

15.02.2022

Due to retirement of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 12.04.2022 for the same as before.



Reader

12.04.2022

Counsel for the petitioner present.

Muhammad Adeel Butt, learned Additional Advocate General alongwith Janat Khan Superintendent for the respondents present.

Representative of respondents submitted copy of CPLA and stated that leave has been granted by the august Supreme Court of Pakistan. Learned counsel for the petitioner requested that the instant case may be adjourned sine die till the decision by the apex Court.

In view of the above, instant execution petition stands adjourned sine die. The petitioner is, however at liberty to seek restoration of the instant petition after decision by the august Supreme Court of Pakistan. File be consigned to the record room.



(Rozina Rehman)
Member (J)

E. P. No. 207/2021
M. Rafiq vs Govt

09.12.2021

Petitioner in person present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Habib Khan, Supdt for respondents present.

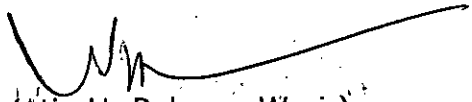
Respondent-department submitted a letter dated 09.12.2021 whereby working paper is being prepared for submission to the departmental promotion committee fixed for 24.12.2021 at 10:30AM. To come up for further proceedings on 03.01.2022 before S.B.


(MIAN MUHAMMAD)
MEMBER (E)

03.01.2022

Petitioner in person present. Mr. Kabirullah Khattak, Additional Advocate General alongwith Janat Khan Superintendent and Bar Assistant for respondents present.

Representative of respondents furnish circulation letter for conducting of DPC dated 24.12.2021, furthermore the representative of the respondents stated at the bar that the DPC has been conducted on 30.12.2021 and minutes of the meeting is still awaited. Representative of the respondents is directed to submit implementation report on the next date positively. To come up on 15.02.2022 before S.B.


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



9/96 5517
GOVERNMENT OF
KHYBER PAKHTUNKHWA
AGRICULTURE LIVESTOCK & COOPERATIVE DEPARTMENT

No. SOE(AD)V-8/DPC/AE/2021/1116
Dated Peshawar, the 24th December, 2021

To

- The Secretaries to,
Government of Khyber Pakhtunkhwa,
i. Establishment Department,
ii. Finance Department.

Subject: CPLA NO. 471-P/2021 SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA, AGRICULTURE DEPARTMENT AND OTHERS VS MUHAMMAD RAFIQ

MISC PETT: NO. 207/2021 IN SERVICE APPEAL NO. 1975/2019 TITLED MUHAMMAD RAFIQ VS SECRETARY, GOVERNMENT OF KP, AGRICULTURAL DEPARTMENT PESHAWAR & OTHERS

WORKING PAPER FOR PROMOTION OF SENIOR SUPERVISOR (BPS-16) TO THE POST OF ASSISTANT AGRICULTURAL ENGINEER (BPS-17) ON CONDITIONAL BASIS

Dear Sir,

The undersigned is directed to refer to this Department's letter of even No. dated 10.12.2021 on the subject cited above and to inform you that the subject meeting which was scheduled to be held on 24.12.2021 regarding Promotion case of Senior Supervisor (BPS-16) to the post of Assistant Agricultural Engineer (BPS-17) on conditional basis of Agricultural Engineering wing of Agriculture Department has been postponed.

02. Now, the subject meeting will be held on 30.12.2021 at 10:30 AM under the Chairmanship of Secretary Agriculture in the Committee Room of Agriculture Department.

03. Working papers are already circulate please.

Office of The
Director Agril. Engineering
P.O. Jarnah, Peshawar
Lic. No. 7405
Date: 27/12/2021

Yours faithfully,

SECTION OFFICER-ESTT:

Endst. of Even No. & Date:

Copy forwarded to:

- 27/12/21
1. The Registrar, Khyber Pakhtunkhwa, Service Tribunal, Peshawar.
 2. Deputy Secretary (Admn) Agriculture, Livestock, Fisheries & Cooperative Department Khyber Pakhtunkhwa, Peshawar with the request to attend the meeting.
 3. The Director, Agricultural Engineering, Khyber Pakhtunkhwa, Peshawar with the request to attend the DPC on the above-mentioned date, time & venue, please.
 4. The Section Officer (Litigation), Agriculture, Livestock, Fisheries & Cooperative Department, Khyber Pakhtunkhwa, Peshawar w/r to his letter No. SO(Lit)AD/3-2/269/2020 dated 09.12.2021 with the request to attend the subject meeting.

Estt. Adm. Secy
27/12/21

P.S

05.11.2021

Counsel for the petitioner turned up and requested for early date instead of 21.12.2021. Since the petition is on its primary stage, therefore, request is accorded. To come up for implementation report on 02.12.2021 instead of 21.12.2021. Notices be issued to the respondents.

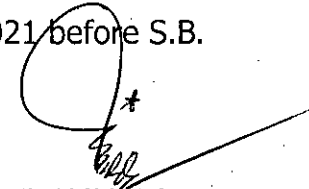


Chairman

02.12.2021

Counsel for the petitioner present. Mr. Muhammad Adeel Butt, Addl: AG for respondents present.

Implementation report not submitted. Learned AAG seeks time to submit proper implementation report on the next date. To come up for implementation report on 06.12.2021 before S.B.

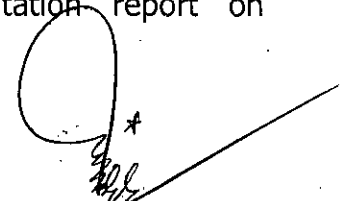


(MIAN MUHAMMAD)
MEMBER (E)

06.12.2021

Counsel for the petitioner present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Ibrar, Assistant for respondents present.

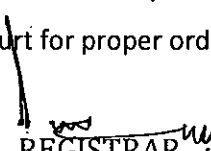


Learned AAG stated at the bar that the department has gone into CPLA. However, neither a suspension order on the Service Tribunal judgement dated 30.07.2021 is produced nor a valid justification for delay in implementation substantiated. The petitioner is going to retire on 11.12.2021 and as such appears to be hardship case. The department is therefore obligated to provisionally implement the Service Tribunal judgement dated 30.07.2021 and come up with implementation report on 09.12.2021 before S.B.



(MIAN MUHAMMAD)
MEMBER (E)

Form- A
FORM OF ORDER SHEET

Court of _____
Execution Petition No. _____/2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	04.10.2021	<p>The execution petition of Mr. Muhammad Rafiq submitted today by Mr. Saad Ullah Khan Marwat Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	05.11.2021	<p>This execution petition be put up before S. Bench at Peshawar on <u>05/11/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> <p>Petitioner along with counsel present.</p> <p>Notices be issued the respondents to come up for implementations report on 21.12.2021 before the S.B. on 21.12.2021 before the S.B.</p> <p style="text-align: right;"> Chairman</p>

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

Misc Pett: No. _____ /2021

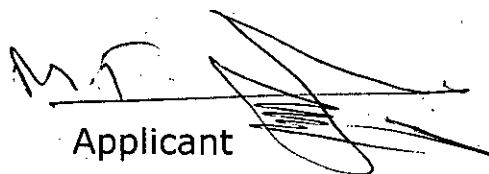
Muhammad Rafiq

versus

Secretary & Others


I N D E X

S.#	Description of Documents	Annex	Page
1.	Memo of Misc Petition		1-2
2.	Copy of Appeal dated 01-10-2019	"A"	3-6
3.	Copy of Judgment dated 30-07-2021	"B"	7-11



Applicant

Through



(Saadullah Khan Marwat)
Advocate
21-A Nasir Mension,
Shoba Bazar, Peshawar.
Ph: 0300-5872676

Dated: 04-10-2021

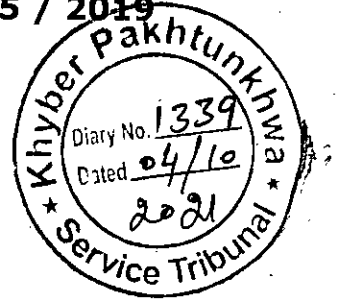
BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

E.P. No. 207/2021

Misc Pett: No. _____ /2021

IN

S.A. No. 1975 / 2019



Muhammad Rafiq
 S/O Abdul Hameed,
 Unit Supervisor,
 Office of Assistant
 Agricultural Engineer,
 Bannu Appellant

VERSUS

1. Secretary, Govt. of KP,
 Agricultural Department,
 Peshawar.
2. Chief Secretary,
 Govt. of KP,
 Civil Secretariat,
 Peshawar. Respondents

**APPLICATION FOR IMPLEMENTATION OF THE
 JUDGMENT DATED 30-07-2021 OF THE HON'BLE
 TRIBUNAL, PESHAWAR:**

Respectfully Sheweth:

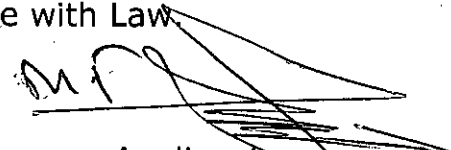
1. That on 01-10-2019, applicant filed appeal before this hon'ble Tribunal for restoring the previous rules for promotion to the next higher post / grade or modify the impugned rules by inserting post of promotion having qualification of Diploma of Associate Engineer. (Copy as annex "A")

2. That the said appeal came up for hearing on 30-07-2021 and then the hon'ble Tribunal was pleased to "direct the respondents to consider the applicant promotion to the next higher post under the previous rules". (Copy as annex "B")
3. That not only applicant but the Registrar of the hon'ble Tribunal remitted the same to respondents for compliance but so far no favorable action was taken there and then and the judgment of the hon'ble Tribunal was put in a waste box.
4. That the respondents are not complying with the judgment of the hon'ble Tribunal in letter and spirit and flouts the same with disregard, so are liable to be proceeded against the Contempt of Court Law for punishment.

It is, therefore, most humbly requested that the judgment dated 30-07-2021 of the hon'ble Tribunal be complied with hence forthwith.


OR

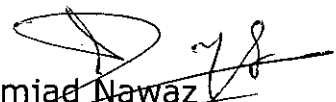
In the alternate, respondents be proceeded for contempt of court and they be punished in accordance with Law.


Applicant

Through


Saadullah Khan Marwat


Arbab Saif-ul-Kamal


Amjad Nawaz
Advocates

Dated: 04-10-2021

A 3

BEFORE KPK, SERVICE TRIBUNAL, PESHAWAR

S.A No. 3275/2019

Muhammad Rafiq S/O Abdul Hameed,
Unit Supervisor, Office of Assistant
Agricultural Engineer, Bannu Appellant.

Versus

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1334

Dated 01-10-2019

1. Secretary, Govt. of KP
Agricultural Department,
Peshawar.
2. Chief Secretary, Govt. of KP,
Civil Secretariat, Peshawar Respondents

⇔<=>⇔<=>⇔<=>⇔<=>⇔

APPEAL U/S 4 OF SERVICE TRIBUNAL ACT, 1974
AGAINST OFFICE NOTIFICATION NO. 9632-
44/DAE/ESTT:/5/29, DATED 16-07-2019 OF R.
NO. 01, WHEREBY PROMOTION TO THE POST OF
ASSISTANT AGRICULTURAL ENGINEER /
ASSISTANT DIRECTOR PLANNING B-17 WAS
DELETED / BLOCKED FROM PROMOTION FOR
EVER FOR NO LEGAL REASON:

Filed to-day
Registrar
01/10/2019

⇔<=>⇔<=>⇔<=>⇔<=>⇔

Respectfully Sheweth:

1. That appellant was initially appointed as Sub-Engineer on Farm Water Management B-11 on 04-04-1984. He was adjusted as Unit Supervisor B-11 in Agriculture Engineering on 01-04-1985. (Copies as annex "A").

Handwritten signature

2. That In the year 1994 or as the case may be, the department framed rules in consultation with Establishment & Finance Department whereby method of recruitment, qualifications and other conditions were specified in the appendix.

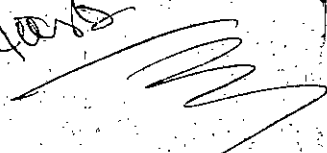
In the appendix, the post of Assistant Agricultural Engineer / Superintendent Workshop, B-17 was to be filled in initial recruitment and by promotion with ratio:-

- a. 75% of the vacancies shall be filled by initial recruitment.
- b. 25% of the vacancies shall be filled by selection on merit with due regard to seniority and fitness for higher responsibility from amongst holders of the post of Dealing Supervisor / Training Supervisor / Unit Supervisor / Sub-Engineers / Overseers in grade 16 who :-
 - i. have at least the qualification as specified at item (a) in column 04, i.e. Diploma in Agricultural Mechanical or Auto-Mobile Engineering from recognized institute or Degree in Agricultural or Mechanical Engineering from a recognized University ;
 - ii. have at least 12 year service in the department ; and
 - iii. have passed the departmental examination... (Copy as annex "B")

3. That to clarify the position, appellant is Unit Supervisor B-16 and fulfills the criteria of promotion of the rules to the post of Assistant Agriculture Engineer / Superintendent Work-Shop.

4. That on 30-06-2015, Finance Department, Govt. of KP issued Notification by upgrading of pay scales of the employees of the department with effect from 01-07-2015. Para B relates to the case in hand of appellant. (Copy as annex "C")

5. That on 31-10-2017, appellant was promoted to the post of Unit Supervisor B-16 in the interest of public service by Director Agricultural Engineering, KP, Tarnab Peshawar. (Copy as annex "D").

Arif


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6. That on 29-03-2019, Final Seniority List was circulated of Unit / Senior Supervisor B-16 of Agricultural Engineering Wing of the department bearing the name of petitioner was at S. No. 01. (Copy as annex "E")

7. That in every field of life and as per promotion criteria, appellant was due for promotion to the post of Assistant Agricultural Engineer B-17 but to drop him from promotion to the said post, R. No. 01 issued Notification on 16-07-2019, wherein at S. No. 03 of the appendix, qualification for the post of Unit / Senior Supervisor B-16 was deleted and qualification of Bachelor of Science (B. Sc) Degree in Agricultural Engineering was inserted and Diploma of Associate Engineer (DAE) was deleted from promotion. (Copy as annex "F")

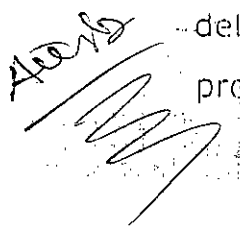
Here it would be not out of place to mention that at the final stage of life, appellant could be unable to get Degree of Bachelor of Science.

8. That on 12-09-2019, appellant submitted representation before R. No. 02 to restore the former rules for promotion to the post of Assistant Agricultural Engineer / Assistant Director Planning B-17 but the same met dead response till date. (Copy as annex "G")

Hence this appeal, inter alia, on the following grounds:-

GROUND S:

- a. That appellant has in his credit the qualifications of Diploma in Associate Engineering Mechanical (DAE) and was fully qualified for promotion from the post of Unit / Senior Supervisor B-16 to the post of Assistant Agricultural Engineer / Assistant Director Planning, B-17.
- b. That appellant was at S. No. 01 of the final seniority list, being sole candidate and was to be promoted to the said post, being fully qualified and eligible.
- c. That the fresh rules of 2019, curtailed the way of promotion of appellant by inserting Degree of Bachelor of Science (B. Sc) and deleting Diploma of Associate Engineer. He was never see further promotion to the next higher grade till his retirement.

Adm


6

- d. That at such a belated stage of life, appellant could be unable to pass Degree of Bachelor of Science (B. Sc) from recognized Institution / University. He cannot be admitted to such course by any forum.
- e. That not only appellant but other employees of the low categories affected their future by amending the former rules in to the impugned rules as appellant is at the verge of retirement from service.
- f. That the fresh rules of the year, 2019 totally infringed promotion share to the next higher grade.
- g. That the rules of 16-10-2019, hits the basic / fundamental right of appellant if not interfered and are based on malafide.

It is, therefore, most humbly prayed that on acceptance of the appeal, Notification dated 16-07-2019 of R. No. 01 be set aside by restoring the previous rules for promotion to the next higher post / grade or modify the impugned rules by inserting post of promotion having qualification of Diploma of Associate Engineer (DAE), with such other relief as may be deemed proper and just in the circumstances of the case.

M.S.
Appellant

Through

Saadullah Khan Marwat

Amjad Khan
Advocates.

Dated 26-09-2019

Amjad Khan
Advocates

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BEFORE KPK, SERVICE TRIBUNAL, PESHAWAR

S.A No. 1975 /2019

Muhammad Rafiq S/O Abdul Hameed,
Unit Supervisor, Office of Assistant
Agricultural Engineer, Bannu



Appellant

Versus

Khyber Pakhtunkhwa
Service Tribunal

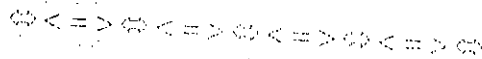
Diary No. 1334

Dated 01-10-2019

1. Secretary, Govt. of KP,
Agricultural Department,
Peshawar.

2. Chief Secretary, Govt. of KP,
Civil Secretariat, Peshawar

Respondents



APPEAL U/S 4 OF SERVICE TRIBUNAL ACT, 1974
AGAINST OFFICE NOTIFICATION NO. 9632-
44/DAE/ESTT:/5/29, DATED 16-07-2019 OF R.
NO. 01, WHEREBY PROMOTION TO THE POST OF
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ASSISTANT DIRECTOR PLANNING B-17 WAS
DELETED / BLOCKED FROM PROMOTION FOR
EVER FOR NO LEGAL REASON:

Filed to-day
Registrar
01/10/2019

Respectfully Sheweth:

1. That appellant was initially appointed as Sub-Engineer on Farm Water Management B-11 on 04-04-1984. He was adjusted as Unit Supervisor B-11 in Agriculture Engineering on 01-04-1985. (Copies as annex "A")

e-submitted to day
to filed.

Registrar
20/10/19

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1975/2019

Date of Institution ... 01.10.2019

Date of Decision ... 30.07.2021



Muhammad Rafiq S/O Abdul Hameed Unit Supervisor, Office of Assistant Agricultural Engineer, Barnu. ... (Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar and one other. ... (Respondents)

MR. ARBAB SAIFUL KAMAL
Advocate

For Appellant

MR. MUHAMMAD ADEEL BUTT
Additional Advocate General

For Respondents

MR. SALAH-UD-DIN
MR. ATIQ-UR-REHMAN WAZIR

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT

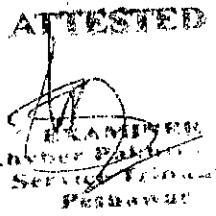
ATIQ-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are that the appellant was initially appointed as Sub-Engineer (BPS-11) on Farm Water Management on 04-04-1984 and was adjusted as unit supervisor in agriculture engineering on 01-04-1985. In the year 1994, the department framed rules, whereby method of recruitment, qualification and other conditions were specified, where the post of Assistant Agriculture Engineer/Superintendent Workshop (BPS-17) was to be filled in with ratio of 75% by initial recruitment and 25% by promotion from amongst the holders of posts of dealing supervisors/unit supervisors/sub-engineers and overseers in grade-16 on the basis of seniority cum fitness. On 31-10-2017 the

Atiq

ATTESTED

[Signature]
Secretary
Khyber Pakhtunkhwa Service Tribunal
Peshawar

appellant was promoted to the post of unit supervisor(BPS-16) and as per final seniority list, issued on 29-03-2019, the appellant stands at Serial No. 1 and was otherwise fit for promotion to the next grade, when the respondents vide notification dated 16-07-2019 brought certain amendments, where qualification of the post of unit supervisor for further promotion to the post of assistant engineer was changed from diploma of associate engineer to that of BSc degree in agriculture engineering. Feeling aggrieved, the appellant filed departmental appeal dated 12-09-2019 to promote the appellant on the basis of the old rules, but was not responded to, hence the instant service appeal with prayers that the appellant may be promoted on the basis of the old rules, as the appellant was fit for promotion in every respect, but respondents delayed his promotion.

ATTESTED

 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

02. Written reply/comments were submitted by respondents.

03. Learned counsel for the appellant has contended that the appellant has in his credit the qualifications of Diploma in Associate Engineering Mechanical(DAE) and was fully qualified for promotion from the post of unit/senior supervisor(BPS-16) to the post of Assistant Agriculture Engineer/Assistant Director Planning(BPS-17); that the appellant was at serial No. 1 of the final seniority list, being the sole candidate and was to be promoted to the said post, being fully qualified and eligible. He further contended that the fresh rules curtailed the way of promotion of appellant by inserting degree of Bachelor of Science and deleting diploma of associate engineer, due to which he would never avail further promotion, as at the last lag of his service, he would not be able to obtain degree of BSc. Learned counsel for the appellant argued that the fresh rules, hits the basic/fundamental rights of the appellant and are based on malafide. Learned counsel for the appellant added that since the appellant was otherwise eligible for promotion during the old rules, but was not promoted, hence he was deprived of promotion forever in the wake of amendments in the rules, so in order to meet the ends of justice, the appellant may be promoted

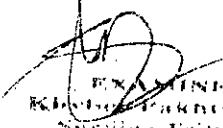
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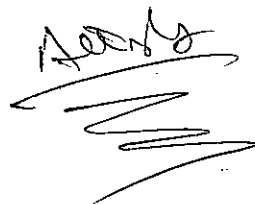

in pursuance of the old rules, according to which he is fit for promotion on the basis of seniority cum fitness.

04. Learned Deputy District Attorney appearing on behalf of respondents has contended that diploma holders on promotion to the next grade are unable to prepare PC-1 for the projects/schemes in the department, therefore they have been dropped from promotion to the post of Assistant Engineer and the degree holders was inserted as per S.No 03 of the appendix of service rules of the department recently notified on 16-07-2019. He further contended that in view of the new amendments the appellant is not entitled for further promotion to the post of assistant Engineer (BPS-17). Learned Deputy District Attorney argued that as per record, the recently promoted diploma holders have proved to be unable to achieve the target fixed by the government. The learned attorney prayed that the instant appeal being devoid of merit may be dismissed.

05. We have heard learned counsel for the parties and have perused the record.

06. Record reveals that in pursuance of the old rules, the respondents have already made promotions from amongst the holders of posts of dealing supervisors/unit supervisors/sub-engineers and overseers in grade-16 based on seniority cum fitness to the post of Assistant Engineer (BPS-17). The post which has rendered vacant and for which the appellant has preferred departmental appeal was also filled in by way of promotion from amongst the holders of associate engineers, who have now retired. It was also noted that the appellant was otherwise fit for promotion, when the old rules were in field and to which the respondents did not object, but his case was delayed only to keep him deprived from further promotion, which is unlawful and contrary to the norms of natural justice. Such amendments could not be allowed to operate retrospectively to the disadvantage of the appellant.

ATTESTED

EXAMINER
Karnataka Public Service Tribunal
BANGALORE

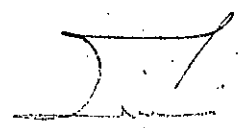



(11)

who was otherwise entitled for promotion prior to the amendments against the vacant seat. The Supreme Court of Pakistan in its judgment reported in 2012 SCMR 965 has held that rules operate prospectively and if a right was created in favor of an employee under the old rule, it could not be taken away on the ground that the amended rules had allowed others to compete.

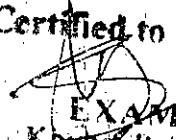
07. In view of the foregoing discussion, the instant appeal is accepted as prayed for. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
30.07.2021


(SALAH-U-DIN)
MEMBER (JUDICIAL)


(ATIQ UR REHMAN WAZIR)
MEMBER (EXECUTIVE)

Certified to be true copy


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 30/7/21

Number of Words 2000

Copying Fee 22/-

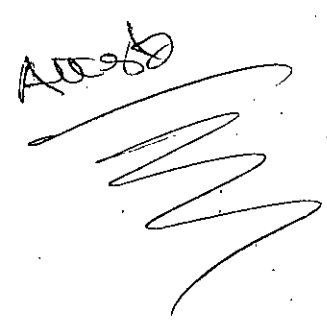
Urgent

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Date of Delivery of Copy 13/9/21



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مستوفی

محمد رفیق نام

دعویٰ

پس

باعتبار

مستوفی مندرجہ مخبران بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی مستغافہ آل مقام استوار کیے ہیں مستغافہ خان سرور نے ایڈووکیٹ ہائی کورٹ کو وکیل مقرر کر کے اتفاق کیا ہے کہ صاحب مروتوف کو مقدمہ کی کل کاروائی کا کابل اختیار ہو گا نیز وکیل صاحب کو کسے راہی ہمارے دفتر ثالث و فیصلہ برعکاف دینے جواب دہی اور اقبال دعویٰ اور لہجہ و لگاری کرنے اجراء اور وصولی چیک و روپیہ اور دعویٰ دہوئی اور درخواست ہر قسم کی تقدیر از اس پر دستخط کرنے کا اختیار ہو گا نیز بھرتہ عدم پیروی یا ڈگری یک طرفہ یا اپیل کی برآمدگی اور مستوفی راہی کرنے اپیل نگران و نظر ثانی و پیروی کرنے کا اختیار ہو گا اور بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مستوفی قانونی کو اپنے ہمراہ یا اپنی بجائے تفرک اختیار ہو گا اور اسے مقرر شدہ کو بھی وہی جواب مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساتھ پر واضح منظور قبول ہو گا اور دوران مقدمہ میں جو خرچہ و ہرجانہ التوا مقدمہ کے سبب سے ہو گا اس کے مستوفی وکیل صاحب مروتوف ہوں گے نیز بقایا دفعہ چیک وصولی کرنے کا بھی اختیار ہو گا اگر کوئی تاریخ پیش مقام دہرہ پر ہو یا عدت سے باہر ہو تو وکیل صاحب یا ہمارے ہوں گے کہ پیروی مندرجہ مذکور کریں۔

لہذا رکالت نامہ رکھ دیا کہ سند ہے۔

الرقوم - 21-10-4

القلم

ارباب نیف اہمال ایڈووکیٹ

محمد رفیق ایڈووکیٹ

M.T

محمد نواز ایڈووکیٹ

Date of Retirement 11.7.2021



Most Immediate
Court Matter

GOVERNMENT OF KHYBER PAKHTUNKHWA
AGRICULTURE, LIVESTOCK & COOPERATIVE
DEPARTMENT

Phone-0919212464, Fax-091-9210033

NO. SO(Lit)AD/3-269/2020

Dated Peshawar the December 09, 2021

To

The Director,
Agriculture Engineering,
Khyber Pakhtunkhwa, Tarnab, Peshawar.

SUBJECT: - CPLA NO. 471-P/2021 SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA AND OTHERS V/S RAFIQ UR REHMAN

EXCLUSION PETITION NO. 207/2021 IN SERVICE APPEAL NO. 1973 OF 2019 TITLED MUHAMMAD RAFIQ VS SECRETARY AGRICULTURE GOVERNMENT OF KHYBER PAKHTUNKHWA & OTHERS.

I am directed to refer to your letter No. 15863/DAE/Estt./9/96 dated 07-12-2021 on the subject noted above and to state that working papers in the subject case may be furnished to Section Officer (Establishment) of this department for meeting of Departmental Promotion Committee in light of Khyber Pakhtunkhwa Service Tribunal Peshawar order dated 06-12-2021.

The matter is most urgent and may be taken on top priority.

Encl. As above.

Encl. No. & Date Recd.

Copy forwarded to:

1. The Section Officer (Establishment), Agriculture Department along with above referred letter for further necessary action under intimation to this section.
2. PS to Secretary Agriculture, Khyber Pakhtunkhwa, Peshawar.
3. Master file.

[Signature]
09/12/2021
Section Officer (Litigation)

[Signature]
Section Officer (Litigation)



GOVERNMENT OF
KHYBER PAKHTUNKHWA
AGRICULTURE LIVESTOCK & COOPERATIVE DEPARTMENT

No. SOE(AD)V-8/DPC/AE/2021/1663

Dated Peshawar, the 10th December, 2021

To

- The Secretaries to,
Government of Khyber Pakhtunkhwa,
i. Establishment Department,
ii. Finance Department.

Subject: CPLA NO. 471-P/2021 SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA, AGRICULTURE DEPARTMENT AND OTHERS VS MUHAMMAD RAFIQ

MISC PETT: NO. 207/2021 IN SERVICE APPEAL NO. 1975/2019 TITLED MUHAMMAD RAFIQ VS SECRETARY, GOVERNMENT OF KP, AGRICULTURAL DEPARTMENT PESHAWAR & OTHERS

WORKING PAPER FOR PROMOTION OF SENIOR SUPERVISOR (BPS-16) TO THE POST OF ASSISTANT AGRICULTURAL ENGINEER (BPS-17) ON CONDITIONAL BASIS

Dear Sir,

The undersigned is directed to refer to the subject noted above and to enclose herewith a copy of Director, Agricultural Engineering letter No. 16101/DAE/Estt:3/8 alongwith its enclosures and Judgement of the Hon'ble Khyber Pakhtunkhwa, Service Tribunal, Peshawar Judgment dated 06.12.2021 in the subject cited above and to state that a Departmental Promotion Committee meeting has been scheduled to be held on 24.12.2021 at 10:30 AM under the Chairmanship of Secretary Agriculture in the Committee Room of Agriculture Department to discuss the Promotion case of Senior Supervisor (BPS-16) to the post of Assistant Agricultural Engineer (BPS-17) on conditional basis of Agricultural Engineering wing of Agriculture Department:

02. Working papers are also enclosed herewith.
03. you are therefore, requested to depute your representative to attend the subject meeting on the above-mentioned date, time, and venue, please.

Encls. As Above:

Yours faithfully,


SECTION OFFICER ESTT:

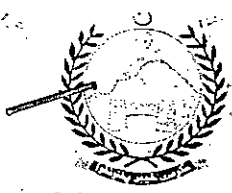
Endst. of Even No. & Date:

Copy forwarded to:

1. The Registrar, Khyber Pakhtunkhwa, Service Tribunal, Peshawar.
2. Deputy Secretary (Admn) Agriculture, Livestock, Fisheries & Cooperative Department Khyber Pakhtunkhwa, Peshawar with the request to attend the meeting.
3. The Director, Agricultural Engineering, Khyber Pakhtunkhwa, Peshawar w/r to his letter No. quoted above with the request to attend the DPC on the above-mentioned date, time & venue, please.
4. The Section Officer (Litigation), Agriculture, Livestock, Fisheries & Cooperative Department, Khyber Pakhtunkhwa, Peshawar w/r to his letter No. SO(Lit)AD/3-2/269/2020 dated 09.12.2021.
5. P.S to Secretary Agriculture, Livestock, Fisheries & Cooperative Department Khyber Pakhtunkhwa, Peshawar.
6. Master File.


SECTION OFFICER ESTT:

587/



GOVERNMENT OF KHYBER PAKHTUNKHWA
AGRICULTURE, LIVESTOCK & COOPERATIVE
DEPARTMENT

Most Immediate
Court Matter

Phone-0919212464, Fax-091-9210033

NO. SO(Lit)AD/3-269/2020

Dated Peshawar the Januray 07, 2022

To

The Director Agricultural Engineering
Khyber Pakhtunkhwa, Tarnab Peshawar.

Subject:-

CP NO.471-P/2021 GOVERNMENT OF KPK ETC V/S MUHAMMAD RAFIQ

I am directed to forward herewith a copy of self explanatory letter No. 127/AG dated 07-1-2022 received from the Advocate On Record Khyber Pakhtunkhwa on the subject noted above for immediate necessary action under intimation to this department enabling the Law Officers to file the appeal in the august court in time please.

Encl. As above.

[Signature]
Section Officer (Litigation)

Endst. No. & Date Even.

Copy forwarded to:

1. The Advocate On Record, Khyber Pakhtunkhwa, Peshawar w/r to his letter referred to above for information please.
PS to Secretary Agriculture, Khyber Pakhtunkhwa, Peshawar.
2. Master File.

[Signature]
Section Officer (Litigation)

Action taken
See page 585
11/01/2022

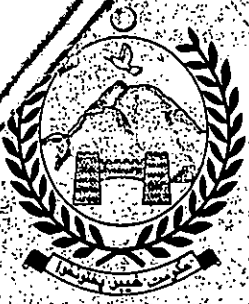
[Large Signature]
11/1/22

Suppl. Lit) A
11/01/2022

11/01/2022

Office of The
Director, Agril. Engineering
K.P.K, Tarnab, Peshawar
Diary No. 228
Dated: 11-01-2022

589 24



OFFICE OF THE ADVOCATE-GENERAL KPK, PESHAWAR

No. 127 /AG Dated Peshawar the, 07-Jan-22

(Telephone No. 091/9210312; Fax No. 091/9210270)
Exchange No. 091/9213833)

To

The Secretary to Govt. of Khyber Pakhtunkhwa,
Agriculture, Livestock and Cooperative Department, Peshawar.

SUBJECT: CP.471-P/2021.GOV'T OF KPK-VSV-MUHAMMAD RAFIQ

Dear Sir,

The above noted case come up for hearing on 05-01-2022 before the Supreme Court of Pakistan and leave to appeal is granted.

Seven copies of appeal stage paper book are required to be prepared and filed in the Supreme Court of Pakistan within three days. It is requested that a sum of Rs.5800/- is required as expenses for remaining Court fee, Photostat and Binding charges to the undersigned to meet the above expenses. Priority may be given to this case, being Supreme Court matter.

M. H. Hameed
Advocate-on-Record
Supreme Court of Pakistan
For Govt. of KPK

*Letter signed -
PP - 12/1/22*

Supdt (47) 07/1/22 P. on file PT.

Supdt (11) 07/1/22

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

268 591

PRESENT:

MR. JUSTICE GULZAR AHMED, C.J
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL PETITION NO. 471-P OF 2021

Against the judgment dated 30.07.2021 passed
by K.P.K. Service Tribunal, Peshawar in Appeal-
1975/2019

Secretary to Government of Khyber Pakhtunkhwa
Agriculture, livestock and Cooperative Department,
Peshawar and another

...Petitioner(s)

VERSUS

Muhammad Rafiq

...Respondent(s)

For the Petitioner(s): Mr. Shumail Aziz, Addl. AG KPK

For the Respondent(s) N.R.

Date of Hearing: 05.01.2022

O R D E R

GULZAR AHMED, C.J. — Learned Additional Advocate General Khyber Pakhtunkhwa contends that *vide* notification dated 16.07.2019, the Government of Khyber Pakhtunkhwa, Agriculture, Livestock and Cooperative Department, in exercise of powers under Sub-Rule (2) of Rule 3 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 has amended Columns No.3 to 5 of the Appendix. He contends that for promotion to the post of Assistant Agricultural Engineer, Assistant Director Planning (BPS-17) the minimum qualification prescribed by the notification is at least second class Bachelor of Science (B.Sc) Degree in Agricultural Engineering from a recognized University. He further contends that the respondent, who was possessing Diploma in Engineering, is not entitled to be promoted and the rules were competently made by the Government of Khyber Pakhtunkhwa. He further contends that the

ATTESTED

Senior Court Associate
Supreme Court of Pakistan
Islamabad

respondent cannot claim any vested right in the Rules, which is the prerogative of the Government to prescribe the condition or eligibility for promotion and in this regard reliance was placed on the judgment of this Court reported as Muhammad Ishaque and others vs. Government of Punjab through Chief Secretary and others (2005 SCMR 980).

2. Submissions made by the learned Additional Advocate General need consideration. Leave to appeal is, therefore, granted to consider, *inter alia*, the same. Let the appeal stage paper books be prepared on the available record. However, the parties are at liberty to file additional documents, if any, within a period of one month. As the matter relates to service, the office is directed to fix the same for hearing in Court expeditiously preferably after three months.

C.M.A. No.797-P/2021

In the meantime, operation of the impugned judgment is suspended.

Sd/-HCJ
Sd/-J

Certified to be True Copy

Senior Court Associate
Supreme Court of Pakistan
Islamabad



Not approved for reporting

GR No:	<u>231/22</u>	Civil/Criminal
Date of Presentation:	<u>5-1-22</u>	<u>600</u>
No of Words:	<u>167</u>	
No of Folios:	<u>500</u>	
Requisition Fee Rs:	<u>3.72</u>	