



To

1. The Registrar, Khyber Pakhtunkhwa Service Tribunal,
Judicial Complex (old), Khyber Road, Peshawar.
2. The Additional Advocate General,
Khyber Pakhtunkhwa Service Tribunal,
Judicial Complex (old), Khyber Road, Peshawar.

Subject:

**ORDER OF HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
IN THE SERVICE APPEAL NO.6041 OF 2020 TITLED MUHAMMAD KAFEEL
VERSUS SENIOR MEMBER BOARD OF REVENUE, KHYBER PAKHTUNKHWA
ETC.**

Dear sir,

I am directed to refer to the subject noted above and to enclose herewith a copy of order dated: 21.9.2022 passed by the Honourable Khyber Pakhtunkhwa Service Tribunal in the subject service appeal.

In this regard, it is stated that Mr. Muhammad Kafeel, Head Vernacular Clerk (the then Head Clerk), Office of the Commissioner Hazara Division had filed the service appeal for service structure of Head Vernacular Clerk. On 21.09.2022, the Honourable Service Tribunal has directed to finalize the tentative seniority list of Assistants issued during the year 2013, wherein name of appellant was included as Head Clerk in the seniority list of Assistants, copy of that seniority list has been annexed for ready reference. It is pertinent to mention that said seniority was not finalized due to objection (s) of Assistant (s) being separate cadre.

In this respect the Divisional Ministerial Rules 2015 are clear, wherein the procedure for filling the post of Assistant is reproduced as under:

Method of recruitment of Assistant:-(a) Seventy five percent, on the basis of seniority-cum-fitness from amongst the Senior Clerks with at least five years service as Junior and Senior Clerk in the Office of Commissioner of Division concerned; and (b) twenty five percent by initial recruitment.

Furthermore, the rules of seniority are also reproduced as under for perusal please:

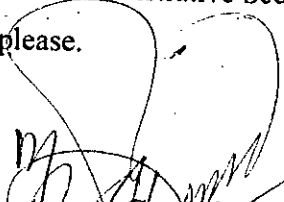
Seniority:- (1) For proper administration of a service, cadre or (post), the appointing authority shall cause a seniority list of the members for the time being of such service, cadre or (post) to be prepared.

(2) Subject to the provisions of sub-section (1), the seniority of a civil servant shall be reckoned in relation to other civil servants belonging to the same service or (cadre) whether serving the same department or office or not, as may be prescribed.

(3) Seniority on initial appointment to a service, (cadre) or post shall be determined as may be prescribed,

In compliance with Honourable Khyber Pakhtunkhwa Service Tribunal, seniority of Assistants (BPS-16) have been finalized in accordance with current final seniority position of Assistants (BPS-16) issued by this office at Divisional Level (copy enclosed for ready reference). However, name of appellant, Mr. Muhammad Kafeel has been omitted as no rules/policy is available in respect of absorption/adjustment of Head Clerks against the cadre of Assistant.

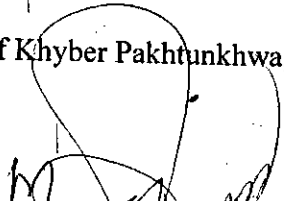
I am therefore, directed to inform that the subject case is also being forwarded to the Senior Member Board of Revenue, Khyber Pakhtunkhwa (respondent/Administrative Secretary) for devising proper rules regarding promotion/absorption of Head Clerks, please.


**Secretary to Commissioner,
Hazara Division, Abbottabad**

No. & Date Even.

Copy to the:

1. PS to Senior Member Board of Revenue, Government of Khyber Pakhtunkhwa, Peshawar for information, please.
2. PS to Commissioner Hazara Division, Abbottabad.


**Secretary to Commissioner,
Hazara Division, Abbottabad**

FINAL SENIORITY LIST OF ASSISTANTS (BPS-16), OFFICE OF THE COMMISSIONER
HAZARA DIVISION, ABBOTTABAD AS STOOD ON 02.12.2022.

S.No.	Name	Date of Birth	Qualification	First Entry into Govt. Service	Date of Regular Appointment/ Promotion	Method of Recruitment	Remarks
1	Mr. Adnan Najam	07.05.1979	M.A.	18.05.2009	19.05.2009	Direct	
2	Mr. Shahid Rafique	25.08.1986	M.B.A.	18.05.2009	20.05.2009	Direct	
3	Mr. Akhtar Zaman	05.04.1984	B.A.	18.05.2009	20.05.2009	Direct	
4	Mr. Awais Shah	10.08.1983	B.A.	18.05.2009	20.05.2009	Direct	
5	Mr. Bahadur Khan	07.02.1978	M.A.	18.05.2009	20.05.2009	Direct	
6	Miss Sofia Bibi	03.02.1985	M.Sc. (Clinical Psychology)	01.06.2009	01.06.2009	Direct	
7	Mr. Shabbir Malik	06.12.1979	M.A.	29.06.2009	30.06.2009	Direct	
8	Mr. Muhammad Babar	26.05.1983	M.A.	18.06.2007	30.06.2009	Direct	
9	Mr. Awais Ahmad	02.01.1982	M.Sc.	11.07.2009	16.07.2009	Direct	
10	Miss Sobia Zaman	09.07.1985	M.Phil.	16.07.2012	16.07.2012	Direct	

By the Order of
Commissioner
Hazara Division, Abbottabad

No. CHD/Est/2/3/ 13986 , dated: 8/12/2022.


Secretary to Commissioner
Hazara Division, Abbottabad.



To

The Senior Member Board of Revenue,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject:

**ORDER OF HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL IN THE
SERVICE APPEAL NO.6041 OF 2020 TITLED MUHAMMAD KAFEEL VERSUS SENIOR
MEMBER BOARD OF REVENUE, KHYBER PAKHTUNKHWA ETC.**

Sir,

I am directed to refer to the subject noted above and to enclose herewith a copy of order dated:21.09.2022 passed by the Honourable Khyber Pakhtunkhwa Service Tribunal in the subject service appeal.

In this regard, it is stated that appellant Mr. Muhammad Kafeel, Head Vernacular Clerk (the then Head Clerk), Office of the Commissioner Hazara Division had filed subject service appeal for service structure of Head Vernacular Clerk. On 21.09.2022, the Honourable Service Tribunal has directed to finalize the tentative seniority list of Assistants issued during the year 2013, wherein name of appellant was included as Head Clerk in the seniority list of Assistants, copy of that seniority list has been annexed for ready reference. It is pertinent to mention that said seniority was not finalized due to objection (s) of Assistant (s) being separate cadre.

In compliance with Honourable Khyber Pakhtunkhwa Service Tribunal, seniority of Assistants (BPS-16) have been finalized in accordance with current final seniority position of Assistants (BPS-16) issued by this office at Divisional Level (copy enclosed for ready reference). However, name of appellant, Mr. Muhammad Kafeel has been omitted as no rules/policy is available in respect of absorption/adjustment of Head Clerks against the cadre of Assistant. Absorption/adjustment of Miss Sonia Bibi, Head Clerk as Assistant is a precedent in this office, wherein she was adjusted/absorbed as Assistant in the light of Board of Revenue, Government of Khyber Pakhtunkhwa, Peshawar letter No. Estt-II/1255, dated:21.01.2011, copy is enclosed for ready reference, please.

I am therefore, directed to request that since the post of Head Clerk has been abolished and there is no clear rules/policy regarding absorption/adjustment of Head Clerk against Assistant's cadre, the instant case is therefore submitted for your kind consideration and for devising proper rules regarding promotion/absorption of Head Clerks, please.

Your faithfully,


Secretary to Commissioner,
Hazara Division, Abbottabad

No. & Date Even.

Copy to the:

1. ✓ Registrar, Khyber Pakhtunkhwa Service Tribunal, Judicial Complex (old), Khyber Road, Peshawar.
2. Additional Advocate General, Khyber Pakhtunkhwa Service Tribunal, Judicial Complex (old), Khyber Road, Peshawar.
3. PS to Commissioner Hazara Division, Abbottabad.


Secretary to Commissioner,
Hazara Division, Abbottabad

21st Sept 2022



1. Appellant alongwith his counsel present Mr. Khatik, Ullah Khattak, Additional AG alongwith Ajmal Khan, Sr. Assistant Secretary for respondents present.

2. Arguments heard at some length. During the course of arguments it was pointed out by Mr. Ajmal Khan, representative of the Respondents that fixation of seniority and issuance of the seniority list was the job of the Commissioner Hazara Division, it was then felt that the Commissioner Hazara Division be arrayed as respondent, therefore, Commissioner Hazara Division be arrayed as respondent in this appeal and be summoned to apprise the Tribunal about the seniority position of the appellant. The office is directed to make entries in the memorandum and grounds of appeal as well as in the relevant register.

lit
ACR

3. Ms Farah Naz, Superintendent office of the Commissioner Hazara Division put appearance alongwith a tentative seniority list, which is already placed on file as annexure-H. The learned counsel and appellant himself present in the court say that the appellant would be satisfied if the tentative list (annexure-H) is finalized by the Commissioner office within a fortnight. Mr. Muhammad Ajmal, Senior Assistant Secretary present on behalf of the respondents and Ms. Farah Naz representative of Commissioner Hazara Division have also expressed no objection if the seniority list is finalized by the Commissioner office in accordance with law. As the appellant is satisfied on the above situation and assurance of the representative of the Commissioner office that the list will be finalized as soon as possible but not later than fifteen days from today, therefore, the appeal is disposed of accordingly in the above terms.

[Handwritten signature]

TESTED
[Handwritten signature]
Secretary
Government of Punjab


Diary & Dispatch Br
Entry No. 2723
Date 14/11/2022
Commissioner

Needless to say that the appellant may again approach the proper forum in case he feels himself aggrieved of the final seniority list issued by the Commissioner office.

Consign:

4. Pronounced in open court in Camp Court Abbottabad and given under our hands and seal of the Tribunal on this 21st day of September, 2022.


(Paragha Paul)
Member (E)


(Kalim Arshad Khan)
Chairman
Camp Court Abbottabad

Date of presentation of Application	28/9/22
Number of Words	1200
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Date of Completion of Copy	06/10/22
Date of Delivery of Copy	06/10/22

Certified to be true copy

Khalid R
Service Tribunal
Peshawar

LIST 2013

SENIORITY LIST OF ASSISTANT/HEAD CLERK (B-14) OF THE OFFICE OF THE COMMISSIONER HAZARA DIVISION

S.NO	NAME	DATE OF BIRTH	QUALIFICATION	DATE OF FIRST ENTRY INTO GOVT. SERVICE	DATE OF REGULAR APPOINTMENT/SELECTION/PROMOTION AS ASSISTANT/HEAD CLERK	METHOD OF RECRUITMENT	OFFICE	REMARKS
1	Mr. Adnan Najam	07-05-1979	MA	18-05-2009	18-05-2009	Direct	CHD Abbottabad	
2	Mr. Akhtar Zaman	05-04-1984	BA	18-05-2009	18-05-2009	Direct	CHD Abbottabad	
3	Mr. Shahid Rafique	25-08-1986	MBA(F)	18-05-2009	18-05-2009	Direct	CHD Abbottabad	
4	Mr. Awais Shah	10-08-1983	BA	18-05-2009	18-05-2009	Direct	CHD Abbottabad	
5	Mr. Bahadur Khan	07-02-1978	MA	18-05-2009	18-05-2009	Direct	CHD Abbottabad	
6	Miss. Sonia Bibi	03-02-1985	MSC	01-06-2009	01-06-2009	Direct	CHD Abbottabad	
7	Mr. M. Kafeel HEAD CLERK	19-03-1980	BA-LLB	01-06-2009	01-06-2009	Direct	CHD Abbottabad	
8	Mr. M. Babar	26-05-1983	MA	18-06-2007	30-06-2009	Direct	CHD Abbottabad	
9	Mr. Shabir Malik	06-12-1979	BA	30-06-2009	30-06-2009	Promotee	CHD Abbottabad	
10	Mr. M. Rasheed	13-04-1964	Matric	30-06-1988	30-06-2009	Direct	CHD Abbottabad	
11	Mr. Awais Ahmed	02-01-1982	MSC	11-07-2009	11-07-2009	Direct	CHD Abbottabad	
12	Mr. Fazal ur Rehman	01-07-1959	Matric	24-12-1981	30-12-2011	Promotee	CHD Abbottabad	

NOTE:- If any official has any objection he may submit his objection in writing to the undersigned within seven days of the receipt of the tentative seniority.

Assistant to Commissioner (Rev/GA)
Hazara Division Abbottabad

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.

SERVICE APPEAL No. 6041 OF 2020

Muhammad Kafeel, Head Vernacular Clerk (Revenue), Office of the Commissioner
Hazara Division, Abbottabad.

(Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa, Revenue and Estate Department, Peshawar.

(Respondents)

SERVICE APPEAL UNDER SECTION-4 OF KPK SERVICE TRIBUNAL ACT 1974.

JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENTS.

Respectfully Sheweth,

Joint parawise comments are as under:

Preliminary objections:-

1. That, the appellant has got no locus standi and cause of action to institute the present appeal.
2. That, the appeal in hand is not maintainable.
3. That, the appellant has not come to this honorable court with clean hands and there is misrepresentation of facts.
4. That, the appeal in hand is badly time barred.
5. That the appeal is bad for mis-joinder and non-joinder of necessary and proper parties.

ON FACTS:

1. Pertains to record of the Commissioner Hazara Division.
2. Pertains to record.
3. Incorrect. Neither the appellant was willing for adjustment as Assistant (BPS-16), nor there was any vacant post of Assistant available in the office of Commissioner Hazara Division, Abbottabad at that time. Moreover, the cadre cannot be changed. Copy of Arrival Report is annexed as "A".
4. Incorrect. The appellant did not suffer from any angle or aspect and his services had already been regularized as H.V.C. BPS-15 on his own request vide Order No. 1/2 Estab/13169-75 dated 17-10-2016 (Annexure-B) as the appellant was not willing for adjustment as Assistant/Senior Clerk.
5. Incorrect. As already explained in para-3 that the appellant was not willing to be adjusted as Assistant. Furthermore, after up-gradation of the post of Assistant from BPS-14 to BPS-16, it is unlawful to maintain his seniority with Assistants (BPS-16), as he is serving as H.V.C. in BPS-15, which is a separate cadre.
6. Incorrect and subject to proof.
7. Correct to the extent of notification dated:20.05.2014 (Annexure-C).
8. Correct to the extent of judgement dated:16.08.2016 of this Honourable Service Tribunal on the basis of which the appellant was adjusted as H.V.C.

9. Correct to the extent of notification dated:30.06.2015 (**Annexure-D**) on basis of which the appellant has already been granted one step up-gradation from BPS-14 to BPS-15. (2)
10. Incorrect. Under the Divisional Cadre Ministerial Service Rules, amended in 2015 (**Annexure-E**) the post of HVC shall be filled in by transfer from amongst Senior Clerks, therefore, further amendments in these rules are not required.
11. Incorrect. There is no ambiguity, malafide or discrimination on the part of respondents. The appellant was given opportunity by the respondent No. 2 for maintaining of his seniority with Senior Clerks but he refused, and was accordingly adjusted as HVC on his own request.
12. Pertains to record.
13. Incorrect. The post of H.V.C. is dying cadre and to be filled in by transfer from amongst the Senior Clerks (BPS-14).
14. As stated is incorrect. The respondent No. 2 framed service rules in the best interest of all employees strictly in accordance with law/ rules in vogue, the appellant was given a chance of adjustment as Senior Clerk, but he declined and accordingly adjusted as H.V.C. in Commissioner office Abbottabad. Besides, Rules cannot be changed for a single person.
15. Incorrect, as already explained in preceding Paras.
16. Incorrect. The departmental appeal of the appellant was disposed off on merit, in accordance with prevailing rules/policy and was filed by the Competent Authority. Moreover, the departmental appeal and service appeal are badly time barred.

REPLY ON GROUNDS:

- A. Incorrect, Amended Notification dated 13.05.2019 (**Annexure-F**) has been issued with proper approval by the Standing Service Rules Committee and after vetting from Law Department.
- B. Incorrect, if the appellant followed the advice of the respondent No. 2 for maintenance of his seniority with Senior Clerks, then the matter would be tackled as per rules which defend the rights of every official but the appellant tangled his office in unnecessary litigation.
- C. Incorrect, all previous rules have already been superseded by the Competent Authority as defined in Service rules 2008 and in the appellant's case the respondents are bound to adhere the prevailing rules.
- D. Incorrect, the service structure in respect of H.V.C is clearly defined in prevailing service rules 2008 (amended from time to time) that the post of H.V.C is to be filled in by transfer from amongst Senior Clerks.
- E. Incorrect, neither there is any unlawful act/ ambiguity at the end of respondents nor any discrimination with appellant. The amended Notification has been issued with proper by the Standing Service Rules Committee.
- F. Incorrect, service rules are very clear. Post of H.V.C. is to be filled in by transfer from amongst Senior Clerks. Services of the appellant had already been regularized as H.V.C. on his own request.



OFFICE OF THE
COMMISSIONER HAZARA DIVISION
ABBOTTABAD

No: CHD /Estb/ 2/3/ 5689-99

Dated 19/05/2022


Ph. # 0992-9310461-2 Fax No. 0992-9310265

To

All the Deputy Commissioners,
Hazara Division.

Subject: FINAL SENIORITY LISTS OF ASSISTANT (BPS-16) ON
DIVISIONAL BASIS

I am directed to refer to the subject noted above and to enclose herewith a copy of Final Seniority Lists of Assistants (BPS-16) on Divisional basis for the year 2021 with the request to circulate the same among the Assistants (BPS-16) concerned working in your respective offices, please.


Assistant to Commissioner (Rev/GA)
Hazara Division, Abbottabad

Endst: Even No & Date:

Copy forwarded to:

1. Assistant Secretary (Estt), Board of Revenue, Khyber Pakhtunkhwa, Peshawar with reference to above.
2. PS to Commissioner, Hazara Division, Abbottabad.


Assistant to Commissioner (Rev/GA)
Hazara Division, Abbottabad

Daid-ur-Rehman

FINAL JOINT SENIORITY LIST OF ASSISTANTS WORKING IN THE OFFICE OF COMMISSIONER, HAZARA DIVISION AND OFFICES OF THE DEPUTY COMMISSIONERS, IN HAZARA DIVISION ON DIVISIONAL BASIS AS STOOD ON 31/12/2021

Sr#	Name	Date of Birth	Qualification	First Entry into Govt. Service	Date of Regular Appointment/Promotion	Method of Recruitment	Office	Remarks
1	Jahanzeb	20-04-1970	B.A	15-10-1990	28-06-2004	Promotee	DC-Kolai Pallas	
2	Muhayuddin	15-12-1971	B.A	15-10-1990	28-06-2004	Promotee	Kohistan Upper	
3	Noor ul Wahaj	06-03-1969	B.A	15-10-1990	29-09-2005	Promotee	Kohistan Upper	
4	Shams ul Haq	01-02-1982	B.A	15-10-1990	29-09-2005	Promotee	DC Kolai Pallas	
5	Asghar Khan	01-04-1978	MA	29-09-2005	29-09-2005	Direct	DC-Haripur	
6	Muhammad Ijaz	12-02-1982	MBA	19-06-2006	19-06-2006	Direct	DC-Haripur	
7	Faisal Mehmood	15-04-1984	M.Sc/ B.ed	19-06-2006	19-06-2006	Direct	DC-Haripur	
8	Kafayatullah	01-01-1979	M.A	19-06-2006	19-06-2006	Direct	DC-Haripur	
9	Hakim Dad	03-12-1962	FA	28-07-2006	28-07-2006	Direct	DC-Batagram	
10	Yar Muhammad	06-01-1969	BA	09-09-1981	25-11-2006	Promotee	DC-Manshra	
11	Shad Muhammad	14-02-1970	BA	01-07-1991	16-12-2006	Promotee	DC-Batagram	
12	Muhammad Iqbal -1	16-11-1962	BA	30-09-1993	16-12-2006	Promotee	DC-Batagram	
13	Malik Muhammad Tariq	24-04-1963	Matric	12-10-1980	11-07-2007	Promotee	DC-Manshra	
14	Gull Muhammad	01-01-1969	Matric	27-03-1983	11-07-2007	Promotee	DC-Manshra	
15	Dildar Ahmad	01-01-1969	B.A	13-08-1996	17-05-2008	Promotee	DC-Batagram	
16	Tariq Mehmood	03-09-1963	F.A	05-12-1983	19-07-2008	Promotee	DC-Manshra	
17	Adnan Najam	04-05-1966	F.A	01-07-1984	05-09-2008	Promotee	DC, Abbottabad	
18	Shervar Ali Khan	07-05-1979	MA	18-05-2009	19-05-2009	Direct	CHD Office	
19	Shervar Ali Khan	01-12-1985	B.Sc	18-05-2009	20-05-2009	Direct	DC, Abbottabad	
20	Shahid Rafique	25-08-1986	MBA	18-05-2009	20-05-2009	Direct	CHD Office	
21	Akhtar Zaman	05-04-1984	B.A	18-05-2009	20-05-2009	Direct	CHD Office	
22	Awais Shah	10-08-1983	B.A	18-05-2009	20-05-2009	Direct	CHD Office	
23	Bahador Khan	07-02-1978	B.A	18-05-2009	20-05-2009	Direct	CHD Office	
24	Miss Sonia BiBi	03-02-1985	M.A	18-05-2009	20-05-2009	Direct	CHD Office	
25	Asif Shauzad	03-02-1985	M.Sc (Clinical Psychology)	01-06-2009	01-06-2009	Direct	CHD Office	
26	Sayed Muhammad	30-08-1976	MA/LLB	08-03-2001	29-05-2009	Direct	DC-Haripur	
27	Muhammad Rasheed	06-05-1983	M.A	20-05-2009	22-10-2009	Direct	DC-Batagram	
28	Shabir Malik	13-04-1964	Matric	30-06-1988	30-06-2009	by Adjst. from DOR	CHD Office	
29	Muhammad Bahar	06-12-1979	M.A	29-06-2009	30-06-2009	Direct	CHD Office	
30	Muhammad Bahar	26-05-1983	M.A	18-06-2007	30-06-2009	Direct	CHD Office	

29	Awais Ahmad	02-01-1932	M.Sc	11-07-2009	16-07-2009	Direct	CHD Office
30	Muhammed Iqbal-II	16-06-1962	M.A	12-11-1983	02-12-2009	Promotee	DC-Mansehra
31	Amer Khan	01-01-1972	F.A	23/12/1992	22/01/2010	Promotee	DC-Kohistan Lower
32	Miss Aman Zulfqar	10-04-1978	B.A	05-03-2010	05-03-2010	Promotee	DC-Abbottabad
33	Auf Rehman	30-11-1986	ACCA/B.Com	22/09/2011	27/09/2011	Direct	DC-Torghar
34	Mehboob Ur Rehman	31-03-1986	M.A	28/01/2005	31/12/2011	Direct	DC-Kohistan Lower
35	Iftikhar Ahmed	24-04-1962	F.A	17/03/1981	21/07/2012	Direct	DC-Haripur
36	Miss Sobha Zaman	09-07-1985	M.Phil	16/07/2012	16/07/2012	Promotee	CHD Office
37	Qasim Hussain Shah	12-03-1985	MBA	31/05/2013	31/05/2013	Direct	DC-Haripur
38	Abid Iqbal	18-06-1984	M.Sc	22/10/2013	22/10/2013	Direct	DC-Batagram
39	Shah Fahad	06-05-1988	B.Sc Hons	22/10/2013	22/10/2013	Direct	DC-Batagram
40	Muhammad Mahmood	15-09-1969	Matric	26/10/1993	20/05/2014	Promotee	DC-Batagram
41	H.Amir Zada	25-12-1973	Matric	01-04-1998	20/05/2014	Promotee	DC-Batagram
42	Muhammad Nisar	10-01-1971	D.Com	28/07/1992	25/06/2015	Promotee	DC-Torghar
43	Muhammad Saqib	01/08/1988	M.A	10-05-10	13/08/2015	Promotee	DC-Torghar
44	Muhammad Afzal	02/10/1971	B.A	24/09/1992	28/08/2015	Promotee	DC-Haripur
45	Iftikhar Ahmad	20/01/1968	Matric	20/01/1986	22/12/2015	Promotee	DC-Mansehra
46	Nazakat Hussain Shah	06-04-1976	Matric	15/03/1995	06/04/2017	Promotee	DC-Batagram
47	Naveed Ur Rehman	16-05-1969	MA/LLB	26/09/1992	11-10-2017	Promotee	DC-Haripur
48	Abdul Ghafoor	10-06-1962	Matric	01/07/1984	01/03/2018	Promotee	DC, Abbottabad
49	Saddam Hussain	02/03/1990	MBA	10-05-10	01-03-18	Promotee	DC-Torghar
50	Muhammad Shahid	03/03/1971	Matric	23/09/1992	15/05/2018	Promotee	DC-Haripur
51	Muhammad Khalid	08/04/1964	Matric	01-08-84	07-09-18	Promotee	DC, Abbottabad
52	Muhammad Azeem	15-02/1963	Matric	01-10-84	07-09-18	Promotee	DC, Abbottabad
53	H.A Nawaz	15-02/1990	M.A	26/04/2008	05/12/2018	Promotee	DC-Kohistan Upper
54	Muhammed Iqbal	20/04/1984	F.A	18/06/2007	05/12/2018	Promotee	DC-Kohistan Upper
55	Sami-ur-Rehman	04-04/1984	B.A	19/08/2004	03-01-19	Promotee	DC-Kolai Palas
56	Junaid Ahmad	17-08/1969	Matric	30/09/1992	20/02/2019	Promotee	DC Haripur
57	Ghulam Akbar	05-01/1964	Matric	19/09/1991	20/02/2019	Promotee	DC Haripur
58	Fazal-e-Abbas	28/04/1963	B.A	05/10/1991	20/02/2019	Promotee	DC Haripur
59	Muhammad Hamoof	15/03/1965	Matric	09/04/1985	28/02/2019	Promotee	DC-Mansehra
60	Salam Khan	20/02/1970	Matric	28/07/1992	28/02/2019	Promotee	DC-Mansehra
61	Imay-ur-Rehman	04-02/1981	M.A	26/07/2006	28/02/2019	Promotee	DC-Mansehra
62	Muhammad Alam	01-09-1982	B.Com (IT)	02-01-12	05-04-19	Promotee	DC-Mansehra
63	Muhammad Anwar	09-03/1992	M.A	02-01-12	05-04-19	Promotee	DC-Kohistan Lower
64	Fazal Ahmad	22-03/1968	Matric	26/12/1987	13/05/2019	Promotee	DC-Kohistan Lower
						Promotee	DC-Mansehra

GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE /REVENUE AND ESTATE DEPARTMENT.

NOTIFICATION
Peshawar, dated 23/01/2015

No. Estt: I/II/135/SSRC/2033. In pursuance of provisions contained in Sub-Rule (2) of rule 3 of the North West-West Frontier Province Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, and in supersession of all rules issued in this behalf, the Revenue Department in consultation with the Establishment and Administration Department and the Finance Department, hereby lays down the method of recruitment, qualifications and other conditions specified in column 3 to 5 of the appendix to the notification which shall be applicable to post born in the cadre of Commissioners Specified in Column 2 of the said appendix.

AMENDMENTS

In the Appendix:-

S.No	Nomenclature of post with pay scale	prescribed qualification	Age	Method of recruitment
1.	Superintendent (BPS-17)		-	By promotion, on the basis of seniority-cum-fitness, from amongst the Assistants (BPS-16) with five years service as such in the offices of Commissioners of the Division concerned.
2.	Private Secretary (BPS-17)		-	By promotion, on the basis of seniority-cum-fitness, from amongst the Senior Scale Stenographers (BPS-16) with at least five years service in the offices of Commissioners, Deputy Commissioners and Political Agents of the Division concerned
2A	Accounts Officer (BPS-16).		---	By transfer from the Treasury Department/ Accountant General Office Khyber Pakhtunkhwa. Provided that an official earlier adjusted from surplus pool will be considered as rightly adjusted.

No	Nomenclature of post with pay scale	prescribed qualification		
3.	Assistant (BPS-16).	At least Second Class Bachelor's Degree from a recognized University.	20 to 32 years.	(a) Seventy five percent by promotion, on the basis of seniority-cum-fitness, from amongst the Senior Clerks with at least five years service as Junior and Senior Clerk in the Offices of Commissioner of Division concerned; and (b) twenty five percent by initial recruitment.
4.	Senior Scale Stenographer (BPS -- 16)	(i) At least Second-Class Bachelor's Degree, from a recognized University; (ii) a speed of 70 words per minute in shorthand in English and 45 words per minutes in typing; and knowledge of computer using MS Word, MS Excel.	20 to 32 years.	(a) Sixty percent by promotion, on the basis of seniority-cum-fitness, from amongst Stenographers with atleast five years service as such in the offices of Commissioners concerned; and (b) forty percent by promotion, on the basis of seniority-cum-fitness, from amongst the Computer Operators with atleast five years service as such in the office of Commissioner concerned. Provided that if no suitable candidate is available for promotion, then by initial recruitment.
5.	Stenographer (BPS - 14)	(i) At least second class Intermediate or equivalent qualification from a recognized Board (ii) A speed of 50 words per minute in shorthand in English and 35 words per minute in typing; and Knowledge of computer in using MS Word, MS Excel.	18 to 30 years.	By initial recruitment.
6.	Senior Clerk (BPS-14).		By promotion, on the basis of seniority-cum-fitness, from amongst the Junior Clerks of the offices of Commissioner concerned with at least two years service as such.
"6A	Head Vernacular Clerk / Head Clerk (BPS-14).		(a) By transfer from amongst Senior Clerk (BPS-14) of the offices of Commissioner and Deputy Commissioner having at least one year experience of Revenue and Land acquisition matters; or (b) Naib Tehsildars (BPS-14) of the Division concerned.


S.No	Nomenclature of post with pay scale	prescribed qualification	Age	Method of recruitment
7	Computer Operator (BPS - 12)	<p>i. At least second Class Bachelor Degree in Computer Science/ Information Technology (BCS/BIT four years), from a recognized university; or</p> <p>ii. At least Second Class Bachelor's Degree from a recognized university with one year Diploma in Information Technology from a recognized Board of Technical Education.</p>	18-28 Years.	By initial recruitment.
8A	Caretaker (BPS-11)	At least second class Bachelor Degree or equivalent qualification from recognized university alongwith Certificate / Diploma in Housekeeping / hotel management from a recognized institute.	18-30 Years.	By initial recruitment.
8	Junior Clerk (BPS - 11)	<p>(i) At least Second Class Secondary School Certificate or equivalent qualification from a recognized Board; and</p> <p>(ii) A speed of 30 words per minute in typing.</p>	18-30	<p>a) Thirty three percent by promotion, on the basis of seniority, own fitness, from amongst the Qasids and Naib Qasids including holders of other equivalent posts in the Division concerned with two years service as such, who have passed Secondary School Certificate Examination; and</p> <p>b) Sixty seven percent by initial recruitment.</p> <p>Note: For the purpose of promotion there shall be maintained a common seniority list of Qasids and Naib Qasids etc with reference to the date of their regular appointment.</p> <p>Provided that no separate seniority list of Matric and non-matric BS-1 (Class-IV) employees can be maintained being single cadre. Their seniority shall be fixed with reference to the date of their regular appointment.</p> <p>Provided further that where a senior official does not possess the requisite qualification at the time of filling up a vacancy, the official next junior to him possessing the requisite qualification shall be promoted in preference to the senior official or officials.</p>
9.	Driver BPS - 4)	Literate having LTV driving license issued by the competent authority. preference will be given to those who have sufficient experience in driving, repair and maintenance of vehicles.	18 - 32 years	By initial recruitment.

S.No	Nomenclature of post with pay scale	prescribed qualification	Age	Method of recruitment
10A	Cook / Waiter (BPS-4)	Literate with three years practical experience in any hotel or guest house as cook / waiter.	18-32 Years.	By initial recruitment.
10B	Qasid		---	By promotion on the basis of seniority-cum-fitness, from amongst the Naib Qasids with two years service as such; and
10	Naib Qasid / Chowkidar / Behishti / Mali / Sweeper (BPS - 01)	Literate	18-32 Years.	By initial recruitment.

Sd/-
SECRETARY TO GOVERNMENT
REVENUE AND ESTATE DEPARTMENT

Copy forwarded for information and necessary action to the:-

1. Secretary to Government of Khyber Pakhtunkhwa Establishment Department.
2. Secretary to Government of Khyber Pakhtunkhwa Finance Department.
3. Secretary to Government of Khyber Pakhtunkhwa Law Department.
4. Secretary Khyber Pakhtunkhwa Public Service Commission.
5. Registrar Peshawar High Court.
6. Accountant General Khyber Pakhtunkhwa.
7. All Commissioners / Political Agents in Khyber Pakhtunkhwa.
8. All Deputy Commissioners, Khyber Pakhtunkhwa.
9. Private Secretary to Minister for Revenue Khyber Pakhtunkhwa.
10. Controller, Government Printing Press Peshawar with the request to publish the above notification in the official Gazette and supply 50 printed copies thereof to the undersigned for record.



DEPUTY SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA
REVENUE & ESTATE DEPARTMENT

9. In the facts and circumstances of the case and in the light of the case law cited above, it is quite apparent that the advertisement earlier made had subsequently been withdrawn and thereafter an amendment was made in the Rules and as yet the respondents have not appeared either in the examination or in any interview or selection, therefore, there appears to be no vested right created in their favour, and accordingly any change made in the Rules cannot furnish a cause to the respondents. Moreover, the amendment was made in the Rules in order to clarify certain anomalies, which had duly been taken care of, as such no malafide can be attributed to the Government and as per the settled principle the determination of eligibility of the respondents through amendment fully falls within the domain and policy decision of the Government which does not warrant interference by the Courts. Resultantly, these appeals are allowed and the impugned judgment of the High Court is set aside.

Judge

Judge

Judge

ISLAMABAD
25.02.2016
(Farrukh)

Approved for Reporting.

“ In our opinion the High Court made the above order without taking into consideration all the factors relevant to the case, namely, in the first place the taking out of the post of Deputy Superintendent of the category of class III, to which the petitioners belong amounted to abolition of the post and its upgrading on a higher scale of pay to a creation of the new post; appointment to which required a stricter test of efficiency by a competitive examination. Besides, all the Inspectors were given the right to sit in the examination for any number of times to qualify themselves for promotion. At the same time the pay scale of those, who could not succeed, was raised to the limit of Rs. 350, namely, the same pay as that of a Deputy Superintendent when it was a class III post. In the circumstances it cannot be said that any rights of the petitioners were infringed, which they could enforce by a writ petition. The Government has every right to make rules to raise the efficiency of the services, and if no vested right is denied to a party, the High Court had no jurisdiction to interfere by means of a writ.” (emphasis supplied)

As far as the contention of the respondents that the rules could not be changed to affect them adversely is concerned, the said proposition has also been settled by this Court in the case of Muhammad Umar Malik and others vs. Federal Service Tribunal and others (PLD 1987 SC 172), wherein the proposition that the rules of promotion could not have been changed so as to affect adversely those already on the eligibility list i.e., combined list of U.D.Cs and S.G.Cs, was repelled by observing that, “*No such vested right in promotion or rules determining eligibility for promotion exists*”, and held as under: -

“ Mr. Abid Hasan Minto, Advocate, when called upon to address arguments on merits, urged that the rules of promotion should not have been changed so as to affect adversely those already on the eligibilities list i. e. the combined list of the U.D.Cs. and S.G.Cs. In other words he was claiming a vested right in promotion for all the U.D.Cs. borne on the joint cadre on the date of its separation. The position of law on the subject is clear in view of numerous decisions of this Court, e.g. *Government of West Pakistan v. Fida Muhammad Khan (1) Central Board of Revenue, Government of Pakistan v. Asad Ahmad Khan (2), Province of West Pakistan v. Muhammad Akhtar (3), Manzur Ahmad v. Muhammad Ishaq (4)*. No such vested right in promotion or rules determining eligibility for promotion exists.”

Similarly, the Junior Instructors (BS-14) of Technical Education Department with diploma of Engineering i.e., equal to FA/F.Sc are promoted to BS-17 within 5 to 10 years period. Likewise, Sub-Engineers (BS-11) of C&W, PHE and Irrigation Department having B.A. degree are considered or accelerated promotion to the post of Assistant Engineer (BS-17) after qualifying the departmental exam prescribed under their respective service rules, as such the respondents are entitled to get further promotion to the post of PMS BS-17 in their own service cadre. Further justification given by the appellants was that the ministerial staff of Civil Secretariat is transferable in different departments of Civil Secretariat which make them well acquainted with the nature of job of PMS Officers. Whereas, the employees of other departments/cadre are experts in their own field and their job profile is quite different from that of PMS Officers. Thus reserving 10% quota for ministerial staff of Civil Secretariat is justified as these posts cannot be used as learning place for others.

8. It is a settled proposition of law that the Government is entitled to make rules in the interest of expediency of service and to remove anomalies in Service Rules. It is the Service Rules Committee which has to determine the eligibility criteria of promotion and it is essentially an administrative matter falling within the exclusive domain and policy decision making of the Government and the interference with such matters by the Courts is not warranted and that no vested right of a Government employee is involved in the matter of promotion or the rules determining their eligibility or fitness, and the High Court has no jurisdiction by means of writ to strike it down as held by this Court in the case of The Central Board of Revenue, Government of Pakistan vs. Asad Ahmad Khan (PLD 1960 SC 81), the relevant portion therefrom is reproduced herein below: -

staff. Moreover, the respondents could still compete in open merit as such there was no discrimination. He further argued that the appellants were duly competent to amend the Rules and the Rules were amended strictly in accordance with law.

6. On the other hand, the respondents appearing in-person submitted that through the amendment they were deprived of their right. They further submitted that the Secretariat employees are already covered under Schedule-I subsection 2)(b) for promotion as such the 10% quota actually meant for other attached departments.

7. In the facts and circumstances of the case and in the light of the arguments advanced by the learned Additional Advocate General as well as the respondents in-person, it is to be considered whether amendment in the Rules could be effected by the Government regarding restricting the reservation of 10% quota only for ministerial staff of Civil Secretariat KPK and whether it is justifiable, secondly, whether amendment was malafidely made in order to exclude and deprive the respondents from future prospects of their promotion moreso when they are performing the same functions and duties as such whether it is a discrimination and do the respondents have a vested right to challenge the same. In the above perspective, whether the High Court has the jurisdiction in the matter to strike down rules relating to Civil Servants regarding their appointment and promotions and amendments made therein. The stance of the appellants is that amendment in the relevant provisions of the Rules was quite justified as the employees of attached departments get sufficient chances of promotion in their cadres against the quota reserved specifically for them under their respective service rules, whereas the employees of Civil Secretariat cannot appear in those examinations, for instance the Sub Accountants in the District Accounts Offices accorded promotion after qualifying SAS examination.

holding substantive posts of Superintendents, Private Secretaries, Personal Assistants, Assistant Senior Scale Stenographers, Stenographers, Data Entry Operators, Computer Operator, Senior and Junior Clerks who possess post graduate qualification from a recognized University with at least five years service under the Government. From the perusal of the same it is apparent that the same had not been restricted only to Secretariat employees. The Rules have been amended through notification dated 04.10.2010, which reads as under: -

“
GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Date Peshawar, the 04.10.2010

NOTIFICATION

No. SOE-II(ED) 2(14)/2009: In exercise of the powers conferred by Section 25 of the North-West Frontier Province Civil Servants Act, 1973, (NWFP Act No. XVIII OF 1973), the Chief Minister of the Khyber Pakhtunkhwa is pleased to direct that in the Khyber Pakhtunkhwa Provincial Management Service Rules 2007, the following further amendments shall be made, namely:

AMENDMENT

In Schedule I, against Serial No. 1 in Column No. 5 for Clause (3) the following shall be submitted, namely:

- (3) Ten per cent by Selection on merit, on the basis of competitive examination to be conducted by the Commission in accordance with the provisions contained in Schedule VII, from amongst the persons holding substantive posts of Superintendents, Private Secretaries, Personal Assistants, Assistant Senior Scale Stenographers, Stenographers, Data Entry Operators, Computer Operator, Senior and Junior Clerks who possess post graduate qualification from a recognized University with at-least five years service as such.

CHIEF SECRETARY
KHYBER PAKHTUNKHWA”

By virtue of the above mentioned amendment, the respondents being employees of attached departments have been excluded to be eligible for 10% quota selection on the basis of competitive examination.

5. The learned Additional Advocate General for the appellants argued that the said amendment had been made in order to clarify that appointments to the posts of PMS (BPS-17) in 10% quota was meant only for the ministerial staff of the Secretariat so as to encourage talented lower

of the High Court under Article 199 of the Constitution of Islamic Republic of Pakistan to sit in judgment over the vires of the rules or notifications in view of the judgment rendered in the case titled I. A. Sharwani vs. Government of Pakistan (1991 SCMR 1041) and that the High Court could not impute mala fides to the legislature when there was absolutely nothing on the record as could even remotely suggest that the rules were amended to benefit one and impair the rights of the other.”

3. It would be pertinent to reproduce here the relevant portions of the Rules prior to amendment as provided in Schedule-I: -

S. No.	Nomenclature of posts	Minimum qualification for appointment by initial recruitment	Age limit for initial recruitment	Method of recruitment
1	2	3	4	5
1	PMS (BS-17) as per detail at Schedule -II	2 nd Division Bachelor Degree from a recognized University.	21-30 year	<p>1) Fifty per cent by initial recruitment on the recommendations of the Commission based on the result of competitive examination to be conducted by it in accordance with the provisions contained in ³Schedule-VII.</p> <p>2) Subject to rule 7, by promotion in the following manner:</p> <p>(a) twenty percent from amongst Tehsildars, who are graduates, on the basis of seniority-cum-fitness, having five years service as Tehsildar and have passed the prescribed Departmental Examination; and</p> <p>(b) twenty percent from amongst the Superintendents/Private Secretaries on seniority-cum-fitness basis, who are graduate and have undergone a training course of 9-weeks at the Provincial Management Academy/Provincial Staff Training Institute. A joint seniority list of the Superintendents and Private Secretaries shall be maintained for the purpose of promotion on the basis of their continuous regular appointment to the respective posts.</p> <p>3) Ten percent by selection on merit, on the basis of competitive examination, to be conducted by the Commission in accordance with the provisions contained in ⁴Schedule-VII, from amongst persons holding substantive posts of Superintendents, Private Secretaries, Personal Assistants, Assistant Senior Scale Stenographers, Stenographers, Data Entry Operators, Computer Operator, Senior and Junior Clerks who possess post graduate qualification from a recognized University with at least five years service under the Government.</p>

That according to the original Rules, 10% of selection on merit on the basis of competitive examination was to be made from amongst the persons

orders and notification before the High Court by filing writ petitions contending therein that discriminatory treatment is being given to the them in violation of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973, as they were performing the same functions as that of Secretariat employees as such they cannot be excluded because they fulfilled the qualification and experience. The High Court took their contentions into consideration and vide impugned judgment held that they being similarly placed persons have been treated differently as such it constituted a sheer discrimination and further held that it was not a case where rules have been challenged by a person in service rather it was a case where blessings have been given to a class of employees by depriving others through special amendment introduced in the Rules in the garb of interpretation and misinterpretation of rules, which smacks of malafide on the part of the appellants and accordingly struck down the notification dated 04.10.2010 and restored earlier rules framed in the original form as per rule-3 of Schedule-I of the Rules, which entitled the respondent to compete on 10% reserved quota on the basis of competitive examination to be conducted by the Commission from amongst the persons holding substantive posts of Superintendents, Private Secretaries, Personal Assistants, Assistant Senior Scale Stenographers, Stenographers, Data Entry Operators, Computer Operator, Senior and Junior Clerks who possess post graduate qualification from a recognized University with at least five years service under the Government. Being aggrieved, the appellants approached this Court by filing Civil Petitions No. 442-P & 443-P/2014 wherein leave was granted vide order dated 20.11.2015, the relevant portion therefrom is reproduced herein below: -

“ The learned Additional Advocate General appearing on behalf of the petitioners contended that it is well beyond the domain of jurisdiction

Service (PMS). The said requisition was forwarded to the Khyber Pakhtunkhwa Public Service Commission (hereinafter to be referred as "the Commission"), who thereafter advertised the said posts on 20.07.2010. Pursuant to the advertisement, the respondents, Hayat Hussain, Superintendent, KPK Public Service Commission, Peshawar, and Abdul Basir, Office Assistant, Board of Revenue, KPK Peshawar, applied under 10% reserved quota for ministerial staff as per the Provincial Management Service Rules. Later on vide order dated 18.08.2010 it was conveyed by the KPK Establishment Department to the Secretary of the Commission that the matter with regard to 10% reserved quota in PMS (BPS-17) had been examined by the KPK Establishment Department and it is clarified that the same is meant only for ministerial staff serving in the Administrative Departments of KPK Civil Secretariat excluding the employees of attached departments/subordinate offices. The said letter was followed by another letter dated 09.09.2010 wherein it was intimated to the Commission that requisition of 53 posts of PMS officers (under 10th in-service quota) is withdrawn by issuing notification dated 04.10.2010 through which Khyber Pakhtunkhwa Provincial Management Service Rules, 2007 (hereinafter to be referred as "the Rules") have been amended and 10% reserved quota had been restricted to persons holding substantive posts of Superintendents, Private Secretaries, Personal Assistants, Assistant Senior Scale Stenographers, Stenographers, Data Entry Operators, Computer Operator, Senior and Junior Clerks borne on the cadres strength of Secretariat who possess post graduate qualification from a recognized University with at least five years service as such. The said orders and notification gave rise to a grievance to the respondents, who being employees of attached departments and who have been excluded from 10% reserved quota as previsously provided in the Rules as such they had challenged the said

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT: Mr. Justice Mian Saqib Nisar
Mr. Justice Amir Hani Muslim
Mr. Justice Iqbal Hameedur Rahman

Civil Appeals No. 1213 & 1214/2015.

(On appeal against the judgment dated 28.05.2014
passed by the Peshawar High Court, Peshawar,
in W. Ps. No. 3857 & 4423/2010):

Govt. of KPK through Chief Secretary,
Peshawar, etc.

(in both cases)

Appellant(s)

Versus

Hayat Hussain, etc.

(in C. A. 1213/2015)

Abdul Basir, etc.

(in C. A. 1214/2015)

Respondent(s)

For the Appellant(s)
(in both cases):

Mr. Waqar Ahmed Khan, Addl. AG.

For the Respondent(s):

In-person.

Date of Hearing:

25.02.2016.

JUDGMENT

Iqbal Hameedur Rahman, J: - Through this single judgment, we intend to decide the listed appeals. The instant appeals are directed against the judgment dated 28.05.2014 passed by the Peshawar High Court, Peshawar, in W. Ps. No. 3857 & 4423/2010 whereby the said petitions filed by the respondents have been accepted.

2. Through the above mentioned writ petitions, the respondents had sought a declaration that orders dated 18.08.2010, 09.09.2010 & 04.10.2010 be declared as illegal, unconstitutional, without lawful authority, ultra vires to their rights and based on malafides and also sought that a direction be given to the appellants to proceed with the process as per the advertisement dated 20.07.2010. The precise facts are that the appellants requisitioned 53 posts in BPS-17 in the Provincial Management

(3) Seniority on initial appointment to a service, ⁷[cadre] or post shall be determined as may be prescribed.

⁸(4) Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post;

Provided that civil servants who are selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter-se-seniority as in the lower post.

⁹(5) The seniority lists prepared under sub-section(1), shall be revised and notified in the official Gazette at least once in a calendar year, preferably in the month of January.

9. Promotion:-(1) A civil servant possessing such minimum qualifications as may be prescribed, shall be eligible for promotion to a ¹⁰[higher] post for the time being reserved under the rule for departmental promotion in ¹¹[] the service or cadre to which he belongs.

(2) A post referred to in sub-section (1) may either be a selection post or a non selection post to which promotion shall be made as may be prescribed-

- (a) in the case of a selection post, on the basis of selection on merit; and
- (b) in the case of non-selection post, on the basis of seniority-cum-fitness.

10. Posting and Transfer:- Every civil servant shall be liable to serve anywhere within or outside the province, in any post under the Federal Government, or any Provincial Government or Local authority, or a corporation or body set up or established by any such Government:

Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region:

Provided further that, where a civil servant is required to serve in a post outside his service or cadre, his terms and conditions of service as to his pay shall not be less favourable than those to which he would have been entitled if he had not been so required to serve.

11. Termination of service:- (1) The service of a civil servant may be terminated without notice-

- (i) During the initial or extended period of his probation:

Provided that, where such civil servant is appointed by promotion on probation or, as the case may be, is transferred from one [service], cadre or post to another [service], cadre or post, his service shall not be so terminated so long as he

⁷ The word "grade" substituted by NWFP Ordinance No. IV of 1985.

⁸ Sub section (4) of Sec-8 substituted by NWFP Ordinance No. IV of 1985.

⁹ Sub section (5) of Sec-8 added by NWFP Act No. I of 1989

¹⁰ The word "higher" inserted by NWFP Ordinance No. IV of 1985.

¹¹ The words "the higher grade of" omitted by NWFP Ordinance No. IV of 1985.

before the expiry of the original or extended period of his probation, has failed to pass such examination or test or to successfully complete course or the training shall, except as may be prescribed otherwise-

- (a) if he was appointed to such service or post by initial recruitment, be discharged; or
- (b) if he was appointed to such service or post by promotion or transfer, be reverted to the service or post from which he was promoted or transferred and against which he holds a lien or, if there be no such service or post, be discharged:

Provided that in the case of initial appointment to a service or post, a civil servant shall not be deemed to have completed his period of probation satisfactorily until his character and antecedents have been verified as satisfactory in the opinion of the appointing authority.

7. **Confirmation :-** (1) A person appointed on probation shall, on satisfactory completion of his probation, be eligible for confirmation in a service or, as the case may be, a post as may be prescribed.

(2) A civil servant promoted to a post ²[] on regular basis shall be eligible for confirmation after rendering satisfactory service for the period prescribed for confirmation therein.

(3) There shall be no confirmation against any temporary post.

(4) A civil servant who, during the period of his service, was eligible to be confirmed in any service or against any post retires from service before being confirmed shall not, merely by reason of such retirement, be refused confirmation in such service or post or any benefits accruing there-from.

(5) Confirmation of a civil servant in a service or post shall take effect from the date of occurrence of permanent vacancy in that service or post or from the date of continuous officiation, in such service or post, whichever is later.

8. **Seniority:-** (1) For proper administration of a service, cadre or ³[post], the appointing authority shall cause a seniority list of the members for the time being of such service, cadre or ⁴[post] to be prepared, but nothing herein contained shall be construed to confer any vested right to a particular seniority in such service, cadre or ⁵[post] as the case may be.

(2) Subject to the provisions of sub-section (1), the seniority of a civil servant shall be reckoned in relation to other civil servants belonging to the same service or ⁶[cadre] whether serving the same department or office or not, as may be prescribed.

² The words "or grade" omitted by NWFP Ordinance No. IV of 1985.

³ The word "grade" substituted by NWFP Ordinance No. IV of 1985.

⁴ The word "grade" substituted by NWFP Ordinance No. IV of 1985.

⁵ The word "grade" substituted by NWFP Ordinance No. IV of 1985.

⁶ The word "grade" substituted by NWFP Ordinance No. IV of 1985.

PREFACE

The Government of N-W.F.P. Establishment Code was first published by the Services & General Administration Department in May 1987. It was subsequently updated and the revised version came out in August, 2000. Since its publication, the Establishment Code, a compendium, of laws, rules and administrative instructions pertaining to the terms and conditions of service of the Provincial Civil Servants has served as a standard reference work in the officialdom.

2. *Since a period of over 10 years has elapsed during which large scale amendments in the laws and rules have been made, it was necessary to bring out a revised and updated edition of the Establishment Code incorporating the latest instructions and amendments.*

3. *A committee comprising Mr. Mian Muhammad, Additional Secretary (Cabinet), Mr. Shakirullah, Deputy Secretary (R-III), Mr. Jan Said Section Officer (O&M) and Mrs. Robin Haider Bukhari Section Officer (R-VI) was constituted to revise and update the Establishment Code. This new edition is outcome of endeavours of this Committee.*

4. *This Code comprises law, rules and administrative instructions with regard to terms and conditions of Government Servants. In the present edition, amendments in laws, rules and instructions upto January, 2011 have been incorporated.*

5. *Suggestions for improvement in the Establishment Code are welcomed and may be addressed to the Section Officer (O&M) E&AD.*

**(Rashid Ahmad)
Secretary Establishment**

Dated 07-02-2011



ESTA CODE

**ESTABLISHMENT CODE KHYBER PAKHTUNKHWA
(REVISED EDITION) 2011**

**A COMPENDIUM OF LAWS, RULES AND INSTRUCTIONS
RELATING TO THE TERMS AND CONDITIONS
OF PROVINCIAL CIVIL SERVANTS**

seniority who were neither arrayed before the Service Tribunal nor was any opportunity afforded to them to respond and defend their seniority.

10. In view of above discussion, we do not find any irregularity and perversity in the impugned judgment, this civil petition is dismissed and leave is refused.

Judge

Judge

Islamabad the
6th June , 2022
Khalid
Approved for reporting

claimed as a vested right. The seniority of the petitioner was rightly fixed in 2015 which is also reminded us the celebrated turn of phrase "Birds of a feather flock together" that is somewhat communal in everyday speech used to refer to the resemblance, uniformity and equivalence within a group of people who are permitted to join and sensed safeguarded and shielded around one another. According to Black's Law Dictionary , Ninth Edition, "antedate" means to affix with a date earlier than the true date; backdate . Similarly, in the Wharton's Concise Law Dictionary, "antedate" means to date a document before the day of its execution and to affix with a date earlier than that true date. Whereas in Legal Thesaurus , Regular Edition , William C.Burton, "antedate" means to affix an earlier date ; anachronize; assign to an earlier date; date back; date before the true date; date before the true time; date earlier than the fact; foredate; predate; set an earlier date and transfer to an earlier date. The learned Tribunal in its Judgment also considered the venue of progression with mathematical calculation and further discussed the required minimum length of service for promotion . According to factual matrix, the petitioner joined 43rd CTP in the year 2015 hence his prospective leeway or possibility of promotion would be matured after five years for BS -18. Had the appeal of the petitioner allowed by the learned Federal Service Tribunal, it would deem to have been allowed antedated seniority in BS -17 with 35th CTP contenders in the year 2007 that would tantamount to nurture qualifying service for promotion for BS -18 & BS -19 without passing out 35th CTP. The petitioner had entreated for directions against the respondents to grant antedated seniority with effect from 2007 with all consequential benefits which request or expectation was beyond the rules and norms. It would also inequitable and unreasonable to the other members of service and obviously overturn and obliterate their

accordance with the applicable rules and regulations with a venue of consideration for progression including the fixation of seniority in line with the criteria provided under the applicable rules and such consideration can only be invited if all requisite conditions or preconditions are fulfilled by such claimant enabling him to join the queue or stand in line. Though it is an admitted fact that the petitioner joined training with the batch of 43rd CTP but he is aspiring and ambitious for the fixation of his seniority with the batch of 35th CTP without passing out in that training course which besides being unpersuasive and irrational, also quite unfamiliar and alien to the applicable rules governing and regulating the principles envisaged for fixation of seniority to any particular post or cadre. At this juncture reference of Office Memorandum dated 23.09.2015 issued by Establishment Division, Government of Pakistan for determination of inter-se seniority of officers of all Occupational Groups and Services is quite significant. The relevant paragraph (a) & (b) are reproduced as under:-

(a) All cases pending or future of probationers/officers received for determination of seniority due to deferment will have seniority fixed with the batch, these probationers/officers undergo CTP and not their original CSS batch. Accordingly, all past cases that have been decided otherwise i.e., seniority fixed with original CSS batch will be reverted to bring these at par with the new policy issued vide establishment Division O.M. No.1/3/2014-T-V dated 05.03.2015.

(b) If a probationer is granted deferment after joining CTP with original CSS batch, his/her seniority will be fixed with the batch he/she undergoes/complete the CTP.

9. In order to streamline the proper administration of a service, cadre or post, the appointing authority is required to make out a seniority list of the members, but no vested right is conferred to a particular seniority in such service, cadre or post. No antedated seniority can be

accordance with these Rules shall count seniority from the date of regular appointment against a post in Service and according to Rule 5, the initial appointment to the Service against cadre posts in basic Grade 17 is to be made on the basis of the results of the competitive examinations held for the purpose by the Commission. Whereas in sub-rule 2 it is clearly mentioned that unless the appointing authority in any case otherwise directs, a person appointed to the Service under sub-rule (1) shall be appointed to the Service as a probationer in accordance with the rules which the Federal Government may make from time to time, including rules and orders relating to training during probation, and shall be required to undergo such departmental training and pass such departmental examinations as may be specified by the Federal Government or the Government of the Province to which he is allocated.

8. It is further reflects that on 23.09.2019 , provisional inter se seniority of PSP probationers of 43rd CTP was issued in the light of Rule 7 (4) and (5) of Occupational Groups and Service (Probation, Training and Seniority) Rules, 1990 in which the name of the petitioner was at Serial No.21 but he wanted that his seniority should be fixed with 35th CTP without qualifying requisite training programme which means that seniority of many person will be severely affected without providing any opportunity of being heard to them. The law is somewhat and moderately well settled in series of dictums of superior Courts highlighting the conspectus that a particular claim of promotion or seniority is not a fundamental right and a person is disentitled to claim seniority from a date he was not borne or take on in the service. In the philosophy or jurisprudence of service laws, no one has a vested right to a particular promotion or particular seniority but it is always governed and regulated in

requests for his continual and unending deferments were being made and according to the petitioner, he was not being relived for joining CTP by the Governor Sindh as he was performing very crucial job of ADC in the Governor House. No less than 8th consecutive deferments were allowed on requests and eventually the petitioner joined 43rd C.T.P. after that his inter-se seniority was fixed with 43rd CTP at Serial No.21. The completion of training was mandatory which the petitioner failed to join until 43rd CTP. It is also beyond reasonable comprehension that though the petitioner was willing to join CTP but under some compelling circumstances, he was prevented and his continuous deferments were being asked without his consent or unwillingness. Nothing placed on record that he ever raised any objection or demur that he wanted to join training rather than enjoying the post of ADC. We are also not persuaded that there was so serious scarcity and drought of proficient officers to undertake the job of ADC except the petitioner henceforth, the presence of petitioner was so indispensable and de rigueur that except him no other person was accessible or easy to get to serve the errand of ADC with excellence than the petitioner. Nothing was placed on record to show that he ever requested the Governor Sindh to release him for joining CTP. Keeping in view his complete silence at least for 8th deferments, the possibility cannot be ruled out that the deferments were requested and allowed with his consensus and acquiescence.

7. According to Rule 11 of the Police Service of Pakistan (Composition, Cadre & Seniority) Rules, 1985, the members of the Service referred to in clauses (a) and (b) of sub-rule (2) of rule 3 shall retain the same seniority as is shown in the gradation list as it stood immediately before the commencement of these rules. It is inter alia provided in sub-rule (2) that the persons appointed to the Service in

that the seniority of the probationers shall be determined by the appointing authority after final passing out examination. In the appointment letter of the petitioner referred to above, it is further provided in clause 2 (i) that the petitioner will remain on probation for a period of two years or for such period as government may extend for the successful completion of training, the probationary period shall not be terminated until completion of Common Training at the Civil Services Academy, Lahore, Specialized Training at National Police Academy, Islamabad and passing out the prescribed examination including the final passing out the examination which will be conducted by the FPSC or any other government specified educational institution. It is further divulges from the record that vide letter dated 06.12.2008, the Civil Services Academy on behalf of Director General Civil Services Academy conveyed congratulation to the petitioner on his selection to the Police Services of Pakistan and he was welcomed to join campus of Civil Services Academy for 36th Common Training Programme on 15.01.2009, however, the petitioner could not join as he was not relived by the Governor Sindh where the petitioner was performing the job of ADC. The deferment of the petitioner was requested by the Governor with the suggestion that the petitioner may be allowed to join 37th Common Training Programme in the subsequent year.

6. The petitioner was being continuously called upon to join Common Training Programme but on continuous request s of his deferment the matter was lingering on. It is clear beyond any shadow of doubt that even in the appointment letter it was clearly provided that the petitioner will remain on probationary period until completion of Common Training programme in Civil Services Academy and regardless of inviting the petitioner each and every time to join CTP,

approval of the Secretary Establishment Division on the request of the then Governor Sindh . After eight deferments, the petitioner joined 43rd CTP, thereafter, his inter-se seniority was fixed with 43rd CTP at Serial No. 21. It was further contended that seniority of the petitioner was fixed in accordance with para 1 (a & b) of the Establishment Division's O.M.No.1/3/2014-T-V dated 23.09.2015. It was further contended that the seniority of the probationers was to be determined after Final Passing Out Examination under Rule 7 of Occupational Groups and Services (Probation, Training and Seniority) Rules, 1990. The petitioner completed his CTP with 43rd CTP and his inter-se seniority was fixed accordingly.

5. Heard the arguments. The record reflects that on recommendation of the Federal Public Service Commission , the competent authority issued an offer letter to the petitioner on 31.08.2007 for his induction in the Police Service of Pakistan in BS -17 on certain terms and conditions of service which, inter alia, provided that the petitioner was required to qualify every examination to the satisfaction of the head of training/Educational Institution where he shall undergo training. So far as the seniority is concerned, it was clearly mentioned in Condition No.2 (ix) of the offer letter that the seniority of the petitioner in the group/service shall be determined by the appointing authority after the final passing out of examination in accordance with Rule 7 of the Occupational Groups and Services (Probation, Training and Seniority) Rules, 1990. In response to this offer letter, the petitioner communicated his acceptance to the terms and conditions of appointment vide letter dated 11.09.2007 to the Deputy Secretary, Establishment Division, Government of Pakistan, Islamabad. Under Rule 7 of the Occupational Groups and Services (Probation, Training and Seniority) Rules, 1990, it is clearly provided

Despite that, he claimed antedated seniority from 2007 with 35th CTP members of service. He preferred a departmental appeal on 02.10.2015 which was rejected; thereafter, he filed service appeal before learned Federal Service Tribunal which was also dismissed.

3. The learned counsel for the petitioner argued that the petitioner was appointed in terms of Police Service of Pakistan (Composition, Cadre & Seniority) Rules, 1985, hence he was entitled to the seniority from the date of his regular appointment without qualifying common training programme. He further argued that the petitioner was discriminated in not assigning seniority from the date of regular appointment with 35th CTP. The petitioner was prevented from joining Common Training Program in the exigency of service and not for any reason attributable to him, therefore, he could not be denied seniority from the date of regular appointment in terms of Rule 11(2) of Police Service of Pakistan (Composition), Cadre & Seniority) Rules, 1985. It was further contended that the Rule 7 of Occupational Groups and Services (Probation, Training and Seniority) Rules, 1990 contemplates determination of seniority amongst probationers whereas the Rule 11(2) of Police Service of Pakistan (Composition), Cadre & Seniority Rules, 1985, provides that seniority to the service shall be counted from the date of regular appointment.

4. The learned DAG argued that the petitioner was inducted in PSP on reserved quota of Armed Forces. In the appointment letter dated 31.08.2007, it was clearly mentioned that the seniority shall be determined after Passing Out Examination in accordance with Rule 7 of the Occupational Group and Services (Promotion, Training & Seniority) Rules, 1990. The terms and conditions of appointment were accepted by the petitioner without any reservation but he did not join training in 35th CTP and on continuous requests made from time to time, he was allowed deferment from 35th CTP till 42nd CTP with the

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SARDAR TARIQ MASOOD
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL PETITION No. 419 OF 2019

(Against the judgment of Federal Service Tribunal, Karachi Bench dated 03.12.2018, in Appeal No.51 (K) CS of 2018)

Kashif Aftab Ahmed Abbasi

...Petitioner

VERSUS

Federation of Pakistan through Secretary
Establishment Division, Islamabad

...Respondent

For the Petitioner:

Mr. Abdur Rahim Bhatti, ASC
Malik Naeem Iqbal, ASC
Ch. Akhtar Ali, AOR

For Respondent:

Mr. Ayaz Shaukat, DAG

Date of Hearing:

06.06.2022

JUDGMENT

MUHAMMAD ALI MAZHAR, J. This Civil Petition for leave to appeal is directed against the judgment dated 03.12.2018, passed by learned Federal Service Tribunal, Karachi Bench in Service Appeal No. 51 (K) CS/2018, whereby the Appeal filed by the petitioner was dismissed.

2. The short and snappy minutiae of the case are as under: -

The petitioner joined Pakistan Navy and promoted as Lieutenant on 01.01.2004. While performing his duties as Lieutenant, he was appointed ADC to the Governor Sindh in 2006. During the posting, the petitioner was given an option to join Federal Civil Service. The petitioner joined the selection process and on the recommendations of the Federal Public Service Commission, he was inducted in the Police Service of Pakistan in BS -17. The petitioner was called upon to undertake 35th Common Training Program (CTP) but the Governor Sindh refused to relieve the petitioner and requested for his deferment. According to the petitioner, he was deferred every year on the requests of Governor Sindh till 2015, i.e. 42nd CTP.