Service Tribunal in Appeal No.1324 of 2017)

Nasrullah Khan ... *Petitioner(s)*  
(in CP.354 of 2019)

Speaker Provincial Assembly, KP ... *Petitioner(s)*  
Peshawar & another (in CP.120-P of 2019)

VERSUS

Kifayatullah Khan Afridi & others ... *Respondent(s)*  
(in both cases)

For the petitioner(s) : Hafiz Arfat Ahmad Ch., ASC.  
(in CP.354 of 2019)

For the petitioner(s) : Mr. M. Murir Piracha, ASC.  
(in CP.120-P of 2019)

Respondent No.1 : In-person  
(in both cases)

On Court's call : Barrister Qasim Wadood,  
Addl. AG KPK.

Date of hearing : 02.07.2019.

ORDER

SH. AZMAT SAEED, J. CP.120-P OF 2019. It is

contended by the learned counsel for the petitioner that the observations made and the comments passed by the learned Service Tribunal in the impugned judgment with regard to the petitioner i.e. the Speaker of the Provincial Assembly of KPK, were uncalled for, unnecessary and unsubstantiated by the record.

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Court Associate  
Court of Pakistan

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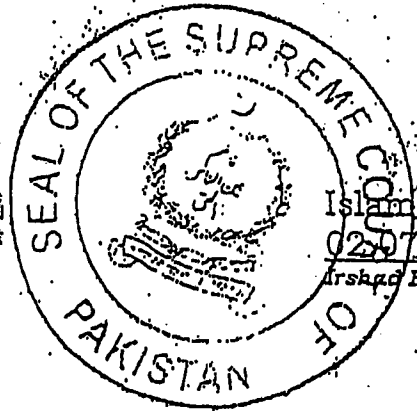
*Attested  
Hafiz Arfat*

2. Notice to the respondents.
3. C.M.A. NO.256-P OF 2019 in CP.120-P of 2019. Notice. Until the next date of hearing, observations made in the impugned judgment against the petitioner shall remain suspended.
4. CP.354 OF 2019. We have heard the counsel for the petitioner as well as the respondent in-person so also the learned Additional Advocate General KPK, who appeared on Court call. A consensus has emerged that the learned counsel for the petitioner does not press this petition, however, states that the matter of promotion of respondent No.1 may be placed before the DPC for consideration in due course, which may decide the matter in accordance with law uninfluenced by any extraneous observations made in the impugned judgment by the learned Service Tribunal.
5. This petition stands disposed of in the above terms.

Sd/-J

Sd/-J

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Court Associate  
Supreme Court of Pakistan  
Islamabad

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IN THE SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Umar Ata Bandial  
Mr. Justice Mazhar Alam Khan Miankhel

Civil Petition No.120-P/2019 and CMA.No.256-P/2019 in  
C.P.120-P/2019

(On appeal from the judgment dated 10.12.2018 passed by the KP, Service Tribunal,  
Peshawar in Appeal No.1324/17)

Speaker Provincial Assembly, K.P. Peshawar & another

- - - - - Versus

.....Petitioner/Applicant

Kifayatullah Khan Afridi & another

....Respondents  
(In both cases)

For the Petitioner/Applicant: Mr. Muhammad Munir Peracha, ASC

Govt. Of KPK: Barrister Qasim Wadood, Addl.AG-KP

Respondent No.1: In person

Date of Hearing: 31.7.2019

ORDER

Umar Ata Bandial, J.: Learned counsel for the petitioner has addressed arguments on behalf of the learned Speaker, Khyber Pakhtunkhwa Provincial Assembly, ("Speaker PA"). He has referred to uncomplimentary remarks made by the Khyber Pakhtunkhwa Service Tribunal ("Tribunal") in its impugned judgment dated 10.12.2018 attributing collateral purpose to the orders passed in the present controversy by two previous Speakers-PA. This is done without grant of hearing to the Speaker-PA; and seeks their expunction. He has also apprised that the Speaker-PA has highest respect for orders passed by the Judiciary, that he does not hold any personal view on the merits of the service controversy raised between the private respondents in this petition. We consider that

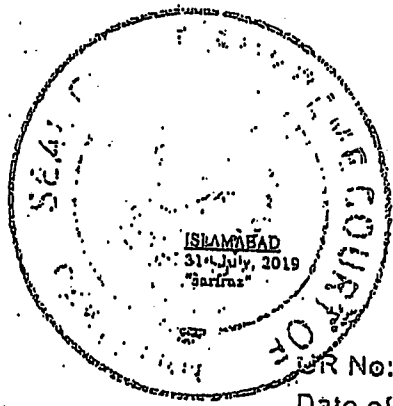
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Supreme Court of Pakistan  
Islamabad

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the contents of paragraph No.14 of the impugned judgment by the Tribunal are judgmental and predisposed. However, we would like to read the minutes of the respective Departmental Promotional Committee (DPC) meetings that are relevant to the Tribunal's judgments, dated 14.9.2017 and 10.12.2018.

2. On account of the withdrawal of the petition filed by Mr. Nasrullah Khan (C.P.354/2019) as noted in our order dated 2.7.2019, the decision on the merits of the controversy between the private respondents by the impugned judgment dated 10.12.2018 by the Tribunal remains intact. Accordingly, the learned counsel for the Speaker-PA assures that the directions given in the said judgment regarding the notification dated 30.8.2018 shall be implemented forthwith. He also assures that as envisaged in our order dated 2.7.2019, a fresh Departmental Promotional Committee (DPC) is being constituted to consider the matter of promotion to the post of Secretary, Provincial Assembly of KP strictly in accordance with law and on the basis of relevant criteria.

3. In view of the foregoing, let this matter be fixed for hearing in the last week of September, 2019. Adjourned.



Sd/-J  
Sd/-J

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Court Associate  
Supreme Court of Pakistan  
Islamabad

SR No: 513-P/19  
Date of Presentation: 8.8.19  
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No of Folios: \_\_\_\_\_  
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Copy Fee in: \_\_\_\_\_  
Court Fee Stamps: 8.00  
Date of Completion of Copy: 15/8/19  
Date of delivery of Copy: 17/8/19  
Compared by/Examined by: \_\_\_\_\_

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IN THE SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction)

PRESENT

Mr. Justice Umar Ata Bandial  
Mr. Justice Maqbool Baqar  
Mr. Justice Faisal Arab

CP No. 120/P/2019 & CMA 809/2019

*Speaker Provincial Assembly, KP Peshawar* Petitioner(s)

Versus

*Kifayatullah Khan Afridi & another* Respondent(s)

For the Petitioner(s) : Mr. Muhammad Munir Paracha,  
ASC  
Mian Saadullah Jandoli, AOR

For the Respondent(s) : In person (R-1)

For KPK : Mr. Qasim Wadood, Addl. AG

Date of Hearing : 26.09.2019

ORDER

Umar Ata Bandial, J. Learned counsel for the applicant has read from paragraph No. 14 of the impugned judgment dated 10.12.2018 passed by the learned KPST wherein very strong views have been expressed about the serving Speaker of the KPK Assembly as well as his predecessor. It is noted therein that both "the former and the present Speaker etc. have one point agenda to promote cronyism, nepotism and favouritism at the cost of merit, transparency, fairness, equality and justice. It amounts to misuse of official authority and is open to cognizance/judicial scrutiny by the quarters concerned." These remarks have been made because statedly an officer junior to the respondent was promoted and appointed Secretary of the Provincial Assembly. The remarks have derogatory contents and have been recorded without confronting the previous or the present Speakers of the KPK

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Court Associate  
Supreme Court of Pakistan  
Islamabad

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Assembly with the allegations sustaining the same. This ought to have been done by serving notice in accordance with the rule laid down in the case of Aman Ullah and others vs. The Federal Government of Pakistan thr. Secretary, Ministry of Finance, Islamabad and others (PLD 1990 SC 1092). As a result neither of the said gentlemen was heard before the adverse remarks were recorded against him. Accordingly, the aforesaid remarks are expunged from the impugned judgment. The CMA No. 809/2019 is accordingly disposed of.

2. Learned counsel for the petitioner submits that the petitioner has no interest in the outcome of the service dispute between the civil servants litigating for the post of Secretary of the KPK Assembly. Consequently, he seeks no further relief.

3. Respondent No. 1 present in Court submits that Secretariat of the KPK Assembly has not complied with the direction of the Court issued on 31.07.2019 for a fresh DPC to consider the candidates for promotion in accordance with law. If the respondent has any grievance regarding the non-compliance of the directions issued by this Court he may file appropriate proceedings before the Court. The present petition stands disposed of accordingly.

*Attested  
Hussain*



*Islamabad, the  
26th September, 2019  
Kishwar  
10/10/19*

Sd/-J

Sd/-J

Sd/-J

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Supreme Court of Pakistan  
Islamabad

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*Hussain*

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**IN THE SUPREME COURT OF PAKISTAN**  
(Original Jurisdiction)

**PRESENT:**  
**MR. JUSTICE UMAR ATA BANDIAL**  
**MR. JUSTICE QAZI MUHAMMAD AMIN AHMED**

Criminal Original Petition No. 181 of 2020  
(against the order dated 31.07.2019 of this Court  
passed in C.P. No. 120-P/2019).

Annexure-1

Kifayatullah Khan Afridi

Petitioner(s)

Versus

Mushtaq Ahmed Ghani and others

Respondent(s)

For the Petitioner (s) : Raja Saif-ur-Rehman, ASC

For the Respondent(s) : N.R.

Date of Hearing : 13.04.2020

**ORDER**

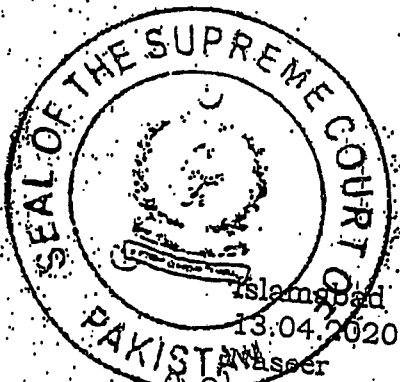
Attested  
H. J. J.

UMAR ATA BANDIAL, J.— Submits that the proceedings of the DPC held on 02.9.2019 form the subject matter of the present contempt petition. On second thought the petitioner would like to avail his remedy before the competent forum rather than plead contempt of the order of this Court dated 31.07.2019. Dismissed.

Sd/-J

Sd/-J

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Senior Counsel Associate  
Supreme Court of Pakistan  
Islamabad

25/4/20  
Not Approved For Reporting

H. J. J.



ANNEXURE 4

28

PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 03/09/2019.

NO.PA./KP/Admn:/2019/ 6027 On the recommendation of Departmental Promotion/Recruitment Committee No.I and in exercise of the powers conferred on him by Rule-10 read with Rule-6 of the Khyber Pakhtunkhwa Provincial Assembly Secretariat (Recruitment) Rules, 1974, Mr. Speaker has been pleased to promote Mr. Nasrullah Khan, Additional Secretary BPS-20 of the Provincial Assembly Secretariat of Khyber Pakhtunkhwa, against the vacant post of Secretary (BPS-21) with immediate effect.


BY ORDER OF MR. SPEAKER

Sd/-  
ADDITIONAL SECRETARY (ADMN)  
PROVINCIAL ASSEMBLY OF KHYBER  
PAKHTUNKHWA

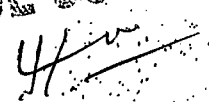
E.NO.PA/K.P/Admn:/2019/ 6028-37 Dated 03/09/2019.

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

- 1 All the Administrative Secretaries to Govt of Khyber Pakhtunkhwa, Peshawar.
- 2 The officer concerned.
- 3 The Secretary to Mr. Speaker, Provincial Assembly of Khyber Pakhtunkhwa.
- 4 All Heads of Attached Departments, Khyber Pakhtunkhwa.
- 5 The Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 6 The Director (Finance & Accounts), Provincial Assembly of Khyber Pakhtunkhwa.
- 7 The Manager, Government Printing Press, Peshawar, for publication in the next issue of Government Gazette.
- 8 The PS to Deputy Speaker, Provincial Assembly of Khyber Pakhtunkhwa.
- 9 Pay Bill Clerk, Provincial Assembly of Khyber Pakhtunkhwa.
- 10 Personal file of the officer concerned.

  
DEPUTY SECRETARY (ADMN)  
PROVINCIAL ASSEMBLY OF KHYBER  
PAKHTUNKHWA

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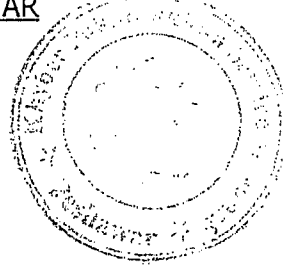


BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 937/2020

Date of Institution ... 28.01.2020

Date of Decision ... 17.12.2020



Kifayatullah Khan Afridi, presently serving as Senior Additional Secretary Provincial Assembly, Khyber Pakhtunkhwa, Peshawar. ... (Appellant)

VERSUS

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

Present.

Mr. Ali Azim Afridi,  
Advocate.

... For appellant

Mr. Muhammad Riaz Khan Paindakhel,  
Asstt. Advocate General

... For respondents  
No. 1 & 2.

Qazi Muhammad Anwar  
Advocate,

... For respondents  
No. 1, 2 and 3.

MR. HAMID FAROOQ DURRANI,  
MR. MIAN MUHAMMAD,

... CHAIRMAN  
... MEMBER(E)JUDGMENTHAMID FAROOQ DURRANI, CHAIRMAN:-

1. The appellant is aggrieved of notification dated 03.09.2019 issued by respondent No. 1, whereby, respondent No. 3 was promoted as Secretary (BPS-21), Khyber Pakhtunkhwa Provincial Assembly. The decision of Departmental Promotion Committee dated 02.09.2019, forming basis of the notification, has also been impugned. Declaration regarding promotion to the position of Secretary Provincial Assembly Khyber Pakhtunkhwa, in favour of the appellant, has also been made part of the prayer.

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 Service Tribunal  
 Peshawar

2. The facts, as laid in the memorandum of appeal, are to the effect that the appellant was appointed as Assistant Secretary (PAC) BPS-17 on 23.11.1992 in the Provincial Assembly Secretariat. On 11.02.1997 he was promoted as Deputy Secretary while on 12.03.2007 the appellant was granted promotion as Additional Secretary BPS-19. On 01.10.2009, he was recommended for promotion to the post of Senior Additional Secretary BPS-20, which was materialized. While posted as such, the appellant was required and authorized to look after the office of Secretary Provincial Assembly as well. The Additional responsibility was for 165 days altogether. On 01.08.2017, a notification was issued for constitution of DPC due to retirement of the incumbent. The name of respondent No. 3 was also included in the panel of officers to be considered for promotion against the post of Secretary. The DPC, with addition of the Deputy Secretary (Admn), was reconstituted. The added Member was subordinate to the respondent No. 3 at the relevant time, it is claimed.

The D.P.C recommended respondent No. 3, a junior to the appellant, for promotion who was accordingly promoted. The appellant questioned the promotion order/notification before this Tribunal through Service Appeal No. 1324/2017 (hereinafter referred to as previous appeal). The matter was laid before a Larger Bench comprising three Honourable Members and was decided on 10.12.2018. The appellant was granted relief by the Tribunal in terms that the order, impugned therein alongwith ensuing order of promotion of respondent No. 3 therein, was set aside and the notification dated 30.08.2018, assigning acting charge of the post of Secretary Provincial Assembly was restored in favour of the appellant. Pertinently, the

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arrangement of parties in the previous appeal was the same as in the instant appeal.

The decision of Tribunal was impugned before the August Supreme Court of Pakistan which was pleased to, inter-alia, expunge remarks against respondent No. 1, as well as the erstwhile Speaker of Khyber Pakhtunkhwa Provincial Assembly. The Apex Court ordered for reconstitution of D.P.C to re-examine and decide the matter of disputed promotion. The reconstituted committee submitted its recommendations on 02.09.2019, whereupon, impugned notification dated 03.09.2019 was issued. The appellant submitted a departmental appeal which was not responded to, hence the appeal in hand.

3. The respondents, upon notice, appeared through counsel who submitted an application for deciding the question of limitation and competence of the instant appeal as preliminary issues first. The application was also accompanied by written statement of respondent No. 3. On 01.10.2020, learned counsel for the parties addressed their respective arguments regarding the preliminary objections. Remaining arguments were addressed on 30.11.2020.

4. We have heard learned counsel for the parties and with their valuable assistance gone through the available record. During the arguments both the learned counsel also repeatedly referred to the judgment in the previous appeal.

5. Agitating the preliminary objections, learned counsel for respondents argued that the appeal in hand was badly time barred as it was submitted on 12.02.2020. In that regard he referred to the calculation, as contained in the

written statement and contended that the impugned notification was issued on 03.09.2019, against which the appellant submitted appeal to the competent departmental authority on 30.09.2019. The period of ninety days wait for decision started from 01.10.2019. The period of ninety days was to expire on 29.12.2019, while the appeal in hand had to be filed within thirty days from 30.12.2019. The said period of thirty days expired on or before 28.01.2020. In his view, some fraud was committed in receipt of appeal on 28.01.2020, through diary No. 888. In support of his arguments, learned counsel referred to the judgments reported as 2017-SCMR-24, 2019-SCMR-663, 2011-SCMR-1111, PLD 1994-Supreme Court-539 and 2007-SCMR-682.

Arguing the second limb of objections regarding the competence of appeal, learned counsel referred to Section 4 of the Khyber Pakhtunkhwa Service Tribunals Act, 1974. He contended that the fitness of respondent No. 3 for impugned promotion was also an issue in the appeal in hand, therefore, it was not to be entertained in view of the provisions of law.

Learned counsel for the appellant refuted the objections and contended that the appeal was not only within time but also competent for the purpose of jurisdiction of this Tribunal. He made references to judgments in previous appeal and also relied on 2007-PLC(C.S)1246, 2002-SCMR-1056 and 1999-SCMR-1605.

Learned Asstt. A.G adopted the arguments of learned counsel for respondents.

6. It is a matter of record that the appeal in hand was initially submitted on 28.01.2020, through diary No. 888 which was returned to the appellant for removal of some deficiency. It was re-submitted, after doing the needful on



12.02.2020. As per the calculation provided in the written statement of respondent No. 3, the time for submission of appeal before this Tribunal was to end on 28.01.2020. In the stated backdrop, the objection regarding delay in submission of appeal is misconceived, therefore, is hereby overruled.

7. Adverting to the other objection regarding competence of appeal in hand, suffice it to note that the issue, also raised in previous appeal, was decided by a Larger Bench of the Tribunal in the following terms:-

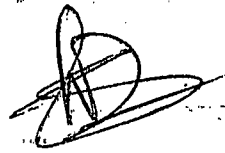
*"We are afraid that assertions of the learned counsel for private respondent No. 3 that under Section-4(b)(i) of Khuyber Pakhtunkhwa Service Tribunal Act, 1974 the question of fitness of a civil servant is outside the pale of jurisdiction of this Tribunal but directions of superior courts in PLD 2008(SC) 769, PLD 2008 (SC) 395, 2014 PLC(C.S) 892 and 2015 PLC(C.S)215 are not conclusive and against the consistent views expressed by the superior courts in numerous judgments relied upon by the learned counsel for the appellant. Similarly in PLC (C.S) 1161(b) and 1999-SCMR-1605, issue of fitness and promotion has also been settled by the apex court in 2005-SCMR-695, PLD 2004-65, 2002-SCMR1056, 1996-SCMR-1185. In 2002-SCMR-1056, the august Supreme Court held that:-*

*"Where a right to consider the civil servant has been claimed on the ground that he has been bypassed in violation of the promotion policy, the Service Tribunal can examine the question of fitness of civil servant."*

The Tribunal consequently went on to decide the appeal on merits.

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The above reproduced view of this Tribunal is respectfully followed in the appeal in hand, therefore, the objection is also overruled.

  
12.02.2020  
Tribunal

8. Looking into the merits of the case of appellant, one finds that the ground forming basis for recommendation was to the effect that for promotion against selection post, merit alone is to be considered. Paragraph 12 of the minutes of the meeting dated 02.09.2019 provides as follows:-

*"In view of the legal position explained in Background section, seniority is not the crucial factor for promotion against selection posts and merit alone is to be considered for comparing officers. Hence, the comparative merit position of some of the relevant factors of panel officers is as under:-*

	<u>Mr. Kifayatullah Khan</u>	<u>Mr. Nasrullah Khan</u>	<u>Mr. Amjad Ali</u>
Academic level	B.A/LLB	MA (International Relatio	M.Sc (Chemistry)
Experience of assembly work	Worked in Legislation and PAC branches.	Worked in Legislation, administration, Finance & Accounts, PAC branches and round the clock security wing.	Worked in PA, Administration and Legislation.
Experience of acting as Secretary Assembly	165 days	657 days.	----
Major Achievements	----	E-Parliament initiative Digital filing system Establishment of Media Centre, Women Caucus Resource Center Equalization of employees perks and privileges with parliament and other provincial assemblies Capacity building training of parliamentarians inland and abroad Construction of multipurpose underground exclusive parking for different stakeholders and a spacious cafeteria	Strengthening of PAC.

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 Service Tribunal,  
 Peshawar

Learned counsel for appellant also grudged the correctness of contents noted under the name of respondent No. 3 which included the experience as acting Secretary Assembly. It was also maintained that the column of experience of Respondent No. 3 contained particulars not relevant for the post of Secretary Provincial Assembly.

It is important to note here that the appellant was senior most amongst the Additional Secretaries B.S-20, however, the said factor was ignored by the DPC. For the resolution of issue, we have to fallback upon judgment in the previous appeal. In para-8 thereof, it was laid down that seniority-cum-fitness was the sole criteria/principle for promotion to the post of Secretary (BPS-21) Khyber Pakhtunkhwa Provincial Assembly. Needless to reiterate that in the previous appeal the parties were the same as arrayed in the appeal in hand . It would not be out of place to mention that Service Appeal No. 952/2014 was decided by this Tribunal on 14.09.2017 wherein the respondents No. 1 and 3 were also included in the panel of respondent. A Bench of this Tribunal was pleased to decide, inter-alia, that the criteria for promotion to the post of Secretary (BPS-21) Khyber Pakhtunkhwa Provincial Assembly Secretariat was also based on seniority-cum-fitness.

The minutes of DPC meeting reflect that the committee proceeded in line with the misconception in declaring the impugned promotion against selection post and kept in consideration the merit alone. The view of DPC was in disregard of the judgments by this Tribunal as well as those referred to in the decision of previous appeal. The finding and recommendation by the committee were based on wrong premises, therefore, the edifice built thereon

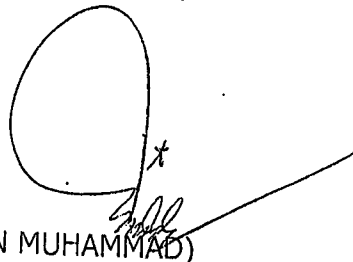
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was bound to collapse. The notification dated 03.09.2019, ensuing from the decision of DPC, is not sustainable for the stated reason.

9. Ex-consequencia, the appeal in hand is allowed and the impugned notification dated 03.09.2019 is set aside. The official respondents shall constitute the DPC in accordance with law. The DPC shall consider the matter of promotion to the post of Secretary Provincial Assembly in light of decision taken in previous appeal as well as the instant judgment strictly in accordance with law/rules. The denovo exercise shall be completed within three months of receipt of copy of instant judgment.

Parties are, however, left to bear their respective costs. File be consigned to the record room.



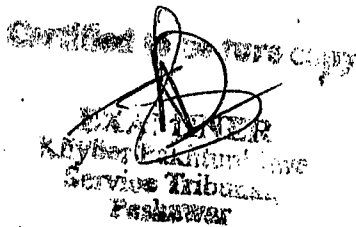
(MIAN MUHAMMAD)  
MEMBER(E)



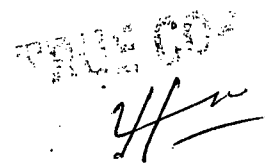
(HAMID FAROOQ DURRANI)  
CHAIRMAN

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ANNEXURE I

~~Annexure B~~

(37)

PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 11 /01/2021.

NO.PA./KP/Admn:/2021/ 449 On the recommendation of Departmental Promotion Committee No.1 and in exercise of the powers conferred on him by Rule-10 read with Rule-6 of the Khyber Pakhtunkhwa Provincial Assembly Secretariat (Recruitment) Rules, 1974, Mr. Speaker has been pleased to promote Mr. Nasrullah Khan, Additional Secretary BPS-20 of the Provincial Assembly Secretariat of Khyber Pakhtunkhwa, against the vacant post of Secretary (BPS-21) on regular basis with immediate effect.

BY ORDER OF MR. SPEAKER:

Sd/-  
ADDITIONAL SECRETARY (ADMN)  
PROVINCIAL ASSEMBLY OF KHYBER  
PAKHTUNKHWA

E.NO.PA/K.P/Admn:/2021/ 450-54

Dated 11 /01/2021.

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

- 1 All the Administrative Secretaries to Government of Khyber Pakhtunkhwa, Peshawar.
- 2 The officer concerned.
- 3 The Secretary to Mr. Speaker, Provincial Assembly of Khyber Pakhtunkhwa.
- 4 All Heads of Attached Departments, Khyber Pakhtunkhwa.
- 5 The Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 6 The Director (Finance & Accounts), Provincial Assembly of Khyber Pakhtunkhwa.
- 7 The Manager, Government Printing Press, Peshawar, for publication in the next issue of Government Gazette.
- 8 The PS to Deputy Speaker, Provincial Assembly of Khyber Pakhtunkhwa.
- 9 Pay Bill Clerk, Provincial Assembly of Khyber Pakhtunkhwa.
- 10 Personal file of the officer concerned.

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ASSISTANT SECRETARY (ADMN)  
PROVINCIAL ASSEMBLY OF KHYBER  
PAKHTUNKHWA

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 4874/2021

Date of Institution ... 14.04.2021

Date of Decision ... 24.09.2021



Kifayatullah Khan Afridi, presently serving as Senior Additional Secretary Provincial Assembly, Khyber Pakhtunkhwa, Peshawar.

... (Appellant)

VERSUS

The Speaker Provincial Assembly of Khyber Pakhtunkhwa, Peshawar and two others.

... (Respondents)

Present.

Mr. Ali Azim Afridi,  
Advocate.

... For appellant

MUHAMMAD ADEEL BUTT,  
Additional Advocate General

--- For official respondents.

M/S Muhammad Zafar Tahirkheli &  
Ansarullah Khan Advocates

... For all respondents

AHMAD SULTAN TAREEN  
ROZINA REHMAN

--- CHAIRMAN  
--- MEMBER(Judicial)

JUDGEMENT.

AHMAD SULTAN TAREEN, CHAIRMAN. The appellant named above invoked the jurisdiction of this Tribunal through service appeal described above in the heading challenging thereby his supersession from promotion and the promotion of respondent No. 3, purporting the same being against the facts and law on the subject.

2. For the production of factual account, we have gone through certain judgments of this Tribunal copies whereof are annexed with

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Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

the memorandum of appeal, which were rendered in the case of none else but between the same parties and in the same matter as *subjudice* in the appeal at hand. Certainly, the facts as noted in the previous judgment are not disregardable but they are impelling us to see the chequered history of litigation in connection with promotion to the post of Secretary, Khyber Pakhtunkhwa Provincial Assembly (for short "Assembly"), particularly, the fate of the previous judgments passed by this Tribunal in the course of said litigation.

3. The appeal at hand is the third in continuation of the dispute related to promotion to the post of Secretary (BPS-21) in the Assembly. According to the facts evident from the record as available on file, the post of Secretary in the Assembly had become vacant on 14.08.2017 when the then incumbent of the post Mr. Amanullah Khan stood retired from service on superannuation. The Departmental Promotion Committee (DPC) as constituted by the Appointing Authority met on 11.08.2017 to consider the cases of panelists for promotion on the said vacant post. The DPC recommended the promotion of Mr. Nasrullah Khan at Sr. No. 3 in the following panel of officers:-

1. Mr. Kifayatullah Khan Afridi, Senior Additional Secretary (BPS-20).
2. Mr. Ghulam Sarwar, Additional Secretary-I (BPS-19)
3. Mr. Nasrullah Khan, Additional Secretary-II (BPS-19)

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EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

4. In pursuance of the recommendation of DPC, appointment of Mr. Nasrullah Khan (present respondent No. 3); as Secretary of

Assembly, was notified vide notification dated 15.08.2017. Mr. Kifayatullah Khan Afridi the panelist at Sr. No. 1 above (present appellant) impugned the recommendation of DPC and notification of promotion of respondent No. 3 through Service Appeal No 1324/2017 preferred before this Tribunal on 28.11.2017. When said appeal was preferred, another service appeal No. 952/2014 was also pending in which Mr. Nasrullah Khan was also a respondent due to challenging of his promotion as Additional Secretary. The said appeal was decided vide judgment dated 14.09.2017, whereby not only the promotion of Mr. Nasrullah Khan as Additional Secretary but also his promotion as the Secretary made vide notification dated 15.08.2017 was set aside, obviously by application of the principle of *lis pendens*. In order to implement the aforementioned judgment, notification dated 15.08.2017 was withdrawn on 07.09.2018. However, Mr. Nasrullah Khan was, for the second time, promoted as Secretary of the Assembly during pendency of appeal No. 1324/2017 of the present appellant, which when accepted vide judgment dated 10.12.2018, it culminated with the operative part as copied below:-

*[Handwritten signature]*

*"As a sequel to above, the appeal is accepted, the impugned order alongwith successive order of promotion of respondent No.3 to the post of Secretary Provincial Assembly, Khyber Pakhtunkhwa passed during the pendency of the present service appeal is set aside. Consequently, notification no. PA/KP/Admin/2018/2242 dated 30.08.2018 assigning acting charge of the post of Secretary Provincial Assembly to the appellant is restored."*

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**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar


5. Notwithstanding the judgment dated 10.2.2018 in field, the Respondent No.1 again referred the matter of promotion on the post

of Secretary to a reconstituted DPC; which on 02.09.2019, for the third time, recommended present respondent No.3 for promotion and accordingly, his appointment was notified vide notification dated 03.09.2019. Ultimately, the matter of said promotion was, again brought before this Tribunal through Service Appeal No.937/2020 by the present appellant and was decided vide judgment dated 17.12.2020. Some of the facts noted in the said judgment are reproduced herein below:-


*"On 01.08.2017, a notification was issued for constitution of DPC due to retirement of the incumbent. The name of respondent No. 3 was also included in the panel of officers to be considered for promotion against the post of Secretary. The DPC, with addition of the Deputy Secretary (Admn), was reconstituted. The added Member was subordinate to the respondent No. 3 at the relevant time, it is claimed.*

*The D.P.C recommended respondent No. 3, a junior to the appellant, for promotion who was accordingly promoted. The appellant questioned the promotion order/notification before this Tribunal through Service Appeal No. 1324/2017 (hereinafter referred to as previous appeal). The matter was laid before a Larger Bench comprising three Honorable Members and was decided on 10.12.2018. The appellant was granted relief by the Tribunal in terms that the order, impugned therein alongwith ensuing order of promotion of respondent No. 3 therein, was set aside and the notification dated 30.08.2018, assigning acting charge of the post of Secretary Provincial Assembly was restored in favour of the appellant. Pertinently, the arrangement of parties in the previous appeal was the same as in the instant appeal.*

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**EXAMINER**  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar

*The decision of Tribunal was impugned before the August Supreme Court of Pakistan which was pleased to, inter-alia, expunge remarks against respondent No. 1, as*

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well as the erstwhile Speaker of Khyber Pakhtunkhwa Provincial Assembly. The Apex Court ordered for reconstitution of D.P.C to re-examine and decide the matter of disputed promotion. The reconstituted committee submitted its recommendations on 02.09.2019, whereupon, impugned notification dated 03.09.2019 was issued. The appellant submitted a departmental appeal which was not responded to, hence the appeal in hand."

6. The judgment in Service Appeal No. 937/2020 ended with the operative part as reproduced below:-

*"Ex-consequencia the appeal in hand is allowed and the impugned notification dated 03.09.2019 is set aside. The official respondents shall constitute the DPC in accordance with law. The DPC shall consider the matter of promotion to the post of Secretary Provincial Assembly in light of decision taken in previous appeal as well as the instant judgment strictly in accordance with law/rules. The denovo exercise shall be completed within three months of receipt of copy of instant judgment."*

7. Now it is the third round of litigation in between the appellant and the respondents in the matter of same dispute previously decided by the above mentioned two judgments of this Tribunal dated 17.12.2020 and 10.12.2018 respectively passed in Service Appeals No. 1324/2017 and 937/2020. Most of the necessary facts in present memorandum of appeal precisely are not different from the factual position as already gone hereinabove except some new facts which hereinafter follow. DPC was constituted and its Chairman after deliberations resigned from the chairmanship of DPC. Resultantly, Mr. Lutf-ur-Rehman MPA was appointed as the new Chairman of DPC, who as purported by the appellant,

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EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

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had earlier offered to act as mediator in the process of promotion to the post of Secretary, which was flatly refused by the appellant at the relevant time since judgment rendered by Service Tribunal was in field. The said Chairman summoned the meeting of DPC on Sunday at Islamabad, purportedly with no time for the appellant to object over his appointment. It is there in the factual part that Respondent No.3 had not preferred any appeal against the judgment dated 17.12.2020 rendered by the Service Tribunal and the appellant was confident to be promoted to the post of Secretary but it happened otherwise. It was the fourth turn that DPC recommended Mr. Nasrullah Khan Respondent No. 3 for promotion after the previous three which were set aside by the Tribunal through different judgment discussed before. The respondent No.3 was appointed as Secretary on the basis of said recommendation of DPC vide notification No.PA/KP/Admn:2021/449 dated 11.01.2021. The appellant preferred departmental appeal/representation against the said notification and on its presumptive rejection due to lapse of 90 days, present appeal has been preferred with the prayer as noted below:-

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*"It is therefore humbly prayed that on acceptance of this Service Appeal; the impugned decision dated 10.01.2021 of Departmental Promotion Committee No.1 and the notification issued thereto on 11.01.2021; notifying respondent No.3 as Secretary Provincial Assembly Khyber Pakhtunkhwa be set at naught besides the same, the present appellant be*

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**EXAMINER**  
**Khyber Pakhtunkhwa**  
**Service Tribunal**  
**Peshawar**



declared as promoted to the position of Secretary of Provincial Assembly Khyber Pakhtunkhwa from such date as his junior was promoted along with back benefits/consequential benefits.

Any such other order be passed which this Tribunal deems fit and appropriate as the circumstances may require for determination of the subject at hand."

8. After admission of appeal for regular hearing, the respondents were put on notice who after attending the proceedings have filed their written reply with several legal and factual objections. Most pertinently, they submitted an application questioning the maintainability of present appeal with the reasons among other that the appellant was considered but superseded and has now challenged the matter pertaining to his fitness before the Service Tribunal; that the august Supreme Court of Pakistan in a recent judgment dated 01-07-2021 passed in CP No. 1097-L of 2020, titled "*Chief Secretary Govt. of Punjab Vs. Mst. Shamim Usman*" has categorically held: "*The scope of jurisdiction and powers of Tribunal are provided in sections 4 & 5 of the Act. The High Court therefore has no jurisdiction to entertain any proceedings in respect of terms and conditions of service of a civil servant which can be adjudicated upon before the Tribunal under the Act. It is only under Section 4 (b)(1) of the Act that no appeal can lie to a Tribunal against an order or decision determining the "fitness" of a person to be appointed or promoted and falls outside the purview of the jurisdiction of the Tribunal. In order to fall in the exception envisaged under section 4 (b)(1) of the Act, the order must determine "fitness" of a civil servant to an appointment or promotion.*" It was added there in the said application with reference to said reasons that the appellant was considered by the worthy authority and was not found fit for promotion; and that the matter to determine "fitness" is hit by section 4 (b)(i) of KP Service Tribunal Act 1974 and thus does not fall within the jurisdiction of this Tribunal. Consequently, it has been requested

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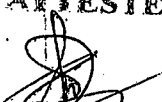
that the instant appeal being hit by section 4 (b)(i) of KP Service Tribunal Act, 1974 and in view of the recent judgment dated 01/07/2021 of august Supreme Court of Pakistan, is not maintainable and may be dismissed with cost throughout. The copy of the judgment dated 01-07-2021 is annexed with the application discussed before.

9. According to the proceedings reflected in the order sheet dated 13.09.2021, learned counsel for the appellant by his statement made at the bar did not opt for submission of written reply of the above mentioned application filed by the respondents; and on his request that he would meet out the question of maintainability during arguments on merits, he was for full arguments and heard. Arguments on behalf of the respondents restricted to the point of maintainability of appeal were heard on previous date i.e.20.09.2021. We have perused the record.

10. Having given our anxious consideration to the arguments of the parties on point of maintainability of appeal in juxtaposition with the relevant record, we have concluded that objection raised by the respondents through their above mention application is not workable in light of the particular factual position noted from the disputed minutes of meeting of DPC held on 10-01-2021. The reasons for our said opinion hereinafter follow.

11. We are not forgetful that we are dealing with the point of maintainability of appeal on an objection that the appellant's fitness for promotion was determined by DPC and in turn, the jurisdiction of this Tribunal is barred to adjudicate upon the matter in appeal. Needless to say that if the "fitness" of a person to be appointed or promoted is determined by an order of the competent authority, the jurisdiction of Service Tribunal is barred within meaning of Section

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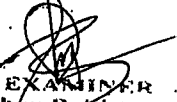
  
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 Service Tribunal  
 Peshawar

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4(b)(i) of Khyber Pakhtunkhwa Service Tribunal Act, 1974. So, before heading to our findings on the said point, we are obliged to identify the *ratio decidendi* of the judgment of august Supreme Court of Pakistan cited as precedent with a particular description in the application of respondents discussed above. According to the facts of case noted in the said pronouncement of the august Supreme Court of Pakistan, the respondent at various occasions invoked the constitutional jurisdiction of the High Court in a service disputes instead of challenging the same before the Punjab Service Tribunal constituted under the Punjab Service Tribunal Act, 1974. The matter ultimately reached to the August Supreme Court of Pakistan which culminated into the ruling selectively relied upon by the respondents in their said application as well as during the arguments at the bar. The full view of the August Supreme Court of Pakistan in the said case as encapsulated at Para-5 of the judgment is copied below:-

"5. We cannot lose sight of the fact that notwithstanding clauses of Articles 212(1) and (2) begin with "notwithstanding anything hereinbefore contained," thus overriding, *inter alia*, the constitutional jurisdiction of the High Court under Article 199, which is already "subject to the Constitution." Article 212(1)(a) provides that a Tribunal established under the law will enjoy exclusive jurisdiction in the matters relating to terms and conditions of persons who are or have been in the service of Pakistan, including disciplinary matters. The term "terms and conditions" is clearly spelt out in Chapter II of the Punjab Civil Servants Act, 1974 and the rules there-under. Article 212(2) in unambiguous terms states that no other Court can grant injunction, make any order or entertain any proceedings in respect of any matter to which the jurisdiction of such Administrative Court or Tribunal



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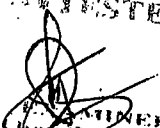
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extends. Scope of jurisdiction and powers of the Tribunal are provided in sections 4 and 5 of the Act. The High Court, therefore, has no jurisdiction to entertain any proceedings in respect of terms and conditions of service of a civil servant which can be adjudicated upon by the Tribunal under the Act. It is only under section 4(1)(b) of the Act that no appeal can lie to a Tribunal against an order or decision determining the "fitness" of a person to be appointed or promoted and falls outside the purview of the jurisdiction of the Tribunal. In order to fall in the exception envisaged under section 4(1)(b) of the Act, the order must determine "fitness" of a civil servant to an appointment or promotion. In the instant case, the order under challenged before the High Court pertained to the eligibility of the petitioner to be even considered for proforma promotion due to the seniority of a large number of officers awaiting promotion before her and in no manner determined the "fitness" of the respondent. High Court as a constitutional court should always be mindful of the jurisdictional exclusion contained under Article 212 of the Constitution. Any transgression of this constitutional limitation will render the order of the High Court void and illegal. Therefore, unless the jurisdiction of the Tribunal is ousted under section 4(1)(b) of the Act, as described above, assumption of jurisdiction by the High Court in respect of matters of terms and conditions of a civil servant is unconstitutional and impermissible. Even the direction passed in the earlier constitutional petition, in this case, was impermissible under the Constitution."

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12. Explicably, the above ruling in essence laid down the rule of exclusion of the constitutional jurisdiction of the High Court in service matters with an exception envisaged under Section 4(b)(i) of the Service Tribunal Act. However, it was emphasized that in order to fall in the exception under Section (b)(i) of the Act, the order must determine the fitness of a civil servant to an appointment or promotion. So, recourse to the minutes of meeting of DPC is

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 K. J. Prasad  
 Member  
 Service Tribunal  
 Bangalore

necessary to find out whether in view of the said findings in respect of the appellant, case at hand comes in purview of the exception of Section 4(b)(i) of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, or because of failing of the said findings to determine the question of fitness of the appellant for promotion, this appeal is maintainable being not hit by the said exception. Copy of minutes of DPC meeting held on Sunday, 10<sup>th</sup> January, 2021 at Khyber Pakhtunkhwa House, Islamabad, has been annexed with memorandum of appeal at annexure "A-1". The relevant part of the findings of DPC in the said minutes about the appellant is reproduced below:-

1) Mr. KifayatUllahKhanAfridi

The Committee "unanimously" recommended supersession of the Officer for the following reasons:-

- a) Although, his PERs have been shown "Good" in the Working Paper, but, surprisingly, the PERs were not available in the dossier of the officer, Responding query posed by the Committee in this regard, the Secretary Committee clarified that Mr. KifayatUllah Khan had not submitted his PERs for the year 2017, 2018 and 2019 to the Reporting Officer for the reasons best known to him;
- b) The Committee observed that performance of the officer is not ascertainable due to non-availability of the latest PERs;
- c) It is settled rule that the Officer was required to submit his PER Forms to the Reporting Officer himself;
- d) The reasons for non-submission of PER Forms to the Reporting Officer were attributable to Mr. KifayatUllah Khan himself; and
- e) The Committee was of the unanimous view that examination of PERs for the

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Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

*latest period is sine qua non for making appropriate recommendations.*

13. At ending moments of his arguments on his application questioning the maintainability of appeal obviously with vigorous reliance upon judgment dated 01-07-2021 of august Supreme Court of Pakistan and in addition on the judgment dated 04/09.2014 of the Hon'ble Peshawar High Court, Peshawar in Writ Petition No. 2440-P/2012; it was deemed appropriate to draw attention of the learned counsel for respondents to the above noted findings of DPC about the Appellant to get his viewpoint whether those findings anywhere disclose a determination on the point of Appellant's fitness for promotion. Unsurprisingly, his answer was that DPC by those findings determined the question of fitness that the appellant was not fit for promotion and was superseded. We are afraid to concur with him. Undoubtedly, the DPC was unanimous in recommending the supersession of appellant but with the unsettled reasons revolving around one and the same lacuna i.e. absence of Appellant's PERs for the years 2017, 2018 and 2019. The over obsessiveness of DPC with the said omission on part of the appellant is beyond comprehension for the reason that the DPC after having discussed the entire history of litigation about promotion on post of the Secretary of Assembly was not supposed to be oblivious of the fact that the appellant and the respondent No. 3 were *inter se* locked into dispute about entitlement of promotion on the said post. However, the DPC remained indifferent to the account of such events and did not determine whether in view of the said litigation, was there any logic for the appellant to submit his PERs of the disputed period to his rivals in litigation. Anyhow, if the said PERs were not available and the DPC itself concluded with the last reason that it was of the unanimous view that examination of PERs for the latest period is *sine qua non* for making appropriate recommendations, how come it possible that the appellant was superseded and that too without holding him unfit for promotion. The observations of the DPC as copied herein above even do not include a word about fitness or unfitness for the sake of name. We

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Syder Pakhtukhwa  
Service Tribunal  
Peshawar

are, therefore, clear in our mind that the findings of the DPC as enumerated in the minutes of meeting in respect of the appellant have nothing to deal with any other business except with the absence of the PERs of the appellant for a particular period including years 2017, 2018 and 2019. By virtue of the discussion in the minutes of meeting dated 10.01.2021 at Paragraphs 4 to 7 in the said minutes, the Committee was enlightened about litigation in between the appellant and respondent No. 3 which obviously started in the year 2017 when the respondent No. 3 was, for the first time, promoted as Secretary of the Assembly vide notification dated 15.08.2017. It is mentioned at Paragraph 8 of the minutes of meeting in question that after the above discussion pertaining to litigation, the Committee examined the Working Paper and service record of the officers mentioned therein including PERs (till the year 2019) of the three officers in the feeding cadre; who included the appellant, respondent No. 3 and one Mr. Amjad Ali Additional Secretary.

14. It is a matter of fact that the appellant in the previous litigation succeeded to get the promotion of the respondent No. 3 on the post of Secretary of the Assembly set aside through judicial evaluation, resulting into reversion of respondent No. 3 to the post of Additional Secretary and assignment of the charge of the post of Secretary to the appellant awaiting next decision of the DPC. It would be amiss not to mention that the appellant had struggled and is struggling for his duly adjudged entitlement of promotion against the parties including Hon'ble Speaker of the Provincial Assembly at the top and the respondent No. 3 beneficiary of the disputed promotion on the post of Secretary. If there was no other reporting officer in the channel except respondent No.3, non-submission of PERs by the appellant to the respondent No. 3 as reporting officer is understandable as the latter holding the post of Secretary was a non-entity in the case of appellant due to their inter-se dispute on the promotion to the post of Secretary. Supposedly, had the appellant submitted PERs for the disputed period directly to Mr.

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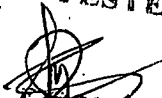
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Service Tribunal  
Peshawar

Speaker, would it not be counterproductive for him when Hon'ble Speaker was also party in the appeal as his orders were challenged in respect of disputed promotion of respondent No. 3. Consequently, it was not a fair approach on part of the DPC to consider the absence of PERs of the disputed period of three years for supersession of the appellant pending his fitness for promotion which could be otherwise resolved on the basis of other record not attended to despite its being workable. Moreover, the view taken by the DPC in case of appellant is not in conformity to the direction given in operative part of the last judgment of this Tribunal setting aside the promotion of respondent No. 3. It was directed thereby that the official respondents shall constitute the DPC in accordance with law. The DPC shall consider the matter of promotion to the post of Secretary Provincial Assembly in light of decision taken in previous appeal as well as the instant judgment strictly in accordance with law/rules.

15. We are mindful of the fact that we have heard the respondents only on the point of maintainability of appeal with reference to a particular proposition that the DPC has held the appellant not fit for promotion due to absence of his PERs and the question of fitness for promotion of a person falls outside the jurisdiction of this Tribunal under Section 4 (b)(i) of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. Having thrashed out the minutes of DPC albeit relating to the said point only, we may not be able to overlook the expediency of passing an order in exercise of enabling powers under Rule 27 of the Khyber Pakhtunkhwa Service Tribunal Rules, 1974, if deemed necessary for the ends of justice and to prevent abuse of the process of this Tribunal. We have already held that findings of DPC fully discussed hereinabove do not include the determination of question of fitness for promotion as far as they relate to the appellant. Having held so, we are constrained to contemplate that what purpose of keeping this appeal pending would be served when the findings of the DPC have been thrashed out judiciously for settlement of point of the maintainability of appeal certainly agitated by the respondents

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Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar




themselves followed by their failure to convince us that the DPC has determined the question of fitness baring jurisdiction of this Tribunal. Alternatively, we have come to the conclusion that the DPC despite discussing the chain of litigation between the same parties as to promotion on the post of Secretary for Assembly has recommended the supersession of the appellant merely for the reason that he did not submit his PERs for the three years i.e. the period during which the litigation was ongoing. We are also not unmindful of the facts that judgments of this Tribunal with reference to the previous litigation discussed herein above ended in favor of the appellant on merit. Rule 27 of Khyber Pakhtunkhwa Service Tribunal Rules, 1974 provides that nothing in these rules shall be deemed to limit or otherwise affect the powers of a Tribunal to make such orders as may be necessary for the ends of justice or to prevent the abuse of process of the Tribunal. It is an undeniable fact that the appellant has availed the opportunity of full hearing while the respondents have been heard on the point of maintainability of the appeal during which the material to be considered for disposal of this appeal will remain the same as now has been thrashed out with assistance of the parties. Therefore, it will result into abuse of process of this Tribunal to keep this appeal pending for no useful purpose when its decision will rest on the same material as argued before us and examined herein this judgment.

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16. For what has gone above, the application filed by respondents questioning maintainability of this appeal is rejected and the appeal is held maintainable and accepted in the following terms, in order to prevent the abuse of the process of this Tribunal. The recommendations of DPC in respect of the appellant and respondent No. 3 are set aside and consequently, the impugned notification of promotion of latter is also set aside. The respondent No.1 shall constitute a new DPC and the panelist officers particularly the appellant will be given opportunity of objection on nominees of DPC, if so advised. The DPC so constituted after settlement of objections, if any, will consider the panelists for promotion in light of the directions given in the judgment dated 17.12.2020 of this Tribunal in Service

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**ATTESTED**  
  
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 Service Tribunal  
 Peshawar

Appeal No. 937/2020 excluding the necessity of the PERs of appellant for the years 2017 and onward. There is no order as to cost. File be consigned to the record room.

ANNOUNCED.  
24.09.2021

(ROZINA REHMAN)  
MEMBER (J)

(AHMAD SULTAN TAREEN)  
CHAIRMAN

Certified to be true copy

EX-AMINER  
Khyber/Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Application 28/9/2021  
Number of Words 6600  
Copying Fee 66.00  
Urgent —  
Total 66.00  
Name of Copyist —  
Date of Completion of Copy 04-10-2021  
Date of Delivery of Copy 04-10-2021

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ANNEXURE  
54

**IN THE SUPREME COURT OF PAKISTAN**

Appellate Jurisdiction

C.P.L.A No. 5969 /2021

Nasrullah Khan presently serving as Secretary Provincial Assembly  
Khyber Pakhtunkhwa, Peshawar.

Petitioner

**VERSUS**

1. Kifayatullah Khan Afridi presently serving as Senior Additional Secretary Provincial Assembly, Khyber Pakhtunkhwa, Peshawar.
2. The Speaker Provincial Assembly of Khyber Pakhtunkhwa Peshawar.
3. The Departmental Promotion Committee through its Secretary Provincial Assembly of Khyber Pakhtunkhwa, Peshawar.

Respondents

**PETITION UNDER ARTICLE 212 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973 FOR THE GRANT OF LEAVE TO APPEAL FROM THE JUDGMENT DATED: 24-09-2021 PASSED BY THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR IN SERVICE APPEAL NO. 4874/2021.**

**RESPECTFULLY SHEWETH:-**

1. That the following questions of law of public importance arise for the determination of this Honourable Court in this petition:-

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- a. Whether the Khyber Pakhtunkhwa Service Tribunal misinterpreted the provisions of Section 4(b)(i) of the Khyber Pakhtunkhwa Service Tribunal Act 1974?
- b. Whether the Khyber Pakhtunkhwa Service Tribunal erroneously held that section 4(b)(i) of the Khyber Pakhtunkhwa Service Tribunal Act 1974 is not applicable to the facts and circumstances of the case?
- c. Whether the Khyber Pakhtunkhwa Service Tribunal was wrong in holding that the case of respondent no. 1 does not relate to the fitness or otherwise of the Civil Servant?
- d. Whether the petitioner has not been heard on merits of the case?
- e. Whether the Khyber Pakhtunkhwa Service Tribunal was justified in setting aside the order of promotion of the petitioner in the facts and circumstances of the case?
- f. Whether the judgement of Khyber Pakhtunkhwa Service Tribunal is sustainable in law?

**2. That the above questions of law arose in the following facts and circumstances of the case:-**

- i. That the post of Secretary in the Assembly had become vacant on 14.08.2017 when the then incumbent of the post Mr. Amanullah Khan stood retired from service on superannuation. The Departmental Promotion Committee

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(DPC) as constituted by the Appointing Authority met on 14.09.2017 to consider the cases of panelists for promotion on the said vacant post. The DPC recommended the promotion of Mr. Nasrullah Khan at Sr. No. 3 on the following panel of officers:-

1. Mr. Kifayatullah Khan Afridi, Senior Additional Secretary (BPS-20)
2. Mr. Ghulam Sarwar, Additional Secretary-I (BPS-19)
3. Mr. Nasrullah Khan, Additional Secretary-II (BPS-19)

That in pursuance of the recommendation of DPC appointment of petitioner as Secretary of Assembly was notified vide notification dated 15.08.2017, the respondent no. 1 the panelist at Sr. No. 1 above impugned the recommendation of DPC and notification of promotion of petitioner through Service Appeal No. 1324/2017 preferred before the Khyber Pakhtunkhwa Service Tribunal on 28.11.2017. When said appeal was preferred, another service appeal No. 952/2014 was also pending in which the petitioner was also a respondent due to challenging of his promotion as Additional Secretary. The said appeal was decided vide judgement dated 14.09.2017 whereby not only the promotion of the petitioner as Additional Secretary but also his promotion as the Secretary made vide notification dated 15.08.2017 was set aside. Obviously by application of the principle of *lis pendens* in order to

implement the aforementioned judgement, notification dated 15.08.2017 was withdrawn on 07.09.2018. However, the petitioner was for the second time promoted as Secretary of the Assembly during pendency of appeal No. 1324/2017 of the respondent no. 1 which when accepted vide judgement dated 10.12.2018, it culminated with the operative part as copied below:-

*"As a sequel to above, the appeal is accepted, the impugned order alongwith successive order of promotion of respondent no. 3 to the post of Secretary Provincial Assembly, Khyber Pakhtunkhwa passed during the pendency of the present service appeal is set aside. Consequently, notification no. PA/KP/Admin/2018/2242 dated 30.08.2018 assigning acting charge of the post of Secretary Provincial Assembly to the appellant is restored."*

- iii. That respondent no. 2 again referred the matter of promotion on the post of Secretary to a reconstituted DPC which on 02.09.2019 for the third time, recommended appellant for promotion and accordingly his appointment was notified vide notification dated 03.09.2019. Ultimately, the matter of said promotion was again brought before this Tribunal through Service Appeal No. 937/2020 by the respondent no. 1 and was decided vide judgement dated 17.12.2020. Some of the facts noted in the said judgement are reproduced herein below:-

*"On 01.08.2017, a notification was issued for*

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constitution of DPC due to retirement of the incumbent. The name of respondent no. 3 was also included in the panel of officers to be considered for promotion against the post of Secretary. The DPC, with addition of the Deputy Secretary (Admn), was reconstituted. The added Member was subordinate to the respondent no. 3 at the relevant time, it is claimed.

The DPC recommended respondent no. 3, a junior to the appellant, for promotion who was accordingly promoted. The appellant questioned the promotion order/notification before this Tribunal through Service Appeal No. 1324/2017 (hereinafter referred to as previous appeal). The matter was laid before a Larger Bench comprising three Honorable Members and was decided on 10.12.2018. The appellant was granted relief by the Tribunal in terms that the order, impugned therein alongwith ensuing order of promotion of respondent no. 3 therein, was set aside and the notification dated 30.08.2018, assigning acting charge of the post of Secretary Provincial Assembly was restored in favour of the appellant. Pertinently, the arrangement of parties in the previous appeal was the same as in the instant appeal.

The decision of Tribunal was impugned before the August Supreme Court of Pakistan, which was pleased to, inter-alia, expunge remarks against respondent no. 1, as well as the erstwhile Speaker of Khyber Pakhtunkhwa Provincial Assembly. The Apex Court ordered for reconstitution of DPC to re-examine and decide the matter of disputed promotion. The

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reconstituted committee submitted its recommendations on 02.09.2019, whereupon, impugned notification dated 03.09.2019 was issued. The appellent submitted a departmental appeal which was not responded to, hence the appeal in hand."

iv. That judgement in Service Appeal No. 937/2020 ended with the operative part as reproduced below:-

*"Ex-consequencia the appeal in hand is allowed and the impugned notification dated 03.09.2019 is set aside. The official respondents shall constitute the DPC in accordance with law. The DPC shall consider the matter of promotion to the post of Secretary Provincial Assembly in light of decision taken in previous appeal as well as the Instant judgement strictly in accordance with law/rules. The denovo exercise shall be completed within three months of receipt of copy of instant judgement."*

v. That in consequence of this order, DPC was constituted and its Chairman after deliberations resigned from the Chairmanship of DPC. Resultantly, Mr. Lutf ur Rehman MPA was appointed as the new Chairman of DPC.

vi. That the DPC recommended the petitioner for promotion. He was appointed as Secretary on the basis of said recommendation of DPC vide notification No. PA/KP/Admn.

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2021/449 dated 11.01.2021.

- vii. That the respondent no. 1 preferred departmental Appeal and after waiting for 90 days filed Service Appeal No. 4874/2021 before Khyber Pakhtunkhwa Service Tribunal Peshawar with the following prayer:-

*"It is therefore humbly prayed that on acceptance of this Service Appeal; the impugned decision dated 10.01.2021 of Departmental Promotion Committee No. 1 and the notification issued thereto on 11.01.2021; notifying respondent no. 3 as Secretary Provincial Assembly Khyber Pakhtunkhwa be set at naught besides the same, the present appellant be declared as promoted to the position of Secretary of Provincial Assembly Khyber Pakhtunkhwa from such date as his junior was promoted alongwith back benefits/consequential benefits.*

*Any such other order be passed which this Tribunal deems fit and appropriate as the circumstances may require for determination of the subject at hand."*

- viii. That the petitioner and the respondents no. 2 and 3 filed their written reply with several legal and factual objections. An application was filed by the petitioner and official respondents questioning the maintainability of the appeal

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on the ground that the respondent no. 1 was considered but was found un-fit for promotion and the determination of fitness or otherwise to hold a post or to be promoted to a higher post is outside the jurisdiction of the Service Tribunal and therefore, the service appeal filed by the respondent no. 1 was not maintainable.

ix. That the respondent no. 1 did not opt to file reply to the said application. He argued the matter on merits as well as on the maintainability of the appeal. The petitioner argued only on a preliminary objection that the appeal is not maintainable and reserved his right to argue the case on merits after the decision of the tribunal on the objection regarding the maintainability of the appeal.

x. That the Service Tribunal recorded a finding that the appeal filed by the respondent no. 1 is maintainable.

xi. That after holding that the appeal filed by the respondent no. 1 is maintainable, the service tribunal without hearing the petitioner on merits of the case accepted the appeal filed by the respondent no. 1 and set aside the order of promotion of the petitioner. In paragraph 15 of the judgement, the Tribunal admitted that it has heard the petitioner only on the point of maintainability but yet without hearing the petitioner on merit accepted the appeal filed by the respondent no. 1 vide judgement dated 24.09.2021.

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that the petitioner seeks leave to appeal from the judgement dated: 24-09-2021 passed by the learned Khyber Pakhtunkhwa Service Tribunal Peshawar in Special Appeal No: 487/2021 on the following inter alia grounds:

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That the Khyber Pakhtunkhwa Service Tribunal misinterpreted the provisions of Section 4(b)(i) of the Khyber Pakhtunkhwa Service Tribunal Act 1974.

That the Khyber Pakhtunkhwa Service Tribunal erroneously held that section 4(b)(i) of the Khyber Pakhtunkhwa Service Tribunal Act 1974 is not applicable in the facts and circumstances of the case.

That the Khyber Pakhtunkhwa Service Tribunal was wrong in holding that the case of respondent no: 1 does not relate to the fitness or otherwise of the Civil Servant. The Departmental Promotion Committee (DPC) found the respondent no: 1 to be un-fit for promotion to the post of Secretary Khyber Pakhtunkhwa Provincial Assembly. The reason as to why the respondent no: 1 was found to be un-fit for promotion is not relevant for the applicability of section 4(b) of the Khyber Pakhtunkhwa Service Tribunal Act 1974. Under the provisions of Khyber Pakhtunkhwa Civil Servant Act, no appellate representation is competent.

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on matters relating to the determination of fitness of a person to hold a particular post or to be promoted to a higher post. Similarly, section 4(b)(i) of Khyber Pakhtunkhwa Service Tribunal Act 1974 provides that no appeal shall lie to a Tribunal against an order or decision of a departmental authority determining the fitness or otherwise of a person to be appointed to a higher post or grade.

The intention of the legislature is thus clear that the question of fitness or otherwise of a person to be appointed to a higher post has been left exclusively with the Departmental Promotion Committee and the authority and no representation or departmental appeal is competent against the said order nor the Service Tribunal has the jurisdiction to interfere in such determination.

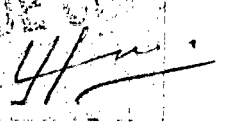
d. That the petitioner has not been heard on merits of the case. The Service Tribunal itself observed in paragraph 15 of the judgement that the petitioner has not been heard by the tribunal on the merits of the case. The judgement of the Khyber Pakhtunkhwa Service Tribunal is therefore violative of principle of natural justice and is liable to be set aside on this simple ground.

e. That had the petitioner been heard on the merits of the case, the petitioner would have brought to the notice of the Service Tribunal that the respondent no. 1 was proceeded

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against under the Efficiency and Discipline Rules. He was charge sheeted on 16.05.2019. He was placed under suspension vide order dated 17.05.2019. He challenged the charge sheet dated 16.05.2019 before the Peshawar High Court and the Peshawar High Court vide order dated 21.05.2019 suspended the notification dated 16.05.2019. What is the effect of the respondent no. 1 being charge sheeted has not been considered by the Service Tribunal because the petitioner was not heard on the merits of the case. It was also important to be considered by the Tribunal that though the notification dated 16.05.2019 was suspended by the High Court but it appears that actually it was notification dated 17-05-2019 which was suspended. Because charge sheet is not a notification and notification dated 17.05.2019 through which the respondent no. 1 was suspended was suspended by the High Court. The Department should have proceeded to decide the charge sheet on one way or the other. The Tribunal was bound to consider these two aspects of the matter but were not considered because the petitioner was not heard on merits.

- f. That the Khyber Pakhtunkhwa Service Tribunal was not justified in setting aside the order of promotion of the petitioner in the facts and circumstances of the case.
- g. That the judgement of Khyber Pakhtunkhwa Service Tribunal is not sustainable in law.

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**PRAYER:-**

*It is, therefore, respectfully prayed that leave to appeal may kindly be granted from the judgement dated: 24-09-2021 passed by the learned Khyber Pakhtunkhwa Service Tribunal Peshawar in Service Appeal No. 4874/2021 in the Interest of Justice.*

**DRAWN BY**

**FILED BY**

**MUHAMMAD MUNIR PIRACHA**  
*Advocate Supreme Court of Pakistan*  
House No. 19, St 59, F-8/4,  
**ISLAMABAD.**

**ANIS MUHAMMAD SHAHZAD**  
*Advocate on Record*  
Supreme Court of Pakistan  
**ISLAMABAD.**

**CERTIFICATE:-**

*Certified that as per instructions this is the First Petition against the impugned judgement in this Honorable Court.*

**ADVOCATE-ON-RECORD**  
(Supreme Court of Pakistan)

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Hon'ble Speaker  
Provincial Assembly of  
NWFP, Peshawar.

Subject: **APPOINTMENT ON VACANT POST OF ASSISTANT SECRETARY,  
PROVINCIAL ASSEMBLY OF NWFP.**

Sir,

I have learned from reliable source that a post of Assistant Secretary, Provincial Assembly is lying vacant under your kind control. I beg to offer my self for the same. I am a graduate and have appeared in my Law Final from Karachi University.

I hope you will consider me favourable for the post mentioned and oblige.

Thanking you in anticipation.

Your's Obediently

Dated. 22/11/1992

(KIFAYAT ULLAH)

APPOINTMENT ON VACANT POST OF ASSISTANT SECRETARY, PROVINCIAL ASSEMBLY OF NWFP.

Subject

I have learned from reliable source that a post

of Assistant Secretary, Provincial Assembly is lying vacant

under your kind control. I beg to offer my self for the same.

I am a graduate and have appeared in my Law Final from

General University.

I hope you will consider me favourable for the

post mentioned and oblige.

Thanking you in anticipation.

Yours obediently,

(KIFAYATULLAH)

[Handwritten signature]

Date: 26/11/92

26/11/92

ATTESTED

SECRETARY, PROVINCIAL ASSEMBLY OF NWFP

ANNEXURE 3

Annexure - 3

The Hon. Chief Minister, Provincial Assembly of NWFP, Peshawar.

33



PROVINCIAL ASSEMBLY OF N.W.F.P.

Annexure - J/1

NOTIFICATION

Dated Peshawar, the 23/11/1992.

NO. PA/NWFP/Admn:/92/22835 - As ~~decreed~~ <sup>ordered</sup> by Mr. Speaker, Mr. Kifayatullah Khan Afridi S/O Amanullah Khan Afridi of FR Kohat, is hereby appointed as Assistant Secretary (PAC) in BPS NO. 17, on purely temporary basis, from the date of assumption of his charge, with usual allowance as admissible under the rules on the following terms and conditions :-

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

BY ORDER OF MR. SPEAKER.

(ABBUL HAMEED KHATRAK)  
Secretary,

Provincial Assembly of N.W.F.P.

Endst: NO. PA/NWFP/Admn:/92/22836-4/ Dated 23/11/1992.

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

- 1- The Accountant-General, NWFP, Peshawar.
- 2- The Director, Health Services, NWFP, Peshawar.
- 3- The Manager Government Printing Press, Peshawar for publication in the next issue of Govt. Gazette.
- 4- Mr. Kifayatullah Khan Afridi, Vill: & P.O. Babri Banda Distt: Kohat.
- 5- The Superintendent (Budget & Accounts) Provincial Assembly of N.W.F.P.
- 6- Personal file of the officer concerned.

FAKHR-UDDIN  
Law Officer

Per Pakhtunkhwa

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Anneamē J/2

To,

The Secretary,  
Provincial Assembly of N.W.F.P.

Subject:- ARRIVAL REPORT

Sir,

In pursuance of your Notification No. PA/NWFP/Admn:/92/22835 dated 23-11-1992, I beg to submit my arrival report for duty as Assistant Secretary in B.P.S. No. 17 on the fore-noon of 23-11-1992.

Your obedient servant,

Dated 23/11/1992 (F.N.). (KIFAYATULLAH KHAN AFRIDI)  
Assistant Secretary,  
Provincial Assembly of N.W.F.P.

  
Deputy Secretary  
Khyber Pakhtunkhwa Assembly

M. J. ALA  
FAKHR-E-ALA  
Law Officer  
Provincial Assem  
Khyber Pakhtunkh

ATTESTED

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69

PROVINCIAL ASSEMBLY OF N.W.F.P.

*Annexure T3*

OFFICE ORDER

Dated Peshawar, the 3 /2/1993.

No. PA/NWFP/Admn:/93/3-67 - In pursuance of the powers conferred on him by Rules-9 (b) and 15 of the North West Frontier Province Provincial Assembly Secretariat (Recruitment) Rules, 1974, read with Government of N.W.F.P., Services and General Administration Department's circular letter No. SOS III(S&GAD)2(91)86 dated 24.9.1988, Mr. Speaker is pleased to grant relaxation in upper age limit of 2 years 5 months and 12 days in favour of Mr. Kifayatullah Afridi S/O Amanullah Khan Afridi of District Kohat who has been appointed as Assistant Secretary in (B-17) in the Provincial Assembly Secretariat of N.W.F.P., with effect from 23.11.1992.

BY ORDER OF MR. SPEAKER.

*(Signature)*  
 (ABDUL HAMEED KHATTAK)  
 Secretary,

Provincial Assembly of N.W.F.P.

Endst: No. PA/NWFP/Admn:/93/3-68-71 Dated 3 /2/1993.

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

- 1- The Accountant General, NWFP, Peshawar.
- 2- --- Mr. Kifayatullah Afridi, Assistant Secretary, Provincial Assembly of N.W.F.P.
- 3- The Superintendent (Budget and Accounts) Provincial Assembly of N.W.F.P.
- 4- ✓ Personal file of the officer concerned

*Att. Secy*  
**TRUE COPY**  
*(Signature)*  
 Deputy Secretary  
 Provincial Assembly

*Attested*  
 AKHAR-E-ADAM  
 Law Officer

Provincial Assembly  
 Peshawar  
**ATTESTED**

*(Signature)*

EXTRAORDINARY  
GOVERNMENT



REGISTERED NO. PIII  
GAZETTE

70  
Annexure

North West Frontier Province

Published by Authority

PESHAWAR, MONDAY, 31ST DECEMBER, 2007.

PROVINCIAL ASSEMBLY SECRETARIAT

NOTIFICATION

Dated Peshawar, the 25th September, 2007.

No. RA/NWFP/Admn./2007/19866. In exercise of the powers conferred on him under rule 5(2) of the North West Frontier Province, Provincial Assembly Secretariat Recruitment Rules, 1974, Speaker, Provincial Assembly of NWFP is pleased to make the following order namely:-

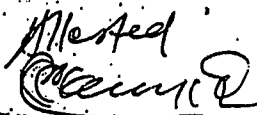
1. This order may be called the North West Frontier Province, Provincial Assembly Secretariat Recruitment Order, 2007.
2. It shall come into force at once.
3. The method of recruitment and minimum qualification for the posts of Secretary, Sr. Additional Secretary, Additional Secretaries, Deputy Secretaries, Assistant Secretaries, Secretary to Mr. Speaker, Chief Editor of Debates, Chief Reporter, Director Library and Research, Librarian and Assistant Librarian shall be as indicated in the schedule given hereunder:-

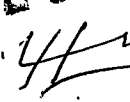
SCHEDULE

S. No.	Name of Posts	Minimum qualification for appointment		Method of Recruitment
		By direct recruitment	By Promotion	
1	2	3	4	5
1	Secretary BPS-21		By Promotion	By Promotion on the basis of seniority cum fitness amongst the senior Additional Secretary and Additional Secretaries with three years service as such or 22 years service in BPS-17 and above.
2	Senior Additional Secretary-BPS-20		By Promotion	By Promotion on the basis of seniority cum fitness amongst the Additional Secretaries with two years service as such or 17 years service in BPS-17 and above.

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4/11/07  
Att. Secy  
KHR-E-2  
Law Officer  
Provincial Assembly  
Peshawar

1	2	3	4	5
3.	Additional Secretary BPS-19		By Promotion	By Promotion on the basis of seniority cum fitness amongst the Deputy Secretaries with five years service as such or 12 years service in BPS-17 and above.
4.	Deputy Secretary BPS-18		By Promotion	By Promotion on the basis of seniority cum fitness amongst the Assistant Secretaries with five years service in BPS-17.
5.	Assistant Secretary-BPS-17	B.A/BSc from a recognized University preference be given to Master degree holder in social sciences with LLB (50% direct recruitment)	50% By Promotion & 50% by direct recruitment	By Promotion (50%) on the basis of seniority cum fitness amongst the Superintendents with 10 years service in BPS-16 and below.
6.	Secretary to Mr. Speaker BPS-19		By Promotion	By Promotion on the basis of seniority cum fitness amongst the private secretaries with 5 years service in BPS-18 or 12 years service in BPS-17 and above.
7.	Chief Editor of Debates BPS-19		By Promotion	By Promotion on the basis of seniority cum fitness amongst the Editors with 7 years service in BPS-18 or 12 years service in BPS-17 and above.
8.	Chief Reporter BPS-18		By Promotion	By Promotion on the basis of seniority cum fitness amongst the Reporters with 5 years experience of service in BPS-17.
9.	Director Library and Research BPS-19		By Promotion	By Promotion on the basis of seniority from Librarians with 7 years service as such or 12 years service as Librarian in BPS-17 and above.
10.	Librarian BPS-18		By Promotion	By Promotion on the basis of seniority cum fitness from Assistant Librarians with 5 years service.

  
**FAKHR-E-ALAM**  
 Law Officer,  
 Provincial Assembly of NWFP

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72

1	2	3	4	5
11.	Assistant Librarian BPS 17	Master in Library Science (second division) preference be given to Law graduates as additional qualification.		

BY ORDER OF MR. SPEAKER

(AMANULLAH)  
Acting Secretary,  
Provincial Assembly of NWFP.

*Akhter  
Qureshi*

Printed and published by the Manager,  
Silly & Ptg. Deptt. NWFP, Pesh

**FAKHR-E-ALAM**  
Law Officer,  
Provincial Assembly of Khyber  
Pakhtunkhwa

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388 day

(73)

Annex ml - L

**PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA**

**NOTIFICATION**

Dated Peshawar, the 15/08/2017

No.PA/K.P/Admn:/2017/ 4935 On the recommendation of Departmental Promotion/Recruitment Committee No.1 and in exercise of the powers conferred on him by Rule 10 read with Rule 6 of the Khyber Pakhtunkhwa Provincial Assembly Secretariat (Recruitment) Rules, 1974, Mr. Speaker has been pleased to promote the following officers of the Provincial Assembly Secretariat of Khyber Pakhtunkhwa, against the posts as mentioned against each with immediate effect:-

S.No.	Name with designation & BPS No.	Post against which promoted.
1.	Mr. Nasrullah Khan, Additional Secretary (BPS-20 personal)	Secretary (BPS-21)
2.	Mr. Inamullah Khan, Deputy Secretary (BPS-19 personal)	Additional Secretary (BPS-19)
3.	Mr. Muhammad Younas, Assistant Secretary (BPS-18 personal)	Deputy Secretary (BPS-18)

BY ORDER OF MR. SPEAKER

Sd/-

DEPUTY SECRETARY (ADMN)

Provincial assembly of Khyber Pakhtunkhwa

E.No.PA/K.P/Admn:/2017/ 4936-44 Dated Peshawar, the 15/08/2017

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

1. All the Administrative Secretaries to Govt: of Khyber Pakhtunkhwa, Peshawar.
2. All the Officers concerned.
3. All the Heads of Attached Departments, Khyber Pakhtunkhwa.
4. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
5. The Manager, Government Printing Press Peshawar for publication in the next issue of Government Gazette.
6. The Director (Finance & Accounts), Provincial Assembly of Khyber Pakhtunkhwa.
7. The PS to Deputy Speaker, Provincial Assembly of Khyber Pakhtunkhwa.
8. Pay Bill Clerk, Provincial Assembly of Khyber Pakhtunkhwa.
9. Personal files of the officers concerned.

(Signature)  
ASSISTANT SECRETARY (ADMN:)  
Provincial assembly of Khyber Pakhtunkhwa

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(Signature)

74

PROVINCIAL ASSEMBLY SECRETARIAT  
KHYBER PAKHTUNKHWA



Annexure - C

NOTIFICATION

Dated Peshawar, the 30 /08-2018

No. PA/KP/Admn:/2018/ 2242 In pursuance of the judgment of the Service Tribunal in service appeal No. 952/2014 dated 14-09-2017 and execution petition No. 235/2017 dated 20-07-2018, the competent authority hereby confers acting charge to Mr. Kifayatullah Khan Afridi, Senior Additional Secretary as Secretary, Provincial Assembly of Khyber Pakhtunkhwa, awaiting decision of the Supreme Court of Pakistan.

BY ORDER OF THE SPEAKER

Sd/-  
Additional Secretary (Admn)  
Khyber Pakhtunkhwa Assembly

Endst. No. PA/KP/KP/Admn:/2018/ 2243-S3 Dated 30 08-2018

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

1. All Administrative Secretaries to Government of Khyber Pakhtunkhwa.
2. The Secretary, National Assembly of Pakistan, Islamabad.
3. The Secretaries, Provincial Assemblies, Punjab, Sindh and Balochistan, Lahore/Karachi/Quetta.
4. The Secretary, Legislative Assembly of Azad Jammu & Kashmir, Muzaffarabad.
5. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
6. The Officer concerned.
7. The Special Secretary (Administration, Finance & Accounts) Provincial Assembly of Khyber Pakhtunkhwa.
8. The Manager, Government Printing Press, Peshawar.
9. The Director (Finance & Accounts), Provincial Assembly of Khyber Pakhtunkhwa.
10. All Additional Secretaries, Provincial Assembly of Khyber Pakhtunkhwa.
11. All Deputy Secretaries, Provincial

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Deputy Secretary (Admn.)  
Khyber Pakhtunkhwa Assembly



277 days

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Annexure - L

PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 25 /09/2018.

NO.PA./KP/Admn:/2018/ 3798 On the recommendation of Departmental Promotion/Recruitment Committee No.I and in exercise of the powers conferred on him by Rule-10 read with Rule-6 of the Khyber Pakhtunkhwa Provincial Assembly Secretariat (Recruitment) Rules, 1974, Mr. Speaker has been pleased to promote Mr. Nasrullah Khan, Additional Secretary BPS-20 (Personal) of the Provincial Assembly Secretariat of Khyber Pakhtunkhwa, against the vacant post of Secretary (BPS-21) with immediate effect.

BY ORDER OF MR. SPEAKER

Sd/-

DEPUTY SECRETARY (ADMN)  
PROVINCIAL ASSEMBLY OF KHYBER  
PAKHTUNKHWA

E.NO.PA/K.P/Admn:/2018/ 3799-807 Dated 25 /09/2018.

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

1. All the Administrative Secretaries to Govt of Khyber Pakhtunkhwa, Peshawar.
2. The officer concerned.
3. The Special Secretary to Mr. Speaker, Provincial Assembly of Khyber Pakhtunkhwa.
4. All Heads of Attached Departments, Khyber Pakhtunkhwa.
5. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
6. The Director (Finance & Accounts), Provincial Assembly of Khyber Pakhtunkhwa.
7. The Manager, Government Printing Press, Peshawar, for publication in the next issue of Government Gazette.
8. The PS to Deputy Speaker, Provincial Assembly of Khyber Pakhtunkhwa.
9. Pay Bill Clerk, Provincial Assembly of Khyber Pakhtunkhwa.
10. Personal file of the officer concerned.

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ASSISTANT SECRETARY (ADMN)  
PROVINCIAL ASSEMBLY OF KHYBER  
PAKHTUNKHWA

PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA

NOTIFICATION

Annexure - L

Dated Peshawar, the 9/07/2019

No.PA/K.P/Admn:/2019/ 542 Pursuant to the Order of Hon'ble Supreme Court of Pakistan dated 02-07-2019, in Civil Petition No.354 of 2019, this Secretariat Notifications No.PA/KP/Admn:/2017/4935 dated 15-08-2017 & No.PA/KP/Admn:/2018/3798 dated 25-09-2018 promoting Mr. Nasrullah Khan Khattak, as Secretary (BPS-21), Provincial Assembly Secretariat of Khyber Pakhtunkhwa, are hereby withdrawn with effect from 02-07-2019.

BY ORDER OF MR. SPEAKER

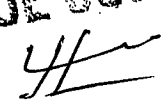
Sd/-  
DEPUTY SECRETARY (ADMN:)  
PROVINCIAL ASSEMBLY OF KHYBER  
PAKHTUNKHWA

E.No.PA/K.P/Admn:/2019/ 543-47 Dated Peshawar, the 9/07/2019

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

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Officer concerned.
3. The Manager, Government Printing Press, Peshawar.
4. Pay Bill Clerk, Provincial Assembly of Khyber Pakhtunkhwa.
5. Personal file of the officer concerned.

  
ASSISTANT SECRETARY (ADMN:)  
PROVINCIAL ASSEMBLY OF KHYBER  
PAKHTUNKHWA

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PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA

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NOTIFICATION

*Annex me - L*

Dated Peshawar, the 9/07/2019

No.PA/K.P/Admn:/2019/ 554 Mr. Speaker has been pleased to allow Mr. Nasrullah Khan Khattak, Additional Secretary BPS-20 (personal) to act as Secretary, Provincial Assembly Secretariat of Khyber Pakhtunkhwa with effect from 02-07-2019 till the promotion against the post of Secretary on regular basis.

BY ORDER OF MR. SPEAKER

Sd/-  
DEPUTY SECRETARY (ADMN:)  
PROVINCIAL ASSEMBLY OF KHYBER  
PAKHTUNKHWA

E.No.PA/K.P/Admn:/2019/ 555-68 Dated Peshawar, the 9/07/2019

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

1. All Administrative Secretaries to Government of Khyber Pakhtunkhwa.
2. The Secretary, National Assembly of Pakistan, Islamabad.
3. The Secretaries, Provincial Assemblies, Punjab, Sindh, Baluchistan, Lahore, Karachi & Quetta.
4. The Secretary, Legislative Assembly of Azad Jamu & Kashmir, Muzaffarabad.
5. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
6. The Officer concerned.
7. The Secretary to Mr. Speaker, Provincial Assembly Secretariat of Khyber Pakhtunkhwa.
8. All Additional Secretaries, Provincial Assembly Secretariat of Khyber Pakhtunkhwa.
9. The Director (F&A), Provincial Assembly Secretariat of Khyber Pakhtunkhwa.
10. All Deputy Secretaries, Provincial Assembly Secretariat of Khyber Pakhtunkhwa.
11. The PS to Deputy Speaker, Provincial Assembly Secretariat of Khyber Pakhtunkhwa.
12. The Manager, Government Printing Press, Peshawar.
13. The PA to Senior Additional Secretary, Provincial Assembly Secretariat of Khyber Pakhtunkhwa.
14. The Pay bill Clerk, Provincial Assembly Secretariat of Khyber Pakhtunkhwa.
15. Personal file of the officer concerned.

*TRUE COPY*  
*YH*  
ASSISTANT SECRETARY (ADMN:)  
PROVINCIAL ASSEMBLY OF KHYBER  
PAKHTUNKHWA

ANNEXURE

PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA

CHARGE SHEET

I, Mushtaq Ahmad Ghani, Speaker, Provincial Assembly, as competent authority, do hereby serve you Mr. Kifayatullah Khan Afridi, Senior Additional Secretary, Provincial Assembly Secretariat of Khyber Pakhtunkhwa, Peshawar, charge sheet as follows: -

1. Whereas that you got yourself appointed in violation of the rules, procedure and merit and no proper procedure mandated under the law was followed and the following irregularities were committed:-
  - a. That you submitted application for appointment on 22-11-1992.
  - b. That you were appointed on 23-11-1992.
  - c. That you reported for duty on the same day i.e. 23-11-1992.
  - d. That you did not require Medical Certificate before or at the time of arrival.
  - e. That Medical Board for your fitness examination was constituted on 30-12-1992, after one month and seven days.
  - f. That your upper age limit was relaxed after two months and ten days of your appointment which means that you were over age at the time of appointment.
  - g. That you were loan defaulter of ADBP, Kohat Branch; at the time of your appointment.
  - h. That you acquired premature promotion as Deputy Secretary (BPS-18) which was illegal.
  - i. That you were not eligible for appointment in grade-17 due to your holding 3<sup>rd</sup> Division in F.A.
  - j. That you did not avail of study leave during your service as Assistant Secretary but acquired L.L.B Degree.
2. By reasons of above, you appeared to be guilty of misconduct under E&D Rules, 2011 and have rendered yourself liable to all or any of the penalties specified therein.
3. You are, therefore, required to submit your written defence within 07-days of receipt of this charge sheet to the Inquiry Officer.
4. Your written defence, if any, should reach the Inquiry Officer within the specified period, failing which it shall be presumed that you have no defence to put in and in that case one sided / ex-parte action shall follow against you.
5. You should intimate in writing whether you desire to be heard in person.
6. Statement of allegation is enclosed.

MR. SPEAKER,  
PROVINCIAL ASSEMBLY OF KHYBER  
PAKHTUNKHWA

No.PA/K.P/Admn./2019/194911 Dated Peshawar, the 16/05/2019.

Copy of the above is forwarded to Mr. Kifayatullah Khan Afridi, Senior Additional Secretary, Provincial Assembly Secretariat of Khyber Pakhtunkhwa, for strict compliance.

ASSISTANT SECRETARY (ADMN.),  
PROVINCIAL ASSEMBLY OF KHYBER  
PAKHTUNKHWA

ANNEXURE E

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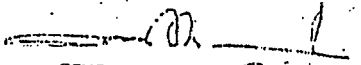
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PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA

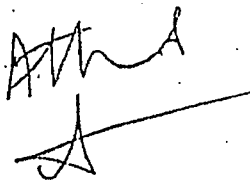
STATEMENT OF ALLEGATION

1. Whereas that he got himself appointed in violation of the rules, procedure and merit and no proper procedure mandated under the law was followed and the following irregularities were committed:-
  - a. That he submitted application for appointment on 22-11-1992.
  - b. That he was appointed on 23-11-1992.
  - c. That he reported for duty on the same day i.e. 23-11-1992.
  - d. That he did not acquire Medical Certificate before or at the time of arrival.
  - e. That Medical Board for his fitness examination was constituted on 30-12-1992, after one month and seven days.
  - f. That his upper age limit was relaxed after two months and ten days of your appointment which means that he was over age at the time of appointment.
  - g. That he was loan defaulter of ADBP, Kohat Branch, at the time of his appointment.
  - h. That he acquired premature promotion as Deputy Secretary (BPS-18) which was illegal.
  - i. That he was not eligible for appointment in grade-17 due to your holding 3<sup>rd</sup> Division in F.A.
  - j. That he did not avail of study leave during his service as Assistant Secretary but acquired L.L.B Degree.

  
SPEAKER,  
PROVINCIAL ASSEMBLY OF KHYBER  
PAKHTUNKHWA

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IN THE PESHAWAR HIGH COURT, PESHAWAR


FORM OF ORDER SHEET

Date of order or proceedings.	Order or other proceedings with signature (s) of Judge(s)
(1)	(2)
21.05.2019	<p><u>W.P.No.2914-P/2019</u></p> <p><u>Present:</u> Mr. Ali Azim Afridi, Advocate for the petitioner.</p> <p style="text-align: center;">***</p> <p>Comments of respondent be called for, so as to reach this court positively within possible shortest time.</p> <p><u>Interim Relief</u></p> <p>Notice for 11.6.2019. In the meanwhile, the impugned Notification dated 16.5.2019 stands suspended.</p> <p style="text-align: right;">JUDGE</p> <p style="text-align: right;">CERTIFIED TO BE TRUE COPY</p> <p style="text-align: right;">Peshawar High Court, Peshawar Authorised by the Registrar The Qanoon-e-Adalat, 1974</p> <p style="text-align: right;">17 SEP 2020</p> <p style="text-align: right;">TRUE COPY</p> <p style="text-align: right;">4/</p>

Shahid Ali, P.S.

(D.B) (Hon'ble Mr. Justice Daramullah Khan and Hon'ble Justice Musarrat Hitali)

81



(19)

**BEFORE THE PESHAWAR HIGH COURT PESHAWAR**  
**WRIT PETITION NO. /2019**

Kifayatullah Khan Afridi Presently Serving as Senior  
Additional Secretary Provincial Assembly Khyber  
Pakhtunkhwa, Peshawar

....Petitioner

**Versus**

The Speaker Provincial Assembly Khyber Pakhtunkhwa,  
Peshawar

....Respondent(s)

**WRIT PETITION UNDER ARTICLE 199; SEEKING  
DECLARATION TO THE EFFECT THAT THE  
IMPUGNED NOTIFICATION DATED 16.05.2019  
MAY PLEASE BE DECLARED VOID AB INITIO,  
CORAM NON JUDICE AND WITHOUT ANY  
LAWFUL AUTHORITY**

**Respectfully Sheweth,**

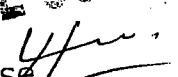
1. That the Constitution of Islamic Republic of Pakistan, provides for the Provincial Assembly; as a state institution within the meaning of Article 7 of the Constitution.
2. That the Constitution of Islamic Republic of Pakistan equally provides for constitution of Provincial Assemblies in line with Article 106 of the Constitution.
3. That the Constitution of Islamic Republic of Pakistan allows election of respondent in lieu of Article 108 of the Constitution.
4. That the Constitution of Islamic Republic of Pakistan equally allows the Provincial Assembly by law so as to regulate the recruitment and conditions of service of persons appointed to the secretarial staff within the meaning of Article 87 read with Article 127 of the Constitution.

**TRUE COPY**  
**WITNESSED**  
EXAMINER  
Peshawar High Court

5. That the law provides for strength and composition of the Secretariat; including therein methods of recruitment, promotion, transfer; qualification for appointment; appointing authority etcetera.
6. That it is important to note that; the respondent before entering upon office as Speaker, make before the Provincial Assembly oath in the form set out in the Third Schedule.
7. That the respondent as a Speaker of Provincial Assembly, maintains to discharge his duties and perform his functions, honestly, to the best of his ability, faithfully in accordance with the Constitution of Islamic Republic of Pakistan, the law and the rules of the Assembly and always in the interest of the Sovereignty, integrity, solidarity, well-being and prosperity of Pakistan.

**ON FACTS**

8. That the petitioner being citizen of the state of Islamic Republic of Pakistan and as such presently serving as Senior Additional in the Provincial Assembly Secretariat, Khyber Pakhtunkhwa since the Judgment rendered by Service Tribunal Khyber Pakhtunkhwa is yet to be implemented; as such expects exercise of powers aimed at having impact upon the lives of people; to be within the limits ordained by the Constitution and law.
9. That the grievance of the petitioner revolves around over issuance of charge sheet dated 16.05.2019 by the respondent; aimed at forgoing his seniority-cum-promotion as Secretary Promotion Assembly Khyber Pakhtunkhwa. **(Copy of the show-cause dated 16.05.2019 is annexed as Annexure "A")**
10. That for the sake of brevity and information; the inter-se promotion of Mr. Nasrullah Khan Khattak the than occupant of the position of Secretary Provincial Assembly; was disputed before the Service Tribunal Khyber Pakhtunkhwa by the present petitioner; wherein not only his promotion was declared otherwise rather the respondent too was reprimanded regarding his inactions and omissions

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ATTESTED  
 EXAMINER  
 Peshawar High Court



83

# VAKALATNAMA

In the Court of **Khyber Pakhtunkhwa Service Tribunal, Peshawar**

Service Appeal No. \_\_\_\_/2022

Petitioner  
Plaintiff  
Applicant  
Appellant  
Complainant

**NAsrullah Khan**

Decree-Holder

**V**ERSUS

In the

Service Appeal

Respondent  
Defendant  
Opponent  
Accused

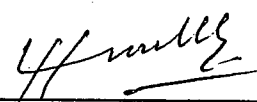
**Speaker etc.**

Judgment-Debtor

I / We **Nasrullah Khan** the above noted Appellant do hereby appointed and constitute, **Muhammad Zafar Tahirkheli Advocate Supreme Court of Pakistan & Ansar Ullah Khan, Advocate High Court**, to appear, plead, act, compromise, withdraw or refer to arbitration for me / us as my / our counsels / advocates in the above noted matter, without any liability for his default and with the authority to engage any other Advocate / Counsel at my / our cost.

The Client / Litigant will ensure his presence before the Court on each and every date of hearing and the counsel would not be responsible if the case is proceeded ex-parte or is dismissed in default of appearance. All cost awarded in favour shall be the right of Counsel or his nominee, and if awarded against shall be payable by me/us.

I / We authorize the said Advocates to withdraw and receive on my / our behalf all sums and amounts payable or deposited on my / our account in the above noted matter.



Client

**M. Zafar/Tahir**

Attested & Accepted (Advocates)

**Ansar Ullah Khan**

Dated 02/04/2022

Office **ATIQ LAW ASSOCIATES,**  
87, Al-Falah Street, Besides State Life Building,  
Peshawar Cantt, Phone: 091-5279529  
E-mail : [zafark.advocate@gmail.com](mailto:zafark.advocate@gmail.com)

# VAKALATNAMA

In the Court of **Khyber Pakhtunkhwa Service Tribunal, Peshawar**

Service Appeal No. \_\_\_\_/2022

Petitioner  
Plaintiff  
Applicant  
Appellant  
Complainant

**NAsrullah Khan**

Decree-Holder

**V**ERSUS

In the Court of

Service Appeal

Respondent  
Defendant  
Opponent  
Accused

**Speaker etc.**

Judgment-Debtor

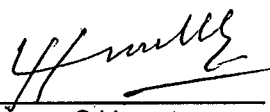
I / We **Nasrullah Khan** the above noted Appellant do hereby appointed and constitute, **Muhammad Zafar Tahirkheli Advocate Supreme Court of Pakistan & Ansar Ullah Khan, Advocate High Court**, to appear, plead, act, compromise, withdraw or refer to arbitration for me / us as my / our counsels / advocates in the above noted matter, without any liability for his default and with the authority to engage any other Advocate / Counsel at my / our cost.


The Client / Litigant will ensure his presence before the Court on each and every date of hearing and the counsel would not be responsible if the case is proceeded ex-parte or is dismissed in default of appearance. All cost awarded in favour shall be the right of Counsel or his nominee, and if awarded against shall be payable by me/us.

I / We authorize the said Advocates to withdraw and receive on my / our behalf all sums and amounts payable or deposited on my / our account in the above noted matter.

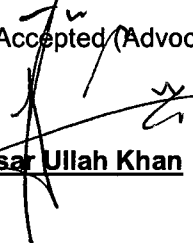
Dated 02/04/2022

**Office** **ATIQU LAW ASSOCIATES,**  
87, Al-Falah Street, Besides State Life Building,  
Peshawar Cantt, Phone: 091-5279529  
E-mail : [zafark.associate@gmail.com](mailto:zafark.associate@gmail.com)

  
\_\_\_\_\_  
Client

  
\_\_\_\_\_  
M. Zafar/Tahir

Attested & Accepted (Advocates)

  
\_\_\_\_\_  
Ansar Ullah Khan

**"B"**

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

No.

537

Appeal No. .... of 20<sup>22</sup>

Nasrullah Khan

Appellant/Petitioner

Speaker Provincial Assembly KPK

Versus

Respondent

1

Respondent No. ....

Speaker Provincial Assembly KPK

Notice to: —

Peshawar.

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal \*on.....at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

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

Pre-Admission Notice

Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No.....dated.....

18th

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

April 22

Day of.....20

(for Reply)

Received  
23-6-2022  
Sr. PS to Mr. Speaker

Registrar,

Khyber Pakhtunkhwa Service Tribunal,  
Peshawar.

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

**"B"**

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

No.

3-B

Appeal No..... of 20 ..

..... 537 ..... Appellant/Petitioner

*Varsus*  
**Nasrullah Khan**

..... Respondent

..... *Respondent No.* 2 .....  
**Speaker Provincial Assembly KPK**

Notice to: —

**Kifayatullah Khan Afridi, Secretary Provincial**

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal \*on.....at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

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

Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No..... Pre-Admission Notice dated.....

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

Day of.....20 ..

18 15

(For Reply) *Received*  
*23/6/2022*  
*April*

*12*  
Registrar,

**Khyber Pakhtunkhwa Service Tribunal,  
Peshawar.**

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

**"B"**

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

No.

Appeal No. 537 of 20 22

Nasrullah Khan Appellant/Petitioner

Versus

Speaker Provincial Assembly KP Respondent

Respondent No. 3

Departmental Promotion/Recruitment Committee

Notice to: - Through its Secretary Ms. Attaullah Khan Provincial Assembly of KPK.

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal \*on 8/7/2022 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

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

Pre-Admission Notice

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

office Notice No.....dated.....

Given under my hand and the seal of this Court, at Peshawar this..... 18/14

Day of..... April 20 22

(For Reply)

OLW 3/10  
23-06-22

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

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