

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

SERVICE APPEAL No. 7038/2021.

Farukh Zeb S/O Humayun Khan, Naib Qasid, Village/ Neighborhood Council, (Rural, RBC & RVC), District Swabi..... (Appellant)

VERSUS

1. The Secretary
Govt of Khyber Pakhtunkhwa
Local Govt: Election & Rural Development Department
Civil Secretariat Peshawar.
2. The Secretary Finance,
Govt of Khyber Pakhtunkhwa
Peshawar.
3. The Director General,
Local Govt: & Rural Development Department
Khyber Pakhtunkhwa, Peshawar.
4. The Assistant Director,
Local Govt. & Rural Development Department District Swabi.

2/65
6/12/22

..... (Respondents)

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Respondents

Through


ASSISTANT DIRECTOR (SENIOR)
Local Government & Rural Development
Department Swabi

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..... (Respondents)

JOINT PARA-WISE COMMENTS ON BEHALF OF RESPONDENT NO. 1 to 4

Respectfully Sheweth:

Preliminary Objection:

- (i) That appellant has not come to this Hon'ble Tribunal with clean hands.
- (ii) That appellant has estopped to file such like appeal against the respondents due to his own conduct;
- (iii) That appellant has concealed the material facts from this Hon'ble Tribunal.
- (iv) That appeal of the appellant is not maintainable in its present form.
- (v) That no vested right of the appellant has been infringed, thus he has got no right to file the instant appeal.
- (vi) That the appeal is barred by law and limitation.

ON FACTS

1. The Para pertains to the appellant's record.
2. Pertains to record.
3. Correct to the extent that the appellant is performing his duties upto the satisfactory level as Naib Qasid.
4. Correct to the extent but he was not promoted due to non-fulfilment of the minimum criteria of 2nd Division in SSC. Copy of the Service Rules is at (**Annexure-B**).
5. Incorrect. The service rules are framed in consultation and on recommendations of Establishment and Law department.
6. Correct to the extent that no promotion quota is reserved for class-IV employees to the post of Junior Village Secretary (BPS-07). However, through service rules amendment vide notification dated 16-10-2019 wherein 20% promotion quota has been reserved on the basis of Seniority-cum-fitness from amongst the Naib Qasids and Chowkidars in the Village / Neighborhood Council with Seniority at tehsil level, having Secondary School Certificate in Second division from a recognized board or institute and six months Diploma in IT from a recognized Board/ Institute with three (03) year service as such. Copy of the Service Rules is at (**Annexure-A**).
7. The vacant posts of Village Secretaries have been filled strictly in accordance with the method of recruitment / Service Rules notified and published in the Government Gazette.
8. Correct to the extent that 20% quota has been reserved on the basis of seniority-cum-fitness amongst the Naib Qasids and Chowkidars in the Village/Neighborhood Councils with the seniority at Tehsil Level subject to the condition having Secondary School Certificate in 2nd Division from the recognized Board or Institution with 3-year service against the post of Naib Qasids and Chowkidars for the promotion to the post of Junior Village Secretary. However, rules are made in the interest of public and could not be tailored in the interest of an individual. Furthermore, the post of Junior Village Secretary requires a well-qualified individual having sound academic qualification.
9. In correct. The minimum criteria of qualification for promotion from Naib Qasid to Junior Village Secretary as per the then Notification of dated 05-04-2018 was also at least 2nd Division in SSC with 03 years' service as such. Furthermore, the notification dated 16-10-2019 is still operative and not withdrawn by any authority. (Copy of the Notification dated 05-04-2018 is attached, as mark **Annexure-B**).
10. Pertains to record.

11. The amended writ petition of the appellant was dismissed by the august Peshawar High Court, Peshawar vide order/ Judgement 24-02-2021. Furthermore, the notification dated 16-10-2019 is still operative and not withdrawn by any authority.

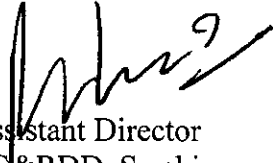
12. Pertains to record.

ON GROUNDS

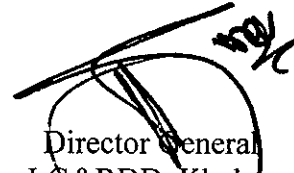
- A. Incorrect. The impugned notification has been issued by the competent authority duly approved and vetted by Establishment department and Law department strictly in the best interest of public. Furthermore, increasing of promotion quota is sole discretion of the provincial government keeping in view. unemployment and quality of service delivery.
- B. Incorrect, the impugned notification is legal, lawful and has been issued after the fulfillment of all legal requirements and in the best interest of public by the competent authority.
- C. Not applicable on appellant.
- D. The impugned notification has been issued by the competent authority duly approved and vetted by Establishment department and Law department and is strictly in accordance with the law and is in the public interest.
- E. The Posts of Junior Clerk and Junior Village Secretary are of different nature as the post of Junior Village Secretary at the gross root level of governance and administration being an administrative post requires a well-qualified individual having sound academic qualification.
- F. As replied above in para A & E.
- G. The Para pertains to the record of the honorable Lahore High Court.
- H. Incorrect. The service rules are framed in consultation and dully vetted by Establishment and Law department in the best interest of public keeping in view, unemployment and quality of service delivery.
- I. As replied in para H above.
- J. Incorrect the appellant has been treated according to the rules and no discrimination/ malafied has been made in this case and respondents acted strictly in accordance with the rules/law regarding service of appellant.
- K. As replied in para E above.

- L. Incorrect. All promotion of Naib Qasids to the post of Junior Village Secretaries have been made as per the amended service rules notified vide Notification dated 05-04-2018 which is re-produced as under:
“20% by promotion, on the basis of Seniority-cum-fitness, from amongst the Naib Qasid and Chowkidars in the Village/Neighborhood Councils with the seniority at Tehsil Level subject to the condition having Secondary School Certificate in 2nd Division from the recognized Board or Institution with 3-year service as such; and”. Hence the promotions of Naib Qasids are made on the basis of above Service Rules by the competent forum in the offices of Assistant Directors, LG&RDD which are applicable in the LG&RDD in the whole Province without discrimination and strictly on merit.
- M. Incorrect. The promotion was purely made on the final seniority list issued vide No. 139 AD (LG-SB)/DPC, dated 11-02-2019. Furthermore, those Naib Qasids who fulfilled the prescribed criteria mentioned in the rules were considered by the departmental promotion committee (DPC) for promotion to the post of junior village secretary lying vacant under 20% promotion quota. The appellant who did not fulfill the basic criteria of the service rules hence was not considered by the competent forum. The appellant being under qualified for the said post was not considered and therefore no infringement of fundamental right of the appellant has been caused.
- N. Incorrect. The impugned notification is legal, lawful and has been issued after the fulfillment of all legal requirements and in the best interest of public.
- O. Incorrect. The promotion is purely made on the final seniority list issued vide No. 139 AD (LG-SB)/DPC Dated 11-2-2019. Furthermore, those Naib Qasids who fulfilled the prescribed criteria mentioned in the rules were considered by the departmental promotion committee (DPC) for promotion to the post of junior village secretary lying vacant under 20% promotion quota. The appellant who did not fulfill the basic criteria of the service rules hence was not considered by the competent forum.
- P. The impugned notification has been issued by the competent authority duly approved and vetted by Establishment department and law department Strictly in the best interest of public.
- Q. If produced by the appellant will be replied at the time of arguments.

It is therefore, requested that this Hon'ble Tribunal may graciously dismiss the instant petition with cost.



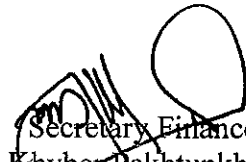
Assistant Director
LG&RDD, Swabi
Respondent No.4



Director General
LG&RDD, Khyber
Pakhtunkhwa
Respondent No.3



Secretary LG,E&RDD
Khyber Pakhtunkhwa
Respondent No.1



Secretary Finance,
Khyber Pakhtunkhwa
Respondent No.2

4.11.22

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

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Local Govt. & Rural Development Department District Swabi.

..... (Respondents)

AFFIDAVIT

I, Ali Asmat, Assistant Director (Senior), office of Assistant Director Local Government & Rural Development, Swabi do hereby solemnly affirm and declare on oath that Para wise Comments in **SERVICE APPEAL No. 7038/2021 Vs Government of Khyber Pakhtunkhwa and others** are true and correct to the best of my knowledge & belief and nothing has been intentionally concealed from this Honorable Court.



Identified By

Deponent
CNIC #. 17301-8397582-1
Cell #.0308-0888818

**Advocate General
Khyber Pakhtunkhwa**



Government Of Khyber Pakhtunkhwa
Local Government, Elections & Rural
Development Department

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NOTIFICATION

Dated Peshawar, the 16th October, 2019

No. SO(E)LG/2-188/SSRC/2019.- In exercise of the powers conferred by sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Local Government, Elections and Rural Development Department Khyber Pakhtunkhwa, in consultation with the Establishment & Administration Department and the Finance Department hereby directs that in this Department's Notification No. DG(RWP)7(2)/73, dated 26.01.1978, the following further amendments shall be made, namely:

Div (Admin/HS)
17/10/2019

AMENDMENTS

In the Appendix.-

- a) Against Serial No. 2, in column No. 6, for the existing entries, the following shall be substituted, namely:
- "Fifty per cent by initial recruitment through Khyber Pakhtunkhwa Public Services Commission on the pattern of syllabus prescribed for the Officers in Provincial Management Service.";
 - Forty per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Progress Officers with at least three years service as such; and
 - Ten per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Senior Scale Stenographers and Assistants with at least three years service as such.";

Note: For purpose of promotion to the post of Assistant Director against ten percent quota, there shall be maintained a joint seniority list of Senior Scale Stenographers and Assistants.";

- b) against Serial No. 3, in column No.6, for the existing entries, the following shall be substituted, namely:
- "Fifty (50) per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Superintendents with at least three years service as such; and
 - Fifty (50) per cent by initial recruitment.";

- c) against Serial No.5, in column No. 6, for the existing entries, the following shall be substituted, namely:

- "Twenty per cent by promotion, on the basis of seniority-cum-fitness, from amongst diploma holder Sub-Engineers with at least ten years service as such and have passed the prescribed Departmental Examination;
- Ten per cent by promotion, on the basis of seniority-cum-fitness, from amongst Sub-Engineers with at least five years service as such and who possess Bachelor's Degree in Engineering or its equivalent qualification from a recognized University; and

(Handwritten signature)
Assistant Director Senior
Local Government & Rural Development Deptt
Swabi
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many field
officers

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- d) against Serial No. 6, in column No.6, for the words, colon and slash "Assistants/Accountants/Senior Scale Stenographer", the word "Accountants" shall be substituted;
- e) against Serial No. 15A, in column No.6, for the word, figure and brackets "ten (10)", the word, figure and brackets "five (05)" shall be substituted; and
- f) against Serial No. 16, in column No.6 for the existing entry, the following shall be substituted, namely:
- Twenty (20) per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Naib Qasids and Chowkidars in the Village Council / Neighborhood Council with seniority at Tehsil level, having Secondary School Certificate in Second Division from a recognized Board or Institute and six months Diploma in IT from recognized Board / Institute with three (03) years service as such; and
 - Eighty (80) per cent by initial recruitment:

Provided that the candidate shall be preferably a bonafide resident of the same Village / Neighborhood Council. If such candidate is not available in the same Village Council / Neighborhood Council then the candidate from adjacent Village Council / Neighborhood Council;

Provided further that in case of non-availability of candidate from adjacent Village Council / Neighborhood Council then from any other Village Council / Neighborhood Council in that Tehsil."


SECRETARY TO GOVERNMENT OF KHYBER
PAKHTUNKHWA LG,E&RD DEPARTMENT

No. SO(E)LG/2-188/SSRC/2019.-

Dated Peshawar, the 16th October, 2019

Copy forwarded to:-

1. All Administrative Secretaries to Government of Khyber Pakhtunkhwa.
2. All Divisional Commissioners in Khyber Pakhtunkhwa.
3. The Secretary to Governor, Khyber Pakhtunkhwa, Peshawar.
4. The PSO to Chief Minister, Khyber Pakhtunkhwa Peshawar.
5. The PSO to Chief Secretary, Khyber Pakhtunkhwa Peshawar.
6. The Director General, LG,E&RDD, Khyber Pakhtunkhwa Peshawar.
7. The Secretary, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
8. All Head of Attached Departments in Khyber Pakhtunkhwa.
9. All Deputy Commissioners in Khyber Pakhtunkhwa.
10. The Registrar, Peshawar High Court, Peshawar.
11. All District and Session Judges in Khyber Pakhtunkhwa.
12. All Assistant Directors, LG&RDD in Khyber Pakhtunkhwa.
13. The Manager Government printing press, Peshawar for publication in the next Government Gazettee Notification. 100 copies of the Notification may be sent to this Department.
14. The PS to Senior Minister for LG,E&RD Khyber Pakhtunkhwa.
15. The PS to Secretary LG,E&RDD Peshawar.
16. The Office Order file.


Assistant Director
Local Government & Rural Development
Swabi


SECRETARY TO GOVERNMENT OF KHYBER
PAKHTUNKHWA LG,E&RD DEPARTMENT

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Government Of Khyber Pakhtunkhwa
Local Government, Elections & Rural
Development Department

2nd copy
Dir (Adm / HR)
06/4/2018

D. No. 878
DATED 6/4/18
DG LOCAL GOVERNMENT

NOTIFICATION

Dated Peshawar, the 05th April, 2018

No. SO(LG-1)2-188/SSRC/2018.-

In exercise of the power conferred by sub-rule (2) of the rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Local Government, Elections and Rural Development Department Khyber Pakhtunkhwa, in consultation with the Establishment & Administration Department and the Finance Department, hereby directs that in this Department's Notification No. DG(RWP)7(2)/73, dated 26.01.1978, the following further amendments shall be made, namely:

AMENDMENTS

In the Appendix.-

for serial No. 10 the following shall be substituted, in the respective columns, namely:

"10.	Supervisor	Atleast Second Class Bachelor's Degree from a recognized University.	21 to 30 years.	i) Seventy-five (75) per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Senior Secretary Village / Neighborhood Council, with atleast five (05) year service as such; and ii) Twenty-five (25) per cent by initial recruitment."
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D/O (A)
9/4
A.D.E.A.
10/4/2018

(b) after serial No. 15, the following new entries shall be inserted, in the respectively columns, namely.

"15A.	Senior Secretary Village / Neighborhood Council.	-----	-----	By promotion, on the basis of seniority-cum-fitness, from amongst the Junior Secretary Village / Neighborhood Council, with atleast ten (10) year service as such."; and
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(c) for serial No. 16, the following shall be substituted, in the respective columns, namely:

"16.	Junior Secretary Village / Neighborhood Council.	Atleast Second Class Intermediate or equivalent qualification from a recognized Board and atleast six (06) months Certificate in Computer from a recognized Institute with experience in	18 to 30 years.	i) Twenty (20) per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Naib Qasids and Chowkidars in the Village / Neighborhood Council with seniority at tehsil level, having Secondary School Certificate in
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P.I.P.U
10/4

			<p>ii) Eighty (80) per cent by initial recruitment:</p> <p>Provided that the candidate shall be preferably a bonafide resident of the same Village / Neighborhood Council. If such candidate is not available in the same Village / Neighborhood Council then the candidates from adjacent Village / Neighborhood Council:</p> <p>Provided further that in case of non-availability of candidate from adjacent Village / Neighborhood Council then from any other Village / Neighborhood Council in that Tehsil Council.</p>
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Refer
list
2

SECRETARY TO GOVERNMENT OF KP
LOCAL GOVT. ELECTIONS & RURAL
DEVELOPMENT DEPARTMENT

No. SO(LG-I)2-188/SSRC/2018.-

Dated Peshawar, the 05th April, 2018

Copy forwarded to:-

1. All Administrative Secretaries to Government of Khyber Pakhtunkhwa.
2. All Divisional Commissioners in Khyber Pakhtunkhwa.
3. The Secretary to Governor, Khyber Pakhtunkhwa, Peshawar.
4. The PSO to Chief Minister, Khyber Pakhtunkhwa Peshawar.
5. The PSO to Chief Secretary, Khyber Pakhtunkhwa Peshawar.
6. The Director General, LG,E&RDD, Khyber Pakhtunkhwa Peshawar.
7. The Secretary, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
8. All Head of Attached Departments in Khyber Pakhtunkhwa.
9. All Deputy Commissioners in Khyber Pakhtunkhwa.
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