

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

*Execution Petition No. 42/2018*

C.O.C No. \_\_\_\_\_/2018

In

Appeal No. 304/2014

Mr. Abdur Rahim.....(Petitioner)

**VERSUS**

Mr. Rafiq Khattak and another.....(Respondents)

**I N D E X**

S.No	Description of Documents	Annex	Pages
1.	C.O.C Petition		1-3
2.	Affidavit		4
3.	Copy of judgment dated 27/10/2017	A	5-6
4.	Copy of application for implementation	B	7
5.	Wakalat Nama		8

*[Signature]*  
Petitioner

Through

Dated: 06/02/2018

*[Signature]*  
**Gohar Ali**  
Advocate High Court,  
Peshawar.  
Cell No. 0345-9082942

**Gohar Ali Khesghi**  
Advocate High Court  
Peshawar

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

*Execution Petition No. 43/2018*

C.O.C No. \_\_\_\_\_/2018

In

Appeal No. 304/2014

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 158

Dated 08/02/2018

Mr. Abdur Rahim, Class-IV, Government Higher Secondary School, Khweshgi Payan, Tehsil and District Nowshera.....(Petitioner)

**VERSUS**

1. Mr. Rafiq Khattak, Director Education, Elementary and Sedentary Education Khyber Pakhtunkhwa, Peshawar.
2. Mr. Fayaz Hussain, District Education Officer, Nowshera.....(Respondents)

**APPLICATION FOR INITIATING CONTEMPT  
OF COURT PROCEEDING AGAINST THE  
RESPONDENTS WHO REFUSED TO  
IMPLEMENT THE ORDER DATED  
27/10/2017 ON APPEAL NO. 304/2014 OF  
THIS HON'BLE TRIBUNAL, WITHOUT  
PREPARING PROMOTION LIST STAGE  
WISE AND CALCULATION ON 33% QUOTA  
OF CLASS-IV SINCE FIRST STAGE OF  
SERVICE.**

**Respectfully Sheweth:**

Brief Facts of the petition are as under:

1. That petitioner has filed an appeal before this Hon'ble Tribunal for promotion to the upper class from Class-IV since 1992-93 and upto date of the appellant in his service appeal instituted on 04/03/2014 which was remanded to the respondents for calculating 33% quota at different stages dated 27/10/2017. (Copy of judgment dated 27/10/2017 is attached as annexure "A").
2. That the petitioner filed an application along with judgment which was under process of the respondents who finally refused to implement the order/ judgment of this Hon'ble Tribunal. (Copy of application for implementation is attached as annexure "B").
3. That petitioner was compelled to visit numerous offices for perusal of his case, but in vain.

- 4. That the respondent conducts directly amounts to contempt of Court.

It is, therefore, requested that the respondent s may please be directed to implement the order of promotion of the petitioner as early as possible according to law and rules and also initiate contempt proceeding against the respondents.

*[Handwritten Signature]*  
Petitioner

Through

Dated: 06/02/2018

*[Handwritten Signature]*  
**Gohar Ali**  
Advocate High Court,  
Peshawar.  
Cell No. 0345-9082942

**Gohar Ali Khashgi**  
Advocate High Court  
Peshawar

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

C.O.C No. \_\_\_\_\_/2018

In

Appeal No. 304/2014

Mr. Abdur Rahim.....(Petitioner)

**VERSUS**

Mr. Rafiq Khattak and another.....(Respondents)

**AFFIDAVIT**

I, Mr. Abdur Rahim, Class-IV, Government Higher Secondary School, Khweshgi Payan, Tehsil and District Nowshera, do hereby solemnly affirm and declare that all the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

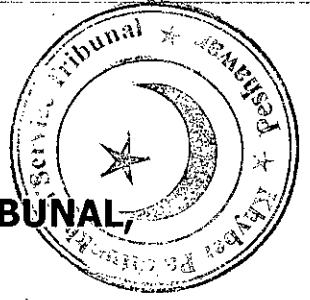


*Dr. Gohar Ali Khesghi*  
**DEPONENT**

17101-718923-7

**Gohar Ali Khesghi**  
Advocate High Court  
Peshawar.

P-5 A



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

Appeal No. 304 /2014

343  
04/3/2014

Mr. Abdur Rahim, Class-IV,  
Government Higher Secondary School,  
Khweshgi Payan, Nowshera.

**APPELLANT**

VERSUS

1. The Director Education E&SE KPK Peshawar.
2. The EDO (E&SE), Nowshera.
3. The Secretary, Finance Department, Khyber Pakhtunkhwa, Peshawar.

**RESPONDENTS**

.....  
APPEAL UNDER SECTION-4 OF THE KPK SERVICE TRIBUNAL ACT 1974 FOR DIRECTION THE RESPONDENT TO CONSIDER THE APPELLANT FOR PROMOTION TO THE POST OF JUNIOR CLERK UNDER 33% FIXED QUOTA BY THE GOVERNMENT AND AGAINST NOT TAKING ANY ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT.  
.....

**PRAYER:**

THAT ON ACCEPTANCE OF THIS APPEAL, THE RESPONDENTS MAY BE DIRECTED TO CONSIDER THE APPELLANT FOR PROMOTION TO THE POST OF JUNIOR CLERK UNDER 33% QUOTA FIXED BY THE GOVERNMENT FROM HIS DUE DATE/AVAILABILITY OF FUND WITH ALL CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

*[Handwritten signature]*  
4/3/14

**RESPECTFULLY SHEWETH:**

1. That the appellant joined the respondent department on 19.10.1992. The appellant more than 21 years service with good record through out at his credit. Copy of Appointment Order is attached as Annexure-A.

**ATTESTED**

*[Handwritten signature]*  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

27.10.2017

Appeal No. 304/2014, Abdus Rahim vs Govt

6

Counsel for the appellant and Mr. Kabeerullah Khattak, Addl.



Advocate General alongwith Hameedullah, Assistant Director of the respondents present.

2. Both the learned counsel for the parties agreed on the point that if this appeal is disposed of in the terms that the department shall calculate the quota of promotees in accordance with the prevalent rules at different stages and then the department shall consider only those appellants and others who are eligible and fit in accordance with the calculation of the department.

3. In view of the above, the respondents are directed that they should calculate the quota of promotees in accordance with the prevalent rules at different stages and then they should consider all those who are eligible and fit for promotion at different stages.

4. The appeal is disposed of in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

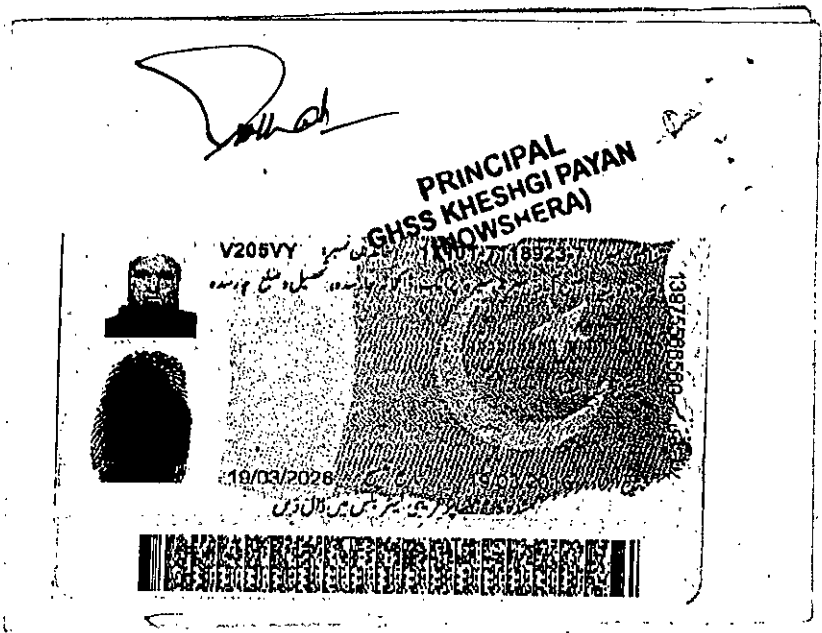
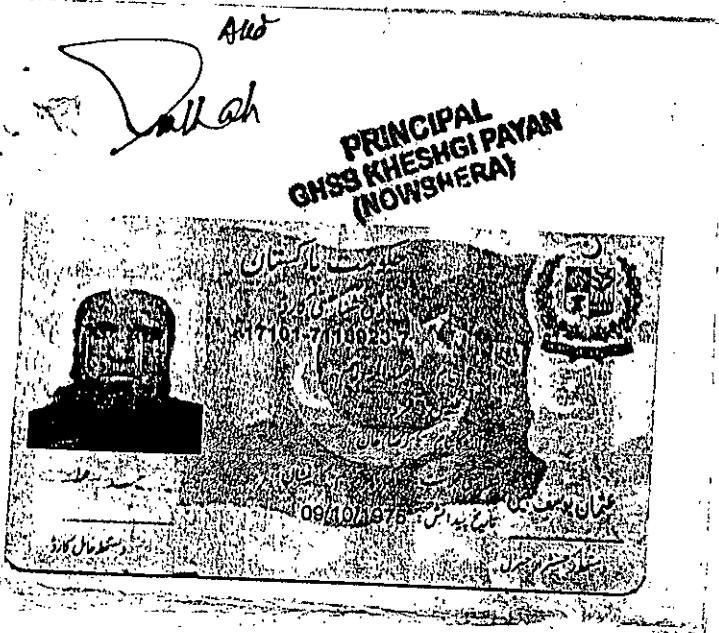
(Ahmad Hassan)  
Member

(Niaz Muhammad Khan)  
Chairman

ANNOUNCED  
27.10.2017

Certified for true copy  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Application 13-11-17  
Number of Words 800  
Copying Fee 6  
Urgent 6  
Total 6  
Name of Copyist [Signature]  
Date of Completion of Copy 21-11-17  
Date of Delivery of Copy 21-11-17



Allah  
SAH

**Gohar Ali Khashgi**  
Advocate High Court  
Peshawar



15  
7-10  
گھوڑا سٹریٹ ایجوکیشنل انسٹیٹیوٹ  
گھوڑا سٹریٹ لاہور

گھوڑا سٹریٹ ایجوکیشنل انسٹیٹیوٹ  
لاہور کے تعلیمی ادارے کے لیے  
اسٹریٹ ایجوکیشنل انسٹیٹیوٹ  
27-10-2014 مورخہ 30/10/2014

صف - 1  
اسٹریٹ ایجوکیشنل انسٹیٹیوٹ

1 - یہ کہ اسٹریٹ ایجوکیشنل انسٹیٹیوٹ کے لیے  
27-10-2014 کو مفصلہ شریک کالی لف ہذا ہے

2 - یہ کہ اسٹریٹ ایجوکیشنل انسٹیٹیوٹ کے لیے  
جو کہ صحت مندرجہ ذیل کے مطابق ہے

اس کے استناداً اسٹریٹ ایجوکیشنل انسٹیٹیوٹ کے لیے  
31-10-2014

محمد علی احمد صاحب  
مشائی کارڈز 7-718923-7101

Gohar Ali Kheshegi  
Advocate High Court  
Peshawar

محمد علی احمد صاحب

قیمت 50 روپے	پشاور بار ایسوسی ایشن PBA	25659
ایڈوکیٹ: گورنمنٹ کالج		
بار کونسل ایسوسی ایشن نمبر: 107448		
رابطہ نمبر: 0345.9082942		
	پشاور بار ایسوسی ایشن، خیبر پختونخواہ	

بعدالت جناب:

مخانب: شیخ عزیز / ابلدین	دعویٰ:
محمد الرحیم ذکریہ رضا خان مدرس فور گورنمنٹ کالج	علت نمبر:
پشاور سنٹرل کالج کورسنگ، پشاور	مورخہ:
بنام	جرم:
رفیق حنیف سکریٹری ایجوکیشن KPIK	تھانہ:
دعویٰ:	

### باعت تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ

آن مقام لے کر کیلئے فی ہرٹیل کورسنگ کو وکیل مقرر

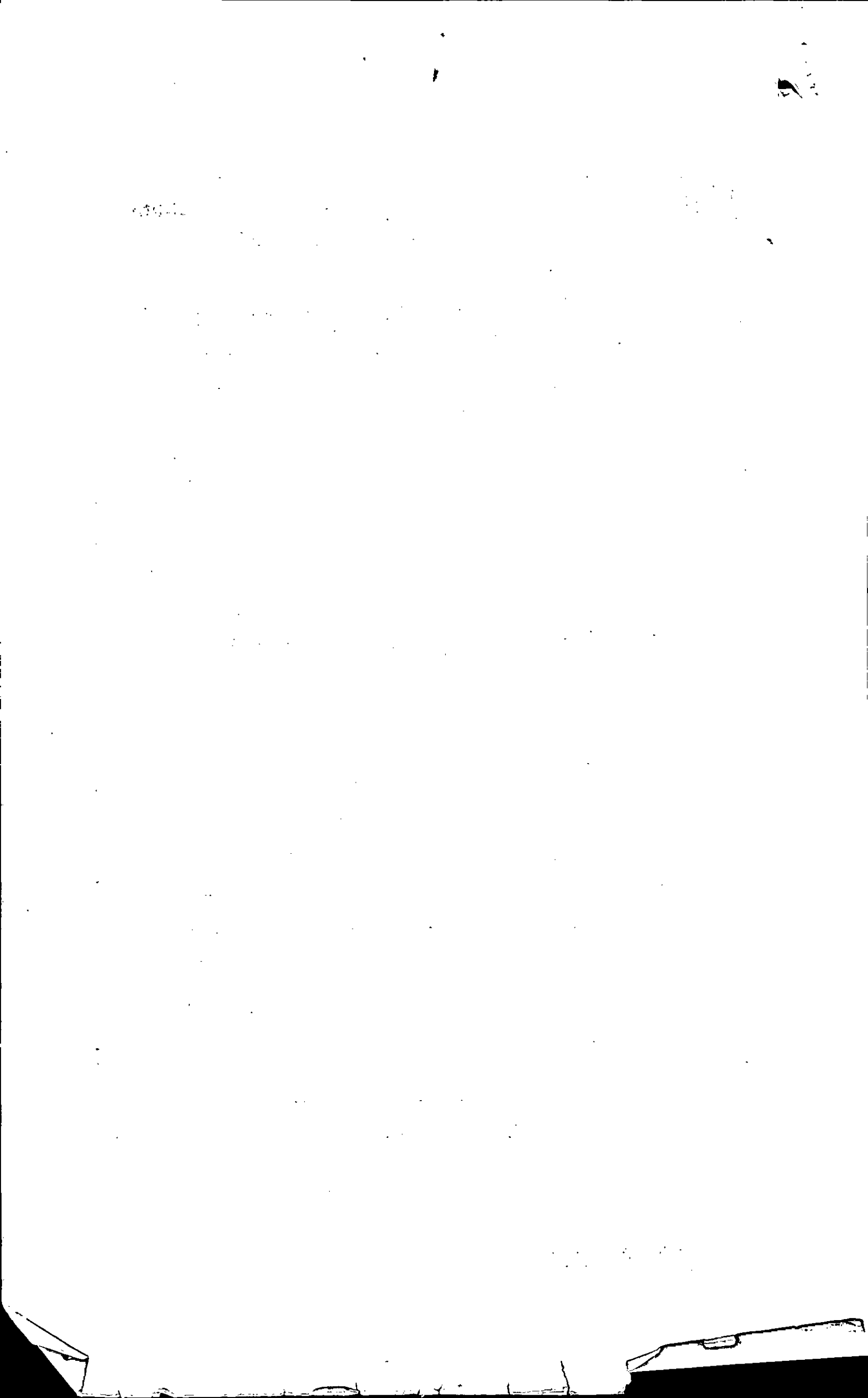
کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المقوم: 2018

المقام لے کر

وہ شد الع بد

المقام لے کر



**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

No. 1926 /ST

Dated 25 /9/ 2018

To


The District Education Officer Male,  
Government of Khyber Pakhtunkhwa,  
Nowshera.

SUBJECT: -

**ORDER IN EXECUTION PETITION NO. 43/2018, MR. ABDUR RAHIM.**

I am directed to forward herewith a certified copy of order dated 25 .09.2018 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

E.P No. 42/2018

in

Appeal No. 304/2014

Abdur Rahim.....Appellant.

**VERSUS**


Govt & Others..... Respondents

**IMPLEMENTATION REPORT ON BEHALF OF RESPONDENTS**

**Respectively Sheweth**

1. That the above title case is sub-judice before this Honorable Service Tribunal and is fixed for hearing on 18-12-2018.
2. That in compliance of the judgment date 27/10/2017 of this Honorable Tribunal the promotion of the deserving official has been issued by the respondent but the appellant was not entitled as per promotion criteria (seniority cum fitness).
3. That the respondent complied with the Order of this Honorable Tribunal and the appellant not fulfilled the criteria therefore, he was not promoted.

The implementation report is submitted please.

  
District Education Officer (M)  
Nowshera



**OFFICE OF THE  
DISTRICT EDUCATION OFFICER, (MALE),  
NOWSHERA**

PHONE # 0923-9220228 , FAX # 0923-9220228

**NOTIFICATION**

Consequent upon the recommendations of the Departmental Promotion committee meeting held on 26-10-2018, and in Compliance with the order / direction of the Khyber Pakhtunkhwa Service Tribunal in service appeal No.304/2014(Execution Petition No.43/2018) dated 25-09-2018, and in pursuance of S.No: 09 of the notification issued by the Govt: of Khyber Pakhtunkhwa (E & S).Education department Notification No. SO (PE) 14-10/SSRC/Ministerial Staff/ 2013 dated: 28-01-2013, the following Class-IV employees are hereby promoted to the post of **Junior Clerk BPS-11 (12570-880-38970)** plus usual allowances under the rules on regular basis under the existing policy of the Provincial Government, under 33% quota and posted at the schools noted against their names with immediate effect subject to the terms and conditions given below:-

S#	S.L No:	Name & Designation	Father's Name	Present Place of duty.	Posted as Junior Clerk B-11
01	01	Mr. Rahat Shah Lab: Attendant.	Mr. Bukhari Shah	GHSS Akbar Pura	GHSS, Pirpai Nowshera.
02	02	Mr. Munawar Shah Chowkidar	Rasool Shah	GHS Aza Khel Bala	GHSS, Khair Abad Nowshera.
03	03	Mr. Akhtar Munair Chowkidar	Adam Khan	GPS Dag Behsud	GHS, Palosi Payan Nowshera.

**TERMS & CONDITIONS:**

1. They shall be on probation for a period of one year extendable for another one year.
2. They should join their post within (15), fifteen days, of the issuance of this Notification.
3. They shall be governed by such rules and regulations may be issued time to time by the Government.
4. Charge report should be submitted to all concerned.
5. The DDO concerned will verify their documents before release of their pay; if documents were found bogus they will be terminated.
6. Necessary entries should be made in his /their service Book to the effect that if the said promotion was withdrawn due to the representation / appeal by any other senior eligible Candidate/or by the court, recovery of the monitory benefit, taken during the said period, will be recovered from the officials concerned.
7. No. TA/DA is allowed for joining their duty.
8. They will give an under taking to be recorded in their Service Books to the effect that if any over payment is made to him in the light of this order will be recovered and if he is wrongly promoted he will be reversed.

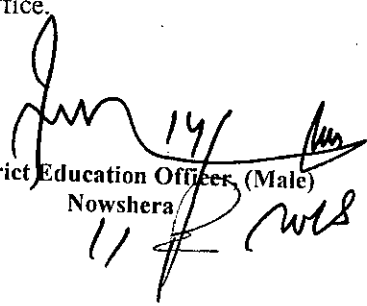
**(FAYAZ HUSSAIN)**

District Education Officer, (Male)  
Nowshera

13865-74  
Endstt: No. \_\_\_\_\_/DEO (M) NSR/EA-S/Prom: of Class-IV to J/C/2018.Dated Nowshera the 14/11/2018




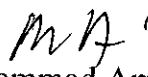
Copy of the above is forwarded for information and necessary action to the:

1. Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No.304/2014.
2. PS to Secretary, Elementary & Secondary Education Department, Khyber Pakhtunkhwa Peshawar.
3. Director, Elementary & Secondary Education Department, Khyber Pakhtunkhwa Peshawar.
4. Section Officer (Lit: II), Elementary & Secondary Education Department, Khyber Pakhtunkhwa Peshawar.
5. Deputy Solicitor, Law Department, Khyber Pakhtunkhwa Peshawar.
6. Senior District Accounts Officer, Nowshera.
7. Principal/Head Master concerned.
8. Assistant District Education Officer, Estt: Secondary branch, Local Office.
9. Superintendent / Dealing Assistant, Estt: Secondary Branch, Local Office.
10. Official concerned.

  
District Education Officer, (Male)  
Nowshera

FORM OF ORDER SHEET

Execution Petition No. 42/2018

S.No.	Date of order Proceedings	Order or other proceedings with signature of Judge
1	2	3
1	08.02.2018	<p>The Execution Petition of Mr. Abdur Rahim submitted to-day by Mr. Gohar Ali Khesghi Advocate may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	08/02/18	<p>This Execution Petition be put up before S. Bench on <u>26/02/18</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	26.02.2018	<p>Counsel for the petitioner and Addl: AG for respondents present. Notices be issued to the respondents for submission of implementation report. To come up for further proceedings on 24.04.2018 before S.B.</p> <p style="text-align: right;"> (Ahmad Hassan) Member (E)</p>
	24.04.2018	<p>Petitioner in person present. Mr. Kabirullah Khattak, Additional AG for the respondents also present. Respondents are directed to submit seniority list on the next date. Adjourned. To come up for seniority list on 10.07.2018 before S.B.</p> <p style="text-align: right;"> (Muhammad Amin Khan Kundi) Member</p>

10.07.2018

Petitioner with counsel present. Mr. Sardar Shoukat Hayat, Additional AG for the respondents also present. Representative of the department is not in attendance therefore, notice be issued to the respondents with the direction to direct the representative to attend the court. Adjourned. To come up for implementation report on 07.08.2018 before S.B.

  
(Muhammad Amin Khan Kundi)  
Member

07.08.2018

Mr. Gohar Ali Khuwshgi, Advocate counsel for the petitioner present. Mr. Inayat Ullah, ADO alongwith Mr. Kabirullah Khattak, Advocate for respondents present and made a request for adjournment to produce implementation report on next date. Granted. To come up for implementation report on 25.09.2018 before S.B.

  
Chairman



25.09.2018

Counsel for the petitioner Mr. Gohar Ali, Advocate present: Mr. Shamsul Islam, ADO alongwith Mr. Kabirullah Khattak, Addl. AG for the respondents present.

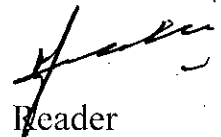
The DEO (Male) Nowshera was directed to submit implementation report but the same direction has not been honored till today. Hence this Tribunal is left with no option but to give last chance to the EDO (Male) to submit implementation report and in case of failure on any reason he is directed to personally attend this Tribunal and explain his position for non-compliance of order of this Tribunal. Case is adjourned to 31.10.2018 before S.B.



Chairman

31.10.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 18.12.2018.



Reader


18.12.2018

Inayat Ullah ADO representative of the respondent department present and submitted implementation report which is placed on file. Adjourn. To come up for further proceedings/arguments on 30.01.2019 before S.B

  
Member

30.01.2019

Counsel for the petitioner present. Mr. Kabirullah Khattak, Additional AG for the respondents present. Record reveals that the implementation report has already been submitted by the respondents on the previous date. However, learned counsel for the petitioner seeks adjournment to examine the same. Adjourned. To come up for further proceedings on 15.03.2019 before S.B.

  
(Muhammad Amin Khan Kundi)  
Member

15.03.2019

Petitioner with counsel and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Learned counsel for the petitioner stated that the petitioner is not satisfied with the implementation report submitted by the respondent department and requested for furnishing updated seniority list of Class-IV and Junior Clerks. Inayat Ullah ADO representative of the respondent department absent. He be summoned with the direction to furnish seniority list of Class-Iv and Junior Clerks of the office of DEO (E&SE) (Male) Nowshera on the next fixed as 16.04.2019 before S.B

  
Member

16.04.2019            Learned counsel for the petitioner present. To come up for further proceedings alongwith connected execution petition No.41/18 on 23.05.2019 before S.B

  
Member

23.05.2019            Petitioner with counsel present. Mr. Usman Ghani, learned District Attorney alongwith Inayat Ullah ADO present. To come up alongwith connected execution petition No.41/2018 on 03.07.2019 before S.B.

  
Member

03.07.2019            Counsel for the petitioner and Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Inayatullah, ADO for the respondents present. Representative of the department submitted reply which is placed in connected Execution Petition No. 41/2018. Adjourned to 27.08.2019 for further proceedings before S.B.

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

27.08.2019

Counsel for the petitioner and Addl. AG alongwith Inayatullah, ADO for the respondents present.

Learned counsel for the petitioner requests for adjournment as he is engaged today in various cases before the Honourable High Court.

Adjourned to 25.09.2019 for further proceedings before S.B.

  
Chairman

25.09.2019

Counsel for the petitioner and Addl. AG alongwith Inayatullah, ADO for the respondents present.

Learned counsel for the petitioner requests for time to work out the correct seniority of petitioner and also provide the names of officials who have been promoted against 33% quota to Junior Clerk after the settlement of seniority list dated 04.05.2018 and require to be excluded there-from.

Adjourned to 21.10.2019 for further proceedings.

  
Chairman

21.10.2019

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

Junior to counsel for the appellant requests for adjournment as senior learned counsel is not available due to general strike on the call of the Provincial Bar Council.

Adjourned to 20.11.2019 before S.B

  
Chairman

20.11.2019

Junior to counsel for the appellant and Addl. AG alongwith Inayatullah, ADO for the respondents present.

A request for adjournment is made on account of non-availability of learned senior counsel for the appellant. Adjourned to 30.12.2019 for further proceedings in view of order dated 25.09.2019.

  
Chairman

30.12.2019

Counsel for the petitioner present. Nemo for respondents.

Learned counsel states that after passing of judgment under implementation recently another seniority list has been issued by the respondents wherein juniors to the petitioner have been allocated positions senior to him. The petitioner, therefore, desires to pursue legal remedy available to him on account of the seniority list and requests for consigning the instant proceedings to the record with the reservation of his right as stated above.

Instant execution proceedings are consigned to record. The petitioner shall, however, be at liberty proceed against the seniority list or any other instruments, whereby, his service rights have been adversely affected, in accordance with law.

  
Chairman

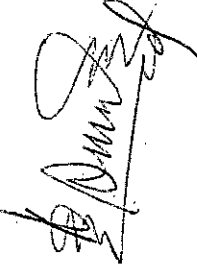
Appeal no. 761/2020

10.01.2022

Counsel for the appellant and Mr. Kabirullah Khattak, Addl. AG for the respondents present. Preliminary arguments have been heard and record perused.

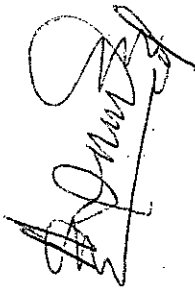
The appellant has invoked the jurisdiction of this Tribunal with the prayer as copied below:-

*"On acceptance of this appeal, the respondents may be directed to consider the appellant for promotion to the post of Junior Clerk under 33% quota fixed by the Government from his due date/availability of fund with all consequential benefits or any other remedy which this august Tribunal deems fit and appropriate that may also be awarded in favour of appellant."*



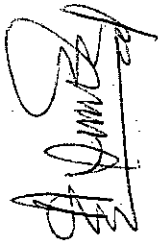
The appeal was filed on 31.01.2020 and is still going through the course of preliminary hearing. According to the proceedings reflected in order sheet dated 23.12.2020, pre-admission notice was given to the respondents. Therefore, they are in attendance through learned AAG. Private respondents also entered in proceedings through their counsel. In different order sheets, request for adjournment for submission of the written reply has been reflected but no order sheet reflects as to submission of the comments, while parawise comments on behalf of respondents No. 1 & 2 are available in the file. It is asserted vide para-4 of the said comments that the appellant had already filed an appeal No. 304/2014 asking the same relief in which final order was issued by the Tribunal on 27.10.2017 with the decision that the respondents should calculate the quota of the promotees in accordance with the prevalent rules at different stages and then they should consider all those who are eligible and fit for promotion at different stages.

Then in 2018, the appellant filed an Execution Petition No. 43/2018 in Appeal No. 304/2014 for implementation in which the respondents submitted an implementation report. A Copy of this Tribunal's order has been annexed with the said comments. According to titled page of Appeal No. 304/2014 annexed with the order dated 27.10.2017 the prayer in the said appeal was also the same rather verbatim as now in the present appeal and copied above. There is an order dated 30.12.2019 which was passed in execution petition No. 43/2018. According to the titled page of the execution petition as available alongwith certified copy of the said order, the same was filed seeking the implementation of the order dated 27.10.2017 passed in appeal No. 304/2014 by this Tribunal. According to contents of the said order the then learned counsel stated before the Tribunal that after passing of the judgment under implementation another seniority list was issued by the respondents wherein juniors to the petitioner were allocated positions senior to him. Therefore, desire of the petitioner to pursue legal remedy available to him on account of seniority list was pressed into service with the request for consigning the execution proceedings to the record room with the reservation of his rights as stated above. Consequently, the execution proceedings were consigned to the record room with liberty to the petitioner to proceed against the seniority list or any other instruments whereby his service rights were adversely affected.



As far as the prayer in the present service appeal as copied above and in the previous service appeal decided vide order dated 27.10.2017 are concerned, the same are indistinguishable and main contesting parties are also the same. Therefore, the present appeal with the same prayer, having already been adjudicated upon is not maintainable within the meaning of Rule 23 of the Khyber


Pakhtunkhwa Service Tribunal Rules, 1974 and its rejection is inevitable. However, the case of the appellant in view of his previous litigation is required to be reconsidered for further proceedings in execution of the previous order dated 27.10.2017 passed in Service Appeal No. 304/2014. I am mindful of the fact that the petitioner himself requested for consignment of the execution petition in pursuance of his desire to file the present appeal but this Tribunal is vested with power under Rule 27 of the Khyber Pakhtunkhwa Service Tribunal Rules, 1974 to make such order as may be necessary for the ends of justice. It seems that the execution petition No. 43/2018 as filed by the present appellant was got consigned to the record room vide order dated 30.12.2019 because of some misunderstanding or miscomprehension of the scope of the order under execution. The order dated 27.10.2017 passed in Service Appeal No. 304/2014 is still intact and its execution is possible having regard to its letter & spirit. In order to delineate the scope of the executable part of the said order, it is observed that the respondents were directed thereby that they should calculate the quota of promotees in accordance with the prevalent rules at different stages and then they should consider all those who are eligible and fit for promotion at different stages. The spirit of the said order is very much clear that it was aimed at calculation of the quota of the promotees for the relevant posts and to grant them promotion after determination of their eligibility and fitness for promotion at different stages. So it was required on part of the department to demonstrative the compliance of the said order that they should have brought the Working Paper before the Tribunal showing the number of posts available in the quota of the promotees for the relevant posts and then to show whether the petitioner in the execution





petition was eligible for promotion or not. Therefore, while rejecting the present appeal on the principle of *resjudicata*, the execution petition No. 43/2018 is restored for further proceedings in view of the scope of the order dated 27.07.2017 as delineated herein above.

This file be consigned to the record room and file of execution petition No. 43/2018 be recovered from the record and register on its original number for further proceedings on 20/01/2022 before S.B. Copy of this order be filed on E.P File.

  
Chairman

is an appointment by initial recruitment with exception of the requirements of sub rule (2) of Rule 10 ibid. The appointment for the purposes of sub rule (4) or in case of children of medically invalidated government servants in no manner is viable to be made by utilization of the vacancies falling in any other prescribed quota other than quota of initial recruitment. The respondents wittingly or unwittingly ignored the quota reserved for promotion of Class-IV servants in the post of junior clerks and have wrongly used 27 vacancies of junior clerks out of 33 falling to their quota for appointment of children of in-service deceased persons and medically invalidated government servants. Therefore, it has become incumbent upon the respondents to divert 27 posts from the quota of initial recruitment to the quota prescribed for promotion of Class-IV government servants and make promotion of eligible class-IV government servants on such posts as and when they become available. For the time being, 03 vacant posts of junior clerks have been shown as per information reproduced above. The respondents are directed to make appointment of petitioner Ibrahim Khan and other namely Abdur Rahim the petitioner in Execution Petition No. 42/2018 on 02 posts out of 03 vacant posts through Departmental Promotion Committee. The remaining one vacancy and vacancies falling in the quota of initial recruitment becoming available henceforth shall not be filled by initial recruitment until the remaining quota for promotion of Class-IV government servants in the respondent department stands satisfied. The respondents are also directed to submit final report of vacancies of junior clerks under control of the District Education Officer (Male & Female) Noshehra with a certificate to the effect that no such vacancy was concealed. To come for implementation report on 10.03.2022.

Chairman

	son.		
12	Order dated 25.06.2018 bearing Endst# 8247-54/DEO(M)/NSR/E-SA/ESTAB:/Class-4 Apptt.	07	01
13	Order dated 06.03.2019 bearing Endst# 3882-91/DEO(M)/NSR/E-SA/ESTAB:/Deceased/invalid EMP; son apptt.	14	06
14	Order dated 08.08.2020 bearing Endst# 3198-32/DEO(M)/NSR/E-SA/ESTAB:/Apptt: Junior Clerk/Lab Asstt Deceased.	16	15
15	Order dated 18.09.2020 bearing Endst# 4809-19/DEO(M)/NSR/E-SA/ESTAB:/Apptt: Junior Clerk/Deceased.	04	03
16	Order dated 07.01.2021 bearing Endst#9665-73/DEO(M)/NSR/ESTAB:/Apptt/Deceased, Class-4.	02	01
17	Order dated 26.05.2021 bearing Endst# 14555-65/ DEO(M)/NSR/E-SA/ESTAB:/Apptt: Junior Clerk/Lab Asstt/C-4/Deceased.	20	15
18	Order dated 24.08.2021 bearing Endst# 3141-48/DEO(M)/NSR/ESTAB:/Apptt/deceased/J.C.	02	02

The year wise breakup of appointments made is noted below:-

Year of appointment	No. of appointment
2016	08
2017	24
2018	07
2019	06
2020	18
2021	18

Coming to the legal position, it is apt to observe that view of the respondents as to 100% quota for sons of deceased/medically invalidated government servants is highly mistaken. The right of appointment in case of in-service death of a government servant has been given to one of the children of such government servant or alternatively to their wife(s) under sub rule (4) of Rule 10 of the Khyber Pakhtunkhwa Civil Servants (APT) Rules, 1989 and in view of 3<sup>rd</sup> proviso to said sub rule, the appointment is subject to availability of a vacancy. The appointment under sub rule (4) for all its intents and purposes

servants promotion quota are 06. So, it is not difficult to infer that 27 posts for the purpose of said quota have not been filled by promotion of the Class-IV servant after 2012. On the other hand, the respondent department has shown 81 posts to have been filled through 100% deceased/medical Sons Quota vide different orders copy whereof are annexed with the information and tabulated as under:-

S#	No. of Appointment order and date	Total Appointment	No. of J/C
1.	Order dated 21.05.2016 bearing Endst# 2887-2920/DEO(M)/NSR/ESTAB:/Apptt/Deceased quota.	15	08
2	Order dated 07.01.2017 bearing Endst# 3640-56/ DEO(M)/NSR/ESTAB:/Apptt/Deceased quota.	09	07
3	Order dated 13.02.2017 Endst# 5246-78/ DEO(M&F)/NSR/ESTAB:/Apptt/Deceased quota.	25	01
4	Order dated 19.05.2017 bearing Endst# 9145-51/DEO(M&F)/NSR/ESTAB:/Apptt/Deceased quota.	01	01
5	Order dated 24.06.2017 bearing Endst# 10491-10546/DEO(M)NSR/E-SA/ESTAB:/Apptt/Deceased quota.	44	04
6	Order dated 28.09.2017 bearing Endst# 14630-49/ DEO(M)/NSR/ESTAB:/Apptt/Deceased quota.	10	04
7	Order dated 29.09.2017 bearing Endst# 14680-97/DEO(M)/NSR/ESTAB:/Apptt/Deceased Children quota.	07	03
8	Order dated 20.11.2017 bearing Endst# 2194-2224/DEO(F)/NSR/E-SA/ESTAB:/Apptt/Deceased, Employees Son's & fresh.	21	01
9	Order dated 06.12.2017 bearing Endst# 575-84/ DEO(M)/NSR/E-SA/ESTAB:/Apptt/Deceased, Employees Son's & fresh.	11	02
10	Order dated 29.04.2017 bearing Endst# 7814-21/DEO(M)/NSR/E-SA/ESTAB:/Apptt/Deceased son.	01	01
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EP 43/18

27.01.2022

Petitioner in person present. Muhammad Adeel Butt, Addl. AG alongwith (Sajid ADEO) for the respondents present.

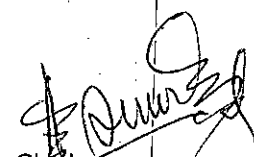
The information bearing No. 8453 dated 27.01.2022 as required vide order dated 21.01.2022 has been produced which is duly signed by DEO (M) Noshera and placed on file. The same is accompanied by different appointment orders after Notification dated 06.12.2012 and a tentative seniority list of Class-IV in District Nowshera. The Opening Sheet contains breakup of the sanctioned post with reference to prescribed Quotas. It is deemed useful to copy the said breakup herein below:-

<b>Total sanctioned junior Clerk Seats</b>	<b>= 111</b>
<b>Total Already Filled Posts prior to 2012 through 100% deceased/medical sons quota</b>	<b>= 11 Filled 81</b>
<b>Remaining seats.</b>	<b>= 19</b>
<b><u>Break up according to appointment/promotion rules, 2012</u></b>	
<b>Seats filled by open/direct recruitment.</b>	<b>= 10</b>
<b>Seats filled by 33% C-IV promotion quota.</b>	<b>= 06</b>
<b>Remaining vacant seats.</b>	<b>= 03</b>

**The remaining vacant seats will be filled through deceased/open in the next DSC meeting according to rules.**

Break up captioned in the information as copied above is erroneous as far as apportionment of quota in the given manner is concerned. According to the said break up 111 sanctioned posts of the Junior Clerk have been shown out of which 11 posts are shown to have been filled prior to 2012 when 33% quota for Class-IV employees was provided in recruitment for the post of Junior Clerk vide notification dated 06.12.2012, copy whereof as annexed with the information is available on file. So, excluding the said 11 posts out of 111 posts, 100 posts of Junior Clerk were available when 33% quota for promotion of Class-IV servants was provided for their promotion to the post of Junior Clerk. If the 33% quota is worked out on 100 posts so available at the time of said notification, the posts against the said Quota comes to 33 in number. On the other hand, the seats so for filled as per information under discussion against 33% Class-IV

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Chairman

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E.P 43/18

27.01.2022

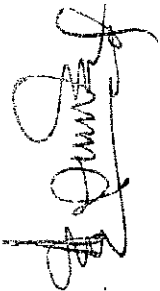
Petitioner in person present. Muhammad Adeel Butt, Addl. AG alongwith (Sajid ADEO) for the respondents present.

The information bearing No. 8453 dated 27.01.2022 as required vide order dated 21.01.2022 has been produced which is duly signed by DEO (M) Noshera and placed on file. The same is accompanied by different appointment orders after Notification dated 06.12.2012 and a tentative seniority list of Class-IV in District Nowshera. The Opening Sheet contains breakup of the sanctioned post with reference to prescribed Quotas. It is deemed useful to copy the said breakup herein below:-

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E.P No. 42/2018

20.01.2022

Petitioner in person and Mr. Muhammad Adeel Butt, Addl. AG alongwith Masood Khan, Litigation Officer for the respondents present.

Petitioner seeks adjournment as his learned counsel is not in attendance due to general strike. Granted. To come up for further proceedings on 21.01.2022 before the S.B.

  
Chairman

21.01.2022

Counsel for the petitioner present. Mr., Muhammad Adeel Butt, Addl. AG alongwith Shah Jehan Khjan, DEO (M) Nowshera for the respondents present.

Implementation report is still awaited. The DEO (M) Nowshera in attendance and taken on board to calculate number of posts and provide break-up of posts filled in through direct recruits or through promotion. In case there are vacant posts in the quota of promotion, the respondents should grant promotion to the officials after determination of their eligibility and fitness at different stages. He will also show whether the petitioner in the execution petition in hands is/was eligible for promotion and not ignored. Case to come up for compliance report on 27.01.2022 before S.B.

  
Chairman

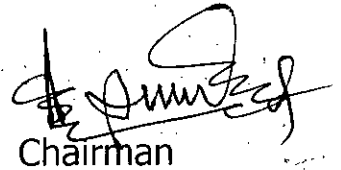
27.01.2022

Petitioner in person present. Muhammad Adeel Butt, Addl. AG alongwith (Sajid ADEO) for the respondents present.

The copy of the detailed order recorded in Execution Petition No. 43/2018 has been placed on this file. The order is accordingly in this execution petition. To come up for implementation report on 10.03.2022 alongwith Execution Petition No. 43/2018.

10.3/2022

Due to Retirement of The

  
Chairman

Hon'able chairman, The Case is Adjourned to 08.06-2022 for The Same as before.


  
Reader

08.06.2022

Nemo for petitioner. Lawyers are on general strike.

File to come up alongwith Execution Petition No.43/2018

28.06.2022 before S.B.

  
(Rozina Rehman)  
Member (J)

2022

Petitioner present in person. Mr. alongwith Mr. Masood Khan, ADEO (Lit) for respondents present.

Representative of the respondent department submitted compliance report by the order of Service Tribunal dated 27.01.2022 in the light of judgment dated 27.10.2017. He further submitted a compliance report Endst: No. 2773/DEO(M)/NSR dated 25.06.2022 stating therein, that as per recommendation of DPC the petitioner Mr. Abdur Rahim declared "Not Eligible" as he does not fulfill the requirement for promotion.

In view of the above, instant petition is disposed off. File be consigned to record room.

Announced.  
28.06.2022

  
(Fareeha Paul)  
Member (E)