

Nemo for the appellant.

The appeal in hand was called on for hearing after various intervals, however none appeared on behalf of the appellant till the closing time, therefore, the appeal in hand stands dismissed in default. File be consigned to the record room.

ANNOUNCED 06.10.2022

> (Salah-Ud-Din) Member (J) Camp Court Swat

06.09.2022

Mr. Kamran Khan, Advocate, for the appellant present and sought adjournment on the ground that he has not made preparation for preliminary arguments. Adjourned. To come up for preliminary hearing on 06.10.2022 before the S.B at Camp Court Swat.

(Salah-Ud-Din) Member (J) Camp Court Swat 04.07.2022

3.8-22

Junior to counsel for the appellant present.

He made a request for adjournment as senior counsel for appellant is busy before Hon'ble Peshawar High Court. Adjourned. To come up for preliminary hearing on 02.08.2022 before S.B at Camp Court, Swat.

(Rozina Rehman) Member (J) Camp Court, Swat

alux to Samones vacationo the corse is affavismed to 6-9- on for the same.

### Form- A

### FORM OF ORDER SHEET

Court of	 · · · · · · · · · · · · · · · · · · ·	 
	٠.	
		 _

	Case No	655/ <b>2022</b>
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	;A, 2	3
1-	28/04/2022	The appeal of Mr. Noor Alam presented today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.
		REGISTRAR
. 2-	Noted Mahamud	This case is entrusted to Single Bench at $\frac{1}{2}$ for preliminary hearing to be put there on $\frac{6}{6}$ . Notices be issued to appellant
	nor Man	and his counsel for the date fixed.
,	No Char	CHAIRMAN
	1/2012	en en de la companya
·		
		k. Communication of the state o
-		
9 <sup>th</sup> Ju	ne, 2022	None for the appellant present.
		Counsel are on strike. To come up for preliminary
	hear	ing on 04.07.2022 before the S.B at camp court Swat.
		(Kalim Arshad Khan) Chairman Comp Court Swat
	1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 -	Camp Court Swat
,		

### BEFORE KIFTBER PKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR CHECKLIST

Case Title: NOOV Alam vs Education Depts

S.#	Contents	Yes	No
1.	This appeal has been presented by: Noor Mohammad Kit	{	
2.	Whether Counsel / Appellant / Respondent / Deponent have signed the	<u> </u>	
	requisite documents?		
3.	Whether Appeal is within time?		
4.	Whether the enactment under which the appeal is filed mentioned?		<u> </u>
5	Whether the enactment under which the appeal is filed is correct?		<u> </u>
6	Whether affidavit is appended?		
7.	Whether affidavit is duly attested by competent oath commissioner?	/	1.
8.	Whether appeal/annexures are properly paged?		1
9.	Whether certificate regarding filing any earlier appeal on the		
	subject, furnished?		
10.	Whether annexures are legible?		
11.	Whether annexures are attested?		
12.	Whether copies of annexures are readable/clear?		
13.	Whether copy of appeal is delivered to A.G/D.A.G?	/	
14.	Whether Power of Attorney of the Counsel engaged is attested and		
·	signed by petitioner/appellant/respondents?		
15.	Whether numbers of referred cases given are correct?	/	
16.	Whether appeal contains cuttings/overwriting?		
17.	Whether list of books has been provided at the end of the appeal?		
18.	Whether case relate to this Court?		
19.	Whether requisite number of spare copies attached?		
20.	Whether complete spare copy is filed in separate file cover?		
21.	Whether addresses of parties given are complete?		
22.	Whether index filed?		
23.	Whether index is correct?	عند ا	
24.	Whether Security and Process Fee deposited? on		
25	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974		
25.	Rule 11, notice along with copy of appeal and annexures has been sent		
	to respondents? on	ļ	<u> </u>
26.	Whether copies of comments/reply/rejoinder submitted? on		
27.	Whether copies of comments/reply/rejoinder provided to opposite		
	party? on		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name:	Noor Mohamma
**	
Signature:	,
Dated:	99
	V

### BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, **PESHAWAR**

<b>SERVICE</b>	APPEAL NO.	653	/2022

**NOOR ALAM** 

V/S

**EDUCATION DEPTT:** 

### INDEX

S. 0	DOCUMENTS	ANNEXURE	PAGE
1	Memo of appeal	***************************************	1-4
2	Appointment order & transfer order	A & B	5 ~ 6
3	Education testimonials	C	7-9
4	Impugned notification dt: 24.07.2014	D	10-15
5	Judgment dt: 28.01.2016 & 05.04.2016	E&F	15-22
6	Notification dt: 15.12.2011	G	23
. 7	Departmental appeal	Н	24-25
8	Wakalat Nama	**********	26

Dated:

/.04./2022

**APPELLANT** 

Through:

NOOR MOHAMMAD KHATTAK

ADVOCATE

0345-9383141

### BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

APPEAL NO. 655 \_\_/2022

Khyber Pakhtukhwa Service Tribunal

Biary No. <u>538</u>

Mr. Noor Alam, PSHT (BPS-15), GPS Pato Talash, Dir Lower.

APPELLANT

#### **VERSUS**

- 1- The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The Director, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 5- The District Education Officer (Male), District, Proposition

APPEAL UNDER SECTION-4 OF THE **PAKHTUNKHWA** SERVICE **TRIBUNAL** ACT, 1974 AGAINST THE RESPONDENTS BY NOT CONSIDERING THE APPELLANT FOR PROMOTION TO THE POST OF SST (BPS-16) ON THE BASIS OF HAVING BACHELOR DEGREE AND AGAINST THE SERVICE RULES NOTIFIED ON 24-07-2014 WHEREBY THE CONDITION BACHELOR 2ND DIVISION HAS BEEN INSERTED IN SERIAL NO. 1 (B), COLUMN No 3 (i) OF THE TABLE AND AGAINST NOT TAKING **ANY ACTION** DEPARTMENTAL APPEAL OF THE APPELLANT DATED 17-01-2022 WITHIN THE STATUTORY PERIOD **NINETY DAYS** 

Registrar.

### **PRAYER:**

That on acceptance of this appeal the impugned Service Rules dated 24.07.2014 may kindly be modified to the extent that the condition of 2<sup>nd</sup> Division/Class be expunged/excluded from Column No. 3 (i), Serial No. 1B of the Table and the respondents may kindly be directed to consider the appellant for promotion to the post of Secondary School Teacher (BS-16) from the date when his junior colleagues were promoted with all consequential back benefits including seniority. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

## (F)

### R/SHEWETH: ON FACTS:

### Brief facts giving rise to the present appeal are as under:-

- 1- That appellant was initially appointed as Junior Clerk against a vacant post in the respondent Department. Since 29-04-1987 and right from the date of appointment, the appellant is serving the respondent Department quite efficiently and up to the entire satisfaction of his high ups. Copy of Appointment Order & Transfer order is attached as annexure A & B.
- 2- That the appellant is a highly qualified person having 2<sup>nd</sup> Division Bachelor degree in Education acquired from University of Peshawar and also got B.Ed & M.Ed from a reputable recognized Institution of the country.

  Copies of the Educational Testimonials are attached as annexure
- 3- That it is pertinent to mention here that the respondent department issued the impugned notification dated 24-07-2014 whereby the post of Secondary School Teacher(SST) was
  - restructured and 2% promotion quota to the aforementioned posts was reserved for the Primary School Teachers(PST).
- 4- That according to the aforesaid notification the prescribed qualification for initial recruitment as well as promotion was mentioned as 2<sup>nd</sup> class bachelor degree.
- 5- That it is pertinent to mention here that the respondents department have denied promotion to some colleagues of the appellant to the post of SST due to having 2<sup>nd</sup> Division bachelor degree. That feeling aggrieved some colleagues of the appellant filed writ petitions which were allowed in favor of the petitioners vide judgments dated 05-04-2016 and 28-01-2016. Consequently they were promoted to the post of SST.
  - Copies of the judgments dated 28-01-2016 & 05-04-2016 are attached as annexure ...... E & F.
- 6- That it is worth mentioning here that appellant was also denied from promotion due to having 2<sup>nd</sup> Class Bachelor degree despite the fact that appellant is having second division in higher qualification i.e. Master and B.Ed & M.Ed as well.



- 7- That appellant being a similarly placed employee approached the respondent to extend him the benefits of the above mentioned judgments, but still in vain.
- 8- That it is also pertinent to mention that Establishment Department issued a notification dated 24-07-2014 whereby amendment has been made in Provincial Management Service (PMS) Rules 2007 by providing that a candidate who has obtained 3<sup>rd</sup> Division in Bachelor degree will be eligible for the examination in the cases where he/she has obtained a higher division in Master's degree.

9- That appellant feeling aggrieved from the inaction of the respondent by not promoting the appellant to the post of SST (BPS-16) preferred Departmental Appeal dated 17-01-2022 before the respondents through register post but the same is not responded within the statutory period of ninety days.

10- That appellant feeling aggrieved and having no other remedy filed the instant service appeal on the grounds interalia as under:

### **GROUNDS:**

- A- That the inaction of the respondent by not promoting the appellant to the post of SST (BPS-16) and notification dated 24-07-2014 is against the law, facts, norms of natural justice and material on the record, hence not tenable in the eyes of law and liable to be set aside.
- B- That the appellant has not been treated by the respondent department in accordance with law and rules on the subject noted above and as such the respondent violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the appellant deserves to be promoted to the post of SST (BPS-16) from due date in light of judgments of Peshawar High Court by attracting Principle of Parity as mentioned in the apex court's judgment reported as 2009 SCMR page 01.
- D-That the appellant has been discriminated on the subject noted above as other colleague having 3<sup>rd</sup> division are given promotion but the appellant has been deprived from the benefit of promotion to the post of SST (BPS-16).



- E- That the respondents non promotion of the appellant to the post of SST (BPS-16) by the respondent department is against the law & rules on the subject matter and thus the respondents have violated the principle of natural justice.
- F- That the appellant has 2<sup>nd</sup> division in higher qualification i.e. Master degree and other educational related degrees i.e. B.Ed & M.Ed as such entitle to be promoted from the due date in light of notification dated 24-07-2014.
- G- That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

Appellant

NOOR ALAM

Through:

NOOR MOHAMMAD KHATTAK

KAMRAN KHAN

HAIDER ALI

KHANZAD GUL ADVOCATES PESHAWAR

#### **CERTIFICATE:**

No such like appeal has earlier been filed between the parties

ADVOCATE

#### **AFFIDAVIT:**

I, Noor Alam s/o Sher Alam do hereby solemnly affirm that the contents of the above appeal are true and correct to the best of my knowledge & believe and nothing has been concealed from this Honourable Court.

DEPONENT

AMNEX A

Took over charge

AS TIC post

OFFICE OF THE DISTY: EDUCATION OFFICER(M) DIR AT TIMERGANA. 2-05-1987

### OFFICE OFFICE.

Mr, Noor Alam Typist S/OSher Alam Village Talash Ajoo Tehsil Timergara Distt; Dir is hereby appointed against Vacant J/clerk post in the office of the undersigned with effect from the date of his taking over charge subject to the Following condition.

1. Charge reports should be submitted to all concerned.
2. He will get pay in BPS-5(520-18-880) plus usual allow;
3. His age may not exceeds 28 years or below 18 years.
4. He should produce his Health & age certificate from the civil surgeon concerned.

5. His appointment on temporary basis liable termination at any time with-out actice.

Distt; Education Officer, (M) Dir at Timergara.

Endst; No. 4820-2//Dated Timergara the 29/4/1987.

Copy of the above is forwarded to Mr, Noor Alam S/O

Sher Alam Ajoo Talash for information.

2) DAO BIR

HEAD MASTER
GH.S Pato Talash
Disti Dir (L)

Distt; Education Officer, (M) Dir at Timergara.

### OFFICE ORDER

Mr, Noor Alam J/Clerk Govt; High School Thall is hereby transfered and adjusted against the vacant P.T.C post at GPS Ajo in BPS No,7(750-31-1370) w.e.f the date of taking over charge in the interest of public service.

All the terms/condition related to TTC post shall apply on him w.e.f the date of his taking over charge except senority in the P.T.C cadre prior to his appointment/adjustment against FTC post.

Charge reports should be submitted to all concerned.

ON OFFICER, DISTT: DUCA (M) DIR ATTEMERGARA.

OFFICE OF THE DISTT: EDUCATION OFFICER(M), DIE AT TIMERGARA.

3-55/Dated Timerga a the

Copy for information & n/a to; -

1.The SDEO(M) Timergara.

2. The Headmast r, GHS Thall. 3. The candidate concern for complaince.

QHIS Pato Falash Distr. Oh (L)

TT: DUCATION OFFICE

(M) DIR AV TIMERGARA.

## النهاللي المنافقين التينم

## University of Peshawar

(Bakistan) ANNUAL 1989

and a student Of SHER ALAM

having passed the prescribed Examination DIR DISTRICT

held in August 1989. is this day admitted by the University of Peshawar to the Degree of

Bachelor of Arts

Division in the HIRD The Gramination was taken as axwholes in Parts)

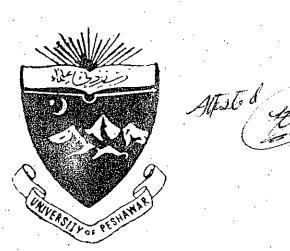
Serial Nº 002276

NOOR ALAM

Registered No. 88-17/A- 31219

Roll 190 -- 19484

Result Declared on 19TH FEBRUARY 1990



hakeel Ahmand

Registrar.

Countersigned

# University of Peshawar

MA

	(Pakistan)		•
	· Session Annual 1997		
Bioon Alan	Son/Daughter of	SPER ALAR	
and a sindent private	candidate of	District Dir	· · ·
Inching macked the urest	ribed examination held	in // APRIL, 1998	.,
is this day admitted by	the University of Pe	shawar to the Degree	e o
	Master of Arts	<b>3</b>	
	<b>In</b>		
	In Second Divis	ion	
The Examinat	ion was taken as a w	hole / in parts	
		Jamas.	· · · · · · · · · · · · · · · · · · ·

Serial No 0063829

Restration No. 88-PA-31219 Result Beclared on 1774 SEP, 1986



Allasted

MEAD MASTER GH.S Pato Talash Distt: Dir (L)

Countersigned

Dice-Chancel for

7	***	44	经验证	Military.	
		. Se 140		715	
	7 7 7 7 7		PROPERTY	- The Control of the	

The state of the s	Character of the contraction of
	- (Pakistan)
	SESSIOIT ANNUAL 1995
ENT ALAM V	Son of Sher Alams and a student
LE DISTRICT	having passed the prescribed examination
Остовен,	19 95, is this day admitted by the University of Peshawar to the Degree of
	Bachelor of Education
	In the Second- Division in Theory
	In the Second. Division in Teaching Practice
	In the Second. Division in Aggregate
He	She also passed Seneral Science as additional subject.
	The Examination was taken as a whole sin parts:
a : 1 No 550017	Che Examination was taken as a whote me pairs

Serial Nº 006014

Registered Ro. 88/PA/31219 ... Carelment Ro. 1620 -Sall declared on MAY 6, 1996 ..



Registerr

Countersigned

Dice-Chantellor

Per 19 19 19 Better Copy e

## ANNEXURE D -



### GOVERNMENT OF KHYBER PAKHTUNKHWA ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Peshawar dated the 24th July, 2014.

#### NOTIFICATION

No.SO(PE) 4-5/SSRC/meeting/2013/Teaching Cadre:- In pursuance of the provision contained in sub rule (2) rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Elementary and Secondary Education Department in consultation with the Establishment Department and the Finance Department hereby directs that in this Department's Notifications No.SO(G)S&LD/1-28/2003/Voli-II date 09.04.2004, Notification No.SO(G)S&L/1-69/06/Vol-1/DPE/LIB dated, 13-11-2007, and Notification No.SO(PE)4-5/SSRC/meeting/2012/Teaching Cadre, dated, 13.11.2012, the following further amendments shall be made, namely:

#### **AMENDMENTS**

In the Appendix,-

(i) Serial No.1 shall be renumbered as 1B and before serial No.1B, as so renumbered new entries shall be inserted in respective columns, namely:

	new entrie	s shall be inserted in respective colur	nns, namel	y:
1	2	3	4 .	5
'1.	Subject	i. At least second class	23 to 35	a) fifty per cent by
	specialist (BPS-	Master Degree or four	years	promotion, on the basis
1	1.7)	Years BS Degree in the		of seniority-cum-fitness,
1		Relevant subject: and	^	for the relevant subject
		ii. Bachelor of education	:	from amongst the
1.		or Master of education		Secondary School
1		(industrial Art or		Teachers (BPS-16), with
		Business education) or		at least five years'
1	•	MA education or		service as such and
		equivalent qualification		having qualification
\.		from a recognized		mentioned in column
.		university		No.3.
1		ariivet sity	1	1.0.5,
1				Note: if no suitable
				candidate is available in
. 1				the relevant subject the
				post falling in their
			\ \	promotion quota shall be
				filled by initial
· \				recruitment: and
			%- <b>\</b>	recraitment, and
		v I		b) fifty percent by initial
· .				recruitment.
. [	1A Director	At least second class master	22-35	a) Fifty percent by
. [	physical	Degree in physical Educatio	,	promotion on the basis
. \	education	from a recognized university		of seniority cum fitness
	(BPS-17)			from amongst senior
· \				Physical Education
. \			· ·	Teachers BPS-16 with at
			.	least five year's service
				as senior physical
				education teacher and
. :				physical education
5.				teacher and having
•	'   '			qualification mentioned
ĺ,				in column No.3:
		· 1		Provided that if no
· ::	1			suitable person is
				available from amongst
			\ '	sernior physical
	A PARTY			education teachers for
. 6		<i>'</i>		promotion then the pos





	<u>.</u>			<del></del>	<del></del>	<del></del>					<del></del>	I shall be filled by	
		. : '		1	, ,	•		•				shall be filled by	
٠.		•								\		promotion, on the basis	
٠.	* .			.		''		٠.	` -			of seniority cum fitness	
	}.			-		*		•	•			from amongst the	••
		٠		{ ;		•	•	_		Ì		physical education	
	}		:	\ .				}	•	1		teachers with at lest five	i
	\ · ·			\		•	•		٠	\			
	1.	• •		- 1						1		years service as such and	
				· }	•	-				• }		having qualification	1
:	1.			• \		•		,		ľ		mentioned in column	1
	1.		٠.			. "			` .	1	•	No.3;	1
	-  -	٠.		` .	•	· .				1		Note:- If no suitable	
.,		-		. \					•	. \	•	candidate is available in	
				·	·			•			,	the relevant cadres of	
			·				٠,		•	1	•		
			٠ .			*			٠٠ .			the above teachers the	1
	٠. \									1		post falling in their	1
	-		· ·							1.		promotion quota shall be	: . \
	Ì	Ĺ	·						•	\	-	filled by initial	. \
		;;	<i>;</i>							1	•	recruitment; and	
		}	,		1.				•	-		b) fifty percent by initial	
	1									*		by initial recruitment";	. 1
į.	٠		÷			•			,			1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	1
	·	1					·		·			and	:
	<u>:</u> ۱	afainet	carial	No.	1R . ac sc	renum	shered	for the	evist	ina e	ntries	the following shall be	

ii) afainst serial No.1B, as so renumbered for the existing entries the following shall be substituted in respective column, namely:

( ai	1 2	· · · · · · · · · · · · · · · · · · ·	4	5
1	2	1. At least second class	21 to 35	seventy five percent
1B	Secondary School	bachelor degree's	years	by promotion on the
-	1 .	1	Years	basis of seniority cum
}	Teachers (BPS-	from a recognized	. ^	
	16)	university on need		fitness from the
	n	basis from the		district concerned in
		following groups with		the following manner:
		two subject		2. forty percent
		a) (Chemistry, Botany or	'	amongst the senior
		zoology),		certified teachers
		Or		BPS-16 with at least
		b) Physics, Maths 'A or		five years service as
Ì		B' or statistics		senior certified
	1	Or		teacher and certified
		c) Humanities and othe		teacher and having
: \		equivalent groups at		qualification
. 1		degree level with		mentioned in column
.		English as		No.3:
		compulsory subject;		provided that if no
. \		And		suitable tandidate is
.}		11. Bachelor of Education of	or	available from
٠. ا		Master of education ° (industrial Art or business		amongst senior
·		Education) or MA educatio	1 ,	certified teachers for
1		or equivalent qualifications		promotion then the
		from a recognized universi		post shall be filled by
		irom a recognized universi	ity	promotion on the
				basis of seniority cum
	}		· \	fitness from amongst
es Sentin				certified teachers
			· ·	with at least five
				years service as such
٠.			.  -	and having
٠.				qualification
1.			,	mentioned in column
		TESTED		No. 3;
		30 1		b) four percent from
+ :	1.	- Hours	1 .	(amongs) the contri





senior drawing masters and drawing masters and having qualification mentioned in column No.3; provided that if no suitable candidate is available from amongst senior drawing master for promotion then the post shall be filled by promotion on the basis of seniority cum fitness from amongst drawing master with at least five years service as such and having qualification mentioned in column No.3;

- c) four percent from amongst the senior Arabic teachers BPS-16 with at least five years service as senior Arabic teachers and Arabic teachers and having qualification mentioned column provided that if no suitable candidate is available from amongst senior Arabic teachers for promotion then the post shall be filled by promotion on the basis seniority cum fitness from Arabic teachers with at least five years service as such and having qualification mentioned in column No.3;
  - d) four percent from amongst the senior theology teachers BPS-16 with at least five years service as senior theology teachers and theology teachers and theology teachers and having qualification mentioned in column No.3; provided that if no suitable candidate is ayailable from





amongst senior
theology teachers for
promotion then the
post shall be filled by
promotion on the
basis of seniority cum
fitness from amongst
the Theology
Teachers with at least
five years service as
such and having
qualification
mentioned in column
No.3:

- e) three percent from amongst the Senior Qari BPS-15 with at least five years. service a senior Qari and having qualification mentioned in column No.3: provided that if no suitable candidate is available from amongst the senior Qari then the post shall be filled by promotion on the basis of seniority cum fitness from Qaris with at least five years service as such and having qualification mentioned in column No.3;
  - twenty percent from amongst the primary school head teachers BPS-16 with at least seven years service as primary school Head Teachers and senior primary school teachers and primary school teachers and having qualification mentioned in column No.3; provided that if no suitable candidate is available from amongst,



ZAMIN KHAN MOMAND SECTION OFFICER (PRIMARY)

### AMENUMINIS ...

t as IB and before Serial No. 1B, as so inclumbered, the following new entries shall be

O. Stephock to the state of the	on:∷:
	C-14 67 7
	V 10 10 1

为,我们就是一个 <del>是一个人,我们就是一个人,我们就是一个人,我们就是一个人,我们就是一个人,我们就是一个人,我们就是一个人,我们就是一个人,我们就是一个人,我们</del>	
The state of the s	(a) Fifty per cent by promotion
Apleast second class the coloured vicars	of seniority-cum fitness, fo
Subject Specialists of Aribast second class Master's Degree or 23 to 35	subject from amongst the S
但可能的1.5.1上发生的风险和大型中的"发展的"的"一",从"自然的",是可能够多为他的"人"这些人的"全部的"的"特别"的"一"。"这一","一","一",	Subject
subject; and	Teachers (BPS-16), with at
	service as such and havin
Bachelor of Education or Muster of	Service us and
	rientioned in column No. 3
Arqueation of the fact that th	
	A Service Service Library dollars
The state of the s	γοτα: If no silitable candidate i
The state of the s	-all name subject the post of
Personne	
	promotion quite situation

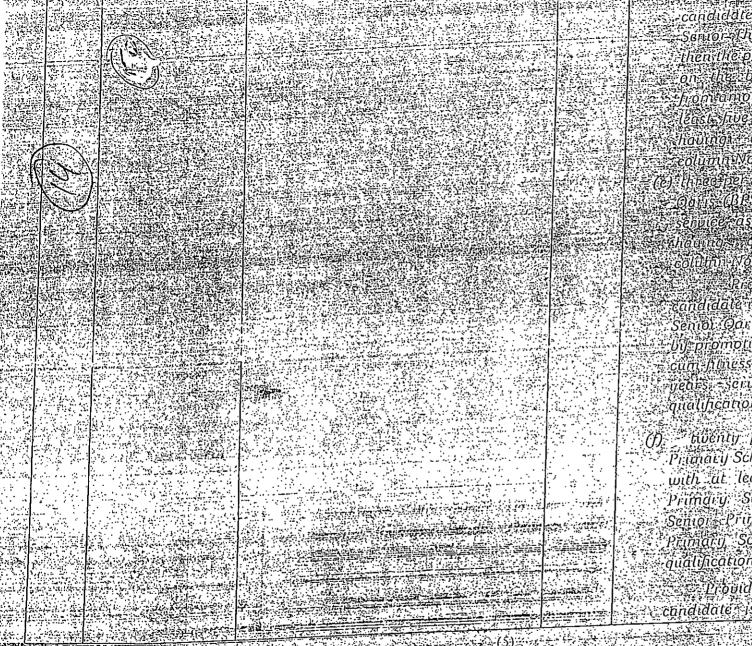
or the relevant Secondary School least five years



7.800多数的形式的形式的影響的電腦影響。 1.800多数形式的影響的電腦影響。 1.800多数形式的影響的電腦影響。 1.800多数形式的影響的電腦影響。		ecritiment, ally (b) :::: fifty percent by initial recruitment :: 32.55	
		"我是这个大大大的"。"我们就是一个人的"我们就是我们的",我们的一个人的"我们的",我们就是一个人的,我们就是一个人的,我们就是这个人的一个人的一个人的一个人	
	\$ 100 miles	(a) Lifty percent by promotion, on the basis of	
Phierals Arteast second class Master's Degree in	22-35 Veurs	。	the first of the second contract of the secon
Director Physical Physical Education fight a recognized		。在19、19年代的2015年的前面中国民族的名称的第二人称:1111日1日1日1日1日1日1日1日1日1日1日1日1日1日1日1日1日1	""。"我们是我们的,我们就是这些有意思。""我们是这些人,我们也是这种的,我们就是这个人的。""我们是这个人,""我们是这个人,我们就是这个人,我们就是这个人
Education States University		是一种心理的的变形,这个人们是一种人,这些意思是是一种的人们们在自己的。这个自己的人们也是一个人的意思的。	
		tai least finc Yeurs servi Education Teacher and Physical Education Education Teacher and having Equalification.	
		Teacher and Teache	
		注:"在这个是是这种,就是这种的特殊,在这种的现在,我们就是这种的特殊的。"	
		Provided-that if no suitable person	
		THE RESERVE OF STREET OF STREET STREET	
		. ' 1993, 1994, 2007, 1994 Pre-Charles Carles Carle	医骨骨 医性骨部 医乳毒素 医乳毒素 化二氯甲基甲基甲基甲基甲基甲基甲基甲基甲基甲基甲基甲基甲基甲基甲基甲基甲基甲基甲基
		post shall be filled by promotion on the basis of senionity cumification.	
		CHERRY CONTRACTOR OF THE LANGE BUILDING PROPERTY OF THE CONTRACTOR	For the Process of the Control of th
		とうけいはく マーフル・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・	100
		with at least two gen having qualification mentioned in column-	
		No 3 (4)	
	图 (1)	Note - If no suitable candidate is available	
		The state of the s	
		- 1 1809	
		shall be filled by initial rectationed,	
		(b) fifty percent by initial recruitment." and	
		(D), 1919, F3	
	1		

lagginst Serial No. 1B as so renumbered, for the existing entries, the following Shall be substituted, in respective conditions of the condition of the conditi

1 Secondary School	1 Al-Jeast second class Bachelor 21.10.3	Seventy live per cent by promotion on the basist of semonity cum hims, from the	
Figure 1 -	This is properly on need basis from the table of the substitution of our properly the substitution of the subs	district concerned in the following monner (a) forty per cent from amongst the Senior	
	(b)-(Physics Maths: A or B' or Statistics)	Certificil Teachers (BPS-16): With at least  - Type Typars, service as Senior, Certified Teacher and Certified Teacher and	
	(6) (Humanihes and other equivalent 2 groups at degree levels with English	eolumn No 3 1 1 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2	
	as compulsory subjects	Sentor Certified Teachers for promotion the their the post shall be filled by promotion;	
	H Bachelon of Edication on Master, of Education (Industrial Art: or Business Education) on M.A.  Education — or equivalent	on the basis of seniority-cum-fitness, from amonyst Certified Teachers, with at letist five years service as such and	
	gualifications from a recognized University	having qualification mentioned in column No.3;  (b) four per cent from amongst the Senior	
		Drawing Masters(BPS-16) with at least five years service as Seittor Drawing Masters and Drawing Masters and	
		liaving qualification mentioned in collimn No.3	



-candidates is raydilable -from amongst ---Semor-Cheology Feachers for promotion then the post-shall be filled by promotion. e on the basis of senjouity-cum-filiness; - from amongst theology Teachers with at least live byears iservice as such and Moungs soualifications times noned sup-

Threafizer cent-prom amongstithe Senion egons (des ro); without least five vears Service as Servou Oars and Oars and phauing syqualylications munitioned sim

# Recorded that if not suitable zandidale is available from aniongst the Seniol Qaris then the post-slidl be filled -by-promotion; on the basis of seniority cum fliness, from Qaris bith at least five yenes: -service eas -sucle and having qualification mentioned in column No-3,

(f) - tiventy per cent from aniongst the Primáky School Head Veachers (BPS-16); with at least seven years service tis Primäry School Head Teachers and Semons-Primary School, Acachers circle Primary School Leachers, and having gualineation menhoned in collann No. 3

Erbuided illats if no suitable condidater is available from amongst



### SECKETARY TO COVERNMENT OF KHYBER PARKETUNKHWA CLEMENTARY & SECONDARY EDUCATION DELARTMENT

fakhtilikhwa Estabitslung af and Administration Department Peshawar Tridst Tokeven No & Clat lent of Chybell Pakhtingkliwa, Liftencer Department Peshawar

imeator Khybei Pakhtunkliwa, Late Department leshawat. Vo-griblic service Commissions Peshaivan

Education Department Kliyber Pakhtin khtoa-Peshatbar

licanon lengue rackhorach work blockabad

partment khyber Rakhtunkhwa Peshawa

Tin khijber Paklibinkhiva

Ta: All Dismiccaccount Officer in thy be creather in thuo.

17 PS to Governor Khyber Rakhtunkhwa Peshawa

TS 15 To Enef Minister Khijber Rakhtirikhija Reshawat

to-PS to Cheef Secretary Khyber Pakhtinkhwa Peshawar 20: PS to Minister E&SE khyber Pakhtinikhwa Pesligwar

en Pskio Segretary E&SE Kliyber Pakhtarikhiba Pashawar

22 Master file

(ZAMIN KHAN MOMAND) spērionoikietietenimaity)











### PESHAWAR HIGH COURT BANNU BENCH FORM OF ORDER SHEET

Ī	Date of order	Order or other proceed.
	or other	Order or other proceedings with signature of Judge (S)
-	proceedings	
	(1)	(0)
	28.01.2016	(2)
	20.01.2010	WP No.73-B-2014
	· · · · · · · · · · · · · · · · · · ·	Present Mr. Ali Jan Khan Advocate for petitioner:
		MUHAMMAD GHAZANFAR KHAN ;-
		1. the petitioner namely Mumtaz khan son of the Gull Jan, through the
		Thistant Consultational Detition under Article 100 of the County to
-		TOIGHT INCOMPLE OF PARISIAN 1973 SERVE ISSUED OF ALL ALL IN THE
		. I Copulation department to the consider him for promotion in the
		or our in biorio in view of the department promotion committee I
		meeting held on 18.01.2014.
		2 We have heard learned and
		2. we have heard learned counsel for the petitioner and gone through the available record of the case.
		are available record of the case.
		3. Perusal of the record transpires that the
		3. Perusal of the record transpires that the petitioner has passed B.A in third division while as per notification bearing No.
		18.1.2011 the minimum qualification for the post of SST BPS-16 are
٠.	A DESTRUCTION OF SERVICE	Bachelor's degree or MA in education bachelor degree in education.
· · · ·		
		during the year 2000 in second division and M.A History and Pak study
		during the session 2003 in second division.
٠.		4. In wake of the above, we direct the respondents to consider the
•		petitioner for promotion to the post of SST BPS-16 in the next
		petition is disposed of in the above terms.
		The second secon
		ANNOUNCED Sd/- ikramullah khan
	<u> </u>	28.01.2016. Sd/-Muhammad Ghazanfar Khan, J
		Gildzaniai Kilan, J



### FORM OF ORDER

	1.		٠	
		Ç.,		4
		10		أبنت
, i	20	×		
	·			٠,

·	•	
	A second to the second	and is to the whold
		クナー
DINGO.	OURATA TILE THE GOLDING BEEN NOT WELL CITE !	
ne de la Santa		(re
	FORM OF ORDER SELECT	
To the second se	Order or other proceedungs with signature of the control of the co	
Haisothei		
apiloceedings.		
基系系(D)。		
128/01/2016	AVP: No.75=B-2014	
	Dittitualities on security with the second section of the second	
	specificanie i samue (v. Mariania). Lede destre de Cant	
	through the anstant Coustatutional articles.	
distribution of the second		
	Auticle 199 of the Constitution of Islandic Rep	iibhic.
	of Pakistin 1973, seeks issumber of directions t	STATE OF THE
	respondents/department, to coolisite africa	
	promoting in the posteric SSP call the four s	
	the Departmential Promognical Colorus 1800 and	
	trefd on 18-01-201-to	
	2. Ne drawe-headillearned counself	
W. S. W. Sar	2. WY C. HERWETTI CHERRANG HERREST ACCURATE CONT.	
	pertrioner and gone chronight the invariable ice	OT COST
	and the lease	
J.V.		
	A Tarana and Allander and Allan	
	profitement has present the X and the experiment of	
AVE	please a manifestioner of the language of the second	
	A Company of the Comp	
	Constitution of the street part of the street was in	6)5 w.5
是在他们的。 第二届《中国公司》	arguet report that take a suggestion of N	
	dividualitation or similarly figure of the contraction of the contract	



record landres shows the record spendings has wee passed March cheming the war 2000 Fire Second division and of A. Thistony the sension 2003 in begonnians

in analic of flickabout and the chilling ices powde uts 10 consider the petitione 10 promotions to the posts of SSTE (EPS-16) profice to Departmental Polyginon Confinitee meeting o the busis of his (legisters in Med little on the second

Study amortal with Market qualifications with the

pictition is dispusce of an the flower trems

Sal Prioritiff Jeanna

Y MAGING THE 28/01/2016

SUEN COUNTY COLD WITH THE

CERTIFIEDTOMET

Aunte of the decrease of the control of the control

ANNEXURE E





18 to 22

Judgment Sheet

### IN THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH JUDICIAL DEPARTMENT Writ Petition No.1041-A/2015

#### JUDGMENT.

- 1. **IKRAMULLAH KHAN,J:-** Through the instant writ petition under article 199 of the Islamic republic of Pakistan, 1973 the petitioner seeks declaration to the effect that the act of respondent NO, 3 where by the promotion notification dated 28.10.2014 was withdrawn vide impugned notification 24.04.2014 on the ground of having qualification of B.Sc (3<sup>rd</sup> division) is illegal and without lawful authority and against the judgment of this court passed in W.P.No.58-B of 2014.
  - 2. In essence, the petitioner was initially appointed as certified teacher and, as per entitlement, later on promoted to the post of senior certified teacher (BPS-16) Vide notification dated 28.10.2014. Where after the petitioner assumed the charge of the said post on 30.10.2014 and after performing his duties to the satisfaction of his competent authority, on 24.04.2015 respondent No,3 has passed the impugned notification and, us such, the promotion order of the petitioner was withdrawn on the ground having B.SC in third division.
    - 3. Comments were called from respondent No.3 who filed the same, averring therein that though petitioner was promoted to the post of SST vide notification dated 28.10.2014 by respondent No.2 scrutinizing his qualification documents, it was found that petitioner was not eligible for promotion to the post of SST being B.SC third divisioner hence, his promotion order was de-notified by the director elementary and secondary education: Khyber Pakhtunkhwa Peshawar and on the direction of director the promotion order of the petitioner was withdrawn vide impugned notification dated 24.04.2015.
    - 4. It is further been averred in the comments that promotion order of the petitioner was withdrawn on the ground of B.sc third division and it was done in light of policy circulated vide Notification No.SO(PE)4-5/SSRC/meeting/2013/teaching cadre dated 24.07.2014 according to which the method of recruitment of SST was specified with a first condition of at least second class BA/Bsc from a recognized university on need basis with two relevant subjects along with second condition of MA education or B.ed from the recognized university further averred that it is the prerogative of the government to enhance, modify or alter the promotion criteria/ policy for the civil servants and a civil servant is not supposed to be treated with a set of rules of his own choice.
    - 5. In response to para-6 of the petition, respondent No.3 averred in the comments that the judgment of this court was announced on 04.06.2015 where as the withdrawal order of the petitioner was passed on 24.04.2015, prior to the announcement of the judgment.
    - 6. The man contention of learned counsel for the petitioner is that this court has already declared the condition of having third division as null and void in its judgment dated 04.06.2015 and the case of the petitioner is on better footing for reason that in referred judgment the petitioner had not been appointed but so far as the case of the petitioner is concerned, he was duly promoted rather received its benefits from 28.10.2014 to 24,04.2015 and thus the impugned order is illegal, without lawful authority and







- 7. Admittedly, the petitioner was duly promoted to the post of question on 28.10.2014, after the departmental promotion committee evaluated his case /PERs.
- 8. Now the question for determination before this court would be that when the petitioner actually performed his duties on the promoted post and that too for six long months, then how the respondent No.3 could withdraw earlier promotion order only on the pretext having B.Sc third division.
- s. It appears from the record that a division Bench of this had already declared the condition of having third division as null and in its judgment dated 04.06.2015 which fact has also been affirmed by the respondent No.3 in his comments by stating that they were not aware of that judgment at the time of withdrawal of the impugned promotion of the petitioner and when the case of the present petitioner is it par with that of the petitioner, there in, rather on better footing because the petitioner was not only promoted to the post in question but he performed his duties for six long months and received its benefits, the impugned notification passed by respondent No,3 is required to be set at naught.
  - 9. It is also a well settled principle of law that once a benefit is granted to a civil servant, cannot taken back from him and, if so, very stringent strong reason are required for the same, which are not available in the case in hand, more so, when the promotion order of similarly placed teachers having B.Sc third division have not been so far withdrawn which is clearly violation of article 25 of the constitution of Pakistan.
  - 10. For the reasons mentioned above, this petition is accepted and the impugned notification dated 24.04.2015 issued by respondent No.3 where by the promotion order of the petitioner was withdrawn is declared to be without lawful authority and, as, such the promotion notification dated 28.10.2014 is hereby restored.

Announced: 05.04.2016.



Judement meet 2

## PARTICLE SHAWARE IN THE OFFICE OF THE PARTICLE OF THE PARTICLE

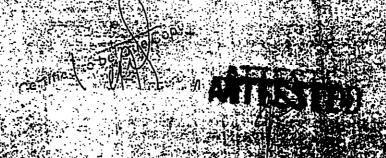
West Polition No. 10

THE GRADE AND

Paic	rofrhearin	12 TA	<b>*(1887)</b>	100	12.0	之人的意		W 3.41	- E	<b>33</b> m	i in
Pale		7.577	Mary Service	1	The 's	代を存在し	<b>企業的</b>	TY TY	2.00	<b>5985</b>	%산.
2 .	ioner .	M		Ser.	1/2	<b>为万字</b> 公				1 Z.	
	100 2 2 7 4 7 7 7		544.5 Z		ar store	<b>水分至三个位</b>			city il	1	
îπ	populants	773	yi i k	The state of	EANS Y	100	- 4		4.15	142	沙岭
											$\mathcal{F}(t)$
	100 m			<u> T.,</u>				2111		4	

under Article 199 of the Islamic Republicable 1982 in More the petitioner seeks declaration to sheet the sees the activities respondent Mo.3 whereby the Article page of the Article page of the seeks of claration to sheet the seeks of constitution as a seeks of claration to sheet the seeks of constitution as 10-2014, was fauthors will established the seeks of constitution 194 04 2014 on the ground of having the sheet supplies the seeks of constitution are seeks of constitution as a seeks of constitution of the ground of having the sheet supplies as the seeks of constitution and the ground of having the sheet supplies as the seeks of constitution and seeks of constitution of this court passed in Will Notes 48 of 20 the

2 In essence, the pennanci, was imbanished promised as a Certified Teacher and as per entitlement the for promise in the post of Senior Certified reactions as a constant of Senior Certified reactions as a constant of the pennance of the said post of in compression and the satisfaction of his compression as the satisfaction of his satisfaction as the satisfaction of his compression as the satisfaction of his satisfaction as





Such, the promotion order of the pentioner was swithdrawn the ground of having P. Sein third division in the

Comments were education respondentation who filled the same, lavering therein that thought be those fives promoted to the post of SST wide notification date; 22 10 2017 by respondent No 2 but on scrubnizing his qualification documents, it was found that perthoner was not eligible for promotion to the post of SST being E Scalbing devisioners hence, his promotion ergst vas demonsteation Religions devisioners. Elementary and Secondary Estreation Religions to both was respondent was withdrawn vide impugace; nor for the petitioner was withdrawn vide impugace; nor finance of the petitioner was withdrawn vide impugace; nor finance dated 24.04.2015

4 It has firther been divered methologoup comments that promotion order of the petitioner was avultionally comments that of P. Sc. third division and it was tone analoght of policy checked vide Notification No So BE Was Mostic meeting?

ZOTA / teaching cadre dated 24.07.2004 according to which the method of recruitment of SST was specified, with a first condition of at least second class BA //B Southous affect grown which the second condition of MA. Education of ABVED from the recognized University on need basis with two delevantes ubjects along with second condition of MA. Education of ABVED from the recognized University Condition of MA. Education of ABVED from the recognized University Condition of MA. Education of ABVED from the recognized University Carling averaged that at is the precognized of the region of the precognized Condition of Calling averaged that at is the precognized of the region of the precognized condition of calling crists and calling the precognized condition of the calling crists and calling the precognized conditions of the calling crists and calling the precognized conditions of the calling crists and calling crists and calling crists and calling crists are precognized that a calling the precognized condition condition calling crists and calling crists are precognized that a calling condition condition calling crists are precognized that a calling condition calling crists are precognized to the calling condition condition calling conditions are called the calling condition calling conditions and calling conditions are called the calling condition calling conditions are called the calling condition calling called the calling condition calling calli

criteria / policy for the civil servants and the villiservantes not supposed to be traced with asset of hules of bus over a force.

Intresions to Para Golffie peringonare spondenial loss averred in the comments that the judgment of the second the announced of 0406 2005 whereas the withdrawing ocception pering her was passed on 24 04901s. Disposition announcement

6 The main contention of dearned coursel for the petitioners that this court has already decisal detric conditions of having third division as multiple decision better from the decision that in the reason that in the referred program at the population of hadepinot the reason that in the referred program at the population of hadepinot been appointed but so for as the scase of sure in the scale of the concerned, he was duly promoted from 28110.001 and the population of the scale of t

illegal without lawful suthoney and the selection

7. Admittedly, the pentioner was duly enomoted to the post in question on 20 10 2014; after the departmental promotion committee evaluated his ease APERs.

Now the question tot determination before filestcourt would be that when the petitioner actually performed his cuties, on the promoted rost and that too for so, long months then thow the respondent the 3-could withdray the surface promoted as a could be could be a could be a could be could be a could be a could be could be a could be could be a could be a could be could be a could be could be a could be could be could be a could be cou

had, already declared the condition of the

stating that the viviete not awar

nulliand voicen austrude in the contract of th

when the case of the present pelitioners and party that which the present pelitioners at party that which the factor of the present pelitioners and party that the peritioners and provided to the posterious stories are peritioned.

Washot only promoted to the posterious stories are periodically the duties for six long months and progression as periodical the impugued four expressed by a society of the duties are pressed by a society of the duties are duties.

benefit is granted to a confise event from the particular with the promotion order profits significant of the promotion order profits significant of the conformation of Article 22 of the Constitution of Article 22 of the Constitution of Pakistan.

10. For the reasons mentioned thought appetrion accepted and the impugned not reasons detect to provide its very the provided by respondent No 3 whereby the province mornion of the petrioner was withdrawn as declared to be without as with

ANNEX 34 23

### BETTER COPY

# GOVERNMENT OF KHYBER PAKHTUNKHWA ESTABLISHMENT DEPARTMENT Dated Peshawar the December, 15 of 2011

#### **NOTIFICATION**

No. SOE-II (ED) 2(14)2011:-In exercise of the powers conferred by Section 26 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No.XVIII of 1973), the Chief MINISTER OF THE Khyber Pakhtunkhwa is pleased to direct that in the Khyber Pakhtunkhwa Provincial Management Service Rules 2007, the following further amendment, shall be made, namely:

#### AMENDMENT

In Schedule-I, against Sr. No.1, in Column No.3, the full stop appearing at the end shall be replaced by colon and thereafter that following proviso shall be added, namely:

"Provided that a candidate who has obtained a 3<sup>rd</sup> Division or D-Grade in Bachelor's Degree will be eligible for the examination in cases where he/she has obtained a higher Division in Master's Degree".

CHIEF SECRETARY
KHYBER PAKHTUNKHWA



24):

To,

The Director. E&SE Department, Khyber Pakhtunkhwa. Peshawar

Subject:

DEPARTMENTAL APPEAL AGAINST THE INACTION OF THE RESPONDENTS BY NOT CONSIDERING THE APPELLANT FOR PROMOTION TO THE POST OF SST (BPS-I6) ON THE BASIS OF HAVING BACHELOR DEGREE IN 3<sup>RD</sup> DIVISION AND AGAINST THE SERVICE RULES NOTIFIED ON 24.7.2014 WHEREBY THE CONDITION OF BACHELOR 2<sup>ND</sup> DIVISION HAS BEEN INSERTED IN SERIAL NO IB, COLUMN NO.3 (I) OF THE TABLE.

Respected sir.

With due respect it is stated that was initially appointed as primary school teacher in he respondent department and right from my lst appointment I am performing my duties quite efficiently and upto the entire setisfaction of his superiors. I have the higher qualification of master in education in second division but the authorities issued the impugned notification dated 24.7.2014 whereby the post of SST was restricted and 2% promotion quote to the aforementioned post was reserved for primary school teacher. That according to the said notification required qualification for initial recruitment as well as promotion was mentioned as second class bachelor degree. That the concerned authority denied promotion of my some colleagues to the post of SST due having third class bachelor degree. They were feeling aggrieved filed writ petition which were allowed in favor of petitioners vide judgment dated 5.4.2016 and 28.1.2016 and consequently they were promoted to the post of SST. That I was also denied promotion due to having third class bachelor degree despite the fact that I am having second division in higher qualification of master in education. That being a similar placed employee approached the concerned authority to extend the same benefit of the above mentioned judgments but in vain. That the establishment department issued a notification dated 15.12.2011 whereby amendment has been made in PMS rules 2007 by providing that a candidate who has obtain  $3^{
m rd}$  division in bachelor degree wil be eligible for the examination in cases where he/she has obtained a higher division in master's degree. That feeling aggrieved from the inaciotn of the concerned authority by not considering me for promotion to the post of SST (BPS-16) Filed the instant department appeal before your good self.

It is therefore, most humbly prayed that on acceptance of this departmental appeal I may very kindly be considered for promotion to the post of SST (BPS-16) FORM THE DATED WHEN MY COLLEAGUES AND junior colleagues were promoted with all consequential benefits including seniority. Any other remedy which your good self deems fit that may also be awarded in my favor.

Dated: 17.1.2022

APPELLANT

NOOR ALAM, PSHT (BPS-15). GPS Pato Talash, Dir Lower



### **VAKALATNAMA**

# EFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

APPEAL NO:	OF 2022
Noor Alam	(APPELLANT) (PLAINTIFF) (PETITIONER)
VE	RSUS
Education De	(RESPONDENT)  (DEFENDANT)
KHATTAK Advocate, Pes compromise, withdraw or re my/our Counsel/Advocate without any liability for his d engage/appoint any other Ad I/we authorize the said Adv	chawar to appear, plead, act, efer to arbitration for me/us as in the above noted matter, default and with the authority to dvocate Counsel on my/our cost. ocate to deposit, withdraw and sums and amounts payable or
Dated//2022	CLIENTS  ACCEPTED
	NOOR MUHAMMAD KHATTAK UMER FAROOQ MOHMAND KAMRAN KHAN Haider Adi
	HAIDER ALI

KHANZAD GUL ADVOCATES