


Service Appeal No. 655/2022

O R D E R
06.10.2022

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.

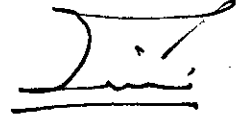
ANNOUNCED
06.10.2022



(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

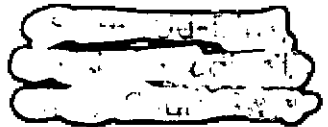
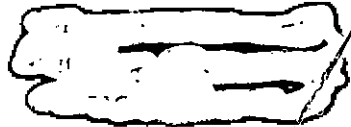
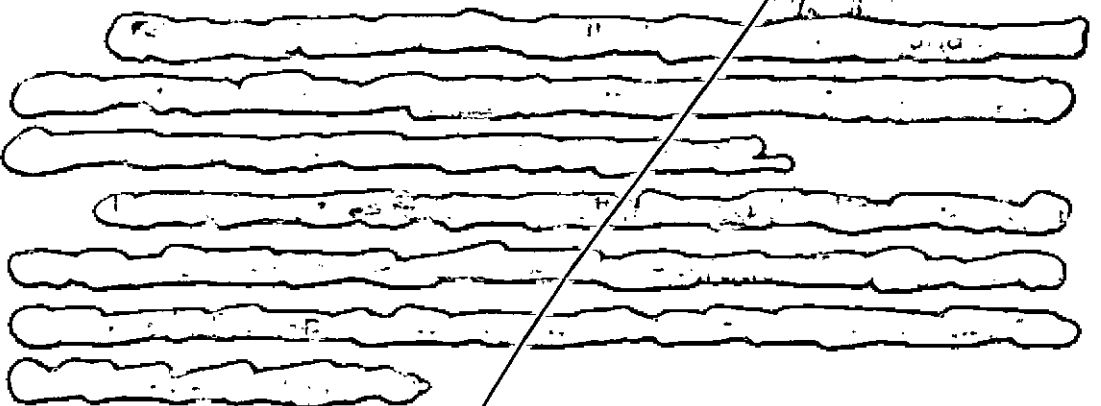
Junior to counsel for the appellant present.

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

7.8.22

Due to Summer vacation the case is adjourned to 6-9-22 for the same.

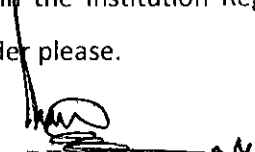



Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- _____ 655/2022 _____

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	28/04/2022	<p>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.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	<p><i>Naked</i> <i>Noor Mohamed</i> <i>Khattak</i> <i>30/5</i> <i>22</i></p> <p>9th June, 2022</p>	<p>This case is entrusted to Single Bench at <u>Swat</u> for preliminary hearing to be put there on <u>6-6-22</u>. Notices be issued to appellant and his counsel for the date fixed.</p> <p style="text-align: right;">CHAIRMAN</p> <p>None for the appellant present.</p> <p>Counsel are on strike. To come up for preliminary hearing on 04.07.2022 before the S.B at camp court Swat.</p> <p style="text-align: right;"> (Kalim Arshad Khan) Chairman Camp Court Swat</p>

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
CHECKLIST**

Case Title: Noor Alam vs Education Deptt

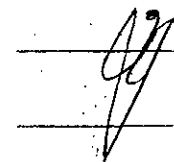
S.#	Contents	Yes	No
1.	This appeal has been presented by: <u>Noor Mohammad Rik</u>		
2.	Whether Counsel / Appellant / Respondent / Deponent have signed the requisite documents?	/	
3.	Whether Appeal is within time?	/	
4.	Whether the enactment under which the appeal is filed mentioned?	/	
5.	Whether the enactment under which the appeal is filed is correct?	/	
6.	Whether affidavit is appended?	/	
7.	Whether affidavit is duly attested by competent oath commissioner?	/	
8.	Whether appeal/annexures are properly pagged?	/	
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?	/	
24.	Whether Security and Process Fee deposited? on		
25.	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? on		
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 Mohammad

Signature:



Dated:

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

SERVICE APPEAL NO. 655 /2022

NOOR ALAM

V/S

EDUCATION DEPTT:

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Dated: /04./2022

APPELLANT

Through:

**NOOR MOHAMMAD KHATTAK
ADVOCATE
0345-9383141**

①

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

APPEAL NO. 655 /2022

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 638

Dated 28/4/2022

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, Dir Lower

.....**RESPONDENTS**

APPEAL UNDER SECTION-4 OF THE KHYBER 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 OF BACHELOR 2ND DIVISION HAS BEEN INSERTED IN SERIAL NO. 1 (B), COLUMN No 3 (i) OF THE TABLE AND AGAINST NOT TAKING ANY ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT DATED 17-01-2022 WITHIN THE STATUTORY PERIOD OF NINETY DAYS

Filed to-day

Registrar

28/4/2022

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 2nd 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.

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 2nd 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 **C.**

- 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 2nd class bachelor degree. **Copy of impugned notification dated 24-07-2014 attached as annexure..... D.**

- 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 2nd 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 2nd 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 3rd 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.

Copy of notification dated 15-12-2011 is attached as annexure.....

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.

Copy of the Departmental Appeal dated 17.01.2022 & Registry receipt is attached as annexure.....

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

GROUND:

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 3rd division are given promotion but the appellant has been deprived from the benefit of promotion to the post of SST (BPS-16).

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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 2nd 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
NOOR ALAM

Through:

Noor Mohammad Khattak
NOOR MOHAMMAD KHATTAK

Kamran Khan
KAMRAN KHAN

Haider Ali
HAIDER ALI

&

Khanzad Gul
**KHANZAD GUL
ADVOCATES PESHAWAR**

CERTIFICATE:

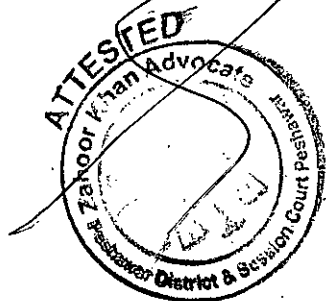
No such like appeal has earlier been filed between the parties

[Signature]
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.

Noor Alam
DEPONENT



Took over charge
AS JIC post

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

OFFICE ORDER.

Mr, Noor Alam Typist S/O Sher 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 notice.

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

Endst; No. 4820-21 / 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 DIR.

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

Attested
[Signature]
HEAD MASTER
G.H.S Pato Talash
Distt. Dir (L)

OFFICE ORDER

Took over charge
 As P.T.C. ^{post} 01-03-1988
 post

Mr. Noor Alam J/Clerk Govt; High School Thall is hereby transferred 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 PTC post shall apply on him w.e.f the date of his taking over charge except seniority in the P.T.C cadre prior to his appointment/adjustment against PTC post.

Charge reports should be submitted to all concerned.

[Signature]
 DISTT: EDUCATION OFFICER,
 (M) DIR AT TIMERGARA.

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

Emdst; No. 753-55 / Dated Timergara the 28 / 2 / 1988.

Copy for information & n/a to:-

1. The SDEO (M) Timergara.
2. The Headmaster, GHS Thall.
3. The candidate concern for complaine.

Attested

[Signature]
 Sd/-
 P.T.C. Pato Talast
 Distt: Dir (M)

[Signature]
 DISTT: EDUCATION OFFICER,
 (M) DIR AT TIMERGARA.

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

University of Peshawar (Pakistan)

MA

Session ANNUAL 1997

NOOR ALAM

Son/Daughter of SHER ALAM

DISTRICT DIR

and a student / private candidate of

having passed the prescribed examination held in APRIL, 1998

is this day admitted by the University of Peshawar to the Degree of

Master of Arts

In

ISLAMIYAT

In SECOND Division

The Examination was taken as a whole / in parts

[Signature]
Registrar

Serial No. 0063829

Registration No. 88-PA-31219

Roll No. 25933

Result Declared on 17TH SEP, 1998



[Signature]
Attested

HEAD MASTER
G.H.S Pato Talash
Distt: Dir (L)

Countersigned

[Signature]
Vice-Chancellor

University of Peshawar

(Pakistan)

SESSION ANNUAL 1995 -

BED

SHER ALAM v

Son of SHER ALAM v

and a student

District -

having passed the prescribed examination

OCTOBER, 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 GENERAL SCIENCE as additional / optional subject.

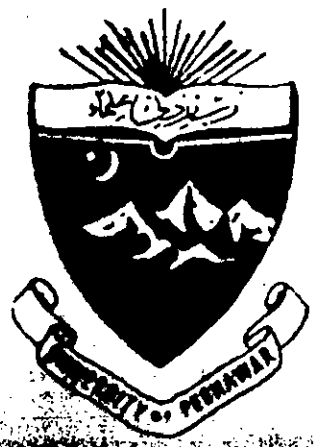
The Examination was taken as a whole / in parts.

Serial No 006014

Registered No. 88/PA/31219

Enrolment No. 1620

Declared on MAY 6, 1996



Attested

Fazli Hamid
Registrar

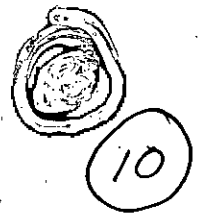
Countersigned
Vice-Chancellor

Revised wal

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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:

1	2	3	4	5
v1.	Subject specialist (BPS-17)	i. At least second class Master Degree or four Years BS Degree in the Relevant subject: and ii. Bachelor of education or Master of education (industrial Art or Business education) or MA education or equivalent qualification from a recognized university	23 to 35 years	a) fifty per cent by promotion, on the basis of seniority-cum-fitness, for the relevant subject from amongst the Secondary School Teachers (BPS-16), with at least five years' service as such and having qualification mentioned in column No.3. Note: if no suitable candidate is available in the relevant subject the post falling in their promotion quota shall be filled by initial recruitment: and b) fifty percent by initial recruitment.
1A	Director physical education (BPS-17)	At least second class master Degree in physical Education from a recognized university	22-35 years	a) Fifty percent by promotion on the basis of seniority cum fitness from amongst senior Physical Education Teachers BPS-16 with at least five year's service as senior physical education teacher and physical education teacher and having qualification mentioned in column No.3: Provided that if no suitable person is available from amongst senior physical education teachers for promotion then the post

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			shall be filled by promotion, on the basis of seniority cum fitness from amongst the physical education teachers with at least five years service as such and having qualification mentioned in column No.3; Note:- If no suitable candidate is available in the relevant cadres of the above teachers the post falling in their promotion quota shall be filled by initial recruitment; and b) fifty percent by initial by initial recruitment"; and
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ii) against serial No.1B, as so renumbered for the existing entries the following shall be substituted in respective column, namely:

1	2	3	4	5
1B	Secondary School Teachers (BPS-16)	<p>1. At least second class bachelor degree's from a recognized university on need basis from the following groups with two subject</p> <p>a) (Chemistry, Botany or zoology), Or b) Physics, Maths 'A or B' or statistics Or c) Humanities and other equivalent groups at degree level with English as compulsory subject; And</p> <p>11. Bachelor of Education or Master of education (Industrial Art or business Education) or MA education or equivalent qualifications from a recognized university.</p>	21 to 35 years	<p>1. seventy five percent by promotion on the basis of seniority cum fitness from the district concerned in the following manner:</p> <p>2. forty percent amongst the senior certified teachers BPS-16 with at least five years service as senior certified teacher and certified teacher and having qualification mentioned in column No.3; provided that if no suitable candidate is available from amongst senior certified teachers for promotion then the post shall be filled by promotion on the basis of seniority cum fitness from amongst certified teachers with at least five years service as such and having qualification mentioned in column No. 3; b) four percent from amongst the senior</p>

ATTESTED



				<p>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;</p> <p>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 No.3; 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;</p> <p>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 having qualification mentioned in column No.3; provided that if no suitable candidate is available from</p>
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~~INTERESTED~~



				<p>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:</p> <p>e) three percent from amongst the Senior Qari BPS-16 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;</p> <p>f) 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</p>
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ATTESTED

ZAMIN KHAN MOMAND
SECTION OFFICER (PRIMARY)

GOVERNMENT OF HYDERABAD
 ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Kcshtawa dated the 24th July, 2014

NOTIFICATION

In pursuance of the provisions contained in sub-rule (2) of rule 10 of the Hyderabad Civil Service (Appointment, Promotion and Transfer) Rules, 1989, the Elementary Education Department, Hyderabad, in consultation with the Hyderabad Branch of the Hyderabad Department of Public Relations, Hyderabad, has issued the following Notifications: No. SO (E) 167/2014 Vol. II dated 09-07-2014 and Notification No. SO (E) 167/2014 Vol. II dated 10-07-2014 and Notification No. SO (E) 167/2014 Vol. II dated 10-07-2014, the following further amendments shall be made, namely:

AMENDMENTS

In the Appendix, Serial No. 1B, as so renumbered, the following new entries shall be inserted, namely:

Serial No.	Qualification	Age	Promotion
1. Subject Specialist (BPS-17)	At least second class Master's Degree or Joint years BS Degree in the relevant subject, and Bachelor of Education or Master of Education (Industrial Art or Business Education) or BPA Education or equivalent qualification from Hyderabad Branch	4 to 35 years	(a) Fifty per cent by promotion on the basis of seniority-cum-fitness, for the relevant subject from amongst the Secondary School Teachers (BPS-16), with at least five years service as such and having qualification mentioned in column No. 3. Note: If no suitable candidate is available in the relevant subject the post falling in the promotion quota shall be filled by direct

SECRET

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<p>LA</p>	<p>Director Physical Education (BPS-17)</p>	<p>At least second class Master's Degree in Physical Education from a recognized University</p>	<p>22-35 years</p>	<p>recruitment, and (b) fifty percent by initial recruitment.</p> <p>(a) Fifty percent by promotion, on the basis of seniority-cum-fitness, from amongst Senior Physical Education Teachers (BPS-16), with at least five years service as Senior Physical Education Teacher and Physical Education Teacher and having qualification mentioned in column No. 3.</p> <p>Provided that if no suitable person is available from amongst Senior Physical Education Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst the Physical Education Teachers, with at least five years service as such and having qualification mentioned in column No. 3.</p> <p>Note - If no suitable candidate is available in the relevant cadres of the above teachers the post falling in their promotion quota shall be filled by initial recruitment, and</p> <p>(b) fifty percent by initial recruitment, and</p>
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(ii) against Serial No. 1B, as so renumbered, for the existing entries, the following shall be substituted, in respective columns, namely:

1	2	3	4	5
1B	Secondary School Teacher (BPS-16)	<p>I. At least second class Bachelor Degree s. from a recognized University on need basis from the following groups with two subject</p> <p>(a) (Chemistry, Botany or Zoology), Or (b) (Physics, Maths, A or B or Statistics) Or (c) (Humanities and other equivalent groups at degree level with English as compulsory subject)</p> <p>and</p> <p>II. Bachelor of Education or Master of Education (Industrial Art or Business Education) or M.A Education or equivalent qualifications from a recognized University</p>	21 to 35 years	<p>Seventy five per cent by promotion on the basis of seniority cum fitness, from the district concerned in the following manner:</p> <p>(a) forty per cent from amongst the Senior Certified Teachers (BPS-16), with at least five years service as Senior Certified Teacher and Certified Teacher and having qualification mentioned in column No. 3</p> <p>Provided that if no suitable candidate is available from amongst Senior Certified Teachers for promotion then the post shall be filled by promotion on the basis of seniority cum fitness from amongst Certified Teachers, with at least five years service as such and having qualification mentioned in column No. 3.</p> <p>(b) four per cent from amongst the Senior Drawing Masters (BPS-16), with at least five years service as Senior Drawing Masters and Drawing Masters and having qualification mentioned in column No. 3.</p>

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

(e) Three per cent from amongst the Senior Qaris (BPS-16) with at least five years service as Senior Qari and Qari and having qualification mentioned in column No. 3.

Provided that if no suitable candidate is available from amongst the Senior Qaris 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.

(f) twenty per cent 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

SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Handst. of even No. & date

1. The Secretary to Government of Khyber Pakhtunkhwa, Establishment and Administration Department Peshawar
2. The Secretary to Government of Khyber Pakhtunkhwa, Finance Department Peshawar
3. The Secretary to Government of Khyber Pakhtunkhwa, Law Department Peshawar
4. The Secretary to Government of Khyber Pakhtunkhwa, Public Service Commission Peshawar
5. The Accountant General Khyber Pakhtunkhwa Peshawar
6. The Director, Elementary and Secondary Education Department Khyber Pakhtunkhwa Peshawar
7. The Director of Education (IATA) Peshawar
8. The Director of Curriculum and Teacher Education Khyber Pakhtunkhwa Abbottabad
9. The Director (PTD) Khyber Pakhtunkhwa Peshawar
10. The Director, ESRT, Elementary and Secondary Education Department Khyber Pakhtunkhwa Peshawar
11. Manager, Government Printing Press Khyber Pakhtunkhwa Peshawar
12. The Deputy Director, EMIS (S&S) Department Khyber Pakhtunkhwa Peshawar
13. All District Education Officer (M&R) in Khyber Pakhtunkhwa
14. All District Account Officer in IATA
15. All Agency Education Officer in IATA
16. All Agency Account Officer in IATA
17. PS to Governor Khyber Pakhtunkhwa Peshawar
18. PS to Chief Minister Khyber Pakhtunkhwa Peshawar
19. PS to Chief Secretary Khyber Pakhtunkhwa Peshawar
20. PS to Minister E&SE Khyber Pakhtunkhwa Peshawar
21. PS to Secretary E&SE Khyber Pakhtunkhwa Peshawar
22. Master file

(ZAMIN IGHAN MOMAND)
SECTION OFFICER (PRIMARY)

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Better copy- 16 to 17

ANNEXURE

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PESHAWAR HIGH COURT BANNU BENCH
FORM OF ORDER SHEET

Date of order or other proceedings (1)	Order or other proceedings with signature of Judge (S) (2)
28.01.2016	<p>WP No.73-B-2014 Present Mr. Ali Jan Khan Advocate for petitioner: MUHAMMAD GHAZANFAR KHAN :-</p> <ol style="list-style-type: none">1. the petitioner namely Mumtaz Khan son of the Gull Jan, through the instant Constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan 1973, seeks issuance of directions to the respondents/department to consider him for promotion in the post of SST in BPS-16 in view of the department promotion committee meeting held on 18.01.2014.2. we have heard learned counsel for the petitioner and gone through the available record of the case.3. Perusal of the record transpires that the petitioner has passed B.A in third division while as per notification bearing No. dated 18.1.2011 the minimum qualification for the post of SST BPS-16 are Bachelor's degree or MA in education bachelor degree in education. The record further shows that the petitioner has also passed M.ed during the year 2000 in second division and M.A History and Pak study during the session 2003 in second division.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 departmental promotion Committee meeting on the basis of his degree in MA History and Pak Study coupled with M.ed qualifications. The writ petition is disposed of in the above terms. <p>ANNOUNCED 28.01.2016.</p> <p style="text-align: right;">Sd/- ikramullah Khan</p> <p style="text-align: right;">Sd/-Muhammad Ghazanfar Khan, J</p>

ATTESTED

FORM OF ORDER SHEET

Date of order or other proceedings	Order or other proceedings with signature of Judge(s)
(1)	(2)
28/01/2016	<p>AYP No. 75-B-2014</p> <p>Present: Mr. Ali Jutt Khan, Advocate for petitioner</p> <p>MR. HANIF AIDAR, ADVOCATE FOR RESPONDENT</p> <p>petitioner, namely, Mr. Hanif Aider, State of Gilgit and through the instant Constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, seeks issuance of directions to the respondents/department to consider him for promotion in the post of SSA in 1985-10 in view of the Departmental Promotion Committee meeting held on 18-01-2014.</p> <p>2. We have heard learned counsel for the petitioner and gone through the available records in the case.</p> <p>3. Petitioner has produced a copy of the promotion list of the respondents/department for the year 1985-10 in which the petitioner's name is not included. The petitioner has also produced a copy of the promotion list for the year 1985-10 in which the petitioner's name is not included. The petitioner has also produced a copy of the promotion list for the year 1985-10 in which the petitioner's name is not included.</p>

[Signature]
 Mr. Hanif Aider
 Advocate for Petitioner

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[Signature]



record further shows that the petitioner has also passed M.Ed. during the year 2000 in second division and M.A. History and Public Studies during the session 2003 in second division.

In wake of the above facts the respondents to consider the petitioner for promotion to the post of SSI (EPS-16) in the next Departmental Promotion Committee meeting on the basis of his degree in M.A. History and M.Ed. Study completed with M.Ed. qualification. The petitioner is disposed of in the above terms.

ANNEXURE D
28/09/2016

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Sd/- [Signature]

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Sd/- [Signature]
28/9/16

CERTIFIED TO BE TRUE COPY

Authorised Under Section 37 of The Government of India Act 1953

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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 (3rd 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, as 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 main 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 jurisdiction.



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.
9. 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.**

Judgment No. 111
IN THE PESHAWAR HIGH COURT OF PAKISTAN
JUDICIAL OFFICE, PESHAWAR

W.P. Petition No. 10369/2013

JUDGMENT

Date of hearing

Petitioner

Respondents

TIRYAMULI KHAN, V. Through the undersigned Petitioner
under Article 199 of the Islamic Republic of Pakistan, 1973, the
petitioner seeks declaration to the effect that the order of
respondent No. 3 whereby the petitioner's appointment dated
28.10.2014 was withdrawn vide impugned notification dated
24.04.2014 on the ground of having no allocation of BSB (2nd
division) is illegal and without jurisdiction and against the law
judgment of this court passed in W.P. No. 353 of 2014.

2. In essence, the petitioner was initially appointed as
Certified Teacher and as per entitlements he was promoted to
the post of Senior Certified Teacher (SCT) vide notification
dated 28.10.2014 whereafter the petitioner assumed the charge
of the said post on 30.10.2014 and during the period of his service
to the satisfaction of his competent authority on 24.01.2015
respondent No. 3 has passed the impugned notification and as

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such, the promotion order of the petitioner was withdrawn on the ground of 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 23.10.2014 by respondent No 2 but on 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 has 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) 45/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 B.A / B.Sc 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

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criteria / policy for the civil servants and ancillary servants 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 whereas the withdrawal order of the petitioner was passed on 24/04/2015, prior to the announcement of the judgment.

6 The main 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 the reason that in the referred judgment the petitioner had not been appointed but so far as the case of the petitioner is concerned, he was duly promoted and received his benefits from 28/10/2014 to 24/04/2015 and thus the impugned order is illegal, without lawful authority and jurisdiction.

7 Admittedly, the petitioner was duly promoted to the post in 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 the earlier promotion order only on the ground of having 3rd division.

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Court
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8. It appears from the records that respondent No. 3 had already declared the conditions of service of the petitioner as null and void in its judgment dated 20.12.1978. It is also been admitted by respondent No. 3 in his comments, by stating that they were not aware of that decision, by the time of withdrawal of the impugned promotion order of the petitioner and when the case of the present petitioner came up for consideration of the petitioner then it rather on better ground because the petitioner was not only promoted to the post in question but he performed his duties for six long months and received increments. The impugned notification passed by respondent No. 3 is declared to be null and void.

9. It is also a well settled principle that once a benefit is granted to a civil servant cannot be taken back from him and, if so, very stringent strong reasons are required for the same, which are not available in the case of the petitioner when the promotion order of the petitioner (teacher) having B.Sc third division have not been so 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 24.12.1978 issued by respondent No. 3 whereby the promotion order of the petitioner was withdrawn is declared to be null and void.

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ANNEX

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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 3rd 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

ATTACHED

To,

The Director, ESSE 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-16) ON THE BASIS OF HAVING BACHELOR DEGREE IN 3RD DIVISION AND AGAINST THE SERVICE RULES NOTIFIED ON 24.7.2014 WHEREBY THE CONDITION OF BACHELOR 2ND DIVISION HAS BEEN INSERTED IN SERIAL NO 18, 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 1st appointment I am performing my duties quite efficiently and upto the entire satisfaction 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 quota 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 3rd division in bachelor degree will be eligible for the examination in cases where he/she has obtained a higher division in master's degree. That feeling aggrieved from the inaction 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
NOOR ALAM, PSHT (BPS-15),
GPS Pato Talash, Dir Lower

~~NOOR ALAM~~

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO: _____ OF 2022

Noor Alam (APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Education Deptt. (RESPONDENT)
(DEFENDANT)

I/We Noor Alam
Do hereby appoint and constitute **NOOR MUHAMMAD KHATTAK Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/2022

Noor Alam

CLIENTS

ACCEPTED

NOOR MUHAMMAD KHATTAK

UMER FAROOQ MOHMAND

KAMRAN KHAN

HAIDER ALI

&

KHANZAD GUL
ADVOCATES