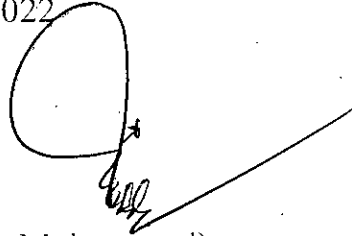


ORDER
14.09.2022

Learned counsel for the appellant present. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present. Arguments have already been heard and record perused.

Vide our detailed judgment of today, placed on file of Service Appeal bearing No. 8647/2016 titled "Wisal Muhammad Versus Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa Peshawar and four others", the appeal in hand being devoid of merit stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
14.09.2022



(Mian Muhammad)
Member (Executive)

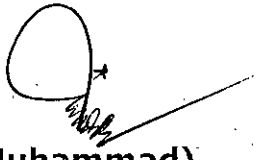


(Salah-Ud-Din)
Member (Judicial)

30th May, 2022

Learned counsel for the appellant present. Mr. Muhammad Rasheed, DDA alongwith Imtiaz Khan, ADO (Litigation) for the respondents present.

Respondents have not submitted reply/comments. Right of respondents to submit reply has already been struck off by virtue of previous order. To come up for arguments on 01.08.2022 before the D.B.



(Mian Muhammad)
Member(E)



(Kalim Arshad Khan)
Chairman

1-8-2022

*Proper DB not available the case is
adjourned to 13-9-2022*



Reeder

13.09.2022

Learned counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

Arguments heard. To come up for order on 14.09.2022 before the D.B.



(Mian Muhammad)
Member (Executive)

(Salah-Ud-Din)
Member (Judicial)

30-9-21

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

\$
Reader

03.02.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 17.05.2022 for the same as before.

Reader

17.05.2022

Appellant alongwith Mr. Umar Farooq, Advocate (junior of learned counsel for the appellant) present. Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present and sought further time for submission of written reply/comments. Respondents are directed to submit written reply/comments on the next date positively, failing which their right for submission of written reply/comments shall be deemed as struck off. Adjourned. To come up for submission of written reply/comments as well as arguments on 30.05.2022 before the D.B.

AK



(Rozina Rehman)
Member (J)



(Salah-ud-Din)
Member (J)

SD


31.03.2021

Junior to counsel for the appellant present.

Addl: AG for respondents present.

Written reply/comments on behalf of respondents not submitted. Learned AAG seeks time for submission of written reply/comments. Granted.

Adjourned to 01.06.2021 before S.B.


(Atiq Ur Rehman Wazir)
Member(E)

01.06.2021

Counsel for the appellant and Addl. AG alongwith Bahramand, ADEO for the respondents present.


Stipulated period has been passed and reply has not been submitted.

Representative of the respondents requests for time to furnish reply/comments. The respondents are required to submit written reply/comments in office within 10 days. 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 30.09.2021 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


17.11.2020

Counsel for the appellant present.

Whether the appellant was not entitled to the benefits accruing through the judgments of Honourable Peshawar High Court in Writ Petition No. 1041-A/2015 and Writ Petition No. 73-B/2014 under the principle of similarly placed person?

In order to settle the proposition, 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 01.02.2021 before S.B.

Appellant Deposited
Security & Process Fee


Chairman

01.02.2021

Counsel for the appellant and Addl. AG for the respondents present.

Learned counsel requests for time to rectify the error in addresses of some of the respondents for proper service of notice. Allowed. May do so within a fortnight. Thereafter, notices be issued to the respondents. Adjourned to 31.03.2021 for submission of reply/comments.

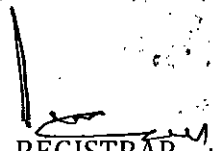



Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 8650 /2020

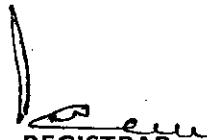
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	27/07/2020	<p>The appeal resubmitted today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR</p>
2-	14.09.2020	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>14/09/2020</u></p> <p> CHAIRMAN</p> <p>Mr. Afrasyab Wazir, Advocate on behalf of counsel for the appellant present.</p> <p>Requests for adjournment as learned counsel is engaged before the Touring Bench of this Tribunal at Abbottabad. Adjourned to 17.11.2020 before S.B.</p> <p> Chairman</p>

The appeal of Mr. Fazal Rehman SCT received today i.e. on 17.07.2020 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Annexures of the appeal may be attested.
- 2- Annexures of the appeal may be flagged.
- 3- Annexures-C, D and E of the appeal are illegible which may be replaced by legible/better one.
- 4- Seven more copies/sets of the appeal along annexures i.e. complete in all respect may also be submitted with the appeal.

No. 1682 /S.T,

Dt. 17-07 /2020.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Noor Muhammad Khattak Adv.

Sir,

*All objections have been removed,
hence re-submitted today dated 24/7/2020.*

Mr. O
24/7/2020

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO. 8650 /2020

FAZAL REHMAN

VS

EDUCATION DEPTT:

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1	Memo of appeal	1- 3.
2	Educational testimonials	A	4- 9.
3	Notification dated 24.07.2014.	B	10- 15.
4	Judgments	C & D	16- 22.
5	Notification	E	23.
6	Departmental appeal	F	24.
7	Vakalat nama	25.

APPELLANT

THROUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

APPEAL NO. 8650 /2020

Diary No. 7427

Mr. Fazal Rehamn, SCT (BPS-16),

Dated 17/7/2020

GHS Ghazi Baba, District Bajaur..... **APPELLANT**

VERSUS

- 1- The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa Peshawar.
- 2- The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The Director Elementary & Secondary Education Department, Khyber Pakhtunkhwa Peshawar.
- 5- The District Education Officer, (male) District Mardan. Bajaur 01/02/20
over

.....**RESPONDENTS**

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

PRAYER:

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

R/SHEWETH:

ON FACTS:

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

Filed to-day
Registrar
17/7/20
Re-submitted to
Registrar
17/7/20

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

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

GROUND:

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

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

APPELLANT



FAZAL REHMAN

THROUGH:

NOOR MOHAMMAD KHATTAK

&

**SHAHZULLAH YOUSAFZAI
ADVOCATES**

S. No. 475866

Roll No. 6812

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

BOARD OF INTERMEDIATE AND SECONDARY EDUCATION



Peshawar N.W.F.P. Pakistan

Secondary School Certificate Examination

SESSION 1985 (ANNUAL)

THIS IS TO CERTIFY THAT FAZAL RAHMAN

Son/Daughter of MERAJ GUL

and a student of GOVT. HIGH SCHOOL SAKHAKOT MALAKAND AGENCY

has passed the *Secondary School Certificate Examination* of the Board of Intermediate and Secondary Education, Peshawar held in April 1985 as a *Regular candidate*. He/She obtained 406 Marks out of 850 and has been placed in Grade D Representing FAIR

The Candidate passed in the following subjects:

- | | | | |
|------------|--------------|-----------------|----------------|
| 1. English | 3. Islamiyat | 5. PAK. STUDIES | 7. MATHEMATICS |
| 2. Urdu | 4. PHYSICS | 6. CHEMISTRY | 8. BIOLOGY |

He/She has been awarded Grade C on the basis of internal assessment by the Institution concerned.

Date of birth according to admission form is FIRST JANUARY
one thousand nine hundred and SEVENTY ONLY (1.1.1970)

Asstt. Secretary

8 August, 1985

This certificate is issued without alteration or erasure.

Secretary

ATTESTED

s.No 190579

Roll No. 2666

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

B

BOARD OF INTERMEDIATE AND SECONDARY EDUCATION



Peshawar N.W.F.P. Pakistan
INTERMEDIATE EXAMINATION
Pre-Engineering Group
SESSION SUPPLEMENTARY 1987

THIS IS TO CERTIFY THAT Fazli Rahman

Son/Daughter of Maraj Gul

and a resident of Bajaur Agency

Registered No. 36-B/KR-85 has passed the *Intermediate Examination* of
the Board of Intermediate & Secondary Education, Peshawar held in Jan/Feb 1988
as a *Private candidate*. He/She obtained 526 Marks out of 1100

and has been placed in Grade D Representing Fair

The Examination was taken as a whole/interacts.

ATTESTED

Asstt. Secretary
Sm

Secretary

— This certificate is issued without alteration or erasure.

عزیز علی خان

University of Peshawar

(Pakistan)

Session ANNUAL 1997

8

FAZL-I-REHMAN

SON

of

MERAJ GUL

and a Student

of BAJAUR AGENCY

having passed the prescribed

Examination held in AUGUST 1997 is this day admitted by the University

of Peshawar to the Degree of

Bachelor of Arts

in the THIRD Division

The examination was taken as a whole ~~in parts~~

ATTESTED

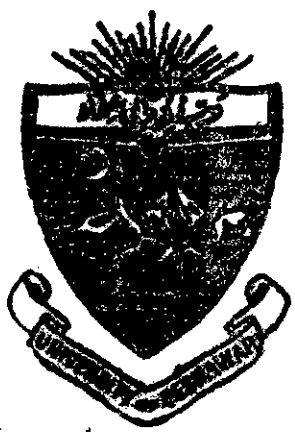
Serial No. 065351/A

M. Samad Khan
Registrar

Registration No. 92-FC-13853

Roll No. 80165

Result declared on 19TH NOVEMBER, 2001



Countersigned

Vice-Chancellor

UNIVERSITY OF MALAKAND
PAKISTAN

Serial No. 032665



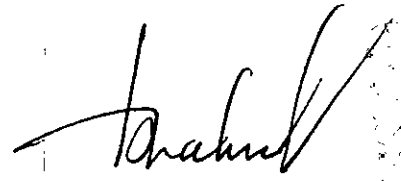
Session 2010-2011

FAZLI REHMAN Son of MERAJ GUL Registration No. 2008670525 Private Candidate of Bajaur Agency having passed the prescribed examination held in OCT, 2015 under Roll No. 4626 is admitted by the University of Malakand to the degree of

Bachelor of Education

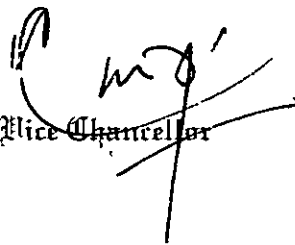
in Second Division

The examination was taken in parts.


Controller of Examinations

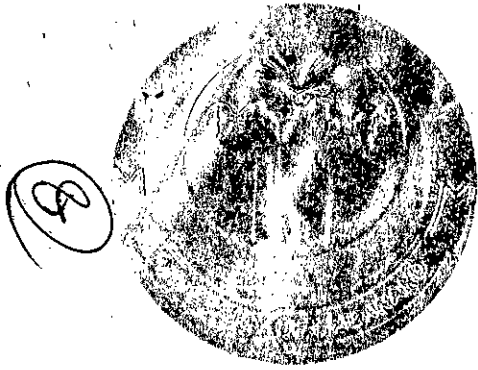
Result Declared on 20-Jan-2016
Issuance Date 11-Aug-2016

Countersigned


Vice-Chancellor

UNIVERSITY OF MALAKAND
PAKISTAN

Serial No. 008090



Session 2008-2010

FAZLI REHMAN Son of MERAJ GUL Registration No. 2008670525 Private Candidate of Bajaur Agency, having passed the prescribed examination held in Sep-Oct, 2010 under Roll No. 14405 is admitted by the University of Malakand to the degree of

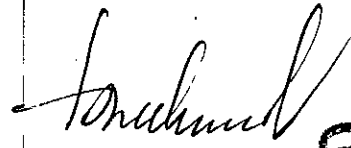
Master of Arts

in Islamiyat in First Division

The examination was taken as a whole.

Result Declared on 02-Feb-2011

Issuance Date 24-Jan-2012


Controller of Examinations

Countersigned


m. Rasheed
Vice Chancellor

ATTESTED

DIRECTORATE OF CURRICULUM & TEACHERS EDUCATION, N.W.F.P., PESHAWAR
CERTIFICATE OF TEACHING (CT)
(ORIGINAL CERTIFICATE)

Serial No. 6095

Roll No. 54

Session 1989

Marks Obtained 638 / 1200

Division I Ind

Certified that Mr./Mrs./Miss Fazal Rehman

Son/Daughter of Meraaj Gul is a student of

GEC(M) Jamrud Khyber Agency

having passed the C.T. Examined held in 1989

qualified to teach in Middle/High School of Schools & Literacy Department.

Prepared by [Signature]

Checked by [Signature]

Result declaration date 17/ 1/ 1990

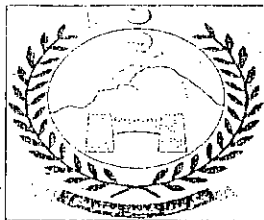
Date of Issue 15/ 2/ 2011



[Signature]

Assistant Director (Examinations),
N.W.F.P., Peshawar.
KPIK at PITE

ATTESTED



10
B

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Peshawar, dated the 24th July, 2014.

NOTIFICATION

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

AMENDMENTS

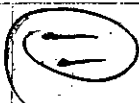
In the Appendix,-

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


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

ATTESTED

13

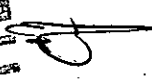
				recruitment; and (b) fifty percent by initial recruitment.
IA	Director Physical Education (BPS-17)	At least second class Master's Degree in Physical Education from a recognized University.	22-35 years	<p>(a) Fifty percent by promotion, on the basis of seniority-cum-fitness, from amongst Senior Physical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

ATTESTED



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

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

ATTESTED


15

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

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

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

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

ATTESTED



<p>(11)</p>			<p>Provided that if no suitable candidate is available from amongst Senior Theology Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst Theology Teachers with at least five years service as such and having qualification mentioned in column No. 3;</p> <p>(e) three per cent from amongst the Senior Qaris (BPS-16), with at least five years service as Senior Qari and Qari and having qualification mentioned in column No.3;</p> <p>Provided that if no suitable candidate is available from amongst the Senior Qaris then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from Qaris with at least five years service as such and having qualification mentioned in column No. 3;</p> <p>(f) twenty per cent from amongst the Primary School Head Teachers (BPS-16), with at least seven years service as Primary School Head Teachers and Senior Primary School Teachers and Primary School Teachers and having qualification mentioned in column No. 3;</p> <p>Provided that if no suitable candidate is available from amongst</p>
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ATTESTED

5

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

Endst : of even No & date:

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

(ZAMIN KHAN MOMAND)
SECTION OFFICER (PRIMARY)

(7)

ATTACHED

PESHAWAR HIGH COURT BANNU BENCH

FOR OF ORDER SHEET

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

FORM OF ORDER SHEET

Date of order or other proceedings	Order or other proceedings with signature of Judge(s)
(1)	(2)
28/01/2016	<p>WP No.73-B-2014. Present: Mr. Ali Jan Khan advocate for petitioner.</p> <p><u>MUHAMMAD KHUZANFAR KHAN</u> J. The petitioner, namely, <u>Muniriz Khatun</u> daughter of Gull Jan, through the instant Constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan 1973, seeks issuance of directions to the respondents/department to consider him for promotion to the post of SST in BPS-16 in view of the Departmental Promotion Committee meeting held on 18-01-2014.</p> <p>2. We have heard learned counsel for the petitioner and gone through the available record of the case.</p> <p>3. Perusal of record transpires that the petitioner has passed BA in third division while as per notification bearing No. SO (P&T) 525/SR/73/3/11 dated 18/1/2014, the minimum qualifications for the post of SST (BPS-16) are second class Bachelor's degree, or MA in Education or Bachelor's degree in Education. The</p>

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STATE JUDGE
BANNU BENCH
Sindh High Court

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

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

Sd/- Iqbalullah Khan, J

ANNOUNCED
28/01/2016.

Sd/- Muhammad Ghazanfar Khan, J

9/2/16
15/2/16

CERTIFIED TO BE TRUE COPY

9/2/16

Examined
Hauzwaq High Court Sana-Ul-Benah
Authorized Under Article 87 of
The Constitution of Pakistan Order 1284

ATTESTED

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IN THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH
JUDICIAL DEPARTMENT

Writ Petition No. 1041-A/2015.

JUDGMENT

Date of hearing 5-11-16
Petitioner Mohammad Bari by Mr. Abdul Samad
Respondents Govt. of NWFP Abdul

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D (18)

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

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

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

3. Comments were called from respondent No.3, who filed the same, averring therein that though petitioner was promoted to the post of SST vide notification dated 23.10.2014 by respondent No.2 but on scrutinizing his qualification documents, it was found that petitioner was not eligible for promotion to the post of SST being B.Sc third divisioner, hence, his promotion order was de-notified by the Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar and on the direction of Director the promotion order of the petitioner was withdrawn vide impugned notification dated 24.04.2015.

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

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

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

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

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

8. Now the question for determination before this court would be that when the petitioner actually performed his duties on the promoted post and that too for six long months, then how the respondent No.5 could withdraw the earlier promotion order only on the pretext of having B.Sc third division.

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8. It appears from the record that a Division Bench of this had already declared the condition of having third division as null and void in its judgment dated 04.06.2015 which fact has also been affirmed by the respondent No.3 in his comments by stating that they were not aware of that judgment at the time of withdrawal of the impugned promotion of the petitioner and when the case of the present petitioner is at par with that of the petitioner therein, rather on better footing because the petitioner was not only promoted to the post in question but he performed his duties for six long months and received its benefits, the impugned notification passed by respondent No.3 is required to be set at naught.

unlawful

9. It is also a well settled principle of law that once a benefit is granted to a civil servant, cannot be taken back from him and, if so, very stringent strong reasons are required for the same, which are not available in the case in hand, moreso, when the promotion order of the similarly placed teachers having B.Sc third division have not been so far withdrawn which is clearly violation of Article 25 of the Constitution of Pakistan.

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10. For the reasons mentioned above, this petition is accepted and the impugned notification dated 24.04.2015 issued by respondent No.3 whereby the promotion order of the petitioner was withdrawn is declared to be without lawful

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Attested Under Section 5 of the
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authority and, as such, the promotion notification dated 28.10.2014 is hereby restored.

Announced:
05.04.2016.

Sd/ Judge
Sd/ Judge

!Saif!

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

NOTIFICATION

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

AMENDMENT

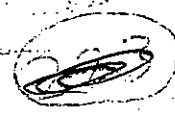
In Schedule-I, against Sr. No.1, in Column No.3, the full stop appearing at the end shall be replaced by colon and thereafter that following proviso shall be added, namely:

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

CHIEF SECRETARY
KHYBER PAKHTUNKHWA



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT



Dated Peshawar the December, 15, 2011

NOTIFICATION

~~ADDEX~~ (C)

E (23)

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AMENDMENT

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

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

CHIEF SECRETARY
KHYBER PAKHTUNKHWA

Encls. No. & date even

Copy of the above is forwarded to:-

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

(Signature)

(PARTAL KAZIM)
SECTION OFFICER (E.II)

ATTESTED

(Signature)

ATTESTED

(Signature)

To,

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

Subject:

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

Respected Sir,

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

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

Dated: 19.03.2020

APPLICANT
Fazal Rehman

FAZAL REHMAN, SST (BPS-16),
GHS Ghazi Baba, District Bajaur

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

_____ OF 2020

Fazal Rehman

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Education Deptt.

(RESPONDENT)
(DEFENDANT)

I/We *Fazal Rehman*

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

Dated. ____/____/2020

CLIENT

[Signature]
ACCEPTED

NOOR MOHAMMAD KHATTAK

KAMRAN KHAN

[Signature]
MIR ZAMAN SAFI

&

AFRASIAB KHAN WAZIR
ADVOCATES

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

[Signature]
10/6

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. _____/2020

FAZAL REHMAN

VS

EDUCATION DEPTT:

APPLICATION FOR CORRECTION OF ADDRESS OF THE
RESPONDENT NO.5 IN THE ABOVE TITLED APPEAL

R/SHEWETH:

- 1- That the appellant filed the abovementioned appeal which is pending adjudication before this August Tribunal and is fixed for hearing/reply on dated 31.03.21.
- 2- That there is certain mistake in the address of the respondent No.5, mistakenly copied and pasted in the subject appeal which is subject to correction as correct address is as under.

"Correct Address of Respondent No:5"

- 5- The District Education Officer, (male) District Bajaur.

It is therefore most humbly requested that the above correct address of the respondent may very kindly be inserted in the array of respondents.

APPLICANT

FAZAL REHMAN

THROUGH:


AFRASIAB KHAN WAZIR
ADVOCATE