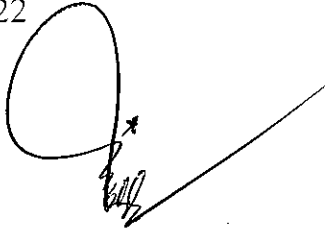


ORDER
14.09.2022

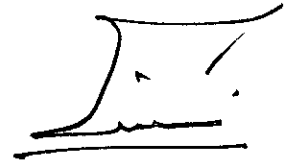
Learned counsel for the appellant present. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present. Arguments have already been heard and record perused.

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)

13.09.2022

Learned counsel for the appellant present. Mr. Muhammad Riaz Khan Painsdakhel, 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)

A long diagonal line drawn across the page, likely a signature or a mark.

30-9-21

DB 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

Mr. Umar Farooq, Advocate (junior of learned counsel for the appellant) present. Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

Junior of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is out of station today. Adjourned. To come up for arguments on 30.05.2022 before the D.B.



(Rozina Rehman)
Member (J)



(Salah-ud-Din)
Member (J)

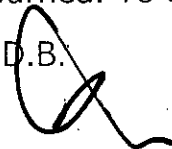
30th May, 2022

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

Learned counsel for the appellant seeks adjournment in order to properly assist the court. Adjourned. To come up for arguments on 01.08.2022 before the D.B.



(Mian Muhammad)
Member(E)



(Kalim Arshad Khan)
Chairman

1-8-22

Proper DB not available the case is adjourned to 1/2022

Reader


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 Waheed Gul, ADEO for the respondents present.

Stipulated period has passed.

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
S. & Process Fee


Chairman

01.02.2021

Counsel for the appellant and Addl. AG alongwith Said ADO for the respondents present.

Representative of the respondents seeks further time to submit reply/comments. Adjourned to 31.03.2021 on which date the requisite reply/comments shall positively be furnished.


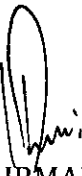


Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 8656 /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 style="text-align: right;"> REGISTRAR</p> <p>2-</p>		<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>14/09/2020</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p>14.09.2020</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 style="text-align: right;"> Chairman</p>

The appeal of Mr. Ihsan Muhammad PSHT 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. 1689 /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.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO. _____/2020

IHSAN MUHAMMAD

VS

EDUCATION DEPTT:

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1	Memo of appeal	1- 3.
2	Educational testimonials	A	4- 6.
3	Notification dated 24.07.2014	B	7- 12.
4	Judgments	C & D	13- 19.
5	Apex Court judgment	E	20- 21.
6	Notification	F	22.
7	Departmental appeal	G	23.
8	Vakalat nama	24.

APPELLANT

THROUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

APPEAL NO. 8656/2020

Diary No. 7420

Dated 17/07/2020

Mr. Ihsan Muhammad, PSHT (BPS-15),
GPS Bahrat Khel Babuzai, District Mardan

..... 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.

.....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

Filed to-day

Registar

17/7/20

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 deleted/expunged 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:

Re-submitted to-day
and filed.

Registar

17/7/2020

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

- 1- That appellant was initially appointed as primary school 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 Pashto 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 Pashto and master in education
- 6- That feeling aggrieved the appellant filed writ petition before Peshawar high court Peshawar which was dismissed on question of jurisdiction vide judgment dated 24/04/2018. That feeling aggrieved from the aforementioned judgment the appellant filed c.p 2468/2018 before august Supreme Court of Pakistan and the same was dismissed vide judgment dated 17/02/2020 and the judgment of high court was upheld. Copy of judgment dated 17/02/2020 is attached as annexure **E.**
- 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

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 annexureF.

- 8- That feeling aggrieved and having no other remedy the appellant filed departmental appeal but the same was not responded within statutory period of ninety days, hence the appellant filed the instant appeal on following grounds inter alia. Copy of departmental appeal is attached as annexureG.

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 the appellant has been discriminated on the subject noted above and as such the respondents violated the principle of natural justice.
- 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

Ihsan
IHSAN MUHAMMAD

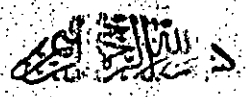
THROUGH:

Noor
NOOR MOHAMMAD KHATTAK

&

SHAHZULLAH YOUSAFZAI

4
A



University of Deshwar

(Pakistan)

Session ANNUAL 1998

IMSAN MUHAMMAD

Sci. of UJLAR UHATF AD

and a student

of S.V.T. POST GRADUATE COLLEGE HARIAN

having passed the prescribed examination

held in AUGUST 10 98;

is this day admitted by the University of Deshwar

to the Degree of

Bachelor of Science

in the THIRD Division.

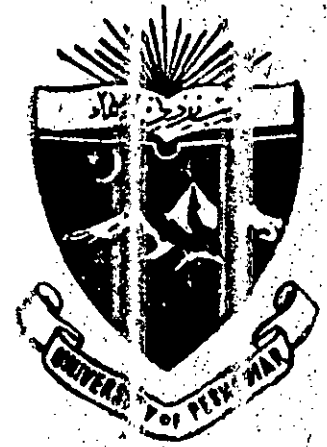
The Examination was taken as ~~entire~~ in parts.

Serial No. 014113

Registered No. 93-N-10183

Roll No. 6293

Result Declared on NOVEMBER 21, 1998



[Signature]
Registrar

Countersigned

[Signature]
Vice-Chancellor

Serial No. 0092879

ALLAMA IQBAL OPEN UNIVERSITY, ISLAMABAD

Roll No.

K6065393

DETAILED MARKS SHEET

Registration No.

94-YMA-0135

It is to certify that Mr./Ms. IHSAN MUHAMMAD
son/daughter of GUJAR MUHAMMAD has completed
all the requirements for **BACHELOR OF EDUCATION** degree
Programme with the following courses in AUTUMN, 2001 Semester :-

Compulsory Courses

Marks obtained

512	Perspectives of Education	<u>61</u> /100
513	School Organization & Management	<u>46</u> /100
514	Evaluation, Guidance & Research	<u>50</u> /100
518	Educational Psychology & Curriculum	<u>58</u> /100
651	English	<u>44</u> /100
652	Islam, Pakistan & Modern World	<u>46</u> /100
655	Practical Component	<u>39</u> /100

Elective Courses

0656	TEACHING OF PHYSICS	54 /100
0661	TEACHING OF MATHEMATICS	52 /100
		500 /900

He/She has obtained 56 % marks and has been placed in grade B.

Date: 12-03-2002

Controller of Examinations

Note: The Detailed Marks Sheet is issued, errors and omissions excepted, as a notice only. An entry appearing in it does not in itself confer any right or privilege independently to the grant of a proper certificate which will be issued under the Regulations, in due course.



ALLAMA IQBAL OPEN UNIVERSITY, ISLAMABAD
RESULT INTIMATION CARD

Serial No. 15963

Registration No. 94NMN0135

Roll No. N618731

(b)

Certified that Mr/Ms. **IHSAN MUHAMMAD**
Father's Name **GUJAR MUHAMMAD**
has Successfully Completed the **M.ED(TEACHER EDUCATION)**
programme. The detail of course is as under
Address: **VILLAGE & P/O BABUZAI, MARDAN DIST. MARDAN**

Semester	Course Code	Title of the Course	Marks	
			Maximum	Obtained
AUT-03	0826	ELEMENTRY EDUCATION	100	70
AUT-03	0827	SECONDARY EDUCATION	100	68
AUT-03	0828	HIGHER EDUCATION	100	54
AUT-03	0829	TEACHER EDUCATION	100	61
SPR-03	0831	FOUNDATION OF EDUCATION	100	55
AUT-03	0837	EDUCATIONAL RESEARCH	100	62
SPR-03	0838	CURRICULUM DEVELOPMENT & INSTRUCTION	100	61
SPR-03	0840	EDUCATIONAL PSYCHOLOGY	100	54
SPR-04	0834	EDUCATIONAL TECHNOLOGY	100	59
SPR-04	0846	TEACHING STRATAGIES	100	49
SPR-04	0855	COMPUTER IN EDUCATION	100	56
SPR-04	6502	EDUCATIONAL MANAG. & SUPERVISION	100	58

Total Credit Hours **

Total AIOU Credits 6

Result declared on April 5, 2005

Date of Issue: JUL 18 2005

Total Marks Obtained

1200 707

Percentage Marks 59

C

CGPA **

Controller of Examinations

Note: This result card is issued as a notice only; errors and omissions are excepted. An entry appearing in it does not in itself confer any right or privilege independently to the grant of proper certificate/degree which will be issued under the Regulations in due course of time.



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Peshawar, dated the 24th July, 2014.

NOTIFICATION

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

AMENDMENTS

In the Appendix,-

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

1	2	3	4	5
1	Subject Specialist (BPS-17)	i. At least second class Master's Degree or four years BS Degree in the relevant subject; and ii. Bachelor of Education or Master of Education (Industrial Art or Business Education) or 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

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

(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),</p> <p style="text-align: center;">Or</p> <p>(b) (Physics, Maths "A" or "B" or Statistics)</p> <p style="text-align: center;">Or</p> <p>(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>

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

11

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

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

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

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

Provided that if no suitable candidate is available from amongst

**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)

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 SHAZANUZZAMAN KHAN</u> J. The petitioner, namely, <u>Munir Khan son of Gull Jan</u>, through the instant Constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan 1973, seeks issuance of directions to the respondents/department to consider him for promotion to the post of SST in BPS-16 in view of the Departmental Promotion Committee meeting held on 18-01-2014.</p> <p>2. We have heard learned counsel for the petitioner and gone through the available record of the case.</p> <p>3. Perusal of record transpires that the petitioner has passed BA in third division while as per notification bearing No. SO (PUN) SENSR/73/2014 dated 19/1/2014, 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>

[Handwritten signature]

REGISTERED
PESHAWAR HIGH COURT
BANNU BENCH

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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/- Ibrarullah Khan, J

ANNOUNCED
28/01/2016.

Sd/- Muhammad Ghaznifer Khan, J

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Examinor
Peshawar High Court Sana Bench
Authorized Under Article 27 of
The Council of Sindh Order 1984

Judgment Sheet

IN THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH
JUDICIAL DEPARTMENT

Writ Petition No. 1041-A/2015.

JUDGMENT

Date of hearing 5-4-16

Petitioner Mahmoud Bari by Mr. Abdul Samad

Respondents Govt. of NWFP Abdul

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 28.10.2014 by respondent No.2 but on scrutinizing his qualification documents, it was found that petitioner was not eligible for promotion to the post of SST being B.Sc third divisioner, hence, his promotion order was de-notified by the Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar and on the direction of Director the promotion order of the petitioner was withdrawn vide impugned notification dated 24.04.2015.

4. It has further been averred in the comments that promotion order of the petitioner was withdrawn on the ground of B.Sc third division and it was done in light of policy circulated vide Notification No.SO(PE)4-5 / SSRC / meeting / 2013 / teaching cadre dated 24.07.2014 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 alongwith 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

(17)

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.3 could withdraw the earlier promotion order only on the pretext of having B.Sc third division.

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Month /

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.

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.

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

Stamp:
Sindh High Court
Abbottabad Bench
Created Under Sec 5 of the
Sindh High Court Act 1979

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unlawful

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

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Announced:
05.04.2016.

Self Judge
Self Judge

Snif

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E. J. ...
29

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**IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)**

**PRESENT
MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE YAHYA AFRIDI**

Civil Petition No.2468 and 2469 of 2018

(On appeal from the judgment/order dated 24.04.2018
Of the Peshawar High Court, Peshawar passed in
W.P No. 3965-P/2017).

Ihsan Muhammad and others (in C.P 2068/2018) ...Petitioner(s)
Muhammad Jan and others in C.P 2469/2018)

VERSUS

Government of KPK, through Chief Secretary, Peshawar and others ...Respondents

For the Petitioner(s) Mr. Misbah Ullah Khan, ASC
For the Respondents N.R
Date of Hearing 17.02.2020

ORDER

UMAR ATA BANDIAL. The learned High Court has by its impugned judgment dated 24.04.2018 dismissed writ petition filed by the petitioners on the grounds that the petitioner claim for promotion fell within the terms and conditions of their services as PST. That there are two aspects of the question of promotion, namely, eligibility and fitness and the present case of the petitioners related to their eligibility for being considered for promotion. On such question, the jurisdiction of the learned Service Tribunal is available and consequently the writ petition filed by the petitioners was not maintainable.

The leaned counsel submits that a number of other petitions on the same question have been entertained and decided by the learned High Court. In this regard the judgment dated 04.06.2015 given in the case of Waris Khan versus Govt: of Khyber Pakhtunkhwa and five others (W.P No. 58-P/2014) has been referred. On perusal of that judgment, we notice that the learned High Court considered the matter in issue to be one regarding the fitness or otherwise of a person to be promoted to a higher post. In the present case, the question is whether the petitioners who secured their B.A, B.Sc degree in 3rd division is eligible for consideration for promotion to the post of SST (BPS-16) when the relevant criteria requires that a candidate for promotion must at least have qualified the said examination in second Division. The impugned judgment of the learned High Court is, therefore, correct in considering the question in issue to be one of eligibility of the petitioners rather than their fitness for promotion. Accordingly, we find no fault with the said judgment. The petitioners may, if so inclined, to pursue their remedy before the competent forum.

These petitions are dismissed and leave to appeal is refused.

E-20

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE YAHYA AFRIDI

Civil Petition No. 2468 and 2469 of 2018
On appeal from the judgment/order dated
24.04.2018 of the Peshawar High Court, Peshawar
passed in W.P. No. 3965-P, 4102-P/2017).

Ihsan Muhammad and others (in C.P. 2468/2018) ...Petitioner(s)
Muhammad Jan and others (in C.P. 2469/2018)

VERSUS

Government of KPK, through Chief ...Respondent(s)
Secretary, Peshawar and others

For the Petitioner(s): Mr. Misbah Ullah Khan, ASC

For the Respondent(s): N.R.

Date of Hearing: 17.02.2020

ORDER

UMAR ATA BANDIAL, — The learned High Court has by its impugned judgment dated 24.04.2018 dismissed writ petition filed by the petitioners on the ground that the petitioners' claim for promotion fell within the terms and conditions of their service as PST. That there are two aspects of the question of promotion, namely, eligibility and fitness and the present case of the petitioners related to their eligibility for being considered for promotion. On such question, the jurisdiction of the learned Service Tribunal is available and, consequently, the writ petition filed by the petitioners was not maintainable.

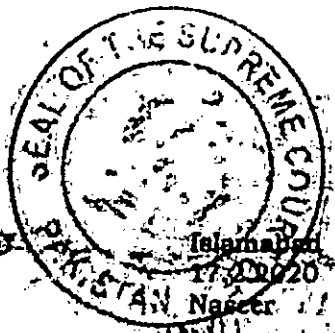
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Associate
of Pakistan
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The learned counsel submits that a number of other petitions on the same question have been entertained

21

and decided by the learned High Court. In this regard the judgment dated 04.06.2015 given in the case of Waris Khan versus Govt. of Khyber Pakhtunkhwa and five others (W.P. No. 58-P/2014) has been referred. On perusal of that judgment, we notice that the learned High Court considered the matter in issue to be one regarding the fitness or otherwise of a person to be promoted to a higher post. In the present case, the question is whether the petitioners who secured their B.A, B.Sø degree in 3rd division is eligible for consideration for promotion to the post of SST (BPS-16) when the relevant criteria requires that a candidate for promotion must at least have qualified the said examination in second Division. The impugned judgment of the learned High Court is, therefore, correct in considering the question in issue to be one of eligibility of the petitioners rather than their fitness for promotion. Accordingly, we find no fault with the said judgment. The petitioners may, if so inclined, to pursue their remedy before the competent forum

3. These petitions are dismissed and leave to appeal is refused.



Certified to be True Copy
Senior Counsel Associate
Supreme Court of Pakistan
Islamabad

Not Approved For Reporting

P.F.O.

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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

30/9/2021

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Service Appeal No.8656/2020

Mr.Ihsan Muhammad ,PSHT (BPS-15)GPS Bahrat Khel, Babuzai , Mardan.

(Appellant)

Versus


The Secretary Elementary & Secondary Education , KPK, Peshawar & Others.

(Respondents)

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S.NO	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGES	
1.	Para wise comments along with affidavit		01	05

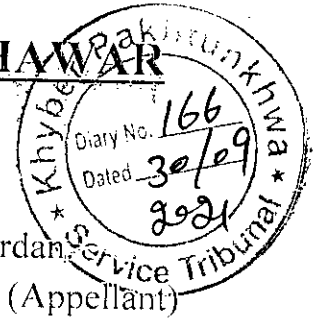
Respondents No 5


District Education Officer
(Male) Mardan

05/04/2021

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Service Appeal No.8656/2020



Mr.Ihsan Muhammad ,PSHT (BPS-15)GPS Bahrat Khel, Babuzai , Mardan,
(Appellant)

Versus

The Secretary Elementary & Secondary Education , KPK, Peshawar & Others.
(Respondents)

Para Wise Comments on Behalf of Respondents No 1 to 5.

Sheweth, Respectfully

PRELIMINARY OBJECTIONS:

1. That the appellant has got no cause of action as well as locus standi to file the instant appeal.
2. That the instant appeal is badly time barred.
3. That the appellant has not come to this honorable Tribunal with clean hands.
4. That the appellant has concealed the material facts from this Hon'ble Tribunal hence liable to be dismissed.
5. That the instant appeal is against the prevailing law and rules.
6. That the appellant has been treated as per law & rules.
7. That the Notification had been issued since 2014, while the departmental appeal has filed dated 19-03-2020,the instant appeal is Time barred. and the appeal is liable to be dismissed.
8. That the answering respondent being responsible government officers acted in accordance law and rules.

FACT:

1. Para No. 1 pertains to record, hence need no comments.
2. Para No. 2 pertains to record, hence need no comments.
3. Para No.3 is incorrect, baseless and against facts as the fact is not based on the sound reason as the appellant was inducted on the department as PST as well as the appellant seeks promotion to the higher rank i.e SST by challenging the Notification vide dated 24.07.2014 which is not the prerogative of the appellant as the notification was general and could not be modified for an individual and since its publication is intact till to date, hence denied.

4. Para No.4 is incorrect, as each and every case have their own merits. The appellant has relied upon the judgment dated 28.01.2016 which is self-explanatory as the Peshawar High court Peshawar Bannu Bench issued gracious direction for considering the petitioner for promotion but does not disclosed the fact that the petitioner must be promoted. The judgment is identical to the instant appeal, hence denied.
5. Para No.5 is incorrect, as the respondent being a responsible Govt officers acted accordance with law and there is no specification mentioned in the notification which seeks that any incumbent having 2nd division Bachelor Degree holder would be consider on the basis of higher degree i.e. Master for promotion, hence denied.
6. Para No.6 is needed to be proceed, hence denied.
7. Para No.7 is incorrect as the appellant intents to mislead the Hon, able KPK, Service Tribunal Peshawar on the basis of the amendments which is denotes/pertains only to the **Management cadre**, and the appellant having **Teaching Cadre**, hence denied.
8. Para No 8 incorrect, hence denied

GROUNDS

- A. Para A is incorrect, baseless and against facts as the fact is not based on the sound reason as the appellant was inducted on the department as PST as well as the appellant seeks promotion to the higher rank i.e SST by challenging the Notification vide dated 24.07.2014 which is not the prerogative of the appellant as the notification was general and could not be modified for an individual and since its publication is intact till to date, hence denied.
- B. Para B is incorrect the appellant has been treated in accordance with law and rules. The respondents Department have not violated Article 4 & 25 of the Constitution of Islamic Republic of Pakistan 1973, hence denied.
- C. Para C is incorrect the appellant did not produce any cogent fact before the respondents Department for his entitlement as the consistency is concerned the appellant does not comes under the


domain of consistency as well as by citing the different judgments in the appeal is bad in the eye of law. As per the Notification for the post of SST, the required qualification is Second (2nd) Division bachelor degree, hence denied.

D. Para D is incorrect, as the appellant intends to mislead the Hon, able KPK, Service Tribunal Peshawar on the basis of the amendments which is denotes/pertains only to the **Management cadre**, and the appellant having **Teaching Cadre**, hence denied.

E. Para E is incorrect, as the respondents Department have acted in accordance with law, and the appellant has not fulfill^{ed} the required qualification which is mentation^{ed} in the Notification, hence denied.

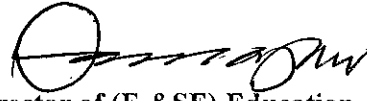
F. That the respondents also seek permission of this Hon' able Tribunal to additional ground at the time of arguments.

It is therefore humble prayed that on acceptance of this reply and the instant appeal may kindly be dismissed with cost.


District Education Officer


(Male) Mardan

(Respondent No. 5)


Director of (E & SE) Education

KPK, Peshawar

(Respondent No.4)


Secretary of Finance Department

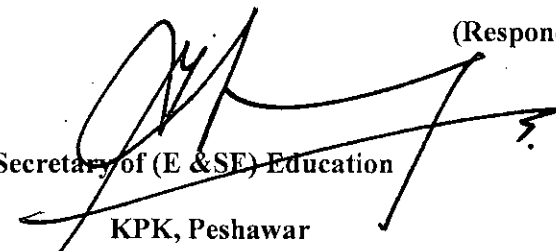
KPK, Peshawar

(Respondent No. 3)


Secretary of Establishment

Department KPK, Peshawar

(Respondent No.2)


Secretary of (E & SE) Education

KPK, Peshawar

(Respondent No. 1)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Service Appeal No.8656/2020

Mr.Ihsan Muhammad ,PSHT (BPS-15)GPS Bahrat Khel, Babuzai , Mardan.
(Appellant)

Versus

The Secretary Elementary & Secondary Education , KPK, Peshawar & Others.
(Respondents)

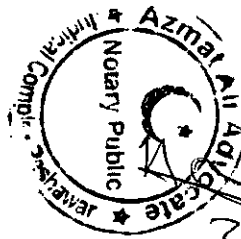
AFFIDAVIT

I, Mr Sajid Khan Litigation Officer Education Department Mardan do hereby solemnly affirm and declare that the contents of Para Wise Comments submitted by on behalf of Answering Respondents are true to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.

Deponent

Sajid
Sajid Khan

16101-6005318-5



U
30-9-2021

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

_____ OF 2020

Ihsan Mohammad (APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Edel Deptt. (RESPONDENT)
(DEFENDANT)

I/We Ihsan Mohammad
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

Ihsan
CLIENT

NOOR MOHAMMAD KHATTAK
ACCEPTED

SHAHZULLAH YOUSAFZAI

MIR ZAMAN SAFI
&

AFRASIAB KHAN WAZIR
ADVOCATES

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

To,

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

D-28

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

IHSAN MUHAMMAD, PSHT (BPS-15),
GPS Bahrat Khel Babuzai, District Mardan



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Dated Peshawar the December, 15, 2011

NOTIFICATION

Amex (21)

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 the following proviso shall be added, namely:

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

CHIEF SECRETARY
KHYBER PAKHTUNKHWA

Enclst. No. & date 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 PATA.
7. Chairman, Khyber Pakhtunkhwa Public Service Commission.
8. Accountant General, Khyber Pakhtunkhwa, Peshawar.
9. Director, STI, I&EA Department.
10. Secretary Khyber Pakhtunkhwa Public Service Commission.
11. PS to Chief Secretary, Khyber Pakhtunkhwa.
12. PS to Secretary Establishment.
13. PS to Additional Secretary (Estt)/Deputy Secretary (Estt) Establishment Department.
14. Office order file.

(Signature)

(PARVAL KAZIM)
SECTION OFFICER (E.II)

ATTESTED

(Signature)