

21.07.2022

Counsel for appellant present.

Muhammad Adeel Butt, learned Additional Advocate General for respondents present.

File to come up alongwith connected Service Appeal No.5800/2021 titled "Syed Anwar Shah Vs. Government of Khyber Pakhtunkhwa" on 28.09.2022 before D.B.



(Fareena Paul)
Member(E)



(Rozina Rehman)
Member (J)

28.09.2022

Junior to counsel for the appellant present.

Nascer Ud Din Shah, learned Assistant Advocate General alongwith Muhammad Shah, for respondents present.

File to come up alongwith connected Service Appeal No. 5800/2021 titled "Syed Anwar Shah Vs. Government of Khyber Pakhtunkhwa" on 14.12.2022 before D.B



(Fareena Paul)
Member (E)



(Rozina Rehman)
Member (J)

Stipulated period passed reply not submitted.

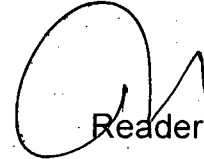
15.09.2021

Learned Addl, A.G be reminded about the omission and for submission of reply/comments within extended time of 10 days.


Chairman

03.02.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 16.05.2022 for the same as before.

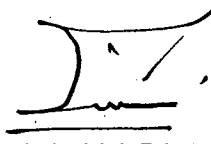

Reader

16.05.2022

Junior of learned counsel for the appellant present. Mr. Naseer ud Din Shah, Assistant Advocate General for the respondents present.

File to come up alongwith connected Service Appeal No.5800/202 titled "Syed Anwar Shah Vs. Education Department" on 21.07.2022 before the D.B.


(Rozina Rehman)
Member (J)


(Salah-Ud-Din)
Member (J)

02.08.2021

Counsel for the appellant present. Preliminary arguments heard.

After hearing the preliminary submissions of learned counsel for the appellant, a question because due for examination whether the condition of at least second class Bachelor Degree provided in the notification dated 24.07.2014 setting down the method of recruitment for the positions in the said notification with particular reference to the phrase "at least" used with the said academic qualification apparently giving expression of minimum; and in extension its effect when the education is improved by acquiring degree in 2nd Division or above in the higher examination. Obviously, the question formulated above relates to interpretation of the policy and the notification related therewith having prospect even to prevent the litigation in future, if the question is finally settled by this Tribunal. Therefore, this appeal is admitted for regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, or extension of time is not sought through written application with sufficient cause, the office shall submit the file with a report of non-compliance. File to come up for arguments on 28.09.2021 before the D.B.

AS
Appellant Deposited
Security & Process Fee
MS/ni

28-9-21


Chairman



DB is on Tour case to come up
For the same on Dated. 3-2-22

\$
Reader

Form- A
FORM OF ORDER SHEET

Court of _____

Case No.- 5809 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	02/08/21	<p>The appeal resubmitted today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>02/08/21</u></p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Akhtiar Hussain SCT GHS Boshera District Kurram Parachinar received today i.e. on 28.05.2021 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

- 1- Copy of impugned order is not attached with the appeal which may be placed on it.
- 2- Index of the appeal may be prepared according to the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 3- Annexures-B & D of the appeal are illegible which may be replaced by legible/better one.
- 4- Annexures of the appeal may be attested.
- 5- Appeal has not been flagged/marked with annexures marks.
- 6- Seven more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

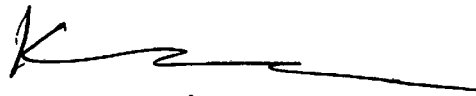
No. 910 /S.T,

Dt. 28/05 /2021


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr.Noor Muhammad Khattak Adv.Pesh.

Resubmitted after the Complitions


7/6/21

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 5809 / 2021

IKHTIAR HUSSAIN

VS

EDUCATION DEPTT:

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of appeal	1-3
2.	Academics documents	A	4-7
3.	Impugned notification dt: 24.07.2014	B	8-13
4.	Judgment dt: 28.01.2016 & 05.04.2016	C & D	14-20
5.	Notification	E	21
6.	Departmental appeal	F	22
11.	Vakalat nama	23

APPELLANT

THROUGH:

NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

APPEAL NO. _____ /2021, Diary No. 5817

Mr. Ikhtiar Hussain, SCT (BPS-16),
GHS Boshera, District Kurram.....

Dated 28/5/2021

APPELLANT

VERSUS

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

.....**RESPONDENTS**

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT CONSIDERING THE APPELLANT FOR PROMOTION TO THE POST OF S.S.T (BPS-16) ON THE BASIS HAVING BACHELOR DEGREE IN 3RD DIVISION AND AGAINST THE SERVICE RULES NOTIFIED ON 24.7.2014 WHEREBY THE CONDITION OF BACHELOR 2ND DIVISION HAS BEEN INSERTED IN SERIAL NO.1B, COLUMN NO.3(i) OF THE TABLE AND AGAINST NOT TAKING ACTION ON DEPARTMENTAL APPEAL OF APPELLANT WITHIN STATUTORY PERIOD OF NINTY DAYS

*Filed to-day
Registrar
28/5/2021*

PRAYER:

That on acceptance of this appeal the impugned service Rules dated 24.7.2014 may kindly be modified to the extent that the condition of Second Division/Class be expunged/deleted from Column No.3 (i), serial No.1B of the table and the respondents may kindly be directed to consider the appellant for promotion to the post of Secondary School Teacher (BPS-16) from the date when his Colleagues and junior colleagues were promoted with all consequential back benefits including seniority. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.

R/SHEWETH:

ON FACTS:

Brief facts giving rise on the present appeal are as under:

- 1- That appellant was initially appointed as certified teacher and later on promoted to SCT and right from appointment till date the appellant is serving the respondents department quite efficiently and of to the entire satisfaction of his superiors.
- 2- That appellant is higher qualified having Master in Arts with 2nd division. Copy of academics documents are attached as annexure.....**A.**
- 3- That it is pertinent to mention here that the respondents issued the impugned notification dated 24/07/2014 whereby the post of secondary school teacher was restructured and 20 % promotion quota to the aforementioned post was reserved for certified Teacher. That according to the said notification required qualification for initial recruitment as well as promotion was mentioned as second class bachelor degree. Copy of impugned notification dated 24/07/2014 is attached as annexure.....**B.**
- 4- That it is pertinent to mention here that the respondents denied promotion to some colleagues of the appellant to the post of SST due to having third class bachelor degree. That feeling aggrieved some colleagues filed writ petitions which were allowed in favor of petitioners vide judgment dated 05/04/2016 and 28/01/2016 and consequently they were promoted to the post of SST. Copies of the judgments dated 28/1/2016 and 05/04/2016 are attached as annexure..... **C & D.**
- 5- That it is worth mentioning that appellant was also denied promotion due to having third class bachelor degree despite the fact that appellant is having 2nd division in higher qualification i.e. master in Arts.
- 6- That appellant being a similar placed employee approached the respondents to extend him the benefits of above mentioned judgments, but still in vain.
- 7- That it is also pertinent to mention that establishment department issued a notification dated 15/12/2011 whereby amendment has been made in PMS rules 2007 by providing that a candidate who has obtain 3rd division in bachelor degree will be eligible for the examination in cases where he/she has obtained a higher division in Master's degree. Copy of notification is attached as annexure**E.**
- 8- That appellant feeling aggrieved filed Departmental appeal before the appellate authority but of no avail. Copy of the departmental appeal is attached as annexure **F.**

- 9- That feeling aggrieved and having no other remedy the appellant filed the instant appeal on the following grounds amongst the others.

GROUND:

- A- That the impugned notification dated 24/07/2014 to the extent of second class bachelor degree for promotion is against the law facts and judgment of Peshawar high court, hence not tenable and liable to be modified and the words second class be expunged only for promotion purpose.
- B- That the petitioner has not been treated in accordance with law and rules by the respondent Department on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That appellant is entitled to be promoted to the post of SST from due date in light of judgments of Peshawar high court by attracting principle of consistency as mentioned in 2009 SCMR 1.
- D- That appellant has second division in higher qualification i.e master and entitle to be promoted from due date in light of notification dated 15/12/2011.
- E- That as per section-9 of the Civil servant Act, 1973 read with rule 7 of the appointment, promotion and transfer rules, 1989 the appellant is fully entitle for promotion to the post of SST (BPS-16).
- F- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

Dated: . . .2021

APPELLANT

Ikhtiar Hussain

IKHTIAR HUSSAIN

THROUGH:

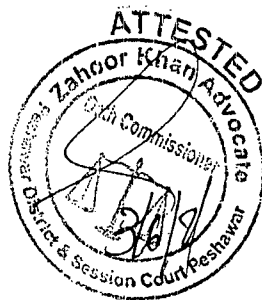
**NOOR MOHAMMAD KHATTAK
ADVOCATES**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

IKhtiar HUSSAIN VS EDUCATION DEPTT: & OTHERS

AFFIDAVIT

Stated on oath that the contents of the accompanying service appeal are correct to best of my knowledge and belief and nothing has been concealed from this Honorable Service Tribunal.



M
11-Hussain
DEPONENT

CERTIFICATE:

Certify that no earlier service appeal has been filed by the appellant in the instant matter before this Honorable Service Tribunal.

M
11-Hussain
CERTIFICATION

Anexure - A² (4)



UNIVERSITY OF PESHAWAR
(Pakistan)

Private Candidate Appeared From: PARACHINAR

Master of Arts in Pashto
FINAL
Annual Examination -- 2007

Detailed Marks Certificate
Required Pass Percentage - 40, Aggregate Pass Percentage - 45

Roll No.
38659

Gender: *Male*

Name: **IKHTIAR HUSSAIN**
Father's Name: **ALI MIRZA**
Registration No. **97-PS-19742**

Papers / Subjects in FINAL

Modern Peotry (VI)

Modern Prose (VII)

tailed Study of Khushal (VIII)

cal Literature Rhetoric (IX)

etc. (X)

Master of Arts in Previous Marks:
Roll No. 13284-A-2001

Papers / Subjects in FINAL	Marks Obtained		
	Maximum Marks	in Figures	in Words
Modern Peotry (VI)	100	43	Forty Three
Modern Prose (VII)	100	66	Sixty Six
tailed Study of Khushal (VIII)	100	43	Forty Three
cal Literature Rhetoric (IX)	100	41	Forty One
etc. (X)	100	40	Forty Only
	100	45	Forty Five
Master of Arts in Previous Marks: Roll No. 13284-A-2001	500	278	Two Hundred and Seventy Eight
Total Marks:	1100	556	Five Hundred and Fifty Six

subject to subsequent rectification.

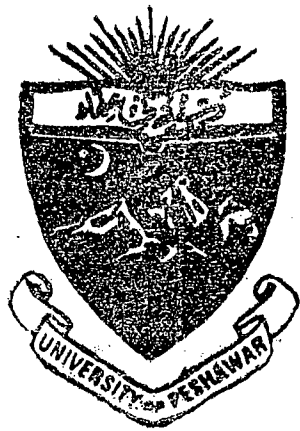
tion was passed in Parts in *Second* division.

08 at 10:23:21
of Peshawar University

ATTESTED
[Signature]
Asstt. District Education Officer
Upper Kurram at Parachinar.

[Signature]
Controller of Examinations
University of Peshawar

(5)



UNIVERSITY OF PESHAWAR
(Pakistan)

Detailed Marks Certificate
Master of Arts (PREVIOUS) in
Pashto, Annual Examination 2001

Private Candidate from **Parachinar**

Required: Pass Percentage - 40, Aggregate Pass Percentage - 45

Name: *Ikhtiar Hussain*

Gender: *Male*

Roll No. **13284**

Father's Name: *Ali Mirza*

Registration No. **97-PS-19742**

Papers	Maximum Marks	Marks Obtained	
		in Figures	in Words
History of Pashto Language and Literature	100	56	Fifty Six
Ancient Poetry	100	59	Fifty Nine
Ancient Prose	100	62	Sixty Two
Detailed Study of Rahman Baba	100	52	Fifty Two
Islamic Studies & History	100	49	Forty Nine
Total:	500	278	Two Hundred and Seventy Eight

Errors and omissions are subject to subsequent rectification.

The examination was passed *in Parts*

Examination Held in (17.09-18.10), 2001
Result Declared on February 27, 2002

[Signature]
Controller of Examinations
University of Peshawar

Dated: 01/03/02 at 14:07:02

M.Air's Engineering, Very First Time in History of Peshawar University

No. 0404731

University of Peshawar

(Pakistan)

Session ANNUAL 1998

IKHTIAR HUSSAIN Son of ALI MIRZA and a student
of KURRAM AGENCY having passed the prescribed examination
held in AUGUST 1998, is this day admitted by the University of Peshawar

to the Degree of
Bachelor of Arts

in the THIRD Division

The Examination was taken as a whole /in parts

Serial No. 045252

Registration No. 57-PS-19742

Roll No. 91997

Result declared on AUGUST 5, 1999



ATTESTED

[Signature]
Asstt. District Education Officer
Upper Kurram at Parachinar

[Signature]
Registrar

Countersigned

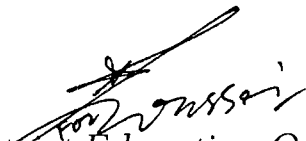
[Signature]
Vice-Chancellor

7

SERVICE CERTIFICATE

It is to certify that Mr. Ikhtiar Hussain S/O
Ali Mirza is a regular Government servant working
in Education Department, as a S.C.T. at
Govt. High school Boshera Kurram
District since 10/10/1994.
His Monthly Basic Salary is Rs: 50830 /-PM

Date: 01/02/2020 2021


District Education Officer
Kurram At Parachinar

DISTRICT EDUCATION OFFICER
KURRAM AT PARACHINAR

GOVERNMENT OF KHYBER PAKHTUNKHWA ELEMENTARY &
SECONDARY EDUCATION DEPARTMENT

Peshawar, dated the 24th July, 2014.

NOTIFICATION:-

NO.SO(PE)4-5/SSRC/Meeting/2013/Teaching cadre:- in pursuance of the provision contained in sub rule (2) of rule 3 of the Khyber Pakhtunkhwa civil servants' (appointment, promotion and transfer) rules, 1989, the elementary & secondary education department in consultation with the establishment department and the finance department hereby direct that in this department's notification NO.SO(G)S&LD/1-28/2003/VOL-II dated 09.04.2004, notification NO.SO(G)S&L/1-69/06/VOL-1/DPE/LIB dated 13.11.2003 and notification NO.SO(PE)4-5/SSRC/meeting/2012/teaching cadre, dated, 13.11.2012, the following further amendments shall be made, namely:

AMENDMENTS

IN THE APPENDIX,-

- (i) Serial no.1 shall be renumbered as 1b and before serial no.1b, as so renumbered, the following new entries shall be inserted in respective columns, namely:

1	2	3	4	5
"1	Subject specialist (BPS-17)	I. at least second class master's degree or four years BS degree in the relevant subject; and ii. Bachelor of education or master of education (industrial art or business education) or M.A education or equivalent from a recognized university	23 to 35 years	(a) fifty percent by promotion .on the basis of seniority-cum-fitness, for the relevant subject from the amongst the secondary schoolteacher (BP-16).with at least five years service as such and having qualification mentioned in column No.3 Note:- if no suitable candidate is available in the relevant subject the post falling in their promotion quota shall be filled by initial recruitment ; and (b) fifty percent by initial recruitment

Better Copy



1A	Director physical education (BPS-17)	At least second class master's degree in physical education from a recognized university	22-35 years	<p>(a) Fifty percent by promotion, on the basis of seniority-cum-fitness, from amongst senior physical education teachers (BPS-16), with at least five years service as senior physical education teacher and having qualification mentioned in column No. 3:</p> <p>Provided that if no suitable person is available from amongst senior physical education teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness from amongst the physical education teachers, with at least five years service as such and having qualification mentioned in column No.3</p> <p>Note:- If no suitable candidate is available in the relevant cadres of the above teachers the post falling in their promotion quota shall be filled by initial recruitment and</p> <p>(b) Fifty percent by initial recruitment and</p>
----	--------------------------------------	------------------------------------------------------------------------------------------	-------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

DEPT. OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D.C. 20535

petitioner was withdrawn is declared to be without lawful
issued by respondent No.3 whereby the promotion order of the

(ii) Against serial No 1B as so renumbered for the existing entries, the following shall be substituted in respective columns,

1	2	3	4	5
1B	Secondary school teacher (BPS-16)	<p>1. At least second class bachelor degree's form a recognized university on need basis from the following groups with two subject</p> <p>(a) (Chemistry, botany or zoology). Or (b) (physics, maths 'A' OR "B" or statistics Or (c) (humanities and the equivalent groups at degree level with English as compulsory subject: And ii. bachelor of education or master of education industrial Art Or Business Education) OR M.A education or equivalent qualification from a recognized university.</p>	21 to 35 years.	<p>1. Seventy five percent by promotion on the basis of the seniority-cum-fitness from the district concern in the following manner.</p> <p>(a) Forty percent from amongst the senior certified teachers BPS-16 with at least five years service as senior certified teacher and certified teachers and having qualification mentioned in column No.3</p> <p>Provide that if no suitable candidate is available from amongst senior certified teachers from promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst teacher with at least five years service as such and having qualification mentioned in column No.3</p>

				<p>(b) Four percent from amongst the senior driving masters (BPS-16) with at least five years service as senior driving masters and driving masters and having qualification mention in column No.3</p> <p>Provided that no suitable candidate is available from amongst senior Drawing Masters for promotion then the post shall be filled by promotion on the basis of seniority-cum-fitness from amongst drawing masters with at least five years service as such and having qualification in column No.3</p> <p>(c) Four percent amongst the senior Arabic teachers (BPS-16) with at least five years as senior arabic teachers and Arabic teacher, and qualification mentioned in column No.3</p> <p>(d) Four percent from amongst the senior theology teachers (BPS-16) with at least five years</p>
--	--	--	--	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

				<p>service as senior theology teachers and theology teachers and having qualification mentioned in column No. 3</p> <p>Provided that if no suitable candidate is available from amongst senior theology teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness from amongst theology teachers with at least five years service as such and having qualification mentioned in column No.3</p> <p>(e) Three percent from amongst the senior qaris (BPS-16), with at least five years service as senior qari and qari and having qualification mentioned in column No3</p> <p>Provided that if no suitable candidate as available from amongst the senior qaris then the post shall be filled by promotion, on the</p>
--	--	--	--	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Better Copy

13

				<p>basis of seniority-cum-fitness, from qaaris at least five years service as such and having qualification mentioned in column No .3</p> <p>(f) Twenty percent from amongst the primary school if teachers (BPS-16) With at least seven years service as primary school head teachers and senior primary school teacher and primary school and having qualification mentioned in column No.3</p> <p>Provided that if no available candidate is available from amongst.</p>
--	--	--	--	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

1/6

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT



Peshawar, dated the 24th July, 2014.

NOTIFICATION

No.SO(PE)4-5/SSRC/Meeting/2013/Teaching Cadre: - In pursuance of the provisions contained in sub rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Elementary and Secondary Education Department in consultation with the Establishment Department and the Finance Department hereby directs that in this Department's Notifications No.SO(G)S&LD/1-28/2003/Vol-II dated, 09-04-2004, Notification No.SO(G)S&L/1-69/06/Vol-1/DPE/LIB dated, 13-11-2007, and Notification No.SO(PE)4-5/SSRC/Meeting/2012/Teaching Cadre, dated, 13.11.2012, the following further amendments shall be made, namely:

AMENDMENTS

In the Appendix,-

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

1	2	3	4	5
1	Subject Specialist (BPS-17)	i. At least second class Master's Degree or four years BS Degree in the relevant subject; and ii. Bachelor of Education or Master of Education (Industrial Art or Business Education) or MA Education or equivalent qualification from a recognized University.	23 to 35 years	(a) Fifty per cent by promotion, on the basis of seniority cum fitness, for the relevant subject from amongst the Secondary School Teachers (BPS-16), with at least five years service as such and having qualification mentioned in column No. 3. Note: If no suitable candidate is available in the relevant subject the post falling in their promotion quota shall be filled by initial

(1)

ATTESTED

Annexure "B" 8

9

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

~~ATTESTED~~

ATTESTED

against Serial No. 1B, as so renumbered, for the existing entries, the following shall be substituted, in respective columns, namely:

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

①

✓

Handwritten signature and stamp

ATTESTED

11

				<p>Provided that if no suitable candidate is available from amongst Senior Drawing Masters for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst Drawing Masters with at least five years service as such and having qualification mentioned in column No. 3;</p> <p>(c) four per cent from amongst the Senior Arabic Teachers(BPS-16), with at least five years service as Senior Arabic Teachers and Arabic Teachers, and having qualification mentioned in column No.3:</p> <p>Provided that if no suitable candidate is available from amongst Senior Arabic Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from Arabic Teachers with at least five years service as such and having qualification mentioned in column No. 3:</p> <p>(d) four per cent from amongst the Senior Theology Teachers(BPS-10), with at least five years service as Senior Theology Teachers and Theology Teachers and having qualification mentioned in column No.3:</p>
--	--	--	--	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

(4)

ATTESTED



12

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

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

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

(f) twenty per cent from amongst the Primary School Head Teachers (BPS-16), with at least seven years service as Primary School Head Teachers and Senior Primary School Teachers and Primary School Teachers and having qualification mentioned in column No. 3;

Provided that if no suitable candidate is available from amongst

ATTESTED

[Signature]

SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Endst : of even No & date:

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

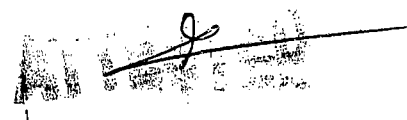
(ZAMIN KHAN MOMAND)
SECTION OFFICER (PRIMARY)

ATTESTED

PESHAWAR HIGH COURT BANNU BENCH

FOR OF ORDER SHEET

Date of order or other proceedings	Order or other proceedings with signature of judge(s)
(1)	(2)
28/01/2016	<p>W.P No. 73-B-2014, Present: Mr. Ali Jan Khan advocate for petitioner</p> <p><u>MUHAMMAD GHAZANFAR KHAN</u> (J):- The petitioner namely Mumtaz Khan S/O Guli Jan, through the instant Constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan 1973, seeks issuance of directions to the respondents/department to consider him for promotion in the post of SST in BPS-16 in view of the Departmental Promotion Committee meeting held on 18.01.2014.</p> <p>2. We have heard learned counsel for the petitioner and gone through the available record of the case.</p> <p>3. Perusal of record transpires that the petitioner has passed BA in third division while as per Notification bearing No. SO(III)S/SSR(Y)III, dated 18.1.2011, the minimum qualifications for the post of SST (BPS-16) are Second Class Bachelor's degree or MA in Education or Bachelor's Degree in Education. The record further shows that the petitioner has also passed M.Ed during the year 2000 in second division and M.A History and Pak Study during the session 2003 in second division and M:A. History and Pak Study during the session 2003 in second division.</p> <p>4. In wake of the above, we direct the respondents to consider the petitioner for promotion to the post of SST (BPS-16) in the next Departmental Promotion Committee meeting on the basis of his degree in MA. History and Pak Study coupled with M.ED qualifications. The writ petition is disposed of in the above terms.</p> <p>ANNOUNCED 28.01.2016</p>



THE Sindh High Court Bench

FORM OF ORDER SHEET

Date of order or other proceedings	Order or other proceedings with signature of Judge(s)
(1)	(2)
28/01/2014	<p>WP No.73-B-2014. Present: Mr. Ali Jan Khan advocate for petitioner.</p> <p><u>MUHAMMAD KHAZANQAR KHAN</u> The petitioner, namely, <u>Muhammad Ghousul Gani Jan</u>, through the instant Constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan 1973, seeks issuance of directions to the respondents/department to consider him for promotion to the post of SST in BPS-16 in view of the Departmental Promotion Committee meeting held on 18-01-2014.</p> <p>2. We have heard learned counsel for the petitioner and gone through the available record of the case.</p> <p>3. Perusal of record transpires that the petitioner has passed BA in third division while as per notification bearing No.SO(P)04/2013 dated 18/1/2014, the minimum qualifications for the post of SST (BPS-16) are second class Bachelor's degree, or MA in Education or Bachelor's degree in Education. The</p>

ATTESTED
Sindh High Court Bench

ATTESTED

[Signature]

[Signature]

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

4. In wake of the above, we direct the respondents to consider the petitioner for promotion to the post of SST (BPS-16) in the next Departmental Promotion Committee meeting on the basis of his degree in M.A. History and Pak Study coupled with M.Ed qualifications. The writ petition is disposed of in the above terms.

Sd/- Ibrahim Khan, J

Sd/- Muhammad Ghazafar Khan, J

ANNOUNCED
28/11/2016.

[Handwritten signature]

CERTIFIED TO BE TRUE COPY

[Handwritten signature]
Examinator
Dhulewar High Court Dahanu Bench
Authorized Under Article 87 of
The Constitution of India Order 1984

ATTESTED

[Handwritten signature]

16.04.20

Judgment Sheet

IN THE PESHAWAR HIGH COURT , ABBOTTABAD BENCH

JUDICIAL DEPARTMENT

Write Petition No. 1014-A/2015

JUDGMENT

Date of hearing: 05.04.2016

Petitioner: Mohammad bari by for Abdul sohail Advocate

IKRAMULLAH KHAN, J.- Through the instant Writ petition under Article 199 of the Islamic Republic of Pakistan, 1973 the petitioner seeks declaration to the effect that the act of respondent No.03 whereby the promotion notification dated 28-10-2014 was withdrawn vide impugned notification dated 24-04-2014 on the ground of having qualification of B.Sc (3rd division) is illegal and without lawful authority and against the judgment of this court passed in W.P.No.58-B of 2014.

2. In essence, the petitioner was initially appointed as Certified Teacher and as per entitlement, later on promoted to the post of Senior Certified Teacher (BPS-16) vide notification dated 28.10.2014 where after the petitioner assumed the charge of the said post on 30-10-2014 and after performing his duties to the satisfaction of his competent authority, on 24-04-2015 respondent No.03 has passed the impugned notification and, as such, the promotion order of the petitioner was withdrawn on the ground of having B.Sc in third division.

3. Comments were called from respondent No.03 who filed the same, averring therein that through petitioner was promoted to the post of SST vide notification dated 28-10-2014 by respondent No.2 but on scrutinizing his qualification documents, it was found that petitioner was not eligible for promotion to the post of SST being B.Sc third divisioner, hence, his promotion order was de-notified by the Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar and on the direction of Director the promotion order of the petitioner was withdrawn vide impugned notification dated 24.04.2015.

4. It has further been averred in the comments that promotion order of the petitioner was withdrawn on the ground of B.Sc third division and it was done in light of policy circulated vide Notification No.SO(PE)4-5/SSRC/meeting/ 2013 / teaching cadre dated 24.7.2014 according to which the method of recruitment for SST was specified with a

16/04/2016

first condition of at least second class BA/B.Sc from a recognized university on need basis wht tow relevant subject along with second condition of MA education or B.Ed from the recognized university further averred that it is the prerogative of the government enhance, modify or after the promotion criteria/ policy for the civil servant is not supposed to be treated with a set of rules of his own choice.

6. the main contention of learned counsel for the petitioner is that this court has already declared the condition of having third division as null and void in its judgment dated 4.6.2015 and the case of the petitioner is on better footing for the reason that in the referred judgment the petitioner had not been appointed but so far as the case of the petitioner is concerned, he was duly promoted rather received its benefits from 28.10.2014 to 24.4.2015 and thus, the impugned order is illegal, without lawful authority and jurisdiction.

7. Admittedly, the petitioner was duly promoted to the post in question of 28.10.2014 after the departmental promotion committee evaluated his case/PERs.

8. now the question for the termination before this court would be that when the petitioner actually performed his duties on the promoted post and that two for six long moths then who the respondent No.3 could withdrawn earlier promotion order on the pretext of having B.Sc third division.

8. it appears form the record that a division bench of this had already declared the condition of having third division as null and void in its judgment dated 4.6.2015 which fact has also been affirmed by the respondent No.3 in his comments by stating that they were not aware of that judgment at the time of withdrawal of the impugned promotion of the petitioner and when the case of the present of the petitioner is at per with date of the petitioner there rather on better footing because the petitioner was not only promoted to post in question but he performed his duties for six long months and received its benefits, the impugned past by respondent NO.3 is required set at naught.

9. it is also avail settle principal of law that once benefit is granted to a civil servant, cannot be take in back from him and, if so very stringent from reasons are required for the same, which are not available in the case in hand more so, when the promotion order of the similarly placed teacher having B.Sc third division have not been so far withdrawn which is clearly violation of article 25 of the constitution of Pakistan.

10. for the reasons mentioned above, this petitioner is accepted and the impugned notification dated 24.4.2015 issued by respondent No.3 whereby the promotion order the petitioner was withdrawal is declared to be

without lawful authority and, as such the promotion notification dated 28.10.2014 is hereby restored.

Announced.

05.04.2016

RESTORED

Annxure D

(16)

Judgment Sheet

IN THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH
JUDICIAL DEPARTMENT

Writ Petition No. 1041-A/2015.

JUDGMENT

Date of hearing 5-11-16

Petitioner Mohammad Bano by her Advocate Sabir

Respondents Govt of NWFP Albert

IKRAMULLAH KHAN, J. - Through the instant writ petition under Article 199 of the Islamic Republic of Pakistan, 1973 the petitioner seeks declaration to the effect that the act of respondent No.3 whereby the promotion notification dated 28.10.2014 was withdrawn vide impugned notification dated 24.04.2014 on the ground of having qualification of B.Sc. (3rd division) is illegal and without lawful authority and against the judgment of this court passed in W.P.No. 58-B of 2014.

2. In essence, the petitioner was initially appointed as Certified Teacher and, as per entitlement, later on promoted to the post of Senior Certified Teacher (BPS-16) vide notification dated 28.10.2014 whereafter the petitioner assumed the charge of the said post on 30.10.2014 and after performing his duties to the satisfaction of his competent authority, on 24.04.2015 respondent No.3 has passed the impugned notification and, as

certified to be a true copy
[Signature]

ATTESTED

[Signature]

such, the promotion order of the petitioner was withdrawn on the ground of having B.Sc in third division.

16/3/15

3. Comments were called from respondent No.3, who filed the same, averring therein that though petitioner was promoted to the post of SST vide notification dated 28.10.2014 by respondent No.2 but on scrutinizing his qualification documents, it was found that petitioner was not eligible for promotion to the post of SST being B.Sc third divisioner, hence, his promotion order was de-notified by the Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshwar and on the direction of Director the promotion order of the petitioner was withdrawn vide impugned notification dated 24.04.2015.

4. It has further been averred in the comments that promotion order of the petitioner was withdrawn on the ground of B.Sc third division and it was done in light of policy circular vide Notification No.SO(PE)4-5 / SSRC / meeting / 2013 teaching cadre dated 24.07.2014 according to which the method of recruitment of SST was specified with a first condition of at least second class BA / B.Sc from a recognized University on need basis with two relevant subjects along with second condition of MA Education or B.Ed from the recognized University. Further averred that it is the prerogative of the government to enhance, modify or alter the promotion

Handwritten mark resembling a stylized 'N' or '5'.

Handwritten signature or initials.

ATTESTED

Handwritten signature below ATTESTED.

Handwritten signature and date at the bottom right.

criteria / policy for the civil servants and a civil servant is not supposed to be treated with a set of rules of his own choice.

5. In response to Para-6 of the petition, respondent No.3 averred in the comments that the judgment of this court was announced on 04.06.2015 whereas the withdrawal order of the petitioner was passed on 24.04.2015, prior to the announcement of the judgment.

6. The main contention of learned counsel for the petitioner is that this court has already declared the condition of having third division as null and void in its judgment dated 04.06.2015 and the case of the petitioner is on better footing for the reason that in the referred judgment the petitioner had not been appointed but so far as the case of the petitioner is concerned, he was duly promoted rather received its benefits from 28.10.2014 to 24.04.2015 and thus, the impugned order is illegal, without lawful authority and jurisdiction.

Admittedly, the petitioner was duly promoted to the post in question on 28.10.2014 after the departmental promotion committee evaluated his case / PERs.

8. Now the question for determination before this court would be that when the petitioner actually performed his duties on the promoted post and that too for six long months, then how the respondent No.3 could withdraw the earlier promotion order only on the pretext of having E.Sc third division.

Certified to be true copy
E.C. [Signature]
[Signature]

ATTESTED

[Signature]

[Signature]

which is clearly violation of Article 25 of the Constitution of having B.Sc third division have not been so far withdrawn when the promotion order of the similarly placed teachers same, which are not available in the case in hand, moroso, harm and, if so, very urgent strong reasons are required for the benefit is granted to a civil servant, cannot be taken back from

9. It is also a well settled principle of law that once a benefit is granted to a civil servant, cannot be taken back from

impugned notification passed by respondent No.3 is required to his duties for six long months and received its benefits, the was not only promoted to the post in question but he performed petitioner therein, rather on being going because the petitioner when the case of the present petitioner is at par with that of the withdrawal of the impugned notification of the petitioner and stating that they were not awarded judgment at the time of also been affirmed by the respondent No.3 in his comments by null and void in its judgment 2015 which fact has had already declared the respondent No.3 in his comments by

8. It appears from the record that the respondent No.3 in his comments by

Handwritten signature

authority and, as such, the promotion notification dated 28.10.2014 is hereby restored.

Announced:
05.04.2016.

Sd/ Judge
Sd/ Judge

Sd/

ATTESTED

9

Certified to be true Gov.
[Signature]

[Signature]

Anxxure E

21

BETTER COPY OF PAGE-2

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

NOTIFICATION

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

AMENDMENT

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

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

CHIEF SECRETARY
KHYBER PAKHTUNKHWA

~~Amended~~



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Dated Peshawar the December, 15, 2011

NOTIFICATION

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

AMENDMENT

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

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

CHIEF SECRETARY
KHYBER PAKHTUNKHWA

Enclst. No. & date given

Copy of the above is forwarded by:-

1. Additional Chief Secretary, Khyber Pakhtunkhwa.
2. Secretary to Governor, Khyber Pakhtunkhwa.
3. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
4. Senior Member Board of Revenue, Khyber Pakhtunkhwa.
5. All Administrative Secretaries, Khyber Pakhtunkhwa.
6. Secretary (Administration & Coordination)/Civil Secretariat PATA.
7. Chairman, Khyber Pakhtunkhwa Public Service Commission.
8. Accountant General, Khyber Pakhtunkhwa, Peshawar.
9. Director S.I. & A Department.
10. Secretary Khyber Pakhtunkhwa Public Service Commission.
11. PS to Chief Secretary, Khyber Pakhtunkhwa.
12. PS to Secretary Establishment.
13. PAs to Additional Secretary (Estt)/Deputy Secretary (Estt) Establishment Department.
14. Office order file.

(PARTAL KAZIMI)
SECTION OFFICER (E.II)

ATTESTED

ATTESTED

To,

The Secretary,
E&SE Department,
Khyber Pakhtunkhwa, Peshawar

Anxore

F

22

Subject:

DEPARTMENTAL APPEAL AGAINST THE INACTION OF THE RESPONDENTS BY NOT CONSIDERING THE APPELLANT FOR PROMOTION TO THE POST OF SST (BPS-16) ON THE BASIS OF HAVING BACHELOR DEGREE IN 3RD DIVISION AND AGAINST THE SERVICE RULES NOTIFIED ON 24.07.2014 WHEREBY THE CONDITION OF BACHELOR 2ND DIVISION HAS BEEN INSERTED IN SERIAL NO.1B, COLUMN NO.3(i) OF THE TABLE.

Respected Sir,

With due respect it is stated that I was initially appointed as Certified Teacher in the respondent Department and right from the date of my 1st appointment I am performing my duties quite efficiently and up to the entire satisfaction of his superiors. During service, later on I was promoted to the post of SCT. That I have the higher qualification of Master in Arts in 2nd Division but the authorities issued the impugned Notification dated 24.07.2014 whereby the post of SST was restricted and 20% promotion quota to the aforementioned post was reserved for Certified Teachers. That according to the said Notification required qualification for initial recruitment as well as promotion was mentioned as second class bachelor degree. That the concerned authority denied promotion of my some colleagues to the post of SST due to having third class bachelor degree. They were feeling aggrieved filed writ petitions which were allowed in favor of petitioners vide judgment dated 05.04.2016 and 28.01.2016 and consequently they were promoted to the post of SST. That, I was also denied from promotion due to having third class bachelor degree despite the fact that I am having second division in higher qualification of Master in education. That being a similar placed employee approached the concerned authority to extend the same benefit of the above mentioned judgments but in vain. That the establishment Department issued a Notification dated 15.12.2011 whereby amendment has been made in PMS rules 2007 by providing that a candidate who has obtain 3rd division in bachelor degree will be eligible for the examination in cases where he/she has obtained a higher division in Master's degree. That feeling aggrieved from the inaction of the concerned authority by not considering me for promotion to the post of SST (BPS-16) filed the instant Departmental appeal before your good self.

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

Dated: 16.02.2021

ATTESTED

APPLICANT

M Hussain
IKHTIAR HUSSAIN, SCT (BPS-16),
GHS Boshera, District Kurram

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

_____ OF 202

I Khtiar Hussain (APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Education Deptt (RESPONDENT)
(DEFENDANT)

I/We I Khtiar Hussain

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

Dated. ____/____/202

I Khtiar Hussain
CLIENT

ACCEPTED
NOOR MOHAMMAD KHATTAK

SHAHZULLAH YOUSAFZAI

MIR ZAMAN SAFI

AFRASIAB KHAN WAZIR
ADVOCATES

OFFICE:
Flat No.4, 2nd Floor, Juma Khan
Plaza, near FATA Secretariat,
Warsak Road, Peshawar.
Mobile No.0345-9383141

BEFORE THE HONORABLE SERVICE TRIBUNAL PESHAWAR .

Service Appeal No. 5809/2021.

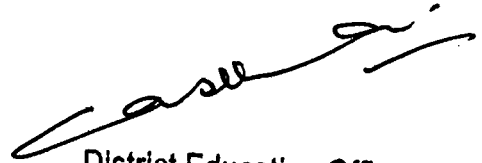
Ikhtair HussainAppellant.

Versus

Secretary E & SE Khyber Pakhtunkhwa & others.....Respondents

INDEX

S. NO	Description of Documents	Annexure	Pages
1	Comments / Affidavit	-----	1-3
2	Promotion Policy 2014	A	4-10



District Education Officer
(Male) Distt: Kurram

①

BEFORE THE HONORABLE SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 5809/2021.

Ikhtiar Hussain.....Appellant.

Versus

Secretary E & SE Khyber Pakhtunkhwa & others.....Respondents

Comments on behalf of Respondent No.14 & 5.

Preliminary objections.

- That the appellant has got no cause of action, locus standi to file the instant appeal.
- That the appellant has not come to this Tribunal with clean hands.
- That the appeal is not maintainable in the present form.
- That the appellant is estopped by his own conduct to bring the instant appeal.
- That the appeal is badly time barred as there is no record of the appeal of the appellant in the Respondent Department.
- That the appellant has concealed material facts from the Honorable Service Tribunal.
- That the appellant is lacking the prescribed qualification i.e "At least second class Bachelor's Degrees from a recognized University on need basis from the Humanities and other equilant groups at degree level with English as Compulsory Subject" and Bachelor of Education or Master of Education (Industrial Art or Business Education) or M.A Education or equilant qualification from a recognized University, however, the appellant has third division and not eligible for promotion under the in-vogue Rules / policy.

ON FACTS.

1. That para-1 pertains to record, hence no further comments.
2. That para-2 pertains to record, hence no further comments.
3. That para-3 is correct to the extent (40%) forty percent promotion quota was reserved out of (75 %) seventy five percent for promotion to the post of SST from the eligible SCT /CT Teacher, policy attached as **(Annex-A)**.
4. That the appellant is misleading this Honorable Tribunal and exerting illegal pressure through instant appeal. The Respondent Department is bound to abide by the Rules / Policy In-vogue, the policy dated 24-7-2014 for promotion to the post of SST General is reproduced herein.

- i. "At least second class Bachelor's Degrees from a recognized University on need basis from the Humanities and other equivalent qualification at degree level with English as Compulsory Subject" and
- ii. Bachelor of Education or Master of Education (Industrial Art or Business Education) or M.A Education or equivalent qualification from a recognized University, attached as **(Annex-A)**.

In view of the said policy, the appellant is with third division, so he is not eligible for promotion.

5. That the appellant is not eligible as he has not fulfilling required criteria, i.e having third division in Bachelor degree.
6. That the appellant is not eligible as he does not fulfill the required criteria as mentioned above. Furthermore, there is no appeal of the appellant in the Respondent Department.
7. That detail reply has already been submitted under para-4 above while the Respondent Department has its own Rules/ policy for promotion and induction, which is attached as **(Annex-A)**.
8. That the appellant is not eligible as he has not fulfilling required criteria, i.e for having third division in bachelor degree, so he is not entitle / eligible under the invogue policy / rules. Furthermore, there is no appeal of the appellant in the Respondent Department.
9. Legal, the respondent also submits on following grounds inter alia.

GROUND

- A. **Incorrect and denied**, the appellant is exerting illegal pressure on the respondent department through instant appeal and the responded department has acted according to the Rules / Policy.
- B. **Incorrect and denied**, the respondent department did not violate Article 4 & 25 of the constitution of Islamic Republic of Pakistan 1973 and has been acted according to the Rules and policy.
- C. **Incorrect and dined**, the Respondent Department is bound to abide by the law / rules and policy as elucidated above that the appellant was not eligible for promotion under the Rules / policy.

3

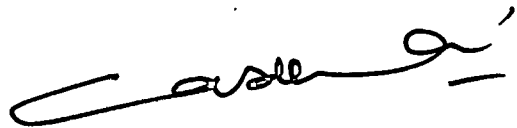
- D. **Incorrect and denied**, detail reply has already been submitted above under para 4 above on facts.
- E. **Incorrect and denied**, detail reply has already been submitted above under para 4 on facts above.
- F. Legal, Respondent Department also seek permission of this Honorable Tribunal to produce additional grounds at time of hearing.

Prayer:

Therefore, it is humbly requested that this Honorable Service Tribunal may graciously be pleased to dismiss the instant appeal in favor of the Respondent Department.



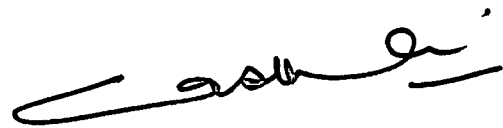
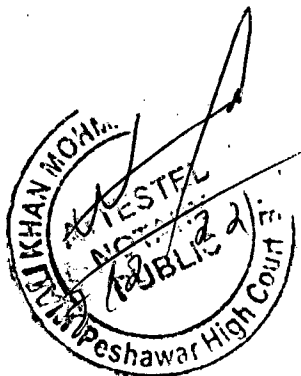
Director E & SE
Khyber Pakhtunkhwa
(Respondent No,4)



District Education Officer
District Kurram
(Respondent No. 5)

AFFIDAVIT

I Mr. Abbas Khan District Education Officer District Kurram do hereby solemnly affirm and declare that the contents of the instant Parawise Comments are true & correct to the best of my knowledge & belief.



District Education Officer
District Kurram



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Peshawar, dated the 24th July, 2014.

NOTIFICATION

No.SO(PE)4-5/SSRC/Meeting/2013/Teaching Cadre:- In pursuance of the provisions contained in sub rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Elementary and Secondary Education Department in consultation with the Establishment Department and the Finance Department hereby directs that in this Department's Notifications No.SO(G)S&LD/1-28/2003/Vol-II dated, 09-04-2004, Notification No.SO(G)S&L/1-69/06/Vol-I/DPE/LIB dated, 13-11-2007, and Notification No.SO(PE)4-5/SSRC/Meeting/2012/Teaching Cadre, dated, 13-11-2012, the following further amendments shall be made, namely:

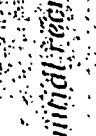
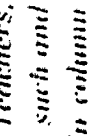
AMENDMENTS

In the Appendix,

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

1	2	3	4	5
1	Subject Specialist (BPS-17)	i. At least second class Master's Degree or four years BS Degree in the relevant subject; and ii. Bachelor of Education or Master of Education (Industrial Art or Business Education) or M.A Education or equivalent qualification from a recognized University.	23 to 35 years	(a) Fifty per cent by promotion, on the basis of seniority-cum-fitness, for the relevant subject from amongst the Secondary School Teachers (BPS-16), with at least five years service as such and having qualification mentioned in column No. 3. Note: If no suitable candidate is available in the relevant subject the post falling in their promotion quota shall be filled by initial

(1)

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

(6)

(ii) against Serial No. 1B, as so renumbered, for the existing entries, the following shall be substituted, in respective columns, namely:

1	2	3	4	5
1B.	Secondary School Teacher (BPS-16)	<p>I. At least second class Bachelor Degree's from a recognized University on need basis from the following groups with two subject</p> <p>(a) (Chemistry, Botany or Zoology), Or (b) (Physics, Maths "A" or "B" or Statistics) Or (c) (Humanities and other equivalent groups at degree level with English as compulsory subject;</p> <p style="text-align: center;">and</p> <p>II. Bachelor of Education or Master of Education (Industrial Art or Business Education) or M.A Education or equivalent qualifications from a recognized University.</p>	21 to 35 years.	<p>1. Seventy Five per cent by promotion, on the basis of seniority-cum-fitness, from the district concerned in the following manner:</p> <p>(a) forty per cent from amongst the Senior Certified Teachers (BPS-16), with at least five years service as Senior Certified Teacher and Certified Teacher and having qualification mentioned in column No.3:</p> <p style="padding-left: 40px;">Provided that if no suitable candidate is available from amongst Senior Certified Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst Certified Teachers, with at least five years service as such and having qualification mentioned in column No. 3;</p> <p>(b) four per cent from amongst the Senior Drawing Masters (BPS-16), with at least five years service as Senior Drawing Masters and Drawing Masters and having qualification mentioned in column No.3.</p>

7

11

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

(c) four per cent from amongst the Senior Arabic Teachers(BPS-16), with at least five years service as Senior Arabic Teachers and Arabic Teachers, and having qualification mentioned in column No.3:

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

(d) four per cent from amongst the Senior Theology Teachers(BPS-16), with at least five years service as Senior Theology Teachers and Theology Teachers and having qualification mentioned in column No.3:

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

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

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

(f) twenty per cent from amongst the Primary School Head Teachers (BPS-16), with at least seven years service as Primary School Head Teachers and Senior Primary School Teachers and Primary School Teachers and having qualification mentioned in column No. 3:

Provided that if no suitable candidate is available from amongst

9

Primary School Head Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst Senior Primary School Teachers with at least seven years service as Senior Primary School Teachers and Primary School Teachers and having qualification mentioned in column No.3:

Provided further that if no suitable candidate is available from amongst Senior Primary School Teachers for promotion then the post shall be filled from amongst Primary School Teachers with at least seven years service as such and having qualification mentioned in column No. 3; and

(ii) twenty Five percent by initial recruitment.

Note:

- I. If no suitable candidate is available in the relevant cadre of the above teachers, the post falling in their promotion quota shall be filled by initial recruitment.
- II. Posts of General SST and SSTs-1 Science and SST-2 Science shall be filled by promotion or initial recruitment, each on need basis separately."

60

(10)

**SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT**

Endst : of even No & date:

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

**(ZAMIN KHAN MOMAND)
SECTION OFFICER (PRIMARY)**