





Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 1199/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	27/09/2018	<p>The appeal of Mr. Fazle Subhan resubmitted today by him may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	28-9-18	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>2-11-2018</u></p> <p style="text-align: right;"> CHAIRMAN</p>
02.11.2018		<p>Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 24.12.2018.</p> <p style="text-align: right;"> READER</p>
24.12.2018		<p>Appellant requests for adjournment in order to further prepare the brief.</p> <p>Adjourned to 31.01.2019 for preliminary hearing before S.B.</p> <p style="text-align: right;"> Chairman</p>

31.01.2019

Appellant Fazle Subhan in person present. Preliminary arguments heard. It was contended by the appellant that he is serving as Private Secretary in Khyber Pakhtunkhwa Service Tribunal and was promoted from the post of Personal Assistant (BPS-16) to the post of Private Secretary (BPS-17) vide order dated 19.04.2018. It was further contended that respondent-department have made Service Rules wherein the method of recruitment and promotion was prescribed. It was further contended that according to Notification dated 06.04.2018, the Additional Registrars, Superintendents and Budget & Accounts Officers with at least five years service were held to be entitled for promotion to the post of Registrar (BPS-18) but the respondent-department have not mentioned the post of Private Secretary (BPS-17) in the said rules for promotion to the post of Registrar (BPS-18) which has affected the right of the appellant therefore, the impugned Notification dated 06.04.2018 is liable to be rectified. It was further contended that in a joint seniority list of Additional Registrars Superintendents, Budget and Accounts Officer and Private Secretaries is required to be maintained for the purpose of promotion to the post of Registrar but the Private Secretary is ignored from the aforesaid seniority list therefore, the respondent department is required to include the post of Private Secretary alongwith the Additional Registrars Superintendents and Budget & Accounts Officer for the purpose of promotion to the post of Registrar in the seniority list, therefore, service rule and seniority list is liable to be rectified.

The Contention raised by the learned counsel for the appellant need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter, notice be issued to the respondents for written reply/comments for 04.03.2019 before S.B.

Appellant Deposited  
Security Process Fee

*MA*  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

04.03.2019

None present on behalf of the appellant. Mr. Kabirullah Khattak, Additional AG for the respondents present. Written reply on behalf of respondents not submitted. Learned Additional AG requested for adjournment. Adjourned to 09.04.2019 for written reply/comments before S.B.

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER.

09.04.2019

Appellant in person and Addl. AG on behalf of the respondents present.

Learned AAG requests for time to procure reply of the respondents. The respondents shall submit the requisite reply/comments on next date of hearing.

Adjourned to 15.05.2019 before S.B.

  
Chairman

15.05.2019

Appellant in person, ~~Learned counsel for the appellant present.~~ Written reply not submitted. ~~Saleem Superintendent~~ representative of the respondent department absent. He be summoned with the direction to furnish written reply/comments. Adjourn. To come up for written reply/comments on 01.07.2019 before S.B. Notice be also issued to respondents for reply/comments.

  
Member

01.07.2019

Appellant in person present. Mr. Kabirullah Khattak learned Additional Advocate General alongwith Mr. Naqeeb Ullah Senior Scale Stenographer for the respondent present. Representative of the respondent department submitted written reply/comments which is placed on file. Granted. To come up for rejoinder/arguments on 11.09.2019 before D.B.



Member

11.09.2019

Appellant in person present. Mr. Zia Ullah learned Deputy District Attorney present. Appellant submitted rejoinder placed on file and seeks adjournment. Adjourn. To come up for arguments on 11.11.2019 before D.B.



Member



Member

11.11.2019

Appellant in person present. Mr. Riaz Khan Paindakheil learned Assistant Advocate General present. Appellant seeks adjournment. Adjourn. To come up for arguments on 09.12.2019 before D.B.



Member



Member

09.12.2019

Lawyers are on strike on the call of Khyber Pakhtunkhwa Bar Council. Adjourn. To come up for further proceedings/arguments on 17.01.2020 before D.B.

  
Member

  
Member

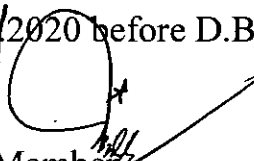
17.01.2020

Appellant in person present. Mr. Muhammad Jan learned Deputy District Attorney present. Learned Member (Executive) is not available. Adjourned for 14.02.2020 before D.B.

  
Member

14.02.2020

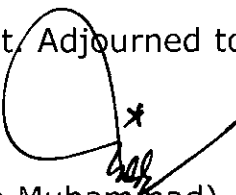
Appellant in person present. Mr. Zia Ullah learned Deputy District Attorney present. Adjournment requested. Adjourned To come up for arguments on 20/03/2020 before D.B.

  
Member

  
Member

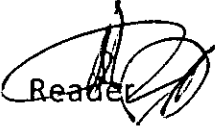
20.03.2020

Appellant in person and Mr. Kabirullah Khattak, Additional AG for the respondents present. Appellant seeks adjournment. Adjourned to 22.05.2020 for arguments before D.B.

  
(Mian Muhammad)  
Member

  
(M. Amin Khan Kundi)  
Member

\_\_\_\_\_.2020 Due to COVID19, the case is adjourned to  
12/8/2020 for the same as before.


  
Reader

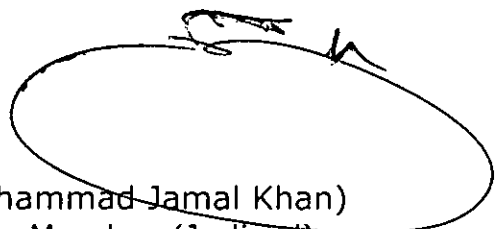
12.08.2020 Due to summer vacations case to come up for the same on  
15.10.2020 before D.B.

  
Reader

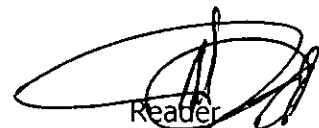
15.10.2020 Appellant is present in person. Mr. Kabirullah Khattak, Additional  
Advocate General for the respondents is also present.

Appellant informed the bench that various of the Rules have been  
challenged through instant appeal which issue is pending adjudication  
before Larger Bench of this august Tribunal, therefore, he requested  
for adjournment so that a definite decision on the issue is made. The  
request is appropriate, the case is adjourned to 09.12.2020 for  
further proceedings before D.B.

  
(Atiq-ur-Rehman Wazir)  
Member (Executive)

  
(Muhammad Jamal Khan)  
Member (Judicial)

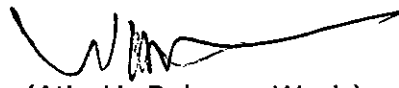
09.12.2020 Due to COVID-19, case is adjourned to 01.03.2021 for the  
same as before.

  
Reader

01.03.2021

Appellant in person and Mr. Asif Masood Ali Shah, learned Deputy District Attorney alongwith Mr. Naheed Gul Assistant for respondents present.


On 14.02.2020 fourteen (14) officials submitted a joint application for their impleadment as respondents in the instant appeal. Notice of the said application is hereby accepted by the respondents as well as appellant. To come up for reply/arguments on application on 08.04.2021 before D.B.

  
(Atiq-Ur-Rehman Wazir)  
Member (E)

  
Chairman

08.04.2021

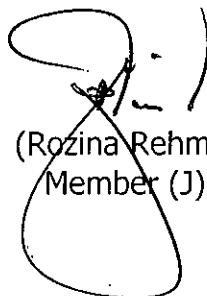
Due to demise of Hon'ble Chairman  
The Tribunal is defunct, therefore the case is  
adjourned to 08.06.2021 for the same as before.

  
Reader

of the Tribunal including the appointments of staff shall be performed by the Chairman on behalf of the Tribunal. However, the proper Service Rules for the ministerial establishment of the Tribunal regarding their terms and conditions of service including the method of recruitment are amiss so far. Whether the notification dated 03.04.2018 of the Government of Khyber Pakhtunkhwa Establishment Department in terms of the formulated question herein above is valid to serve as proper substitute of the rules required to be framed under Section 11 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, let us have the comments of respondent No. 1 before determination of the formulated question in accordance with the law.

The Registrar of this Tribunal is directed to send a copy of this order sheet to the P.S.O of Worthy Chief Secretary Khyber Pakhtunkhwa (respondent No. 1) for placing before the latter for valuable comments through appropriate department.

To come up for reply and arguments on 10.08.2021 before the D.B.

  
(Rozina Rehman)  
Member (J)

  
Chairman



command of the Constitution of Islamic Republic of Pakistan under Article 212?

In order to make the things conveniently understandable for answer to the said question, it may be expounded that the Khyber Pakhtunkhwa Service Tribunal is an entity shaped by an Act of Provincial Assembly and set up to make judgments in area of its activity independent from administrative control of the government whose actions in the area of terms and conditions of Provincial services are subject to judicial review by Tribunal, So it would be amiss if the functionaries of the Tribunal making its integral part are left to control of an Executive Department of the government. Even otherwise, Section 11 of the Act ibid provides that the Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act. Needless to say that the functionaries of the Khyber Pakhtunkhwa Service Tribunal including officers and servants by nature of their duties contribute towards carrying out the purposes of Khyber Pakhtunkhwa Service Tribunal Act, 1974. Although the Government framed the rules namely "Khyber Pakhtunkhwa Service Tribunal Rules, 1974" and notified the same under Government of Khyber Pakhtunkhwa notification No. SOS-III(S&GAD)1-79/73, dated 02.08.1974 published in the Gazette of Khyber Pakhtunkhwa on 20.09.1974; The said rules by virtue of Rule 25 provide that the administrative functions

1199/2018

08.06.2021

Appellant in person present.

Mr. Muhammad Riaz Khan Paindakhel, Asstt. A.G alongwith Naheed Gul, Assistant for official respondents present. Mr. Numan Ali Bukhari Advocate for applicants present.

The appellant has annexed with Memorandum of Appeal the notification No. SE-V/E&AD/13-02/2018, dated 03.04.2018 of the Government of Khyber Pakhtunkhwa Establishment Department (Establishment Wing). The said notification reveals that it is meant to lay down the method of recruitment, qualification and other conditions applicable to different posts in the office of Service Tribunal Khyber Pakhtunkhwa. The Authority for issuance of the said notification has been derived from Sub-rule (2) of Rule-3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989. Although the appellant by relief sought in the appeal, wants to accommodate the post of Private Secretary reflected at S.No. 5 of the Appendix to the said notification, for career progression in light of his prayer. However, a question is apt to arise whether an Executive Department of the Government is competent to exercise administrative control on officers and staff of the Khyber Pakhtunkhwa Service Tribunal which is a statutory body established under Provincial legislation in pursuance to

10.08.2021


Since, 1<sup>st</sup> Moharram has been declared as public holiday, therefore, case is adjourned to 18/10/2021 for the same as before.

  
Reader

18.10.2021

Appellant in person, Mr. Muhammad Adeel Butt, Addl. AG alongwith Amjad Ali, Assistant for the respondents present. Clerk of counsel for the applicants present and stated that learned counsel for the applicants is not in attendance due to general strike of the bar today.

Reply to application for impleadment has been submitted by the appellant which is placed on file and copies whereof are handed over to clerk of counsel for the applicants as well as learned AAG. Besides other proceedings in light of order sheet dated 08.06.2021, case also to come up for arguments on impleadment application on 01.02.2022 before the D.B.

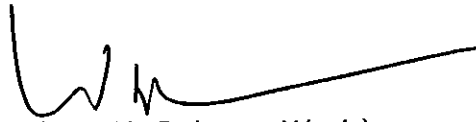
  
(Salah-ud-Din)  
Member(J)

  
Chairman

01.02.2022

Appellant in person present. Mr. Muhammad Adeel Butt, Addl. AG alongwith Amjad Ali, Asstt. for the official respondents present. Counsel for the applicants also present.

Due to paucity of time, arguments on impleadment application could not be heard. However, Representative of official respondents has furnished reply to the questions formulated in order dated 08.06.2021. Placed on file. Besides other proceedings in light of order dated 08.06.2021, case also to come up for arguments on impleadment application on 03.03.2022 before the D.B.

  
(Atiq-Ur-Rehman Wazir)  
Member (E)

  
Chairman

03.03.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 18.05.2022 for the same as before.

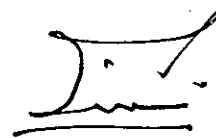
  
Reader.

18.05.2022

Appellant in person present. Mr. Amjid Ali, Assistant alongwith Mr. Naseer Ud Din Shah, Assistant Advocate General for respondents present. Learned counsel for the applicants who are seeking impleadment, is also present. Appellant submitted application for impleadment of Mr. Aamir Farooq, Assistant Registrar (BPS-16) and Mr. Farooq Khan, Law Drafter (BPS-16) <sup>as respondents</sup> in the instant appeal. To come up for reply of the said application as well as arguments on both the impleadment applications on 24.06.2022 before the D.B.



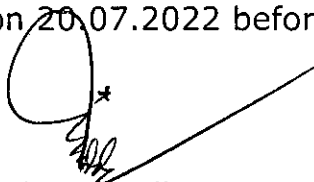
(Rozina Rehman)  
Member (J)



(Salah-Ud-Din)  
Member (J)

24.06.2022

Appellant in person present. Mr. Majid Hanan Lodhi, Superintendent alongwith Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present and requested that time may be granted ~~to him~~ for submission of reply of the application submitted by the appellant for impleadment of Mr. Aamir Farooq, Assistant Registrar (BPS-16) and Mr. Farooq Khan, Law Drafter (BPS-16). Adjourned. Last opportunity given. To come up for submission of reply of the aforementioned application as well as arguments on both the impleadment applications on 20.07.2022 before the D.B.



(Mian Muhammad)  
Member (E)



(Salah-ud-Din)  
Member (J)

20.07.2022

Appellant present in person.

Muhammad Riaz Khan Paindakheil, learned Assistant Advocate General present.

Perusal of preceding order sheet would reveal that Naseer Ud Din Shah, Assistant Advocate General had requested for some time in order to submit reply to the application submitted by the appellant for impleadment of Aamir Farooq, Assistant Registrar (BPS-16) and Farooq Khan, Law Drafter, (BPS-16). Last opportunity had been given. Today, nemo for respondents. Reply was also not submitted, therefore, case is adjourned on cost of Rs.5000/- to be paid in Court to the opposite party on the next date with direction to submit reply to the aforementioned application within 10 days and file to come up for arguments on 14.09.2022 before D.B.



(Fareeha Paul)  
Member(E)



(Rozina Rehman)  
Member (J)

**SCANNED**  
**KPST**  
**Peshawar**

ORDER  
14.09.2022

Appellant in person present. Mr. Muhammad Jan, District Attorney for the respondents present. Learned counsel for the applicants/intervenors also present. Arguments on the impleadment applications heard and case file perused.

2. One application has been submitted by the employees namely Pir Muhammad, Matiullah, Afsar Khan, Iftikhar, Muhammad Nabi and Syed Haris Shah (Assistants) Shehzad Ahmad and Safeer Khan (Senior Clerks) Shahid Khan, Samiullah and Shafiullah (Junior Clerks) Muhammad Faizan, Mali, Naveed Masih, Sweeper and Mehran Khalil, Daftari for their impleadment as party in the instant appeal. Similarly, another application has been submitted by the appellant for impleadment of Mr. Aamir Farooq, Assistant Registrar (BPS-16) and Mr. Farooq Khan, Law Drafter (BPS-16).

3. Learned District Attorney stated at the bar that he is having no objection on the application submitted by the appellant for impleadment of Mr. Aamir Farooq, Assistant Registrar (BPS-16) and Mr. Farooq Khan, Law Drafter (BPS-16) as respondents in the instant appeal. Similarly, the appellant also stated at the bar that he is having no objection on impleadment of necessary parties in the instant appeal. Employees whose impleadment has been sought through the applications are necessary parties and their impleadment as respondents in the instant appeal is necessary for its just and right decision. Both the impleadment applications are thus allowed and the employees namely Pir Muhammad, Matiullah, Afsar Khan, Iftikhar, Muhammad Nabi and Syed Haris Shah (Assistants) Shehzad Ahmad and Safeer Khan (Senior Clerks) Shahid Khan, Samiullah and Shafiullah (Junior Clerks) Muhammad Faizan, Mali, Naveed Masih, Sweeper, Mehran Khalil, Daftari, Mr. Aamir Farooq, Assistant Registrar (BPS-16) and Mr. Farooq Khan, Law Drafter (BPS-16) are impleaded as respondents in the instant appeal. Office is directed to make necessary entry in this respect in the memo of appeal as well as relevant register

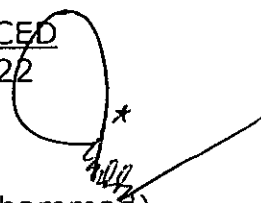


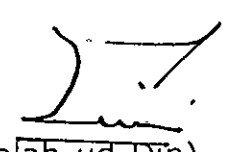
All the mentioned respondents were put in notice.

**SCANNED  
KPST  
Peshawar**

accordingly. Notice be issued to them and to come up for their reply/comments as well as arguments before the D.B on 15-11-2022.

ANNOUNCED  
14.09.2022


  
(Mian Muhammad)  
Member (E)

  
(Salah-ud-Din)  
Member (J)

15<sup>th</sup> Nov. 2022 Appellant present in person.

Mr. Kabirullah Khattak, Additional Advocate General alongwith Majid Hanan Lodhi, S.O for official respondents, learned counsel for private respondents No. 4 to 17 and private respondent No. 19 in person present. Nemo for private respondent No. 18.

Learned counsel for private respondents No. 4 to 17 and respondent No. 19 requested for further time to submit written reply/comments. Fresh notice be issued to private respondent No. 18 through registered post. This being old case of 2018, last opportunity is granted. To come up for reply/comments and arguments on 28.12.2022 before the D.B.

  
(FAREEHA PAUL)  
Member(E)

  
(ROZINA REHMAN)  
Member (J)