

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 9602/2020

BEFORE: SALAH UD DIN --- MEMBER(J)
MIAN MUHAMMAD --- MEMBER(E)

Hazrat Yousaf S/o Muhammad Pinda Muhammad R/o Battgram
Tehsil and District Battgram (Ex-Assistant BPS-16 office of the
Deputy Commissioner Battgram)..... (*Appellant*)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary
Khyber Pakhtunkhwa, Peshawar.
2. Senior Member Board of Revenue, Khyber Pakhtunkhwa
Peshawar.
3. Commissioner Hazara Division, Abbottabad..... (*Respondents*)

Present:

SYED NOMAN ALI BUKHARI,
Advocate --- For Appellant.

MUHAMMAD JAN,
District Attorney --- For respondents.

Date of Institution.....15.07.2020
Date of Hearing.....31.10.2022
Date of Decision.....03.11.2022

JUDGEMENT.

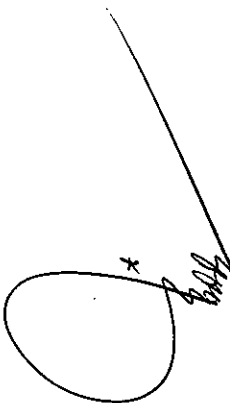
MIAN MUHAMMAD, MEMBER(E):- The service appeal
has been filed with the prayer that “on acceptance of this appeal
the respondent may be directed to consider the appellant for
proforma promotion to the post of Superintendent BPS-17 w.e.f
09.04.2015 i.e. from the date of promotion of the Junior, with all
back and consequential benefits. Any other remedy which

Honourable Tribunal thinks deem fit and appropriate may also be awarded in favor of the appellant”.

02. Brief facts, as per memorandum of appeal are that the appellant was working as Assistant in the office of DOR (E) Battagram since 1992. He was appointed/posted as HCR Naib Tehsildar in his own pay and scale on 04.07.2006. His service appeal with the request for regularization of his services as Niab Tehsildar, was disposed of vide order dated 22.02.2010 with the direction to respondents to place his case for consideration of Departmental Promotion Committee. After having filed execution petition for implementation of the Service Tribunal order, his services were regularized with effect from 04.07.2006, on 11.11.2010. However, the order of his regularization of services was subsequently withdrawn on 09.09.2016. The appellant challenged it before the Service Tribunal but his appeal was dismissed on 17.10.2018. He was also repatriated to his parent department i.e. Deputy Commissioner Battagram on 15.11.2018. During this period, one Assistant (BS-16) namely Syed Jamil Hussain Shah of the office of Deputy Commissioner Battagram was promoted as Superintendent (BS-17) on 09.04.2015. The appellant attained the age of superannuation on 05.04.2019 and retired from service as Assistant (BS-16) with all benefits admissible under the rules, vide office order dated 12.03.2019. The appellant approached the honourable Peshawar High Court through Writ Petition seeking promotion as Superintendent (BS-19) w.e.f. 09.04.2015 when his junior (Syed

Jamil Hussain Shah) was promoted. His Writ Petition was however, dismissed on the ground of jurisdiction on 25.02.2020 whereafter he submitted departmental appeal with the same plea on 17.03.2020. His departmental appeal was not decided within the statutory period and after having waited for 90 days he then approached the Service Tribunal through the instant service appeal on 15.07.2020.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard learned counsel for the appellant as well as learned Assistant Advocate General for the respondents and have gone through the record with their valuable assistance.



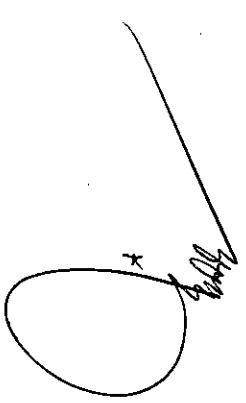
04. Learned counsel for the appellant contended that the appellant being a graduate Assistant was eligible to be appointed as Naib Tehsildar under the quota reserved for promotion prescribed by the Service Rules 2001. He was therefore, posted as Naib Tehsildar in own pay and scale on 04.07.2006 and then regularized his services as Naib Tehsildar under the direction of Service Tribunal dated 22.02.2010, vide order dated 11.11.2010. He further argued that the respondent department did not convene meeting of Departmental Promotion Committee and if his services as Naib Tehsildar were regularized through an administrative order then it was not a fault on part of the appellant but the department for which the appellant has suffered and it is violation of the principle of locus poenitentiae. On one

hand the order of his regularization of services as Naib Tehsildar was withdrawn on 09.09.2016 and on the other hand, he was deprived of his promotion from the post of Assistant to the post of Superintendent (BS-17) rather his junior appearing at serial No. 21 of the seniority list of Assistants, was promoted as Superintendent on 09.04.2015. Not only this, the appellant was repatriated to parent department i.e. Deputy Commission Battagram on 15.11.2018 from where he retired from service on attaining the age of superannuation on 05.04.2019 and the respondents failed to hold meeting of Departmental Promotion Committee with ulterior motives, malafide intention and discriminatory treatment met out to the appellant. In support of his arguments, he relied on PLD 2013 Supreme Court Page No. 195, 1997 SCMR 515, FR-17 (1) and Section 9 of the Khyber Pakhtunkhwa Civil Servants Act, 1973. He therefore, requested that the respondents may graciously be directed to allow the appellant proforma promotion as Superintendent w.e.f. 09.04.2015 i.e. when his erstwhile junior was promoted from the post of Assistant to the post of Superintendent.

05. Learned District Attorney on the other hand, argued that it is an admitted fact that the Service Tribunal directed the respondents to place the case of appellant for promotion as Naib Tehsildar for consideration of the Departmental Promotion Committee. However, he was promoted as Naib Tehsildar on regular basis through an administrative order on 11.11.2010 without adopting proper procedure therefore, the order was liable

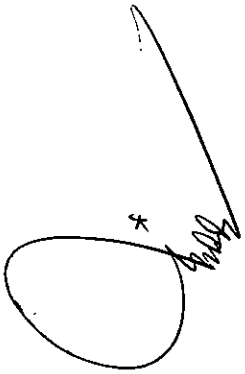
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to be withdrawn on 09.09.2016. The appellant challenged it through service appeal which was dismissed by the Service Tribunal on 17.10.2018. Moreover, the appellant remained posted as Naib Tehsildar, on the basis of an illegal order from 2010-2018 and availed the benefits of the post of Naib Tehsildar, his name was no longer existed on the seniority list of Assistants at the time of promotion of Syed Jamil Hussain Shah and therefore he was not considered for promotion as Superintendent. The appellant did not challenge the promotion of Syed Jamil Hussain Shah as Superintendent and has therefore, foregone his right of appeal now. The appellant has retired from service on 05.04.2019 on attaining the age of superannuation and has been granted all pensionary benefits in BS-16. The service appeal having no legal grounds may therefore, be dismissed, he concluded.



06. Careful perusal of the record reveals that the appellant being graduate belonging to the clerical cadre and working as Assistant (BS-16) in the office of Deputy Commission Battagram, approached the respondent No. 2 through an application for promotion as Naib Tehsildar. He was appointed as Naib Tehsildar in his own pay and scale on 04.07.2006. He filed service appeal No. 1461/2009 with the prayer for regularization of his services as Naib Tehsildar upon which the Service Tribunal directed the respondents on 22.02.2010 to place his case for promotion as Naib Tehsildar for consideration of the Departmental Promotion Committee. In execution petition of the said order of the Service Tribunal, the respondent department

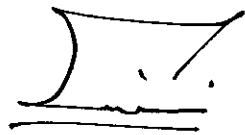
instead of placing his case to the Departmental Promotion Committee, regularized his services as Naib Tehsildar w.e.f 04.07.2006 vide order dated 11.11.2010. The appellant was enjoying the coveted position of Naib Tehsildar till 09.09.2016 when the order of his regularization of services as Naib Tehsildar being found in violation of service rules and instructions, was withdrawn. The appellant feeling aggrieved with order dated 09.09.2016 challenged it before Service Tribunal through service appeal No. 1214/2016 which was dismissed by the Service Tribunal on 17.10.2018. Consequently, the appellant was repatriated to parent department on 15.11.2018. It is interesting to note that Syed Jamil Hussain Shah, Assistant (BS-16) was promoted to the post of Superintendent (BS-17) on 09.04.2015 when the appellant was working as Naib Tehsildar and his name had been dropped from the list of Assistants of the office of Deputy Commissioner Battagram as he had changed his cadre from Assistant to Naib Tehsildar. It is also obvious that he did not challenge the promotion order of Syed Jamil Hussain Shah, at the relevant time, probably on the ground of change of cadre. The appellant assailed it before the honourable Peshawar High Court in Writ Petition No. 527-A/2020 and that too, after his retirement as Assistant on 05.04.2019 which was also dismissed on the ground of jurisdiction by the honourable Peshawar High Court on 25.02.2020. So far, the question of the principle of locus poenitentiae is concerned, it is a matter of the record that the appellant remained as Naib Tehsildar w.e.f 04.07.2006 to

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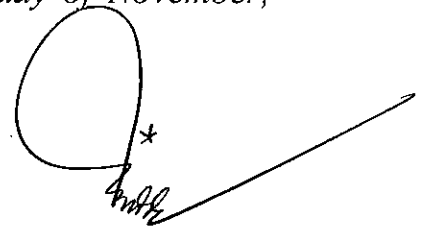
15.11.2018. He was hand in glove with the department and enjoying the coveted position at his sweet will and tacit consent and the respondents could not be held the sole responsible to revoke his order of Naib Tehsildar to have been issued in violation of laid down procedure of promotion to the post of Naib Tehsildar. Moreover, the bench enquired as to whether there was any vacant position of Superintendent in the office of Deputy Commissioner, Battagram and Departmental Promotion Committee meeting held for the purpose after repatriation of the appellant on 15.11.2018? However, no information in this respect could be put forth by either side of the parties in affirmity.

07. As a sequel to the discussion in the preceding paras, the appellant could not establish his case on the available material on record, facts and circumstances. The instant appeal being devoid of its merits, is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 03rd day of November, 2022.*



(SALAH UD DIN)
MEMBER (J)



(MAIN MUHAMMAD)
MEMBER (E)

ORDER

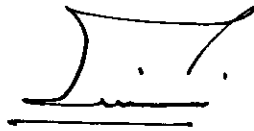
03.11.2022

Syed Nomal Ali Bukhari, Advocate for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

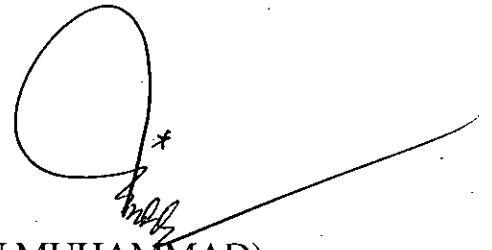
02. Vide our detailed judgement of today separately placed on file containing (07) pages, the appellant could not establish his case on the available material on record, facts and circumstances. The instant appeal being devoid of its merits, is hereby dismissed. Parties are left to bear their own costs.

File be consigned to the record room.

03. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 03rd day of November, 2022.*



(SALAH UD DIN)
MEMBER (J)



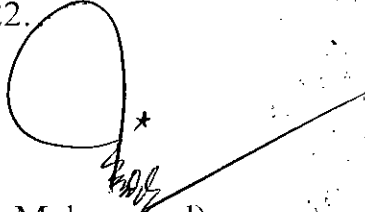
(MIAN MUHAMMAD)
MEMBER (E)

31.10.2022

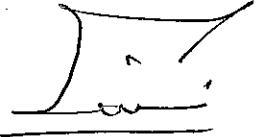
Syed Noman Ali Bukhari, Advocate for the appellant present.

Mr. Muhammad Jan, District Attorney for the respondents
present.

Arguments heard. To come up for order before the D.B on
03.11.2022.



(Mian Muhammad)
Member (E)



(Salah-ud-Din)
Member (J)

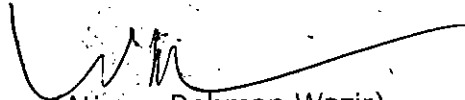
B

9602/20

03.01.2022

Counsel for the appellant and Mr. Asif Masood Ali Shah DDA alongwith Muhammad Haroon Assistant for the respondents present.

Former requests for adjournment in order to further prepare the brief. Request accorded. To come up for further proceedings on 12.04.2022 before the D.B.

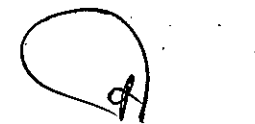

(Atiq-ur-Rehman Wazir)
Member(E)


Chairman

12.04.2022

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Addl. AG alongwith Qasim Khan, Superintendent for the respondents present.

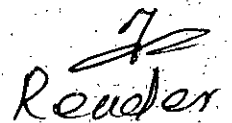
Learned counsel for the appellant requested for adjournment to assist the Tribunal properly. Adjourned. To come up for arguments before the D.B on 02.08.2022.


(Rozina Rehman)
Member (J)


Chairman

2-8-2022

Proper DB not available the case is adjourned to 31-10-2022


Reader

31.05.2021

Reply of R2 has
already been submitted.
Stipulated time to R3
has been passed and
reply has not been
submitted.

Junior to counsel for the appellant and Mr. Muhammad Hanan, Assistant for respondents No. 1 & 2 alongwith Mr. Kabirullah Khattak, Addl. AG for the respondents present.


Respondents No. 1 & 2 have furnished reply/comments. Learned AAG is directed to contact the remaining respondents. The respondents are required to submit written reply/comments in office within 10 days, positively. If the written reply/comments are not submitted within the stipulated time, the office is directed to submit the file with a report of non-compliance. File to come up for arguments on 06.10.2021 before the D.B.


Chairman

P.S

11.06.2021

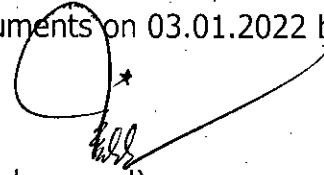
Learned Addl. A.G be reminded about the omission and for submission of Reply within extended time of 10 days.


Chairman

06.10.2021

Counsel for the appellant and Mr. Muhammad Rasheed, DDA alongwith Muhammad Babar, Assistant for the respondents present.

Former requests for adjournment as his learned counsel is not in attendance. Request is accorded. To come up for arguments on 03.01.2022 before the D.B.

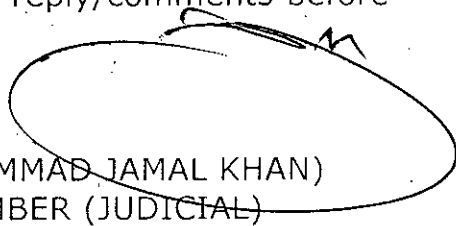

(Mian Muhammad)
Member(Executive)


Chairman

26.01.2021

Junior counsel for appellant is present. Mr. Kabirullah Khattak, Additional Advocate General alongwith representatives of the department Mr. Muhammad Saleem, AAC (Revenue) and Mr. Asif Khan, Assistant, for the respondents are also present.

Written reply on behalf of respondents not submitted. Representatives of the department are seeking further time for submission of written reply/comments. Adjourned to 25.03.2021 on which date file to come up for written reply/comments before S.B.


(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

25.03.2021

Junior to counsel for the appellant and Mr. Kabirullah Khattak learned Addl. AG alongwith Muhammad Saleem Additional AC (Revenue) for respondents present.

Representative of respondents requested for time to submit written reply/comments. Last opportunity is granted. To come up for written reply/comments on 31.05.2021 before S.B.


(Atiq Ur Rehman Wazir)
Member (E)

05.10.2020

Counsel for the appellant present.

On 09.04.2015 one Jamil Hussain Shah was promoted as Superintendent (BPS17) on regular basis. Admittedly, the said incumbent was junior to the appellant as noted in the tentative seniority list of Assistants issued on 25.10.2020. The appellant preferred a departmental appeal/representation in the matter. The respondents duly submitted a reply to the appeal, wherein, on 29.01.2019, it was yet again conceded that the Jamil Hussain Shah was junior to the appellant and was promoted as Superintendent in Revenue & Estate Department through notification dated 09.04.2015. The discriminatory act of respondents ~~escaped~~ ^{drove} the appellant, after his retirement on 28.01.2019, to prefer Writ Petition No. 527-A/2019 which was dismissed ^{due to lack} ~~in pursuance~~ of the jurisdiction of the High Court, hence the appeal in hand.

In view of the available record, instant appeal is admitted to regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 07.12.2020 before S.B.

Appellant Deposited
Security & Process Fee

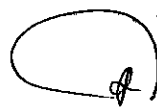

Chairman

07.12.2020

Junior counsel for appellant present.

Kabir Ullah Khattak learned Additional Advocate General alongwith Muhammad Salim Additional Assistant Commissioner for respondents present.

Written reply on behalf of respondents is still awaited. Representative of respondents requests for time to furnish reply/comments; granted. To come up for written reply/comments on 26.01.2021 before S.B.




(Rozina Rehman)
Member (J)

Form- A

FORM OF ORDER SHEET

Court of 9602

Case No.- _____ /2020


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	24/08/2020	<p>The appeal of Mr. Hazrat Yousaf resubmitted today by Uzma Syed Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-		<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>05/10/20</u></p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Hazrat Yousaf Ex-Assistant office of the Deputy Commissioner Battagram received today i.e. on 15.07.2020 is incomplete on the following score which is returned to the counsel for the appellant 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- Copy of departmental appeal against the impugned order and its rejection order are not attached with the appeal which may be placed on it.
- 3- The documents referred to in the memo of appeal are not attached with the appeal which may be placed on it.
- 4- Six more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 1672 /S.T,

Dt. 16-07 /2020.


REGISTRAR,
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Uzma Syed Adv. Pesh.

Objectum Rem e file Resubmitted.



BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

APPEAL NO: 9602/2020

Hazrat Yousaf

VS

Govt of KP

INDEX

S.NO.	Documents	Annexure	Page No.
1.	Memo of appeal	-----	01-06
2.	Copy of judgment dt:22.02.2010	---A---	07-08
3.	Copy of order dt:11.11.2010	---B---	09
4.	Copy of order dt: 09.09.2016	---C---	10
5.	Copy of judgment dt: 17.10.2018	---D---	11-15
6.	Copy of order dt: 15.11.2018	---E---	16
7.	Copy of seniority list	---F---	17-23
8.	Copy of order dated 09.04.2015	---G---	24
9.	Copy of appeals/ application	---H---	25-28
10.	Copy of order 12.03.2019	---I---	29
11.	Copy of judgment dt: 25.02.20	---J---	30-33
12.	Copy of deptt appeal	---K---	34-36
13.	Copy of seniority list	---L---	37-39
14.	Copy of FR rule 17	---M---	40
15.	Copy of rules	---N---	41-45
16.	Vakalatnama	-----	46

Hazrat Yousaf
Appellant

Hazrat Yousaf

THROUGH:

Fazal
(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT,

& Uzma Syed
UZMA SYED

ADVOCATE PESHAWAR

Room No. Fr-8, 4th Floor,
Bilour Plaza, Peshawar Cantt:
Contact No. 0306.5109438

(1)

BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

APPEAL NO: 9602/2020

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 7227

Dated 15/7/2020

Hazrat yousaf s/o Muhammad Painda Muhammad
R/o Battgram Tehsil And District Battgram
(Ex-Assistant Bps-16 Office Of The Deputy Commissioner Battagram)

..... appellant

Versus

1. Govt Of Khyber Pakhtunkhwa Through Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. Senior Member Board Of Revenue, Khyber Pakhtunkhwa Peshawar.
3. Commissioner Hazara Division, Abbottabad.

.....RESPONDENT

APPEAL UNDER SECTION-4 OF THE KP SERVICE TRIBUNAL ACT 1974, FOR DIRECTING THE RESPONDENTS TO CONSIDER THE APPELLANT FOR PROFORMA PROMOTION TO THE POST OF SUPERINTENDENT BPS-17 FROM THE DATE JUNIOR WAS PROMOTED AND AGAINST NOT DECIDING THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN STATUTORY PERIOD OF 90 DAYS.

PRAYER:

THAT ON ACCEPTANCE OF THIS APPEAL THE RESPONDENT MAY BE DIRECTED TO CONSIDER THE APPELLANT FOR PROFORMA PROMOTION TO THE POST OF SUPERINTENDENT BPS-17 W.E.F 09-04-2015 i.e FROM THE DATE OF PROMOTION OF THE JUNIOR, WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH HONORABLE TRIBUNAL THINKS DEEM FIT AND APPROPRIATE MAY ALSO BE AWARDED IN FAVOR OF APPELLANT.

Filed to-day
Registrar
15/7/2020

Re-submitted to -day
and filed.

Registrar
24/8/2020

RESPECTFULLY SHEWETH

2

FACTS

The brief acts of the case are as under

1. That the appellant was serving as assistant in BPS-15 in the office of DOR (E) battagram since 28.5.1992.
2. That according to KPK revenue department service rules 2001 for recruitment of promotion for NTS/TEHSILDAR the assistant who were working in the office of the DOR included in the quota of 12% for Naib Tehsildar and graduate assistant in 30% quota for Tehsildar in the year 2001 at that time the appellant was eligible for both the posts being holding the degree of post graduate , given option, the respondents according to the rules appointed / posted the appellant as HCR Naib Tehsildar in his own pay scale in the office of District Officer (R&E) Collector Shangla on 4.7.2006 and serving on different assignments.
3. That appellant instituted appeal before the service tribunal against the respondent for regularization Of his service as Naib Tehsildar. The Hon'able tribunal is kind enough to accept the appeal and directions were issued to respondents on 22.2.2010 that the promotion case of the appellant for the of Naib Tehsildar may be considered through departmental promotion committee but the respondents delayed the same for lame excuses including power of delegation to commissioner. The appellant filled execution petition for the above cited order which was implemented by the respondents on 11.11.2010 w.e.f 4.7.2006 toward regular service as Naib Tehsildar for the purpose of seniority at proper place. **Copy of judgment and order is attached as annexure-A & B.**
4. That respondents no.2 on one side implemented the service tribunal order on 11.11.2010 and on other side had having grudges incursion, ulterior motive and malafide intention against the appellant as why the appellant instituted the service appeal/implementation proceedings against them, so they picking a apart on the orders of the service tribunal and lastly withdrawn the same order dated 11.11.2010 vide order dated 09.09.2016. against which appellant filed service appeal but the same was also dismissed by the service tribunal on 17.10.2018. thereafter appellant has been repatriated in the office of respondents No.04 as assistant vide order dated 5.11.2018. **copy of order ,judgment and order is attached as annexure-C, D & E.**

5. That the respondents no. 2 always misstated regarding the service records of the appellant, so the respondents no.2&3 w.e.f 4.7.2006 till attaining the age of superannuation of the appellant i.e 05.04.2019 did not held DPC meeting for the promotion of the appellant with ulterior motive and with malafide intention , made out discrimination.
6. That the responder No. 3 who prepared the joint seniority list stood on 25.10.2010 and 2014 the date of regular appointment / promotion was shown on 28.05.1992 at S. No 13 while the Jamal Hussain Shahat S.no ,21 on 17.7. 1996 who is junior to the appellant was promoted to BPS-17 as supdt: vide notification dated 9.4.2015 so the appellant agitated the matter and claim promotion from the date junior was promoted as Superintendent but of no vail, in meanwhile appellant was retired on 05.04.2019. **copy of seniority list, order, applications/appeals and retirement order is attached as annexure-F, G, H & I.**
7. That the appellant filed writ petition for the proforma promotion to the post of BPS-17 but the same was dismissed vide order dated 25.02.2020 for want of jurisdiction with the direction to approach the proper forum for redressal of grievances. **Copy of judgment is attached as annexure-J.**
8. That thereafter the appellant filed departmental appeal for proforma promotion as superintendent BPS-17 from the date junior was promoted but the departmental appeal of the appellant was decided within statutory period of 90 days. Hence the present appeal on the following grounds amongst others. **Copy of departmental appeal is attached as annexure-K.**

GROUNDS

- A. That the respondents act and proceedings regarding the service of the appellant is illegal , malafide ,discriminating and not base on equality.
- B. That the respondents appointed /posted on the quota basis the appellant in his own pay and scale on 04.07.2006 by the respondents.

4

- C. That inaction and omission of respondent department, not to consider the appellant for promotion is against the spirit of section-9 of Civil Servants Act, 1973 and service rights duly protected under the Civil Servants laws .
- D. That the apex Court has already clearly held in case of Anita Turab (PLD-2013 Supreme Court Page No. 195) that matter of tenure, appointment, posting, transfer and promotion, of service could not be dealt with in an arbitrary manner but could only be sustained if it was in accordance with law. Whenever there was statutory provision or rules or regulation of government the matter of appointment of Civil Servants that must be followed honestly and scrupulously and discretionary must be exercised and structured, transparent and reasonable manner, thus the verdict of the Honorable Supreme Court fully favours the appellant's case.
- E. That as there is no any order regarding the stoppage of promotion of appellant, therefore, the appellant has legal vested rights to be considered for promotion from the date when junior to him was promoted. (97-SCMR-1997-515).
- F. That at the relevant time appellant was eligible for promotion and top of the seniority list and the appellant was therefore promoted but if any irregularities was committed that's was by the deptt but the appellant was suffer for the same and promotion order of the appellant was withdrawn and the appellant was restored on his post of assistant and also provided him to his seniority but without promotion which was due since 2015. Which is great in-justice with the appellant. **Copy of seniority list is attached as annexure-L.**
- G. That according to fresh amendment the appellant has the right to promoted with his due date i.e when the junior to the appellant was promoted.
- H. That the respondents no.2 w.e.f 04.07.2006 to 05.04.2019 no DPC was conducting regarding the promotion of the appellant , while in the meanwhile Mr. Jamil shah who is at s.no21 and the appellant was at S.no 13 but he was promoted to BPS-17 while appellant was retired in BPSS-16 on 05.04.2019 , the appellant is senior to him , so this act of the respondent no.2 is the violation of law, service rules ,discriminating and against the equity which is without lawful authority.

- I. That the appellant was deprived from his legal right by not considering for promotion to the post of BPS-17 from the date when junior was promoted which also suffered appellant's pensionary emolument.
- J. That it is well settled principle of justice that no one should be suffered from the arbitrary acts of public functionaries and the public functionaries are required to act in accordance with rules and law with fair means. But in case of appellant such principle has been violated.
- K. That the appellant is senior to him than the Jamil shah who has been promoted in BPS-17 which is clear discriminating and the violation of rules, so the appellant is also entitled for promotion as well as the retirement pension benefits after retirement.
- L. That the appellant has not been treated in accordance with law and his rights secured and guaranteed under the law has also been badly violated.
- M. That the service tribunal allowed the service appeal no .1461/2009 of the appellant regarding which the execution petition was institutes while passing remarks in service appeal n0.1214/2016 decided on 17.10.2018 stated that the appellant /appellant may recourse to the restoration of execution petition in connection with service appeal mentioned cited above ,the appellant is now has been retired ,while the same process is very lengthy and the respondents already rebutted the same order on one or the other reasons.
- N. That the appellant is also entitled to be Performa promoted with arrears of pay allowance pensions etc of BPS-17 arising from the date fixation of the appellant seniority as it was the fault of department not the appellant according to F,RULE 17(1). **Copy of rule is attached as annexure-M.**
- O. That the appellant being eligible and senior most and legally entitled for promotion to the post of superintendent according to rules of the respondent department. **Copy of Rules is attached as Annexure-N.**

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- P. That the respondents did not promote to appellant and caused financially as well as service career loss , willfully to appellant which is against the law in vogue.

- Q. That the appellant during his service was entitled for service promotion to BPS-17 , meanwhile the appellant was retired from service on 05.04.2019 in BPS-16. Therefore the appellant is entitled after retirement for what ,which was due to , him during his service, while this august high court as well as supreme court of Pakistan in WP NO.249-A/13 295-A/13 dated on 24.04.2013 by his honorable court SCRM 1996 1185 ,2009 SCMR 1, PLJ 96 160 ,PLJ 1996 163, ,PLD 94 233© 2012 SCRM 126 ,SCMR 2010 1466,PLC 2009 303 ,PLC 2009.

- R. That by no sketch of imagination, the appellant can be deprived from the valuable rights in the light of dictums of the supreme courts as well as high court.


- S. That appellant Seeks permission to advance other grounds at the time of arguments.


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


Appellant

Hazrat Yousaf

THROUGH:


(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT


UZMA SYED
ADVOCATE HIGH COURT

Date of Order or Proceedings

Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary

A (7)

22.2.2010

Appellant with counsel and Mr. Tahir Iqbal, AGP alongwith Muhammad Zarif, Asstt:Secretary on behalf of the respondents present. Arguments heard & record perused.

It was noticed during the course of arguments, that the respondents, in para-7 of their written reply/comments, have categorically stated that the request of the official concerned i.e. the appellant, will be considered in the light of the seniority-cum-fitness as and when Selection/Promotion Committee meeting (is held) which will be arranged by the department. The respondents have also attached a copy of memo. dated 27.4.09 to the said effect, from the Assistant-Secretary (Admn.) Board of Revenue M.F.P to the District Officer (Revenue & Estate)/Collector, Battagram.

The learned counsel for the appellant, while placing reliance on the afore-mentioned memo., stated that the object of the appeal would be met if the directions are issued to the respondents in accordance with the said memo.

Consequently, directions are issued accordingly for consideration of

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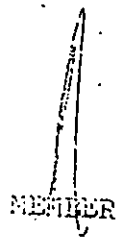
GSE/PO/NWFP/459/14-FS-500 P.uds-17.11.07/P1(Z)/Form Stor Jobs/NWFP Criminal 210

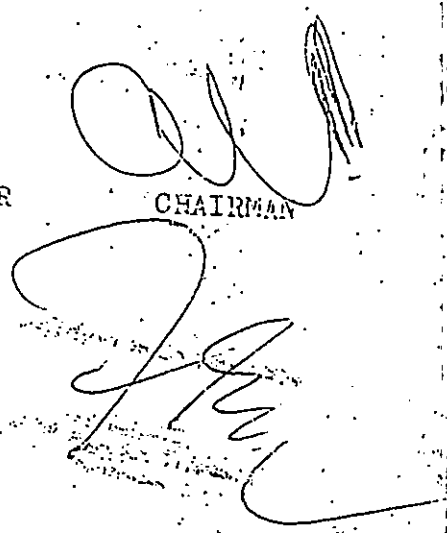
Order of Magistrate	Date of Order or Proceedings	Order of other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
	2	3

the case of the appellant on merits in
the next DPC meeting, which shall be
convened, preferably, within a reasonable
time i.e. three/four months. The appeal
is disposed of accordingly, with no order
as to costs.

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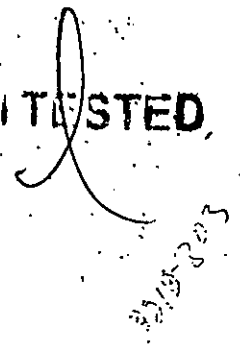
22.2.2010

MEMBER


CHAIRMAN


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**GOVERNMENT OF
KHYBER PAKHTUNKHWA
REVENUE & ESTATE DEPARTMENT**

PESHAWAR DATED // /11 2010

ORDER

No. 22110/10 /Admin:V/(H. Yousaf) in pursuance of Judicial order dated 15.11.2010 passed by the Court of Senior Member, Board of Revenue, Khyber Pakhtunkhwa in case No. 305/2010. Mr. Hazrat Yousaf Naib Tehsildar (Own Pay & Scale) is hereby promoted to the post of Naib Tehsildar (BPS-14) on regular basis and the services rendered by him as Naib Tehsildar (Own Pay & Scale) with effect from 04.07.2006 are to be counted towards regular service and for the purpose of seniority at proper place.

Consequent upon his promotion as Naib Tehsildar (BPS-14) on regular basis he is posted as District Revenue Accountant, Batagram against vacant post with immediate effect.

Senior Member
Board of Revenue Khyber Pakhtunkhwa

No. 24876-79 /Admin:V/(H. Yousaf)

Copy to:-

1. Commissioner, Hazara Division.
2. District Coordination Officer, Batagram.
3. District Officer (R&E)/Collector, Batagram.
4. District Accountant Officer, Batagram.
5. Official Concerned.
6. Personal File.
7. Office Order File.

Senior Member
Board of Revenue Khyber Pakhtunkhwa

AE

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GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT

Peshawar Dated 8/09/2016

ORDER

WHEREAS Mr. Hazrat Yousaf 22745 promoted to the post of Naib Tehsildar on 11.11.2010 on regular basis through administrative order without holding of Departmental Promotion Committee meeting.

NOW THEREFORE, in pursuance of order passed by Senior Member, Board of Revenue on 01.09.2016 the promotion / regularization order dated 11.11.2010 read with notification bearing No. 24876-79/Admn.V/PP(H. Yousaf), dated 11.11.2010 being made in violation of Service Rules and instructions governing promotions is hereby withdrawn with immediate effect.

By Order of
Senior Member

Hazrat Yousaf 22745 HS

Copy forwarded to the
Commissioner, Hazara Division
Deputy Commissioner, Battagram
District Accounts Officer, Battagram
Officer in Charge, Peshawar

Assistant Secretary (R&E)

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... or other proceedings with signature of Judge or Magistrate



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 1214/2016

Date of Institution 30.11.2016
Date of Decision 17.10.2018

Hazrat Yousaf, Naib Tehsildar, Oghi.

Appellant

Versus

1. The Chief Secretary Khyber Pakhtunkhwa Peshawar.
2. The SMBR, Revenue Department Peshawar
3. The Deputy Commissioner Manshra.

Respondents

Mr. Muhammad Hamid Mughal-----Member(J)
Mr. Hussain Shah-----Member(E)

17.10.2018

JUDGMENT

MUHAMMAD HAMID MUGHAL, MEMBER: - Learned

counsel for appellant and Mr. Zia Ullah learned Deputy District Attorney for the respondents present.

2. The appellant has filed the present appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 09.09.2016 whereby the order dated 11.11.2010 alongwith administrative order/notification of the same date of the then SMBR Khyber Pakhtunkhwa regarding the promotion of the appellant as

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Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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Tehsildar on regular basis, was withdrawn. The appellant has also challenged the order dated 21.11.2016 through which his departmental appeal against the original impugned order was rejected.

3. Learned counsel for the appellant argued that the appellant filed service appeal No.1461 in the year 2009 for regular promotion as Naib Tehsildar and vide judgment dated 22.02.2010 passed in the said service appeal, the respondent department was directed to place the case of appellant before next DPC; that the respondent department was not implementing the directions of the Tribunal, therefore, the appellant filed implementation petition before this Tribunal and an application before SMBR and the then SMBR passed an order dated 11.11.2010 whereby the appellant was given his due rights of regular promotion as Naib Tehsildar w.c.f 04.07.2006. Further argued that to the utter surprise of the appellant the SMBR withdrew the promotion order of the appellant on 09.09.2016 and the departmental appeal of the appellant against the said order was also rejected. Learned counsel for the appellant argued that the impugned orders are against law, facts, norms of justice and fair play. Further argued that the promotion order dated 11.11.2010 was issued on the direction of this Tribunal. Further argued that valuable rights accrued to the appellant as a result of the promotion order dated 11.11.2010 and the appellant's promotion could not be withdrawn under the principle of Locus Poenitentiae.

17/10/2018

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As against that learned Deputy District Attorney argued that

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Appellant has not come to this Tribunal with clean hands; that this Tribunal has not issued any directions for out of turn promotion without adopting codal formalities and observing legal requirements but on the other hand the then SMBR through administrative order regularized the services of the appellant as Naib Tehsildar without holding Departmental Promotion Committee Meeting. Further argued that the appellant is in fact a junior official and cannot be promoted as such. Further argued that promotion can only be made through Departmental Promotion Committee Meeting but the promotion order of the appellant was issued through administrative order. Further argued that an illegal act cannot create a single right nor the rule of Locus Poenitentiae is applicable to the case of appellant. Further argued that the then SMBR who issued the unlawful orders is required to NAB authorities and is fugitive from law.

5. Arguments heard. File perused.

6. Perusal of the impugned order dated 09.09.2016 would show that the Promotion/Regularization order dated 11.11.2010 and Notification dated 11.11.2010 regarding promotion of the appellant was withdrawn on the ground that the appellant was promoted to the post of Naib Tehsildar on 11.11.2010 through administrative order without holding of departmental Promotion Committee and as such the same was in violation of Service Rules and instructions governing promotion.


7. The appellant earlier filed service appeal bearing No.1461 in

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 Khayal P. M. S. Khayal
 Service

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9 for the purpose of issuance of directions to the respondents to consider him for regular promotion as Naib Tehsildar and this Tribunal vide judgment dated 22.02.2010 issued directions for consideration of the case of appellant on merits in the next DPC Meeting. Astonishingly the appellant instead of attaining promotion through DPC, adopted another channel and got himself promoted through the administrative order of the SMBR. The then SMBR vide order dated 11.11.2010 accepted the application/appeal of the appellant and promoted him to the post of Naib Tehsildar on regular basis and then on the same date issued administrative order under his signatures regarding the promotion of the appellant to the post of Naib Tehsildar on regular basis.

8. There is no cavil to the proposition that the promotion of a civil servant is to be made in accordance with Section 5 of the Khyber Pakhtunkhwa Civil Servants Act and Rule-7 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. As such in the case of appellant the approval of Departmental Promotion Committee is mandatory for the purpose of promotion.

9. The promotion of the appellant to the post of Naib Tehsildar was not made in the manner prescribed by the law/rules on the subject. Shield of principle of Locus Poenitentiae is not allowed to the beneficiary of illegal actions, for protection/defense. Admittedly the then SMBR who issued the illegal orders is still absconding.

10. It may be observed that had the appellant properly pursued

11/11/2010

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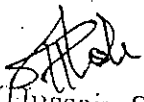
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 CHIEF JUSTICE
 SUPREME COURT OF KHYBER PAKHTUNKHWA


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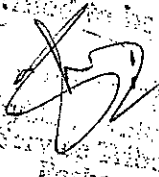
his execution petition for the implementation of judgment dated 22.02.2010, the meeting of DPC would have been convened and his grievances might have been addressed long ago in a proper manner.

11. As a sequel to above, the appellant has not been able to seek indulgence of this Tribunal, consequently the present service appeal is dismissed. The appellant may however seek the redressal of his grievance, if any, through restoration of his execution petition in connection with service appeal No.1461/2009, in accordance with law, if so advised. Parties are left to bear their own costs. File be consigned to the record room.


 (Hussain Shah)
 Member


 (Muhammad Hamid Mughal)
 Member

ANNOUNCED
 17.10.2018

Certified to be true copy

 Peshawar

Date of Presentation of Appeal 10-01-19
 Number of Words 2000
 Copying Fee 12
 Urgent 2
 Total 14
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 Date of Completion of Copy 10-01-19
 Date of Delivery of Copy 10-01-19

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**GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT**

Peshawar dated the 15/11/2018

ORDER

No. Estt: V/PF/Hazrat Yousaf/ _____ In pursuance of Service Tribunal judgement / order dated 17.10.2019. passed in service appeal No.1224/2016. Hazrat Yousaf VS Chief Secretary, Khyber Pakhtunkhwa the services of Mr. Hazrat Yousaf, Assistant, presently working as Naib Tehsildar Dassu Hydro Power Project District Kohistan is hereby repatriated to his parent office i.e Deputy Commisisoner, Battagram with immediate effect.

By order of
Competent Authority

No. Estt: V/PF/Hazrat Yousaf/ 37124-29

Copy forwarded to the:-

1. Accountant General, Khyber Pakhtunkhwa
2. Commissioner, Hazara Division Abbottabad.
3. Deputy Commissioner, Battagram
4. District Accounts Officer, Battagram
5. Official concerned.
6. Personal Files.

Diary No:	<u>7156</u>
Date:	<u>23-11-18</u>
Branch:	<u>DC</u>
Remarks:	
Sign:	<u>[Signature]</u>
D.C (B)	<u>[Signature]</u>

~~Assistant Secretary (Estt)~~

15/11/2018

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TENTATIVE JOINT SENIORITY LIST OF ASSISTANTS (BPS-14) OF THE OFFICES OF COMMISSIONER/DCO/DOR/EDO (F&P) AND POLITICAL AGENTS ON DIVISIONAL BASIS AS IT STOOD ON 25/10/2010

S #	Name of Official	Designation	Date of Birth	Qualification	Date of first entry into Govt. Service	Date of regular Appointment / Promotion	Method of Recruitment (Direct or Promotion)	Office	Remarks
1	Gulzar Ahmed Naushad	Assistant	12/01/1961	M.A	17/11/1982	17/11/1982	Direct	F&P Abbottabad	-----
2	Zulfiqar Ahmed	-do-	12/11/1950	Matric	26/12/1973	16/11/1983	Promotee	DOR Abbottabad	-----
3	Bakhat Alam	-do-	12/07/1961	M.A (Islamyat)	05/12/1984	05/12/1984	Direct	DO R&E Kohistan	-----
4	Mohammad Mahroof	-do-	01/12/1957	Matric	24/05/1977	22/07/1985	Promotee	DCO Abbottabad	-----
5	Fiaz Ahmed Qureshi	-do-	12/04/1962	B.A	15/08/1982	20/07/1988	Direct	DCO Abbottabad	-----
6	Zahid Hussain	Assistant	13/03/1957	B.A	09/12/1978	01/09/1990	Promotee	DN/DCO Office Manshra	-----
7	Tahir Ashraf	-do-	24/01/1970	M.A	28/02/1988	01/11/1990	Direct	F&P Abbottabad	-----
8	Saddique Ahmed	-do-	30/06/1953	Matric	01/03/1972	19/12/1990	Promotee	DOR(R&E) Abbottabad	-----
9	Arshad Mehmood	-do-	04/02/1967	MSc/LLB	17/09/1991	17/09/1991	Direct	DCO Haripur	-----
10	M.Hasarat Khan	-do-	15/04/1968	B.A	17/09/1991	17/09/1991	Direct	DCO Haripur	-----
11	Sajjad Haider	-do-	19/05/1965	M.A	17/09/1991	18/09/1991	Direct	DCO Haripur	-----
12	Tasawar Khan	-do-	15/04/1968	B.A	05/03/1992	5/03/1992	Direct	DCO Haripur	-----

ATTACHED

Office Letter No.2/3Etab/8888-89 dated 20/10/2010

The Tentative seniority list is resubmitted

[Signature]
25/10/10

Attention
Assistant Secy; Etab; KPK
B/Sir Jeelani

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25/10/10

13	Hazrat Yousaf	-do-	06/04/1959	M.A	01/01/1977	28/05/1992	Promotee	DO(R&E) Batagram	Mr. Hazrat Yousaf claiming as seniority as Assistant w.e.f 01/9/1990 on the basis that he was promoted as Assistant in Sep, 1990 in own pay scale and regularly promoted on 28/5/1992. In this regard his application submitted by DO(R&E) Batgram has also forwarded to Commissioner Office vide this office memo No DN-AE/4007 dated 29/6/2010
14	Walidad	-do-	06/10/1955	B.A	30/06/1977	12/05/1992	Promotee	F&P Abbottabad	-----
15	Sattar Mohammad Khan	-do-	19/02/1960	M.A (Islamyat)	22/11/1980	01/12/1993	Promotee	DCO Kohistan	-----
16	Mohammad Javed	-do-	15/04/1954	B.A	09/12/1974	16/03/1993	Promotee	F&P Mansehra	-----
17	Sajjad Ahmed	-do-	18/01/1957	Matric	01/10/1977	10/07/1993	Promotee	F&P Abbottabad	-----
18	Ishtiaq Sultan	Assistant	15/06/1972	M.A	26/07/1995	26/07/1995	Direct	F&P Mansehra	-----
19	Mohammad Javed	-do-	17/03/1956	Matric	20/09/1974	01/05/1996	Promotee	DCO Abbottabad	-----
20	Saeed Ahmed	-do-	31/12/1959	B.A	24/01/1983	05/08/1996	Promotee	R&E Haripur	-----
21	Jamil Hussain Shah	Assistant	08/03/1967	F.A	05/03/1985	17/07/1996	Promotee	DCO Office Batagram	-----
22	Dildar Ali Shah	-do-	12/02/1961	Matric	22/11/1990	17/07/1996	Promotee	DCO Office Batagram	-----
23	Mohammad Riaz	-do-	09/07/1957	Matric	20/10/1975	8/11/1997	Promotee	F&P Abbottabad	-----
24	htar Nawaz	-do-	15/02/1960	B.A	16/06/1980	02/07/1999	Promotee	DCO Abbottabad	-----

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25	Mohammad Tariq	-do-	04/02/1958	B.A	01/10/1977	20/05/2000	Promotee	DCO Abbottabad	-----
26	Mohammad Asif	-do-	15/04/1959	B.A	15/04/1977	14/08/2001	Promotee	F&P Abbottabad	-----
27	Shamsur Rehman	-do-	13/05/1954	Matric	21/01/1978	26/05/2003	Promotee	DO(R&E) Mansehra	-----
28	Rehman Ullah	-do-	01/01/1964	Matric	25/10/1982	16/12/2003	Promotee	EDO(F&P) Kohistan	-----
29	Nisar Ahmed	-do-	05/02/1964	Matric	01/05/1983	16/12/2003	Promotee	DCO Kohistan	-----
30	Hakim Khan	-do-	01/06/1963	Matric	21/04/1985	16/12/2003	Promotee	DCO Kohistan	-----
31	Ahmed jan	-do-	05/05/1954	Matric	03/03/1977	26/12/2003	Promotee	EDO (F&P) Batagram	-----
32	Amir Muhammad	-do-	03/03/1974	D/Com	29/09/1993	26/12/2003	Promotee	EDO (F&P) Batagram	-----
33	Muhammad Nazir	-do-	14/11/1967	MA	30/09/1993	26/12/2003	Promotee	DCO Office Batgram	-----
34	Ghulam Yousaf	-do-	08/04/1968	BA	30/09/1993	26/12/2003	Promotee	DCO Office Batgram	-----
35	Muhammad Sher	-do-	03/03/1964	BA	21/10/1993	26/12/2003	Promotee	EDO (F&P) Batgram	-----
36	Farid Shah	-do-	13/03/1969	MA	30/09/1993	01/06/2004	Promotee	DCO Office, Batgram	-----
37	Syed Iqbal Shah	-do-	09/01/1956	Matric	13/12/1976	25/03/2004	Promotee	DOR (R&E) Haripur	-----
38	Liaqat Khan	-do-	03/02/1967	F.A	01/07/1990	25/03/2004	Promotee	DCO Haripur	-----
39	Khalil-ur-Rehman	-do-	01/12/1955	Matric	26/11/1990	25/03/2004	Promotee	DCO Haripur	-----
40	Navid Akhtar Khan	-do-	18/05/1969	B.A	16/09/1991	25/03/2004	Promotee	R&E Haripur	-----
41	Abid Raza	-do-	01/05/1967	F.A	15/12/1991	25/03/2004	Promotee	R&E Haripur	-----
42	Muhammad Khurshid	-do-	04/04/1957	Matric	01/10/1976	24/05/2004	Promotee	DCO Mansehra	-----
43	Mohammad Farid	-do-	01/01/1960	F.A	01/04/1977	24/05/2004	Promotee	DO (R&E) Mansehra	-----
44	Pir Mohammad ah	-do-	28/06/1954	B.A	01/08/1979	24/05/2004	Promotee	DCO Mansehra	-----
45	Ze Malik	-do-	14/02/1968	Matric	16/07/1987	27/05/2004	Promotee	DCO Kohistan	-----

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46	Mir Afzal	-do-	05/12/1959	Matric	01/01/1977	28/06/2004	Promotee	EDO (F&P) Kohistan	-----
47	Jahan Zeb	-do-	20/04/1977	B.A	15/10/1990	28/06/2004	Promotee	DO (R & E) Kohistan	-----
48	Mohyuddin	-do-	15/12/1971	B.A	15/10/1990	28/06/2004	Promotee	EDO (F&P) Kohistan	-----
49	Habib Ullah	-do-	10/04/1982	M.A(I.R)	01/04/2004	19/02/2005	Direct	EDO (F&P) Kohistan	-----
50	Noor ul Wahaj	-do-	06/03/1969	Matric	15/10/1990	29/09/2005	Promotee	EDO (F&P) Kohistan	-----
51	Shams ul Haq	-do-	01/02/1982	B.A	29/09/2005	29/09/2005	Direct	DCO Kohistan	-----
52	Liaqat Mehmood	-do-	21/07/1972	M.A	17/02/1994	19/06/2006	Promotee	F&P Haripur	-----
53	Asghar Khan	-do-	01/04/1978	M.A	19/06/2006	19/06/2006	Direct	F&P Haripur	-----
54	Mohammad Ejaz	-do-	12/02/1982	MBA	19/06/2006	19/06/2006	Direct	F&P Haripur	-----
55	Liaqat Ali	-do-	5/10/1979	M.A	19/06/2006	19/06/2006	Direct	P&D Haripur	-----
56	Faisal Mehmood	-do-	15/04/1984	BSc	19/06/2006	19/06/2006	Direct	F&P Haripur	-----
57	Kafayatullah	-do-	01/01/1970	MA	28/07/2006	28/07/2006	Direct(Reg: Contract	DCO Office Batgram	-----
58	Mushtaq Ahmad	-do-	02/03/1959	B.A	01/12/1976	25/11/2006	Promotee	F&P Mansehra	-----
59	Hakim Dad	-do-	03/12/1962	F.A	09/09/1981	25/11/2006	Promotee	F&P Mansehra	-----
60	Abdul Sattar	-do-	07/10/1958	Matric	12/12/1981	25/11/2006	Promotee	DO(R&E) Mansehra	-----
61	Yar Muhammad	-do-	06/01/1969	FA	01/07/1991	16/12/2006	Promotee	EDO (F&P) Batgram	-----
62	Shad Muhammad	-do-	14/02/1970	BA	30/09/1993	16/12/2006	Promotee	DO (R&E) Batgram	-----
63	Mohammad Iqbal	-do-	16/11/1962	Matric	12/10/1980	11/07/2007	Promotee	DCO Mansehra	-----
64	Mohammad Arif	-do-	03/06/1961	B.A	01/04/1983	11/07/2007	Promotee	F&P Mansehra	-----
65	Malik Mohammad Tariq	-do-	24/04/1963	Matric	27/03/1983	11/07/2007	Promotee	DCO Mansehra	-----
66	Tariq Mehmood	-do-	04/05/1966	F.A	01/07/1984	05/09/2008	Promotee	F&P Abbottabad	-----
67	Imam Muhammad	-do-	03/04/1971	FA	01/07/1992	23/05/2008	Promotee	EDO (F&P) Batgram	-----

ATTENDED

22

85	*Muhammad Rashid	-do-	13/10/1964	Matric	30/06/1988	30/06/2009	Promotee	CHD Abbottabad	In compliance of the order No 18691-97/Admn.IV/II/promotion/2009 dated 29/06/2009 he was adjusted against the post (defunct Revenue Appellate court) from being Assistant Board of Revenue KPK to as reader to Additional Commissioner Hazara Division Abbottabad. And he submitted his arrival report on 30/06/2009 in the court of Additional Commissioner Hazara Division Abbottabad.
86	Hussain Wali	-do-	05/04/1968	Matric	27/07/1992	22/01/2010	Promotee	EDO (F&P) Kohistan	-----
87	Anar Khan	-do-	01/01/1972	Matric	23/12/1992	22/01/2010	Promotee	EDO (F&P) Kohistan	-----
88	Ms.Aamina Zulfiqar	-do-	10/04/1978	B.A	05/03/2010	05/03/2010	Direct	DCO office Abbottabad	-----

ATTESTED

Note: *He will be remained at the bottom of seniority list pertaining to the Assistants of Commissioner Office Abbottabad, being on his own option.

4
Assistant to Commissioner (Rev/GA)
Hazara Division Abbottabad

(23)

TENTATIVE JOINT SENIORITY LIST
OF SENIOR SCALE STENOGRAPHERS (BPS-15) OF THE OFFICES OF
COMMISSIONER/ADDITIONAL COMMISSIONER/DCO/DOR/EDO (F&P)
AND POLITICAL AGENTS ON DIVISIONAL BASIS AS IT STOOD ON 25/10/2010

ATTACHED

S #	Name of Official	Date of Birth	Qualification	Date of first entry into Govt. Service	Date of regular Appointment / Promotion	Method of Recruitment (Direct or Promotion)	Office
1	Abdul Rehman	12/12/1960	B.A	03/07/1979	01/03/1990	Promotee	DCO Haripur
2	Asad Lohdi	15/04/1972	B.A, LLB	20/09/1992	5/12/1995	Promotee	CHD Abbottabad
3	Qazi Saeed	25/01/1971	B.A	07/08/1996	07/08/1996	Direct	R&E Haripur

4
Assistant to Commissioner (Rev/GA)
Hazara Division Abbottabad

G ~~ASST~~ (24) ~~24~~

GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT

Peshawar dated the 9/04/2015

NOTIFICATION

No. Estt:II/DPS/Suptd:/ _____ On the recommendation of Departmental Promotion Committee, Syed Jamil Hussain Shah, Assistant (BPS-16) office of the Deputy Commissioner, Batagram is promoted as Superintendent (BPS-17) on regular basis with immediate effect.

2. On promotion, he will be on probation for a period of one year in terms of section 6(2) of Khyber Pakhtunkhwa Civil Servant Act 1973 read with Rule 15 of Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion and Transfer) Rules, 1989.

By order of
Senior Member

End No. Estt:II/DPS/Suptd:/ 8391-95

Copy forwarded to the:-

1. Commissioner, Hazara Division, Abbottabad. He is requested to post the above official within the District.
2. Deputy Commissioner Batagram
3. District Accounts Officer, Batagram.
4. Official concerned.
5. Office Order File.

Secretary-I

ATTESTED

To

The Senior Member, Board of Revenue,
Government of Khyber Pakhtunkhwa,
Peshawar

H

25

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Through: PROPER CHANNEL

Subject: DEPARTMENTAL APPEAL/ REPRESENTATION FOR PROMOTION AS OFFICE SUPERINTENDENT BPS-17

Performa
wey

Respected Sir,

The applicant has the honor to submit the following before your good self:

1. That I was serving as Assistant in office of the Deputy Commissioner Office Battagram prior to devolution in the year 2000-2001 and thereafter retained the same post in the office of the District Officer (R&E/Collector Battagram) in the post devolution period.
2. That Government of Khyber Pakhtunkhwa Revenue & Estate Department prescribed service rules for recruitment and promotion to the posts of Tehsildar and Naib Tehsildar. According to the said rules, the Assistants who are working in the office of District Officer (R&E/Collector) were included in the Quota of 12% for Naib Tehsildar and Graduate Assistant in 30% Quota for Tehsildar in the year 2001 and thus I was eligible for both the posts holding the postgraduate degree.
3. That I had the fortune to place before the worthy Senior Member Board of Revenue Khyber Pakhtunkhwa my Application for promotion as Naib Tehsildar and I was accordingly posted as HCR in the office of District Officer (R&E/Collector Shangla and thereafter I worked on various assignments of the same post.
4. That I preferred an appeal to honorable Senior Member Board of Revenue Khyber Pakhtunkhwa for regularization of my service as Naib Tehsildar but I was informed vide letter No.10064/Admin-V/PF dated 27/04/2009, that my case will be considered in the DPC meeting whenever held. However, meeting of the DPC was not held and thus my case was held up. Subsequently I lodged an appeal before the Khyber Pakhtunkhwa services tribunal whereupon the Tribunal decided that my case for promotion as NT shall be considered within Three/ Four months (photocopy attached as Annexure-A).
5. That when my case for promotion was not taken up / considered by the office of honorable Senior Member Board of Revenue within the stipulated period in pursuance of judgment/ order of the Services Tribunal dated 22/02/2010, I was obliged to file an application for implementation wherein the Board of Revenue was given directions for the Implementation of the decision.
6. On my Application and in view of the above directions and order of the services tribunal, I was regularly promoted vide Senior Member Board of Revenue Khyber Pakhtunkhwa order bearing Endorsement No. 24876-79/Admin V(H.Yousaf) dated 11/11/2010 (photocopy attached as Annexure-B) on the last date of hearing

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ATTACHED

[Handwritten mark]

the Board of Revenue presented copy of the order and the honorable Chairman incorporated it in the order sheet that the order of the Services Tribunal may be complied with and the petitioners grievances is redressed thereby disposing of my implementation case (photocopy of the final order sheet dated 29/11/2010 is attached as Annexure-C).

- 7. That the Board of Revenue instant after the above mentioned proceeding again issued notice to the petitioner and the appellant was directed to appear before the Senior Member Board of Revenue to explain the reason. The petitioner appeared and submitted written reply. The Senior Member Board of Revenue satisfied from the same and passed order dated 9/01/2011 (photocopy attached as Annexure-D) for inclusion of my case in the upcoming DPC meeting of Hazara Division was referred to Secretary-I Board of Revenue for promotion as Naib Tehsildar to implement the order of the Services tribunal in its true spirit and the case was disposed of accordingly. That another notice dated 21/06/2016 was conveyed to the appellant wherein the promotion of the appellant was declared unlawful.
- 8. That the worthy SMBR vide his office order No. Estt V/PF (Hazrat Yousaf/22745 dated 09/09/2016 has withdrawn my regular promotion order dated 11/11/2010 read with Notification No.24876-79/ Admin V/PF (H. Yousaf dated 11/11/2010). That against this order I preferred an appeal to worthy Chief Secretary Khyber Pakhtunkhwa, Peshawar but my appeal was not accepted.
- 9. On this another appeal was filed before the Khyber Pakhtunkhwa Services Tribunal who also dismissed the appeal on 17/10/2018.
- 10. I am the senior most Assistant in the seniority list of Khyber Pakhtunkhwa issued by the Board of Revenue and some juniors Assistant to me have been promoted to the post of Tehsildar and Office Superintendent.
- 11. One Mr. Jamil Hussain Shah who is junior to me, has been promoted to the post of Office Superintendent vide Board of Revenue order bearing Endorsement No. Estt:II/DPS/Suptd:/8391-95 dated 9/04/2015 in office of the Deputy Commissioner Battagram (Photocopy of seniority List and his promotion order is attached as Annexure-E).

In view of the foregoing, It is humbly requested that Mr. Jamil Hussain Shah who is junior to me may kindly be reverted to the post of office Assistant and I may very kindly be promoted to the post of Superintendent BPS-17 from due date that is 9/04/2015 in office of the Deputy Commissioner Battagram, being the senior most Office Assistant in the Khyber Pakhtunkhwa and obliged.

12-P.H.C

Obediently Yours,

[Handwritten signature]

(HAZRAT YOUSAF)

Presently working as (Naib Tehsildar)
Dassu Hydropower Project Dassu Kohistan,

ATTSTED



(27)
~~Amir~~ ~~Q~~ ~~A~~ ~~SD~~

(GOVERNMENT OF KHYBER PAKHTUNKHWA)
OFFICE OF THE
DEPUTY COMMISSIONER
BATTAGRAM
Phone No. 0997-310136 & 310030

No. 709 /AE/ DC (B) Dated Battagram the 29 / 01 / 2019.

To:- The Commissioner,
Hazara Division Abbottabad.

Subject: - DEPARTMENTAL APPEAL, REPRESENTATION FOR
PROMOTION AS OFFICE SUPERINTENDENT BS-17

Memo:-
Kindly refer to your letter No. 2/17/ Estt./ ACR/ CHD 5165-67
dated 21/01/2019 on the subject noted above.

The requisite comments/ views are as under:-

- i. That Mr. Hazarat Yousaf was serving as Assistant in the establishment of Deputy Commissioner, Battagram and his date of promotion to the post of Assistant is 28/05/1992.
- ii. That the appellant was promoted to the post of Naib Tehsildar vide Senior Member of Revenue Khyber Pakhtunkhwa Revenue and Estate Department vide order bearing endorsement No. 28876-79/ Admn-V (H. Yousaf) dated 11/11/2010 (photo copy attached as **(Annexure-A)**).
- iii. That the promotion order as Naib Tehsildar of the appellant was withdrawn by the Senior Member Board of Revenue Khyber Pakhtunkhwa Revenue and Estate Department vide order bearing endorsement No. Estt: VI/ PF (H. Yousaf) 22745-46 dated 09/09/2016 (photo copy attached as **(Annexure-B)**).
- iv. That the appellant filed an appeal against the withdrawal order before the worthy Chief Secretary Khyber Pakhtunkhwa

ATTESTED

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Peshawar and subsequently in the Khyber Pakhtunkhwa service tribunal and both the authorities dismissed the appeal (photo copy attached as **(Annexure-C&D)**).

- v. The official was repatriated to his parent office Deputy Commissioner, Battagram vide Senior Member Board of Revenue Khyber Pakhtunkhwa Revenue and Estate Department order bearing endorsement No. Estt:VI/ PF/ H. Yousaf/ 37124-29 dated 05/11/2018. (photo copy attached as **(Annexure-E)**).
- vi. The name of appellant was remained in joint seniority list of Assistants etc upto 2010. (photo copy of the Seniority list for the year 2009 & 2010 attached as **(Annexure-F & G)**, and was extracted from the Sonority List of Assistant etc issued onward.
- vii. During this period one Mr. Jamil Hussain Shah who Junior to the appellant was promoted as Superintendent vide Senior Member Board of Revenue Khyber Pakhtunkhwa Revenue and Estate Department notification bearing endorsement No. Estt:II/ DPS/ Suptd:/ 8391-95 dated 09/04/2015 appeal (photo copy attached as **(Annexure-H)**).

The appeal of the appellant may kindly be considered according to the rules and regulations please

[Handwritten signature]
Deputy Commissioner,
Battagram

ATTESTED



DEPUTY COMMISSIONER BATTAGRAM
(Khyber Pakhtunkhwa)

Deputy Commissioner Battagram

ap.batagram@gamil.com

0997-310136

0997310051

No. 1689-94 /EC

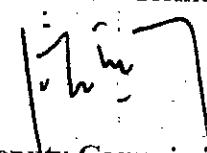
Dated: 12 / 3 /2019

OFFICE ORDER:

No. _____ /AE/DC (B) 2019. On attaining the age of 60 (sixty) years (superannuation) Mr. Hazrat Yousaf Assistant (BPS-16) of this office is hereby retired from Government Service with effect from 05-04-2019 (After Noon) with full fledged benefit as admissible under the rules.

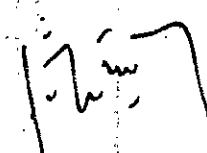
Sanction to the leave encashment of 365 days in lieu of L.P.R is also accorded in favour of retiring official subject to observance of all code of formalities.

No. 1689-94 /EC


Deputy Commissioner,
Battagram.

Copy to:-

1. The Commissioner Hazara Division Abbottabad.
2. The Secretary Board of Revenue, Revenue & Estate Department Peshawar.
3. The Additional Deputy Commissioner Battagram.
4. The District Accounts Officer Battagram
5. The District Nazir (Local) for necessary action.
6. Official concerned.
7. Office copy.


Deputy Commissioner,
Battagram.

ATTESTED.

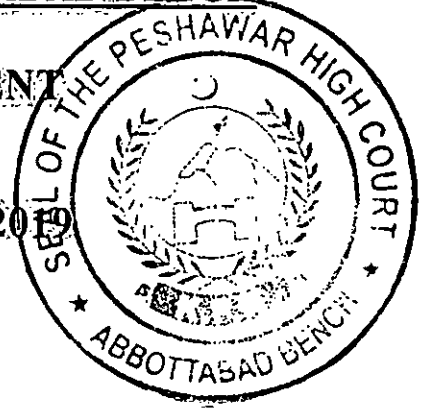
J
30
JUDGMENT SHEET

PESHAWAR HIGH COURT, ABBOTTABAD BENCH

JUDICIAL DEPARTMENT

Writ Petition No.527-A of 2019

JUDGMENT



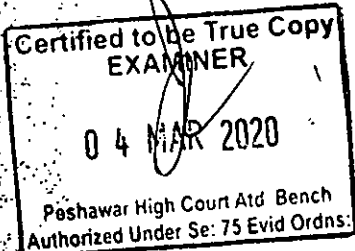
Date of hearing: 25.02.2020

Petitioner(s) ... (Hazrat Yousaf) by Mr. Muhammad Ishaq Battagrami, Advocate.

Respondent(s)... (Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar etc) by Raja Muhammad Zubair, Additional Advocate General.....

AHMAD ALI, J.:- Through the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner, Hazrat Yousaf, invoked the constitutional jurisdiction of this Court with the following prayer:-

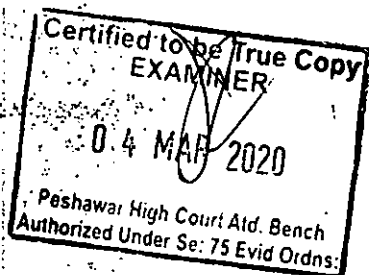
"It is therefore prayed that on acceptance of the instant writ petition, the respondents may be directed to proforma promote the petitioner in BPS 17 w.e.f 09.04.2015 the date of promotion of the junior similar placed officer in the light of judgments of Supreme Court of Pakistan as well as High Court besides respondents may also further



be directed to grant arrears, revise pension as well as monthly in his commutation and pension on account of proforma promotion BPS-17 and any other appropriate, just order and remedy which the Honourable Court deems in the circumstances of the case be granted to the petitioner against the respondents."

2. Brief facts of the case as averred in the writ petition are that initially the petitioner was serving as Assistant (BPS-15) in the office of DORE and subsequently, he was posted as 'Naib Tehsildar' in his own pay and scale. However, the services of the petitioner were regularized as 'Naib Tehsildar' through an order dated 20.02.2010 issued by Khyber Pakhtunkhwa Service Tribunal Battagram. The petitioner asserted that since the respondents developed grudge against him due to filing of appeal against them in the Service Tribunal, as such, they with malafide intention withdrawn the order of his promotion as 'Naib Tehsildar' vide order dated 09.09.2016 and subsequently repatriated him to his parent department i.e. Deputy Commissioner, Battagram, vide order dated 05.11.2018 and on attaining superannuation, he was retired from service on 05.04.2019 as Assistant (BPS-16). During the

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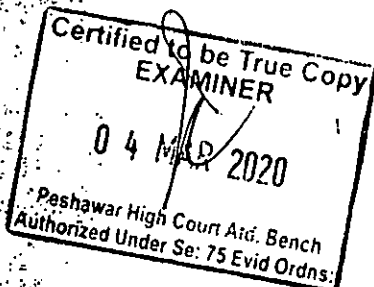


tenure of his appointment as 'Naib Tehsildar', his name was removed from the joint seniority list of Assistants and his junior was promoted as Superintendent BPS-17. Now, the petitioner is seeking his proforma promotion in BPS-17, after his retirement.

3. The respondents filed their parawise comments, wherein, they controverted the claim of the petitioner on various legal and factual grounds.

4. Arguments heard and record perused.

5. Admittedly, the petitioner was a civil servant and the issue raised in the instant petition qua proforma promotion relates to terms and conditions of his service, which can only be agitated before the Service Tribunal, even after his retirement, which has been established for this purpose. There is no cavil with the proposition that Article 212 of the Constitution of Islamic Republic of Pakistan has placed specific bar on the jurisdiction of this court in interfering with the matters relating to terms and conditions of service of a civil servant. This being so, the petitioner has wrongly invoked the constitutional jurisdiction of this court under Article 199 of the



Constitution. The grievances of the petitioner can amicably be resolved by the Service Tribunal as the petitioner had earlier filed appeal twice for the same purpose.

6. For what has been discussed above, instant petition is dismissed accordingly. The petitioner is at liberty to approach the proper forum for redressal of his grievance, if so advised.

Announced.

Dt. 25.02.2020.

sc/ JUDGE

sc/ JUDGE

M. Saleem/

(DB) Mr. Justice Shakeel Ahmad and Mr. Justice Ahmad Ali

Certified to be True Copy
 EXAMINER
 04 MAR 2020
 Peshawar High Court Atd. Bench
 Authorized Under Se: 75 Evid Ordns.

To

The Senior Member, Board of Revenue,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: **DEPARTMENTAL APPEAL/ REPRESENTATION FOR
PROFORMA PROMOTION AS OFFICE SUPERINTENDENT BPS-
17 W.E.F 09-04-2015.**

Respected Sir,

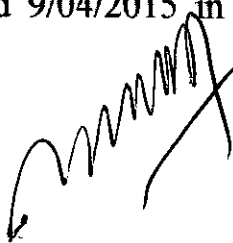
The applicant has the honor to submit the following before your good self:

1. That I was serving as Assistant in office of the Deputy Commissioner Office Battagram prior to devolution in the year 2000-2001 and thereafter retained the same post in the office of the District Officer (R&E/Collector Battagram) in the post devolution period.
2. That Government of Khyber Pakhtunkhwa Revenue & Estate Department prescribed service rules for recruitment and promotion to the posts of Tehsildar and Naib Tehsildar. According to the said rules, the Assistants who are working in the office of District Officer (R&E/Collector) were included in the Quota of 12% for Naib Tehsildar and Graduate Assistant in 30% Quota for Tehsildar in the year 2001 and thus I was eligible for both the posts holding the postgraduate degree.
3. That I had the fortune to place before the worthy Senior Member Board of Revenue Khyber Pakhtunkhwa my Application for promotion as Naib Tehsildar and I was accordingly posted as HCR in the office of District Officer (R&E/ Collector Shangla and thereafter I worked on various assignments of the same post.
4. That I preferred an appeal to honorable Senior Member Board of Revenue Khyber Pakhtunkhwa for regularization of my service as Naib Tehsildar but I was informed vide letter No.10064/Admin-V/PF dated 27/04/2009, that my case will be considered in the DPC meeting whenever held. However, meeting of the DPC was not held and thus my case was held up. Subsequently I lodged an appeal before the Khyber Pakhtunkhwa services tribunal whereupon the Tribunal decided that my case for promotion as NT shall be considered within Three/ Four months (photocopy attached as Annexure-A).



ATTESTED

5. That when my case for promotion was not taken up / considered by the office of honorable Senior Member Board of Revenue within the stipulated period in pursuance of judgment/ order of the Services Tribunal dated 22/02/2010, I was obliged to file an application for implementation wherein the Board of Revenue was given directions for the Implementation of the decision.
6. On my Application and in view of the above directions and order of the services tribunal, I was regularly promoted vide Senior Member Board of Revenue Khyber Pakhtunkhwa order bearing Endorsement No. 24876-79/Admin V(H..Yousaf) dated 11/11/2010 (photocopy attached as Annexure-B) on the last date of hearing the Board of Revenue presented copy of the order and the honorable Chairman incorporated it in the order sheet that the order of the Services Tribunal may be complied with and the petitioners grievances is redressed thereby disposing of my implementation case (photocopy of the final order sheet dated 29/11/2010 is attached as Annexure-C).
7. That the Board of Revenue instant after the above mentioned proceeding again issued notice to the petitioner and the appellant was directed to appear before the Senior Member Board of Revenue to explain the reason. The petitioner appeared and submitted written reply. The Senior Member Board of Revenue satisfied from the same and passed order dated 9/01/2011 (photocopy attached as Annexure-D) for inclusion of my case in the upcoming DPC meeting of Hazara Division was referred to Secretary-I Board of Revenue for promotion as Naib Tehsildar to implement the order of the Services tribunal in its true spirit and the case was disposed of accordingly. That another notice dated 21/06/2016 was conveyed to the appellant wherein the promotion of the appellant was declared unlawful.
8. That the worthy SMBR vide his office order No. Estt V/PF (Hazrat Yousaf/22745 dated 09/09/2016 has withdrawn my regular promotion order dated 11/11/2010 read with Notification No.24876-79/ Admin V/PF (H. Yousaf dated 11/11/2010). That against this order I preferred an appeal to worthy Chief Secretary Khyber Pakhtunkhwa, Peshawar but my appeal was not accepted.
9. On this another appeal was filed before the Khyber Pakhtunkhwa Services Tribunal who also dismissed the appeal on 17/10/2018.
10. I am the senior most Assistant in the seniority list of Khyber Pakhtunkhwa issued by the Board of Revenue and some juniors Assistant to me have been promoted to the post of Tehsildar and Office Superintendent.
11. One Mr. Jamil Hussain Shah who is junior to me, has been promoted to the post of Office Superintendent vide Board of Revenue order bearing Endorsement No. Estt:II/DPS/Suptd:/8391-95 dated 9/04/2015 in office of the Deputy Commissioner



ATT/STED

36

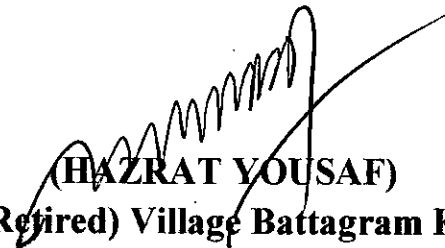
Battagram (Photocopy of seniority List and his promotion order is attached as Annexure-E).

12. That I have filed writ petition in the Peshawar High Circuit Bench Abbottabad for grant of proforma promotion office superintendent BPS-17 but the same was dismissed with the direction to approach the proper forum for redressal of the grievances (Photocopy of the decision attached).

In view of the foregoing, It is humbly requested that I may very kindly be granted proforma promotion as Superintendent BPS-17 from the date my junior was promoted i.e 9/04/2015 in office of the Deputy Commissioner Battagram, being the senior most Office Assistant and also order arrears, revise pension as well as monthly in commutation and pension on account of proforma promotion BPS-17 and obliged.

Obediently Yours,

Dated 17-03-2020.


(HAZRAT YOUSAF)
Assistant (Retired) Village Battagram Khass
P/O, Tehsil & District Battagram.

ATTACHED

OFFICE OF THE DEPUTY COMMISSIONER, BATTAGRAM

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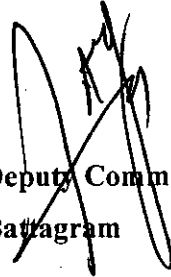
(37)

No. AE- / 1688 /
Dated Battagram the 11/03 /2019

To: The Commissioner
Hazara Division Abbottabad.

Subject: REVISED FINAL SONORITY LIST OF ASSISTANT BPS-16
WORKING IN THE OFFICE DC BATTAGRAM AS STOOD ON
31-12-2018

Memo: Revised final Sonority List of Assistants as at stood on 31-12-2018 is sent herewith for further necessary action please.


Deputy Commissioner,
Battagram


ATTESTED

38


REVISED FINAL SENIORITY LIST OF ASSISTANTS (BPS-16) WORKING IN THE OFFICE OF DEPUTY COMMISSIONER, OFFICE BATTAGRAM AS IT STOOD ON 31.12.2018

S. No.	Name of Assistant	Date of Birth	District Domicile	Date of 1 st Entry into Govt: service	Date of Regular appointment selection /Promotion	Method appointment	Qualification	Previous parent Department	Present /posting /Department	Remarks
1	2	3	4	5	6	7	8	9	10	11
01	Hazrat Yousaf	6/04/1959	Battagram	1/01/1977	28/05/1992	Promotion	M.A	DC Office Battagram	DC Office Battagram	Repatriated from the post of NT vide BOR Order No.Estt;V/PF Hazarat Yousaf/ 37124-29 dated 15-11-2018
02	Dildar Ali Shah	12/02/1961	Mansehra	22/11/1980	17/07/1996	Promotion	Matric	DC Office Battagram	DC Office Battagram	--
03	Amir Muhammad	03/03/1974	Battagram	29/09/1993	26/12/2003	Promotion	B.A	DC Office Battagram	DC Office Battagram	--
04	Muhammad Nazir	14/11/1967	Battagram	30/09/1993	26/12/2003	Promotion	M.A	DC Office Battagram	DC Office Battagram	--
05	Muhammad Sher	03/03/1964	Battagram	21/10/1993	26/12/2003	Promotion	B.A	DC Office Battagram	DC Office Battagram	--
06	Farid Shah	01/03/1969	Battagram	30/09/1993	01/06/2004	Promotion	M.A	DC Office Battagram	DC Office Battagram	--
07	Kafayatullah	01/01/1979	Battagram	28/07/2006	28/07/2006	Direct	M.A	DC Office Battagram	DC Office Battagram	--
08	Yar Muhammad	06/01/1969	Battagram	01/07/1991	16/12/2006	Promotion	B.A	DC Office Battagram	DC Office Battagram	--
09	Shad Muhammad	14/02/1970	Battagram	30/09/1993	16/12/2006	Promotion	B.A	DC Office Battagram	DC Office Battagram	--
010	Guli Muhammad	01/01/1969	Battagram	13/08/1996	17/05/2008	Promotion	B.A	DC Office Battagram	DC Office Battagram	--
11	Said Muhammad	06/05/1983	Battagram	20/05/2009	20/05/2009	Direct	M.A	DC Office Battagram	DC Office Battagram	--
12	Atiq Israr	18/06/1984	Battagram	22/10/2013	22/10/2013	Direct	M.S.C	DC Office Battagram	DC Office Battagram	--

ATTENDED

(39)

13	Shan Fahad	06/05/1988	Battagram	22/10/2013	22/10/2013	Direct	B.S.C Hon	DC Office Battagram	DC Office Battagram	--
14	Murad Muhammad	15/09/1969	Battagram	26/10/1993	20/05/2014	Promotion	Matric	DC Office Battagram	DC Office Battagram	--
15	Hakim Zada	25/12/1973	Battagram	01/04/1998	20/05/2014	Promotion	Matric	DC Office Battagram	DC Office Battagram	--
16	Nazakat Hussin Shah	06/04/1976	Battagram	15/03/1995	06/04/2017	Promotion	Matric	DC Office Battagram	DC Office Battagram	--


Deputy Commissioner,
Battagram

ATTESTED

(40)

Government decision.— Permanent transfers from a higher to a lower scale in anticipation of the abolition of a post are not transfers within the meaning of F. R. 15.

(G.L. F.D. letter No. F-452-R. I/27, dated the 1st February, 1928.)

F. R. 16. A Government servant may be required to subscribe to a provident fund, a family pension fund or other similar fund in accordance with such rules as the Governor-General may by order prescribe.

F. R. 17. (1) Subject to any exceptions specifically made in these rules and to the provisions of sub-rule (2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post and shall cease to draw them as soon as he ceases to discharge those duties *[:]

*[Provided that the **[appointing authority] may, if satisfied that a civil servant who was entitled to be promoted from a particular date was, for no fault of his own, wrongfully prevented from rendering service to the Federation in the higher post, direct that such civil servant shall be paid the arrears of pay and allowances of such higher post through pro forma promotion or upgradation arising from the ante-dated fixation of his seniority.]

(2) The date from which a person recruited overseas shall commence to draw pay on first appointment shall be determined by the general or special orders of the authority by whom he is appointed.

[For Administrative Instructions issued by the Governor-General regarding "CHARGE OF OFFICE" and "LEAVING JURISDICTION", see Part II of Appendix No. 3 in Volume II of this Compilation.]

Orders issued by the Governor-General under Fundamental Rule 17(2). -
-With reference to clause (2) of this rule, the Governor-General has decided that the pay of officers recruited overseas who are entitled to a first class passage to Pakistan, shall commence from the date of disembarkation, subject to their proceeding to take up their duties without avoidable delay. In the case of officers who receive a second class passage, pay shall commence from the date of embarkation for Pakistan.

Audit Instructions —

(1) A Government servant will begin to draw the pay and allowances attached to his tenure of a post with effect from the date on which he assumes the duties of that post if the charge is transferred before noon of that date. If the charge is transferred after noon, he commences to draw them from the following day. This rule does not, however, apply to cases in which it is the recognised practice to pay a Government servant at a higher rate for more important duties performed during a part only of a day.

[Para. I, Chap. III, Sec. I of Manual of Audit Instructions (Reprint.)]

*In sub-rule (1) at the end fullstop subs. by colon & thereafter proviso added by S.R.O. 1092 (I)/95, Gaz. of Pak., Extr., Pt. II, dt. Nov. 13, 1995.

**In the proviso substituted for "President" by the S.R.O. 106 (I)/2001, dt. 13-2-2001, Gaz. of Pak., Extr., Pt. II, dt. 17th Feb., 2001.

ATTESTED

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(41)

(437)

GOVERNMENT OF KHYBER PAKHTUNKHWA,
BOARD OF REVENUE,
REVENUE & ESTATE DEPARTMENT

ATTACHED

Peshawar Dated the 23 / 1 / 2015

NOTIFICATION

No. 2074 In pursuance of provisions contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa, Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Revenue & Estate Department, in consultation with Establishment Department and the Finance Department, hereby lays down the method of recruitment qualification and other condition specified in column 3 to 5 of the Appendix to this Notification and applicable to posts borne on the cadre strength of Deputy Commissioners specified in column 2 of the said Appendix.

APPENDIX

S.No	Nomenclature of posts with BPS	Minimum qualification for appointment by initial recruitment	Age Limit	Method of Recruitment
1	2	3	4	5
1.	Superintendent (BPS-17)	By promotion, on the basis of seniority-cum-fitness, from amongst the Assistants (BPS-16), of the district concerned with at least five years service in the offices of respective Deputy Commissioner and Political Agents.

42

438

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<p>Seale r ber 6)</p>	<p>(i) At least Second Class Bachelor's Degree, from a recognized university; (ii) a speed of 70 words per minute in shorthand in English and 45 words per minutes in typing; and (iii) knowledge of computer using MS Word, MS Excel.</p>	<p>20 to 32 years</p>	<p>(a) Sixty percent by promotion, on the basis of seniority-cum-fitness, from amongst the Stenographers with atleast five years service as such in the offices of respective Deputy Commissioners and Political Agents; and (b) forty percent by promotion, on the basis of seniority-cum-fitness, from amongst the Computer Operators with atleast five years service as such in the offices of respective Deputy Commissioners and Political Agents: Provided that if no suitable person is available for promotion then by initial recruitment.</p>
<p>Assistant, (BPS-16)</p>	<p>At least Second Class Bachelor's Degree from a recognized University.</p>	<p>20 to 30 years</p>	<p>(a) Seventy five percent by promotion, on the basis of seniority-cum-fitness, from amongst the Senior Clerks with atleast five years service as Junior and Senior Clerk in the Offices of Deputy Commissioners and Political Agents of district concerned; and (b) twenty five percent by initial recruitment from amongst the candidates of the district concerned.</p>
<p>4 Head Clerk (BPS-14)</p>	<p>....</p>	<p>....</p>	<p>By transfer from amongst Senior Clerks (BPS-14) of the district concerned.</p>

43

439

6.	Shorthand Clerk (BPS-14)	(i) At least Second Class Intermediate or equivalent qualification from a recognized Board; (ii) a speed of 50 words per minute in shorthand in English and 35 words per minute in typing; and (iii) knowledge of computer in using MS Word, MS Excel.	18 to 30 years	By initial recruitment from amongst the candidates of the district concerned.
6.	Senior Clerk (BPS-14)	By promotion, on the basis of seniority-cum-fitness, from amongst the Junior Clerks of the district concerned with atleast two years service as such.
7.	Computer Operator (BPS-12)	(i) At least Second Class Bachelor's Degree in Computer Science/ Information Technology(BCS/BIT four years), from a recognized university; (ii) at least Second Class Bachelor's Degree from a recognized University with one year Diploma in Information Technology from a recognized Board of Technical Education.	18-to 28 years	By initial recruitment from amongst the candidates of the district concerned.
8.	Pesh Imam (BPS-12)	Sanad in Dars-e- Nizami or a Sanad of Fazail-e-Arabi <u>Note:</u> Preference will be given Hafiz-e-Quran.	18-to 32 years	By initial recruitment from amongst the candidates of the district concerned.
9.	Sub Engineer (BPS-11)	Diploma in Associate Engineering in Civil Technology from Board of Technical Education with certificate in Computer Aided Design (CAD) from recognized Institution.	18-30 years	By initial recruitment from amongst the candidates of the district concerned.
10.	Junior Clerk (BPS-11)	(i) At least Second Class Secondary School Certificate or equivalent qualification from a recognized Board; and (ii) a speed of 30 words per minute in typing.	18 to 30 years	(a) Thirty three percent by promotion, on the basis of seniority-cum-fitness, from amongst the Qasids and Naib Qasids including holders of other equivalent posts in the district concerned with two years service as such, who have

ATTESTED

44

44

passed Secondary School Certificate Examination; and

(b) sixty seven percent by initial recruitment from the candidates of the district concerned.

Note: For the purpose of promotion there shall be maintain a common seniority list of Qasid and Naib Qasid etc with reference to the date of their appointment:

Provided that no separate seniority list of Matric and non-matric BS-1 (Class-IV) employees can be maintained being single cadre. Their seniority shall be fixed with reference to the date of their regular appointment:

Provided further that where a senior official does not possess the requisite qualification at the time of filling up a vacancy, the official next junior to him possession the requisite qualification shall be promoted in preference to the senior official or officials.

11.	Reader/Record Keeper (BPS-7)	At least second division in Secondary School Certificate or equivalent qualification from a recognized Board.	18 to 30 years	By initial recruitment from amongst the candidates of the district concerned.
12.	Alhamad (BPS-5)	At least Second Class Secondary School Certificate or equivalent qualification from a recognized Board.	18-30 years	By initial recruitment from amongst the candidates of the district concerned.
13.	Driver (BPS-4)	Literate having LTV driving license issued by the competent authority. Preference will be given to those who have sufficient	18-32 years	By initial recruitment from amongst the candidates of the district concerned.

ATTESTED

	Process Server (BPS-2)	Literate.	18-32 years	By initial recruitment from amongst the candidates of the district concerned.
16.	Qasid (BPS-2)		---	By promotion on the basis of Seniority-cum-fitness, from amongst the Naib Qasids with two years as such.
17.	Naib Qasid/ Chowkidar/Sweeper/ Mali (BPS-1)	Literate.	18-32 years	By initial recruitment from amongst the candidates of the district concerned.

Sd/-
 SECRETARY TO GOVERNMENT OF
 KHYBER PAKHTUNKHWA,
 REVENUE & ESTATE DEPARTMENT

ATTESTED

VAKALAT NAMA

NO. _____/20

IN THE COURT OF KP Service Tribunal, Peshawar

Hazrat Kousaf (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

SMRBR (Respondent)
(Defendant)

I/We, Hazrat Kousaf

Do hereby appoint and constitute **SYED NOMAN ALI BUKHARI Advocate High Court 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 costs.

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. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/20

[Signature]
(CLIENT)

ACCEPTED

[Signature]
SYED NOMAN ALI BUKHARI
Advocate High Court Peshawar.

Cell: (0306-5109438)

[Signature]
Uzma Syed

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Hazrat YousafPetitioner

VERSUS

Senior Member Board of Revenue and others.....Respondents

INDEX

S.No.	Description of Documents	Annexure	Page No.
1	Parawise Comments	---	1-2
2	Service Tribunal Dismissal Order dated 17.10.2018	A	3-7
3	Seniority List of Assistants of Battagram District	B	8
4	Promotion Notification dated 09.04.2015	C	9
5	Appellant Retirement Order dated 05.04.2019	D	10


Assistant Secretary (Lit-II)
Board of Revenue KPK

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 9602/2020.

Hazrat Yousaf.....Appellant

VERSUS

Senior Member, Board of Revenue and others.....Respondents

PRELIMINARY OBJECTIONS.

1. The appellant has got no cause of action.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the appellant has been estopped by his own conduct to file the present appeal.


COMMENTS ON BEHALF OF RESPONDENTS NO. 1 & 2 ARE AS UNDER:-

1. Pertains to record.
2. Pertains to record.
3. Incorrect. The appellant filed appeal before the Service Tribunal which was accepted with the direction to place the case of the appellant for promotion as Naib Tehsildar before the Departmental Promotion Committee, but he was promoted as Naib Tehsildar through an Administrative order without adopting proper procedure, therefore the same was withdrawn by the Competent Authority. The appellant again filed appeal before the Service Tribunal against the said order which was dismissed by the Service Tribunal on 17.10.2018 (**Annexure-A**).
4. Incorrect. As in Para 3 above. He remained posted as Naib Tehsildar on the basis of an illegal order from 2010 to 2018 and availed the benefits of the post of Naib Tehsildar.
5. Incorrect. A number of meetings of the Departmental Promotion Committee were held, but the petitioner was not considered for such promotion being not eligible. No discrimination has been made with the petitioner.
6. Incorrect. As the appellant was availing the benefit of Naib Tehsildar, his name was not available in the seniority list of Assistant at the time of promotion of Jamil Hussain Shah, Assistant, seniority list of Assistants of Battagram District is at (**Annexure-B**) therefore he was not considered for promotion as Superintendent nor he raised any objection against his promotion notified on 09.04.2015 (**Annexure-C**).
7. Correct to the extent that his Writ Petition was dismissed by Peshawar High Court.
8. Pertains to record.

GROUND:

- a) Incorrect. All the proceedings have been carried out according to law.
- b) As in Para-3 of the facts.
- c) Incorrect. A number of Departmental Promotion Committee meetings were held, but being the junior most, the appellant was not considered for such promotion.
- d) Incorrect. Pertains to record of the office of Deputy Commissioner Battagram.
- e) Incorrect. The appellant has been treated in accordance with law.
- f) As in para-3 of the facts.
- g) Incorrect. The appellant has availed the benefits of promotion as Naib Tehsildar from 2010 to 2018 and has not challenged the promotion of Jamil Hussain Shah as Superintendent and had foregone his right of appeal now.
- h) Pertains to the record of the office of Deputy Commissioner Battagram.
- i) Incorrect. The appellant has been retired from service on 05.04.2019 on attaining the age of superannuation and has granted all pensionary benefits in BS-16 (Annexure-D).
- j) As in Para-6 of the facts.
- k) As in Para-6 of the facts.
- l) Incorrect. The appellant has been treated in accordance with law.
- m) Incorrect. The appellant has been retired from service on 05.04.2019.
- n) Incorrect. Appeal of the appellant is not maintainable.
- o) As in "M" above.
- p) As in Para-6 of the facts.
- q) As in Para-3, 4 & 6 of the facts.
- r) The appellant has not been deprived of his legal rights.
- s) The respondents will also submit additional grounds at the time of arguments.

The appeal of the appellant having no legal grounds may be dismissed.


Respondent No. 1 & 2
Senior Member
Board of Revenue

Sr. No

Date of order/proceeding

Order or other proceedings with signature of Judge or Magistrate

1

2

3



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 1214/2016

Date of Institution 30.11.2016

Date of Decision 17.10.2018

Hazrat Yousaf, Naib Tehsildar, Oghi.

Appellant

Versus

- 1. The Chief Secretary Khyber Pakhtunkhwa Peshawar.
- 2. The SMBR, Revenue Department Peshawar
- 3. The Deputy Commissioner Manshra.

Respondents

Mr. Muhammad Hamid Mughal-----Member(J)

Mr. Hussain Shah-----Member(E)

17.10.2018

JUDGMENT

MUHAMMAD HAMID MUGHAL, MEMBER - learned

counsel for appellant and Mr. Zia Ullah learned Deputy District Attorney for the respondents present.

ATTESTED

CLERK
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

2. The appellant has filed the present appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 09.09.2016 whereby the order dated 11.11.2010 alongwith administrative order/notification of the same date of the then SMBR Khyber Pakhtunkhwa regarding the promotion of the appellant as

Naib Tehsildar on regular basis, was withdrawn. The appellant has also challenged the order dated 21.11.2016 through which his departmental appeal against the original impugned order was rejected.

3. Learned counsel for the appellant argued that the appellant filed service appeal No. 1461 in the year 2009 for regular promotion as Naib Tehsildar and vide judgment dated 22.02.2010 passed in the said service appeal, the respondent department was directed to place the case of appellant before next DPC; that the respondent department was not implementing the directions of the Tribunal, therefore, the appellant filed implementation petition before this Tribunal and an application before SMBR and the then SMBR passed an order dated 11.11.2010 whereby the appellant was given his due rights of regular promotion as Naib Tehsildar w.e.f 04.07.2006. Further argued that to the utter surprise of the appellant the SMBR withdrew the promotion order of the appellant on 09.09.2016 and the departmental appeal of the appellant against the said order was also rejected. Learned counsel for the appellant argued that the impugned orders are against law, facts, norms of justice and fair play. Further argued that the promotion order dated 11.11.2010 was issued on the direction of this Tribunal. Further argued that valuable rights accrued to the appellant as a result of the promotion order dated 11.11.2010 and the appellant's promotion could not be withdrawn under the principle of FOCUS POENITENTIAE.

4. As against that learned Deputy District Attorney argued that

ATTESTED


E. J. WINNER
Hyderabad

the appellant has not come to this Tribunal with clean hands; that this Tribunal has not issued any directions for out of turn promotion without adopting codal formalities and observing legal requirements but on the other hand the then SMBR through administrative order regularized the services of the appellant as Naib Tehsildar without holding Departmental Promotion Committee Meeting. Further argued that the appellant is in fact a junior official and cannot be promoted as such. Further argued that promotion can only be made through Departmental Promotion Committee Meeting but the promotion order of the appellant was issued through administrative order. Further argued that an illegal act cannot create a single right nor the rule of Locus Poenitentiae is applicable to the case of appellant. Further argued that the then SMBR who issued the unlawful orders is required to NAB authorities and is fugitive from law.

5. Arguments heard. File perused.

6. Perusal of the impugned order dated 09.09.2016 would show that the Promotion/Regularization order dated 11.11.2010 and Notification dated 11.11.2010 regarding promotion of the appellant was withdrawn on the ground that the appellant was promoted to the post of Naib Tehsildar on 11.11.2010 through administrative order without holding of departmental Promotion Committee and as such the same was in violation of Service Rules and instructions governing promotion.

7. The appellant earlier filed service appeal bearing No.1461 in

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Services

the year 2009 for the purpose of issuance of directions to the respondents to consider him for regular promotion as Naib Tehsildar and this Tribunal vide judgment dated 22.02.2010 issued directions for consideration of the case of appellant on merits in the next DPC Meeting. Astonishingly the appellant instead of attaining promotion through DPC, adopted another channel and got himself promoted through the administrative order of the SMBR. The then SMBR vide order dated 11.11.2010 accepted the application/appeal of the appellant and promoted him to the post of Naib Tehsildar on regular basis and then on the same date issued administrative order under his signatures regarding the promotion of the appellant to the post of Naib Tehsildar on regular basis.

8. There is no cavil to the proposition that the promotion of a civil servant is to be made in accordance with Section 5 of the Khyber Pakhtunkhwa Civil Servants Act and Rule-7 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. As such in the case of appellant the approval of Departmental Promotion Committee is mandatory for the purpose of promotion.

9. The promotion of the appellant to the post of Naib Tehsildar was not made in the manner prescribed by the law/rules on the subject. Shield of principle of Locus Poenitentiae is not allowed to the beneficiary of illegal actions, for protection/defense. Admittedly

the then SMBR who issued the illegal orders is still absconding.

10. It may be observed that had the appellant properly pursued

ATTESTED


Khyber Pakhtunkhwa
Services

his execution petition for the implementation of judgment dated 22.02.2010, the meeting of DPC would have been convened and his grievances might have been addressed long ago in a proper manner.

As a sequel to above, the appellant has not been able to seek indulgence of this Tribunal, consequently the present service appeal is dismissed. The appellant may however seek the redressal of his grievance, if any, through restoration of his execution petition in connection with service appeal No.1461/2009, in accordance with law, if so advised. Parties are left to bear their own costs. File be consigned to the record room.

Announced Sd/- M. Hamid Mughal
17.10.2018

Number

Sd/- Hussain Shah
Number

(al)

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 25-10-18
Number of Words 2000
Copying Fee 12.00
Urgent -
Total 12.00
Name of Copyist
Date of Completion of Copy 05-11-18
Date of Delivery of Copy 05-11-18

Annexure - 3

FINAL SENIORITY LIST OF OFFICE ASSISTANTS OF THE OFFICE OF DEPUTY COMMISSIONER BATTAGRAM FOR THE YEAR ENDING 31-12-2014.

Sl#	Name of Office Assistant	Date of Birth	Date of first entry into Govt: service	Date of Regular Appointment/selection/Promotion	Method of Appointment	Qualification	Present Department	Remarks
1	Jamil Hussain Shah	08.03.1967	05.03.2995	17.07.1996	By Promotion	B.A	DC Office Battagram	
2	Dildar Ali Shah	12.02.1961	20.11.1980	17.07.1996	-do-	Matric	-do-	
3	Amir Muhammad	13.03.1974	29.09.1993	26.12.2003	-do-	BCA	-do-	
4	Muhammad Nazir	14.11.1967	30.09.1993	-do-	-do-	M.A	-do-	
5	Muhammad Sher	03.03.1964	21.10.1993	-do-	-do-	B.A	-do-	
6	Farid Shah	01.03.1969	30.09.1993	01.06.2004	-do-	M.A	-do-	
7	Kafayatullah	01.01.1970	28.07.2006	28.07.2006	Direct	M.A	-do-	
8	Yar Muhammad	05.01.1969	01.07.1991	16.12.2006	By Promotion	FA	-do-	
9	Shad Muhammad	14.02.1970	30.09.1993	16.12.2006	-do-	B.A	-do-	
10	Gul Muhammad	01.01.1969	13.08.1996	23.05.2008	-do-	B.A	-do-	
11	Said Muhammad	06.05.1983	21.05.2009	21.05.2009	Direct	M.A	-do-	
12	Abid Israr	18.06.1984	22.10.2013	22.10.2013	-do-	MCs	-do-	
13	Shah Fahad	06.05.1988	22.10.2013	22.10.2013	-do-	BSc	-do-	
14	Murad Muhammad	15.09.1969	26.10.1993	20.05.2014	By Promotion	Matric	-do-	
15	Hakim Zada	25.12.1973	01.04.1998	20.05.2014	-do-	Matric	-do-	

No. 1579-81 /AE: Dated Battagram the 19-02 /2015

Copy forwarded to the:-

1. Secretary Board of Revenue Khyber Pakhtunkhwa Peshawar.
2. Commissioner Hazara Division Abbottabad.
3. Officials concerned for information.

sd -
Deputy Commissioner,
Battagram.

[Signature]
Deputy Commissioner,
Battagram.

85

GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT

Peshawar dated the 9/04/2015.

NOTIFICATION

No. Estt:II/DPS/Suptd:/_____ On the recommendation of Departmental Promotion Committee, Syed Jamil Hussain Shah, Assistant (BPS-16) office of the Deputy Commissioner, Batagram is promoted as Superintendent (BPS-17) on regular basis with immediate effect.

2. On promotion, he will be on probation for a period of one year in terms of section 6(2) of Khyber Pakhtunkhwa Civil Servant Act, 1973 read with Rule 15 of Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion and Transfer) Rules, 1989

By order of
Senior Member

End: No. Estt:II/DPS/Suptd:/ 8391-95

Copy forwarded to the:-

1. Commissioner, Hazara Division, Abbottabad. He is requested to post the above official within the District.
2. Deputy Commissioner Batagram
3. District Accounts Officer, Batagram.
4. Official concerned.
5. Office Order File.


Secretary-I



Deputy Commissioner Battagram



DEPUTY COMMISSIONER BATTAGRAM
(Khyber Pakhtunkhwa)

ap.battagram@gmail.com

0997-310136

0997310051



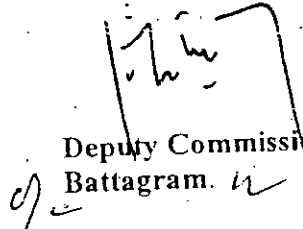
No. 1689-94 / EC

Dated: 12 / 3 / 2019

OFFICE ORDER:

No. _____ / AE/DC (B) 2019. On attaining the age of 60 (sixty) years (superannuation) Mr. Hazrat Yousaf Assistant (BPS-16) of this office is hereby retired from Government Service with effect from 05-04-2019 (After Noon) with full fledged benefit as admissible under the rules.

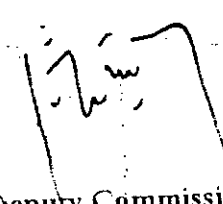
Sanction to the leave encashment of 365 days in lieu of L.P.R is also accorded in favour of retiring official subject to observance of all codal formalities.


Deputy Commissioner,
Battagram.

No. 1689-94 / EC

Copy to:-

1. The Commissioner Hazara Division Abbottabad.
2. The Secretary Board of Revenue, Revenue & Estate Department Peshawar.
3. The Additional Deputy Commissioner Battagram.
4. The District Accounts Officer Battagram
5. The District Nazir (Local) for necessary action.
6. Official concerned.
7. Office copy.


Deputy Commissioner,
Battagram.



Deputy Commissioner Battagram



ap.batagram@gmail.com

0997-310136



0997310051

No. 1689-94 /EC

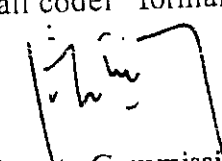
Dated: 12 / 3 /2019

DEPUTY COMMISSIONER BATTAGRAM
(Khyber Pakhtunkhwa)

OFFICE ORDER:

No. _____ /AE/DC (B) 2019. On attaining the age of 60 (sixty) years (superannuation) Mr. Hazrat Yousaf Assistant (BPS-16) of this office is hereby retired from Government Service with effect from 05-04-2019 (After Noon) with full fledged benefit as admissible under the rules.

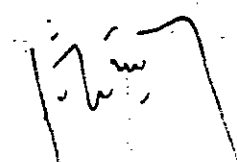
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Deputy Commissioner,
Battagram.

No. 1689-94 /EC

Copy to:-

1. The Commissioner Hazara Division Abbottabad.
2. The Secretary Board of Revenue, Revenue & Estate Department Peshawar.
3. The Additional Deputy Commissioner Battagram.
4. The District Accounts Officer Battagram
5. The District Nazir (Local) for necessary action.
6. Official concerned.
7. Office copy.


Deputy Commissioner,
Battagram.

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

SERVICE APPEAL No. 9602 OF 2020

Hazrat Yousaf-----

Appellant

VERSUS

**Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar
and others-----**

Respondents

INDEX

S. No.	Documents	Page No./ Annexure
1	Joint Parawise comments alongwith affidavit	1-5
2	Copy of Order of Service Tribunal dated: 17.10.2018	A
3	Seniority list of Assistants, DC Office, Battagram	B
4	Notification of promotion of Syed Jamil Hussain Shah, Assistant as Superintendent, dated: 09.04.2015	C
5	Copy of Judgment of Peshawar High Court dated 25.2.2020	D

Dated:

Additional Assistant Commissioner (Rev) (PMS-BPS-17)

Battagram

Deponent

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

SERVICE APPEAL No. 9602 OF 2020

Hazrat Yousaf -----

(Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar
and others. -----

(Respondents)

**APPEAL UNDER SECTION-4 OF KP SERVICE TRIBUNAL ACT 1974
FOR DIRECTING THE RESPONDENTS TO CONSIDER THE
APPELLANT FOR PROFORMA PROMOTION TO THE POST OF
SUPERINTENDENT BPS-17 FROM THE DATE JUNIOR WAS
PROMOTED AND AGAINST NOT DECIDING THE DEPARTMENTAL
APPEAL OF THE APPELLANT WITHIN STATUTORY PERIOD OF 90
DAYS.**

Comments On Behalf Of Respondent No.3

Respectfully Sheweth,

Parawise comments on behalf of respondent No.3 are as under:

Preliminary objections:-

1. That the appellant has no cause of action and locus standi to institute the present appeal.
2. That the appeal in hand is not maintainable.
3. That the appellant has not made the office of the Deputy Commissioner Battagram as necessary respondent, to conceal the real facts, hence the instant appeal is bad for mis-joinder and non-joinder of necessary and proper parties.

4. That the appellant has not come to this honorable court with clean hands and there is misrepresentation of facts.
5. That the appellant is available at serial No.176 in the seniority list of Naib Tehsildars as stood on 31.12.2010.
6. That as per Services rules, the cadre cannot be changed at any cost.
7. That the appellant has already availed the promotion from (BPS-15) of Naib Tehsildar to (BPS-16) of Assistant after the repatriation to Deputy Commissioner Office Battagram.
8. That none of Government employee can have and entitled for the dual cadres.
9. That the appeal in hand is badly time barred.
10. That appellant is an habitual litigant/complainant.

ON FACTS:

1. Pertains to record.
2. Pertains to record.
3. Incorrect. The appellant filed an appeal before the Khyber Pakhtunkhwa Service Tribunal which was accepted with the directions to place the case of the appellant for promotion as Naib Tehsildar before Departmental Promotion Committee but he was promoted as Naib Tehsildar through Administrative order without adopting proper procedure, therefore the same was withdrawn by the Competent Authority. The appellant again filed appeal before the Service Tribunal against the said order, which was dismissed by the Service Tribunal on 17.10.2018 (**Copy of order is attached as annexure-A**).
4. Incorrect. As in Para 3 above appellant remained posted as Naib Tehsildar on the basis of an illegal order from 2010 to 2018 and illegally availed the benefits of the post of Naib Tehsildar.

5. Incorrect.
6. Incorrect. As the appellant was availing the benefits of Naib Tehsildar, his name was available in the seniority list of Assistants at the time of promotion of Mr. Jamil Hussain Shah, seniority list of Assistants of Battagram District is attached as **Annexure-B**. Therefore, he was not considered for promotion as Superintendent, nor he raised any objection against promotion notified on 09.04.2015 (**Annexure-C**).
7. Correct to the extent that his writ petition was dismissed by Peshawar High Court. (**Copy annexed as D**).
8. That the appellant has no right for getting benefits for proforma promotion as Superintendent (BPS-17), for which he is not eligible.


GROUND:

- A. Incorrect. All the proceedings have been carried out in accordance to law.
- B. As stated in para 3 of the facts.
- C. Incorrect. Number of departmental Promotion Committee's meetings were held but being the most junior the appellant was not considered for such promotion.
- D. In reply, it is stated that the appellant was promoted as Naib Tehsildar through an illegal order, therefore, his name was struck off from seniority of Assistants. Being the senior most Assistant Mr. Jamil Hussain Shah was promoted as Superintendent (BPS-17) on his own turn.
- E. Incorrect, the appellant has been treated in accordance with law.
- F. As stated in para 3 and Para 6 of the facts.
- G. Incorrect, the appellant has availed the benefits of illegal promotion from 2010 to 2018 and has not challenged the promotion of Mr. Jamil Hussain Shah as Superintendent (BPS-17) and has forgone his right of appeal now.

- H. Incorrect. Number of meetings of Departmental Promotion Committee were held but appellant was not considered for such promotion being not eligible. No discrimination has been made with the appellant.
- I. Incorrect, the appellant has retired from service on 05.04.2019 on attaining the age of superannuation and has been granted all pensionary benefits of BPS-16 (Annexure-E).
- J. As stated in para-6 of the facts.
- K. As stated in para-6 of the facts.
- L. Incorrect. The appellant has been treated in accordance with law.
- M. Incorrect. The appellant stood retired from service on 05.04.2019.
- N. Incorrect. Appeal of the appellant is not maintainable.
- O. As stated in Para "M" above.
- P. As stated in Para-6 of the facts.
- Q. As stated in paras 3,4 & 6 of the facts.
- R. The appellant has not been deprived of his legal rights.
- S. The respondent will also submit additional grounds at the time of arguments.

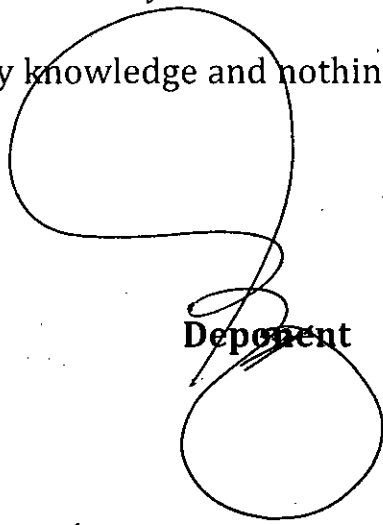
Keeping in view the above facts and in the light of prevailing service rules framed by the Provincial Government from time to time, the Service Appeal in hand is not maintainable, which may kindly be dismissed with costs, please.

Dated:


**Commissioner Hazara Division
Abbottabad
(Respondent No.3)**

Affidavit

I, Muhammad Saleem Khan, Additional Assistant Commissioner (Revenue) (PMS BS-17) Battagram, do hereby solemnly affirm that contents of the parawise comments are true to the best of my knowledge and nothing has been concealed by this honourable court.



Deponent

DA (11) A 7
~~Amir~~

... or other proceedings with signature of Judge or Magistrate



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 1214/2016

Date of Institution 30.11.2016

Date of Decision 17.10.2018

Hazrat Yousaf, Naib Tehsildar, Oghi.

Appellant

Versus

1. The Chief Secretary Khyber Pakhtunkhwa Peshawar.
2. The SMBR, Revenue Department Peshawar
3. The Deputy Commissioner Manshra.

Respondents

Mr. Muhammad Hamid Mughal-----Member(J)

Mr. Hussain Shah-----Member(E)

17.10.2018

JUDGMENT

MUHAMMAD HAMID MUGHAL, MEMBER: - Learned counsel for appellant and Mr. Zia Ullah learned Deputy District Attorney for the respondents present.

2. The appellant has filed the present appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 09.09.2016 whereby the order dated 11.11.2010 alongwith administrative order/notification of the same date of the then SMBR Khyber Pakhtunkhwa regarding the promotion of the appellant as

ATTESTED

Member
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

12

17/10/2018

Tehsildar on regular basis, was withdrawn. The appellant has also challenged the order dated 21.11.2016 through which his departmental appeal against the original impugned order was rejected.

3. Learned counsel for the appellant argued that the appellant filed service appeal No.1461 in the year 2009 for regular promotion as Naib Tehsildar and vide judgment dated 22.02.2010 passed in the said service appeal, the respondent department was directed to place the case of appellant before next DPC; that the respondent department was not implementing the directions of the Tribunal, therefore, the appellant filed implementation petition before this Tribunal and an application before SMBR and the then SMBR passed an order dated 11.11.2010 whereby the appellant was given his due rights of regular promotion as Naib Tehsildar w.e.f 04.07.2006. Further argued that to the utter surprise of the appellant the CRDP withdrew the promotion order of the appellant on

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Appellant has not come to this Tribunal with clean hands; that this Tribunal has not issued any directions for out of turn promotion without adopting codal formalities and observing legal requirements but on the other hand the then SMBR through administrative order regularized the services of the appellant as Naib Tehsildar without holding Departmental Promotion Committee Meeting. Further argued that the appellant is in fact a junior official and cannot be promoted as such. Further argued that promotion can only be made through Departmental Promotion Committee Meeting but the promotion order of the appellant was issued through administrative order. Further argued that an illegal act cannot create a single right nor the rule of Locus Poenitentiae is applicable to the case of appellant. Further argued that the then SMBR who issued the unlawful orders is required to NAB authorities and is fugitive from law.

5. Arguments heard. File perused.

6. Perusal of the impugned order dated 09.09.2016 would show that the Promotion/Regularization order dated 11.11.2010 and Notification dated 11.11.2010 regarding promotion of the appellant was withdrawn on the ground that the appellant was promoted to the post of Naib Tehsildar on 11.11.2010 through administrative order without holding of departmental Promotion Committee and as such the same was in violation of Service Rules and instructions governing promotion.

7. The appellant earlier filed service appeal bearing No.1461 in

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 Registrar
 Service Tribunal

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for the purpose of issuance of directions to the respondents to consider him for regular promotion as Naib Tehsildar and this Tribunal vide judgment dated 22.02.2010 issued directions for consideration of the case of appellant on merits in the next DPC Meeting. Astonishingly the appellant instead of attaining promotion through DPC, adopted another channel and got himself promoted through the administrative order of the SMBR. The then SMBR vide order dated 11.11.2010 accepted the application/appeal of the appellant and promoted him to the post of Naib Tehsildar on regular basis and then on the same date issued administrative order under his signatures, regarding the promotion of the appellant to the post of Naib Tehsildar on regular basis.

8. There is no cavil to the proposition that the promotion of a civil servant is to be made in accordance with Section 5 of the Khyber Pakhtunkhwa Civil Servants Act and Rule-7 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. As such in the case of appellant the approval of Departmental Promotion Committee is mandatory for the purpose of promotion.

9. The promotion of the appellant to the post of Naib Tehsildar was not made in the manner prescribed by the law/rules on the subject. Shield of principle of Locus Poenitentiae is not allowed to the beneficiary of illegal actions, for protection/defense. Admittedly the then SMBR who issued the illegal orders is still absconding.

10. It may be observed that had the appellant properly pursued

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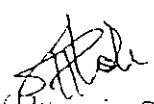
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 10/11/2010
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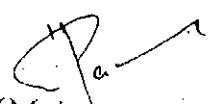
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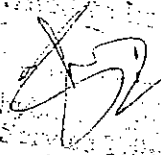
his execution petition for the implementation of judgment dated 22.02.2010, the meeting of DPC would have been convened and his grievances might have been addressed long ago in a proper manner.

11. As a sequel to above, the appellant has not been able to seek indulgence of this Tribunal, consequently the present service appeal is dismissed. The appellant may however seek the redressal of his grievance, if any, through restoration of his execution petition in connection with service appeal No.1461/2009, in accordance with law, if so advised. Parties are left to bear their own costs. File be consigned to the record room.


(Hussain Shah)
Member


(Muhammad Hamid Mughal)
Member

ANNOUNCED
17.10.2018

Certified to be true copy

Secretary
Peshawar

Date of Presentation of Copy _____ 10-01-18
Number of Words _____ 2050
Number of Pages _____ 12
Number of _____ 2
Name of _____ 14
Date of Copy _____ 10-01-18
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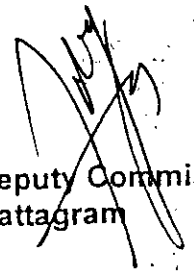
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REVISED FINAL SENIORITY LIST OF ASSISTANTS (BPS-16) WORKING IN THE OFFICE OF DEPUTY COMMISSIONER, OFFICE BATTAGRAM AS IT STOOD ON 12.2018

Sl. No.	Name of Assistant	Date of Birth	District Domicile	Date of 1 st Entry into Govt: service	Date of Regular appointment selection /Promotion	Method appointment	Qualification	Previous parent Department	Present /posting /Department	Remarks
1	2	3	4	5	6	7	8	9	10	11
01	Hazrat Yousaf	6/04/1959	Battagram	1/01/1977	28/05/1992	Promotion	M.A	DC Office Battagram	DC Office Battagram	Repatriated from the post of NT vide BOR Order No.Estt;V/PF Hazarat Yousaf/ 37124-29 dated 15-11-2018.
02	Dildar Ali Shah	12/02/1961	Mansehra	22/11/1980	17/07/1996	Promotion	Matric	DC Office Battagram	DC Office Battagram	--
03	Amir Muhammad	03/03/1974	Battagram	29/09/1993	26/12/2003	Promotion	B.A	DC Office Battagram	DC Office Battagram	--
04	Muhammad Nazir	14/11/1967	Battagram	30/09/1993	26/12/2003	Promotion	M.A	DC Office Battagram	DC Office Battagram	--
05	Muhammad Sher	03/03/1964	Battagram	21/10/1993	26/12/2003	Promotion	B.A	DC Office Battagram	DC Office Battagram	--
06	Farid Shah	01/03/1969	Battagram	30/09/1993	01/06/2004	Promotion	M.A	DC Office Battagram	DC Office Battagram	--
07	Kafayatullah	01/01/1979	Battagram	28/07/2006	28/07/2006	Direct	M.A	DC Office Battagram	DC Office Battagram	--
08	Yar Muhammad	06/01/1969	Battagram	01/07/1991	16/12/2006	Promotion	B.A	DC Office Battagram	DC Office Battagram	--
09	Shad Muhammad	14/02/1970	Battagram	30/09/1993	16/12/2006	Promotion	B.A	DC Office Battagram	DC Office Battagram	--
010	Gull Muhammad	01/01/1969	Battagram	13/08/1996	17/05/2008	Promotion	B.A	DC Office Battagram	DC Office Battagram	--
11	Said Muhammad	06/05/1983	Battagram	20/05/2009	20/05/2009	Direct	M.A	DC Office Battagram	DC Office Battagram	--
	Abid Israr	18/06/1984	Battagram	22/10/2013	22/10/2013	Direct	M.S.C	DC Office Battagram	DC Office Battagram	--

(39)

13	Shan Fahad	06/05/1988	Battagram	22/10/2013	22/10/2013	Direct	B.S.C Hon	DC Office Battagram	DC Office Battagram	--
14	Murad Muhammad	15/09/1969	Battagram	26/10/1993	20/05/2014	Promotion	Matric	DC Office Battagram	DC Office Battagram	--
15	Hakim Zada	25/12/1973	Battagram	01/04/1998	20/05/2014	Promotion	Matric	DC Office Battagram	DC Office Battagram	--
16	Nazakat Hussin Shah	06/04/1976	Battagram	15/03/1995	06/04/2017	Promotion	Matric	DC Office Battagram	DC Office Battagram	--


 Deputy Commissioner,
 Battagram

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GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT

Peshawar dated the 9/10/2015

NOTIFICATION

No. Estt:II/DPS/Suptd:/_____ On the recommendation of Departmental Promotion Committee, Syed Jamil Hussain Shah, Assistant (BPS-16) office of the Deputy Commissioner, Batagram is promoted as Superintendent (BPS-17) on regular basis with immediate effect.

2. On promotion, he will be on probation for a period of one year in terms of section 6(2) of Khyber Pakhtunkhwa Civil Servant Act 1973 read with Rule 15 of Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion and Transfer) Rules, 1989.

By order of
Senior Member

End No. Estt:II/DPS/Suptd:/ 8391-95

Copy forwarded to the:-

1. Commissioner, Hazara Division, Abbottabad. He is requested to post the above official within the District.
2. Deputy Commissioner Batagram
3. District Accounts Officer, Batagram.
4. Official concerned.
5. Office Order File.

Secretary-I

J

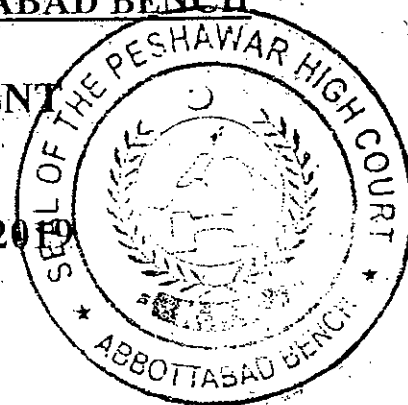
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JUDGMENT SHEET

PESHAWAR HIGH COURT, ABBOTTABAD BENCH

JUDICIAL DEPARTMENT

Writ Petition No.527-A of 2019



JUDGMENT

Date of hearing.....25.02.2020.....

Petitioner(s) ...(Hazrat Yousaf) by Mr. Muhammad Ishaq Battagrami, Advocate.....

Respondent(s)...(Government of Khyber Pakhtukhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar etc) ...by Raja Muhammad Zubair, Additional Advocate General.....

AHMAD ALI, J.- Through the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner, Hazrat Yousaf, invoked the constitutional jurisdiction of this Court with the following prayer:-

"It is therefore prayed that on acceptance of the instant writ petition, the respondents may be directed to proforma promote the petitioner in BPS_17 w.e.f 09.04.2015 the date of promotion of the junior, similar placed officer in the light of judgments of Supreme Court of Pakistan as well as High Court besides respondents may also further

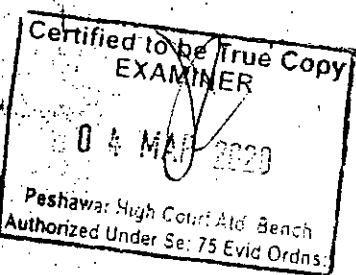
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Certified to be True Copy
EXAMINER
04 MAR 2020
Peshawar High Court Atd Bench
Authorized Under Se: 75 Evid Ordns.

(31)

be directed to grant arrears, revise pension as well as monthly in his commutation and pension on account of proforma promotion BPS-17 and any other appropriate, just order and remedy which the Honourable Court deems in the circumstances of the case be granted to the petitioner against the respondents."

2. Brief facts of the case as averred in the writ petition are that initially the petitioner was serving as Assistant (BPS-15) in the office of DORE and subsequently, he was posted as 'Naib Tehsildar' in his own pay and scale. However, the services of the petitioner were regularized as 'Naib Tehsildar' through an order dated 20.02.2010 issued by Khyber Pakhtunkhwa Service Tribunal Battagram. The petitioner asserted that since the respondents developed grudge against him due to filing of appeal against them in the Service Tribunal, as such, they with malafide intention withdrawn the order of his promotion as 'Naib Tehsildar' vide order dated 09.09.2016 and subsequently repatriated him to his parent department i.e. Deputy Commissioner, Battagram vide order dated 05.11.2018 and on attaining superannuation, he was retired from service on 05.04.2019 as Assistant (BPS-16). During the



32

tenure of his appointment as 'Naib Tehsildar', his name was removed from the joint seniority list of Assistants and his junior was promoted as Superintendent BPS-17. Now, the petitioner is seeking his proforma promotion in BPS-17, after his retirement.

3. The respondents filed their parawise comments, wherein, they controverted the claim of the petitioner on various legal and factual grounds.

4. Arguments heard and record perused.

5. Admittedly, the petitioner was a civil servant and the issue raised in the instant petition qua proforma promotion relates to terms and conditions of his service, which can only be agitated before the Service Tribunal, even after his retirement, which has been established for this purpose. There is no cavil with the proposition that Article 212 of the Constitution of Islamic Republic of Pakistan has placed specific bar on the jurisdiction of this court in interfering with the matters relating to terms and conditions of service of a civil servant. This being so, the petitioner has wrongly invoked the constitutional jurisdiction of this court under Article 199 of the

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 EXAMINER
 04 MAR 2020
 Peshawar High Court, At. Bench
 Authorized Under Se: 75 Evid Ordns.

(33)

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Constitution. The grievances of the petitioner can amicably be resolved by the Service Tribunal as the petitioner had earlier filed appeal twice for the same purpose.

6. For what has been discussed above, instant petition is dismissed accordingly. The petitioner is at liberty to approach the proper forum for redressal of his grievance, if so advised.

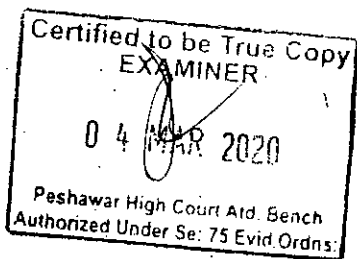
Announced.
Dt. 25.02.2020.

SC/JUDGE

SC/JUDGE

M. Saleem/*

(DB) Mr. Justice Shakeel Ahmad and Mr. Justice Ahmad Ali



post of office Assistant (BPS-16) with all back benefits admissible under the law & rules”.

02. Brief facts of the case are that name of the appellant was at serial No. 59 of the seniority list of 129 Senior Clerks (BS-14) issued on 21.12.2016. On the basis of this seniority list, 39 Senior Clerks were promoted to the post of office Assistant (BS-16) on 04.01.2018. Subsequently, another seniority list of Senior Clerks was issued on 22.10.2019 wherein name of the appellant was allegedly placed at serial No. 63 instead of serial No. 20. Respondent department called for record/documents of 47 Senior Clerks on 28.11.2019 for consideration to the post of office Assistant (BS-16) but name of the appellant was not included in the list. Departmental appeal of the appellant was regretted on the ground of being time barred whereafter the instant service appeal was filed in the service Tribunal.

03. On admission of the service appeal in preliminary hearing on 06.03.2020, the respondents were put on notice to submit written defense through reply/para-wise comments. Reply/Parawise comments were submitted on 13.01.2021. We have heard learned counsel for the appellant as well as learned Assistant Advocate General for the respondents in Divisional Bench and gone through the record thoroughly with their assistance today.

04. Learned counsel for the appellant contended that the appellant was initially appointed as Dark Room Assistant (BS-