

Service Appeal No1431/2018 titled "Muhammad Tariq-vs-The deputy Commissioner, District Nowshera and others". Service appeal No. 1432/2018 titled "Anwar Baig-vs- The deputy Commissioner, District Nowshera and others" and Service appeal No. 1433/2018 titled " Shahi Mulk-vs- The deputy Commissioner, District Nowshera and others" decided on 23.11.2022 by Division Bench comprising Kalim Arshad Khan, Chairman, and Fareeha Paul, Member, Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

BEFORE: **KALIM ARSHAD KHAN .. CHAIRMAN**
FAREEHA PAUL .. MEMBER (Executive)

Service Appeal No.1431/2018

**Muhammad Tariq, Stenographer (BPS-14) Office of the Deputy
Commissioner, District Nowshera.**
.....**Appellant)**

Versus

1. **The Deputy Commissioner, District Nowshera.**
2. **The Commissioner, Peshawar Division, Peshawar.**
3. **The Secretary, Government of Khyber Pakhtunkhwa, Board of
Revenue, Revenue & Estate Department Civil Secretariat, Peshawar.**
4. **Zia Ullah Khan, Stenographer (BPS-14), Office of the Deputy
Commissioner, District, Nowshera.**
.....**(Respondents)**

Present:

Mr. Ashraf Ali Khattak,
Advocate.....For appellant.

Mr. Muhammad Adeel Butt,
Additional Advocate General.....For official respondents.

Mr. Muhammad Arif Jan,
Advocate.....For respondent No.4

Date of Institution.....22.11.2018

Dates of Hearing.....23.11.2022

Date of Decision.....23.11.2022

.....
Service Appeal No.1432/2018

**Anwar Baig, Stenographer (BPS-14) office of the Deputy
Commissioner, District Nowshera.**
.....**Appellant)**

Versus

5. **The Deputy Commissioner, District Nowshera.**
- 

Service Appeal No1431/2018 titled "Muhammad Tariq-vs-The deputy Commissioner, District Nowshera and others", Service appeal No. 1432/2018 titled "Amwar Baid-vs- The deputy Commissioner, District Nowshera and others" and Service appeal No. 1433/2018 titled " Shahi Mulk-vs- The deputy Commissioner, District Nowshera and others" decided on 23.11.2022 by Division Bench comprising Kalim Arshad Khan, Chairman, and Fareeha Paul, Member, Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

6. **The Commissioner**, Peshawar Division, Peshawar.
7. **The Secretary**, Government of Khyber Pakhtunkhwa, Board of Revenue, Revenue & Estate Department Civil Secretariat, Peshawar.
8. **Zia Ullah Khan**, Stenographer (BPS-14), Office of the Deputy Commissioner, District, Nowshera.

.....(**Respondents**)

Present:

Mr. Ashraf Ali Khattak,
Advocate.....For appellant.

Mr. Muhammad Adeel Butt,
Additional Advocate General..... For official respondents.

Mr. Muhammad Arif Jan,
Advocate.....For respondent No.4

Date of Institution.....22.11.2018

Dates of Hearing.....23.11.2022

Date of Decision.....23.11.2022

.....
Service Appeal No.1433/2018

Shah-i-Mulk, Stenographer (BPS-14) office of the Deputy Commissioner, District Nowshera.

.....**Appellant**)

Versus

9. **The Deputy Commissioner**, District Nowshera.
10. **The Commissioner**, Peshawar Division, Peshawar.
11. **The Secretary**, Government of Khyber Pakhtunkhwa, Board of Revenue, Revenue & Estate Department Civil Secretariat, Peshawar.
12. **Zia Ullah Khan**, Stenographer (BPS-14), Office of the Deputy Commissioner, District, Nowshera.

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Mr. Muhammad Adeel Butt,
Additional Advocate General..... For official respondents.



Mr. Muhammad Arif Jan,
Advocate.....

For respondent No.4

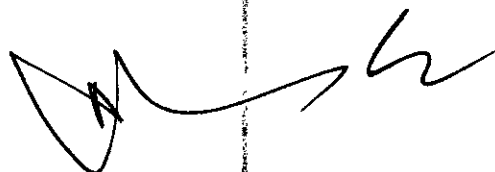
Date of Institution.....22.11.2018
Dates of Hearing.....23.11.2022
Date of Decision.....23.11.2022

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED REVISED FINAL SENIORITY VIDE NOTIFICATION DATED 09.11.2018 WHICH WAS UNLAWFULLY RECTIFIED ON THE TIME BARRED APPLICATION OF RESPONDENT NO.4 FILED ON 06.07.2018 AGAINST THE FINAL SENIORITY LIST DATED 04.12.2017.

CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Through this single judgment this appeal and all the above connected service appeals are decided as all the three appeals are respecting the same allegations.

02. Brief facts leading to the institution of these service appeals are that the appellants were initially appointed as Junior Scale Stenographers in the Co-operative Department, Khyber Pakhtunkhwa and wer declared surplus and then adjusted in the DCO office Nowshera on 13.12.2001 and 01.08.2001; that in the year 2013 a tentative seniority list in respect of stenographers was issued by respondent No.1, wherein the names of appellant was at serial No.1,2 and 3 and the name of respondent No.4 was shown at the bottom, the same was not objected by any official concerned, therefore, on 10.12.2013 final seniority list was issued with the same position; that similarly in the year 2017 tentative seniority list of stenographers was again issued by the respondent No.1 and the seniority position of



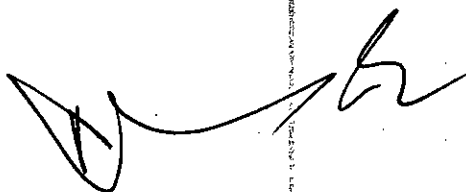
the officials concerned remained the same as per the final seniority list dated 10.12.2013 which was then not objected by anyone concerned and in pursuance of which final seniority list was issued on 04.12.2017; that after lapse of seven months of the final seniority list dated 10.12.2017, the respondent No.4 filed an application dated 06.07.2018 wherein he claimed that appellants and others were junior to him; that the application of private respondent No.4 was processed and the same was accepted on 26.10.2018, in pursuance of which the respondent No.1 issued the impugned revised final seniority list of stenographers vide notification dated 09.11.2018 wherein the appellants were shown junior to the private respondent No.4, hence, this service appeal on 22.11.2018.

3. On receipt of the appeals and admissions to full hearing, the respondents were summoned. Respondents put appearance and contested the appeals by filing written replies raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellants.

4. We have heard learned counsel for the appellants and learned Additional Advocate General for official respondents No.1 to 3 and learned counsel for private respondent No.4.

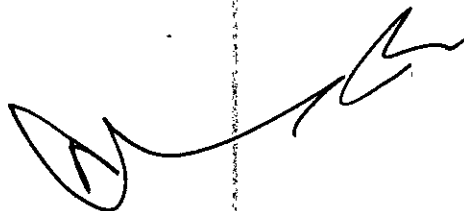
5. The Learned counsel for the appellants reiterated the facts and grounds detailed in the memo and grounds of the appeals while the learned AAG and learned counsel for private respondent No.4 controverted the same by supporting the impugned order(s).

06. At the very outset the learned counsel for private respondent No.4 as well as learned Additional Advocate General objected that there was no departmental



representation filed by the appellants against the impugned seniority list of 2018. Learned counsel for the appellant submitted that as the impugned seniority list was prepared/revised on acceptance of the departmental representation of the private respondent, therefore, no need to file departmental representation on the same was felt. He added that the respondent department had not even heard the appellants before revising the seniority list as previously the appellants admittedly ranked senior to the private respondent. As there is no departmental representation filed by the appellants, therefore, we deem it appropriate, in the interest of justice, that let these service appeals be treated as departmental representations and sent to the departmental authorities for their decision in accordance with law and rules within a period of sixty days of receipt of this judgment under intimation to the Registrar of this Tribunal. The respondents shall also intimate the date of receipt of the judgment to the Registrar office of this Tribunal. Disposed of accordingly. Costs shall follow the event. Copy of this judgment be placed in all the connected appeals. Consign.

07. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 23rd day of November, 2022.*



KALIM ARSHAD KHAN
Chairman



FAREHA PAUL
Member (Executive)

ORDER

23rd Nov, 2022


1. Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for official respondents and counsel for private respondent No.4 present.

2. Vide our detailed judgement of today placed on file this appeal and the connected two appeals, we deem it appropriate, in the interest of justice, that let these service appeals be treated as departmental representations and sent to the departmental authorities for their decision in accordance with law and rules within a period of sixty days of receipt of this judgment under intimation to the Registrar of this Tribunal. The respondents shall also intimate the date of receipt of the judgment to the Registrar office of this Tribunal. Disposed of accordingly. Copy of this judgment be placed in all the connected files. Costs to follow the events. Consign.

3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 23rd day of November, 2022.*



(Kalim Arshad Khan)
Chairman



(Fareeha Paul)
Member(Executive)

26th May, 2022

Mr. Ashraf Ali Khattak, Advocate present and submitted

Wakalatnama on behalf of the appellant. Mr. Muhammad Rashid, Deputy District Attorney for respondents present.

Learned counsel for the appellant seeks time to argue the case on the next date being newly engaged. Last opportunity granted. In case further adjournment is sought the case will be decided on the basis of available record without the arguments as the number of opportunities have already been granted to the appellant. To come up for arguments on 11.08.2022 before D.B.

(Fareeha Paul)
Member(E)

(Kalim Arshad Khan)
Chairman

11-8-2022

Proper DB not available the case is adjourned to 13-10-2022

Handwritten signature
Reader

13th Oct, 2022

Counsel for the appellant present. Mr. Muhammad Adeel

But, Addl. Advocate General for the official respondents and

counsel for private respondent No. 4 present.

Representative of the respondents is not in attendance. Learned

AAG requests for adjournment. Last opportunity is granted. To

come up for arguments on 23.11.2022 before the D.B.

(Fareeha Paul)
Member (E)

(Kalim Arshad Khan)
Chairman

14-12-21

DB is on Tax case to come up

For the same on Dated. 31-3-22

R. Reader

31.03.2022

Appellant in person present. Mr. Kabirullah Khattak, Additional Advocate General for official respondents No. 1 to 3 present. Private respondent No. 4 alongwith his counsel present.

Appellant requested for adjournment on the ground that his counsel is out of station due to some domestic engagement. It appears from the record that so many adjournments have been granted upon the request of the appellant/counsel for the appellant, therefore, last opportunity given. To come up for arguments before the D.B on 26.05.2022.



(Rozina Rehman)
Member (J)



(Salah-ud-Din)
Member (J)

14.01.2021

Due to COVID-19, the case is adjourned for the same on 19.04.2021 before D.B.


READER

21.04.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 13.08.2021 for the same as before.


Reader

13.08.2021

None present on behalf of appellant.

Kabir Ullah Khattak learned Additional Advocate General for official respondents present. Private respondent No.4 present.

This is an old appeal. It appears from previous proceedings in the order sheets that the trend of adjournment is tilted to the appellant. Therefore, appellant and counsel be put on notice for ensuring their presence to argue the appeal on the next date positively. Absence of the appellant and his counsel shall be deemed as their having lost the interest in pursuit of this appeal and the same shall be dismissed in default. Copy of this order sheet be sent to them alongwith notice. To come up on 14.12.2021 before D.B.


(Rozina Rehman)
Member (J)



Chairman

16.06.2020

Nemo for the parties.

On the last date of hearing the matter was adjourned through reader's note. The office shall, therefore, issue notice to the parties for next date of hearing.

Adjourned to 31.08.2020 before D.B.



MEMBER



CHAIRMAN

31.08.2020

Due to summer vacation, the case is adjourned to 05.11.2020 for the same as before.

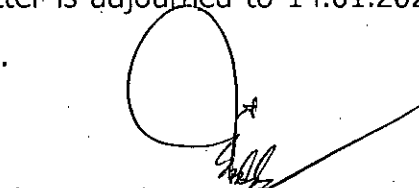


Reader

05.11.2020

Junior to counsel for the appellant and Addl. AG for the respondents present.

The Bar is observing general strike, therefore, the matter is adjourned to 14.01.2021 for hearing before the D.B.



(Mian Muhammad)
Member



Chairman

26.12.2019

Appellant in person present. Mr. Muhammad Jan, DDA for official respondents and private respondent no.4 with counsel present. Appellant seeks adjournment as his counsel is not available today. The appellant dragged the private respondent but is not prepared to argue the present service appeal and the same is being adjourned on the request on behalf of the appellant, hence, adjourned at the cost of Rs.3000/- which to be paid by the appellant to the private respondent. To come up for arguments on 28.02.2020 before D.B.



Member


Member

The bench is incomplete
to come up for the same
on- 23-04-2020


Reader

Due to public holiday on
account of covid-19- the case
is adjourned to - 16.06.2020


Reader

08.08.2019

Appellant in person present. Mr. Muhammad Jan, DDA
alongwith Mr. Zahid Gul, P.S for respondents present.
Appellant seeks adjournment due to general strike on the call of
Pakistan Bar council. Adjourn. To come up for arguments on
23.10.2019 before D.B.


Member


Member

23.10.2019

Learned counsel for the appellant present. Mr. Zia
Ullah learned Deputy District Attorney for the official
respondents present. Private respondent No.4 in person
present.

Learned counsel for the appellant requests for
adjournment in order to further prepare the brief. Learned
counsel for the private respondent No.4 is also reported to be
engaged before the Honourable High Court today.

Adjourned to 26.12.2019 before D.B.


Member


Chairman

11.03.2019

Clerk of counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Zahid Gul, Private Secretary for official respondents No. 1 to 3 and private respondent No. 4 in person present. Written reply on behalf of respondents not submitted. Learned Additional AG requested for further adjournment for filing of written reply. Adjourned. To come up for written reply/comments on 15.04.2019 before S.B.


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

15.04.2019

Appellant in person present. Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Zahid Gul P.S for official respondents present. Private respondent No.4 in person present. Written reply submitted. To come up for rejoinder/arguments on 17.06.219 before D.B


Member

17.06.2019

Learned counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 08.08.2019 before D.B.


Member


Member

application be also given to the respondents for the date already fixed. Till the next date fixed, fate of the further promotions of the parties to the next higher post/grade shall be subject to the outcome of the present service appeal.



Member

12.12.2018

Appellant in person present. Mr. Kabirullah Khattak, Additional AG for the respondents present. Notice to respondent No. 3 could not be issued due to non-furnishing of copy of memo of appeal. Appellant is directed to furnish the copy of memo of appeal for respondent No. 3 thereafter, notice be issued to respondent No. 3 for filing of written reply. To come up for written reply/comments on 22.01.2019 before S.B.


Muhammad Amin Khan Kundi
Member

22.01.2019

Appellant in person present and requested for time to furnish copy of appeal for respondent No.3. Three (03) days granted for doing the needful, thereafter notice be issued to respondent No.3. Arif Jan Advocate present and submitted wakalat nama in favor of respondent No.4 and requested for time to furnish written reply. Written reply on behalf of respondents No.1 & 2 not submitted, notice be issued to respondents No.1 & 2 with direction, to furnish written reply. Adjourn. To come up for written reply on 11.03.2019 before S.B.



Member

28.11.2018

Learned counsel for the appellant present.

The appellant (Stenographer Office of the Deputy Commissioner Nowshera) has filed the present service appeal against the revised final seniority list issued vide Notification dated 09.11.2018.

Main argument of learned counsel for the appellant is that in all the earlier seniority lists the appellant stands senior to the private respondent No.4 and as such the seniority of the appellant vis a vis respondent No.4 has been disturbed for the first time vide seniority list wherein the appellant has been placed junior to the private respondent No.4.

Preliminary arguments heard. File perused.




Note as given in the impugned final seniority list of the Stenographers of the Deputy Commissioner Office Nowshera is self-explanatory. According to the explanation as given in the said seniority list, the appellant was appointed as Junior Scale Stenographer in the Office of Budget & Accounts Office Co-Operative Department Khyber Pakhtunkhwa Peshawar and was declared surplus and then adjusted in the DCO Office Nowshera on 13.12.2001, while on the other hand the private respondent No.4 is the permanent employee of the DCO Office Nowshera who was appointed on 15.08.1997. In these circumstances the appellant was rightly placed below the private respondent No.4 in the impugned seniority list, for the reason that his cadre was changed. However in view of the contention of the learned counsel for the appellant as mentioned above and in the interest of justice the present service appeal is admitted for regular hearing subject to all the legal objections including the issue of maintainability. The appellant is directed to deposit security and process fee within 10 days, thereafter notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 12.12.2018 before S.B

Appellant Deposited
Security & Process Fee

Application for interim relief is also annexed with the memorandum of the present service appeal. Notice of the said

Form-A
FORM OF ORDERSHEET

Court of _____
Case No. _____ /2018

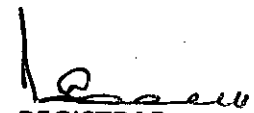
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	26/11/2018	<p style="text-align: center;">As per direction of the Worthy Chairman this case is submitted to the S. Bench for decision on office objection. To be put up there on <u>28/11/18.</u></p> <div style="text-align: right;">  REGISTRAR </div>
	28.11.2018	<p>Learned counsel for the appellant present and contended that the impugned revised seniority list was issued as a result of departmental appeal of the private respondent No.4 hence there was no need to file departmental appeal against the same. In view of the above contention of learned counsel for the appellant, the office objection is removed for the time being.</p> <div style="text-align: right;">  Member </div>
	28.11.2018	<p style="text-align: center;">This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>28.11.2018.</u></p> <div style="text-align: right;">  CHAIRMAN </div>

The appeal of Mr. Muhammad Tariq Stenographer Office of the D.C Nowshera received today i.e. on 22.11.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

Copy of departmental appeal/review petition against the impugned notification dated 09.11.2018 is not attached with the appeal which may be placed on it.

No. 2269/S.T,

Dt. 23/11/2018.


REGISTRAR 22/11/18
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Khushdil Khan Adv. Pesh.

In this private report was filed
dept application / appeal was accepted
of which an applicant is approved &
filed this appeal. no provision for
further departmental appeal.


Submitted


24/11/18

Sir,

The objection of this office and reply of
counsel for the appellant is submitted for order
please.

Humble/chain-cm.


26/11/18.

Be fixed before S.B. for Preliminary hearing.


26/11

BEFORE THE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA

Service Appeal No 1431 /2018

Muhammad Tariq.....Appellant

VERSUS

The Deputy Commissioner, District Nowshera..... Respondents

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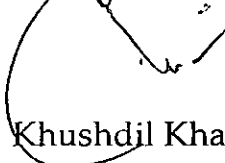
S.No	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal			1-4
2.	Application for restraining the respondents from considering the case of promotion of the respondent No.4 on the basis of impugned seniority list with affidavit			5-7
3.	Copy of covering letter with Tentative Seniority List of Stenographers (BPS-14) as stood on 01.11.2013 wherein the name appellant is at serial No.1 while the name of respondent No.4 at serial No.4	08.11.2013	A	8-9
4.	Copy of covering letter with Final Seniority List of Stenographers (BPS-14) as stood on 01.12.2013 wherein the name appellant is at serial No.1 while the name of respondent No.4 at serial No.4	10.12.2013	B	10-11
5.	Copy of covering letter with Tentative Seniority List of Stenographers (BPS-14) as stood on 01.11.2017 wherein the name of appellant is at serial No.1 while the name of respondent No.4 at serial No.4	01.11.2017	C	12-13
6.	Copy of covering letter with Final Seniority List of Stenographers	04.12.2017	D	14-15

S.No	Description of Documents	Date	Annexure	Pages
	(BPS-14) as stood on 04.12.2017 wherein the name of appellant is at serial No.1 while the name of respondent No.4 at serial No.4			
7.	Copy of application of respondent No.4 (Ziaullah Khan) against the final seniority list	06.07.2018	E	16-17
8.	Copy of letter of respondent No.3 addressed to respondent No.2 therein the application of respondent No.4 was entertained	23.10.2018	F	18
9.	Copy of letter of the respondent No.2 addressed to respondent No.1 for necessary correction in the final seniority list.	26.10.2018	G	19
10.	Copy of the covering letter with the Impugned Revised Final Seniority List as stood on 09.11.2018 wherein the name of respondent No.4 was placed at serial No.1 while appellant was relegated to junior position at serial No.2	09.11.2018	H	20-21
11.	Wakalatnama			

Date: 19-11-2018

Through

Appellant



Khushdil Khan
Advocate Supreme Court.
&



Ashraf Ali Khattak
Advocate High Court.

BEFORE THE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA

Service Appeal No._____/2018

1. Muhammad Tariq,
Stenographer (BPS-14)
Office of the Deputy Commissioner,
District Nowshera.....Appellant

VERSUS

1. The Deputy Commissioner,
District Nowshera.
2. The Commissioner,
Peshawar Division Peshawar.
3. The Secretary,
Government of Khyber Pakhtunkhwa,
Board of Revenue, Revenue & Estate Department
Civil Secretariat, Peshawar.
4. Zia Ullah Khan
Stenographer (BPS-14),
Office of the Deputy Commissioner ,
District, NowsheraRespondents.

SERVICE APPEAL UNDER SECTION-4 OF THE
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
ACT, 1974 AGAINST THE IMPUGNED REVISED
FINAL SENIORITY VIDE NOTIFICATION DATED
09.11.2018 WHICH WAS UNLAWFULLY RECTIFIED
ON THE TIME BARRED APPLICATION OF
RESPONDENT NO.4 FILED ON 06.07.2018 AGAINST
THE FINAL SENIORITY LIST DATED 04.12.2017.

Respectfully Sheweth,

The concise facts giving rise to the present service appeal are as under:-

1. That appellant was initially appointed as Junior Scale Stenographer in the Co-operative Department Khyber Pakhtunkhwa. In the year 2001 under devolution of power, he was declared surplus but later on adjusted in the office of District Co-ordination Officer, Nowshera on 31.12.2001 and since then he was working as such in the office of respondent No.1.
2. That in the year 2013 a tentative seniority list in respect of stenographers was issued by the respondent No.1 therein name of appellant was at serial No.1 and the name of respondent No.4 was at bottom. Since the same was not objected by any official concerned therefore on 10.12.2013 final seniority list was issued with the same position. Copies of tentative seniority list dated 08.11.2013 (**Annexure A**) and final seniority list dated 10.12.2013 (**Annexure B**).
3. That similarly in the year 2017 tentative seniority list of stenographers was again issued by the respondent No.1 and the seniority position of the officials concerned was remained the same as per the final seniority list dated 10.12.2013 which was then not objected by anyone official concerned and in pursuance of which final seniority list was issued on 04.12.2017 therein also the senior position of appellant remained intact which attained finality. Copies of tentative seniority list dated 01.11.2017 (**Annexure C**) and final seniority list dated 04.12.2017 (**Annexure D**).
4. That after lapse of seven (7) months of the final seniority list dated 10.12.2017, the respondent No.4 filed an application

dated 06.07.2018 therein he claimed that appellant and others are junior to him and he be given senior position in the seniority list by revising it. Copy of application Dated 06.07.2018 of respondent No.4 (Annexure E).

5. That the application of respondent No.4 was processed and in view of letter of respondent No.1 dt 23.10.2018 (Annexure-F) the application was accepted as per letter dt 26.10.2018 (Annexure G) of the respondent No.2 in pursuance of which the respondent No.1 issued the impugned revised final seniority list of stenographers vide notification dt 09.11.2018 (Annexure H) wherein the position of the appellant was changed and he was relegated to junior position and placed him at Sr. No.2 of the revised final seniority list of which he has grievances and submits this service appeal on the following amongst other grounds:-

GROUND:-

- A. That respondents No.2 and 3 have not acted in according to law and rules on subject and unlawfully entertained the application of respondent No.4 which was hopelessly time barred and even no request for condonation was made by the respondent No.4. Thus the orders dated 23.10.2018 and 26.10.2018 of respondents No.2 & 3 and the subsequent impugned notification dated 09.11.2018 regarding the revised final seniority list are illegal, without lawful authority, of no legal effect and inoperative on the rights of appellant and liable to be set aside.
- B. That respondent No.1 has rightly assigned senior position to appellant in the seniority list issued in the year 2013 and the same position was continuously remained intact in the subsequent seniority lists issued from time to time without

any objection by any concerned official which attained finality and became a past and closed transaction which could not be reopened on the incompetent application of the respondent No.4.

- C. That the continuity of senior position of the appellant in all the seniority lists created vested right in his favour which could not taken away under the principle of locus poenitentiae.
- D. That respondent No.4 is estopped by his own conduct that he accepted his junior position to appellant in all previous seniority lists and he has no legal justification to claim his seniority at this belated stage and he has lost his right if any under the idem i.e. delay defeat equity.

It is therefore, humbly prayed that on acceptance of this service appeal, the impugned orders dated 23.10.2018, 26.10.2018 and the impugned notification of the revised final seniority list dt 09.11.2018 may graciously be set aside and the original final seniority list dt 04.12.2017 may kindly be restored therein the name of appellant to be at serial No.1.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for may also be granted to appellant.

Dated: 19/11/2018

Through

Appellant

Khush Dil Khan
Advocate,
Supreme Court of Pakistan
&
Ashraf Ali Khattak
Advocate, High Court
Peshawar

BEFORE THE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA

Misc Application No._____/2018

IN

Service Appeal No._____/2018

Muhammad Tariq.....Appellant

VERSUS

The Deputy Commissioner, District Nowshera..... Respondents

APPLICATION FOR RESTRAINING THE
RESPONDENTS NO.1 &2 FROM
CONSIDERING THE CASE OF PROMOTION
OF RESPONDENT NO.4 TO NEXT HIGHER
POST/ GRADES ON THE BASIS OF REVISED
FINAL SENIORITY LIST DATED 09.11.2018
WHICH IS UNDER CHALLENGED IN THIS
HON'BLE' TRIBUNAL BEING RECTIFIED IN
VIOLATION OF LAW AND RULES BASED
ON MALAFIDE JUST TO FACILITATE THE
PROMOTION OF RESPONDENT NO.4 IN
ILLEGAL AND UNFAIR MANNER AS WELL
AT THE RIGHT OF APPELLANT.

Respectfully Shewith,

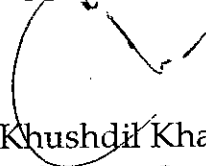
1. That the above titled service appeal is being filed today which is yet to be fixed for hearing.
2. That the facts alleged and grounds taken in the body of appeal may kindly be taken as an integral part of this application which make out an excellent prima facie case in favour of appellant/ applicant.

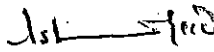
3. That the impugned orders as well the revised final seniority list passed and prepared in glaring violation of law and rules on subject and also based on malafide intention just to facilitate the promotion of respondent No.4 at the right of appellant/ applicant which is not tenable and likely be set aside by this Hon'ble tribunal therefore he requests to restrain respondents from entertaining the case of promotion of the respondent No.4 to next higher post/ grade which has been initiated by the office of respondents. Moreover all the requisite ingredients fall in favour of applicant for the requisite interim relief.

It is therefore, humbly prayed that on acceptance of the instant application, this Honorable Tribunal may graciously be pleased to restrain the respondents from making promotion of the respondent No.4 on the basis of impugned seniority list till the final decision of the accompanying appeal

Through

Appellant


Khushdil Khan
Advocate Supreme Court.
&


Ashraf Ali Khattak
Advocate High Court.

Dated: 19 / 11 / 2018

BEFORE THE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA

Service Appeal No._____/2018

Muhammad Tariq.....Appellant

VERSUS

The Deputy Commissioner, District Nowshera..... Respondents

AFFIDAVIT

I, Muhammad Tariq, Stenographer (BPS-14) Office of the Deputy Commissioner, District Nowshera, do hereby solemnly affirm and declare on Oath that the contents of this application are true and correct to the best of my knowledge, and nothing has been concealed from this Hon'ble Tribunal.

Deponent

OFFICE OF THE DEPUTY COMMISSIONER NOWSHERA

NO. 2080-82 /23/EA/DC/NSR

Dated 68 /11/2013

To: _____
(All concerned).

OFFICE OF THE
DEPUTY COMMISSIONER
NOWSHERA
Diary No. 6640
Date 8/11/13

Subject: TENTATIVE SENIORITY LIST OF STENO GRAPHERS (BPS-14) AS STOOD ON 1.11.2013.

Memo:

The above quoted seniority list amongst the Steno Graphers (BPS-14) of this office is hereby circulated for verification as well as to examine all particulars related to you in all columns. Your objections/observations if any must reach this office by 20.11.2013 positively for decision by the competent authority and subsequently final seniority list will be issued.

Accounts Officer
DC Office Nowshera

Even No & date

Copy forwarded to the following for information please: -

1. The Deputy Commissioner Nowshera.
2. The Assistant Commissioner Nowshera.

*Supdt / ADE
put up working
paper for promotion
on priority*

*Accounts Officer
DC Office Nowshera*



*EA Part of memorandum
s.2.14
11/11/2013
Promotion of Steno grapher
(BPS-14) does not fall in the
power of DC, but will be
considered by the provincial c*

DEPUTY COMMISSISONER OFFICE NOWSHERA

TENTATIVE SENIORITY LIST OF STENO GRAPHER (BPS-14) AS STOOD ON 1ST NOVEMBER, 2013.

Total Sanctioned Post of Steno Grapher (BPS-14) = No. -5.

Name & Designation	Date of Birth	District of Domicile	Qualifications	Date of		Method of Recruitment	Date of Retirement	Remarks
				1 st Entry into Govt: Service	Appointment / Promotion to the present post			
Muhammad Tariq	21-4-1964	Nowshera	M.A	12-7-1987	12-7-1987	By Initial appointment	20-4-2024	
Shah-i-Mulk	15-10-1960	Nowshera	F.A	14-9-1987	14-9-1987	By Initial appointment	14-10-2020	
Anwar-Baig	8-2-1966	Nowshera	D.Com	17-9-1985 as LDC	2-9-1990 as Steno	By Promotion appointment	7-2-2026	
Zia Ullah Khan	10-4-1975	Nowshera	M.A	15-8-1997	15-8-1997	By Initial appointment	9-4-2035	


 Deputy Commissioner,
 Nowshera.



Office of the
DEPUTY COMMISSIONER,
NOWSHERA.

(Office Phone#0923-9220098-99, Fax#0923-9220159)

No. 2641-43/EA-23/DC/NSR

Dated 10 December, 2013


To:

The Assistant to Commissioner (R/GA)
Peshawar Division Peshawar

Subject: - FINAL SENIORITY LIST OF STENOGRAPHERS (BPS-14) AS STOOD ON 1ST DECEMBER, 2013

Reference: Sub para (5) of Section 8 of Civil Servants Act 1973.

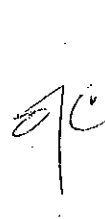
Enclosed please find herewith a copy of Final Seniority List of Stenographers (BPS-14) of this office as stood on 1-12-2013, duly signed for necessary action please.


Deputy Commissioner
Nowshera

Even No & Date

Copy forwarded to the following for information please:-

1. Additional Deputy Commissioner Nowshera
2. Assistant Commissioner Nowshera
3. All Concerned


Deputy Commissioner
Nowshera.



Office of the
**DEPUTY COMMISSIONER
NOWSHERA.**

(Office Phone#0923-9220098-99, Fax#0923-9220159,
Email: dconsrpk@yahoo.com)

No. 8225-07 /EA-23/DC/NSR/2017

Dated 01/11/2017

To

(All concerned).

Subject: TENTATIVE SENIORITY LIST OF STENO GRAPHER (BPS-14) AS
STOOD ON 01.11.2017.

Memo:

The above quoted seniority list amongst the Steno Grapner (BPS-14) of this office is hereby circulated for verification as well as to examine all particulars related to you in all columns. Your objections/observations if any must reach this office by 20.11.2017 positively for decision by the competent authority and subsequently final seniority list will be issued.

[Signature]
Additional Deputy Commissioner
Nowshera

Even No & date

Copy forwarded to the following for information please:-

1. The Deputy Commissioner, Nowshera.
2. All Assistant Commissioner, District Nowshera.
3. All Concerned.

[Signature]
Additional Deputy Commissioner
Nowshera

WDC

end

[Signature]
2017



Office of the
DEPUTY COMMISSIONER
NOWSHERA.

(Office Phone#0923-9220098-99, Fax#0923-9220159)

Email: dconsrpk@yahoo.com

Dated 04 December, 2017

NOTIFICATION

No. 825-31/EA-23/DC/NSR/2017. In pursuance of Section-8 of Khyber Pakhtunkhwa Civil Servants Act 1973, read with Part-VI, Rule-17 of Civil Servants (Appointment, Promotion & Transfer) Rules 1989 and para-6 of Estab: & Admn: Deptt: (RW) No. SOR-I(E&AD)1-200/98 dated 8-6-2001, final seniority list of Steno Grapher (BPS-14) as stood on 04.12.2017, is notified and circulated among all concerned after issue of tentative seniority list vide No. 8005-07/EA-23/DC/NSR/2017 dated 01.11.2017, while no objection / observation received.

S. 2 / m

Deputy Commissioner
Nowshera

Even No & Date

Copy forwarded to the following for information please:-

1. Additional Deputy Commissioner Nowshera.
2. All Assistant Commissioner District Nowshera.
3. All Concerned.

S. 2 / m

Deputy Commissioner
Nowshera.

WDC

ed

[Handwritten signature]

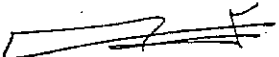
13

DEPUTY COMMISSISONER OFFICE NOWSHERA

TENTATIVE SENIORITY LIST OF STENO GRAPHER (BPS-14) AS STOOD ON 1st November, 2017.

Total Sanctioned Post of Steno Grapher (BPS-14) = 05

Name & Designation	Date of Birth	District of Domicile	Qualifications	Date of		Method of Recruitment	Date of Retirement	Remarks.
				1 st Entry into Govt: Service	Appointment / Promotion to the present post			
Muhammad Tariq	21-4-1964	Nowshera	M.A	12-7-1987	12-7-1987	By Initial appointment	20-4-2024	
Shah-i-Mulk	15-10-1960	Nowshera	F.A	14-9-1987	14-9-1987	By Initial appointment	14-10-2020	
Anwar Baig	8-2-1966	Nowshera	D.Com	17-9-1985 as LDC	2-9-1990 as Steno	By Promotion appointment	7-2-2026	
Zia Ullah Khan	10-4-1975	Nowshera	M.A	15-8-1997	15-8-1997	By Initial appointment	9-4-2035	

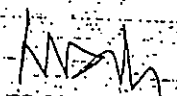

Deputy Commissioner
Nowshera.

DEPUTY COMMISSISONER OFFICE NOWSHERA

FINAL SENIORITY LIST OF STENO GRAPHER (BPS-14) AS STOOD ON 1ST DECEMBER, 2013.

Total Sanctioned Post of Steno Grapher (BPS-14) = No. -5.

Name & Designation	Date of Birth	District of Domicile	Qualifications	Date of		Method of Recruitment	Date of Retirement	Remarks.
				1 st Entry into Govt. Service	Appointment / Promotion to the present post			
Muhammad Tariq	21-4-1964	Nowshera	M.A	12-7-1987	12-7-1987	By Initial appointment	20-4-2024	
Shah-i-Mulk	15-10-1960	Nowshera	F.A	14-9-1987	14-9-1987	By Initial appointment	14-10-2020	
Anwar Baig	8-2-1966	Nowshera	D.Com	17-9-1985 as LDC	2-9-1990 as Steno	By Promotion appointment	7-2-2026	
Zia Ullah Khan	10-4-1975	Nowshera	M.A	15-8-1997	15-8-1997	By Initial appointment	9-4-2035	

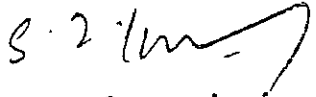

 Deputy Commissioner
 Nowshera.

DEPUTY COMMISSISONER OFFICE NOWSHERA

FINAL SENIORITY LIST OF STENO GRAPHER (BPS-14) AS STOOD ON 04, DECEMBER, 2017.

Total Sanctioned Post of Steno Grapher (BPS-14) = 05

Name & Designation	Date of Birth	District of Domicile	Qualifications	Date of		Method of Recruitment	Date of Retirement	Remarks.
				1 st Entry into Govt: Service	Appointment / Promotion to the present post			
Muhammad Tariq	21-4-1964	Nowshera	M.A	12-7-1987	12-7-1987	By Initial appointment	20-4-2024	
Shah-i-Mulk	15-10-1960	Nowshera	F.A	14-9-1987	14-9-1987	By Initial appointment	14-10-2020	
Anwar Baig	8-2-1966	Nowshera	D.Com	17-9-1985 as LDC	2-9-1990 as Steno	By Promotion appointment	7-2-2026	
Zia Ullah Khan	10-4-1975	Nowshera	M.A	15-8-1997	15-8-1997	By Initial appointment	9-4-2035	


 Deputy Commissioner
 Nowshera.

Annexure-E

AC PID:	
AC R/Ga:	
Suptd:	
Branch:	
Diary No.	7408 6 ² / ₁₆

To:
The Commissioner,
Peshawar Division Peshawar.

Subject: APPLICATION AGAINST THE IMPUGNED SENIORITY LIST OF STENOGRAPHER BPS-14 IN OFFICE OF DEPUTY COMMISSIONER NOWSHERA.

16

Respected Sir,

With due respect it is stated that the applicant was born on 10-04-1975 and appointed against the vacant post of Stenographer (BPS-12) after declaration by the Public Service Commission, Peshawar in office of the Deputy Commissioner, Nowshera and subsequently posted/transferred in office of the Assistant Commissioner, Nowshera. (Copy of Appointment Order & Arrival Report is Annexed as **(Annex-A)**)

In the year 2001 Office of the Deputy Commissioner was abolished and the applicant was posted/adjusted in office of the then District Officer (R&E)/Collector, Nowshera. The said office later on also abolished on 31-12-2012 and the old set up i.e office of Deputy Commissioner, Nowshera restored and I was again posted to office of the Assistant Commissioner, Nowshera and till date serving in this office.

In the meanwhile on 1-1-2013, while the old setup of the then office of the Deputy Commissioner, Nowshera was restored and the applicant placed at bottom in the Final Seniority List of Stenographer (BPS-14) by the Deputy Commissioner, Nowshera instead of the fact that in the covering letter No.8730-31/EA-23/DC/NSR/2017 dated 4.12.2017 whereby the Seniority issued covered with the policy but not in practical implemented (Copy of Seniority List 2017 is annexed as **Annex-B**).

It is further submitted that no doubt the following Stenographers were senior from the applicant but they were appointed in other departments whereas they were declared surplus during 2001 and subsequently adjusted in office of the then DCO, Nowshera w.e.f the dates mentioned against each below:-

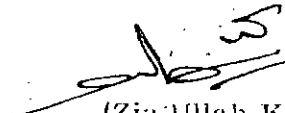
S#	Name of Surplus Stenographer BPS-14	Date of Adjustment	Parent Department
01	Muhammad Tariq	31-12-2001	Co-Operative Department Peshawar.
02	Shahi Mulk	-do-	Co-Operative Societies Peshawar
03	Anwar Baig	08-08-2001	LG&RDD Peshawar

The above Stenographers (BPS-14) were illegally adjusted on TOP in the Final Seniority List of Stenographer (BPS-14) by Office of the Deputy Commissioner Nowshera which is a clear violation of the "policy for declaring Government Servant as surplus and subsequent absorption/adjustment of Government of KPK Establishment and Administration Department regulation wing Para 6(b) of Notification No. SOR-1(E&AD)1-200/98 dated 08-06-2001(Annex-C)".

Under the provision of 11(A) of Civil Servants (Appointment/Promotion & Transfer Rules 1989) adjustment of above Stenographers on TOP from the applicant in the Final Seniority List of Stenographer (BPS-14) are clear crystal violation of Law/Rules and policy of the Provincial Government quoted abid.

In view of above detail justifications, it is requested to set-aside the existing Seniority List of Stenographer (BPS-14) issued by the Deputy Commissioner, Nowshera and pass good order of your excellency for issuance of fresh Seniority List for placement name of the petitioner on TOP to gain the Right/Legal dues under the Law.

It is further requested that the Petitioner may kindly be allowed that all the relevant Laws/Rules which are not quoted in the instant petition please.


06-07-18
(Zia Ullah Khan)
Stenographer (BPS-14)
AC office Nowshera.

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

No. Estt:II/Seniority list File/35320
Peshawar dated the 23/10/2018.

To

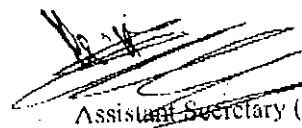
The Commissioner,
Peshawar Division, Peshawar.




SUBJECT: APPLICATION AGAINST THE IMPUGNED SENIORITY LIST OF
STENOGRAPHER (BPS-14) IN OFFICE OF DEPUTY COMMISSIONER
NOWSHERA.

Dear Sir

I am directed to refer to your letter No. 6/4/FA/II/12828 dated 02.10.2018 and to state that Mr. Ziaullah Junior Scale Stenographer is the permanent employee of your office who was appointed on 12.07.2001 while the remaining 3 Junior Scale Stenographers were adjusted from other departments. According to para-6(b) of the surplus pool policy "in case, however he is adjusted in his respective cadre but in a department other than his parent department, he shall be placed at the bottom of seniority list of that cadre" therefore, they are not entitle to claim seniority with effect from their first appointment in other department.

I am further directed to request you to fix their seniority strictly in accordance with the guidelines of the Provincial Government please.


Assistant Secretary (Estt.)

Secy:	
ACPD:	
A.R.Ga:	
Supte.	
Br. Secy:	

11592

EX

Annexure - G

19

OFFICE OF THE
COMMISSIONER PESHAWAR DIVISION
PESHAWAR



11890
31-10-2018

No. 6/4/EA/II/
Dated: 26.10.2018

15024

The Deputy Commissioner,
Nowshera.

Subject: APPLICATION AGAINST THE IMPUGNED SENIORITY LIST OF
STENOGRAPHER (BPS-14) IN OFFICE OF DEPUTY COMMISSIONER
NOWSHERA.

I am directed to refer to your letter No.6170/EA-23/DC/NSR/2018
dated 08.08.2018 on the subject cited above and to enclose herewith a copy of
Assistant Secretary (Estt), Board of Revenue, Revenue & Estate Department, Govt.
of Khyber Pakhtunkhwa letter No.Estt/II/Seniority list File/35320 dated 23.10.2018
for information and compliance please.

ASSISTANT TO COMMISSIONER (REV/GA)
PESHAWAR DIVISION PESHAWAR

No. 6/4/EA/II/15025

Copy forwarded to Assistant Secretary (Estt), Board of Revenue,
Revenue & Estate Department, Govt. of Khyber Pakhtunkhwa w/r to above quoted
letter.

ASSISTANT TO COMMISSIONER (REV/GA)
PESHAWAR DIVISION PESHAWAR

E.A
DEPUTY COMMISSIONER
NOWSHERA



Office of the
DEPUTY COMMISSIONER
NOWSHERA.

(Office Phone#0923-9220098-99, Fax#0923-9220159,

Email: dconsrpk@yahoo.com


No. 8126-31 /EA-23/DC/NSR/2018

Dated 09/11/2018

NOTIFICATION

No. 8126-31 /EA-23/DC/Nowshera. In pursuance of Section-8 of Khyber Pakhtunkhwa Civil Servants Act 1973, read with Part-VI, Rule-17 of Civil Servants (Appointment, Promotion & Transfer) Rules 1989, Revised Final Seniority List of Junior Scale Stenographers (BPS-14) as stood on 07.11.2018, is hereby notified after approval upon Para-1, recommendations of the competent authority decision letter No. Estt:II/Seniority list /35320 dated 23.10.2018. The name of Mr. Zia Ullah Khan Junior Scale Stenographer is placed on Top from S/No. 04 accordingly, and is hereby circulated amongst all concerned.

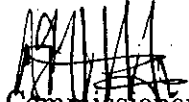
This office notification No. 8730-31/EA-23/DC/NSR/2017 dated 04th December, 2017 is hereby repealed.


Deputy Commissioner
Nowshera ?

Even No & Date

Copy forwarded to the following for information please:-

1. The Assistant to Commissioner (Rev/GA) Peshawar Division Peshawar w/r letter No. 6/4/EA/II/15024 dated 26-10-2018.
2. The Assistant Secretary (Estt) Board of Revenue, Revenue & Estate Department Peshawar.
3. Additional Deputy Commissioner Nowshera
4. Assistant Commissioner Nowshera
5. All Concerned


Deputy Commissioner
Nowshera ?

REVISED FINAL SENIORITY LIST OF STENO GRAPHER (BPS-14) AS STOOD ON 09. NOVEMBER, 2018.


Sanctioned Post of Steno Grapher (BPS-14) = No. 05.

Name & Designation	Date of Birth	District of Domicile	Qualifications	Date of		Method of Recruitment	Date of Retirement	Remarks.
				1 st Entry into Govt. Service	Appointment / Promotion to the present post			
Zia Ullah Khan	10-4-1975	Nowshera	M.A	15-8-1997	15-8-1997	By Initial appointment	9-4-2035	See note below.
Muhammad Tariq	21-4-1964	Nowshera	M.A	12-7-1987	12-7-1987	By Initial appointment	20-4-2024	See note below.
Shah-i-Mulk	15-10-1960	Nowshera	F.A	14-9-1987	14-9-1987	By Initial appointment	14-10-2020	See note below.
Anwar Baig	8-2-1966	Nowshera	D.Com	17-9-1985 as LDC	2-9-1990 as Steno	By Promotion appointment	7-2-2026	See note below.

E:-

Muhammad Tariq was appointed as Junior Scale Stenographer in the office of Budget & Accounts Office Cooperative Department Khyber Pakhtunkhwa Peshawar, and was declared surplus on 01.12.2001, and adjusted in the DCO office Nowshera on 31.12.2001, Mr. Shah-i-Mulk was appointed Junior Scale Stenographer in the office of Budget & Accounts Office Cooperative Department Khyber Pakhtunkhwa Peshawar, and was declared surplus on 01.12.2001, and adjusted in the DCO office Nowshera on 31.12.2001, Mr. Anwar Baig was appointed as LDC on 17.09.1985 appointment / promoted as Junior Scale stenographer on 02.09.1990, in the office of Director LG & RDD Khyber Pakhtunkhwa Peshawar and was declared surplus on 31.07.2001, and adjusted in the DCO office Nowshera on 01.08.2001. And Mr. Zia Ullah Junior Scale Stenographer is the permanent employee of this office who was appointed on 15-8-1997.

This Revised Final Seniority List of Junior Scale Stenographers (BPS-14) of Deputy Commissioner Office Nowshera, issued after approval upon Recommendations of the competent authority decision communicated by Assistant Secretary (Estt) Board of Revenue, Revenue & Estate Department Khyber Pakhtunkhwa vide letter No. Estt-II/Seniority list /35320 dated 23.10.2018, through Assistant to Commissioner (Rev/GA) Peshawar Division Nowshera vide letter No. 6/4/EA/II/15024 dated 26.10.2018. Under the provision of Sub para (b) of para 6 of Government of NWFP Establishment & Administration Department (Regulation Wing) No. SOR-1(E&AD)1-200/98 dated 8 Jun, 2001, the name of Mr. Zia Ullah Junior Scale Stenographer is placed on Top from S/No.04 accordingly.


Deputy Commissioner
Nowshera.

WAKALAT NAMA

IN THE COURT OF K.P.K Service Tribunal

Muhammad Taviz

Appellant(s)/Petitioner(s)

VERSUS

the Deputy Commissioners
and others

Respondent(s)

I/We Muhammad Taviz do hereby appoint
Mr. Khush Dil Khan, Advocate Supreme Court of Pakistan in the above
mentioned case, to do all or any of the following acts, deeds and things.

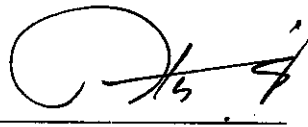
1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.
3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.


AND hereby agree:-

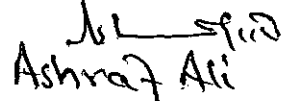
- a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this _____

Attested & Accepted by


Signature of Executants


Khush Dil Khan,
Advocate,
Supreme Court of Pakistan
9-B, Haroon Mansion
Off. Tel: 091-2213445


Ashraf Ali



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

No. Estt:II/DPC/_____

Dated Peshawar the 26 /11/2018

To

1. The Special Secretary (Regulation),
Establishment Department, Khyber Pakhtunkhwa.
2. Additional Secretary (Regulation),
Finance Department, Khyber Pakhtunkhwa.

Subject:

DEPARTMENTAL PROMOTION COMMITTEE MEETING

I am directed to refer to the subject and to state that a meeting of Departmental Promotion Committee is scheduled to be held on **29.11.2018** at **11:30 AM** in the office of Senior Member Board of Revenue, Khyber Pakhtunkhwa in his office.

The following cases will be discussed in the meeting.

- i. Promotion of Senior Clerk (BS-14) to the post of Assistant (BS-16) in the office of Deputy Commissioner Kohistan Upper.
- ii. Promotion of Junior Scale Stenographer (BS-14) to the post of Senior Scale Stenographer (BS-16) in the office of Commissioner Malakand Division.
- iii. Promotion of Junior Scale Stenographer (BS-14) to the post of Senior Scale Stenographer (BS-16) in the office of Deputy Commissioner Batagram.
- iv. Promotion of Junior Scale Stenographer (BS-14) to the post of Senior Scale Stenographer (BS-16) in the office of Deputy Commissioner Hangu.
- v. Promotion of Junior Scale Stenographer (BS-14) to the post of Senior Scale Stenographer (BS-16) in the office of Deputy Commissioner Bannu.
- vi. Promotion of Junior Scale Stenographer (BS-14) to the post of Senior Scale Stenographer (BS-16) in the office of Deputy Commissioner Nowshera.

2. I am further directed to request you to make it convenient to attend the schedule meeting on the date, time and venue specified above.

3. Working papers are enclosed.

Assistant Secretary (Estt)

No. Estt:II/DPC/ 37737-40

Copy alongwith copy of working papers are forwarded to the:-

1. Commissioner Malakand Division Saidu Sharif Swat.
2. Deputy Commissioners Kohistan Upper, Batagram, Hangu, Bannu and Nowshera.
3. PS to Senior Member Board of Revenue, Khyber Pakhtunkhwa.
4. PA to Secretary-I, Board of Revenue, Khyber Pakhtunkhwa.

{ They are requested to depute a well conversant officer not below the rank of BPS-17

Assistant Secretary (Estt)

WAKALATNAMA

IN The KP Service Tribunal Peshawar

M. Tanq

(Petitioner)
(Plaintiff)
(Applicant)
(Complainant)
(Decree Holder)

VERSUS

Commissioner of Police

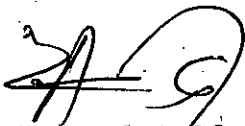
(Respondent)
(Defendant)
(Accused)
(Judgment Debtor)

Case SVC Appeal no 1431/2018

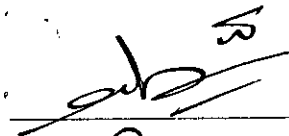
I/We, Ziaullah Khan do hereby appoint and constitute **Muhammad Arif Jan Advocate** High Court, Peshawar, to appear. Plead, act, compromise, withdraw or refer to arbitration to me/ us as my/ our Counsel in the above noted matter, without any liability for their default and with the authority to engage/ appoint any other Advocate/ Counsel at my/ our matter.

Attested & Accepted

CLIENT/S



Muhammad Arif Jan
Advocate, High Court, Peshawar.
Office No. 6, 1st Floor
Pabbi Medical Centre, G.T. Road
Peshawar.
Mobile: 0333-2212213



Respondent No-4

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWER.

Muhammad Tariq (Appeal No. 1431/2018).....Petitioner

Versus

Deputy Commissioner Nowshera etc Respondent

PRELIMINARY OBJECTIONS:

1. That the Appellant has no cause of action and locus standi.
2. That the Appellant has filed instant appeal just to pressurize the respondents.
3. That the instant appeal is against the prevailing circumstances and rules.
4. That the appeal is not maintainable in the present form and also in the present circumstances of the issue.
5. The appellant has filed the appeal in non-proper form and may be dismissed.
6. The appellant has not come to the tribunal with clean hands.
7. The appellant has been stopped by his own conduct. The instant appeal is nothing more than to waste the precious time of the Honorable Court.

PARA WISE COMMENTS ON BEHALF OF RESPONDENCE NO. 1 TO 3:-

FACTS

1. Pertains to record.
2. Pertains to record
3. Incorrect. No violation of laid down policy/rules have been made while reflecting on top in seniority list the name of impugned Stenographer in accordance with the devolution of power-plan Rules/Policy, "Government of Khyber Pakhtunkhwa Establishment and Administration Department regulation wing Para 6(b) of Notification No. SOR-1(E&AD)1-200/98 dated 08-06-2001, which is reproduced below:-


"In case an employee is adjusted in his respective cadre but in a department other than his parent department he shall be placed at bottom of seniority list of that cadre."
4. Correct. Impugned stenographer made an appeal to commissioner Peshawar Division Peshawar for setting aside the previous seniority list. After processing the case the Board of Revenue accepted his appeal and his name was put on top and thus a revised final seniority list of Junior Scale Stenographer (BPS-14) was issued.


5. Pertains to record


GROUNDS

- (a) Incorrect. While dealing with seniority list case proper rules/regulation have been adopted.
- (b) Court matter.
- (c) Correct. Previously no structure of service for promotion etc. of Junior Scale Stenographer (BPS-14) had been framed and now proper structure of service of Junior Scale Stenographer (BPS-14) has been devised.
- (d) Incorrect. Seniority list has been dealt with as per spirit of rules / policy of devolution of power plan 2001.

Hence this appeal may not be entertained and may be filed and dismissed.


Commissioner
Peshawar Division Peshawar
Commissioner Peshawar Division
Peshawar


Senior Member Board of Revenue
Khyber Pakhtunkhwa
Peshawar
Senior Member
Board of Revenue
Khyber Pakhtunkhwa


Deputy Commissioner
Nowshera
DEPUTY COMMISSIONER
NOWSHERA

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

In re:
S.A.No.1431/2018

Muhammad Tariq

Versus

D.C Nowhsera

Written reply on behalf of respondent No.4

Respectfully Sheweth

PRELIMINARY OBJECTIONS:-

1. That the appellant has got no locus standi to file the instant appeal.
2. That appellant has not come to the Court with clean hands, but in fact the present appeal is nothing but just to deprive the respondent No.4 from his legal and lawful right of due promotion.
3. That the instant appeal is barred by law and time.
4. That in a fact, the respondent No.4 rightly promoted on his turn after fulfilling all the codal formalities, moreover, the respondent No.4 not violated any right of other employee including the appellant.

ON FACTS

1. Para-1 needs no comments, does not pertain to respondent No.4.

2. Para-2 is also incorrect, misleading and against the facts and circumstances. The appellant intentionally concealed the seniority list since 2001-2012 and again intentionally with his dishonest attitude concealed the seniority list for the year 2014-16 and this act of the appellant clearly shows the malafide and dishonesty, thus the appellant badly failed to establish his right in the seniority list since 2001 till 2018, except to place on file the seniority list for the year 2013 & 2017.
3. Para-3 is incorrect, brief mentioned in the above para.
4. Para-4 is totally incorrect, misleading, respondent No.4 has rightly promoted on his own turn being senior most and top of the list after fulfilling all the codal formalities by the competent authority and under the **Provision of Para-11A of Appointment, Promotion & transfer Rules, 1973, and sub-para(b) of para-6 of Provincial Govt Policy of declaring Govt. servant as surplus and their subsequent absorption/ adjustment vide E&AD, the appellant was adjusted at the bottom from the respondent No.4.**
5. Para-5 is incorrect, detail reply already mentioned, furthermore, the appellant badly failed to submit the necessary documents, despite the fact, but the appellant took the innocent excuse of flood of the year 2010 for his failure, but in fact it is event establish from the conduct/ efficiency of respondent No.4 where the seniority list of the year 2004, 2005, 2006 and 2011 were provided from the office of

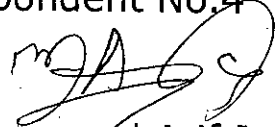
respondent No.4. The respondent No.4 submitted all the ACRs before the DPC members well within time and after scrutinizing the documents the respondent No.4 was declared fit for promotion, being eligible and entitled in all respects. It is worth mentioning that the other cadre promotion has also been dealt and they all submitted their seniority list well after the year of Flood 2010, but they were promoted, which clearly shows that their record was not destroyed due to flood, hence the innocent excuse of flood raised by appellant is false and illegal.

GROUND

Grounds "A" to "D" raised in the appeal are totally illegal, unlawful, against the facts and circumstances, the appellant intentionally concealed some material facts from this hon'ble Tribunal for the sake of to deprive the respondent No.4 from his due right of promotion without any reason and justification. The appellant was appointed in the office of Director Local Government, he was declared surplus in his parent office for one time and was adjusted first time in other department/ DCO Office Nowshera, where the appellant was again declared as surplus and readjusted in the office of respondent No.1, whereas, the respondent No.4 since his appointment till now working in his parent department and thus placed at top of the seniority, whereas, due to adjustment and readjustment the appellant was brought on bottom of the seniority list. Hence not entitled for promotion well before the respondent No.4.

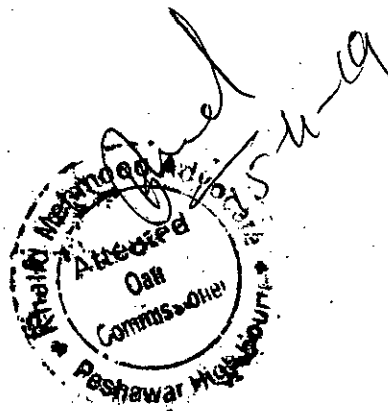
It is, humbly prayed that, on acceptance of instant reply, the appeal of the appellant may graciously be dismissed with cost throughout.

Any other remedy deemed appropriate in the circumstances and not specifically asked for may kindly also be granted.

Respondent No.4
Through 
Muhammad Arif Jan
Advocate High Court

AFFIDAVIT

I, Zia Ullah Stenographer, DC Office Nowshera (respondent No.4) , do hereby affirm and declare on oath that the contents of the instant **Written Reply** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.




Deponent

بعدالت سروس ٹریبیونل کے برقی کے

Service Appeal # 1431/2018

22 2022ء پنجاب

محمد طارق بنام حکومت

موضوع

مقدمہ

دعویٰ

جرم

باعث تحریر آنکھ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے میں صاحب کی کارروائی متعلقہ
آن مقام پشاور کیلئے استغرف علیٰ عدالت اور

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک دروپیا عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
اس پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری کی طرفہ یا اپیل کی برآمدگی
منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت
مذکورہ کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
تقریر اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے
اور اس کا ساختہ پر داخنتہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے
ہوگا وہ ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں
گے۔ کہ پیر کوئی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

2022

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الرقوم

Accepted by

محمد طارق

BC # 10-4605

9931676

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پشاور کے لئے منظور ہے۔

مقام

2010 S C M R 450

[Supreme Court of Pakistan]

Present: Javed Iqbal, Ch. Ejaz Yousaf and Sardar Muhammad Aslam, JJ

Mrs. RASHIDA ASIF----Petitioner

Versus

Mrs. AASIA GONDAL and others----Respondents

Civil Petition No.1206 of 2008, decided on 19th June, 2009.

(On appeal from the judgment, dated 30-6-2008 passed by the Federal Service Tribunal, Islamabad in Appeal No.43(R)(C.S.) of 2005).

Civil Servants Act (LXXI of 1973)---

----S. 8---Constitution of Pakistan (1973), Art.212(3)---Seniority---Determination---Grievance of petitioner was that respondent was junior to her but she had been placed senior to her in seniority list---Validity---In provisional seniority list and final seniority list, petitioner was shown as junior to respondent and that position was never objected or challenged---Petitioner got up from deep slumber after so many years for the reason best known to her---Supreme Court found it too late to reverse existing seniority position which was determined in year, 1995---It was not discretion of competent authority to change seniority position assigned to a government employee without any lawful justification---Petitioner failed to raise substantial question of law of public importance and in absence whereof leave to appeal might not be granted---No infirmity or illegality could be pointed out in the judgment passed by Service Tribunal and the same being unexceptionable and well based did not warrant interference---Leave to appeal was refused.

WAPDA v. Abbas Ali Malano 2004 PLC (C.S.) 1; Ikram Bari and 524 others v. National Bank of Pakistan through President and other 2005 SCMR 100; Bashir Ahmad v. Mahmud Ali Khan PLD 1960 SC 195; Syed Ali Hasan Rizvi v. Islamic Republic of Pakistan 1986 SCMR 1086; Muhammad Azhar Khan v. Service Tribunal, Islamabad 1976 SCMR 262; Water and Power Development Authority v. Abdur Rashid Dar 1990 SCMR 1513; Sher Bahadar v. Government N.-W.F.P. 1990 SCMR 1519; Nazakat Ali v. WAPDA 2004 SCMR 145; Muhammad Iqbal v. Secretary to Government of Punjab 1986 SCMR 1; Karamat Hussain v. Province of the Punjab 1982 SCMR 897; Razia Sultana v. Government of Punjab 1981 SCMR 715; M. Yamin Qureshi v. Islamic Republic of Pakistan PLD 1980 SC 22; Irtiqa Rasool Hashmi v. WAPDA 1980 SCMR 722; Dilbar Hussain v. Province of Punjab 1980 SCMR 148; Yousaf Hussain Siddiqi v. Additional Settlement and Rehabilitation Commissioner, Peshawar 1976 SCMR 268; M.A. Majid v. Government of Pakistan 1976 SCMR 311;

Director Food v. Rashid Ahmad 1990 SCMR 1446; 1990 SCMR 560; Province of Punjab through A. I. G. P. , Lahore v. Rao Abdul Jalil Khan 1989 SCMR 330; Sattan v. Rani 1989 SCMR 1677; Government of Punjab v. Khalid Hussain Gill 1989 SCMR 748; Abdul Razaq v. Province of Punjab . 1980 SCMR 876; Muhammad Yaqub Sheikh v. Government of the Punjab through Secretary, Local Government and Rural Development 1987 SCMR 1354 and Babar Gul v. Sohail Ahmad Sheikh 2002 SCMR 581 rel.

Muhammad Shoaib Shaheen, Advocate Supreme Court for Petitioner.

Qari Abdul Rashid, Advocate Supreme Court for Respondent No.1.

Safdar Shah (I-Officer) for Respondents Nos.2 to 4.

Date of hearing: 19th June, 2009.

JUDGMENT

JAVED IQBAL J.--- Pursuant to the order dated 4-6-2004 and 5-6-2004 and as a result of revised seniority list, the seniority position of Mrs. Aasia Gondal (respondent No.1) was changed and she was placed junior to Mrs. Rashida Asif (petitioner). Being aggrieved a departmental representation was made by Mrs. Aasia Gondal on 1-7-2004 which could not be decided in spite of two reminders which culminated into Appeal bearing No.43(R)(C.S.) of 2005 which has been accepted by the learned Federal Service Tribunal by means of judgment impugned which has been assailed by Mrs. Rashida Asif (petitioner).

2. Precisely stated the facts of the case are that petitioner was appointed as Information Assistant (B-11) along with six others but Mrs. Aasia Gondal could not be appointed. Mrs. Aasia Gondal was, however, appointed against leave vacancy for 66 days by means of order dated 14-9-1986. The seven posts of Information Assistant (B-11) were got sanctioned for a period of 6 months for the election publicity and subsequently the seven posts being temporary and got sanctioned for a particular object were abolished. The prominent features of the controversy is that petitioner continued as Information Assistant (B-11) against the different short term vacancies which remained available with the Information Department till 1990. It reveals from the scrutiny of record that on 20-1-1990 an advertisement was made against 13 vacant posts of Information Assistant (B-11) against which Mrs. Rashida Asif (petitioner) and Mrs. Aasia Gondal (respondent-1) were selected vide order dated 6-10-1990 and Mrs. Aasia Gondal was shown at serial No.2 whereas Mrs. Rashida Asif was 'at serial No.8 in the merit list on the basis whereof a tentative seniority list of Information Assistant (B-11) was circulated on 7-2-1995 and Mrs. Aasia Gondal was shown against Serial No.8 while Mrs. Rashida Asif was at Serial No.14. The provisional seniority list was converted into final seniority list of the Information Assistant (B-11) and circulated by means of Officer Order dated 23-11-1995. It is worth mentioning at this place that no objection whatsoever was filed by any of the Information Assistant against provisional and final seniority list including the petitioner.

3. Mr. Muhammad Shaheen, learned Advocate Supreme Court entered appearance on behalf of petitioner and contended strenuously that legal and factual aspects of the controversy have not been appreciated in its true perspective by the learned Federal Service Tribunal which resulted in serious miscarriage of justice. In order to substantiate the said contention it is contended that the appeal preferred on behalf of Mrs. Aasia Gondal (respondent No.1) being barred by time should have not been entertained by the learned Federal Service Tribunal as the time limit prescribed in the Statute cannot be condoned without any sufficient lawful justification which was lacking but escaped the notice of the learned Federal Service Tribunal. It is urged with vehemence that petitioner was appointed in 1995 and respondent No.1 was appointed in 1990, hence the question of her being senior does not arise as respondent No.1 could not qualify for the post of Information Assistant in the year 1985 and being a regular employee with effect from 11-2-1985 the petitioner by no stretch of imagination can be considered as junior to respondent No.1. Mr. Muhammad Shoaib Shaheen, learned Advocate Supreme Court contended that the petitioner had attained the status of a regular and permanent employee in view of the dictum laid down by this Court in case titled WAPDA v. Abbas Ali Malano 2004 PLC (C.S.) 1, Ikram Bari and 524 others v. National Bank of Pakistan through President and others 2005 SCMR 100. It is contended that ad hoc services can only be continued for a limited period and if it remains intact for an indefinite period, such appointments can be equated to that of regular appointment for all intended purposes, benefit whereof must be given to the petitioner whose service remained uninterrupted. It is argued that the judgment impugned is in consonance with the rules laid down in Office Memorandum No.3605.EG-II/49 dated 18-9-1949 as well as the provisions as enumerated in Fundamental Rule 9(30).

4. Qari Abdur Rasheed, learned Advocate Supreme Court entered, appearance on behalf of Mrs. Aasia Gondal (respondent No.1) and controverted the view point as canvassed at bar by Mr. Muhammad Shoaib Shaheen, learned Advocate Supreme Court for the petitioner with the submission that no specific infirmity or illegality could be pointed out in the judgment impugned and in the absence of any substantial question of law of public importance which is sine qua non for grant of leave as per the provisions enumerated in Article 212(3) of the Constitution of Islamic Republic of Pakistan.. The question of grant of leave does not arise. Qari Abdur Rasheed, learned Advocate Supreme Court has supported the judgment impugned for the reason enumerated therein and argued that the seniority being a valuable right cannot be changed without any lawful justification which at all was no available to the Competent Authority specially when no objection whatsoever was raised against the provisional and final seniority list by the petitioner wherein admittedly she was shown junior to Mrs. Aasia Gondal (respondent No.1).

5. We have carefully examined the respective contentions as agitated on behalf of parties and perused the judgment carefully. We have also examined the entire record made available. The controversy had got a chequered history, perusal whereof would reveals that 13 posts of Information Assistant (B-11) were advertised and Mrs. Aasia Gondal and Mrs. Rashida Asif were selected by means of order dated 6-10-1990 and placed at serial No.2 and Serial No.8 respectively in the merit list which was never

challenged. The provisional seniority list was issued on 7-2-1995 wherein Mrs. Aasia Gondal was placed at serial No.4 while Mrs. Rashida Asif at Serial No.8. No objection worth the name was made by the petitioner against the provisional seniority list which converted into the final seniority list by means of Office Order dated 23-11-1995 which again went unchallenged by the petitioner. As mentioned hereinabove the provisional seniority list was converted into final seniority list on 23-11-1995 but neither objection was made nor any representation was filed by the petitioner. The question as to whether any representation was filed or otherwise, being a question of fact has been dilated upon by the learned Federal Service Tribunal determining that no such representation was ever filed. The Tribunal after having gone through the entire record observed that in particular context that "the record does not satisfactorily depict if the respondent No.4 made any departmental representation against the said seniority list. Although the appellant has placed on the record a copy of the representation dated 20-2-1995 followed by reminders dated 26-3-1995, 13-4-1995 and 3-5-1995 there is no corresponding proof that the same were communicated to the departmental appellate authority and if so in what manner". The representative of the Department, however, mentioned before the learned Federal Service Tribunal that Mrs. Rashida Asif had made one representation dated 31-11-2002 whereas the final seniority list was circulated by means of order dated 23-11-1995 hence it would not render any assistance to the case of petitioner.

6. We are not persuaded to agree with the prime contention of Mr. Muhammad Shoaib Shaheen, learned Advocate Supreme Court on behalf of petitioner that she was a regular Information Assistant (B-11) since 1985 whereas respondent No.1 was appointed in the year 1990 and hence the question of her being senior does not arise for the reason that Mrs. Rashida Asif was never appointed on regular basis against any substantive vacancy of Information Assistant. It is worth mentioning that the posts of Information Assistant were created in 1985 on purely temporary basis and only for the election purposes and for a stipulated period of 6 months and subsequently abolished. There is no doubt that Mrs. Rashida Asif was allowed to perform her duties as information Assistant but against temporary vacancies and she was never appointed or absorbed against any substantive vacancy of Information Assistant. There is no denying the fact that abolition of temporary posts meant for election purposes was never challenged. In our considered view the petitioner who had performed as Information Assistant (B-11) as stopgap arrangement against temporary vacancy cannot invoke, the provisions as enumerated in Fundamental Rule 9(30) and Office Memorandum No.3605.EG-II/49 dated 19-9-1949. Mr. Muhammad Shoaib Shaheen, learned Advocate Supreme Court on behalf of petitioner was asked pointedly that if the posts of Information Assistant (B-11) were sanctioned in the year 1985 then how come that no seniority list whatsoever was prepared but no answer could be given and rightly so because no seniority list whatsoever was prepared as the temporary posts got sanctioned in the year 1985 for the purposes of election were abolished hence the question of preparation of any seniority list does not arise. As mentioned hereinabove in the provisional seniority list and final seniority admittedly the petitioner was shown as junior to that of Mrs. Aasia Gondal (respondent No.1) and that position was never objected or challenged. The petitioner got up from a deep slumber after so many years for the reasons best known to her. It is too late in the day to reverse the existing seniority position which was determined in 1995. It is not a discretion of the

Competent Authority- to change the seniority position assigned to a Government employee without and lawful justification. It is to be noted that "every officer in a graded service has a vested right to a proper place in the seniority list. That is of the highest importance to the officer, as well as to the maintenance of proper discipline and order within the service and consequentially to the public interest which is deeply involved in the maintenance of a proper spirit of order and discipline within the service". Bashir Ahmad v. Mahmud Ali Khan PLD 1960 SC 195. Seniority has been considered as a vested right which cannot be reversed without lawful justification and in case titled Bashir Ahmad (supra) the principle of the vested right of the seniority were determined as follows:---

"(1) Every officer in a graded service has a vested right to a proper place in the seniority list.

(2) This is of the highest importance to him, as well as to the maintenance of proper discipline and order within the service, and consequentially to the public interest which is deeply involved in the maintenance of a proper spirit of order and discipline within the service.

(3) Seniority rules are not of the same nature and quality as the great body of departmental rules applicable to the conduct of officers and other such matters relating to the service as a whole, which are capable of being altered by the Government. These rules are of the highest validity and have the quality of settling the important matter of seniority among officers of service."

7. We have also adverted to the question of limitation which has been addressed to properly by the learned Federal Service Tribunal in the judgment impugned, relevant portion whereof is reproduced herein below for ready reference:---

"The objection raised by the learned counsel for the respondents that the appeal is barred by time and that there is no ground for condonation of delay has not impressed us. Admittedly the departmental appeal was filed on 1-7-2004. When the same remained un-actioned the appellant after submitting two reminders filed the present appeal on 11-1-2005. During the pendency of the appeal, a legal notice dated 5-4-2005 was issued to the respondents once again calling upon the departmental appellate authority to decide the departmental appeal as per law. In response to the said Legal Notice, the Deputy Director (Admn.), Press Information Department, Government of Pakistan, Islamabad vide letter dated 6-5-2005 intimated the appellant that her appeal was still under process in the Ministry of Information and Broadcasting and that it will be forwarded to the Establishment Division. -It was also asserted that "it may be pertinent to mention here that justice will be done at all cost". No further action appears to have been taken by the department thereafter."

8. The Tribunal has rightly exercised its discretion in condoning the delay in view of the peculiar circumstances of the case's mentioned hereinabove. "It hardly needs any elucidation that sufficiency of cause for condonation of delay being question of fact is within the exclusive jurisdiction of learned Federal Service Tribunal and

once the discretion concerning condonation of delay was exercised judiciously by the Service Tribunal it cannot be disturbed by this Court without any justification which is lacking in this case." In this regard we are fortified by the dictum laid in Syed Ali Hassan Rizvi v. Islamic Republic of Pakistan 1986 SCMR 1086, Muhammad Azhar Khan v. Service Tribunal, Islamabad 1976 SCMR 262, Water and Power Development Authority v. Abdur Rashid Dar 1990 SCMR 1513; Sher Bahadar v. Government N.-W.F.P. 1990 SCMR 1519 and Nazakat Ali v. WAPDA 2004 SCMR 145.

9. We may mentioned here that no substantial question of law of public importance is involved and in absence whereof leave to appeal may not be granted. In this regard we are fortified by the dictum laid down in the following cases:---

Muhammad Iqbal v. Secretary to Government of Punjab 1986 SCMR 1, Karamat Hussain v. Province of the Punjab 1982 SCMR 897, Razia Sultana v. Government of Punjab 1981 SCMR 715, M. Yarnin Qureshi v. Islamic Republic of Pakistan PLD 1980 SC 22, Irtiqa Rasool Hashmi v. WAPDA 1980 SCMR 722, Dilbar Hussain v. Province of Punjab 1980 SCMR 148, Yousaf Hussain Siddiqi v. Additional Settlement and Rehabilitation Commissioner, Peshawar 1976 SCMR 268, Muhammad Azhar Khan v. The Services Tribunal, Islamabad 1976 SCMR 262, M.A. Majid v. Government of Pakistan 1976 SCMR 311, Director Food v. Rashid Ahmad 1990 SCMR 1446, 1990 SCMR 560, Province of Punjab through A.I.G.P., Lahore v. Rao Abdul Jalil Khan 1989 SCMR 330, Sattan v. Rani 1989 SCMR 1677, Government of Punjab v. Khalid Hussain Gill 1989 SCMR 748, Abdul Razaq v. Province of Punjab 1980 SCMR 876, Muhammad Yaqub Sheikh v. Government of the Punjab through Secretary, Local Government and Rural Development 1987 SCMR. 1354 and Babar Gul v. Sohail Ahmad Sheikh 2002 SCMR 581."

10. No infirmity or illegality could be pointed out in the judgment impugned which being unexceptionable and well based does not warrant interference. The petition being devoid of merit is dismissed and leave refused.

M.H./R-10/SC Petition dismissed.

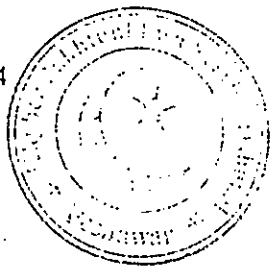
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Anne K

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO. 975/2014

Date of institution ... 22.07.2014
Date of judgment ... 19.10.2016



Sial Muhammad
Junior Clerk,
Office of the Deputy Commissioner,
Nowshera

... (Appellant)

VERSUS

1. Commissioner, Peshawar Division, Peshawar.
2. Deputy Commissioner, Nowshera.
3. Additional Deputy Commissioner, Nowshera.
4. Fazal Ihsan, Junior Clerk, Deputy Commissioner's Office Nowshera.
5. Wajid Aslam, Junior Clerk, Deputy Commissioner's Office Nowshera.
6. Zahidullah Paracha, Junior Clerk, Deputy Commissioner's Office Nowshera.
7. Imtiaz Hussain, Junior Clerk, Deputy Commissioner's Office Nowshera.

... (Respondents)

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 23.06.2014 VIDE WHICH NOTIFICATION NO. 5506-10/FA-23/DC/NOWSHERA DATED 03.07.2014 WAS ISSUED AND THE DECISION/NOTIFICATION 344-47/EA-23/DC/NOWSHERA DATED 31.01.2014 OF RESPONDENT NO. 2 IN FAVOUR OF THE APPELLANT WAS SET-ASIDE AND THE APPEAL PREFERRED BY RESPONDENTS NO. 4 TO 7 WAS ACCEPTED.

Mr. Saqib Alam, Advocate.
Mr. Kabirullah Khan Khattak, Assistant AG
Private Respondents No. 4 to 7 in person.

.. For appellant.
.. For Official respondents No.1 to 3.

MR. ABDUL LATIF
MR. PIR BAKHSH SHAH

.. MEMBER (EXECUTIVE)
.. MEMBER (JUDICIAL)

ATTESTED

JUDGMENT

ABDUL LATIF, MEMBER:-

Facts giving rise to the instant appeal are that the appellant was appointed as Junior Clerk vide order dated 16.08.1987 in Cooperative Department. That on 24.07.2002 the appellant was declared as surplus from Cooperative

3

Department and adjusted in the District Coordination Office Nowshera vide order No. 411-19/DCO/Estt: 08/NSR dated 25.01.2003 as Computer Operation (BPS-11) in his own pay & scale (BPS-7) for the purpose of pay & allowances. Later on, vide order dated 31.03.2012 he was adjusted and posted against the same cadre post of Junior Clerk in the DOR Office Nowshera. However, during adjustment as Computer Operation in DCO office and further posting as Junior Clerk in DOR office Nowshera, the official was not assigned any specific position of his seniority in the seniority list of Junior Clerks. Subsequently, appellant was promoted as Senior Clerk (BPS-9) but in pursuance of BOR decision/order, his order of promotion as Senior Clerk was withdrawn. He was given another opportunity of posting as Assistant Inspector Excise & Taxation Department Nowshera but was readjusted as Junior Clerk in the DOR Office against his original post. Against the impugned order appellant filed the departmental appeal which was accepted by the competent authority and seniority of the appellant was adjusted accordingly. That respondents No. 4 to 7 filed appeal against the decision of respondent No. 2 before respondent No. 1 which was accepted and the decision of the competent authority was set-aside and again the seniority of the appellant was disturbed. That feeling aggrieved from the impugned order appellant filed the instant service appeal with a prayer that on acceptance of this appeal the impugned order dated 20.06.2014 passed by respondent No. 1 and notification dated 03.07.2014, may kindly be set-aside and the decision/notification dated 31.01.2014 by the respondent No. 2, in representation in favour of the appellant may kindly be maintained as the same was in accordance with law and rules on the subject and the seniority of appellant may kindly be reckoned from the date of appointment.

2. The Learned counsel for the appellant argued that the appellant was appointed as Junior Clerk in Cooperative Department on 16.08.1987 whereas private respondents No. 4, 5, 6 and 7 were appointed as Junior Clerk on 01.10.1999, 15.09.1990, 07.08.1990 and 25.09.1991 respectively. He further argued that as a result of restructuring of Cooperative Department the appellant was rendered surplus on 01.07.2002 and was adjusted as Computer Operator in the office of DCO Nowshera in own pay scale on 25.01.2003. He further contended that appellant was adjusted as ASI in Excise & Taxation Department on

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27.08.2011 which order was subsequently withdrawn on 06.09.2011. The appellant was there-after formally adjusted as Junior Clerk (the cadre to which he belonged) in office of DOR Nowshera on 31.03.2012 and he was placed at the top of seniority list of Junior Clerks of the office of Deputy Commissioner Nowshera notified on 7th January 2014. The learned counsel further argued that private respondents contested the said seniority list before Commissioner Peshawar Division who vide his order dated 20.06.2014 accepted the appeals of the private respondents for correcting of their seniority according to the date of their regular appointment as Junior Clerks and appellant was relegated to S. No 17 of the seniority list as stood on 01.12.2013. He further argued that impugned order dated 20.06.2014 was against the law and the APT Rules 1989 made there under and prayed that on acceptance of this appeal the impugned order dated 20.06.2014 and notification dated 03.07.2014 may be set-aside and notification dated 31.01.2014 of respondent No. 2 may be restored by placing the appellant at the top of the seniority list of the Junior Clerks. He relied on 1993 SCMR 609, 2001 PLC (C.S) 710, 2007 SCMR 886 and judgment dated 28.12.2010 of Supreme Court of Pakistan passed in Civil Appeal No. 140-P of 2010.

3. Private respondents while arguing the case in person resisted the appeal and argued that they were original employees of the Deputy Commissioner office whereas the appellant was rendered surplus from Cooperative Department on 01.7.2002. They argued that the appellant was first adjusted as Computer Operation in own pay scale and was later on appointed as Junior Clerk in the office of DOR on regular basis on 31.03.2012. They further argued that on revival of office of DCO in the year 2013 tentative seniority list of Junior Clerks was circulated where appellant was placed at the top of seniority list with reference to his date of initial appointment as Junior Clerk in the Cooperative Department due to omission on the part of the relevant authority. They further argued that they contested the said seniority list before the Commissioner Peshawar Division being appellate authority who after consulting the entire record accepted their appeals and corrected their seniority according to the date of their regular appointment in the light of APT Rules 1989. They prayed that being a surplus employee and adjusted as Junior Clerk in the DC Nowshera office on 31.03.2012, the appellant seniority was re-fixed at the

ATTACHED

correct place and prayed that the appeal being devoid of merits may be dismissed. They relied on 1999 SCMR 1039.

4. The learned Assistant Advocate General endorsed the arguments advanced by the private respondents.

5. Arguments heard and record perused.

6. From perusal of the record it transpired that the appellant who was initially appointed as Junior Clerk in the Cooperative Department was rendered surplus as a consequence of restructuring of his parent department on 01.07.2002 and was adjusted as Computer Operation (BPS-11) in his own pay scale in the office of DCO Nowshera on 25.01.2003. He was subsequently appointed as Junior Clerk on 31.03.2012 in the said office and his seniority was required to be fixed at the bottom of the said cadre according to rule-17 of APT Rules 1989 read with the surplus pool policy of the Provincial Government. The claim of the appellant for reckoning his seniority as Junior Clerk from the date of his initially appointment in the Cooperative Department is therefore not valid and is not covered under the relevant APT Rules as well as surplus pool policy of the Provincial Government. We are therefore constrained not to interfere in the case and the appeal being devoid of any merits is accordingly dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
19.10.2016

Sd/- Abdul Latif, Member
Sd/- Pirs Bakhtishah Shah, Member

Certified to be true copy
Secretary, Provincial Government

Date of Presentation 18-11-2016
Number of Pages 1600
Copying Fee 10/-
Urgent 2/-
Total 12/-
Name of C. *[Signature]*
Date of Copy 18-11-2016
Date of Delivery 18-11-2016

Mr
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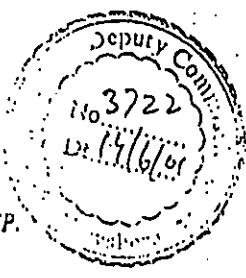
ESTABLISHMENT & ADMINISTRATION DEPARTMENT
(REGULATION WING)

13

✓ P^o

~~Annex~~

NO. SOR-(E&AD)-200/98,
Dated Peshawar the 8th June 2001



To

- 1) All Administrative Secretaries in NWFP.
- 2) The Secretary to Governor, N.W.F.P.
- 3) All Commissioners in N.W.F.P.
- 4) All Heads of Attached Department in N.W.F.P.
- 5) All Heads of Autonomous/Semi-Autonomous Bodies in NWFP.
- 6) The Registrar, Peshawar High Court, Peshawar.
- 7) All Districts & Session Judges in NWFP.
- 8) All Deputy Commissioners/Political Agents in NWFP.
- 9) The Secretary, NWFP Public Service Commission, Peshawar.
- 10) The Director, Anti-Corruption Establishment, Peshawar.
- 11) The Registrar, NWFP Service Tribunal, Peshawar.

SUBJECT: POLICY FOR DECLARING GOVERNMENT SERVANTS AS SURPLUS AND THEIR SUBSEQUENT ABSORPTION/ADJUSTMENT

Sir,

I am directed to refer to the subject noted above and to say that the Provincial Government has been pleased to make the following policy for absorption/adjustment of Government Servants declared as surplus in view of the transition of District System and resultant re-structuring of the Government Organizations/Departments etc:

POWER WITH REGARD TO THE DECLARATION OF POSTS AS SURPLUS.

The Finance Department in consultation with Department concerned and with the approval of competent authority would decide with regard to the declaration of a particular organization, set up or individual post as redundant or inessential.

CREATION OF SURPLUS POOL.

There will be a surplus pools cell in the E&AD. After abolition of such posts in the concerned department, duly notified by the Finance Department, equal number of posts in the corresponding basic pay scales would be created in the E&AD for the purpose of drawl of pay and allowances etc by the employees declared surplus as such.

IMPLEMENTATION/MONITORING CELL.

For the purpose of coordination and to ensure proper and expeditious adjustment / absorption of surplus staff, the Government of NWFP has been pleased to constitute the following committee:-

- | | |
|--|-----------------|
| a. Additional Secretary (Establishment) E&AD | Chairman. |
| b. Deputy Secretary LG & RD Department. | Member. |
| c. Deputy Secretary Finance Department. | Member. |
| d. Deputy Secretary (Establishment) E&AD. | Secretary |

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Important M
file for necessary
reference
13/6/01



5. PROCEDURE FOR ADJUSTMENT OF SURPLUS EMPLOYEES.

Notwithstanding anything contained in any other law, rules or regulation to the contrary, for the time being in force, the following procedure for the adjustment of surplus staff would be followed:-

- (a) Before transferring an employee to the surplus pool, he should be given option by the concerned department
 - (i) to proceed on retirement with normal retiring benefits under the existing rules;

OR

 - (ii) to opt for readjustment/absorption against a future vacancy of his status/BPS which may not necessarily be in his original cadre/department.

(b) Those who opt for retirement would be entitled for usual pension and gratuity according to the existing Government Servants Pension and Gratuity Rules of the Provincial Government. Those who opt for absorption/re-adjustment, a category-wise seniority list will be caused in the Surplus Pool for their gradual adjustment against the future vacancies as and when occurred in any of the Government Departments. These adjustment shall be on seniority-cum-fitness basis. For this purpose the seniority list will be caused category-wise with reference to their respective dates of appointment in the cadre. In case where dates of appointment of two or more persons are the same, the person older in age shall rank senior and shall be adjusted first.

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(c) Adjustment shall be made on vacant post pertaining to initial recruitment quota from those in the surplus pool in the following manner:-

- (i) In case of occurrence of vacancies in their corresponding posts in any Government Department/Organization, the senior most employee in the surplus pool should be adjusted first
- (ii) In case of cross cadre adjustment, the persons with such minimum qualification as prescribed in the relevant Service Rules for the post in question shall be adjusted keeping in view their seniority position.
- (iii) If an employee possess the basic academic qualification but lacks the professional/technical qualification, he may be adjusted against such post subject to imparting the requisite training.
- (iv) (a) The surplus employees holding such posts which fall to promotion quota in about all the Departments, he shall remain in the surplus pool till the availability of a post in the parent department.

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OR

E&AD

(b) Where no equivalent post is available the civil servant may be offered a lower post in such manner, and subject to such conditions, as may be prescribed and where such civil servant is appointed to a lower post the pay being drawn by him in the post immediately proceeding his appointment to a lower post shall remain protected.



(d) If no suitable person is available in the surplus pool to be adjusted against the vacant/revived post, such a post would be filled up by initial recruitment in the prescribed manner after getting clearance from the E&AD.

(e) Surplus staff should be adjusted preferably in their home District(s). If not possible, then within the same Division, if staff is adjusted away from their District of Domicile in the first instance then on availability of post they should be considered for adjustment near to their home station.

(f) To facilitate the adjustment of surplus staff, it will be incumbent upon the Administrative Department to take up the case with Finance Department for revival of the essential posts so retrenched as a result of general directive issued by Finance Department from time to time, giving cogent reasons/justification. Against the resultant revival/restoration of the post, the concerned Department will place a requisition on the E&AD for transferring of a suitable surplus employee against the said post.

(g) Unless the surplus employees in Class-IV are fully adjusted/absorbed against their respective graded posts in various Government Department/Organizations, the general policy of the Finance Department regarding conversion of BPS-1 & 2 posts to posts in fixed salary @ Rs. 2000/- per month for contractual appointed should be restricted to the above extent.

FIXATION OF SENIORITY

The inter-se seniority of the surplus employees after their adjustment in various Department will be determined according to the following principles:-

- (a) In case a surplus employee could be adjusted in the respective cadre of his parent department he shall regain his original seniority in that cadre.
- (b) In case, however, he is adjusted in his respective cadre but in a Department other than his parent Department, he shall be placed at the bottom of seniority list of that cadre.
- (c) In case of his adjustment against a post in a corresponding basic pay scale with different designation/nomenclature of the post, either in his parent department or in any other department, he will be placed at the bottom of seniority list.

NOTE:-

In case the officer/official declines to be adjusted/absorbed in the above manner in accordance with the priority fixed as per his seniority in the integrated list, he shall loose the facility/right of adjustment/absorption and would be required to opt for premature retirement from Government service.

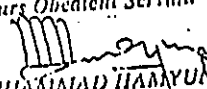
Provided that if he does not fulfill the requisite qualifying service for premature retirement he may be compulsorily retired from service by the competent authority

COMPETENT AUTHORITY TO NOTIFY/ORDER ADJUSTMENT/ ABSORPTION.

After the transfer of services of surplus employee to a Department for adjustment/absorption against a vacant/revived post, the Competent Authority to notify/order his absorption/adjustment, shall be the respective appointing authority under the relevant rules for the post.

Provided that the decision of adjustment/absorption of surplus employees by the E&AD shall be binding upon the respective appointing authorities.

Yours Obedient Servant



(MUHAMMAD HAMAYUN)
ADDITIONAL SECRETARY (REGULATION)

(14)



Copy forwarded to the:


1. COS HQ, 11 Corps, Peshawar Cantt;
2. HQ PMCS C/O HQ Engineer 11 Corps, Peshawar Cantt;
3. All Add/Deputy Secretaries in (Establishment) E&AD.
4. Deputy Secretary (Admn) E&AD.
5. Director, STI, Benevolent Fund Building, Peshawar.
6. The Accountant General, NWFP, Peshawar.
7. Deputy-Secretary Benevolent Fund Cell, E&AD.
8. All District Accounts Officers in NWFP.


(GHULAM F. JILANI ASIF)
DEPUTY SECRETARY (REG-1)

Encl: even No. & date

Copy forwarded to:-

1. All Section Officers in (Establishment) E&AD.
2. All Section Officer in General Administration E&AD.
3. The Estate Officer, E&AD.
4. PS to Chief Secretary, NWFP.
5. PS to Secretary (Establishment) E&AD.
6. PS to Secretary (General Administration) E&AD.
7. Librarian, E&AD.


SECTION OFFICER (REG-1)

(16)

Annex: 4

(15)

KATA

GOVERNMENT OF NWFP
ESTABLISHMENT & ADMINISTRATION DEPTT

(REGULATION WING)

NO.SOR-I(S&GAD)1-200/98(Vol.I)
Dated Peshawar the 13th August, 2001

To

1. All the Administrative Secretaries to Government of NWFP.
2. Secretary to Governor, NWFP.
3. All Head of Attached Departments in NWFP.
4. All the District Coordination Officers in NWFP.

Subject:

DECISIONS OF THE MEETING OF CHIEF SECRETARY WITH DISTRICT COORDINATION OFFICERS, ON THE ISSUE OF SURPLUS POOL.

Sir

I am directed to refer to the subject cited above and to say that a meeting was held on 4.8.2001 in the Cabinet Room Civil Secretariat under the chairmanship of Chief Secretary, NWFP to discuss the issues relating to adjustment of employees rendered surplus due to restructuring of the Government Departments and Devolution of Power Plan, 2000. The following decisions were taken in the said meeting:-

- i) Administrative Departments may reconsider adjustments already made against the available posts at District level. The guiding principle for reviewing the adjustment would be aimed at avoiding dislocation of the employees to the possible extent.
- ii) The DCOs will maintain the surplus pool of the employees, declares surplus in the District cadres and their subsequent adjustment against the vacant posts (District Cadres). It must be ensured that only the junior most employees in the scale in the cadre be declared surplus. At the stage of adjustment of Class-IV posts, the senior most be adjusted first. However, for other posts besides seniority, the background of the individual and requisite experience of the posts shall be kept in view. The surplus pool of Divisional cadres be maintained by the DCOs posted at divisional headquarters.
- ✓ iii) The surplus pool of the employees of the Head Offices be maintained by the Head of the concerned Attached Department. Declaring employees surplus and their subsequent adjustment be made strictly according to the spirit of the policy of the Provincial Government issued vide circular letter No.SORI(S&GAD)1-200/98, dated 8.6.2001.
- iv) The surplus pool of the Secretariat be maintained by the Establishment Department in consultation with the Department concerned.
- v) The salaries of the surplus employees be disbursed through their relevant offices for the time being.

- vi) It was also felt that the sanctioned staff for the office of DCO and other offices is not sufficient. The ministerial staff has no appropriate tiers for the purpose of control and promotion i.e. Senior Clerk and Superintendent etc. The post of Chowkidar/Sweeper does not exist in the office of DCOs and other offices. Even the other required staff does not meet the bare minimum. The DCOs will, therefore, forward the required proposal for consideration of Finance Department. The budget for the same can be arranged from the available savings due to phasing away of magistracy etc.
- vii) The LG&RD Department may reconsider the adjustment of the employees of the Local Council Board, so as to find out whether any such employees have been adjusted against the regular Government posts funded from the Provincial Consolidated Fund.
- viii) For adjustment of regular Class-IV (BS-1-4) Government servant in Surplus Pool, Finance Department may consider conversion of fixed pay/contract posts into regular.

It is requested that decisions taken during the meeting held on 4.8.2001 may kindly be implemented by all concerned with letter and spirit & compliance report be furnished accordingly.

Your Obedient Servant,



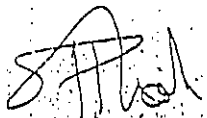
(MUHAMMAD HUMAYUN)
Addl: Secretary (Regulation)
Ph: No: 9210069

13-8-2001

Encl: of even No. and date.

Copy forwarded for information to the:-

1. All Addl/Deputy Secretaries in Establishment and Administration Department.
2. All Section Officers in Establishment and Administration Department.
3. PS to Chief Secretary, NWFP.
4. PS to Secretary (Establishment) Establishment and Administration Department.
5. PS to Secretary (Administration) Establishment and Administration Department.
6. 11 HQ Corps, Peshawar Cantt.
7. PMC engineering C/O 11 HQ Corps, Peshawar Cantt.



(HUSSAIN SHAH)
Section Officer (Reg-I)

Annex: M

16

GOVERNMENT OF NWFP
ESTABLISHMENT & ADMIN. DEPARTMENT
(REGULATION WING)

REG. NO. E&AD/5-1/2005
Dated Peshawar, the 15th February 2006.



To

1. All Administrative Secretaries to Govt. of NWFP.
2. The Secretary to Governor, NWFP.
3. The Secretary to Chief Minister, NWFP.
4. All District Coordination Officers / District Agents in NWFP.
5. The Registrar, Peshawar High Court Peshawar.
6. The Registrar, NWFP S. & A. Board Peshawar.
7. All Head of Attached Departments.
8. The Secretary, NWFP State Service Commission.
9. The Secretary, Board of Revenue NWFP Peshawar.
10. All Heads of Autonomous & Quasi-Autonomous Bodies in NWFP.
11. The Director Anti-Corruption Establishment NWFP Peshawar.

Subject: AMENDMENT IN THE SURPLUS POOL POLICY.

Dear Sir,

I am directed to refer to the subject cited above and to state that Surplus Pool Policy circulated vide letter No. No.SOR-1(E&AD)1-200/98, dated 8th June 2001 has been reviewed. It has been decided by the competent authority to add following sub paras to the relevant paras of the policy: -

(i) Sub para (c) (v) added to para-5

C(v) In case an employee already adjusted against a lower post is declared surplus again, he shall regain his original pay scale.

(ii) Sub para-(d) added to para (b)

(d) In case of adjustment against a post lower than his original scale, he shall be placed at the top of seniority list of that cadre, so as to save him from being rendered surplus again & becoming junior to his juniors.

Yours faithfully,

MULLA GHULAM HAMAYUN, 15-2-06
SPECIAL SECRETARY (REGULATIONS)

Encl. No. & Date even.

Copy forwarded to:

1. The Accounts Officer, Peshawar.
2. The Secretary to Government, Peshawar.

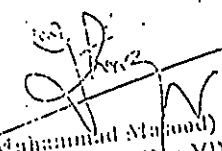
5. Private Secretary to Chief Secretary NWFP, Peshawar.
6. Private Secretary to Senior Minister NWFP.
7. Private Secretaries to all the Provincial Ministers NWFP.


 (Musam Shah)
 Deputy Secretary (Reg-I)

Crtdl No. & date even.

Copy forwarded to:

1. All Additional/ Deputy Secretaries in Establishment and Administration Department NWFP, Peshawar.
2. Director, Staff Training Institute, Benevolent Fund Building Peshawar.
3. All Section Officers/Estate Officer Establishment and Administration Department.
4. Private Secretary to Secretary Establishment Department.
5. Assistant Secretary Benevolent Fund, Establishment & Administration Department.
6. Librarian, Establishment & Administration Department.


 (Muhammad Afzaal)
 Section Officer (Reg-VI)

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FROM

FAX NO.

16 Mar 2009 12:45AM P1

8

OFFICE OF THE
COMMISSIONER PESHAWAR DIVISION
PESHAWAR



No. 6/4/EA/II/
Dated: 26.10.2018

15024

The Deputy Commissioner,
Nowshera.

Subject: APPLICATION AGAINST THE IMPUGNED SENIORITY LIST OF STENOGRAPHER (BPS-14) IN OFFICE OF DEPUTY COMMISSIONER NOWSHERA.

I am directed to refer to your letter No.6170/EA-23/DC/NSR/2018 dated 08.08.2018 on the subject cited above and to enclose herewith a copy of Assistant Secretary (Estt), Board of Revenue, Revenue & Estate Department, Govt. of Khyber Pakhtunkhwa letter No.Estt:II/Seniority list File/35320 dated 23.10.2018 for information and compliance please.

ASSISTANT TO COMMISSIONER (REV/GA)
PESHAWAR DIVISION PESHAWAR

No. 6/4/EA/II/

15025

Copy forwarded to Assistant Secretary (Estt), Board of Revenue, Revenue & Estate Department, Govt. of Khyber Pakhtunkhwa w/r to above quoted letter.

ATTESTED

ASSISTANT TO COMMISSIONER (REV/GA)
PESHAWAR DIVISION PESHAWAR

Copy of Estt
DC Office Nowshera

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

No. Estt:II/Seniority list File/35320
Peshawar dated the 23/10/2018.



To

The Commissioner,
Peshawar Division, Peshawar.

SUBJECT: APPLICATION AGAINST THE IMPUGNED SENIORITY LIST OF
STENOGRAPHER (BPS-14) IN OFFICE OF DEPUTY COMMISSIONER
NOWSHERA.

Dear Sir,

I am directed to refer to your letter No. 6/4/EA/II/12828 dated 02.10.2018 and to state that Mr. Ziaullah Junior Scale Stenographer is the permanent employee of your office who was appointed as such on 12.07.2001 while the remaining 3 Junior Scale Stenographers were adjusted from other departments. According to para-6(b) of the surplus pool policy "in case, however he is adjusted in his respective cadre but in a department other than his parent department, he shall be placed at the bottom of seniority list of that cadre" therefore, they are not entitled to claim seniority with effect from their first appointment in other department.

I am further directed to request you to fix their seniority strictly in accordance with the guidelines of the Provincial Government please.

~~ATTESTED~~
Copying Branch,
DC Office Nowshera

[Signature]
Assistant Secretary (Estt.)

ETA 22 23 28

Secy:	<i>[Signature]</i>
ACPD:	
ACR/Ga:	<i>[Signature]</i>
Supto.:	<i>[Signature]</i>
Branch:	
Diary No.:	11582
Date:	24/10/18

Annex: ~~Q~~ D

Office of the
**DEPUTY COMMISSIONER
NOWSHERA.**

(Office Phone#0923-9220098-99, Fax#0923-9220159)

Email: dconsrpk@yahoo.com

No. 5957-64/EA-23/DC/NSR/2018Dated 22/07/2018

To

1. Mr. Tariq Khan Steno Ghrapher
2. Mr. Shah E. Mulk Steno Ghrapher
3. Mr. Anwar Baig Steno Ghrapher
4. Mr. Zia Ullah Steno Ghrapher

Subject: FINAL SENIORITY LIST OF STENO GHRAPHER BPS-14 IN THE
OFFICE OF DEPUTY COMMISSIONER NOWSHERA FROM 2001
TO 2010

Memo:

You are hereby directed to provide copies of the Final Seniority List of Steno Ghrapher (BPS-14) of the then DCO Office Nowshera and this office issued to you by name from 2001 to 2010.

Your complete report / copies of the requisite Final Seniority List should reach this office by 23.07.2018, otherwise ex-party action will be taken under the provision of Provincial Government Policy for adjustment vide letter No. SOR-1/(E&AD)1-200/98 dated 08.06.2001 and Section (10) (Appointment, Promotion and Transfer) rules 1973.

It is pertinent to mention that the flood of 2010 have completely destroyed your ACRs / Seniority list, maintained by this office.

[Signature]
Superintendent
Deputy Commissioner Office
Nowshera

Even No & Date

Copy forwarded for information to:-

1. The PS to Deputy Commissioner Nowshera
2. Additional Deputy Commissioner Nowshera.
3. All Assistant Commissioners District Nowshera.
4. Office File

ATTESTED

[Signature]
Coping Branch
DC Office Nowshera

[Signature]
Superintendent
Deputy Commissioner Office
Nowshera

02/07
11

(Annex: ~~BE~~)



The Superintendent,
DC Office, Nowshera

Subject:-

FINAL SENIORITY LIST OF STENO GRAPHER BPS-14 IN THE
OFFICE OF DEPUTY COMMISSIONER NOWSHERA FROM 2001 TO
2010.

R/Sir,

Kindly refer to your office letter No.5957-64/EA-23/DC/NSR/2018 dated
22-07-2018 on the subject cited above.

The undersigned have no copy of seniority list for the period from 2001 to
2010, however, a copy of seniority list issued by Assistant Commissioner Nowshera on
19-02-2013 is send herewith as desired please.

[Signature]
23.7.2018
(Zia Ullah Khan)

Steno Ac Office, Nowshera

Only one Recd

23/7/18

*Masood Asy/Duppalat
DC, office use.*

[Signature]

ATTESTED
Copying Branch
DC Office Nowshera

*22 09
2018*

OFFICE OF THE DISTRICT OFFICER (R & E)/COLLECTOR NOWSHERA

FINAL SENIORITY LIST OF JUNIOR SCALE STENOGRAPHER (BPS-14) AS STOOD ON 31-12-2012:



S.No.	Name & Designation	District of Domicile and date of Birth	Qualifications	Date of 1st Entry Into Govt. Service	Method of Recruitment	Date of Retirement	Place of Present posting
1.	Zia Ullah Khan Junior Seal Steno Grapher (BPS-14)	Nowshera. 10-04-1975	M.A	15-08-1997	Direct	09-04-2035	AC Office Nowshera

Dated 19/02/2013

ATTESTED
Copying Branch
DC Office Nowshera

Assistant Commissioner
Nowshera.

02 02
2013

Annex: OF-9

OFFICE OF THE
DEPUTY COMMISSIONER,
NOWSHERA

(Office Phone# 0923-9220098, Fax # 0923-9220159, Email: dconsrpk@gmail.com)

No. 8418 /EA/23/DC/NSR/2018
November, 2018


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The Secretary,
Board of Revenue,
Khyber Pakhtunkhwa, Peshawar.

SUBJECT: - DEPARTMENTAL PROMOTION COMMITTEE FOR THE POST OF SENIOR
SCALE STENOGRAPHER (BS-16) IN THE OFFICE OF DEPUTY
COMMISSIONER NOWSHERA.

Memo:

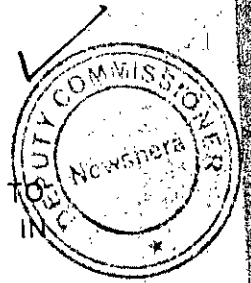
Enclosed please find herewith synopsis of ACRs alongwith original ACRs
Working Paper as well as Non-Involvement Certificate for conduct of Departmental
Promotion Committee amongst the Junior Scale Stenographers of this office.


Deputy Commissioner,
Nowshera

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Annex F-110



WORKING PAPER

SUBJECT: - PROMOTION OF JUNIOR SCALE STENOGRAPHER (BS-14) TO THE POST OF SENIOR SCALE STENOGRAPHER (BS-16) IN DEPUTY COMMISSIONER, OFFICE NOWSHERA.

1. In terms of the provision of Notification No.2074/Estt.I/II/35/SSRS dated 23.1.2015, the following method of promotion has been prescribed for the post of Stenographer (BS-16)

- a) Sixty percent by promotion, on the basis of seniority-cum-fitness from amongst the Stenographers with atleast five years service as such in the offices of Deputy Commissioner and Political Agents.
- b) Forty percent by promotion, on the basis of seniority-cum-fitness, from amongst the Stenographers (BS-14) with atleast five years service as such in the offices of Deputy Commissioners and Political Agents.

2. There is only (01) newly created sanctioned post of Senior Scale Stenographer in the office of Deputy Commissioner Nowshera.

The details of post is as under:-

Sanctioned posts	Existing working strength	Vacancies
1	-	1

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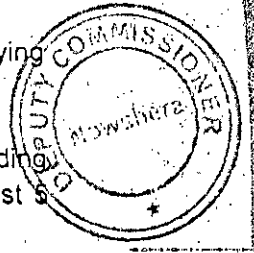
3 The post is required to be filled in by way of promotion under the provision of Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion and Transfer) Rules, 1989. A panel of the Junior Scale Stenographers according to Seniority list is given below:

S. No.	Name	Seniority Position	Date of promotion to the present post	Whether or not 5 years length of service completed	Whether or not already appointed as ACB	Present place of posting
1	Zia Ullah Khan	1 st	-	Yes	No	DC Office Nowshera
2	Muhammad Tariq	2 nd	-	Yes	No	DC Office Nowshera
3	Shahi Mulk	3 rd	-	Yes	No	DC Office Nowshera

Annex E/B
✓ F-2

4. It is certified that:-

1. The officials have completed the prescribed minimum length of qualifying service experience as required under the service recruitment rules.
2. Neither disciplinary/Departmental proceedings/NAB case is pending against any official nor any penalty imposed upon them during the last 5 years.
3. They are the regular member of the service/cadre and presently working in their respective service cadre.
4. Seniority list of Junior Scale Stenographers (BS-14) of Nowshera District as stood on 9.11.2018 is final and not under dispute.



(5) Detail of Synopsis of ACRs as well as Non-Involvement Certificate is as under:-

Name	ACRs Position	Synopsis Position	Non-Involvement Certificate
Zia Ullah Khan	Available	Available	Available
Muhammad Tariq	Not Available	Not Available	Not Available
Shahi Mulk	Not Available	Not Available	Not Available

The Departmental Promotion Committee is requested to determine the suitability of one Junior Scale Stenographer (BS-14) for promotion to the post of Senior Scale Stenographer (BS-16) on regular basis.

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Nowshera

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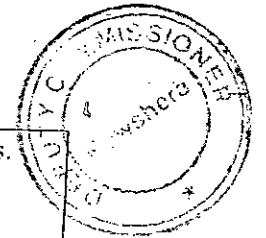
DEPUTY COMMISSISONER OFFICE NOWSHERA

Annex: **G**

REVISED FINAL SENIORITY LIST OF STENO GRAPHER (BPS-14) AS STOOD ON 09, NOVEMBER, 2018.

Total Sanctioned Post of Steno Grapher (BPS-14) = No. 05.

S#	Name & Designation	Date of Birth	District of Domicile	Qualifications	Date of		Method of Recruitment	Date of Retirement	Remarks
					1 st Entry into Govt. Service	Appointment / Promotion to the present post			
1.	Zia Ullah Khan	10-4-1975	Nowshera	M.A	15-8-1997	15-8-1997	By Initial appointment	9-4-2035	See note below.
2.	Muhammad Tariq	21-4-1964	Nowshera	M.A	12-7-1987	12-7-1987	By Initial appointment	20-4-2024	See note below.
3.	Shah-i-Mulk	15-10-1960	Nowshera	F.A	14-9-1987	14-9-1987	By Initial appointment	14-10-2020	See note below.
4.	Anwar Baig	8-2-1966	Nowshera	D.Com	17-9-1985 as LDC	2-9-1990 as Steno	By Promotion appointment	7-2-2026	See note below.



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 09/11/18

NOTE:-

1. Muhammad Tariq was appointed as Junior Scale Stenographer in the office of Budget & Accounts Office Cooperative Department Khyber Pakhtunkhwa Peshawar, and was declared surplus on 01.12.2001, and adjusted in the DCO office Nowshera on 31.12.2001. Mr. Shah-i-Mulk was appointed as Junior Scale Stenographer in the office of Budget & Accounts Office Cooperative Department Khyber Pakhtunkhwa Peshawar, and was declared surplus on 01.12.2001, and adjusted in the DCO office Nowshera on 31.12.2001, Mr. Anwar Baig was appointed as LDC on 17.09.1985 appointment / promoted as Junior Scale stenographer on 02.09.1990, in the office of Director LG & RDD Khyber Pakhtunkhwa Peshawar and was declared surplus on 31.07.2001, and adjusted in the DCO office Nowshera on 01.08.2001. And Mr. Zia Ullah Junior Scale Stenographer is the permanent employee of this office who was appointed on 15-8-1997.

2. This Revised Final Seniority List of Junior Scale Stenographers (BPS-14) of Deputy Commissioner Office Nowshera, issued after approval upon Para-1, recommendations of the competent authority decision communicated by Assistant Secretary (Estt) Board of Revenue, Revenue & Estate Department Khyber Pakhtunkhwa vide letter No. Estt-II/Seniority list /35320 dated 23.10.2018, through Assistant to Commissioner (Rev/GA) Peshawar Division Peshawar vide letter No. GA/EA/1/2024 dated 26.10.2018. Under the provision of Sub para (b) of para 6 of Government of NWFP Establishment & Administration Department (Regulation Wing) No. SOR-1(E&AD)1-200/98 dated 8 Jun. 2001, the name of Mr. Zia Ullah Junior-Scale Stenographer is placed on Top from S/No.04 accordingly.

Deputy Commissioner
 Nowshera



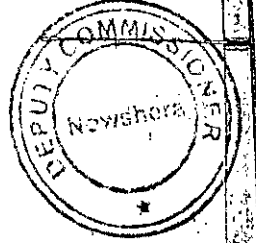
Office of the
**DEPUTY COMMISSIONER
NOWSHERA.**

(Office Phone#0923-9220098-99, Fax#0923-9220159,

Email: dconsrpk@yahoo.com

No. 2126-31 /EA-23/DC/NSR/2018


Dated 05/11/2018



NOTIFICATION

No. 2126-31 /EA-23/DC/Nowshera. In pursuance of Section-8 of Khyber Pakhtunkhwa Civil Servants Act 1973, read with Part-VI, Rule-17 of Civil Servants (Appointment, Promotion & Transfer) Rules 1989, Revised Final Seniority List of Junior Scale Stenographers (BPS-14) as stood on 07.11.2018, is hereby notified after approval upon Para-1, recommendations of the competent authority decision letter No. Estt:II/Seniority list /35320 dated 23.10.2018. The name of Mr. Zia Ullah Khan Junior Scale Stenographer is placed on Top from S/No. 04 accordingly, and is hereby circulated amongst all concerned.


This office notification No. 8730-31/EA-23/DC/NSR/2017 dated 04th December, 2017 is hereby repealed.


Deputy Commissioner
Nowshera

Even No. & Date

Copy forwarded to the following for information please:-

1. The Assistant to Commissioner (Rev/GA) Peshawar Division Peshawar w/r letter No. 6/4/EA/II/15024 dated 26-10-2018.
2. The Assistant Secretary (Estt) Board of Revenue, Revenue & Estate Department Peshawar.
3. Additional Deputy Commissioner Nowshera
4. Assistant Commissioner Nowshera
5. All Concerned


Deputy Commissioner
Nowshera

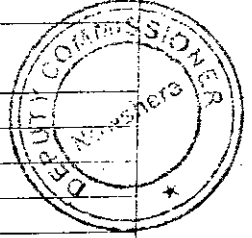
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OFFICE OF THE DEPUTY COMMISSIONER NOWSHERA
SYNOPSIS OF CHARACTER ROLL IN RESPECT OF MR. ZIAULLAH KHAN JUNIOR SCALE STENOGRAPHER

YEAR	REMARKS OF THE REPORTING OFFICER	ADVERSE REMARKS
		Nil
1997	Honest, Obedient, Intelligent, Hardworking and competent.	Nil
1998	The official is honest and dedicated to his job. He carries out task assigned to him with sincerity and devotion. He is well dressed and well mannered.	Nil
1999	The official is hard working and intelligent. He is a grip over his job. He has good manners and polite in dealing with public and his colleagues.	Nil
2000	A very efficient, hardworking and honest employee who has always delivered in difficult circumstances.	Nil
2001	A deeply religious person.	Nil
2002	No Remarks.	Nil
2003	A very honest, devoted, hardworking and gentleman.	Nil
2004	Efficient and well conversant in his job. He is religious minded official and is very honest.	Nil
2005	Efficient and obedient. Honest and religious minded, additional quality of computer knowledge.	Nil
2006	The official is obedient, polite, hard worker, having command on his work.	Nil
2007	A thorough gentleman having a good reputation. He has command on his work. He is cooperative with the staff as well as general public.	Nil
2008	An obedient official. His work was found satisfactory during the period under report.	Nil
2009	An obedient, efficient, hard worker. Found satisfactory during the period under report.	Nil
2010	Missing ✓	Nil
2011	He is cooperative and trusted official works well in a team. During the period under report, his work was found satisfactory.	Nil
2012	He is punctual and hard working official. Performed his duties regularly during the period and due to fit for further promotion.	Nil
2013	No Remarks.	Nil
2014	Mr. Ziaullah performed his duty as Steno during the period. He was found efficient and trustworthy. His honesty was up to the mark. He dealt the public in a well manner.	Nil
2015	Mr. Ziaullah Khan worked devotedly as Steno in this office. He is very helpful to the general public in resolving their problem.	Nil
2016	Mr. Ziaullah, Stenographer is as experienced official who handles the official matters in all types of situations in a very dignified manner. He knows his job and performs up to the satisfaction of high-ups and public.	Nil
2017	The official is hard working. He knows his job well. He achieved all the target assigned to him in the period under report.	Nil



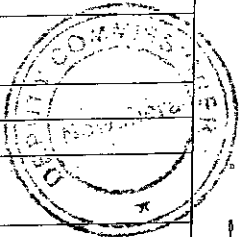
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 Deputy Commissioner,
 Nowshera

13/11/2017

OFFICE OF THE DEPUTY COMMISSIONER NOWSHERA
SYNOPSIS OF CHARACTER ROLL IN RESPECT OF MR. IHSAN ULLAH JUNIOR CLERK.

YEAR	REMARKS OF THE REPORTING OFFICER	REMARKS OF HIGHER AUTHORITY
2004	He is dutiful and hardworking.	I agree
2005	He is hardworking and trustworthy official.	I agree
2006	A trust worthy official, who discharges his duties to the satisfaction of his superior. without any complaint.	Agree.
2007	He is hard working and punctual official could be of great help at hours.	I agree with RO
2008	Hard worker efficient he takes keen interest in official work honest official	Agree
2009	He know his job well he efficiently fulfill all assigned task. Hard worker and his attainted is very good with office collagens and superiors.	Agree
2010	He is trustworthy and punctual official.	I agree with RO
2011	He is punctual and honest official. He can be trusted in confidential and secret matters.	I agree with RO
2012	He is punctual and honest official. He can be trusted in confidential and secret matters.	I agree with RO
2013	The official hard worker. Punctual and good manner. Fit for promotion.	Agree.
2014	He is hard worker and trustworthy. Servant is intelligence / Punctual and fit for promotion.	Agree.
2015	The official is hard worker and trustworthy. Intelligence / cooperative and fit for promotion.	I agree with RO
2016	He is known his job well. He is very hard working and interest with duties. Recommended for promotion.	I agree with RO
2017	Official is hard worker. cooperative and intelligence according his office record. The undersigned recommendation for promotion.	I agree with RO



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 Copy of Report
 DC Office Nowshera

02/12/17

*Additional Deputy Commissioner
 Nowshera*

Annex J

DELOBIT THE SOLDER DAKU LINKUWA SERVICE KROMA AL-PISTAMAR

Appeal No. 149/2014

Date of Institution 11.01.2014

Date of Decision 07.08.2014

Mohammad Shah, Assistant SPS-16, Office of the Assistant (General) (Wakil) (M)

VERSUS

Commissioner Payroll Division Payroll and four other (Respondents)

MR. ARU-JAN
Advocate

For appellant.

MR. MUHAMMAD YAN
Deputy District Attorney

For respondents.

MR. AHMAD HASSAN,
MR. MUHAMMAD HAMID MUGHIAL

MEMBER (Judge)
MEMBER (Judge)

JUDGMENT

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the parties heard and record perused.

ARGUMENTS

2. Learned counsel for the appellant argued that his services were terminated on the basis of a fact finding enquiry. Though show cause notice was served on the appellant but the same was defective and not on the proper grounds. The said notice was submitted by the appellant feeling aggrieved. He submitted representation before respondent no.1 on 01.07.2014, which was partially accepted vide order dated 25.08.2014. The order of termination was partially modified/converted into withholding of two annual increments for 2014 and 2015.

was reinstated in service through order dated 13.10.2014. Subsequently, first review petition filed on 28.08.2015 was disposed of vide order dated 04.09.2015 but the same was not communicated to the appellant. Thereafter second review petition was filed on 09.03.2016 and without hearing the appellant the same was disposed of vide order dated 04.09.2016 but conveyed to him on 08.07.2016 ^{by} the office of respondent no. 2. It was followed by the present service appeal. Learned counsel for the appellant further argued that on reaching the app of superannuation he stood retired from government service on 30.11.2017. He had a spotless career and wanted to remove stigma attached to it as a result of imposition of said penalty.

3. At the very outset learned Deputy District Attorney argued that the present appeal was badly time barred, hence, not maintainable. All the codal formalities were observed before passing the impugned order. He requested that the appeal be dismissed.

CONCLUSION

4. This is a classic case where the appellant became a victim of personal ire, ego and vendetta of respondent no. 2. The officer was swayed by his emotions to the extent that he committed one blunder after the other during the course of departmental proceedings. It proved to be a blessing in disguise for the appellant and utilized the said anomalies to his advantage. As the appellant was awarded penalty of termination from service on the basis of fact finding enquiry, hence, the impugned order was void ab-initio. No penalty can be granted on the basis of fact finding enquiry. Limitation does not run against a void order. Void termination is alien to law and is not included in the list of penalties given in Rule-4 of E&D Rules, 2011. Show cause notice served on the appellant was not on the proper format, hence, defective in the eyes of law. Other formalities contained in the rules were also not observed. The competent authority, in passing order to the

(2) Under the provisions of the Rules, the Commission has the authority to...
strongly recommend for modification of the...
may also be considered very...
proceedings...
And lack of knowledge of relevant rules was duly explained in the...
maintained...
service...
from his...
having been... innocent...

As the Commission has accepted the appeal and the impugned order dated 28.05.2014 and 14.05.2016 are set aside, parties are left to bear their respective costs which be consigned to the record room.

(MUHAMMAD HAMID MUGHAL)
MEMBER

(GHULAM HASSAN)
MEMBER

ANNOUNCED
02/01/2019

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