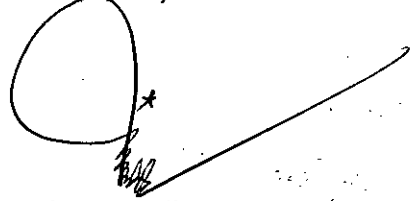


01.09.2022

Appellant in person present.

02. Appellant submitted an application for withdrawal of the instant service appeal on the ground that the matter has been resolved and he does not want to pursue the instant appeal further. Application is allowed and the instant service appeal No. 885/2019 filed on 01.07.2019 is dismissed as withdrawn. Consign.

03. *Pronounced in open court at Peshawar and given under my hand and seal of the Tribunal this 1st of September, 2022*


(Mian Muhammad)
Member (E)

02.06.2022

Nemo for the appellant.

Previous date was changed on Reader Note, therefore, notice for prosecution of the appeal be issued to the appellant as well as his counsel and to come up for preliminary hearing on 08.08.2022 before the S.B.

*Notice for
Appellant Counsel Clerk
Prosecution Counsel Clerk
03/06/22*

(Salah-Ud-Din)
Member (J)

*8.8.2022 Due to the Public Holiday The
Case is Adjourned to 1-9-2022*

Reader.

[Faint handwritten notes and signatures at the bottom of the page]

02.11.2021

None for the appellant present.

Notices be issued to the appellant and his counsel.
Adjourned. To come up for preliminary hearing on
06.01.2022 before S.B.



(Mian Muhammad)
Member(E)

06.01.2022

Nemo for the appellant.

Lawyers are on general strike today. Case to come
up for preliminary hearing on 03.03.2022 before S.B.



(Rozina Rehman)
Member (J)

3-3-2022

Due to retirement of the
Honorable Chairman the case is
Adjourned to come up for the
same as before on 2-6-2022
Reader

23.02.2021

The learned Member Judicial Mr. Muhammad Jamal Khan is under transfer, therefore, the case is adjourned. To come up for the same before S.B on 09.06.2021.



Reader

09.06.2020

Counsel for the petitioner and Mr. Kabirullah Khattak, Addl. AG for the respondents present.

This is an application filed on 04.10.2019, for restoration of Service Appeal No. 886/2019, dismissed for non-prosecution on 23.09.2019.

Since the application is within time and the reason given in the application seems genuine, the appeal is restored to its original number and shall come up for proceedings as before.

Adjourned to 15.09.2021 for preliminary hearing before S.B.



Chairman

15.09.2021

Junior to counsel for appellant present.

Request for adjournment was made as senior counsel was stated to be busy before Hon'ble Peshawar High Court; allowed. To come up for preliminary hearing 02/11/2021, before S.B



(Rozina Rehman)
Member (J)

28.07.2020

Mr. Imran Khan, learned counsel for petitioner is present. No one on behalf of the respondents is present at the moment i.e 11:45 A.M. As a result of declaration of Public Holiday being falling on 22nd April 2020 due to COVID-19 pandemic respondents could not be issued notices. Notices be issued to respondents for 20.10.2020. File to come up for their reply and arguments before S.B.

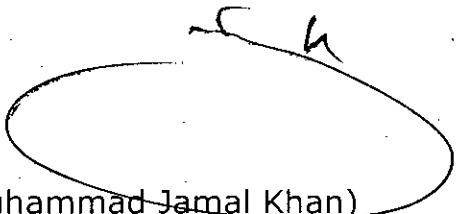

(MUHAMMAD JAMAL KHAN)
MEMBER

20.10.2020

Mr. Kabirullah Khattak, Additional Advocate General alongwith representative of the department Mr. Nabi Gul, Superintendent, are present.

Representative of the department submitted para-wise comments on behalf of respondents No. 1 to 4 which are made part of the record.

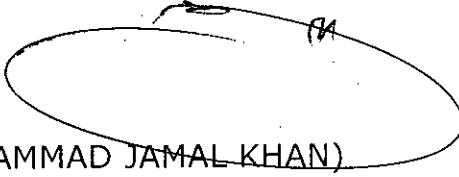
The legal fraternity is observing strike today, therefore, the case is adjourned to 02.12.2020 on which to come up for arguments before S.B.


(Muhammad Jamal Khan)
Member (Judicial)

02.12.2020

Petitioner has not forth come at the moment i.e 02:10 P.M despite have been called time and again. Mr. Kabirullah Khattak, Additional Advocate General for the respondents is present.

Petitioner and his respective counsel be put on notice for 23.02.2021. File to come up for further proceedings before S.B.


(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

17.12.2019

Junior to counsel for the petitioner and Addl. AG alongwith Nabi Gul, Superintendent for the respondents present.

Representative of respondents seeks time to furnish reply to application for restoration of appeal. To come up reply/arguments on application on 28.01.2029 before S.B.


Chairman

28.01.2020

Petitioner in person present and seeks adjournment on the ground that his counsel is not available due to general strike of the bar on the call of Khyber Pakhtunkhwa Bar Council.

The present service appeal was dismissed in default when it was fixed for preliminary hearing. Adjourn. To come up for further proceedings/arguments on 17.03.2020 before S.B.


Member

17.03.2020

Clerk to counsel for the petitioner present and seeks adjournment as lawyers community is on strike on the call of Peshawar Bar Association. Adjourn. To come up for further proceedings/arguments on 22.04.2020 before S.B.


Member

22.04.2020




Due to public holiday on account of COVID-19, the case to come up for the same on 28.07.2020 before S.B.


Reader

Form-A
FORM OF ORDER SHEET

Court of _____

Appeal's Restoration Application No. 373/2019

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	04.10.2019	<p>The application for restoration of appeal No. 885/2018 submitted by Mr. Zartaj Anwar Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2		<p>This restoration application is entrusted to S. Bench to be put up there on <u>05/11/19</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	05.11.2019	<p>Counsel for the petitioner present.</p> <p>Notice of instant application be given to respondents for 17.12.2019 before S.B.</p> <p style="text-align: right;"> Chairman</p>

23.09.2019

Nemo for appellant.

It is now 4:00 P.M and the case has been called several times but no one is in appearance on behalf of the appellant.

Dismissed for non-prosecution. File be consigned to record room.



CHAIRMAN

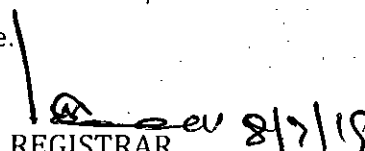
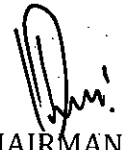

21/5/13

Announced
23.09.2019

Form- A
FORM OF ORDER SHEET

Court of _____

Case No.- _____ 885/2019 _____


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	08/07/2019	<p>The appeal of Mr. Masih Ullah resubmitted today by Mr. Zartaj Anwar 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 8/7/19</p>
2-	09/07/19	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>16/08/19</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	16.08.2019	<p>Clerk of counsel for the appellant present and requested for adjournment on the ground that learned counsel for the appellant is not available today. Adjourned to 23.09.2019 for preliminary hearing before S.B.</p> <p style="text-align: right;"> (MUHAMMAD AMIN KUNDI) MEMBER</p>

The appeal of Mr. Masih Ullah Assistant Directorate of Social Welfare Special Education and Women Empowerment Khyber. Pakhtunkhwa Peshawar received today i.e. on 01.07.2019 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

Page nos. 37 to 41, 46 to 54, 63 and 64 of the appeal are illegible which may be replaced by legible/better one.

No. 1149 /S.T,

Dt. 01/07 /2019.


REGISTRAR 11/7/19
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Zartaj Anwar Adv. Pesh.-

Sr

Re Submitted files Impugnatio

Please Retu in the case

*Jawad Ali
Asst*

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Appeal No. 885/2019

Masih ullah Assistant BPS 16, Directoriat of Social Welfare,
Special Education, and Women Empowerment Khyber
Pakhtunkhwa Peshawar.

(Appellant)

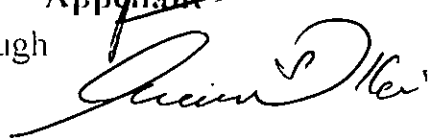
VERSUS

Govt of Khyber Pakhtunkhwa through Chief Secretary Civil
Secretariat Khyber road, Peshawar and others.

(Respondents)

INDEX

No.	Description of Documents	Page	Page
1	Memo of appeal and Affidavit		1-6
2	copy of the minutes of the meeting dated 26.04.2011 and order dated 26.04.2011	A	7-10
3	Copy of the working paper, seniority list	B	11-21
4	Copies of the ACRs	C	22-29
5	copy of the promotion order	D	30
6	copy of the order and judgment	E	31-36
7	copy of the order and judgment	F	37-41
8	copy of the notification dated 25.07.2012	G	42-44
9	copy of the judgment	H	45
10	copy of the order and judgment	I	46-54
11	copies of representation and order	J & K	55-61
12	Other Documents		62-64
13	Vakalatnama		65


Appellant
Through 

Zartaj Anwar
Advocate High Court
Office FR , 3 Forth Floor
Bilour Plaza Peshawar Cantt.
Cell: 0331-9399185
Email: Zartaj9@yahoo.com

1

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Appeal No. 885 /2019

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 907

Dated 01-07-2019

Masih ullah Assistant BPS 16, Directoriat of Social Welfare,
Special Education, and Women Empowerment Khyber
Pakhtunkhwa Peshawar.

(Appellant)

VERSUS

1. Govt of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat Khyber road, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa, Establishment Department Civil Secretariat Khyber road, Peshawar.
3. Secretary to Government of Khyber Pakhtunkhwa, Finance Department Civil Secretariat Khyber road, Peshawar
4. Secretary to Government of Khyber Pakhtunkhwa Social Welfare, Special Education, and Women Empowerment Civil Secretariat Khyber road, Peshawar.
5. Director, Social Welfare, Special Education, and Women Empowerment Khyber Pakhtunkhwa Peshawar.

(Respondents)

Filed to-day

Registrar

1/7/19

Re-submitted to -day
and filed.

Registrar

8/7/19

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the Order dated 15.05.2018 whereas to regularize the promotion on acting charge basis of Appellant to the post of Office Assistant (BPS 16) on regular basis with immediate effect, against which his departmental Appeal dated 09.04.2019 has not been regretted on 31.05.2019.

Prayer in Appeal: -

On acceptance of this Service Appeal declaring the acts and omission of the respondents whereby the Appellant are not treated alike to all those similarly placed employees who's service given effect i.e anti date promotion on regular basis from the date of acting charge basis, Further more the order dated 15.05.2018 may be declare void and the order of promotion may be issued from the date of acting charge basis, or from the date when became eligible for the post/promotion, the Appellant is highly discriminated in respect of his promotion while giving immediate effect i.e 15.05.2018, thus the refusal of the same to the Appellant is illegal unlawful without lawful authority, hence the Appellant deserve similar treatment in view of the reported cases of the apex court i.e. SCMR 1996 Page 1185, 2009 SCMR Page 1 etc, with arrears and back benefits.

Respectfully Submitted:

- 1) That the Appellant serving, in Directorate of Social Welfare, Special Education, and Women Empowerment Department Khyber Pakhtunkhwa Peshawar, While performing duties, served the department for more than 30 years with great zeal and devotion.
- 2) That the Appellant was previously serving as Senior Clarks in the respondent department (Directorate of Social Welfare, Special Education, and Women Empowerment Khyber Pakhtunkhwa Peshawar).(copy of the minutes of the meeting dated 26.04.2011 and order dated 26.04.2011 are attached as annexure A)
- 3) That the Appellant performed their duties on the said post to the entire satisfaction of the high ups of the department (Directorate of Social Welfare, Special Education, and Women Empowerment Khyber Pakhtunkhwa Peshawar) with no complaint what so ever till date.

- 4) That as per rules / method of appointment / qualification the promotion criteria for the post of Assistant was 25% on initial recruitment while 75% on promotion basis of seniority com fitness with at least 5 years service on the post of senior clerk, the respondent department prepared working paper for the promotion of senior clerk BPS 9 to the post of Assistant BPS 14, in which 75 % by promotion and 25% on initial recruitment, where as the Appellant no 1 was at serial no 4 and Appellant no 2 was at serial no 5.(Copy of the working paper, seniority list are attached as annexure B)
- 5) That the Appellant while performing their duties earned very good ACRs form the 2006 to 2010, which shows their devotion and hard work in the department. (Copies of the ACRs are attached as annexure C)
- 6) That on the recommendation of the Departmental Selection Committee in its meeting held on 15.05.2018 the competent authority regularized the service of the Appellant with immediate of 15.05.2018 on the said post.(copy of the promotion order is attached as annexure D)
- 7) That the Appellant no 1 completed his tenure of qualifying service of 5 years on 26.04.2013, where as the Appellant no 2 had completed his tenure of qualifying service of 5 years on 26.012.2013 but the regularization order for the post of assistant was issued with immediate effect i.e 15.05.218.
- 8) That in the meanwhile, some of the colleagues of the Appellant being on the same footing have approached to the service tribunal, and detailed judgment with regard to the regularization of employees/colleagues from the date of acting charge basis were issued in favour of the employees.(copy of the order and judgment is attached E)
- 9) That however, the said judgment of the service tribunal was challenged before the supreme court by the establishment department and the Hon;able Apex Supreme court was kind enough to give an elaborate and detailed judgment with regard to the same grievance.(copy of the order and judgment is attached as annexure F)

- 10) That as result of the above said judgment of the Hon'ble Supreme Court of Pakistan the notification with regard to the anti-date promotion of the employees/colleagues were issued from the date of their taking acting charge on relevant posts.(copy of the notification dated 25.07.2012 is attached as annexure G)
11. That another similarly placed case title Govt of Khyber Pakhtunkhwa vs Azam Khan, the supreme court of Pakistan upheld the decision of the service tribunal in service appeal no 1358/2000 on 05.03.2015 and granted relief to the employees.(copy of the judgment is attached as annexure H)
12. That very identical and similarly placed employees approached this Hon'ble court on the same point and issue in writ petition no 2640-p/2018 title abdu samad and others vs govt of Khyber Pakhtunkhwa , the Peshawar high court granted relief to the Appellant/colleagues of the present Appellant by extending the benefits of the judgments in the similar cases.(copy of the order and judgment is attached as annexure I).
13. That the Appellant approached the respondent department / competent authority by filling appeal / representation dated 09.04.2019 but was regretted vide order dated 31.05.2019. (copies of representation are attached as annexure J and order dated 31.05.2019 are annexure J&K)
14. That the act and omission of the respondents by not giving the same treatment is illegal, unlawful without lawful authority and against the law and facts, hence liable to be set aside inter alia on the following grounds.

GROUND:

- A. That the Appellant has not been treated in accordance with law, his rights secured and guaranteed under the law and Constitution has been violated.
- B. That the respondents are not acting in accordance with law and not treating the Appellant alike.
- C. That the conduct of the respondents is apparently tainted with malice, malafide and bias, similarly favoritism, nepotism & political interference prevailed in the process of promotion, thus the promotion with immediate effect so made is discriminatory.

- D. That the govt of Khyber Pakhtunkhwa filed Civil Appeal no 254-p/ 2015 which was dismissed vide order dated 05.03.2015 against the Govt of Khyber Pakhtunkhwa by upholding the judgment of the Peshawar High Court.
- E. That not considering appellant for promotion from the date of acting charge basis and promoting them with immediate effect is illegal without lawful authority, thus inaction on the part of respondents is against the law, facts, norms of justice and material on record and also against the principle fair play and equity.
- F. That the appellant has not been treated as per notified gazetted rules by the respondents which deprived the appellant from his due rights of promotion since his fulfillment of the required qualifications and experience.
- G. That the state is bound to ensure the elimination of all forms of exploitation and the gradual fulfillment of the fundamental principles. It is also the duties of the state to remove disparity in the income and earning of individuals under Article 37 & 38 of the Constitution.
- H. That the Appellant has at their credit the spot less service career prescribed qualification/experience for the post correctly mentioned besides has a vast experience of handling these posts, is thus eligible and fit to be promoted from the date of initial date of acting charge basis, which is also allowed to all similarly placed colleges by all forums i.e Service Tribunal, High Court, and Supreme Court of Pakistan.
- I. That under Article 25 of the Constitution of the Islamic Republic of Pakistan 1973, all citizen are equal before law, and that no discrimination is permitted in the similarly placed citizens, thus the discrimination meted out to the Appellant in the grant of regularization is illegal, highly discriminatory and not sustainable.
- J. That inaction on the part of respondents is adversely affecting the Appellant career; hence the proprietary demands that the Appellant should be promoted from the initial date of promotion as allowed to the similarly placed colleagues whom been promoted to higher posts.

- K. That the Appellant while posted in the respondents department performing their duties with honesty great zeal and devotion to the entire satisfaction of the superiors without any complaint what so ever.
- L. That the Superior Courts have repeatedly held that where a point of law is decided by the Superior Courts that cover the cases of all those civil servants who have not litigated than the good governance require that the benefit of such judgment should also be given to those who may not be parties to the litigation instead of compelling them to approach the Service Tribunal or any other forum. Reference can be made to case reported as SCMR 1996Page 1185, 2009 SCMR Page 1, the Appellant being similarly placed is also entitled to similar treatment meted out to their counter parts.
- M. That the appellant seeks the permission of this honourable Court to rely on additional grounds at the hearing of this appeal.

It is, therefore, prayed that the service appeal as prayed for in the heading of this Appeal may please be accepted in favour of the Appellant and against the respondents.


Appellant

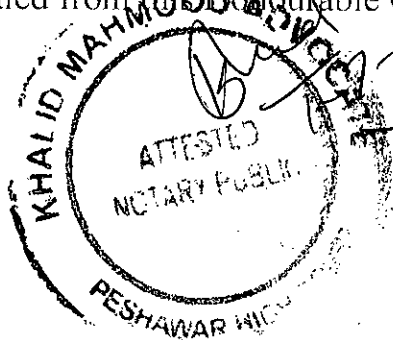
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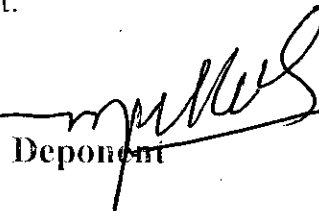


ZARTAJ ANWAR
Advocate Peshawar

AFFIDAVIT

I, Masihullah Assistant BPS 16, Directorate of Social Welfare, Special Education, and Women Empowerment Khyber Pakhtunkhwa Peshawar., do hereby solemnly affirm and declare on oath that the contents of the above service appeal are true and correct and that nothing has been kept back or concealed from this Honourable Court.




Deponent

7 *Amir A.*

MINUTES OF DEPARTMENTAL PROMOTION COMMITTEE
MEETING HELD ON 20/04/2011

A meeting of Departmental Promotion Committee was held on 20/04/2011 at 02.00 pm under the chairmanship of Director Social Welfare & Women Development Khyber Pakhtunkhwa. The following attended the meeting:

- i) Mr. Saeed Muhammad
Section Officer -II,
Social Welfare Department Khyber Pakhtunkhwa. Member
- ii) Mr. Nisar Muhammad,
Assistant Director (Admn);
Directorate of Social Welfare & WDD, Khyber Pakhtunkhwa. Member

The following cases for promotion were placed before the Departmental Selection Committee.

1. Promotion of Junior Scale Stenographer (BPS-12) to the post of Senior Scale Stenographer (BPS-15).
2. Promotion of Senior Clerk (BPS-9) to the post of Assistant (BPS-14).

The Committee examined the working paper, synopsis of ACR and after thorough discussion recommended the following officials for promotion to the post of Senior Scale Stenographer (BPS-15) in the Directorate of Social Welfare & Women Development Khyber Pakhtunkhwa.

1. Mr Nabi Gul , Junior Scale Stenographer (BPS-12) Directorate of Social Welfare & Women Development Khyber Pakhtunkhwa .
2. Mr Ikramullah Jan, Junior Scale Stenographer (BPS-12) Directorate of Social Welfare & Women Development Khyber Pakhtunkhwa.

The Committee discussed the case for promotion of Senior Clerks (BPS-9) to the post of Assistant (BPS-14) thoroughly examined the Working paper and synopsis of ACR and found that the following officials are eligible for promotion under the rules and recommended for promotion to the posts of Assistants (BPS-14) in the Directorate of Social Welfare and Women Development Khyber Pakhtunkhwa.

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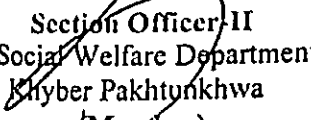
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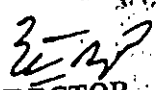
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- 146
1. Mr Mohammad Umar, Senior Clerk Directorate of Social Welfare & Women Development Khyber Pakhtunkhwa.
 2. Mr Abid Mohammad, Senior Clerk (Provincial Cadre) working at Mentally Retarded and Physically Handicapped Children Peshawar.
 3. Mr Sardar Ali, Senior Clerk Directorate of Social Welfare & Women Development Khyber Pakhtunkhwa .
 4. Mr Ayub Khan, Senior Clerk Directorate of Social Welfare & Women Development Khyber Pakhtunkhwa.

~~Write~~ The Committee recommended the following officials for Promotion / appointment on acting charge basis as Assistant BPS-14 in the Directorate of Social Welfare & Women Development Khyber Pakhtunkhwa who are eligible under Section -9 (i) Part (ii) of Civil Servant (Appointment , Promotion and Transfer) Rules -1989.

1. Mr Masihullah, Senior Clerk,
Directorate of Social Welfare
& Women Dev: Khyber Pakhtunkhwa.
2. Mr. Saeed Mohammad, Senior Clerk,
Directorate of Social
Welfare & Women Dev: Khyber Pakhtunkhwa.


Section Officer-II
Social Welfare Department
Khyber Pakhtunkhwa
(Member)


Assistant Director (Admin)
Directorate of Social Welfare
Khyber Pakhtunkhwa
(Member)


DIRECTOR,
Social Welfare & W. Dev: Department.
Khyber Pakhtunkhwa
(Chairman)

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ATTESTED



9

**GOVERNMENT OF KHYBER PAKHTUNKHWA
DIRECTORATE OF SOCIAL WELFARE AND
WOMEN DEVELOPMENT JAMHUD ROAD PESHAWAR**

Dated Peshawar the 26/04/2011

ORDER

No.E-17/16/DSW/V- 19128-38 On the recommendation of Departmental Promotion Committee in its meeting held on 20-4-2011 and approval of the competent authority, the following Senior Clerks are hereby promoted as Assistant (BPS-14) with immediate effect.

1. Mr Muhammad Umar, Senior Clerk (BPS-09)
Directorate of Social Welfare & WDD Khyber Pakhtunkhwa
Peshawar.
2. Mr Muhammad Abid, Senior Clerk (BPS-09)
Centre for Mentally Retarded and Physically Handicapped Children
Peshawar.
3. Sardar Ali., Senior Clerk (BPS-09)
Directorate of Social Welfare & WDD Khyber Pakhtunkhwa
Peshawar.
4. Mr Ayub Khan, Senior Clerk (BPS-09)
Directorate of Social Welfare & WDD Khyber Pakhtunkhwa
Peshawar.

The officials concerned on promotion will remain on probation for a period of one year in terms of Section (2) of NWFP Civil Servant Act 1973 read with rules -15 (1) of NWFP civil servants (Appointment, Promotion and Transfer) Rules 1989.

Consequent upon their promotion they are posted as Assistant (BPS-14) in the Directorate of Social Welfare & Women Development Khyber Pakhtunkhwa Peshawar.

Sd/-
Director
Social Welfare & Women Dev:

Endst: Even No.& Dated:-
Copy to:-

1. The Accountant General Khyber Pakhtunkhwa.
2. The Section Officer-II, Social Welfare Department Peshawar.
3. The District Account Officer Peshawar.
4. The Assistant Director (Budget & Account) Directorate of Social Welfare and WDD Khyber Pakhtunkhwa Peshawar.
5. The District Officer Social Welfare Department Peshawar.
6. The Manager, Center for Mentally Retarded & Physically Handicapped Children Peshawar.
7. The officials Concerned.

Assistant Director, (Admn)
Social Welfare & Women Dev:

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ATTESTED



10

GOVERNMENT OF KHYBER PAKHTUNKHWA
DIRECTORATE OF SOCIAL WELFARE AND
WOMEN DEV: JAMRUD ROAD PESHAWAR.

Dated Peshawar the 26 / 04 / 2011

ORDER

No.E-17/16/DSW/V- 19124-28 On the recommendations of Departmental Promotion Committee, in its meeting held on 20-4-2011, and the approval of the competent authority, the following Senior Clerks (BPS-9) are hereby appointed as Assistant (BPS-14) on Acting Charge basis with immediate effect.

1. Mr Masih Ullah Senior Clerk (BPS-09)
Directorate of Social Welfare & WDD Khyber Pakhtunkhwa
Peshawar.
2. Mr Saeed Mohammad, Senior Clerk (BPS-09)
Directorate of Social Welfare & WDD Khyber Pakhtunkhwa
Peshawar.

Consequent upon their appointment as Assistant (BPS-14) on Acting Charge basis, they are posted in the Directorate of Social Welfare & Women Development Khyber Pakhtunkhwa.

Sd/-
Director
Social Welfare & Women Dev:

Endst: Even No.& Dated:-
Copy to:-

1. The Accountant General Khyber Pakhtunkhwa.
2. The Section Officer-II, Social Welfare Department Peshawar
3. The Assistant Director (Budget & Account) Directorate of
Social Welfare and WDD Khyber Pakhtunkhwa Peshawar.
4. The officials concerned.

o/c
Assistant Director, (Admin)
Social Welfare & Women Dev::

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ATTESTED

J

11

APPROVED: B

WORKING PAPER.

Subject: PROMOTION OF SENIOR CLERK (BPS-09) TO THE POST OF ASSISTANT (BPS-14), DIRECTORATE OF SOCIAL WELFARE AND WOMEN DEVELOPMENT DEPARTMENT KHYBER PAKHTUNKHWA.

There are 10 sanction posts of Assistant (B-14) as per detail mentioned below:-

- | | | | |
|----|--|---|----------------------|
| 1. | Existing strength | 5 | (Copy at Annexure-A) |
| 2. | Newly created through Supplementary Grant 2010-11. | 5 | (Copy at Annexure-B) |

According to S.No. 12 column -7 of Directorate of Social Welfare & Women Development Khyber Pakhtunkhwa (appointment to posts) rules 1981, amended 2006 (Copy at Annexure-C) the matter of recruitment is as under:-

- i. 75% by promotion on the basis of seniority, cum - fitness, from amongst the Senior Clerk with at least 05 years service as such; and
- ii. 25% by initial recruitment.

At present 9 posts are lying vacant. The quota for promotion & initial recruitment is as under:-

- | | | |
|------|-------------------------|---|
| i) | Total vacant post. | 9 |
| ii). | by initial recruitment. | 2 |
| iii) | By promotion. | 7 |

According to the final seniority list (Provincial Level) (Annexure-D), the following (6) officials are serving against the posts of Senior Clerk (BPS-09).

S. No	Name of the official with designation	Date of 1 st entry into Govt. service	Date of appointment to the present post	Length of service upto 15-04-2010 as per Column-4.			Present place of posting.
				Years	Month s	Days	
1	2	3	4	5			6
1	Mr Muhammad Umar	25-06-1982	05-05-1994	16	11	10	Directorate of SW & WDD Khyber Pakhtunkhwa
2	Mr Abid Muhammad	17-05-1984	28-05-1996	14	08	17	MR&PHC Peshawar
3	Mr. Sardar Ali	17-05-1987	31-12-2004	6	04	15	Directorate of S W & WDD Khyber Pakhtunkhwa
4	Mr. Masih Ullah	19-09-1991	26-03-2008	03	00	19	--do--
5	Mr. Saeed Muhammad	28-09-1988	04-12-2008	02	04	11	--do--
6	Mr. Ayub Khan	01-07-1979	02-12-1990	20	04	13	--do--

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04-12-2008

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Zarfaq Anwar
2008

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The officials at S.No. 1, 2, 3 and 6 have the prescribed ^{MINIMUM} length of qualifying service/experience as required under the rules, whereas the officials at S.No 4 & 5 have not the prescribed length of service but according to Sr.No.9 (1) Part-II of the Govt. of Khyber Pukhtoon Khwa Civil Servant (Appointment, Promotion and Transfer) Rules, 1989 "where the appointing authority considered it to be in the public interest to fill a post reserved under the rules for departmental promotion and the most senior civil servant belonging to the cadre of service concerned, who is otherwise eligible for promotion, does not possess the specified length of service the authority may appointment him to that post on acting charge basis:

Provided that no such appointment shall be made if the prescribed length of service is short by more than three years." (Annex-E)


Attested copies of synopsis of ACRs of the officials are placed at (Annexure-F).

It is certified that all the 6 officials included in the panel for promotion:-

- a- Are holding the present post on regular basis and not holding the post on adhoc basis.
- b- Neither any anti-corruption / departmental enquiry is pending against the above mentioned officials nor were any penalties imposed against them during the last 05 years.
- c- All the vacant posts of Assistants as mentioned above are on regular budget side.
- e- The officials were not granted extra ordinary leave (leave without pay).

The Departmental Promotion Committee is requested to determine the suitability of the officials at S.No. 1,2,3 and 6 for promotion/appointment against the vacant posts of Assistant (BPS-14) in the Directorate of Social Welfare & Women Development Khyber Pakhtunkhwa Peshawar.

The DPC is further requested to determine the suitability of officials at S.No. 4 and 5 for promotion/ appointment on acting charge basis in the best public interest.


Assistant Director (Admin)
Social Welfare Department
Khyber Pakhtunkhwa

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AWH/15/13/2006

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Government of NWFP
Zakat, Ushr, Social Welfare & Women
Development Department

Dated Peshawar the September 21, 2006

NOTIFICATION:

NO.SOII (SW) II-12/99/. In pursuance of the provision contained in sub-rule (2) of rule 3 of the NWFP Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, and in supersession of Services & General Administration, Tourism and Sport Department, Government of NWFP Notification No. SOR-II (S&GAD) 2-6/78 dated 01-2-1981, the Zakat, Ushr, Social Welfare & Women Dev: Department NWFP in consultation with Establishment and Finance Departments NWFP hereby lays down the method of recruitment, qualification and other conditions specified in column No. 2 to 7 of Appendix to this Notification, which will be applicable to the posts in the Directorate of Social Welfare and Women Dev: NWFP.

Secretary to Govt. of NWFP
Zakat, Ushr, Social Welfare
& Women Dev: Department

Endt: NO.SOII (SW) II-12/99/

Dated Peshawar the September 21, 2006

Copy is forwarded to:-

1. All Administrative Secretaries to Govt. of NWFP.
2. All Heads of the Attached Departments.
3. All Distt. Coordination Officers in NWFP.
4. Director, Social Welfare and Women Dev: NWFP Peshawar.
5. Manager, Printing Press, NWFP Peshawar for information and publication in the officers gazette.
6. Secretary to Chief Minister, NWFP.
7. PS to Chief Secretary, NWFP.
8. PS to Secretary, Zakat, Ushr, Social Welfare & Women Dev: Dept NWFP.

AD (AS)
21/9/06
774
Asst Dir
(Admin)

Pl. examine Do the following and other useful is send copy of promotion to other ranks to AD also forward to NWFP PSC
ii) Promos. can be made at level.
iii) Put

(Nom Khan Sialkot)
Section Officer II

ATTESTED

APPENDIX
 METHOD OF APPOINTMENT/QUALIFICATION AND OTHER CONDITIONS APPLICABLE TO POSTS IN SOCIAL WELFARE DEPARTMENT

Nomenclature of Post	Minimum Qualification for Appointment by		Age for initial recruitment		Method of Recruitment
	Initial recruitment	Promotion	Minimum	Maximum	
Director BPS-18					By promotion only from amongst the Directors and Supervisors with at least 5 years service as Assistant Director available for promotion in any other Government Department.
Assistant Directors/Manager B-17					By transfer from any of the posts in Social Welfare Office.
Superintendent Welfare Home BPS-17					By promotion in the line of posts of fitness from the posts of Supervisor / Field Officer / Social Case Worker 4B-16 (Office Superintendent) BPS-16 with at least 5 years service as such.
Planning officer B-17	Master Degree in Economics or Statistics / MBA or MPA from a recognized University		21 years	32 years	By Initial recruitment
Social Welfare Officer B-17	Master Degree in Social Work / Sociology or Anthropology from a recognized University		21 years	32 years	i) 80% by Initial Recruitment ii) 20% by promotion from holder of the post Field Officer / Supervisor B-16 and Social case Worker B-16 with at least 5 years service as such.

[Signature]
 Director Welfare Department
 Government of West Bengal

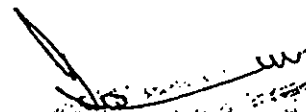
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Field Officer / Supervisor B-16	Master Degree in Social Work Sociology or Anthropology from a recognized University		21 years	32 years	By Initial Recruitment
Office Superintendent, B-16					By promotion on the basis of seniority-cum-fitness amongst the holder of post of Assistants and Senior Scale Stenographer in the Directorate with at least 5 years service as such. Note: A common seniority list of Assistants and Senior Scale Stenographer for the purpose of promotion to the post of Superintendent shall be maintain on the basis of their regular continuous appointment to the respective posts.
Social Case Worker B-16	Master Degree in Social Work Sociology or Anthropology from a recognized University		21 years	32 years	By Initial recruitment
Stenographer. B-15					By promotion on the basis of seniority-cum-fitness from amongst the holders of the posts of Steno typist with at least 5 years service as such.
Key Punch Operator B-12	Bachelor Degree in Computer Science from a recognized University		18 years	28 years	By Initial recruitment

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 Director
 Department of Social Work
 Government of Karnataka
 Bangalore

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11	Junior Scale Stenographer B-12	FA with 50 words per minutes in English Short Hand and 35 words per minutes in typing and Computer Knowledge		18 years	28 years	By Initial Recruitment
12	Assistant B-11	Bachelor Degree from a recognized University		18 years	28 years	a) 25 % by Initial Recruitment b) 75 % by promotion on the basis of Seniority come fitness from the holders of the post of Senior Clerk with at least 5 years service as such
13	Investigator. B-11	Bachelor Degree from a recognized University with statistics/Sociology/ Social Work as one of the subject.		18 years	28 years	By initial recruitment.

WORKSHOP TECHNICANS

14	Fitter. B-11	a). F.A or FSc. or Poly Technique Mechanic. b) Diploma/Certificate from a recognized Orthopedic Workshop.		18 years	28 years	By initial recruitment.
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15	Metal Mechanic-(B-11)	a).F.A or FSc or Poly Technique Mechanic . b) Diploma/Certificate from a recognized Orthopedic Workshop.	18 years	28 years	By initial recruitment.
16	Brace Maker-(B-11)	a).F.A or FSc or Poly Technique (Mechanic . b) Diploma/Certificate from a recognized Orthopedic Workshop	18 years	28 years	By initial recruitment.
17	Electric Palter, (B-11).	a).F.A or FSc or Poly Technique Mechanic . b) Diploma/Certificate from a recognized Orthopedic Workshop	18 years	28 years	By initial recruitment.
18	Blacksmith. (B-11)	(a) Middle. (b) Certificate from a recognized Orthopedic Workshop.	18 years	28 years	By initial recruitment.
19	Polisher,(B-11)	(b)Middle. (b)Certificate from a recognized Orthopedic Workshop.	18 years	28 years	By initial recruitment.
20	Shoe Maker,(B-11).	(b)Middle. (b)Certificate from a recognized Orthopedic Workshop -	18 years	28 years	By initial recruitment.

ATTESTED

[Signature]
 Director, Technical Education
 Government of Karnataka
 Bangalore

18

21	Welder, (B-11).	(b) Middle. (b) Certificate from a recognized Orthopedic Workshop		18 years	28 years	By initial recruitment
22	Hostel Superintendent B-9	FA / FSc with 2 years experience in the relevant field		18 years	28 years	By Initial Recruitment
23	Lady Health Visitor, B-9.	A) Matriculation or equivalent qualification from a recognized board; and B) Diploma from a recognized Public Health Institute/Qualified L.H.V. from Nursing Council.	C)	18 years	28 years	By initial recruitment.
24	Inspector, B-9					By promotion on the basis of seniority-cum-fitness from amongst of the post of Auxiliary workers with at least 5 years service as such.
25	Instructor/Craft Instructor, B-8	a) Middle Standard from a recognized School; and b) Industrial diploma from a recognized Institute.	c)	18 years	28 years	By initial recruitment.
26	Senior Clerk, B-07					By promotion of the basis of seniority-cum-fitness from amongst the holder of the posts of Junior clerk with at least two years service as such.

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	Auxiliary Worker B-6	FA / FSc from a recognized Board	18 years	28 years	By Initial Recruitment
28	Junior Clerk, B-5.	Matric with Typing Speed 35 Words per Minute and Computer Knowledge	18 years	28 years	67 % by Initial recruitment. 33 % by promotion from amongst the Matriculate Class IV employees holding the post of Daftari, Gasfetter Operator, Qasid/ Naib Qasid and others equal post under 45 years of age with at least 2 years service as such.
29	Driver, B-04	Preferably literate.	18 years	40 years	By initial recruitment.
30	Naib Qasid B-1	Preferably literate.	18 years	40 years	i) 80 % By initial Recruitment ii) 20 % by transfer from amongst the holder of the post of Chowkidar.
	Chowkidar, B-1				
	Mali, B-1		18 years	40 years	By initial recruitment.
33	Sweeper, B-1		18 years	40 years	By initial recruitment.
			18 years	40 years	By initial recruitment.

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GOVERNMENT OF KHYBER PAKHTUNKHWA
DIRECTORATE OF SOCIAL WELFARE AND
WOMEN DEJAMRUD ROAD PESHAWAR.

Dated Peshawar the 10/2/2011

NOTIFICATION:

No. E-17/17/ DSW/Vol-IV 7649-50 In pursuance of provision contained in Section-8 of the NWFP Servant Act, 1973, the final seniority list of Senior Clerk (BPS-09). Working at Provincial level is hereby notified for information of all concerned.

Sd/-
Director
Social Welfare & WDD
Khyber Pakhtunkhwa

Endast: Even No & Date

- Copy forwarded to:
1. The Section Officer-II, Social Welfare Department Peshawar.
 2. Official Concerned.

o/c
Assistant Director (Admn)
Social Welfare & WDD
Khyber Pakhtunkhwa

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FINAL SENIORITY LIST OF SENIOR CLERKS BPS-09 OF SOCIAL WELFARE AND WOMEN DEVELOPMENT DEPARTMENT KHYBER PAKHTUNKHWA

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S.No	Name	Qualification	Domicile	Date of Birth	Date of 1 st Entry into Government Service	Present appointment with date	Present B.P.S	Move Over Selection Grade	Remarks
1	Mr Muhammad Umar	Matric	Charsadda	10-10-1960	25-06-1982	05-05-1994	09	By Promotion	
2	Mr Abid Muhammad	Matric	Peshawar	16-07-1965	17-05-1984	17-05-1984	09	By Promotion	
3	Mr Sardar Ali	F.A	Charsadda	14-08-1966	17-05-1987	31-12-2004	09	By Promotion	
4	Mr Masih Ullah	F.A	Charsadda	10-02-1970	19-09-1991	26-03-2008	09	By Promotion	
5	Mr Saeed Muhammad	Matric	Charsadda	16-12-1968	28-09-1988	04-12-2008	09	By Promotion	
6	Mr Ayub Khan	Matric	Peshawar	02-05-1959	01-07-1979	02-12-1991	09	By Promotion	The official was transferred from D/O SW Peshawar to Directorate of Social Welfare. He has opted to retain his seniority in the Directorate. The seniority position will stand at the bottom of Seniority list.

ATTESTED


[Signature]
ASSISTANT DIRECTOR (Admn)
SOCIAL WELFARE WDD
KHYBER PAKHTUNKHWA

22

APPROVED: C

**SYNOPSIS OF ACRs FOR THE LAST 05 YEAR IN R/O MUHAMMAD UMAR SENIOR CLERK
DIRECTORATE OF SOCIAL WELFARE & WOMEN DEVELOPMENT, KHYBER PAKHTUNKHWA.**

S.No	Year	Grading	Remarks of the Reporting Officer	Remarks of the Countersigning Officer	Adverse remarks
1	2006	Good	A hard Working official, efficient takes into account all work	Agreed with the reporting officer	Nil
2	2007	Good	Over all performance is good.	Agree with RO	Nil
3	2008	Good	Over all performance is good.	Agreed	Nil
4	2009	Good	The official over all performance is satisfactory.	Agreed	Nil
5	2010	Good	He is an obedient and hardworking official.	Agree with R.O	Nil


Assistant Director
Social Welfare & Women
Khyber Pakhtunkhwa

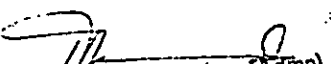
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SYNOPSIS OF ACRs FOR THE LAST 05 YEAR IN R/O ABID MUHAMMAD, SENIOR CLERK, DIRECTORATE OF SOCIAL WELFARE & WOMEN DEVELOPMENT KHYBER PAKHTUNKHWA.

S.No	Year	Grading	Remarks of the Reporting Officer	Remarks of the Countersigning Officer	Adverse remarks
1	2006	Good	The performances of the official were very good.	Agreed with the remarks of RO	Nil
2	2007	Good	Satisfactory	I agree with RO	Nil
3	2008	Good	Devoted & dedicated to his work, can be recommended for promotion on his own turn.	Agree	Nil
4	2009	Good	Know how to perform his duties in a better manner, can be recommended for promotion on his own turn.	Agreed with RO remarks	Nil
5	2010	Good	Devoted and dedicated to his work, can be recommended for promotion on his own turn.	Agree	Nil


Assistant Director, (Admn)
Social Welfare & WDD
Khyber Pakhtunkhwa

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SYNOPSIS OF ACRs FOR THE LAST 05 YEAR IN R/O SARDAR ALI SENIOR CLERK DIRECTORATE OF SOCIAL WELFARE & WOMEN DEVELOPMENT KHYBER PAKHTUNKHWA.

S.No	Year	Grading	Remarks of the Reporting Officer	Remarks of the Countersigning Officer	Adverse remarks
1	2006	Very good	He is a dedicated worker; fulfill the given task in time. Punctual and well mannered.	Agreed with the reporting officer	Nil
2	01-01-2007 to 31-05-2007	Very Good	He is hones and dedicated worker. Knows his job very well. He always fulfill his duty when a task is given to him,	I agree with RO	Nil
3	01-06-2007 to 31-12-2007	Very Good	Mr Sardar Ali Senior Clerk , is honest and devoted person. He ever focus on his work. He is disciplinary gentle man.	I agree with RO	Nil
4	2008	Very Good	Over all performance of the official v. good and satisfactory.	Agreed	Nil
5	01-01-2009 to 25-07-2009	Very Good	The over performance of the official is satisfactory.	Agreed	Nil
6	26-07-2009 to 31-12-2009	Good	Hard worker and obedient.	Agree with reporting Officer.	Nil
7	2010	Good	Hard working and dutiful official. Fit for promotion on his term.	I agree with RO	Nil

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[Signature]
 Assistant Director, (Admn)
 Social Welfare & WDD
 Khyber Pakhtunkhwa

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SYNOPSIS OF ACRs FOR THE LAST 05 YEAR IN R/O MASIH ULLAH, SENIOR CLERK, DIRECTORATE OF SOCIAL WELFARE & WOMEN DEVELOPMENT KHYBER PAKHTUNKHWA.

S. No	Year	Grading	Remarks of the Reporting Officer	Remarks of the Countersigning Officer	Adverse remarks
1	2006	Very Good	A competent and trust worthy official. Very skill full in Account matters. Can work any desk. Give to him any assignment he will come out with plying coloures if given accelerated promotion, it would not surprised me.	Agree with R/O	Nil
2	2007	Very Good	Knows his job description very well. Capable and efficient.	Agree with R/O	Nil
3	01-01-2008 to 24-03-2008	Very good	Competent and trust worthy official. Always does his assignment.	Agree with the R/O	Nil
4	25-03-2008 to 31-12-2008	Very Good	Competent and intelligent official. Can be trusted.	Agree with the R/O	Nil
5	2009	Very Good	The official has professional capabilities regarding the official work and is going very well.	Agree with the R.O	Nil
6	2010	Very good	Hard working intelligent,. He knows his job very well. Fit for accelerated promotion.		

[Signature]
Asstent Director, (Admin)
Social Welfare & WDD
Khyber Pakhtunkhwa

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SYNOPSIS OF ACRs FOR THE LAST 05 YEAR IN R/O SAEED MUHAMMAD, SENIOR CLERK, DIRECTORATE OF SOCIAL WELFARE & WOMEN DEVELOPMENT KHYBER PAKHTUNKHWA.

S.No	Year	Grading	Remarks of the Reporting Officer	Remarks of the Countersigning Officer	Adverse remarks
1	2006	Very Good	The official takes keen interest in his official work and recommended for promotion on his own term bases.	Agreed	Nil
2	2007	Very Good	The official is obedient punctual and trustworthy. He is doing his job well.	As Above	Nil
3	2008	Very Good	Saeed Muhammad is hard working cooperative will be disciplined and punctual. He has done very well during the period. I recommend him for further promotions as per rules and regulations under the laid down procedures.	As Above	Nil
4	2009	Good	Take keen interest in his work dutiful official. Fit for promotion.	Agreed	Nil
5	2010	Very Good	He is hardworking trust worthy and efficient official.	Agreed	Nil


Assistant Director, (Admin)
Social Welfare & WDD
Khyber Pakhtunkhwa

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SYNOPSIS OF ACRs FOR THE LAST 05 YEAR IN RIO AYUB KHAN, THE CLERK,
DIRECTORATE OF SOCIAL WELFARE & WOMEN DEVELOPMENT KHYBER PAKHTUNKHWA.

S.No	Year	Grading	Remarks of the Reporting Officer	Remarks of the Countersigning Officer	Advisory remarks
1	2008	Good	Cooperative and good overall performing in good	Agree with marks of the R/O	Nil
2	2007	Good/Very Good	Fit for promotion. Punctual, honest.	Agree	Nil
3	2008	Good	Able to develop good working relations, hard worker.	Agree with marks of R/O	Nil
4	2008	Good	Honest & Hard worker.	Agree	Nil
5	2010	Good	Hard working & dutiful official. Fit for promotion on his turn.	Agree with R/O	Nil

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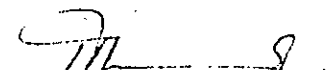

ASSISTANT DIRECTOR (Admin),
SOCIAL WELFARE & WOMEN DEVELOPMENT
KHYBER PAKHTUNKHWA

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SYNOPSIS OF ACRs FOR THE LAST 05 YEAR IN R/O ABID MUHAMMAD, SENIOR CLERK, DIRECTORATE OF SOCIAL WELFARE & WOMEN DEVELOPMENT KHYBER PAKHTUNKHWA

S.No	Year	Grading	Remarks of the Reporting Officer	Remarks of the Countersigning Officer	Adverse remarks
1	2006	Good	The performances of the official were very good.	Agreed with the remarks of RO	Nil
2	2007	Good	Satisfactory	Agree with RO	Nil
3	2008	Good	Devoted & dedicated to his work, can be recommended for promotion on his own turn.	Agree	Nil
4	2009	Good	Know how to perform his duties in a better manner can be recommended for promotion on his own turn.	Agreed with RO remarks	Nil
5	2010	Good	Devoted and dedicated to his work, can be recommended for promotion on his own turn.	Agree	Nil

ATTESTED


Assistant Director, (Admn)
Social Welfare & WDD
Khyber Pakhtunkhwa

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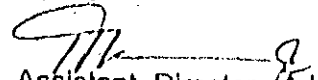
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**SYNOPSIS OF ACRs FOR THE LAST 05 YEAR IN R/O MUHAMMAD UMAR, SENIOR CLERK
DIRECTORATE OF SOCIAL WELFARE & WOMEN DEVELOPMENT KHYBER PAKHTUNKHWA.**

S.No	Year	Grading	Remarks of the Reporting Officer	Remarks of the Countersigning Officer	Adverse remarks
1	2006	Good	A hard Working official, efficient takes interest in his work	Agreed with the reporting officer	Nil
2	2007	Good	Over all performance is good.	Agree with RO	Nil
3	2008	Good	Over all performance is good.	Agreed	Nil
4	2009	Good	The official over all performance is satisfactory.	Agreed	Nil
5	2010	Good	He is an obedient and hardworking official	Agree with R.O	Nil

ATTESTED


Assistant Director, (Admn)
Social Welfare & WDD
Khyber Pakhtunkhwa



GOVERNMENT OF KHYBER PAKHTUNKHWA
DIRECTORATE OF SOCIAL WELFARE, SPECIAL EDUCATION
& WOMEN EMPOWERMENT PESHAWAR

Dated Peshawar 15th May, 2018

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APPROVED
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ORDER.

NO.E-17/16/DSW/2011/VOL-8/10605-10 On the recommendation of the Departmental Promotion Committee in its meeting held on 15th May, 2018, the competent authority is pleased to regularize the promotion on acting charge basis of M/S Masih Ullah & Saeed Muhammad Khan, Office Assistants (BPS-16), Directorate of Social Welfare, Special Education & Women Empowerment, Khyber Pakhtunkhwa to the post of Office Assistant (BPS-16) on regular basis with immediate effect.

02. The above mentioned officials on regularization of their promotion will remain on probation in terms of Rule 6(2) of the Khyber Pakhtunkhwa Civil Servants Act 1973 read with Rule 15(1) & (2) of the Khyber Pakhtunkhwa Government Servant (Appointment, Promotion & Transfer) Rules 1989 for a period of one year.

-Sd-

DIRECTOR

Social Welfare, Special Education
and Women Empowerment Khyber
Pakhtunkhwa.

Endst: of Even No. & Date:-

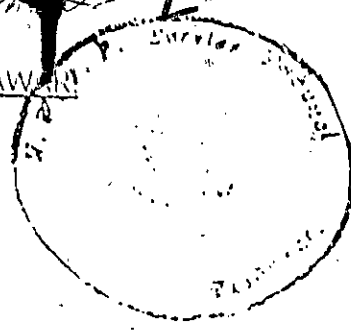
Copy for information is forwarded to the:

1. Accountant General, Khyber Pakhtunkhwa.
2. Dy: Director (MIS) Social Welfare, Special Education & Women Empowerment Department Khyber Pakhtunkhwa.
3. PS to Secretary to Govt: of Khyber Pakhtunkhwa Social Welfare, Special Education & Women Empowerment Department.
4. PA to Director Social Welfare, Special Education & Women Empowerment Khyber Pakhtunkhwa.
5. PA to Dy: Director (Admn) Social Welfare, Special Education & Women Empowerment Khyber Pakhtunkhwa.
6. Officials concerned.

MJL-81

(Muhammad Jehangir)
Assistant Director
(Establishment)

ATTESTED



Appeal No. 612/2008

Date of Institution.. .. 16.04.2008
Date of Decision 13.03.2009

Muhammad Iqbal Khattak,
Assistant Political Agent, Khar Bajaur Agency. ... (Appellant)

VERSUS

1. Government of NWFP through Secretary Establishment Department, Peshawar.
2. Govt. of NWFP through Chief Secretary, Peshawar. (Respondents)

APPEAL U/S 4 OF THE NWFP SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION NO.SOE.II (E&D) 2 (192)2007 DATED 19.2.2008 WHEREBY THE APPELLANT WAS PROMOTED ON REGULAR BASIS W.E.F. 19.2.2008 INSTEAD OF 30.11.1999, AND ORDER NO.SOE-II (E&D) 2(192) WHEREBY HIS DEPARTMENTAL APPEAL WAS DISMISSED.

MR. SHAKEEL AHMAD,
Advocate ... For appellant.
MR. ZAHID KARIM KHALIL,
Addl. Government Pleader, ... For respondents.
MR. JUSTICE (R) SALIM KHAN, .. CHAIRMAN.
MR. BISMILAH SHAH, .. MEMBER.

JUDGMENT

JUSTICE (R) SALIM KHAN, CHAIRMAN.-The present appeal No. 612 of 2008 by Muhammad Iqbal Khattak and appeal No. 613 of 2009 by Ahmad Khan involved similar questions of law, therefore, these are taken together for arguments and disposal.

2. Muhammad Iqbal Khattak was promoted as Tehsildar on regular basis vide order dated 28.12.1988. He was promoted to PCS(E.G) (BPS-17) on temporary basis vide notification dated 06.03.1996. He contended that many posts became vacant, but the appellant was promoted to (BPS-17) on regular basis on 19.2.2008 with immediate effect, instead of ante-dating of his promotion to the date on which the vacancy fell to his turn in the

ATTESTED

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seniority lists of officers of PCS (E.G). His departmental appeal was rejected on 22.03.2008. The present appeal was filed on 16.4.2008 which is within time. The case of Ahmad Khan (Appellant) is similar to the case of Muhammad Iqbal Khattak on facts also. His appeal is also within time.

3. The respondents contested the appeal on many grounds, including the ground that no one could claim a vested right in promotion or in the terms and conditions for promotion to a higher post.

4. We heard the arguments and perused the record.

5. The learned counsel for the appellants contended that the appellants were temporarily posted to BPS-17 post on 06.3.1996, but they remained silent, because they did not have a vested right for promotion to a higher post. The appellants have already been considered for promotion and have been found eligible and fit for regular promotion to BPS-17 post, therefore, the principles embodied in the judgment of the August Supreme Court of Pakistan reported as 1990 SCMR 1321 are not applicable to their cases. In fact, the vacancies had become available for the appellants as early as on 30.11.1999, and it was the responsibility of the official respondents to expeditiously deal with the cases of the appellants for their regular promotion. The appellants could not be punished for no fault on their side, or for delay caused by the official respondents in processing the cases of the appellants. He relied on 1997, PLC (C.S) 77, wherein it has been held in para 3 as under:-

"On behalf of the Government it is contended that no civil servant has a right to claim that he should be promoted from a back date even though a vacancy may be existing on the date from which the promotion is being claimed. This is no doubt true but there are no orders by the Government that the respondents/petitioners should be held up for some time. The delay in making the promotions occurred entirely due to the reason that the officials of the Education Department could not carry out a fairly simple exercise within a reasonable period. In the circumstances it will not be appropriate for this Civil Petition to interfere with the order of the Service Tribunal. Leave is refused."

This judgment was in the petition for leave to appeal against the judgment dated 19.02.1995 of the Punjab Service Tribunal. It is worth-mentioning that

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Arguments cited as 1990 SCMR 1321 and cited as 1997 PLC (C.S) 77 are in two different aspects of the same subject.

6. Ante-dating of promotion, after consideration of the candidate aspiring for such promotion, after he was found eligible and fit for such promotion and is promoted, is an established principle of law. Such a candidate cannot be punished for any delay caused by the department in processing his case for promotion. The order of promotion, therefore, has to be ante-dated to the date on which the vacancy for his turn became available or to the date on which he actually took charge of the post on officiating/acting charge basis, whichever is later.

7. The A.G.P contended that the present appeals were miserably time-barred and both the appellants were estopped by their own conduct to file the present appeals. In fact, the principle embodied in the judgment reported as 1990 SCMR 1321 was applicable to the cases of the appellants from 06.3.1996 to 18.2.2008. They could not claim promotion as of right. The principle embodied in the judgment reported as 1997 PLC (C.S) 77 became applicable to their case on 19.2.2008. Cause of action arose to the appellants for claiming ante-dation of their promotion as prayed for only when their cases were considered for promotion, they were found eligible and fit for promotion, and their promotion orders were issued, though with immediate effect. They filed their departmental appeals within time from the date of the impugned order dated 19.2.2008, and their appeals were rejected on 22.3.2008. They filed Service Appeals on 16.04.2008. The departmental appeals as well as the Service Appeals were well within time.

8. The A.G.P further contended that, according to the proviso contained in sub-section (2) of Section 22 of the N.W.F.P Civil Servants Act 1973, "no representation shall lie on matters relating to the determination of fitness of a person to hold a particular post or to be promoted to a higher post or grade." Judgment cited as 1990 SCMR 1321 was, then, applicable and appellants could not file representation. This stage has already passed. The appellants have been considered for holding the higher post after their promotion to that higher post, and their fitness for such promotion and holding of post has already been determined. The judgment cited as 1997

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EXAMINER
N.W.F.P.

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(C.S) 77 has become applicable after determination of fitness of the appellants. The question in these cases is not the determination of fitness but is the right of ante-dation of their promotion. The appellants had vested right for consideration of promotion on their turn, whenever it was, and, when found fit on determination of fitness, at any stage, they had a right to claim ante-dation of their promotion to the dates on which the vacancies were available for their respective turns or from the dates on which they actually took the charge of their respective posts, whichever were later in time.

9. The A.G.P also contended that according to sub-rule (6) of Rule 9 of the N.W.F.P Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 "acting charge appointment shall not confer any vested right for regular promotion to the post held on acting charge basis." The appellants have never claimed any vested right for regular promotion to the post which they held on acting charge basis, on the basis of acting charge appointment. In fact, they did not have such a right. They remained silent for a long time, knowing that they did not have such a right on the basis of acting charge appointment. They, however, had a vested right, as civil servants, for consideration for promotion, when the authority was to consider someone for promotion against the vacancy. No other person could be considered till the appellants were so considered. They, therefore, had a vested right for ante-dation of their promotion only when they were regularly promoted, but from the date when the vacancy became available for their turn.

10. The A.G.P further contended that, according to the North West Frontier Province Provincial Management Service Rules, 2007, notified on 11.05.2007 vide No. SOE.II(ED)2(14)2007, The NWFP Provincial Civil Service (Secretariat/Executive Group) Rules, 1997 were repealed. He was of the view that the N.W.F.P Provincial Management Service Rules, 2007 had come into force at once w.e.f. 11.05.2007, while the orders of promotion of the appellants were issued on 19.02.2008. He submitted that the promotion orders were covered by the new rules, therefore, the appellants could not claim any benefit out of the already repealed rules of 1997. In order to clarify this controversy, It is necessary to reproduce the text of the N.W.F.P Provincial Management Service Rules, 2007.

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OFFICER
Public Tribunal

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Repeal:- The North-West Frontier Province Provincial Civil Service (Secretariat/Executive Group) Rules, 1997 shall stand repealed after the retirement of existing incumbents of both the cadres. Separate seniority list of both the cadres shall be maintained under the existing rules and they shall be promoted at the ratio of 50:50. The existing incumbents of PCS (E.G) and (S.G) in different pay scales, for the purpose of their promotion, shall continue to be governed under the said service rules till the retirement of the last such incumbent."

The above rule, by itself, clarifies that the rules of 1997 shall not stand repealed before the retirement of the existing incumbents of both the cadres of Secretariat/Executive Groups, and shall remain in force till the retirement of the last such incumbent. It further clarified that separate seniority list of both the cadres shall be maintained under the existing rules. The existing rules for such incumbents are the N.W.F.P Provincial Civil Service (Secretariat/Executive Group) Rules, 1997. It was also clarified that such incumbents shall be promoted at the ratio of 50:50. It means that out of each two vacancies, one vacancy shall be given to Secretariat Group, while another vacancy shall be given to the Executive Group. Further clarification is to the effect that the existing incumbents of PCS (E.G) and (S.G) in different pay scales shall continue to be governed under the rules of 1997 for the purpose of their promotion, and this process is to continue till the retirement of last such incumbent. Both the appellants belonged to the Executive Group of Civil Servants. They were to be governed under the N.W.F.P Provincial Civil Service (Secretariat/Executive Group) Rules, 1997 before 11.05.2007, and they have to be governed under the above mentioned rules of 1997 till the retirement of the last incumbent of a post in Secretariat Group/Executive Group.

11. The cases of the appellants are, therefore, to be governed in accordance with the provisions of Section 8 (quoted above) of the new N.W.F.P Provincial Management Service Rules, 2007. The record shows that vacancies were available for the appellants but they were not promoted at the due time and their cases for promotion were delayed unnecessarily without any fault of the appellants. They, therefore, are entitled to ante-dation of their promotion, against the first available vacancy falling to the turn of each of them or from the date of taking over the charge of that vacancy on officiating/acting charge basis, whichever is later.

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2. In the light of the above, we accept both the appeals, and direct the official respondents to ante-date the promotion of each of the two appellants to the respective dates on which a vacancy became available for the respective turn of the appellants or from the respective dates of their taking charge of such vacancy on officiating/acting charge basis, whichever is later. The appellants are entitled to the costs of their respective litigation from the official respondents.

ANNOUNCED
11.03.2009

Ady - Justice C.S. Lalwani
Chairman
Ady - Biswinder Chahal
Member

[Handwritten signature]

of presentation of petition *12-3-09*
of work *2400*
of fee *14*
of cost *14*
completion of copy *10-4-09*
delivery of copy *10-4-09*

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IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

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ANNEX F

PRESENT:
MR. JUSTICE ERKIN KHAN
MR. JUSTICE IFTIKHAR AHMED KHAN

C. As. No. 860 to 861 of 2010.
(On appeal against the judgment of
11.3.2009 passed by NWFP Service
Tribunal, Peshawar in Appeals Nos. 612
and 613 of 2008).

Govt. of NWFP thru. Secy. Establishment and another. (in both cases)
Appellants

Versus

Muhammad Iqbal Khattak. (in CA 860/10)
Ahmed Khan. (in CA 861/10)
Respondents

For the appellants: Alian Muhibullah Kalakhel, Sr.ASC.
Miss. Tehmina Muhibullah, ASC.
Mir Adam Khan, ACR.
(in both)

For the respondents: Hafiz S. A. Rehman, Sr.ASC.
Mr. Shakeel Ahmed, ASC
(in both).

Date of hearing: 24.05.2012.

J U D G M E N T

EJAZ AFZAL KHAN, J. --- These appeals with the leave of the Court have arisen out of the judgment dated 11.3.2009 of the Service Tribunal whereby appeals filed by the respondents were allowed.

2. The points raised and noted while granting leave read as under:-

"We have heard the learned counsel at some length. We are inclined to grant leave inter-alia on the point as to whether the legal and factual aspects of the controversy have been dilated upon and decided by the Tribunal in accordance with relevant Rules i.e. Rule B of the NWFP, Provincial Civil Service (Secretarial/Executive Group) Rules, 1997 and Rule 9(a) of NWFP Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. It is also to be examined as to whether the stop-gap arrangement can be equated to that of regular promotion and besides that the order passed by the learned Service Tribunal could be made applicable to a

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Superintendent
Supreme Court of Pakistan
ISLAMABAD

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IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

Present:

Mr. Justice Ejaz Afzal Khan

Mr. Justice Muhammad Altaf Saeed

C.As No.860 to 861 of 2010
(on appeal against the judgment on
11.03.2009 passed by NWFP Service
Tribunal, Peshawar in Appeals No.660
and 613 of 2008)

Govt. of NWFP thr. Secy. Establishment & others

(in both case
Appellants

Versus

Muhammad Iqbal Khattak
Ahmad Khan

(in CA 860/10)
(in CA 861/10)
Respondents

For the Appellants:

Mian Muhibullah Kakakhel, Sr. ASC
Miss Tebmma Muhibullah, ASC
Mir Adam Khan, AOR,
(in both)

Dated of hearing:

24.05.2012

J U D G M E N T

EJAZ AFAZAL KHAN, J:- These Appeals with the leave of the Court have been set aside of the judgment dated 11.3.2009 of the Service Tribunal whereby appeals filed by the respondents were allowed.

2 The points raised and noted while granting leave read as under:-

We have heard the learned counsel at same length. We are inclined to grant leave inter alia on the point as to whether the legal and factual aspects of the controversy have been dilated upon and decided by the Tribunal in accordance with relevant Rule i.e. Rule 8 of the NWFP, Provincial Civil Service (Secretariat/Executive Group) Rules, 1997 and Rule 9(d) of the NWFP Civil Servants (Appointment, promotion and Transfer) Rules, 1989, it is also to be examined as to whether that stop gap- arrangement can be equated to that of regular promotion and besides that the order passed by the learned Service Tribunal could be made applicable to all the

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Tehsildars who are ... Since a short question of law is involved in the matter, therefore, the case be listed after the ... to limitation in the meanwhile operation of the assigned judgment shall remain suspended.

3. Learned counsel appearing on behalf of the appellants contended that though the Governor of the Province in consultation with the Provincial Selection Board was pleased to order the promotion of the respondents in BPS-16 as Extra Assistant Commissioner in BPS-17 in the Ex-PCS (E.B) Cadre with immediate effect on purely temporary basis vide notification dated Peshawar 6th March, 1996, yet it could not earn them any benefit or entitle them to a vested right notwithstanding they have been promoted on regular basis with immediate effect vide notification dated 19.2.2008. They, the learned counsel added, could not have claimed any ante-dated promotion even on the occurrence of any vacancy in such scale in violation of Section 8 of the Civil Services Act or Rule 9 of NWFP Civil Service (Executive Group) Rules, 1997, as decidedly promotion is not a vested right. Appeal before the departmental authority, the learned counsel added, or before the Tribunal claiming ante-dated promotion was, therefore, misconceived. The learned Tribunal, the learned counsel maintained, could not have allowed such appeal when it tended to mar the seniority of many others in the run. The learned counsel to support his contention placed reliance on the cases of "Wajahat Hussain, Assistant Director, Social Welfare, Lahore and 7 others. Vs. Province of the Punjab, through Secretary, Social Welfare and Zakat, Lahore and 81 others" (PLD 1991 S.C. 82), "Sh. Anwar Hussain, Assistant Director, Labour Welfare, Lahore Region, Lahore. Vs. Government of the Punjab through Secretary, Labour Department and others" (1905 SCMR 1201), "Nazeer Ahmed. Vs. Government of Sindh through Chief Secretary Sindh, Karachi and 2 others" (2001 SCMR 352), "Government of Pakistan through Establishment

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Supreme Court of Pakistan
ISLAMABAD

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Tehsildar whosince a
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the case be listed after Limitation in the
meanwhile judgment shall
.....

3. Learned Counsel appearing on behalf of the Appellants contended that though the Governor of the Province in consultation with the Provincial Selection Board was pleased to order the promotion of the respondents in BPS-16 as Extra Assistant Commissioner in BPS-17 in the Ex-PCS (E.B) Cadre with immediate effect on purely temporary basis vide notification dated Peshawar 6th March, 1996, yet it could not earn them any benefit or entitle them to a vested right notwithstanding they have been promoted on regular basis with immediate effect vide notification dated 19.02.2008. They, the learned counsel added could not have claimed any ante-dated promotion even on the occurrence of any vacancy in such scale in violation of Section 8 of the Civil Servant Act or Rule 9 of N.W.F.P Civil Service (Executive Group) Rules, 1997, as decidedly promotion is not a vested rights. Appeal before the departmental authority, the learned counsel added, or before the Tribunal claiming antedated promotion was, therefore, misconceived. The learned Tribunal, the learned counsel maintained, could not have allowed such appeal when it tended to mar the seniority of many others in the run. The learned counsel of support his contention placed reliance on the cases of "Wajahat Hussain, Assistant Director, Social Welfare, Lahore and 7 others. Vs. Province of the Punjab, through Secretary, Social Welfare and Zakat, Lahore and 81 others" (PLD 1991 S.C, 82), "Sh. Anwar Hussain, Assistant Director, Lahore Welfare, Lahore Region, Lahore Vs. Government of Punjab through Secretary, Labour Department and others" (1985 SCMR 1201), "Nazeer Ahmad, Vs. Government of Sindh through Chief Secretary Sindh, Karachi and 2 others" (2001 SCMR 352), Government of Pakistan through Establishment

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DIVISION, Islamabad and 7 others. Vs. Flameed Akhtar Niazi, Academy of Administrative, Walton Training, Lahore and others" (PLD 2003 S.C. 110).

The learned counsel next contended that a change in scale by means of promotion is not automatic but dependent on a process involving selection, therefore, any change in scale without such process being violative of the relevant law and rules, cannot be maintained. The learned counsel to support his contention placed reliance on the case of "Abid Hussain Sherazi, Vs. Secretary M/o Industries and Production, Government of Pakistan, Islamabad" (2005 SCMR 1742).

4. As against that learned counsel appearing on behalf of the respondents defended the impugned judgment by contending that where a vacancy occurs in the next higher scale, the Civil Servant officiating or working on acting charge basis thereagainst is not considered for promotion or the process of regular promotion is delayed on account of lethargic attitude of the competent authority or any other exigency so-called, the Civil Servant who is subsequently found fit for such promotion on regular basis cannot be deprived of the salary and other consequential benefits attached to such post. Learned counsel to support his contention placed reliance on the case of "Lugman Zareen and others. Vs. Secretary Education, NWFP and others" (2006 SCMR 1938). The learned counsel next contended that though the NWFP Civil Service (Secretariat Group) Rules, 1997 have been substituted by the NWFP Provincial Management Service Rules, 2007 but the rights of the existing incumbents of both the cadres have been protected by Rule 8 of the latter. Therefore, the change in rules would not affect the service structure of the respondents or rights accruing thereunder. The learned counsel next contended that if the concluding paragraph of the impugned judgment is read none of the rights of any of the officers including their seniority has been affected.

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Secretary, Govt of Pakistan
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Division/ Islamabad and 7 others Vs Ahmad Akhtar Niazi, Academy of Administrative, Walton Training, Lahore and others" (PLD 2003 S.C 110). The learned counsel next contended that a change in scale by means of promotion is not automatic but dependent on a process involving selection, therefore, any change in scale without such process being violative of the relevant law and rules, cannot be maintained. The learned Counsel to support his contention placed reliance on the case of "Abid Hussain Sherazi, Vs Secretary M/o Industries and Production, Government of Pakistan, Islamabad" (2005 SCMR 1742).

4 As against that learned counsel appearing on behalf of the respondents defended the impugned judgment by contending that where a vacancy occurs in the next high scale, the Civil Servant officiating or working on acting charge basis there against is not considered for promotion or the process of regular promotion is delayed on account of lethargic attitude of the competent authority or any other exigency so-called, the Civil Servant who is subsequently found fit for such promotion on regular basis cannot be deprived of the salary and other consequential benefits attached to such post. Learned counsel to support his contention place reliance on the case of "Luqman Zareen and other Vs Secretary Education NWFP and others" (2006 SCMR 1938). The learned counsel next contended that though the NWFP Civil Servant (Secretariat Group) Rules 1997 have been substituted by the NWFP Provincial Management Service Rules, 2007 but the rights of the existing incumbents of both the cadres have been protected by Rule 8 of the respondents or rights accruing hereunder. The learned counsel next contended that if the concluding paragraph of the impugned judgment is read none of the rights of any of the officers including their seniority has been affected.

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"Lugman Zareen and others. Vs. Secretary Education, NWFP and others"
(2006 SCMR 1938), this Court while dealing with an identical issue held as
under :-

"It is then a position admitted on all sides that nothing existed in the way of the petitioners on 31.8.2000 which could have disentitled them to regular promotion to the posts in question and that it was only the usual apathy, negligence and bureaucratic red-tapsim which had deprived the petitioners of the fruits that they deserved. The petitioners could not be permitted to be punished for the faults and inaction of others. We are of the view that where a post was available against which a civil servant could be promoted; where such a civil servant was qualified to be promoted to such a higher post, where he was put on the said higher post on officiating or acting charge basis only because the requisite exercise of allowing the regular promotion to the said post was being delayed by the competent authority and where he was subsequently, found fit for the said promotion and was so promoted on regular basis then he was entitled not only to the salary attaching to the said posts but also to all consequential benefits from the very date from which he had been put on the said post on officiating or acting charge basis and we hold accordingly".

While dealing with the reservations of the nature expressed by the learned counsel for the appellant, this Court held as under :-

"A bare perusal of these judgments would thus, show that this Court had always accepted the principle that a person who was asked to hold a higher post to which he was subsequently promoted on regular basis, was entitled to the salary etc. attaching to such a post for the period that he held the same; that he would also be entitled to any other benefits which may be associated with the said post and further that if a vacancy existed in a higher cadre to which a civil servant was qualified to be promoted on regular basis but was not so promoted without any fault on his part and was instead put on the said post on officiating basis then on his regular promotion to the said post, he would be deemed to have been so promoted to the same from the date from

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Secretary
Supreme Court of Pakistan
ISLAMABAD

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"Lugman Zareen and others Vrs. Secretary Education, NWFP and others" (2006 SCMR 1938), this Court while dealing with an identical issue held as under:

"it is then a position admitted on all sides that nothing existed in the way of the petitioner on 31.08.2000 which could have disentitled and that if was only the usual apathy, negligence and bureaucratic red-tapsim which had deprived the petitioners of the fruits that they deserved. The petitioners could not be permitted to be punished for the faults and inaction of others. We are of the view that where a post was available against which a civil servant could be promoted; where such a higher post, where he was put on the said higher post on officiating or acting charge basis only because the requisite exercise of allowing the regular promotion to the said post was being delayed by the competent authority and where he was subsequently, found fit for the said promotion and was so promoted on regular basis then he was entitled not only the salary attaching to the said posts but also to all consequential benefits from the very date from which he had been put on the said post on officiating or acting charge basis and were hold accordingly"

While dealing with the reservations of the nature expressed by the learned counsel for the appellant, this Court held as under:=-

A bar perusal of these judgments would thus, show that this court had always accepted the principle that a person who was asked to hold a higher post to which he was subsequently promoted on regular basis was entitled to the salary etc, attaching to such a post for the period that he held the same that he would also be entitled to any other benefits which may be associated with the said post and further that a vacancy existed in a higher cadre to which a civil servant was qualified to be promoted on regular basis but was not a promoted without any fault on his part and was instead put on the said post on officiating basis then on his regulation promotion to the said post, he would be deemed to have been so promoted to the same from the date from


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which he was allowed to hold the said higher post unless justifiable reasons existed to hold otherwise

When this being the state of things on factual and legal plain, we don't think the judgment of the learned Service Tribunal is open to any exception. The judgments rendered in the cases of "Wajahat Hussain, Assistant Director, Social Welfare, Lahore and 7 others. Vs. Province of the Punjab, through Secretary, Social Welfare and Zakat, Lahore and 8 others", "Sh. Anwar Hussain, Assistant Director, Labour Welfare, Lahore Region, Lahore. Vs. Government of the Punjab through Secretary, Labour Department and others", "Nazeer Ahmed. Vs. Government of Sindh through Chief Secretary Sindh, Karachi and 2 others", "Government of Pakistan through Establishment Division, Islamabad and 7 others. Vs. Hameed Akhtar Niazi, Academy of Administrative, Walton Training, Lahore and others" and "Abid Hussain Sherazi. Vs. Secretary M/o Industries and Production, Government of Pakistan, Islamabad", (supra) cited by the learned counsel for the appellants are not applicable to the case in hand because of their distinguishable facts and features.

9. For the reasons discussed above, these appeals being without merit are dismissed.



Adv. Ejaz Akbar Khan, J
Adv. Muhammad Atiq Pervez, J
Certified to be True Copy
Superintendent
Supreme Court of Pakistan
ISLAMABAD

'Not Approved for Reporting'

3/2/12

Case No:	5828/12
Date of Presentation:	25-3-12
No. of Words:	1800
No. of folios:	48
Requisition Fee:	11-76
Copy Fee in:	16-76
Court Fee stamp:	215/12
Date of Completion of Copy:	31/5/12
Date of delivery of Copy:	7/5/12

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Approved 9

GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Dated Peshawar the July, 25. 2012

NOTIFICATION

NO.SOE-II(ED)2(423)/2010/Vol-II:- In pursuance of Judgment of Supreme Court of Pakistan dated 24.05.2012 in CPLAs No. 860/2010 and 861/2010 titled Govt. of Khyber Pakhtunkhwa through Secretary Establishment and others versus Muhammad Iqbal Khattak and Ahmad Khan and Judgments of Khyber Pakhtunkhwa Services Tribunal dated 13.03.2009 & 09.04.2009 in service appeals No. 612/2008, 613/2008 & 575/2009 titled Muhammad Iqbal Khattak, Ahmad Khan & Latif-ur-Rehman versus Govt. of Khyber Pakhtunkhwa through Secretary Establishment and others, the competent authority is pleased to ante-date the promotion of following PMS BS-17 officers w.e.f the dates as mentioned against each with all back benefits/consequential benefits and re-designate them as PCS(EG) BS-17:-

S.No.	Name of PMS BS-17 officer for ante-dated promotion as PCS (EG) BS-17	Date of ante-dated promotion as PCS (EG)
1.	Mr. Muhammad Iqbal Marwat (Retired on 31.07.2009) ✓	27.12.2005
2.	Mr. Riaz Muhammad Baloch (Retired on 28.02.2011) ✓	26.01.2000 ✓
3.	Mr. Muhammad Farooq	27.12.2005
4.	Mr. Zaarmat Ali (Retired on 05.03.2010) ✓	15.05.2000 ✓
5.	Mr. Muhammad Zaheer-ud-Din (Retired on 13.08.2011) ✓	29.05.2000 ✓
6.	Mr. Ahmad Khan Orakzai	01.06.2000 ✓
7.	Mr. Muhammad Iqbal Khattak	07.06.2000 ✓
8.	Mr. Muhammad Javed	10.01.2001 ✓
9.	Mr. Azam Jan Khalil	10.02.2001
10.	Mr. Ahmad Jan Afridi	08.04.2001 ✓
11.	Mr. Nazar Gul Mohmand	09.04.2001 ✓
12.	Mr. Muhammad Hanif (died on 31.03.2010) ✓	14.04.2001 ✓
13.	Mr. Tahir Muhammad	27.12.2005
14.	Mr. Muhammad Rafiq (Retired on 01.03.2012) ✓	27.12.2005
15.	Mr. Muhammad Fakhruddin	13.11.2001 ✓
16.	Mr. Farzand Ali	03.03.2005
17.	Mr. Rehmatullah Khan Wazir	13.11.2001 ✓
18.	Mr. Qaiser Khan	13.11.2001 ✓
19.	Mr. Abdul Shakoor Dawar	26.12.2001 ✓
20.	Mr. Azizullah Khan Mehmud	13.01.2002 ✓

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21.	Mr. Naeem Anwar Khan	09.04.2002
22.	Mr. Loi Khan (Retired on 02.11.2010) ✓	14.04.2002
23.	Mr. Damsaz Khan	29.05.2004
24.	Mr. Habibullah Wazir	23.05.2002
25.	Mr. Zafar Ali Khan	29.05.2004
26.	Mr. Gul Wahid (Retired on 13.03.2011) ✓	31.08.2002
27.	Mr. Abdul Mateen	13.11.2002
28.	Mr. Akbar Jalal	04.03.2003
29.	Mr. Khaista Rehman	24.03.2003
30.	Mr. Shams ul Alam	27.12.2005
31.	Mr. Fazal Rehman	29.05.2004
32.	Mr. Latif ur Rehman (died on 25.10.2010) ✓	27.12.2005
33.	Mr. Rashid Mehood	29.05.2004
34.	Mr. Muhammad Jamil	29.05.2004
35.	Mr. Khurshid Anwar	29.05.2004
36.	Mr. Perhezgar Khan	29.05.2004
37.	Mr. Mushtaq Ahmad	29.05.2004
38.	Mr. Naimatullah (Retired on 24.09.2010) ✓	26.05.2007
39.	Mr. Momin Khan (Retired on 14.06.2010) ✓	27.12.2005
40.	Syed Ismail Ali Shah Gillani	26.05.2007
41.	Mr. Ahmad Khan	09.01.2006
42.	Mr Jan Muhammad	01.02.2005
43.	Mr. Saeed ur Rehman	09.01.2006
44.	Mr. Muhammad Israr (Retired on 02.01.2012) ✓	27.12.2005
45.	Mr. Arshad Naveed	26.03.2005
46.	Mr. Hidayatullah	09.01.2006
47.	Mr. Said Ahmad Jan	17.05.2005
48.	Mr. Abdul Hamid Jan	13.01.2006
49.	Mr. Muhammad Tuhab (Retired on 12.06.2012) ✓	27.04.2006
50.	Mr. Sultanat Khan (Retired on 14.08.2010) ✓	13.04.2006
51.	Mr. Subhanullah (Retired on 12.05.2012) ✓	13.04.2006
52.	Mr. Muhammad Siddique	25.05.2006
53.	Mr Fakhru Zaman	11.09.2006
54.	Mr. Ibadat Khan	11.09.2006
55.	Mian Asfandyar	26.05.2007
56.	Mr. Rasool Khan	26.05.2007
57.	Mr Fida Muhammad (Retired on 30.10.2010) ✓	23.12.2006
58.	Mr. Muntazir Khan	23.12.2006
59.	Mr. Atta-ur-Rehman	31.12.2006
60.	Mr. Shahab Hamid Yousafzai	16.02.2007
61.	Mr. Ihsanullah	16.02.2007
62.	Mr. Ghulam Habib	16.02.2007

CHIEF SECRETARY
KHYBER PAKHTUNKHWA

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ENDST: NO. & DATE EVEN.

A copy is forwarded to:-

1. Additional Chief Secretary, Planning & Dev. Department, Khyber Pakhtunkhwa.
2. Additional Chief Secretary(FATA), FATA Secretariat.
3. Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
4. Secretary to Governor, Khyber Pakhtunkhwa.
5. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
6. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
7. All Divisional Commissioners in Khyber Pakhtunkhwa.
8. All District Coordination Officers in Khyber Pakhtunkhwa.
9. All Political Agents in FATA.
10. Accountant General, Khyber Pakhtunkhwa.
11. Accountant General(PR) Sub Office, Peshawar.
12. All District Accounts Officers in Khyber Pakhtunkhwa.
13. All Agency Accounts officers in FATA.
14. Officers concerned.
15. P.S to Chief Secretary, Khyber Pakhtunkhwa.
16. P.S to Secretary Establishment, Khyber Pakhtunkhwa.
17. P.S to Special Secretary(Estt) Establishment Department.
18. PAs to AS(E)/AS(HRD)/DS(E) Establishment Department.
19. Office order file.

(TABASSUM)

SECTION OFFICER(E-II)

"HISAN AFRIDI"

ATTESTED

Admitted 11

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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Anwar Zaheer Jamali
Mr. Justice Sh. Azmat Saeed

CIVIL PETITION NO.254-P OF 2013

(On appeal from the judgment dated 21.2.2013
of the Khyber Pakhtunkhwa Service Tribunal,
Peshawar passed in Appeal No.1358/2010)

Government of Khyber Pakhtunkhwa through
Secretary Establishment Department, Peshawar and
others

... Petitioner(s)

Versus

Azam Khan

.... Respondent(s)

For the Petitioner (s) : Mian Arshad Jan, Addl. AG KPK

Respondent : In person

Date of hearing : 05.3.2015

ORDER

Anwar Zaheer Jamali, J.- After hearing the submissions of the
learned Addl. Advocate General, KPK, we are satisfied that the relief granted
to the respondent by the Tribunal in its judgment is in accordance with law.

Moreover, there is no substantial question of law of public importance

involved in this petition, which may justify invoking the jurisdiction of this

Court under Article 212(3) of the Constitution of the Islamic Republic of

Pakistan, 1973 by the petitioners. Dismissed. Leave refused.

Sd/- Anwar Zaheer Jamali
Sh. Azmat Saeed, J

Certified to be true c:
[Signature]
11.03
Deputy Registrar,
Supreme Court of Pak
Peshawar.

Peshawar,

05.03.2015

Not approved for reporting

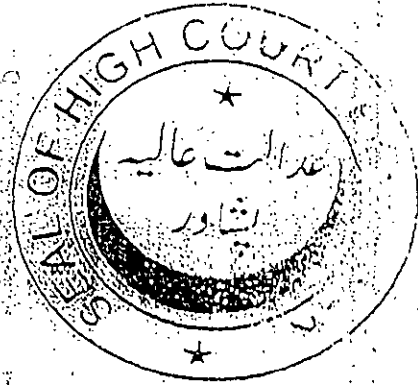
Sd/-
[Signature]

ATTESTED

Attended I 46

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

W.P. No 2640-P/2012



1. Abdul Samad
Deputy Secretary (Budget)
Finance Department,
Govt. of K.P.K.,
Civil Secretariat, Peshawar.
2. Ishtiaq Ahmad,
Deputy Secretary (IPC)
Govt. of K.P.K.,
Civil Secretariat, Peshawar.
3. Muhammad Ismail Qureshi,
Deputy Secretary
Local Govt. & Rural Development Department,
Govt. of K.P.K.,
Civil Secretariat, Peshawar.
4. Redi Gul
Deputy Secretary
Sports Tourism Archology Museum & Youth Affairs
Department,
Govt. of K.P.K.,
Civil Secretariat, Peshawar.
5. Taj Muhammad,
Deputy Secretary (Budget)
Finance Department,
Govt. of K.P.K.,
Civil Secretariat, Peshawar.
6. Muhammad Raees,
Deputy Secretary
Home & Tribal Affairs Department,
Govt. of K.P.K.,
Civil Secretariat, Peshawar.

ATTESTED
16 SEP 2015

ATTESTED

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

W.P.No.2640-P/2012

1. Abdul Samad
Deputy Secretary (Budget)
Finance Department,
Govt. of K.P.K.,
Civil Secretariat, Peshawar.
2. Ishtiaq Ahmad,
Deputy Secretary (IPC)
Govt. of K.P.K.,
Civil Secretariat, Peshawar.
3. Muhammad Ismail Qureshi
Deputy Secretary
Local Govt. & Rural Development Department,
Govt. of K.P.K.,
Civil Secretariat, Peshawar.
4. Redi Gul
Deputy Secretary
Sports Tourism Archology Musem & Youth Affairs Department,
Govt. of K.P.K.,
Civil Secretariat, Peshawar.
5. Muhammad Idress
Deputy Secretary (Regulation-1)
Finance Department,
Govt. of K.P.K.,
Civil Secretariat, Peshawar.
6. Taj Muhammad,
Deputy Secretary (Budget)
Finance Department,
Govt. of K.P.K.,
Civil Secretariat, Peshawar.
7. Muhammad Raees,
Deputy Secretary
Home & Tribal Affairs Department,
Govt. of K.P.K.,
Civil Secretariat, Peshawar.

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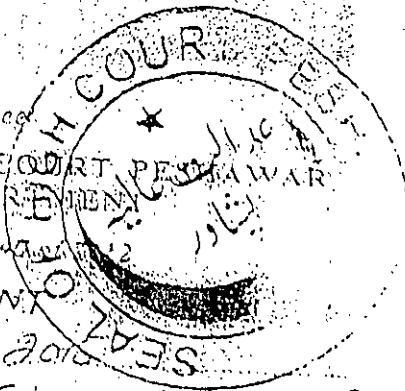
Judgment Sheet

IN THE PESHAWAR HIGH COURT PESHAWAR
JUDICIAL DEPARTMENT

Writ Petition No. 2640-P/2012

JUDGMENT

20-09-2012



Date of Judgment

Petitioner (Applicant/Complainant and others) By: Ghulam Nabi (Advocate)

Respondents (Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and others) By: Ahmad Ali AAG

HAQAR AHMAD SETH, J. Through this single judgment we propose to dispose of the instant W.P. No.2640-P/2012 as well as the connected W.P.No.2696-P/2012, as the question for determination raised in both the writ petitions is one and the same.

2. The petitioners in these writ petitions are the serving and retired employees of the Government of Khyber Pakhtunkhwa Civil Secretariat, Peshawar. Their grievance is that they were previously serving as Superintendent/ Private Secretaries (BPS-16/17) in the relevant departments and through notification issued by respondent No 3 (Secretary Establishment/ Regulation), the petitioners were appointed as Section Officers on current charge basis with immediate effect. According to them, vide another Notification dated 2.12.2013, the Provincial Selection Board regularized the services of the petitioners as Section Officers (BPS-17) with immediate

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BY
RECORDS OFFICER
2012

Judgment sheet
IN THE PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

Judgment

Date of hearing: 20-09/2012

Ghulam Nabi (Advocate)

Mujahid

WAQAR AHMAD SETH J:- Through this single judgment were proposed to disposed of the instant W.P No.2640-P/2012 as well as the connected W.P No.2696-P/2012 as the question for determination raised in both the Writ Petitions is one and the same.

2 The petitioners in these Writ Petitions are the serving and retired employees of the Government of Khyber Pakhtunkhwa Civil Secretariat, Peshawar. Then grievance is that they were previously serving as Superintendent/ Private Secretaries (BPS-16/17) in the relevant departments and through notification issued by respondent No.3 (Secretary Establishment / regulation), the petitioners were appointed as Section Officers on current charge basis with immediate effect. According to them, vide another Notification dated 2.12.2013, the Provincial Selection Board regularized the services of the petitioner as Section Officer (BSP-17) with immediate

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effect. It is averred in the petitions that although the notification of their regularization was issued with immediate effect but they were performing their duties on the said posts in officiating capacity with effect from 27.04.2006 and in this respect, they made several representations to the competent authority for their regularization of services as Section Officers from the date of their appointment on current acting charge basis. It is further stated in the petitions that some of their colleagues had approached the Service Tribunal for their ante-date regularization vide Appeal Nos. 612 and 613 of 2008, where their appeals were accepted and the relief asked for was granted to them. The said judgment of the Service Tribunal was challenged before the Apex Court by the respondents' department and the Hon'ble Supreme Court of Pakistan also affirmed the judgment of the Service Tribunal through an elaborate and detailed judgment dated 24.05.2012. The above judgments of the Service Tribunal as well as the Hon'ble Supreme Court with regard to ante-date promotion of their colleagues from the date of their taking acting charge on the relevant posts have been implemented and a proper notification was issued in this regard, however, the petitioners were not given the said relief despite the judgment of the August Supreme Court of Pakistan reported in 1996 SCMR-1185 wherein it has

ATTESTED

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effect. It is averred in the petitions that although the notification of their regularization was issued with immediate effect but they were performing their duties on the said posts in officiating capacity with effect from 27.04.2006 & in this respect, they made several representations in the competent authority for their regularization of services as Section Officer from the date of their appointment on current acting charge basis, it is further stated in the petitions that some of their colleagues had approached the Service Tribunal for their ante-date regularization vide Appeal No.612 and 613 of 2008 where their appeals were accepted and the relief asked for was granted to them. The said judgment of the Service Tribunal was challenged before the Apex Court by the respondents department and the Hon'ble Supreme Court of Pakistan also affirmed the judgment of the Service Tribunal on collaborate and detailed judgment dated 24.05.2012. The above judgments of the Service Tribunal as well as the Hon'ble Supreme Court with regard to ante-date promotion of their colleagues from the date of their taking acting charge on the relevant posts have been implemented and a proper Notification was issued in this regard, however, the petitioners were not given the said relief despite the judgment of the August Supreme Court of Pakistan reported in 1996 SCMR 1185 wherein it has

ATTESTED

been observed that if the Tribunal or the Supreme Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of the civil servant who litigated but also of other civil servants, who may have not taken any legal proceedings, in such a case, the dictates of justice and rule of good governance demand that the benefit of the above judgment be extended to other civil servants, who may not be parties to the above litigation, instead of compelling them to approach the Tribunal or any other legal forum. The petitioners through these writ petitions have prayed that the respondents be directed to extend the same benefit of the judgment of the Service Tribunal and the Apex Court to them, having more than 30 years service at their credit while in the connected W.P. No. 2696/P/2012 the petitioners are now the retired government servants

3 Arguments heard and record perused.

4 Record reveals that petitioners were promoted and appointed as Section Officers on current charge basis with immediate effect and subsequently, vide another notification dated 02/12/2003, the Provincial Government in consultation with Provincial Selection Board, appointed the petitioners on acting charge basis with immediate effect. The record is also suggestive that in the year 2006, all the petitioners alongwith number of

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 12 SEP 2015

been observed that if the Tribunal or the Supreme Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of the civil servant who litigated but also of other civil servants, who may have not taken any legal proceedings in such a case the dictates of justice and rule of good governance demand that the benefit of the above judgment be extended to other civil servants who may not be parties to the above litigation instead of compelling them to approach the Tribunal or any other legal forum. The petitioners through these Writ Petitions have prayed that the respondents be directed to extend the same benefit of the judgment of the Service Tribunal and the Apex Court to them, having more than 30 years service at their credit while in the connected W.P No.2696-P/2012 the petitioners are now the retired government servants.

3 Agreements heard and record perused.

4 Record reveals that petitioners were promoted and appointed as Section Officer on current charge basis with immediate effect & subsequently vide another notification dated 02.12.2003 the Provincial Government in consultation with Provincial Selection Board appointed the petitioners on acting charge basis with immediate effect. The record is also suggestive that in the year 2006. All the petitioners alongwith number of


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other employees of the same cadre were promoted to the posts of Section Officers PBS-17 on regular basis, by the Competent Authority in consultation with Provincial Selection Board; there is no dispute regarding these facts, however, the dispute started when petitioners claimed regularization with effect from the date of their initial current charge basis / acting charge res with effect from 22.08.2001 and 02.12.2003, and in this respect they filed their departmental appeals which are pending as yet.

5. We have come across three, four judgments of the KPK, Service Tribunal upheld by the apex court, in which colleague and batch mates of petitioners were given effect of regularization from the date when they were appointed on current charge / acting charge basis. Even otherwise, there are number of precedents, without any deviation, that if a civil servant was asked to hold a higher post, to which he was subsequently promoted on regular basis, was entitled to the salary, seniority etc. attaching to said post for the period that he held the same, because it was the duty of the department/respondents to promote the incumbent on regular basis against a post available for him at relevant time.

6. The apex court of the country while upholding the said judgments as referred above, of the colleague and

ATTESTED
 EXAMINER
 18 SEP 2015

~~ATTESTED~~

Other employees of the same cadre were promoted to the posts of Section Officer BPS-17 on regular basis by the Competent Authority in consultation with Provincial Selection Board, there is no dispute regarding these facts, however, the disputes started when petitioners claimed regularizations with effect from the date of their initial current charge basis acting charge i.e. with effect from 22.08.2001 and 02.12.2003 and in this respect they filed then departmental appeals which are pending as yet.

5. We have come across three, four judgments of the KPK, Service Tribunal upheld by the apex court, in which colleague and batch mates of petitioners were given effect of regularization from the date when they were appointed on current charge/ acting charge basis. Even otherwise, there are number of precedents without any deviation that if a civil servant was asked to hold a higher post to which he was subsequently promoted on regular basis, was entitled to the salary seniority etc attaching to said post for the period that he held the same, because it was the duty of the department/ respondents to promote the incumbent on regular basis against a post available for him at relevant time.

6. The Apex Court of the country while upholding the said Judgments as referred above of the colleagues and

ATTESTED

13 51
batch mats of the petitioners in civil appeal No.860 to 861
of 2010, decided on 24.05.2012, has held as under:-

"There is no dispute with the proposition that the terms and conditions of the service of the respondents, in view of the provision contained in Rule 8 of NWFP Civil Service (Secretariat Group) Rules, 2007, shall continue to be governed by the erstwhile rules. There is also no dispute with the proposition that if the respondents were to hold a post on acting charge basis, they could also hold the same on regular basis. In the case of *Imqam Zareen and others Vs Secretary Education NWFP and others* 2006 SCMR 1938, this court while dealing with the identical issue has held that it is then a position admitted on all sides that nothing existed in the way of the petitioners on 31.08.2000 which could have disentitled them to regular promotion to the posts in question and that it was only the usual apathy, negligence and bureaucratic red-tapsim which had deprived the petitioners of the fruits that they deserved. The petitioners could not be permitted to be punished for the faults and inaction of others. We are of the view that where a post was available against which a civil servant was qualified to be promoted to such a higher post, where he was put on said higher post on officiating or acting charge basis only because the requisite exercise of allowing the regular promotion to the said post was being delayed by the competent authority and where he was subsequently found fit for the said promotion and was so promoted on regular basis then he was entitled not only to the salary attaching to the said posts but also to all consequential

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~~EXAMINER~~
~~Public Works Dept. Govt. of NWFP~~
16 SEP 2015

~~ATTESTED~~

batchmats of the petitioners in civil appeal No.860-861 of 2010 decided on 24.05.2012 has held as under”

“There is no dispute with the proposition that the terms and conditions of the service of the respondents in view of the provision contained in Rule-8 of NWFP Civil Service (Secretariat Group) Rules 2007, shall continue to be governed by the erstwhile rules, There is also no dispute with the proposition that if the respondents were to hold a post on acting charge basis. They could also hold the same on regular basis. In the case of Luqman Zareen and other Vs Secretary Education NWFP and others 2006 SCMR 1938, this court while dealing with identical issue has held that it is then a position admitted on all sides that nothing existed in the way of the petitioners on 31.08.2008 which could have disentailed them in regular promotion to the posts in question and that it was only the usual apathy, negligence and bureaucratic red-tapsim which had deprived the petitioners of the fruits that they, deserved. The petitioners could not be permitted to be punished for the faults and inaction of others. We are of the view that where a post was available against which a civil servant was qualified to be promoted to such a higher post on officiating or acting charge basis only because the requisite exercise of allowing the regular promotion to the said post was being delayed by the competent authority and where he was subsueqnetly found fit for the said promotion and was so promoted on regular basis then he was entitled not only to the salary attaching to the said post but also to all consequential

ATTESTED

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benefits from the very date from which he had been put on the said post on officiating or acting charge basis and we hold accordingly.

While dealing with the reservations of the nature expressed by the learned counsel for the appellant, this court held that a bare perusal of these judgments would thus show that this court had always accepted the principle that a person who was asked to hold a higher post to which he was subsequently promoted on regular basis, was entitled to the salary etc. attaching to such a post for the period that he held the same; that he would also be entitled to any other benefits which may be associated with the said post and further that if a vacancy existed in a higher cadre to which a civil servant was qualified to be promoted on regular basis but was not so promoted without any fault on his part and was instead put on the said post on officiating basis then on his regular promotion to the said post, he would be deemed to have been so promoted to the same from the date from which he was allowed to hold the said higher post unless justifiable reasons existed to hold otherwise.

"When this being the state of things on factual and legal plain, we do not think the judgment of the learned Service Tribunal is open to any exception.

After the dismissal of civil appeal, the respondents vide notification dated 25th July 2012 regularized the civil servant by given ante-date, the promotion of all the civil servants who were appointed w.e.f acting charge basis. The said notification was produced by counsel for the petitioner.

ATTESTED
EXAMINER
Bihar High Court
20 SEP 2015

~~ATTESTED~~

Benefit from the very date from which he had been put on the said post on officiating or acting charge basis and were hold accordingly.

While dealing with the reserved reservations of the nature expresses by the learned counsel for the appellant, this court held that A bare perusal of these judgments would thus show that this court had always accepted the principle that a person who was asked in hold at higher post in which was subsueqnetly promoted on regular basis was entitled to the salary etc attaching to such a post for the period that he held the same that he would also be entitled to any other benefits which may be associated with the said post and further that if a vacancy existed in a higher cadre to which a civil servant was qualified to be promoted on regular basis but was not so promoted without any fault on his part and was instead put on the said post on officiating basis then on his regular promotion to the said post, he would be deemed to have been so promoted to the same from the date from which he was allowed to hold the said higher post unless justifiable reasons existed to hold otherwise".

"When this being the state of things on factual and legal plain, we do not think the judgment of the learned Service Tribunal is open to any exception

After the dismissal of civil appeal, the respondents vide notifications dated 25th July 2012 regularized the civil servant by given ante-date, the promotion of all the civil servants who were appointed w.e.f acting charge basis. The said notification was produced by counsel for the petitioner

ATTESTED

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(35)

at the time of arguments which was available at page 33 of the writ petition. In addition to above cited judgments there are number of judgments which clearly show that it has become a continuous practice that whenever regular promotion is given by the competent authority, the effect is always given from the date of current / acting charge basis. In this respect reliance is placed on 1998 SCMR 969 & 2006 SCMR 1938

The only stance of the respondents, argued at the bar is regarding jurisdiction in view of Article 212 of the Constitution of Islamic Republic of Pakistan, 1973. In this respect it is an admitted fact that there are orders of tribunal as well as apex court, deciding the same point of law, relating to the terms of service of a civil servant, that covers not only the case of civil servants who litigated, but also for other civil servants, who may have not taken any legal proceedings. The dictates of justice and rule of good governance demand that the benefit of such judgment of the tribunal or of the apex court be extended to other civil servants, who may not be party to said litigation, instead of compelling them to approach the tribunal or any other legal forum. Reliance in this respect is made on 1996 SCMR 1185, 2005 SCMR 499, 2003 SCMR 1030. In view of which this court has the jurisdiction to entertain the writ petition.

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 EXAMINER
 Islamabad High Court
 16 SEP 2016

~~ATTESTED~~

at the time of arguments which was available at page 33 of the Writ Petition in addition to above cited judgments there are number of judgments which clearly show that it has become a continues practice that whenever regular promotion is given by the competent authority, the effect is always given from the date of current/acting charge basis. In this respect reliance is placed on 1998 SCMR 969 & 2006 SCMR 1938.

8 The only stance of the respondents argued at the bar is regarding medication in view Articles 212 of the Constitution of Islamic Republic of Pakistan, 1973 in this respect it was an admitted fact that there are orders of tribunal as well as apex court, deciding the same point of law relating to the terms of service of a civil servant, that covers not only the case of civil servants, who may have not taken any legal proceedings the dictates of justice and rule of good governance demand that the benefit of such judgment of the tribunal or of the apex court be extended to other civil servant, who may not be part to said litigation instead of compelling them to approach the tribunal or any other legal forum Reliance in this respect is made on 1996 SCMR 1185, 2005 SCMR 499, 2003 SCMR 1030. In view of which this court has the jurisdictions to entertain the Writ Petition.


ATTESTED

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9. Indeed, the cited judgment of the apex court and the number of judgments of service tribunal KPK annexed and referred by the petitioners shows that it was a question of law given the regularization antedation from the date of acting charge, therefore, in view of which petitioners cannot be compelled to approach the service tribunals being civil servants, which, in fact is a longer and time-consuming exercise.

10. In view of the above, the writ petition is allowed as prayed for. In the connected writ petition, both the petitioners stands retired during this time and as such while extending the benefits of the judgment, they are also entitled to the same relief and thereafter their retiring benefits, as well.

Ed. Wagon Roshy Ahmed
Seta G
Dr. Muhammad Hussian G

Announced
 08.09.2015

1 Jun 15

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 CERTIFIED TO BE TRUE COPY
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[Signature]

9. Indeed, the cited judgment of the Apex Court and the number of judgments of Service Tribunal KP annexed and referred by the petitioners shows that it was a question of law given the regularization antedation from the date of acting charge, therefore, in view of which petitioners cannot be compelled to approached the service tribunals being civil servants which in fact is a longer and time consuming.

10. In view of the above, the Writ Petition is allowed as prayed for in the connected Writ Petition, both the petitioners stands retired during this time and as such while extending the benefits of the judgment they are also entitled to the same relief and thereafter their retiring benefits as well.

Announced
08.09.2015

Sd/-

ATTESTED



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APR 15 2018
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**GOVERNMENT OF KHYBER PAKHTUNKHWA
DIRECTORATE OF SOCIAL WELFARE, SPECIAL EDUCATION AND
WOMEN EMPOWERMENT JAMRUD ROAD PESHAWAR**

DSW/AD/B&A/Temp/ ML
Dated Peshawar the 3/8/ 2018

To

The Assistant Director (Estab)
Directorate of Social Welfare SE&WE
Khyber Pakhtunkhwa.

Subject: APPEAL FOR REGULARIZATIN OF PROMOTION AS ASSISTANT (BPS-14)
ON ACTING CHARGE BASIS W.E.F. 26.4.2011 INSTEAD OF 15 MAY 2018

R/Sir,

Kindly refer to your letter No:E-17/16/DSW/KC/19265-67 dated 17.7.2018 on the subject noted above and to state that we have no knowledge about the relevant rule. However the Honorable Supreme Court of Pakistan has already resolved the instant matter vide its judgments attached.


Masih Ullah

Assistant


Saeed Mohammad

Assistant

ATTESTED

To

The Director,
Social Welfare, Special Education and
Women Empowerment, Khyber Pakhtunkhwa.

Subject: APPEAL FOR REGULARIZATION OF PROMOTION AS ASSISTANT
(BPS-14) ON ACTING CHARGE BASIS W.E.F 16.04.2012 INSTEAD
OF 15TH MAY, 2018.

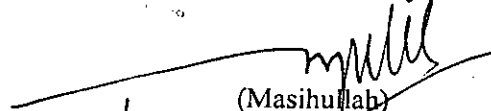
Respected Sir,

With due respect the undersigned intends to bring the following few lines for your sympathetic consideration:

- 1- That on 26.04.2011, the undersigned being Senior Clerk (BPS-9) was promoted as Assistant (BPS-14) on acting charge basis due to less qualifying service i.e. 03 years and 19 days (F/A).
- 2- I assumed the charge of post of Assistant (BPS-14) in the Directorate of Social Welfare, Special Education & Women Empowerment Khyber Pakhtunkhwa and performed my duties up to the entire satisfaction of the high ups of the Directorate / Department.
- 3- After completing normal tenure of qualifying service of 05 years on 15.04.2012, the Department supposed to regularize my promotion as Assistant (BPS-14) w.e.f. 16.04.2012.
- 4- On the recommendation of Departmental Selection Committee in its meeting held on 15th May, 2018, the competent authority regularized my promotion on acting charge basis to the post of Assistant (BPS-16) on regular basis with immediate effect i.e. 15th May, 2018 (F/C) which was legally required from 15.04.2012.
- 5- Due to immediate regularization as Assistant (BPS-16) my seniority position is badly suffered and the officials / Senior Clerks who have been promoted / appointed after 26.04.2011 will automatically effect my seniority position.
- 6- Keeping in view the above factual position, it is requested that my appeal may kindly be accepted and regularization of my promotion may kindly be considered with effect from assumption the charge of the post of Assistant (BPS-14).

Received
24/6/18

Yours Obediently


(Masihullah)
Assistant (B-16)
Directorate of Social Welfare,
Spl. Edu: & Women Empowerment
Khyber Pakhtunkhwa.

~~ATTESTED~~

To

The Director,
Social Welfare, Special Education and
Women Empowerment, Khyber Pakhtunkhwa.

Subject: APPEAL FOR REGULARIZATION OF PROMOTION AS ASSISTANT (BPS-14) ON ACTING CHARGE BASIS W.E.F 16.04.2012 INSTEAD OF 15TH MAY, 2018.

Respected Sir,

With due respect the undersigned intends to bring the following few lines for your sympathetic consideration:

- 1- That on 26.04.2011, the undersigned being Senior Clerk (BPS-9) was promoted as Assistant (BPS-14) on acting charge basis due to less qualifying service i.e. 03 years and 19 days (F/A).
- 2- I assumed the charge of post of Assistant (BPS-14) in the Directorate of Social Welfare, Special Education & Women Empowerment Khyber Pakhtunkhwa and performed my duties up to the entire satisfaction of the high ups of the Directorate / Department.
- 3- After completing normal tenure of qualifying service of 05 years on 15.04.2012, the Department supposed to regularize my promotion as Assistant (BPS-14) w.e.f. 16.04.2012.
- 4- On the recommendation of Departmental Selection Committee in its meeting held on 15th May, 2018, the competent authority regularized my promotion on acting charge basis to the post of Assistant (BPS-16) on regular basis with immediate effect i.e. 15th May, 2018 (F/C) which was legally required from 15.04.2012.
- 5- Due to immediate regularization as Assistant (BPS-16) my seniority position is badly suffered and the officials / Senior Clerks who have been promoted / appointed after 26.04.2011 will automatically effect my seniority position.
- 6- Keeping in view the above factual position, it is requested that my appeal may kindly be accepted and regularization of my promotion may kindly be considered with effect from assumption the charge of the post of Assistant (BPS-14).

Received

14/6/18

Yours Obediently

(Saeed Muhammad)
Assistant (B-16)

o/c
Directorate of Social Welfare,
Spl. Edu: & Women Empowerment
Khyber Pakhtunkhwa.

ATTESTED

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 1358/2010

Date of Institution. ... 19.7.2010
Date of Decision ... 21.2.2013



Azam Khan son of Azad Khan, Section Officer (Police-I),
Home Department, Government of Khyber Pakhtunkhwa,
Peshawar.....

(Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary, Establishment Department, Peshawar.
2. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar..... (Respondents)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED NOTIFICATION NO.SOE-III(ED)3(45)2007; DATED 19.2.2008 OF RESPONDENT NO.2, WHEREBY THE APPELLANT WAS PROMOTED TO PROVINCIAL MANAGEMENT SERVICE (BPS-17) ON REGULAR BASIS WITH IMMEDIATE EFFECT ON 19.2.2008 INSTEAD OF 2.12.2003 AND ALSO ORDER DATED 11.6.2010, OF RESPONDENT NO.1 WHEREBY HIS DEPARTMENTAL APPEAL WAS NOT ACCEDED TO IN VIOLATION OF RULES AND REGULATIONS.

MR. SAADULLAH KHAN MARWAT,
Advocate

For appellant.

MR. SHERAFGAN KHATTAK,
Addl. Advocate General

For respondents.

SYED MANZOOR ALI SHAH,
MR. NOOR ALI KHAN,

MEMBER
MEMBER

JUDGMENT

SYED MANZOOR ALI SHAH, MEMBER. This appeal has been filed by Azam Khan, the appellant under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 against the order dated 19.2.2008 of respondent No.2, whereby he was promoted to Provincial Management Service (BPS-17) on regular basis with immediate effect from on 19.2.2008 instead of 2.12.2003 and against the order dated 11.6.2010, whereby his departmental appeal has been rejected. It has been prayed that on acceptance of the appeal, the respondents may be directed to antedate and regularize promotion of appellant as Section Officer BPS-17 (SG) w.e.f. 2.12.2003 instead of 19.2.2008.

2. Brief facts of the case as averred in the memo: of appeal are that the appellant while serving as Private Secretary in the Civil Secretariat was appointed

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as Section Officer (BPS-17) on acting charge basis with immediate effect by the competent authority vide order dated 2.12.2003. He was subsequently promoted on regular basis vide notification dated 19.2.2008 with immediate effect instead of ante-dating his promotion w.e.f. 2.12.2003. The appellant agitated the matter several times through appeals/applications to higher authorities for seeking his vested rights regarding ante-dating of his promotion from the date when the vacancy was available in his turn, but in vain. Feeling aggrieved, the appellant filed departmental appeal on 29.4.2010, before the competent authority, which was rejected vide order dated 11.6.2010, hence the present appeal.

3. After receipt of the appeal, pre-admission notices were issued to the respondents. Despite of repeated adjournments for three times, the respondents failed to file written reply. On 15.10.2010, the appeal was admitted to regular hearing. Written reply by the respondents filed on 6.12.2010 and contested the appeal.

4: Arguments heard and record perused.

5. The learned counsel for the appellant argued that a large number of posts of BPS-17 of PCS(Executive & Secretariat Groups) were fallen vacant to the share of promotion quota since long in the Civil Secretariat even then the appellant alongwith others was appointed as Section Officer (BPS-17) on acting charge basis vide order dated 2.12.2003. On 19.2.2008, the appellant was promoted on regular basis with immediate effect instead of ante-dating his promotion when clear vacancy was available for him and deprived him of his legitimate rights. He stated that if a civil servant was asked to hold a higher post to which he was subsequently promoted on regular basis, was entitled to the salary etc. attaching to such post for the period that he held the same and also entitled to any other benefits including seniority etc. because it was the duty of the respondent department to promote him on regular basis against a post available for him. He relied on a judgment of the august Supreme Court of Pakistan as reported in 2006-SCMR-1938. He further stated that vide consolidated judgment dated 13.3.2009, in similar nature cases of Muhammad Iqbal Khattak and another in Service Appeal No. 612/2008, wherein on acceptance of the appeal, the official respondents were directed to ante-date promotion of each of the two appellants to the respective dates on which a vacancy became available for the respective turn of the appellants or from the respective dates of their taking charge of such vacancy on officiating/acting charge basis, whichever is later. This judgment of the Tribunal has also been upheld by the august Supreme Court of Pakistan vide judgment dated 24.5.2012 in C.As No. 860 to 861 of 2010. The appellant being

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similarly placed person is also entitled to the same treatment. He requested that the appeal may be accepted as prayed for.

7. The learned AGR argued that the appellant was appointed as Section Officer (BPS-17) purely on temporary basis as well as stop gap arrangement which do not accrue any right. Under sub rule-4 of Rule-9 of (Appointment, Promotion and Transfer) Rules 1980, appointees against a temporary vacant post are liable to reversion till the return of the lien holder of the post against which he was promoted/appointed. Hence acting charge appointment does not confer any right for the purpose of regular promotion. However, the appellant was appointed on acting charge basis against the post reserved for initial recruitment. On promulgation of PMS Rules 2007, a working paper was prepared and placed before the PSB, which in its meeting held on 9.2.2008, considered name of the appellant and recommended for promotion to the post of PMS (BPS-17) on regular basis. So far as the question of back benefits is concerned, the appellant is getting all financial benefits of BPS-17 w.e.f. the date of his appointment on acting basis. He requested that the appeal may be accepted as prayed for.

8. The Tribunal while agreeing with the arguments advanced by the learned counsel for the appellant observes that the appellant was promoted as Section Officer (BPS-17) on acting charge basis vide order dated 2.12.2003. As per ruling of the august Supreme Court of Pakistan if a civil servant was asked to hold a higher post to which he was subsequently promoted on regular basis, was entitled to the salary etc. attaching to such post for the period that he held the same and also entitled to any other benefits including seniority etc. because it was the duty of the respondent department to promote the appellant on regular basis against a post available for him at relevant time. Judgment dated 13.3.2009 in Service Appeal No. 612/2008 has also been upheld by the august Supreme Court of Pakistan vide judgment dated 24.5.2012 in C.As No. 860 to 861 of 2010.

9. In view of the above, the appeal is accepted to the extent that the respondent department is directed to ante-date promotion of the appellant from the date of availability of post in his quota. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED
21.2.2013.

Sd/- Syed Manzoor Ali Shah
Member
Sd/- Noor Ali Khan
Member

Certified copy
Tribunal
Service Tribunal
Peshawar

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GOVERNMENT OF KHYBER PAKHTUNKHWA
ZAKAT, USHR, SOCIAL WELFARE, SPECIAL EDUCATION
& WOMEN EMPOWERMENT DEPARTMENT

No. SO-II(SWD)/II-105/2016/PC
Dated Peshawar the 31-05-2019

61
2792

To,

The Director,
Social Welfare, Special Education &
Women Empowerment Khyber Pakhtunkhwa.

Subject: - DEPARTMENTAL APPEAL.

Dear Sir,

I am directed to refer to your letter No: DSW/E-11/154/7555, dated 09.04.2019 on the subject noted above and to state that the Departmental appeal of M/S Masiullah and Saeed Muhammad, Assistant, Directorate of Social Welfare, Special Education & Women Empowerment Department Khyber Pakhtunkhwa have been processed and regretted being not covered under the rules.

Yours faithfully,

Muhammad Saud
(Muhammad Saud)
Section Officer-II

Endst: of Even No. & Date:-

Copy is forwarded to:

1. PS to Secretary, Zakat, Ushr, Social Welfare, Special Education & Women Empowerment Department Peshawar.

Muhammad Saud
Section Officer-II

ATTESTED

BEFORE KPK SERVICE TRIBUNAL PESHAWAR



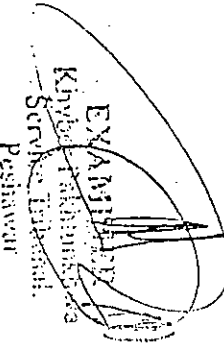
S.A No. 62/2011

Muhammad Jamil S/o Haji Danish,
Deputy Secretary, Govt. of KPK,
Home Department, Peshawar Appellant

Versus

1. Secretary, Govt. of KPK, Establishment and Administration Department, Peshawar
2. Chief Secretary, Govt. of KPK, Peshawar Respondents

APPEAL UNDER SECTION 4 OF SERVICE TRIBUNAL ACT, 1974 AGAINST NOTIFICATION NO. SOE-2(ED)3(45)99, DATED 10.02.2003 OF R.NO.1 WHEREBY SERVICES OF APPELLANT WERE REGULARIZED WITH IMMEDIATE EFFECT INSTEAD OF 10.07.1995 OR FROM THE DATE OF FALL OF VACANCY OR ORDER DATED 29.08.2011 OF R.NO.2 WHEREBY REPRESENTATION OF APPELLANT WAS MADE FILED FOR NO LEGAL REASON.



26/8/11

Respectfully Sheweth,

1. That appellant was initially appointed as Steno Grapher in the department and was promoted to the post of Section Officer BPS-17 with effect from 31.05.1995 on temporary/staff gap arrangement till further orders. The name of the appellant appears in the notification at S.No.14. (Copy as annex "A")

~~ATTEST~~



No.	Date of order/ proceedings	Order or other proceedings with signature of Judge
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1	2	5
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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Appeal No. 1589/2011
Muhammad Jamil Versus Secretary, Government of Khyber
Pakhtunkhwa, Establishment Deptt. etc

JUDGMENT

01.09.2015

ABDUL LATIF, MEMBER. Counsel for the appellant (Mr. Saadullah Khan Marwat, Advocate) and Government Pleader (Mr. Muhammad Jan) for the respondents present.

2. The instant appeal has been filed by the appellant, Muhammad Jamil under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against notification No. SOE-2(ED)3(45)99, dated 10.2.2003, whereby services of the appellant were regularized with immediate effect instead of 10.7.1995 as was the date of occurrence of vacancy to his share and against order dated 29.8.2011 of respondent No.2 whereby a representation was filed.

3. The broad facts and legal issues raised in this case are the same as in the case in Service Appeal No. 612/2008.

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(Signature)

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(Signature)

No.	Date of order/ proceedings	Order or other proceedings with signature judge Magistrate
1	2	3
		<p style="text-align: center;"><u>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,</u> <u>PESHAWAR</u></p> <p style="text-align: center;">Appeal No.1589/201 Muhammad Jamil Versus Secretary, Government of Khyber Pakhtunkhwa Establishment Deptt. etc.</p> <p style="text-align: center;">J U D G M E N T</p> <p>Abdul Latif Members. Counsel for the appellant (Mr. Saadullah Khan Marwat, Advocate and Government pleader (Mr. Muhammad ... for the respondents present.</p> <p>2. The instant appeal has been filed by the appellant Muhammad Jamil under Section of the Khyber Pakhtunkhwa Service Tribunal Act 1974 against notification No. SOE-2 (ED)3 (45)99 dated 10.02.2003,whereby services of the appellant were regularized with immediate effect instead of 10.07.1995 of same date of occurrence of vacancy to his share and against order dated 29.08.2011 of respondent No.1 whereby the respondent was filed.</p> <p>3. The board facts and legal issued</p> <p>The same as in the case in Service Appeal No.612/2008</p>

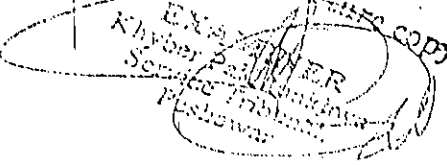
ATTESTED

decided on 13.3.2009, Appeals No. 574/2009, 575/2009, 576-597/2009 decided on 09.4.2009. This appeal is also disposed of with the same directions as stated vide judgment in Service Appeal No 575/2009, decided on 09.4.2009 with further directions to the respondents to ascertain that the appellant in the instant case is a person similarly placed with the appellants of the mentioned cases and is entitled to the benefits of the judgment in service appeals cited above and to examine and decide the case of the appellant in the same manner as was prescribed and indicated vide judgment mentioned above. The appeal is disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED
01.09.2015.

Suppl. Appeal Court
14/9/2015
Sd/- Mr. Bahadur Singh
Member

Certified to be true COPY



Date of Presentation of Application 2.9.2015
 Name 1200
 Age 8
 Sex 8
 Date of Birth 14.9.2015
 Date of Issuance 14.9.2015

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decided on 13.3.2009, Appeals No.574/20009,
576-597/2009 decided on 09.4.2009. This Appeal is also
disposed of with the same directions as used vide judgment
in Service Appeal No.575/2009, decided on 09.04.2009 with
further directions to the respondents to ascertain that the
appellant in the instant case is a person similarly placed with
the appellants of the mentioned cases and is entitled to the
benefits of the judgment in service Appeals cited above and
to examine and decide the case of the appellant in the same
manner as was prescribed and indicated vide judgment
mentioned above. The appeal disposed of accordingly.
Parties are left to bear then over costs. File be consigned to
the record.

Announced
01.09.2015

Sd/-

ATTESTED

POWER OF ATTORNEY

In the Court of SPK Sargana Tribunal Peshawar

Masim Ullah

} For
} Plaintiff
} Appellant
} Petitioner
} Complainant

VERSUS

Govt of SPK and AWS

} Defendant
} Respondent
} Accused
}

Appeal/Revision/Suit/Application/Petition/Case No. _____ of _____
Fixed for _____

I/W, the undersigned, do hereby nominate and appoint

ZARTAJ ANWAR ADVOCATE, my true and lawful attorney, for me in my same and on my behalf to appear at Peshawar to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions. An appeal, statements, accounts, exhibits. Compromise or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc. and to apply for and issue summons and other writs or sub-poena and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

IN WITNESS whereof I/we have hereto signed at _____
the _____ day to _____ the year _____
Executant/Executants _____
Accepted subject to the terms regarding fee _____



Zartaj Anwar
Advocate High Courts

ADVOCATES, LEGAL ADVISORS, SERVICE & LABOUR LAW CONSULTANT
FR-3-4, Fourth Floor, Bilour Plaza, Saddar Road, Peshawar Cantt
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