

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 6136/2020

Date of Institution ... 23.06.2020

Date of Decision ... 27.07.2021

Sajjad Ali, Naib Qasid, Anti terrorism Court-II Peshawar.

... (Appellant)

VERSUS

Hon'ble Administrative Judge, Anti Terrorism Court-II Khyber Pakhtunkhwa  
Judicial Complex, Peshawar.

... (Respondents)

MR. MUHAMMAD ZAFAR TAHIRKHELI  
Advocate

... For Appellant

MR. MUHAMMAD RASHEED  
Deputy District Attorney

... For Respondents

MR. SALAH-UD-DIN ...  
MR. ATIQ-UR-REHMAN WAZIR ...**MEMBER (JUDICIAL)**  
**MEMBER (EXECUTIVE)**  
**JUDGMENT**

**ATIQ-UR-REHMAN WAZIR MEMBER (E)**:- Brief facts of the case are that the appellant, initially appointed as Naib Qasid (BPS-1) at the Court of Special Judge Anti-terrorism-II Peshawar, is aggrieved of the inaction of the respondent, which has kept the appellant deprived of the his promotion to the post of junior clerk and for which the appellant filed a departmental appeal dated 20-12-2019, which was not responded, hence the instant service appeal with prayers that the respondents may be directed to consider the appellant for promotion to the post of junior clerk/

Moharrar/record keeper against the vacant post in terms of 40% quota reserved for Naib Qasids.

02. Written reply/comments were submitted by respondent.

03. Learned counsel for the appellant has contended that two posts of junior clerk were filled through initial recruitment on 06-01-2011, which however were required to be filled on the ratio of 40% by promotion from amongst the Naib Qasids and 60% by initial recruitment. He further contended that one of the incumbent quit his job and the post of junior clerk rendered vacant, upon which one Mr. Noor Ullah was promoted from amongst the Naib Qasids vide order dated 05-04-2012. Learned counsel for the appellant argued that another post of junior clerk rendered vacant due to promotion of the incumbent to the post of senior clerk vide order dated 17-12-2019. He further argued that the quota specified for initial recruitment has already been exhausted, hence the appellant being qualified in every respect and senior most, may be promoted against the said vacant post. Learned counsel for the appellant explained that the Supreme Court of Pakistan in its judgment reported in 1993 SCMR 2258 has held that promotion as per general principle of seniority should be first filled in before filling in quota for direct recruitment.

04. Learned Deputy District Attorney appearing on behalf of respondents has contended that it is only a final order, original/ appellate order, against which an appeal lies to this Tribunal, whereas there is no original or appellate order, hence the service appeal is not maintainable. Reliance was placed on 2006 SCMR 1630 and SA No 19/2011. He further contended that there were two posts of junior clerk and one is already filled through promotion, so the other post would be filled by initial recruitment as per ratio of 40 and 60%. Learned Deputy District Attorney argued that promotion is not a vested right and the civil servant cannot ask for, or claim a promotion as a matter of right, as it is within the exclusive domain of the government. Reliance was placed on PLD 2008 SC 395 and 2005 SCMR 1742.

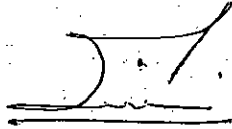
05. We have heard learned counsel for the parties and have perused the record.

06. As per Establishment Department Notification dated 06-12-2012, amended on 18-07-2019, the post of junior clerk is to be filled on the basis of 40% by promotion from amongst the Naib Qasids and holders of other equivalent posts and 60% by way of initial recruitment. We have noted that two vacancies had been created in the office of respondent and both were filled by initial recruitment on 06-01-2011, thus grappled the share of 40% specified for promotion from amongst the Naib Qasids. In the meanwhile, one of the post fell vacant as the incumbent quit the job, upon which, one of the Naib Qasid was promoted on the basis of seniority cum fitness vide order dated 05-04-2012. The second post fell vacant due to promotion of the incumbent to the post of senior clerk, for which the appellant requested for his promotion, but the respondents turned deaf ear over his appeal and did not respond within the statutory period, which created a cause of action for the appellant and which naturally inclined the appellant to approach this Tribunal. Since both the posts of junior clerk were earlier filled through initial recruitment in violation of law and rule, hence, principles of natural justice demands that the other post of junior clerk, which has rendered vacant shall also be filled in by promotion from amongst the posts of Naib Qasids/holders of other equivalent posts, which ultimately would equate the quota between promotion and initial recruitment. Since the appellant is having eleven years of service at his credit as well as the senior most and otherwise fit for promotion as per criteria provided in the Establishment Department Notification dated 18-07-2019, hence is entitled for promotion to the post of junior clerk.

07. In order to meet the ends of justice, the instant appeal is accepted with directions to the respondents to promote the appellant against the vacant post of junior clerk on the basis of seniority cum fitness, thereafter the ratio of 40:60 be

maintained for future recruitments. Parties are left to bear their own costs. File be consigned to record room.

**ANNOUNCED**  
**27.07.2021**



**(SALAH-UD-DIN)**  
**MEMBER (JUDICIAL)**



**(ATIQ UR REHMAN WAZIR)**  
**MEMBER (EXECUTIVE)**

ORDER

27.07.2021 Appellant alongwith his counsel Mr. Muhammad Zafar Tahirkheli, Advocate present. Syed Mohsin Shiraz Superintendent alongwith Mr. Muhammad Rasheed, Deputy District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the instant appeal is accepted with directions to the respondents to promote the appellant against the vacant post of junior clerk on the basis of seniority cum fitness, thereafter the ratio of 40:60 be maintained for future recruitments. Parties are left to bear their own costs. File be consigned to record room.

**ANNOUNCED**

**27.07.2021**



**(SALAH-UD-DIN)  
MEMBER (JUDICIAL)**



**(ATIQ UR REHMAN WAZIR)  
MEMBER (EXECUTIVE)**

17 .2020

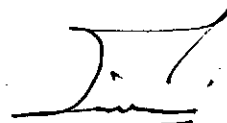
Due to summer vacation, case is adjourned to  
19.3 .2021 for the same as before.

  
Reader

19.03.2021

Appellant in person and Mr. Noor Zaman Khattak, District Attorney for the respondents present.

Former submitted rejoinder to the reply of respondents. Placed on file. To come up for arguments on 19.05.2021 before D.B.

  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

  
CHAIRMAN

19.5.2021. Due to covid 19, the case is adjourned  
to 9-7-21 for the same.

  
Reader

09.07.2021

Appellant alongwith his counsel Mr. Muhammad Zafar Tahirkheli, Advocate, present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

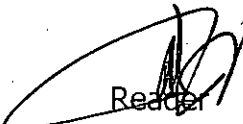
Later requested for adjournment on the ground that he has not gone through the record being pre-occupied in preparation for arguments in other appeals. Learned counsel for the appellant is having no objection on adjournment. Adjourned. To come up for arguments before the D.B on 27.07.2021.

  
(ATIQ-UR-REHMAN WAZIR)  
MEMBER (EXECUTIVE)

  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

30.10.2020

Due to public holiday, the matter is adjourned  
1.1.2021 for arguments before the D.B.

  
Reader

20.07.2020

Counsel for the appellant is present. Learned counsel for the appellant contends that being senior most official in his respective cadre as prominently mentioned in the seniority list, he has not been considered for promotion when a seat has fallen vacant and has called in question the promotion order dated 17.12.2019. In spite of movement of a departmental appeal his grievance could not be addressed so much so that it has not yet been decided.

For the question as to the time span within which an aggrieved civil servant could approach the Services Tribunal the learned counsel contends that extension in this regard has been made by the august Supreme Court of Pakistan as a result of the spread of COVID-19 due to which order for the lock down was made by the Federal as well as Provincial Government making timely reports almost impossible.

The points raised need consideration therefore, admitted to regular hearing. 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 18.09.2020.

Appellant Deposited  
Security & Process Fee

(MUHAMMAD JAMAL KHAN)  
MEMBER

18.09.2020

Appellant in person and Addl. AG alongwith Syed Mohsin Shah Superintendent for the respondents present.

Representative of the respondents has furnished written statement on behalf of the respondents, which is made part of the record. The appeal is assigned to D.B for arguments on 30.10.2020. The appellant may furnish rejoinder, within a fortnight, if so advised.

  
Chairman

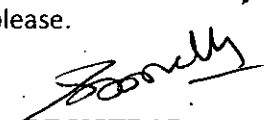



Form- A

FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. - 6136 /2020

1S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	23/06/2020	<p>The appeal of Mr. Sajjad Ali presented today by Mr. Muhammad Zaffar Tahir Kheli Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>20/07/2020</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
2-		

**BEFORE THE SERVICE TRIBUNAL, KHYBER PUKHTOONKHWA**  
**PESHAWAR**

Service Appeal No. **6136**/2020.

Sajjad Ali,  
Naib Qasid, Anti Terrorism Court-II Peshawar.

.....Appellant

**VERSUS**

1. Hon'ble Administrative Judge, Anti Terrorism Court-II Khyber Pakhtunkhwa,  
Judicial Complex; Peshawar

.....Respondents

=====  
**I N D E X**  
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S.No	Particulars	Annexure	Pages
1	Memo of Petition		1-3
2	Departmental Appeal	dated 20-12-2019	"A" 4-5
3	Order	dated 01-03-2010	"B" 6
4	Order	dated 17-12-2019	"C" 7
5	Order	dated 06-01-2011	"D" 8
6	Order	dated 06-01-2011	"D1" 9
7	Order	dated 04-04-2012	"E" 10
8	Notification	dated 18-07-2019	"F" 11-13
9	DMC		"G" 14
10	Degree		"G1" 15
11	Application for condonation of delay		16-19
12	Vakalatnama		20

Peshawar, dated  
22-06-2020

(MUHAMMAD ZAFAR TAHIRKHELI)  
Advocate

(Ansar Ullah Khan)  
Advocate

①

F-4/2020

**BEFORE THE SERVICE TRIBUNAL, KHYBER PUKHTOONKHWA  
PESHAWAR**

Service Appeal No. **6136** /2020

**Khyber Pakhtunkhwa  
Service Tribunal**

Sajjad Ali,  
Naib Qasid, Anti Terrorism Court-II Peshawar.

Diary No. **5459**  
Dated **23/6/2020** Appellant

**VERSUS**

1. Hon'ble Administrative Judge, Anti Terrorism Court-II Khyber Pakhtunkhwa,  
Judicial Complex, Peshawar  
.....Respondents

=====

**SERVICE APPEAL U/S 4 OF NWFP SERVICE TRIBUNAL ACT, 1974,  
FOR DIRECTING THE RESPONDENT TO CONSIDER THE APPELLANT  
FOR PROMOTION TO THE POST OF JUNIOR CLERK / MOHARRIR /  
RECORD KEEPER BPS-11, WHEREIN HIS DEPARTMENTAL  
REPRESENTATION DATED 20-12-2019 (Annex-A) WAS NOT DECIDED  
WITHIN THE STATUTORY PERIOD OF LIMITATION.**

=====

**PRAYER:** Allowing the appeal and directing the respondent to consider the  
appellant for promotion to the post of Junior Clerk / Moharrir  
/Record Keeper BPS-11 against the vacant post in terms of 40%  
quota reserved for Naib Qasids.

=====

**RESPECTFULLY SHEWETH,**

1. The appellant being qualified and eligible was selected and appointed as Naib Qasid BPS-01 at the court of Special Judge Anti Terrorism-II Peshawar vide order dated 01-03-2010. **(Copy annexed "B")**

The appellant after since his appointment has been serving the department honestly and diligently to the utmost satisfaction of his superiors. That neither any adverse remarks have been served upon him, nor any disciplinary proceedings initiated against him till date.

That consequent upon the promotion order of Mr. Abdul Basit to the post of Senior Clerk BPS-14 vide order dated 17-12-2019, one out of two posts of Junior Clerks became vacant. **(Copy annexed "C")**

3. That in the year 2011 two posts of junior Clerks, lying vacant with Anti Terrorism Court No-II were filled up vide initial recruitment, wherein Mr. Abdul Basit and Mr. Sohail Ahmad were appointed vide orders dated 06-01-2011. **(Copy annexed "D"&"D1")**

One of the two Junior Clerks Mr. Sohail Ahmad quit his job at Anti Terrorism Court-II due to his appointment at Department of Food KPK Peshawar, and resultantly Noor Ullah Naib Qasid was promoted to the post of Junior Clerk from amongst the Naib Qasids vide order dated 05-04-2012. **(Copy annexed "E")**

**Filed to-day**

**Registrar**

**23/6/2020**

5. That recently since Mr. Abdul Basit has been promoted to the post of Senior Clerk vide order dated ~~17-12-19~~ (Annex ~~C~~) and the post of Junior Clerk has fallen vacant once again, therefore the appellant submitted his representation / appeal before the respondent for considering him for promotion to the post Junior Clerk BPS-11 on the 40% quota reserved for the post Naib Qasids, but was not replied till the lapse of statutory period of limitation.

Feeling aggrieved and finding no other remedy, the appellant has been constrained to approach the Hon'ble Service Tribunal for the redress of his grievance, inter-alia, on the following,

Grounds:

- a. That the worthy authority has ignored the appellant's departmental appeal without any plausible explanation, which needs immediate attention of the Hon'ble Service Tribunal for the just conclusion of the matter in question.
- b. That according to Govt. of KPK Establishment Department Notification dated 18-07-2019, the APT Rules 1989 were amended and the quota reserved for promotion from amongst, Daftaries, Gestetner, Operators, Qasids & Naib Qasids were enhanced from 30% to 40%. **(Copy annexed "F")**
- c. That according to the rules regulating the matter, the appellant's case merits consideration for promotion to next higher scale as Junior Clerk BPS-11 in view of the enhanced quota reserved for Naib Qasids, but his case has been ignored by the worthy respondent without any cogent reason.
- d. That the post of Junior Clerk is still lying vacant, and being senior most from amongst the Naib Qasids attached to the Anti Terrorism Court-II, the appellant is entitled to be considered for promotion to next higher scale.

In utter disregard and in violation of the principles of equity and justice, the appellant has been subjected to arbitrary and discriminatory treatment.

- e. That the appellant has 11 years of service at his credit and has an academic qualification of M.A B.Ed. The appellant is senior and eligible for promotion on the basis of universal criteria of seniority cum-fitness, but has been however ignored, subject to correction by the worthy Tribunal. **(Copy annexed "G"&"G1")**
- f. The impugned omission is thus arbitrary, discriminatory, against the principles of equity, law, justice and proprietary, subject to correction by the worthy Service Tribunal.
- g. Appellant seeks permission to take several other grounds at the time of arguments.

**Prayer:**

In view of the above it is prayed that by allowing this appeal, the respondent may be directed to consider the appellant for promotion to the post of Junior Clerk / Moharrir /Record Keeper BPS-11 against the vacant post in terms of 40% quota reserved for Naib Qasids.

Any other relief deemed appropriate may also be granted.

*[Signature]*  
Appellant

Through, *[Signature]*

(MUHAMMAD ZAFAR TAHIRKHELI)  
Advocate

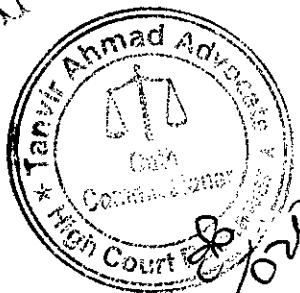
(Ansar Ullah Khan)  
Advocate

Peshawar, dated  
22-06-2020

**Affidavit**

I, the appellant, do hereby state on Oath that the contents of the accompanying appeal are true and correct to the best of my knowledge and belief, and nothing has been concealed from this Hon'ble Tribunal.

ATTESTED



*[Handwritten signature]*  
19/06/2020

*[Signature]*

DEPONENT

To,

THE HON'BLE ADMINISTRATIVE JUDGE,  
Anti-Terrorism Courts,  
Peshawar.

Subject:

FILLING UP VACANT POST OF JUNIOR CLERK  
(BPS-11) ON ON PROMOTION BASIS.

Respected Sir,

I have the honor to refer to the subject noted above and to submit that I was appointed as Naib Qasid (BPS-01) dated 25.02.2010, and assumed charge as such on 01.03.2010. (Order attached annex-A)

- 1) Sir, it is brought to your kind notice that two posts of junior clerk were created in the year 2011 in this establishment. Both of which were fulfilled by initial recruitment (Order attached annex-B)
- 2) That in the year 2012, one post of junior clerk become vacant which was fulfilled through promotion by DPC and resultantly, one Naib Qasid was promoted to the post of junior clerk. (Order attached annex-C)
- 3) That in the year 2019 one post of senior clerk was created by the provincial government in this establishment and one junior clerk was promoted to the post of senior clerk (BPS-14) through Departmental Promotion Committee resultantly one post of junior clerk is lying vacant (Order attached annex-D).
- 4) That previously, one Naib Qasid was promoted to the post of junior clerk in the establishment of ATC-I, Peshawar vide endorsement no.345-349/ATC (P) dated 06<sup>th</sup> April, 2010. (Order attached annex-E)
- 5) That Government of KP, Establishment Department vide notification no.SOEIV (E&AD1-35/2014) dated 18.7.2019 has increased the promotion quoota for Junior clerk from 30% to 40% from amongst Naib Qasid, Daftaris etc. (Copy of notification annexed annex-G)
- 6) That keeping in view my academic qualification i.e MA B.Ed. (Documents attached annex-F) as well as long ten years experience plus satisfactory performances and my 46 years age, I may kindly be promoted on the vacant post of junior clerk in promotion quota.

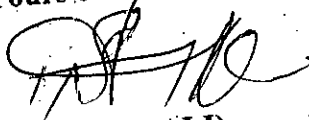
It is therefore, most humbly prayed that I may kindly be promoted on the vacant post of junior clerk and obliged, if the aforesaid post of junior clerk is fulfilled by initial recruitment, then the applicant may be deprived

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from his fundamental right. I assure you Sir that I will work with responsibility and devotion and will not give any chance of complaint to my superior officers in the due discharge of my duties.

Dated: 20.12.2019.

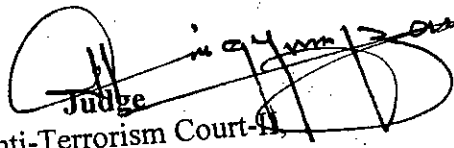
Yours obediently,



(SAJJAD ALI)  
Naib Qasid,  
Anti-Terrorism Court-II,  
Peshawar.

**ORDER**  
16.01.2020.

Superintendent is directed to submit his detail report as to whether any post of junior clerk is vacant and if so, then whether direct appointment or promotion from Class-IV is to be made.



Judge  
Anti-Terrorism Court-II,  
Peshawar.

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Annex B  
ANNEXURE B

6

**IN THE COURT OF MR. ABDUR RAHMAN KHAN,  
ADMINISTRATIVE JUDGE, ANTI-TERRORISM COURT-II, PESHAWAR.**

**O R D E R**

**01<sup>ST</sup> MARCH 2010.**

Consequent upon the recommendations of the Departmental Selection Committee in its meeting held on 25<sup>TH</sup> February 2010 Mr. Sajjad Ali s/o Fazal Wahid r/o Muslim Abad, Sector No. 8, Railway Station, Charsadda is hereby appointed as Naiib Qasid in Basic Pay Scale No. 01 viz (2970-90-5670) in the Court of Administrative Judge, Anti-Terrorism II, Peshawar with immediate effect.

His appointment is purely on temporary basis and shall be liable for termination at any time without assigning any reason or giving prior notice.

**TERMS AND CONDITIONS**

1. His service shall be governed by the NWFP Civil Servants Act, 1973 as amended up to date.
2. The service shall be governed by the NWFP Govt: Servant (E&D) Rules, 1973.
3. His service shall be subject to Medical Fitness Certificate from M.S. Service and Police Hospital Peshawar.
4. In case he desires to resign from service, either he will submit notice one month before leaving the office or will surrender one month pay.
5. His service shall be on probation for a period of one year extendable upto two years.
6. His appointment is also subject to verification of his Academic Certificates / Degrees from concerned Board or University.
7. His service shall be subject to eventual confirmation in case of availability of permanent post.
8. He shall be paid the minimum Basic Pay of Grade 01 and ordinary allowances admissible under the rules.

In case the above terms and conditions are accepted he should report to the undersigned for assuming his duty with in seven days from today, failing which offer shall stand withdrawn.

sd/-  
(ABDUR RAHMAN KHAN)  
ADM: JUDGE  
ANTI-TERRORISM COURT-II /  
CHAIRMAN SELECTION COMMITTEE

Dated Peshawar the 01<sup>st</sup> March 2010.

Endst. No. 196-200 ATC (P-II)

Copy forwarded for information and necessary action to :-

- 1) The Registrar, Peshawar High Court, Peshawar.
  - 2) The Secretary to Government of NWFP, Home and Tribal Affairs Department, Peshawar.
  - 3) The Accountant General, NWFP, Peshawar.
  - 4) The Accountant of this Court.
- Mr. Sajjad Ali s/o Fazal Wahid r/o village & street Muslim Abad, Sector No. 8, Railway Station, Charsadda.

(ABDUR RAHMAN KHAN)  
ADM: JUDGE  
ANTI-TERRORISM COURT-II /  
CHAIRMAN SELECTION COMMITTEE

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JUDG

JUDGE OF THE  
ANTI-TERRORISM COURT-II,  
PESHAWAR

Old Judicial Complex, Khyber Road, Peshawar. Phone / Fax # 091-9211047

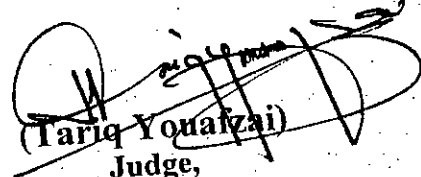
Annex C

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ORDER

17.12.2019

Consequent upon the recommendation of the Departmental Promotion Committee vide its meeting held on 17.12.2019, Mr. Abdul Basit S/o Aftab Ud Din, Junior Clerk (BPS-11) is hereby promoted against the vacant post of Senior Clerk in BPS-14 with immediate effect.

  
(Tariq Yousafzai)  
Judge,  
Anti-Terrorism Court-II/  
Chairman Departmental  
Promotion Committee.

No. 351-55/ATC (P)

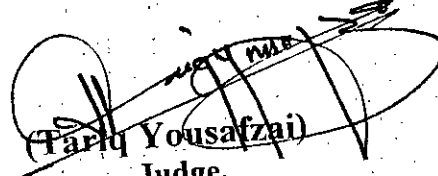
Dated: Peshawar the 17-12-2019

Copy forwarded for information and necessary action to:-

1. The Registrar Peshawar High Court, Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa, Home Department, Peshawar.
3. The Accountant General Khyber Pakhtunkhwa, Peshawar.
4. The Superintendent, Anti Terrorism Courts, Peshawar.
5. Mr. Abdul Basit S/o Aftab Ud Din, Junior Clerk ATC-II, Peshawar.

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(Tariq Yousafzai)  
Judge,  
Anti-Terrorism Court-II/  
Chairman Departmental  
Promotion Committee.

**ANNEXURE D**

**IN THE COURT OF MR. ABDUR RAHMAN KHAN**  
**ADMINISTRATIVE JUDGE ANTI TERRORISM COURT-II, PESHAWAR**

**ORDER**  
**06<sup>TH</sup> JANUARY 2011**

Consequent upon the recommendation of the Departmental Selection Committee in its meeting held on 05<sup>th</sup> Jan, 2011, Mr. Sohail Ahmad s/o Shokat Khan r/o P.O. Haji Camp, Madina colony Supply Road, Street No. 8, Mohallah Sethi Town No. 2, Peshawar is hereby appointed as Junior Clerk in Basic Pay Scale No.07 viz (3530-190-9230) in the court of Judge, Anti Terrorism-II, Peshawar with immediate effect.

His appointment is purely on temporary basis and shall be liable for termination at any time without assigning any reason or giving prior notice.

**TERMS AND CONDITIONS**

1. His service shall be governed by the Khyber Pakhtunkhwa, Civil Servants Act 1973 as amended up to date.
2. His service shall be governed by the Khyber Pakhtunkhwa Government Servants (E&D) 1973.
3. His Service shall be subject to medical fitness certificate from M.S Service and Police Hospital Peshawar.
4. In case he desires to resign from the service, either he will submit notice one month before leaving the office or he surrenders one month pay.
5. His Service shall be on probation for a period of one year extendable up to two years.
6. His appointment is also subject to verification of Academic Certificates / Degrees from concerned Board or University.
7. His service shall subject to eventual confirmation in case of availability of permanent post.
8. He shall be paid the minimum Basic Pay of Grade -07 and ordinary allowances permissible under the rules.
9. His appointment is subject to verification of character / conduct from Police.

In case the above terms and conditions are accepted he should report to the undersigned for assuming his duty in seven days from today, failing which offer shall stand withdrawn.

o/c  
(Abdur Rahman Khan)  
Adm. Judge  
Anti Terrorism Court  
Chairman Selection Committee

Endst. No. 257-26ATC (P-II)

Dated: Peshawar the 06<sup>th</sup> January 2011.

**Copy forwarded for information and necessary action to:-**

- 1) The Registrar, Peshawar High Court Peshawar.
- 2) The Secretary to Government of Khyber Pakhtunkhwa, Home & Tribal Affairs Department Peshawar.
- 3) The Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 4) The Accountant of this Court.
- 5) Mr. Sohail Ahmad s/o Shokat Khan r/o P.O. Haji Camp, Madina colony Supply Road, Street No. 8, Mohallah Sethi Town No. 2, Peshawar.

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o/c  
(Abdur Rahman Khan)  
Adm. Judge  
Anti Terrorism Court  
Chairman Selection Committee

Annex D  
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**IN THE COURT OF MR. ABDUR RAHMAN KHAN,  
ADMINISTRATIVE JUDGE ANTI TERRORISM COURT-II, PESHAWAR**

**ORDER**  
**06<sup>TH</sup> JANUARY 2011**

Consequent upon the recommendation of the Departmental Selection Committee in its meeting held on 05<sup>th</sup> Jan, 2011, Mr. Abdul Basit s/o Aftab uddin r/o P.O. Karim Pura, Baroon Lahori Gate House NO.129, Shaikh Abad NO 2, Peshawar is hereby appointed as Junior Clerk in Basic Pay Scale No.07 viz (3530-190-9230) in the court of Judge, Anti Terrorism-II, Peshawar with immediate effect.

His appointment is purely on temporary basis and shall be liable for termination at any time without assigning any reason or giving prior notice.

**TERMS AND CONDITIONS**

1. His service shall be governed by the Khyber Pakhtunkhwa, Civil Servants Act 1973 as amended up to date.
2. His service shall be governed by the Khyber Pakhtunkhwa Government Servant (E&D) 1973.
3. His Service shall be subject to medical fitness certificate from M.S Service and Police Hospital Peshawar.
4. In case he desires to resign from the service, either he will submit notice one month before leaving the office or he surrenders one month pay.
5. His Service shall be on probation for a period of one year extendable up to two years.
6. His appointment is also subject to verification of Academic Certificates / Degrees from concerned Board or University.
7. His service shall subject to eventual confirmation in case of availability of permanent post.
8. He shall be paid the minimum Basic Pay of Grade -07 and ordinary allowances permissible under the rules.
9. His appointment is subject to verification of character / conduct from Police.

In case the above terms and conditions are accepted he should report to the undersigned for assuming his duty in seven days from today, failing which offer shall stand withdrawn.

*o/c*  
(Abdur Rahman Khan)  
Adm Judge  
Anti Terrorism Court  
Chairman Selection Committee

Endst. No. 253-256ATC (P-II)

Dated: Peshawar the 06<sup>th</sup> January 2011.

Copy forwarded for information and necessary action to:-

- 1) The Registrar, Peshawar High Court Peshawar.
- 2) The Secretary to Government of Khyber Pakhtunkhwa, Home & Tribal Affairs Department Peshawar.
- 3) The Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 4) The Accountant of this Court.
- 5) Mr. Abdul Basit s/o Aftab uddin r/o P.O. Karim Pura, Baroon Lahori Gate House NO.129, Shaikh Abad NO 2, Peshawar

*o/c*  
(Abdur Rahman Khan)  
Adm: Judge  
Anti Terrorism Court  
Chairman Selection Committee  
**TRUE COPY**

OFFICE OF THE  
JUDGE ANTI-TERRORISM COURT-II  
PESHAWAR.

ANNEXURE E

Court # 19 Judicial Complex Khyber Road Peshawar.  
Phone / Fax # 091 / 9214259.

10

ORDER

4<sup>th</sup> APRIL 2012

Consequent upon the recommendation of the Departmental Promotion Committee vide its meeting held on 4.4.2012, Mr. Noor Ullah S/O Khushal Khan Naib Qasid BPS-1 is hereby promoted against the vacant post of Junior Clerk/Moharrir in BPS-7 with immediate effect.

(Mohammad Ibrahim Khan)  
Judge,  
Anti Terrorism Court-II  
/Chairman Departmental  
Promotion Committee.

No. 106-110 /ATC-II (P) Dated Pesh: 5/4/2012.

Copy forwarded for information and necessary action to:-

1. The Registrar, Peshawar High Court, Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa, Home & Tribal Affairs Department, Peshawar.
3. The Accountant General Khyber Pakhtunkhwa, Peshawar.
- ✓ 4. The Accountant of this office.
5. Mr. Noor Ullah S/O Khushal Khan.

TRUE COPY

(Mohammad Ibrahim Khan)  
Judge  
Anti-Terrorism Court-II/  
Chairman Departmental Promotion  
Committee.

ANNEXURE

F

11



GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT  
(ESTABLISHMENT WING)

Dated Peshawar, the 18<sup>th</sup> July, 2019

TRUE COPY

2

NOTIFICATION

No.SOE.IV(E&AD)/1-35/2014:-

In pursuance of the provisions contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Establishment and Administration Department, in consultation with the Finance Department, is hereby directs that in this Department's Notification No.SOE.IV (E&AD)/1-35/2012 dated 6<sup>th</sup> December, 2012, the following amendments shall be made, namely:

AMENDMENTS

In the APPENDIX, for Serial No.4, the following shall be substituted, namely:

1.	2.	3.	4.	5.
4.	Junior Clerk.	(i) FA/ F.Sc with second division or equivalent qualification from a recognized Board; and  (ii) a speed of thirty (30) words per minute in typing.	18 to 30 years.	(a) Forty per cent by promotion, on the basis of seniority-cum-fitness, from amongst Daftaris, Gestetner Operators, Qasids and Naib Qasids including holders of other equivalent posts in the Secretariat with two years service as such, who have passed FA/F.Sc Examination or its equivalent qualification from a recognized Board; and  (b) sixty per cent by initial recruitment.  <u>Note:</u> For the purpose of promotion, there shall be maintained a common seniority list of Daftaries, Gestetner Operators, Qasids, Naib Qasids etc. with reference to the dates of their acquiring the FA/ F.Sc qualification:

2

12

1.	2.	3.	4.	5.
				<p>Provided that-</p> <p>(i) if two or more officials have acquired the FA/F.Sc qualification in the same session, the inter se seniority in the lower post shall be maintained for the purpose of determining seniority in the higher post;</p> <p>(ii) 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> <p>— Provided further that The condition of FA/F.Sc or its equivalent qualification from a recognized Board, as laid down at clause (a) shall not apply for a period of four years from the date of commencement of this Notification to the existing matriculate incumbents of the post of Daftaris, Gestetner Operators, Qasids and Naib Qasids including holders of other equivalent posts for promotion to the post of Junior Clerk (BS-11)."</p>

AW

TRUE COPY

CHIEF SECRETARY  
KHYBER PAKHTUNKHWA

13  
Endst: No. SOE-IV(E&AD)/1-35/2014, dated 18<sup>th</sup> July, 2019

Copy forwarded for information and necessary action to: -

1. All Administrative Secretaries to Government of Khyber Pakhtunkhwa. Civil Secretariat, Khyber Pakhtunkhwa Peshawar.
2. The Senior Member of Board of Revenue.
3. The Principal Secretary to Governor, Governor's Secretariat, Khyber Pakhtunkhwa.
4. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary Provincial Assembly, Khyber Pakhtunkhwa.
6. The Secretary, Khyber Pakhtunkhwa Public Service Commission.
7. Deputy Director (IT), Establishment & Administration Department with the request to upload on the official website.
8. PS to Chief Secretary Khyber Pakhtunkhwa.
9. PS to Secretary Establishment Department,
10. PS to Special Secretary (Estt), Establishment Department.
11. PS to Special Secretary (Reg), Establishment Department.
12. PA to Addl: Secretary (Estt/ Reg), Establishment Department.
13. PA to Addl: Secretary (HRD Wing) Establishment Department.
14. All the Deputy Secretaries in Establishment Department.
15. All Section Officers, Establishment Department, Khyber Pakhtunkhwa Peshawar.
16. The Manager Government Printing Press for publication in the Extra Ordinary Gazette with the request to provide 50 copies of Gazette.

  
(HAZRAT JAMAL)  
SECTION OFFICER (E-IV)

TRUE COPY  
2



# University of Peshawar Pakistan

ANNEXURE

9  
14

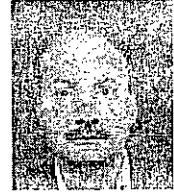
## Detailed Marks Certificate

Master of Arts in Islamiyat

- Final -

Annual Examination 2019

District Charsadda



Private

Name: SAJJAD ALI

Gender: Male

Roll No: 26750

Father's Name: FAZLI WAHID

Registration No: 94-PC-34468

Division: 2nd

Papers	Max Marks	Marks Obtained	
		In Figures	In Words
Al Quraan Translation 2nd Half & Tafsir of Surah Nur & Ahzab-VI	100	86	Eighty Six
Usul al-Fiqh(Principles of Islamic Jurisprudence)-VII	100	60	Sixty Only
Comparative Study of Judaism, Christianity & Islam-VIII	100	46	Forty Six
Contemporary Muslim World(Resources & Challenges)-IX	100	63	Sixty Three
Eco System of Islam (Comparison with Modern Eco Thought)-X	100	51	Fifty One
Viva Voce	100	65	Sixty Five
Previous 16893:Annual-2019	500	256	Two Hundred and Fifty Six
Final	1100	627	Six Hundred and Twenty Seven

Errors & omissions are subject to subsequent rectification

Chance: 1

**The Examination was taken In Parts**

Examination held From 31-Jul-2019 to 30-Aug-2019

Result Declared on Monday, January 27, 2020

Issue Date: 27-Jan-2020

7:03 pm

(Dr. S. Fazli-i-Hadi)  
CONTROLLER OF EXAMINATIONS  
UNIVERSITY OF PESHAWAR

Computerized by RTC

Charsadda City Area

TRUE COPY

20



ANNEXURE 91

TRUE COPY

# University of Peshawar

(Pakistan)

Session ANNUAL 1998

SAJJAD ALI

SON

of

FAZLI WAHID

of FACULTY OF EDUCATION UNIVERSITY OF PESHAWAR

and a student

held in SEPTEMBER, 1998

having passed the prescribed Examination

is this day admitted by the University of Peshawar to the Degree of

## Bachelor of Education

In the SECOND Division in Theory

In the FIRST Division in Teaching Practice

In the SECOND Division in Aggregate

Passed also in GENERAL SCIENCE as an Optional Subject

The Examination was taken as a whole / in parts

Serial No 909649

Registration No. 94-FC-34468

Roll No. 280

Result declared on FEBRUARY 24, 1999



*[Signature]*  
Registrar

Countersigned

*[Signature]*

## NOTIFICATION

**No.P.Reg.259/2017-SCJ**: In order to deal with difficulties faced by litigants who are hampered in filing suits, applications, petitions and appeals, etc before various legal *fora* provided by laws, on account of partial/complete Lockdown announced by the Federal/Provincial Governments, by reason of spread of Pandemic Novel Coronavirus (COVID-19) in different parts of the country:

**WHEREAS** the Supreme Court of Pakistan including its Institution Branches are functioning all over the country while observing various safety protocols;

**AND WHEREAS** on account of curtailment of movement and non availability/scarcity of means of transportation, it is difficult for litigants to file suits, applications, petitions and appeals, etc. for reasons beyond their control.

**AND WHEREAS** it is expedient to facilitate filing of suits, applications, petitions and appeals, etc. before the *fora* provided by various laws.

**NOW THEREFORE** in exercise of powers available under Article 191 of the Constitution of the Islamic Republic of Pakistan, 1973 read with Order II Rule 1 and Order XXXIII Rules 1, 3, 4 & 6 of the Supreme Court Rules, 1980 it is hereby notified as follows:

- i) For the purposes of Section 4 of the Limitation Act, 1908 ("the Act"), for the purpose of calculation of period of limitation, provided under the Act or any other law, the Institution Branch of this Court, at the Principal Seat and the Branch Registries, shall be deemed to be closed from 22.03.2020 till 21.04.2020 (unless withdrawn earlier), for those litigants who are unable to approach this Court on account of the Lockdown announced by the Federal/ Provincial Governments.

PHOTOCOPY  
2

Islamabad, the 20<sup>th</sup> May, 2020

## NOTIFICATION

**No.P.Reg.259/2017-SCJ:** In continuation of this Court's Notification(s) of even number dated 26<sup>th</sup> March 2020, 20.04.2020, 30.04.2020 & 08.05.2020, the effect of such notification issued by this Court is extended till 31.05.2020 or at an earlier point of time as may be notified.

**THEREFORE,** the operative part of the Para 01 (i & ii) of the above said notification may be read as under:-

- iii. For the purposes of Section 4 of the Limitation Act, 1908 ("**the Act**"), for the purpose of calculation of period of limitation, provided under the Act or any other law, the Institution Branch of this Court, at the Principal Seat and the Branch Registries, shall be deemed to be closed from 24.05.2020 till 31.05.2020 (unless withdrawn earlier), for those litigants who are unable to approach this Court on account of the Lockdown announced by the Federal/Provincial Governments.
- iv. Notwithstanding the above, there shall be no bar on filing of applications, petitions and appeals, etc. within the statutory period of limitation.

By order of the HCJP

— sd —

(KHAWAJA DAUD AHMAD)  
REGISTRAR

**The Manager,**  
Printing Corporation of Pakistan Press,  
University Road,  
Karachi.

**Copy to:**

1. Secretary Law, Justice & Human Rights Division, Islamabad
2. The Attorney General for Pakistan, Islamabad.

TRUE COPY

**BEFORE THE SERVICE TRIBUNAL, KHYBER PUKHTOONKHW**  
**PESHAWAR**

Service Appeal No. \_\_\_\_\_/2020

Sajjad Ali,  
Naib Qasid, Anti Terrorism Court-II Peshawar.

.....Appellant

**VERSUS**

1. Hon'ble Administrative Judge, Anti Terrorism Court-II Khyber Pakhtunkhwa,  
Judicial Complex, Peshawar

.....Respondents

**APPLICATION FOR CONDONATION OF DELAY**

1. That the accompanying appeal may kindly be read as part an parcel of the present application.
2. That the ninety days after Departmental Appeal expired on 20-03-2020. The thirty days for filing of service appeal expired on 20-04-2020.
3. That due to the prevailing Corona Virus / COVID-19 the august Supreme Court of Pakistan provided relaxation in the limitation for purpose of filing appeals vide notification dated 26-03-2020 and 20-05-2020. **(Copies Annexed)**
4. That the delay was not intentional but due to the circumstances beyond the control of the appellant, therefore the period may kindly be condoned for the purpose of limitation of filing the instant service appeal.

In view of the above the application may kindly be accepted as prayed for.

Applicant *[Signature]*

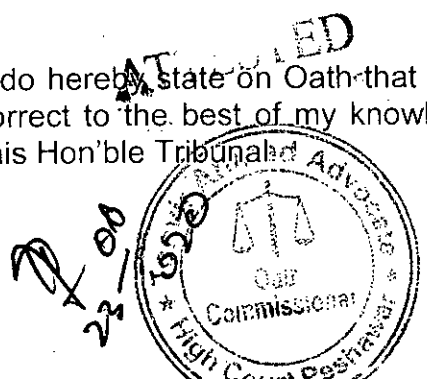
Through, *[Signature]*

**(MUHAMMAD ZAFAR TAHIRKHELI)**  
Advocate

Peshawar, dated  
22-06-2020

**Affidavit**

I, the appellant, do hereby state on Oath that the contents of the accompanying appeal are true and correct to the best of my knowledge and belief, and nothing has been concealed from this Hon'ble Tribunal.



*[Signature]*  
**DEPONENT**

# VAKALATNAMA

In the Court of

**Khyber Pakhtunkhwa Service Tribunal, Peshawar**

Service Appeal No. \_\_\_\_\_ of 2020

Petitioner  
Plaintiff  
Applicant  
Appellant  
Complainant

**Sajjad Ali**

Decree-Holder

**V**ERSUS

Respondent  
Defendant  
Opponent  
Accused

**Judge, Anti Terrorism Court etc**

Judgment-Debtor

I / We Sajjad Ali the above noted Appellant do hereby appointed and constitute, **Muhammad Zafar Tahirkheli & Ansar Ullah Khan, Advocates High Court**, to appear, plead, act, compromise, withdraw or refer to arbitration for me / us as my / our counsels / advocates in the above noted matter, without any liability for his default and with the authority to engage any other Advocate / Counsel at my / our cost.

The Client / Litigant will ensure his presence before the Court on each and every date of hearing and the counsel would not be responsible if the case is proceeded ex-parte or is dismissed in default of appearance. All cost awarded in favour shall be the right of Counsel or his nominee, and if awarded against shall be payable by me/us.

I / We authorize the said Advocates to withdraw and receive on my / our behalf all sums and amounts payable or deposited on my / our account in the above noted matter.

Dated 22-06 -2020

Office

**ATIQ LAW ASSOCIATES,**  
87, Al-Falah Street, Besides State Life Building,  
Peshawar Cantt, Phone: 091-5279529  
E-mail : [zafark.advocate@gmail.com](mailto:zafark.advocate@gmail.com)

Client

**M. Zafar Tahirkheli**

Attested & Accepted (Advocates)

**Ansar Ullah Khan**

OFFICE OF THE  
**ADMINISTRATIVE JUDGE ANTI-TERRORISM COURT,**  
PESHAWAR.

Old Judicial Complex, Khyber Road, Peshawar. Phone / Fax # 091-9211047

No. 256 /ATC (P)

Dated: Peshawar the 08<sup>th</sup> September 2020

To: - The Registrar,  
Khyber Pakhtunkhwa Service Tribunal,  
Peshawar

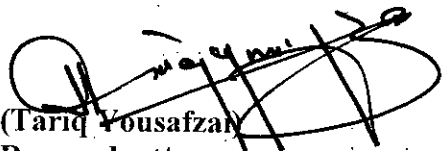
**SUBJECT: - Written Reply in Service Appeal No. 6136/2020.**  
Sajjad Ali

Vs  
Hon'ble Administrative Judge ATC-II, Peshawar.

---

Enclosed please find herewith Four Copies of Witten reply by the undersigned as Respondent and nominate Syed Mohsin Shiraz, Superintendent of this establishment as authorized repetitive in above subject service appeal.

Encl: A & A

  
(Tariq Yousafzal)  
Respondent/  
Administrative Judge  
Anti Terrorism Courts  
Peshawar

**JUDGE**  
Anti Terrorism Court-II  
Peshawar

**BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA  
PESHAWAR**

---

APPEAL No.6136/2020

Sajjad Ali .....Appellant

Versus

Honorable Administrative Judge, Anti Terrorism Court-II, KPK Judicial Complex,  
Peshawar.....Respondent

Subject: - Written reply on behalf of Respondent

**Preliminary objection:-**

- 1) That the appellant has no cause of action;
- 2) That no service appeal can be filed by petitioner seeking consideration for promotion or promotion before this honorable Tribunal.
- 3) That no right of appeal is available u/s 4 of the Khyber Pakhtunkhwa (KPK) Service Tribunal Act 1974 to the appellant as no terms and condition of his service is violated;
- 4) That no civil servant can file appeal before Service Tribunal for seeking the like direction for consideration of promotion as agitated by the appellant.

**Factual Objections:-**

- 1) Para-1 is correct to the extent of appointment of the appellant however his service delivery is average;
- 2) Para-2 is correct;
- 3) Para-3 is correct;
- 4) Para-4 is correct however it is added that one of the junior clerk was promoted from the rank of Class-IV. As total posts of junior clerk are two in Establishment of Judge, ATC-II, therefore the vacant post will go in quota of initial recruitment and not in promotion quota as claimed. The representation of appellant was not considered reason being that the same was not warranted in law.

**On Grounds:-**

- A) The representation was ignored being illegal and without justification under the relevant rules.
- B) That increase in quota from 30 % to 40 % did not affect the status of available vacancy as the same will go for quota of direct recruitment on the ground that there

are two posts of junior clerk which were initially filled through direct recruitment but later on leaving service by one of the junior clerk, the vacant post was filled through promotion from Class-IV and as such 50/50 quota of direct recruitment and promotion recruitment was filled and now the turn of future vacancy is of direct recruitment.

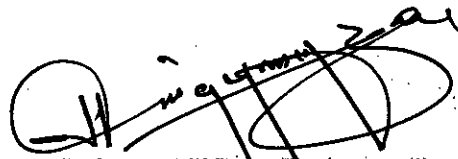
- C) Para-C is not correct in view of explanation made in Para-2 above.
- D) Para-D is not correct. Vacant posts lying in court of direct recruitment can not be claimed by a civil servant as right to promotion is not recognized in law. Moreover a civil servant has no right to demand promotion on his own and to compel the authority to consider him for a vacancy. Authority has power to abolish a vacant post if need arise in view of work load in an organization.
- E) Length of service can not be made ground for the like claim under the law. It may be agitated if authority ignored the same while making promotion / recruitment in violation of the relevant rules which is not the case at all.
- F) Appellant has no right as stated above to raise claim for his consideration to promotion as per law and precedents of honorable superior courts of Pakistan in this respect.
- G) Needs no comment pertaining to powers of the Tribunal.

**Prayers:-**

In light of aforesaid, appeal of the appellant is without legal justification and not warranted in law and may please be dismissed at the earliest with special cost.

**Dated:-03-09-2020**

**Respondent**



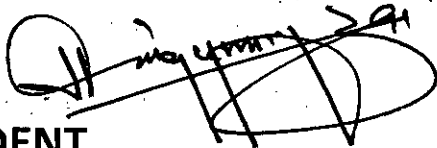
Honorable Admn: Judge ATCs, Peshawar/Presiding  
Officer Judge, ATC-II, Peshawar as authority

**JUDGE  
Anti Terrorism Court-II  
Peshawar**



**AFFIDAVIT**

I, Tariq Yousafzai, Judge Anti Terrorism Court-II, Peshawar do hereby confirm on oath that contents of written reply is correct to the best of my knowledge and belief.

**RESPONDENT**

**JUDGE  
Anti Terrorism Court-II  
Peshawar**

**BEFORE THE SERVICE TRIBUNAL, KHYBER PUKHTOONKHWA**  
**PESHAWAR**

Service Appeal No. \_\_\_\_\_/2020

Sajjad Ali,  
Naib Qasid, Anti Terrorism Court-II Peshawar.

.....Appellant

**VERSUS**

1. Hon'ble Administrative Judge, Anti Terrorism Court-II Khyber Pakhtunkhwa,  
Judicial Complex, Peshawar

.....Respondents

=====

**I N D E X**

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S.No	Particulars	Annexure	Pages
1	Memo of Petition		1-2
2	Notification	dated 29-09-2020	"R" 3-6

Peshawar, dated  
22-06-2020

  
(MUHAMMAD ZAFAR TAHIRKHELI)  
Advocate

(Ansar Ullah Khan)  
Advocate

①

**BEFORE THE SERVICE TRIBUNAL, KHYBER PUKHTOONKHWA**  
**PESHAWAR**

Service Appeal No. \_\_\_\_\_/2020

Sajjad Ali,

**VERSUS**

Administrative Judge, ATC

**Petitioner's Rejoinder To The Respondent's Reply**

**Respectfully Sheweth:**

**Preliminary Objections:**

All the preliminary objections taken in para 1 to 4 are incorrect, irrelevant and against the material facts on record and rules regulating the services of the appellant, hence liable to be rescinded as such.

**On Facts:**

1. Para 1 of the appeal is correct and that of the reply is incorrect. The appellant has never been communicated with any adverse remarks.
2. Para 2 of the appeal is correct and that of the reply is incorrect.
3. Para 3 of the appeal is correct and that of the reply is incorrect.
4. Para 4 of the appeal is correct and that of the reply is incorrect. It is necessary to mention that quiet recently vide notification dated 29-09-2020, in pursuance of sub rule 2 of rule 3 of the KP Civil Servants (APT) Rules 1989, the amended rules regarding method of recruitment, qualification and other conditions were notified, which are applicable to various posts of Anti Terrorism Courts.

The criteria for promotion, selection is detailed as under;

5.	Junior clerk	At least- (a) FS/FSc with second division or its equivalent qualification from a recognized Board, and (b) A speed of thirty (30) words per minute in typing	18 to 30 years	(a) Forty (40) per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Naib Qasid, Chowkidars and Sweepers including holders of other equivalent posts, who have passé FA/FSc Examination or its equivalent qualification from a recognized Board, with two-years service as such, and  (b) Sixty (60) per cent by initial recruitment.
----	--------------	--	----------------	--

That since Mr. Abdul Basit and Muhammad Sohail were appointed on initial recruitment, vide order dated 06-01-2011, therefore 120% quota in respect of initial recruitment has already been exhausted in ATC Court-II, Establishment, therefore, the case of the appellant merits acceptance.

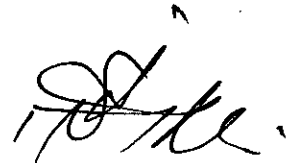
**(Copy annexed "R")**

**On Grounds:**

All the grounds taken in para A to G of the respondent's reply are irrelevant against the material facts on record and against the rules regulating the appellant's service. The grounds taken in appeal are correct and in accordance with the rules regulating the matter, wherein the appellant is entitled to the relief prayed for.

**Prayer:**

In view of the above, it is therefore requested that by allowing this appeal, the respondent may be directed to consider the appellant for promotion to the post of Junior Clerk / Moharrir / Record Keeper BPS-11 against the vacant post in terms of 40% quota reserved for Naib Qasids.



Appellant

Through,

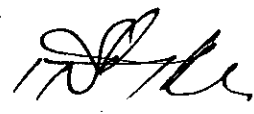
(MUHAMMAD ZAFAR TAHIRKHELI)

Advocate

Peshawar, dated  
30-10-2020

**Affidavit**

I, the appellant, do hereby state on Oath that the contents of the accompanying rejoinder are true and correct to the best of my knowledge and belief, and nothing has been concealed from this Hon'ble Tribunal.



DEPONENT

ATTESTED  
*ms*  
13-X-2020  
MIAN SIDDIQAT ULLAH SHAH  
ADVOCATE  
Notary Public/Oath Commissioner  
Peshawar High Court Peshawar



GOVERNMENT OF THE KHYBER PAKHTUNKHWA  
HOME AND TRIBAL AFFAIRS DEPARTMENT

Peshawar, dated the 29<sup>th</sup> September, 2020.

**NOTIFICATION**

**No. SO(Prosecution)/HD/1-5/2020/Vol-I:**

In pursuance of the provisions contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Home and Tribal Affairs Department, in consultation with the Establishment Department and the Finance Department, hereby lays down the method of recruitment, qualification and other conditions, specified in column Nos. 3 to 5 of the Appendix to this Notification, which shall be applicable to various posts of Anti-Terrorism Courts, as specified in column No. 2 of the said Appendix.

**APPENDIX**

1.	2.	3.	4.	5.
S.#	Nomenclature of post.	Minimum qualification for appointment by initial recruitment.	Age limit.	Method of recruitment.
1.	Superintendent.	—	—	By promotion, on the basis of seniority-cum-fitness, from amongst Assistants and Computer Operators, with at least five years service as such.  Note: For the purpose of promotion there shall be maintained a joint seniority list of Assistants, Senior Scale Stenographers and Computer Operators.

*[Handwritten signature]*

ANNEXURE R

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2.	Assistant.	At least Second Class Bachelor's Degree from a recognized University.	20 to 32 years.	(a) Seventy-five percent (75 %) by promotion, on the basis of seniority-cum-fitness, from amongst Senior Clerks, with at least five (05) years service as Junior and Senior Clerks; and  (b) twenty-five percent (25 %) by initial recruitment.
3.	Computer Operator.	At least- (a) Second Class Bachelor's Degree in Computer Science / Information Technology (BCS/ BIT four years) from a recognized University; or  (b) Second Class Bachelor's Degree from a recognized University with one year Diploma in Information Technology from a recognized Board of Technical Education.	20 to 32 years.	By initial recruitment.
4.	Senior Clerk.			By promotion, on the basis of seniority-cum-fitness, from amongst Junior Clerks with at least two years service as such.
5.	Junior Clerk.	At least- (a) FA/ F.Sc with second division or its equivalent qualification from a recognized Board; and  (b) a speed of thirty (30) words per minute in typing.	18 to 30 years.	(a) <input type="checkbox"/> Forty (40%) per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Naib Qasids, Chowkidars and Sweepers including holders of other equivalent posts, who have passed FA/F.Sc Examination or its equivalent qualification from a recognized Board, with two years service as such; and  (b) sixty (60%) per cent by initial recruitment.

Note: For the purpose of promotion, there

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				<p>shall be maintained a common seniority list of Naib Qasids, Chowkidars, Sweepers etc. with reference to the dates of their acquiring the FA/ F.Sc qualification:</p> <p>Provided that-</p> <p>(i) if two or more officials have acquired the FA/F.Sc qualification in the same session, the inter se seniority in the lower post shall be maintained for the purpose of determining seniority in the higher post;</p> <p>(ii) 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> <p>Provided further that the condition of FA/F.Sc or its equivalent qualification from a recognized Board, as laid down at clause (a), shall not apply for a period of four years from the date of commencement of this Notification to the existing matriculate incumbents of the post of Naib Qasid, Chowkidar and Sweeper including holders of other equivalent posts for promotion to the post of Junior Clerk (BPS-11).</p>
6.	Driver.	(a) Secondary School Certificate or equivalent qualification from a recognized Board; and	18 to 40 years.	By initial recruitment.

*[Handwritten Signature]*

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		(b) LTV license in case of light duty vehicle with at least five years' experience as such.		
7.	Naib Qasid.	Preferably literate.	18 to 40 years.	By initial recruitment.
8.	Chowkidar.	Preferably literate.	18 to 40 years.	By initial recruitment.
9.	Sweeper.	Preferably literate.	18 to 40 years.	By initial recruitment.

SECRETARY TO  
GOVERNMENT OF KHYBER PAKHTUNKHWA  
HOME AND TRIBAL AFFAIRS DEPARTMENT

Endst: No. & date even

Copy forwarded to:

1. The Secretary to Government of Khyber Pakhtunkhwa, Establishment Department.
2. The Secretary to Government of Khyber Pakhtunkhwa, Finance Department.
3. The Secretary to Government of Khyber Pakhtunkhwa, Law, Parliamentary Affairs & Human Rights Department.
4. Registrar, Peshawar High Court, Peshawar.
5. The Member Inspection Team/Focal Person, Peshawar High Court, Peshawar.
6. All the Administrative Judges, Anti-Terrorism Courts, Khyber Pakhtunkhwa, Peshawar.
7. The Manager, Government Printing & Stationery Department, Shami Road, Peshawar for publication in the Government Gazette. He is requested to supply 10 gazette copies to this Department.
8. PS to Secretary Home Department, Khyber Pakhtunkhwa.

  
(Arshad Khan) 29/09/2020  
Section Officer (Prosecution)  
091-9210541

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**KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, PESHAWAR**

No. 1572 /ST

Dated: 09/08 /2021

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281  
Fax:- 091-9213262

To

The Administrative Judge Anti Terrorism Court-II,  
Government of Khyber Pakhtunkhwa,  
Peshawar.

Subject: JUDGMENT IN APPEAL NO. 6136/2020, MR. SAJJAD Ali

I am directed to forward herewith a certified copy of Judgement dated 27.07.2021 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

REGISTRAR

KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR

Service Appeal # 6136/2020

DISTRICT ATTORNEY  
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR

SASJAD ALI vs Govt.

Maintainability

As there is no original or appellate order,  
hence Service Appeal is not maintainable.

Section 4, 7 Service Tribunal Act 1974  
✓ 2006 SCMR 1630  
✓ S/Appeal 17/2011 Dated 15.12.2017  
EDO

Appellant have not filed departmental appeal to  
appellate authority, hence instant appeal is barred  
by law & not maintainable.

[Rule 3 Civil Servants (Appeal) Rules 1986.

Eligibility for Promotion

3 post

There were 2 posts of Junior Clerk

1 post  
50%

1 post filled through Promotion from class IV  
on basis of Seniority-cum-fitness 40%

1 post  
50%

1 post shall be filled through initial  
recruitment as per rules 60%

[Anti Terrorisism Courts Rules

Jurisdiction

Jurisdiction regarding fitness for promotion barred

[Section 4(b)(i) KP Service Tribunal Act 1974  
✓ Service Appeal # 12449/20 Dt. 25/5/2021  
S/O P/S

Promotion is not a vested right

[PLD 2008 SC 395  
✓ 2005 SCMR 1742

under section 161 Cr. P. C. It was never doctor. It does not bear any date. The Investigating Officer recorded Exh P.A./3 on the basis of Exh P.A./2. That it was handed over to him by some unknown person. Because of the aforesaid background Exh P.A./3 is a word-by-word reproduction of Exh P.A./2. Khair Muhammad had remained unconscious for quite some time and was so unconscious even when the Investigating Officer contacted him in the Lady Reading Hospital at Peshawar. The strong possibility cannot be ruled out, as rightly held by the High Court, that it could be the result of consultations and prompting by the relatives. This statement also cannot be relied upon as genuine dying declaration.

5. Next is the identification of the accused on the spot. The torch in the light of which the accused were identified was produced before the Investigating Officer sixteen days after the occurrence. The one Haid Akbar who produced the same before the Investigating Officer was never produced at the trial and hence there is no satisfactory evidence that the torch produced in the given circumstances was the same, available at the time of occurrence. It was never found on the spot along with other recoveries though there was no occasion for the injured and the deceased to have carried it along. There is no evidence as to how it came to the possession of Haid Akbar, who was not produced.

6. In nutshell, we are convinced that the dying declarations in the instant case are not worthy of credence and cannot be placed reliance upon in a case of capital charge. We are also convinced that it was an unseen night occurrence where the identity of the accused could not be established. The respondents, therefore, were rightly acquitted. The petition being no force in the petition, it is hereby dismissed and leave to appeal refused.

M.H./H-10/SC

2006 S C M R 1630

[Supreme Court of Pakistan]

Present: Ch. Ijaz Ahmad and Syed Jamshed Ali, JJ

EXECUTIVE DISTRICT OFFICER SCHOOLS AND LITERACY, DISTRICT DIR LOWER and others---Petitioners

versus

QAMAR DOST KHAN and others---Respondents.

Civil Petitions Nos. 786, 787 and 788-P of 2004, decided on 8th May 2005

Adam Akbar, Advocate

presence of the Investigating Officer admitted that the dying declaration was a true statement.

(Against the order, dated 28-8-2004 passed by High Court of Peshawar in Service Appeal No. 51 of 2003)

(1) North West Frontier Province Service Tribunals Act (I of 1974)---

(2) Appeal before Service Tribunal--Maintainability--It is only a final order original or appellate, against which an appeal lies to North West Frontier Province Service Tribunal [p. 1635] A

(3) North West Frontier Province Service Tribunals Act (I of 1974)---

Ss. 4 & 7--North West Frontier Province Service Tribunals Rules, 1974 R. 27--Service Tribunal--Jurisdiction--Direction to departmental authorities--Non-availability of any final order--Grievance of civil servants was that after their appointment as PTC teachers, they were not posted anywhere--Service Tribunal allowed appeals filed by civil servants and directed departmental authority to issue posting orders--

Service Tribunal did not have any jurisdiction to issue direction to them and appeal filed by civil servants was not maintainable as there was no final order. Validity--Powers conferred in R. 27 of North West Frontier Province Service Tribunals Act, 1974, were not intended to enlarge the scope of S.4 of North West Frontier Province Service Tribunals Act, 1974--Such power was available to Service Tribunal while hearing an appeal and question of maintainability of an appeal was to be answered with reference to Ss. 4 & 7 of North West Frontier Province Service Tribunals Act, 1974--

There had not been such an order within the contemplation of S.4 of North West Frontier Province Service Tribunals Act, 1974, which could be brought under challenge before North West Frontier Province Service Tribunal--Relief claimed by civil servants through appeals was in the nature of a command to departmental authority to give them suitable posting--In essence, the civil servants were seeking writ of mandamus which jurisdiction the Service Tribunal did not possess--

Application for leave to appeal was converted into appeal and judgment rendered by Service Tribunal was set aside--Appeal was allowed. [1635, 1637] B & H

Secretary to the Government of N.-W.F.P., Agriculture Department v. Asmatullah Khan and others 2003 PLC (C.S.) 1289; Muhammad Amjad Malik v. Pakistan State Oils Co. Ltd. and others 2003 PLC (C.S.) 318; Muhammad Zahid Iqbal and others v. D.E.O. Peshawar and others 2006 SCMR 285; Muhammad Sarwar v. The State of Punjab 1969 SC 278 and Board of Intermediate and Secondary Education, Peshawar through its Chairman and another v. Mst. Salma Afroz and 2 others 1992 PLD 263 ref.

Question of jurisdiction--Raising for the first time--

Secretary to the Government of N.-W.F.P., Agriculture Department v. Asmatullah Khan and others 2003 PLC (C.S.) 1289; Muhammad Amjad Malik v. Pakistan State Oils Co. Ltd. and others 2003 PLC (C.S.) 318; Muhammad Zahid Iqbal and others v. D.E.O. Peshawar and others 2006 SCMR 285; Muhammad Sarwar v. The State of Punjab 1969 SC 278 and Board of Intermediate and Secondary Education, Peshawar through its Chairman and another v. Mst. Salma Afroz and 2 others 1992 PLD 263 ref.

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Handwritten notes and signatures on the right margin, including 'original & appellate case' and '6/36/05'.

Court—Principles—Question of jurisdiction goes to the root of case and can be raised for the first time even while appearing before the highest Court of country. Only constraint where a party could be said to be estopped to raise question of jurisdiction would be where the party itself invoked jurisdiction of Court or Tribunal and on the result being unfavourable repudiates its own action and throws challenge to jurisdiction of such Court or Tribunal but even in such a case, it depends on facts of that case. Yet another case where question of jurisdiction may not be entertained for the first time before superior Courts could be when the equities are plainly against the person raising objection and upheld consequence would be to perpetuate all ill-gotten gain or to bring about a plainly unjust consequence. Objection to jurisdiction should not be shut even though raised for the first time before Supreme Court. [p. 1636] C & E

#### (d) Administration of justice—

Duty of Court or Tribunal—Not engaging of counsel by a party. Effect—Court or Tribunal has to decide lis before it in accordance with law and parties are not bound to engage a counsel. Justice according to law is the duty of Court, which can neither be abdicated in favour of whims or ignorance of litigants or their lawyers nor it be avoided or evaded on the pretext that a question of law going to the root of the case was not raised promptly. [p. 1636] D

#### (e) Jurisdiction

Territorial or pecuniary jurisdiction—Scope—Objection to territorial or pecuniary jurisdiction is regulated by Civil Procedure Code, 1908 and Sui Valuation Act, 1887, respectively. [p. 1637] F

#### (f) Jurisdiction—

Conferring of jurisdiction—Principle—Jurisdiction is conferred either Constitution or law. Consent or acquiescence has never been considered as a factor conferring jurisdiction. [p. 1637] G

Maulvi Aziz-ur-Rehman v. Ahmad Khan and others 2004 SC 1622; Ali Muhammad and others v. Muhammad Shafi and others 1996 SC 292; Shagufta Begum v. The Income-Tax Officer, Circle Zone-B, Lahore PLD 1989 SC 360 and Haji Abdullah Khan and others v. Nisar Muhammad Khan and others PLD 1965 SC 690, rel.

M. Saeed Khan, A.A.-G. for Petitioners (in all cases).

Khushdil Khan Mohmand, Advocate Supreme Court and  
Adam Khan, Advocate-on-Record for Respondents (in all cases).

#### ORDER

SYED JAMSHED ALI, J.—This order shall dispose of Civil Petitions Nos 786, 787 and 788-P of 2004 because common questions of law and fact are involved therein. The facts of the cases are briefly noted hereunder.

2. Qamar Dost Khan, respondent in C.P. No. 786-P of 2004; Gul Zaman Khan, respondent in C.P. No. 787-P of 2004 and Saeed Anwar in C.P. No. 788-P of 2004 claimed to have been appointed as PTC teachers vide separate orders dated 23-4-1998. Their grievance in the appeals before the N.W.F.P. Service Tribunal was that the departmental authorities were not issuing any posting order. Qamar Dost Khan, respondent in C.P. No. 786-P of 2004, stated to have made a representation on 4-12-1999 to the Incharge Monitoring Cell and Complaints and a departmental representation on 21-10-2002 for a suitable posting and then approached the learned N.W.F.P. Service Tribunal by filing appeals on 1-2-2003.

3. The appeals were contested on a number of grounds including that appeals were barred by time, and these were not maintainable as the respondents were not civil servants, since they had never taken over the charge of the post. On facts, the position taken was that the orders of appointment of the respondents were invalid and dubious. As far as respondents, Gul Zaman Khan, respondent in C.P. No. 787-P of 2004, and Saeed Anwar, respondent in C.P. No. 788-P of 2004, are concerned, apart from the objections noted above, an additional objection was taken that they were not duly qualified on the date of submission of the applications.

4. The learned Service Tribunal, however, relying on their own judgment in Appeal No. 2879 of 2000 titled Nasrullah v. D.E.O. (M) Primary, Dir. Lower and others, allowed all the three appeals notwithstanding their observation that it is the burden of respondent department to verify the authenticity of the claims of the appellants through fresh departmental enquiry, if they so desire.

5. The learned Additional Advocate General, submits that the departmental appeal lay only against a final order and in these cases there was no order to be assailed before the learned Service Tribunal. The respondents were not permitted to join the posts because their appointment orders were forged and bogus and therefore, they never acquired the status of a civil servant to invoke section 4 of the N.W.F.P. Service Tribunals Act, 1974 and that the so-called departmental appeal was filed by Qamar Dost Khan on 21-10-2002 and was not against any order, it was for directing a posting. In the other two, he submits that no representation was filed, even it be

assumed that respondents could invoke the jurisdiction of N.W.F.P. Service Tribunal. In case of Gul Zaman Khan and Saeed Anwar, the learned counsel invited our attention to the copy of the PTC certificates, showing announcement of their result on 27-7-1998 while the public notice through press inviting applications was issued on 3-10-1997 and the closing date was 13-10-1997. It was maintained that since they were eligible there was no question of their being summoned for test or interview for selection to the post of PTC teachers. He submits that record of appointment of these respondents is available with the department.

The learned counsel for the respondents first addressed the C.P. No. 786 P.O. 2004. On the basis of pay rolls of a number of officials whose names find mention in the order dated 23-4-1998, which name of respondent Qamar Dost also appears, such as Muhammad Raheed, Asghar Khan, Muhammad Saleem Khan, Muhammad Ishaq, Inayat Ullah, which were placed on record to contend that the officers in the said order were in receipt of salaries which was sufficient to defeat the plea of the departmental authorities that the order dated 23-4-1998 was a forged document. Before we proceed further we would like to observe here that the departmental representatives explained that the basis of this consolidated order dated 23-4-1998 were separate orders, the copy of the orders being relied upon contain two so-called releases but as a matter of fact sixteen out of them were genuine releases and the department had record of those sixteen. Learned counsel for the respondents strenuously relied on the order of Nasrullah Khan and others 2004 PLC (G.S.) 1289 and Muhammad Asmaullah Khan and others 2004 PLC (G.S.) 1288 and Muhammad Asmaullah Khan and others 2005 PLC (G.S.) 1287. He urged that if the record was not available with the department, respondents should not be made to suffer. As far as Gul Zaman Khan and Saeed Anwar Khan are concerned, he submits that before their selection, they had become eligible and therefore, they were not required to be summoned for test or interview. He maintains that the respondents had submitted their applications and had thus become civil servants.

Exercising his right of rebuttal, the learned Additional Advocate General relied on Muhammad Zahid Iqbal and others v. F.O. Mardan and others 2006 SCMR 285. Explaining the case of Muhammad Nasrullah, he submitted that the fact of the said case were distinguishable because there was no allegation of fraud and forgery in Muhammad Nasrullah.

Right of appeal has been created by section 4 of the N.W.F.P. Service Tribunals Act, 1974. It will be appropriate to reproduce the said provision.

Appeal to Tribunals.— Any civil servant aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him or within six months of the establishment of the appropriate Tribunal having jurisdiction in the matter.

Provided that:

(underlining is ours)

A careful reading of the said provision shows that it is only against a final original or appellate, against which an appeal lies to the N.W.F.P. Service Tribunal. The powers of the Tribunal are given in section 7 of the said Act according to which the Tribunal may on appeal set aside, vary or modify the order appeal against. (underlining is ours) Rule 27 of N.W.F.P. Service Tribunals Rules, 1974 which is relied upon by the learned counsel for the respondents is also reproduced herebelow.

Additional powers of the Tribunal.— Nothing in these rules shall be deemed to limit or otherwise affect the powers of a Tribunal to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Tribunal.

The powers contained in rule 27 are not intended to enlarge the scope of appeal. A careful reading of the said rule shows that this power will be available to the Tribunal while hearing an appeal and the question of maintainability of an appeal is to be answered with reference to sections 4 and 7 of the Act. There has not been such an order within the meaning of section 4 which could be brought under challenge. He submits that no representation was filed, even if it be



before the learned N.W.F.P. Service Tribunal. The relief claimed by the respondents through the appeals was in the nature of a commanding the departmental authority to give them suitable posting. In essence, they were seeking issuance of writ of mandamus which jurisdictional learned Tribunal did not possess.

18. The contention of the learned counsel for the respondents that the question of non-maintainability of the appeals before the learned Tribunal in the absence of a final order of the departmental authority not having been raised before the learned Tribunal, could not be allowed to be raised before this Court has not impressed us for the reason that the question of jurisdiction goes to the root of the case and could be raised for the first time even while appealing before the highest Court of the country. It is a fundamental principle of law that a Court or Tribunal should decide the case in accordance with law and parties are bound to engage a counsel. Justice according to law is the duty of a Court which can neither be abdicated in favour of the wrong ignorant of the litigants or their lawyers nor it be avoided or evaded. The pretext that a question of law going to the root of the case was raised promptly. In making the above observations, I am fortified by the following observations of this Court in Muhammad Sarwar v. The State, PLD 1969 SC 278.

It appears that the Judges were not properly advised, but it is to be said that there is a well-known adage that a Judge should wear all the law of the country on the sleeve of his robe.

The rule laid down was reiterated in Board of Intermediate & Secondary Education, Lahore through its Chairman and another v. Salma Afroz and 2 others PLD 1992 SC 263. The only constraint on a party could be said to be estopped to raise question of jurisdiction would be where the party itself invoked jurisdiction of Court of law and on the result being unfavourable, repudiates its own action and throw challenges to the jurisdiction of the said Court or Tribunal. Even in such a case it will depend on the facts of that case. Yet in any case where question of jurisdiction may not be entertained for the first time before superior Courts could be when the equities are against the person raising objection and if upheld the consequence would be to perpetuate an ill-gotten gain or to bring about a plainly unjust consequence. Based on the basis of the above stated principles, we do not see that the objection to jurisdiction should be shut even if raised for the first time before this Court. We find yet another reason permitting the objection to be raised and that is to clarify the jurisdiction of the learned Tribunal lest the impugned judgment be

with the subject-matter jurisdiction and not the territorial or summary jurisdiction. Objections to the said jurisdictions are provided respectively by the Code of Civil Procedure and the Suits Act.

We may also add that jurisdiction is conferred by either constitution or law. Consent or acquiescence has never been considered a factor conferring jurisdiction. The judgments of this Court in support of the above view point are Maulvi Aziz-ur-Rehman v. Ahmad Khan and others, 2004 SCMR 1622; All Muhammad and others v. Muhammad Shafi and others PLD 1996 SC 252; Shagufta Begum v. The Income Tax Officer, Circle XI, Zone B, Lahore PLD 1989 SC 360 and Muhammad Abdullah Khan and others v. Nisar Muhammad Khan and others PLD 1965 SC 690.

Accordingly, these petitions are converted into appeals, are allowed and the judgment of the learned Service Tribunal is set aside. Appeal allowed.

2006 S C M R 1637

[Supreme Court of Pakistan]

Present: Javed Iqbal and Abdul Hamid Dogar, JJ

ATA ULLAH KHAN and others, Petitioners

versus

Mst. SURRAYA PARVEEN, Respondent

Petition No. 102 of 2005, decided on 14th March, 2006

(On appeal from the order, dated 2.12.2004 of the Lahore High Court, Lahore passed in Civil Revision No 1461 of 2003).

Punjab/Pre-emption Act (IX of 1990)--

33. Constitution of Pakistan (1973), Art. 185 (3). Superior right of pre-emption. Shafi Khan and Shafi Jafar Talab Muwahibbat and Muhammad Shafiqullah--Proof--Pre-emptor, on coming to know about sale on 22.6.1995, immediately disclosed her intention to pre-empt the suit land in village in presence of witnesses. Sale was kept secret and to knowledge of pre-emptor after about two months and 24 days. Fact was established and not rebutted. Factum of sending notice to Shafiqullah on the same day i.e. 22.6.1995 after getting it attested by truthful witnesses also stood established on record. Witnesses of pre-emptor had categorically stated that she had superior right on the

6/36/20  
original/available  
dismissed

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 19/2011

Date of Institution ... 30.12.2010

Date of Decision ... 15.12.2017

Deputy Director  
Khyber Pakhtunkhwa  
Service Tribunal Peshawar

Mr. Abdul Waheed, SET, GHS No.3 Abbottbad.

... (Appellant)

VERSUS

1. The Executive District Officer, Elementary and Secondary Education,  
Abbottabad and 4 others.

... (Respondents)

MR. Khaled Rahman,  
Advocate

--- For appellant.

MR. MUHAMMAD RIAZ PAINDAKHEL,  
Assistant Advocate General

--- For respondents.

MR. AHMAD HASSAN,

MR. MUHAMMAD AMIN KHAN KUNDI

MEMBER (Executive)  
MEMBER (Judicial)

JUDGMENT

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

FACTS

2. The brief facts are that the appellant was appointed SET on 29.07.1985.  
The appellant obtained M.Ed on 01.03.2001. As per policy of the government  
dated 13.07.2002, he was allowed three advance increments on getting higher  
qualification. That the Finance Department issued notification dated 30.03.2009  
by allowing increments for untrained period to the entire teaching community,  
hence the appellant also benefited from the said notification and reached the  
maximum of BPS-16. In the light of notification dated 11.08.1991, the appellant

was entitled for personal pay, which has been denied to him. He filed departmental on 27.09.2010, but without any response, hence, the instant service appeal on 30.12.2010.

### ARGUMENTS

3. Learned counsel for the appellant argued that he was appointed as SET on 27.09.1885. That after qualifying M.Ed from Allama Iqbal Open University on 01.03.2001 three advance increments on higher professional qualification were granted/allowed to him vide notification dated 13.07.2002. The Finance Department vide notification dated 30.03.2009 allowed increments for untrained service period to all the teachers serving in the department. That the appellant also benefited from the aforementioned notification and reached the maximum of BPS-16 i.e Rs. 5490 on 01.12.2000. Resultantly increments granted on obtaining M.Ed to the appellant stood usurped. That pay of the appellant should have been fixed as personal pay in the light of notification of the Finance Department dated 11.08.1991. He filed departmental appeal on 02.09.2010 which was not decided within the statutory period, hence the instant service appeal. He further argued that judgment of this Tribunal dated 21.06.2006 passed in service appeal no. 846/2004 was implemented by the Finance Department vide letter dated 10.11.2008. Case of the appellant being identical in nature deserves similar treatment. Reliance was placed on 2005 SCMR 499, 2009 SCMR 01 and Peshawar High Court, Peshawar dated 08.06.2017 passed in writ petition no. 913-P/2014.

4. On the other hand learned Assistant Advocate General argued that a cursory reading of Section-4 of Service Tribunal Act 1974 shows that it is only against a final order, original or appellate that an appeal can be filed in Service



Tribunal. In the instant service appeal the appellant has not challenged any original or appellate order passed by a departmental authority and from which he is aggrieved. Appellant is seeking directions from this Tribunal to the respondents for grant of advance increment on getting higher qualification. Issuance of directions is not the job of Service Tribunal. Moreover, after promulgation of Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increment on Higher Qualification Act No. IX-2012, he is not entitled for advance increments. Reliance was placed on 1990 SCMR 1106, 2016 PLC 1042, 2006 SCMR 1630 and judgment of this Tribunal dated 20.09.2017 passed in service appeal no. 467/2012.

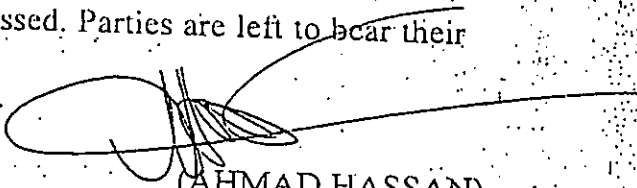
#### CONCLUSION.


5. This Tribunal deems it appropriate to first decide the issue of parameters given in Section-4 of Service Tribunal Act 1974 for filing service appeal which is reproduced below:-

*"Any civil servant aggrieved by any order whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may, within days of the communication of such order to him, or within six months of the establishment of the appropriate Tribunal, whichever is later, prefer an appeal to the Tribunal."*

Learned counsel for the appellant when confronted on the above mentioned section of law conceded that no original or appellate order passed by the respondents is available to be challenged through the instant service appeal. As he has not challenged any departmental order but seeking directions from this Tribunal to the respondents which is beyond our jurisdiction. In these circumstances no effective remedy can be granted in favour of the appellant. In view of case law reported as 1990 SCMR 1106 the appeal is not maintainable. After having deliberated on the issue of jurisdiction there is hardly any need to touch the merits of the case.

6. As a sequel to above, the appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

  
(AHMAD HASSAN)  
MEMBER

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

ANNOUNCED  
15.12.2017



TO BE SUBSTITUTED FOR THE SAME NUMBER AND DATE

GOVERNMENT OF THE KHYBER PAKHTUNKHWA  
HOME AND TRIBAL AFFAIRS DEPARTMENT

Peshawar, dated the 29<sup>th</sup> September, 2020.

NOTIFICATION

No. SO(Prosecution)/HD/1-5/2020/Vol-I:

In pursuance of the provisions contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Home and Tribal Affairs Department, in consultation with the Establishment Department and the Finance Department, hereby lays down the method of recruitment, qualification and other conditions, specified in column Nos. 3 to 5 of the Appendix to this Notification, which shall be applicable to various posts of Anti-Terrorism Courts, as specified in column No. 2 of the said Appendix.

*Qureshi*

APPENDIX

1.	2.	3.	4.	5.
S.#	Nomenclature of post.	Minimum qualification for appointment by initial recruitment.	Age limit.	Method of recruitment.
1.	Superintendent.	—	—	By promotion, on the basis of seniority-cum-fitness, from amongst Assistants, Senior Scale Stenographer and Computer Operators, with at least five years service as such.  Note: For the purpose of promotion there shall be maintained a joint seniority list of Assistants, Senior Scale Stenographer and Computer Operators.

2.	Senior Scale Stenographer	<p>(a) At least Second Class Bachelor's Degree, from a recognized University;</p> <p>(b) a speed of seventy (70) words per minute in Shorthand and forty five (45) words per minute in typing;</p> <p>(c) In the districts where Urdu is the Court language, speed of thirty (30) words per minute in typing in Urdu as well; and</p> <p>(d) knowledge of computer in using MS Word, MS Excel.</p>	20-32 years	By Initial recruitment
3.	Assistant.	<p>At least Second Class Bachelor's Degree from a recognized University.</p> <p><i>Ans</i></p>	20. to 32 years.	<p>(a) Seventy-five percent (75 %) by promotion, on the basis of seniority-cum-fitness, from amongst Senior Clerks, with at least five (05) years service as Junior and Senior Clerks; and</p> <p>(b) twenty-five percent (25 %) by initial recruitment.</p>
4.	Computer Operator.	<p>At least-</p> <p>(a) Second Class Bachelor's Degree in Computer Science / Information Technology (BCS/ BIT four years) from a recognized University; or</p> <p>(b) Second Class Bachelor's Degree from a recognized University with one year Diploma in Information Technology from a recognized Board of Technical Education.</p>	20 to 32 years.	By initial recruitment.
5.	Senior Clerk.	----	----	By promotion, on the basis of seniority-cum-fitness, from amongst Junior Clerks with at

Deputy District Attorney  
Khyber Pakhtunkhwa  
Service Tribunal Peshawar

6/36/20

				least two years service as such.
6.	Junior Clerk.	At least- (a) FA/ F.Sc with second division or its equivalent qualification from a recognized Board; and  (b) a speed of thirty (30) words per minute in typing.	18 to 30 years.	(a) Forty (40%) per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Naib Qasids, Chowkidars and Sweepers including holders of other equivalent posts, who have passed FA/F.Sc Examination or its equivalent qualification from a recognized Board, with two years service as such; and  (b) sixty (60%) per cent by initial recruitment.  <u>Note:</u> For the purpose of promotion, there shall be maintained a common seniority list of Naib Qasids, Chowkidars, Sweepers etc. with reference to the dates of their acquiring the FA/ F.Sc qualification.  Provided that-  (i) if two or more officials have acquired the FA/F.Sc qualification in the same session, the inter se seniority in the lower post shall be maintained for the purpose of determining seniority in the higher post;  (ii) 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

(Handwritten signature)

				<p>promoted in preference to the senior official or officials:</p> <p>Provided further that the condition of FA/F.Sc or its equivalent qualification from a recognized Board as laid down at clause (a), shall not apply for a period of four years from the date of commencement of this Notification to the existing matriculate incumbents of the post of Naib Qasid, Chowkidar and Sweeper including holders of other equivalent posts for promotion to the post of Junior Clerk (BPS-11).</p>
7.	Driver.	<p>(a) Secondary School Certificate or equivalent qualification from a recognized Board; and</p> <p>(b) LTV license in case of light duty vehicle with at least five years' experience as such.</p>	18 to 40 years.	By initial recruitment.
8.	Naib Qasid.	Preferably literate.	18 to 40 years.	By initial recruitment.
9.	Chowkidar.	Preferably literate.	18 to 40 years.	By initial recruitment.
10.	Sweeper.	Preferably literate.	18 to 40 years.	By initial recruitment.

SECRETARY TO  
GOVERNMENT OF KHYBER PAKHTUNKHWA  
HOME AND TRIBAL AFFAIRS DEPARTMENT

Endst: number.even dated 07<sup>th</sup> October, 2020.

Copy forwarded to:

1. The Secretary to Government of Khyber Pakhtunkhwa, Establishment Department.
2. The Secretary to Government of Khyber Pakhtunkhwa, Finance Department.
3. The Secretary to Government of Khyber Pakhtunkhwa, Law, Parliamentary Affairs & Human Rights Department.
4. Registrar, Peshawar High Court, Peshawar.
5. The Member Inspection Team/Focal Person, Peshawar High Court.
- ✓ 6. All the Administrative Judges, Anti-Terrorism Courts, Khyber Pakhtunkhwa. *Peshawar*
7. The Manager, Government Printing & Stationery Department, Shami Road, Peshawar for publication in the Government Gazette. He is requested to supply 10 gazette copies to this Department.
8. PS to Secretary Home Department, Khyber Pakhtunkhwa.

*Arshad Khan*  
(Arshad Khan)  
Section Officer (Prosecution)  
091-9210541  
*07/10/2020*

Promotion --- 4(b)(i) --- Jurisdiction as  
--- fitness to hold a particular post  
falls in the domain of DPC/PSB

50/50, 6

6/36/20

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Service Appeal No. 12449/2020

Date of Institution : ... 21.10.2020

Date of Decision : ... 25.02.2021

Kifayatullah, Tehsildar, Peshawar.

Deputy District Attorney  
Khyber Pakhtunkhwa  
(Appellant)  
Khyber Pakhtunkhwa  
Services Tribunal Peshawar

VERSUS

The Govt. of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat,  
Peshawar and two others. ... (Respondents)

Present:

MR. KHALID REHMAN, --- For Appellant.  
Advocate

MR. MUHAMMAD RASHEED, --- For respondents.  
Deputy District Attorney

MR. MIAN MUHAMMAD --- MEMBER (Executive)  
MR. HAMID FAROOQ DURRANI, --- CHAIRMAN

JUDGEMENT.

MIAN MUHAMMAD, MEMBER (E):- The instant service appeal has been instituted under Section-4 of the Khyber Pakhtunkhwa Services Tribunal Act, 1974, against the impugned notification dated 02.07.2020 whereby the appellant stands deferred for promotion to PMS (BS-17) and the impugned appellate order dated 22.09.2020 vide which departmental appeal of the appellant was turned down.

FACTS.

02. Brief facts leading to the service appeal are that the appellant was initially appointed as Naib Tehsildar (BS-14) through Public Service Commission in 2009



who was then promoted to the post of Tehsildar (BS-16) on 17.1.2019. The Provincial Selection Board in its meeting dated 09.06.2020 deferred the promotion case of the appellant on the ground that CPLA of the respondent departments was pending in the Apex court and his promotion will be decided after outcome of the CPLA. The appellant feeling aggrieved with the notification dated 02.07.2020, preferred departmental appeal which was rejected by the competent authority on 22.09.2020, hence, the instant service appeal before the Services Tribunal on 21.10.2020.

03. We have heard the arguments of learned counsel for the appellant as well as Deputy District Attorney for respondents and perused the record thoroughly.

#### ARGUMENTS.

04. Learned counsel for the appellant contended that Provincial Selection Board has made CPLA as basis for deferment of the appellant's promotion to higher post in BS-17 (PMS). Background of the CPLA is that the appellant had been removed from service on disciplinary proceedings and the Khyber Pakhtunkhwa Services Tribunal reinstated him in service through its judgement dated 20.11.2015 in service appeal No. 1099/2014 against which the respondent-department subsequently filed CPLA in the august Supreme Court of Pakistan and which is still pending there. It was further argued that the PSB could not convene its scheduled meeting on 20.02.2020 when the appellant was on the panel of officers for consideration to be promoted to BS-17 in Provincial Management Service. It was therefore not his fault and as such was eligible for promotion from that date due to availability of vacancy falling in quota reserved for promotion at that very point of time. As a result of not

convening meeting of the PSB, 123 direct recruitees in BS-17 (PMS) recommended by the Public Service Commission were notified on 29.05.2020 rendering the appellant to become junior to them. He pleaded that as per principle, vacancy in a cadre or service group will have to be filled from promotion quota first and then in direct or initial quota. He quoted Section-9 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule-7(3) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules 1989 as well as para-V(a) of the Promotion Policy and submitted that deferment is recommended when inter-seniority is disputed/subjudice, disciplinary/departmental proceedings are pending or PER dossier of an officer is incomplete. The appellant was not hit by any of the category of deficiency and as such he was by all means eligible for promotion to BS-17. More so even in subsequent PSB meeting held on 09.06.2020 he was deferred on the ground that CPLA was pending in the Apex court and his earlier promotion as Tehsildar on 17.01.2019 was also conditional subject to the said CPLA. This is again an illegal and illogical ground and the appellant has been condemned unheard because no case of litigation could be held as a Bar to deprive him of promotion which is a vested right of the appellant. He quoted some other officers such as Fazal Hussain, Ghulam Habib, Atta Ur Rehman and Habib Arif etc who were recommended by the PSB despite the fact that their CPLA was pending before the Apex court at relevant point of time. To strengthen his arguments the learned counsel for the appellant placed reliance on order No. XX of Supreme Court Rules 1980, 1993 SCMR 2258, 2006 SCMR 1938 and 2010 PLC (C.S) 760.

05. Learned Deputy District Attorney, contrary to the arguments of learned counsel for the appellant, raised preliminary objection on maintainability of the

appeal under Section-4 (b)(i) and contended that determining the suitability of an officer for a particular post falls in the domain of DPC/PSB and as such the Services Tribunal has no jurisdiction on such issues to be adjudicated upon. It was further argued that the appellant has been promoted even to BS-16 as Tehsildar on 17.01.2019 on conditional basis because of pending CPLA in the august Supreme Court of Pakistan and second conditional promotion to BS-17 is not only unreasonable, but also not covered under the relevant law, rules and promotion policy. He also raised objection on the contention of learned counsel for appellant with regard to the notification of direct recruits dated 29.05.2020 mainly on the ground that it has neither been assailed nor impugned in the present memo of appeal. Similarly, 123 private respondents in notification dated 29.05.2020 have not been made party for the purpose of joinder and non-joinder and the service appeal has inner defects and liable to be dismissed even on ground of merits. Reliance was placed on case law reported as 2005 SCMR 1742, PLD 2008 Supreme Court 769.

### CONCLUSION.

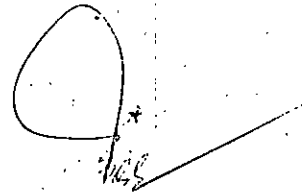
06. Without touching the facts, circumstances and merits of the case the question of jurisdiction comes in the way of adjudication under Section-4 (b)(i) which stipulates that:-

(b) "no appeal shall lie to a Tribunal against an order or decision of a departmental authority determining--  
(i) the fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher post or grade.

We understand that the Provincial Selection Board met on 09.06.2020 to determine the fitness or otherwise of the officers on penal for consideration to be promoted to next higher scale i.e from BS-16 to BS-17 and scrutiny of the documents/service

record was the prime and sole criteria before the PSB which the forum did take into consideration before making its recommendations to the competent Authority for approval. As this Tribunal is hit by the above mentioned provision of law, the service Appeal in hand is therefore, dismissed. Parties are left to bear their respective costs. File be consigned to the record room.

ANNOUNCED  
25.02.2021



(MIAN MUHAMMAD)  
MEMBER(E)



(HAMID FAROOQ DURRANI)  
CHAIRMAN

9/7/2021 D.B. Salah-u-Din Sabir

Sajad Ali :- AT.C court.

P/7 - one post vacant.

Two post filled on basis of initial  
CP/8/P/9)

Basit prasad

Sehail Pr appointed in other dept  
originally Mr. Norullah N/O

was printed from -

one post is vacant now.

P/11 Rules.

Sam well qualified - the senior most.

1993 SCMR 2258-C.

DDA - No original / Appellate order  
2006 SCMR 1632

Appeal Rules - 3 -

Rebuttal - no other authority.

brother of the petitioner as well as Tanvir Ahmed Khan, the petitioner. The latter was produced as P.W.2 and thus, rightly of the view that he proved the list. The gold ornaments were wrongly excluded by the learned trial Court. On the case were very much mentioned in the list Exh.P.2 which stands already proved. Such ornaments could not be considered as a gift to wife because gifts are given by the husband. The list contained only those articles which were given by the parents of the lady at the time of marriage, which always is a part of dowry. Rather the entire dowry is a gift for the lady from the parents.

4. All the three Courts having rightly appreciated the evidence and having arrived at correct conclusion, there being no force in the instant petition, it is hereby dismissed and leave to appeal refused.

S.A.K./A-88/S

Leave refused.

2005 S C M R 1742

[Supreme Court of Pakistan]

Present: Javed Iqbal and Muhammad Nawaz Abbasi, JJ.

ABID HUSSAIN SHERAZI---Petitioner

versus

SECRETARY M/O INDUSTRIES AND PRODUCTION,  
GOVERNMENT OF PAKISTAN, ISLAMABAD---Respondent

Civil Petition No.898 of 2004, decided on 27th July, 2005.

(On appeal from the judgment dated 29-1-2004 of Federal Service Tribunal, Islamabad, passed in Appeal No.1034(K) of 1999).

(a) Civil Service---

---Promotion---Principles---Promotion is neither a vested right nor it can be claimed with a retrospective effect---Whenever there is a change of grade or post for the better, there is an element of selection involved which is promotion and it is not earned automatically, but under an order of the competent Authority to be passed after consideration of comparative suitability and the entitlement of those incumbents---Promotion or pro forma promotion by civil servant can be claimed under the law which can be considered when question of promotion is taken up---Civil servant, cannot call upon the Service Tribunal to direct the Department to fill the promotion post forthwith or

2005 Abid Hussain Sherazi v. Secretary, M/O Industries & Production (Javed Iqbal, J) 1743

on a particular date and not to keep the post vacant or under consideration. [pp. 1744, 1745] A, B & C

Muhammad Umar Malik v. Federal Service Tribunal PLD 1987 SC 172; Government of the Punjab v. Muhammad Awain Shahid 1991 SCMR 696 and Muhammad Yousaf v. Chairman, Railway Board/Secretary 1999 SCMR 1559 ref.

(b) Constitution of Pakistan (1973)---

---Art. 25---Equality of citizens---Article 25 of the Constitution guarantees a similarity of treatment and not identical treatment---Protection of equal laws does not mean that all laws must be uniform, it means that among equals the law should be equal and should be equally administered and that the like should be treated alike, and that there should be no denial of any special privilege by reason of birth, creed or the like and also equal subjection of all individuals and classes to the ordinary law of the land. [p. 1745] D

Om Prakash v. The State AIR 1955 All. 275; Balochistan Bar Association v. Government of Balochistan PLD 1991 Quetta 7; Zakaria v. Trustees of the Port of Karachi PLD. 1968 Kar. 73; Abdul Fatah v. Government of Hyderabad AIR 1953 Hyd. 100 and Sheoshankar v. State of Government of Madhya Pradesh AIR 1951 Nag. 58 ref.

F.K. Butt, Advocate Supreme Court and Ejaz Muhammad Khan Advocate-on-Record (absent) for Petitioner.

Nemo for Respondents.

Date of hearing: 27th July, 2005.

JUDGMENT

JAVED IQBAL, J.--- This petition for leave to appeal is directed against the judgment, dated 29-1-2004 passed by learned Federal Service Tribunal, Islamabad, whereby the appeal preferred on behalf of petitioner has been dismissed.

2. Precisely stated the facts of the case as enumerated in the judgment impugned are to the effect that "the appellant was appointed as LDC in BPS-5 in the Department of Explosives, Karachi on 15-7-1986 and was promoted as UDC in BPS-7 on 20-12-1989 and later promoted to the post of Assistant on 10-8-1994. Appellant submitted request for antedation of promotion from the date he became eligible for promotion which was recommended by the respondent's Chief Inspector vide his OM No.PF-280/411, dated 26-9-1997 but was rejected vide respondent's memorandum dated 10-9-1999 on the ground that his appeal for antedation of promotion was not covered under section 22(2) of the Civil

Deputy District Attorney  
Khyber Pakhtunkhwa  
Service Tribunal Peshawar

6/36/20

of 1973. Learned counsel for the appellant stated that due rejection of his request for antedation of promotion the appellant has been rendered junior to Mr. Muhammad Hashim Raza, Assistant who was surplus in IACP where was working as Key Punch Operator (K.P.O.) and while absorbing him in the respondent-Organization it was clearly mentioned to him in the letter dated 12-4-1994 that he would be treated as junior most in the Department from the date of joining of service". After rejection of the request of petitioner for antedation of promotion, a representation was made by him which was rejected by the Competent Authority. Being aggrieved, the learned Federal Service Tribunal was approached by way of appeal which has been dismissed by means of judgment impugned, hence this petition.

3. Heard Mr. F.K. Butt, learned Advocate Supreme Court on behalf of petitioner at length who mainly contended that the petitioner has been denied of his vested right because he was entitled to get promotion as Assistant (B-11) from the date when the vacancy occurred and no fault whatsoever can be attributed to the petitioner for his belated promotion which was made two years after due date. It is also contended that the petitioner has been discriminated and various other officials were promoted with retrospective effect causing serious prejudice to the petitioner. It is also contended that the denial of antedation promotion amounts to violation of the provisions as contained in Article 25 of the Constitution of Islamic Republic of Pakistan.

4. We have carefully examined the respective contentions as agitated on behalf of petitioner and perused the relevant record with eminent assistance of learned Advocate Supreme Court as well as the judgment impugned. It is well-settled by now that promotion is neither a vested right nor it could be claimed with retrospective effect. It is to be noted that petitioner has not claimed pro forma promotion but retrospective promotion from the date when the vacancy had occurred i.e. on 19-12-1992 which, according to learned Advocate Supreme Court on behalf of petitioner, should have filled either on the same date i.e. 19-12-1992 or at the most within a period of two or three months.

5. We have considered the prime contention as mentioned hereinabove which is nothing more but a wishful thinking having no nexus whatsoever with the ground realities. By no stretch of imagination the vacant vacancy could have been filled on the date of occurrence in view of the time consuming formalities such as subjective assessment of the incumbent concerned, collection of ACR dossiers, their comparative study and convening the meeting of Departmental Promotion Committee (DPC). It transpired from scrutiny of record that meeting of DPC was held on 10-8-1994 and the petitioner was promoted as Assistant (B-11).

There is no cavil to the proposition that "there is no vested right in promotion or rules determining eligibility for promotion. Wherever there is a change of grade or post for the better, there is an element of selection involved that is promotion and it is not earned automatically, but under an order of the competent Authority to be passed after the consideration of the comparative suitability and entitlement of those incumbents". Muhammad Umar Malik v. Federal Service Tribunal PLD 1987 SC 172; Government of the Punjab v. Muhammad Awain Shahid 1991 SCMR 696.

6. It also hardly needs any explanation that "as regards claim to promotion or pro forma promotion, what the civil servant could claim under the law was, that he should be considered when question of promotion was taken up. Civil servant, could not call upon the Service Tribunal to direct the Department to fill the promotion post forthwith or on a particular date and not to keep it vacant or under consideration". Muhammad Yousaf v. Chairman, Railway Board/Secretary 1999 SCMR 1559.

7. Besides that what has been stated above, the petitioner has not impleaded all the seniors which could have been affected by any order passed in this petition and thus this petition being incomplete deserves dismissal on this score alone. It is noteworthy that the appeal preferred on behalf of petitioner before learned Federal Service Tribunal was also barred by time for the simple reason that petitioner was promoted on 10-8-1994, who made various representations to the Competent Authority which could not have been done and the petitioner should have approached learned Federal Service Tribunal within stipulated period if his first representation was not decided within 90 days by the Competent Authority as there is no provision of law whereby various representations/appeals could have been made to the Competent Authority. The petitioner had approached the learned Federal Service Tribunal after a lapse of about five years, which cannot be ignored. We are mindful of the fact that learned Federal Service Tribunal had not dilated upon this aspect of the matter but on the contrary found that the appeal was filed before it on 11-10-1999 with a delay of one day which is not correct as the petitioner should have approached the learned Federal Service Tribunal well in time as mentioned hereinabove. The petitioner has failed to substantiate the factum of "discrimination" by producing any cogent and concrete evidence. It is worth-mentioning that petitioner's Department had mentioned in an unequivocal manner while furnishing their comments that no promotion with retrospective effect was made. There is no reason whatsoever to disbelieve the view point as canvassed by the respondent-Department in parawise comments. The learned Advocate Supreme Court on behalf of petitioner has ignored the fact that while pressing the provisions as contained in Article 25 of the

stitution of Islamic Republic of Pakistan that "the Article guarantees a similarity of treatment and not identical treatment. The protection of equal laws does not mean that all laws must be uniform. It means that among equals the law should be equal and should be equally administered and that the like should be treated alike, and that there should be no denial of any special privilege by reasons of birth, creed or the like and also equal subjection of all individuals and classes to the ordinary law of the land Om Prakash v. The State AIR 1955 All. 275; Balochistan Bar Association v. Government of Balochistan PLD 1991 Quetta 7; Zakaria v. Trustees of the Port of Karachi PLD 1968 Kar. 73; Abdul Fatah v. Government of Hyderabad AIR 1953 Hyd. 100 and Sheoshankar v. State of Government of Madhya Pradesh AIR 1951 Nag. 58.

In the light of what has been discussed hereinabove, the question of violation of Article 25 of the Constitution of Islamic Republic of Pakistan does to arise. The petition being meritless is dismissed and leave refused.

M.B.A./A-170/S

Leave refused.

2005 S C M R 1746

[Supreme Court of Pakistan]

Present: Rana Bhagwandas and Saiyed Saeed Ashhad, JJ

Mst. SHAHIDA MAQSOOD—Petitioner

versus

PRESIDENT OF PAKISTAN and another---Respondents

C.P.L.A. No.829-K of 2003, heard on 21st June, 2005.

Constitution of Pakistan (1973)---

---Art. 199(1)(a)---Constitutional jurisdiction of High Court---Scope---Territorial jurisdiction of High Court---Impugned action of the authority should have been taken by it within the territorial jurisdiction of the High Court, for exercise of its jurisdiction---High Court has power to issue a direction to a person performing functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not permitted by law to do or to do anything he is required by law to do within its territorial jurisdiction. [p. 1750] A

Asghar Hussain v. Election Commission of Pakistan PLD 1968 SC 387 and Sandalbar Enterprise (Pvt.) Ltd. v. Central Board of Revenue PLD 1997 SC 334 distinguished.

(Rana Bhagwandas, J)

Sabir Din v. Government of Pakistan 1979 SCMR 555; Messrs Al-Iblagh Limited, Lahore v. The Copyright Board, Karachi 1985 SCMR 758 and Amin Textile Mills (Pvt.) Ltd. v. Islamic Republic of Pakistan PLD 1998 SCMR 2389 and Anoud Power Generation Limited v. Federation of Pakistan PLD 2001 SC 340 ref.

Kunwar Mukhtar Ahmed, Advocate Supreme Court and Ahmadullah Faruqi, Advocate-on-Record for Petitioner.

Nadeem Azhar Siddiqui, Deputy Attorney-General of Pakistan for Respondents on Court notice.

Date of hearing: 21st, June, 2005.

### JUDGMENT

RANA BHAGWANDAS, J.--- This petition is directed against an order of the Sindh High Court, dated 21-8-2003, passed in C.P. No.D-1375 of 2002 dismissing the same for lack of territorial jurisdiction.

2. Facts of the case appear to be that the petitioner addressed a letter, dated 31-10-2000 to the Collector Sales Tax and Central Excise, Rawalpindi informing him about the evasion of excise duty by Pakistan Telecommunication Company Limited, Headquarters, Islamabad (hereinafter referred to as P.T.C.L.). While referring to the balance sheets of the Company for the years 1996-97 to 1998-99, petitioner made a disclosure of fact that the P.T.C.L. was not paying Central Excise Duty in respect of overseas calls made from Pakistan at the prescribed rate of excise duty thereby causing huge loss of revenue. As per calculation of the petitioner, P.T.C.L. evaded an amount of Rs.16,95,22,57,150 in the years 1996-97, 1997-98 and 1998-99. During the course of arguments before the Federal Tax Ombudsman, petitioner's husband, as representative, claimed that a sum of Rs.4,91,517.25 was short deposited by way of Central Excise Duty. She also alleged that P.T.C.L. was guilty of evasion of Central Excise Duty on international calls terminating in Pakistan amounting to Rs.3,520,555,450. The third item of evasion of Central Excise Duty was in respect of trade debts, which, according to the balance sheets up to 30-6-1999 stood at Rs.24,58,96,17,000. She further complained that duty was not being charged on services rendered through telex, telephone and other services. As no response was received by the petitioner from the Collector, she filed a complaint before the Federal Tax Ombudsman which was disposed of with the observation that the Collectorate of Sales Tax had already taken action and settled the matter up to June, 1998 with P.T.C.L. whereas action for subsequent period was in hand. Consequently, petitioner was not found entitled to any reward.



Service Appeal # 6136/2020

**DISTRICT ATTORNEY  
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR**

SATTAD ALI vs Govt.

(PASHEED  
- DDA)

Maintainability

As there is no original or appellate order,  
hence Service Appeal is not maintainable.

Section 4, 7 Service Tribunal Act 1974  
✓ 2006 SCMR 1630  
✓ S/Appeal 19/2011 Dated 15.12.2017 (EDO)

Appellant have not filed departmental appeal to  
appellate authority, hence instant appeal is barred  
by law & not maintainable.

[Rule 3 Civil Servants (Appeal) Rules 1986.

Eligibility for Promotion

There were 2 posts of Junior Clerk  
2 post  
1 post filled through Promotion from class-IV  
50% on basis of Seniority-cum-Fitness 40%  
1 post shall be filled through initial  
50% recruitment as per rules 60%.

[Anti Terrorism Courts Rules

Jurisdiction

Jurisdiction regarding Fitness for promotion barred

[Section 4(b)(i) KP Service Tribunal Act 1974  
Service Appeal # 12447/20 Dt. 25/2/2021

Promotion is not a vested right.

✓ PLD 2008 SC 395  
✓ 2005 SCMR 1742

under section 161 Cr.P.C. It was never done. It does not bear any date. The inventory recorded Exh P.A/3 on the basis of Exh P.A/2. That it was handed over to him by some unknown person. Details of the aforesaid background Exh P.A/3 is a word-by-word reproduction of Exh P.A/2. Khair Muhammad had remained unconscious for quite some time and was so unconscious even when the Investigating Officer contacted him in the Lady Reading Hospital Peshawar. The strong possibility cannot be ruled out, as rightly held by the High Court, that it could be the result of consultations and prompting by the relatives. This statement also cannot be relied upon as genuine dying declaration.

Next is the identification of the accused on the spot. The torch in the light of which the accused were identified, was produced before the Investigating Officer sixteen days after the occurrence. The one Haid Akhar, who produced the same before the Investigating Officer was never produced at the trial and hence there is no satisfactory evidence that the torch produced in the given circumstances was the same, available at the time of occurrence. It was never found on the spot along with other recoveries though there was no occasion for the injured and the deceased to have carried it along. There is no evidence as to how it came to the possession of Haid Akhar, who was not produced.

In nutshell, we are convinced that the dying declarations in the instant case are not worthy of credence and cannot be placed reliance upon in a case of capital charge. We are also convinced that it was an unseemly occurrence where the identity of the accused could not be established. The respondents, therefore, were rightly acquitted. The petition being no force in the petition, it is hereby dismissed and leave to appeal refused.

M.H.H-10/SC

2006 S C M R 1630

[Supreme Court of Pakistan]

Present: Ch. Ijaz Ahmad and Syed Jamshed Ali, JJ

EXECUTIVE DISTRICT OFFICER SCHOOLS AND LITERACY, DISTRICT DIR LOWER and others--- Petitioners

versus

QAMAR DOST KHAN and others--- Respondents

Civil Petitions Nos. 786, 787 and 788-P of 2004, decided on 8th May 2005

Adam Khan, Advocate for petitioners

presence of the... admitted the... ded statement

North West Frontier Province Service Tribunals Act (I of 1974)--- Appeal before Service Tribunal--- Maintainability--- It is only a final order or appellate, against which an appeal lies to North West Frontier Province Service Tribunal. [p. 1635] A.

North West Frontier Province Service Tribunals Act (I of 1974)--- Ss. 4 & 7--- North West Frontier Province Service Tribunals Rules, 1974--- Service Tribunal--- Jurisdiction--- Direction to departmental authorities--- Non-availability of any final order--- Grievance of civil servants was that after their appointment as P.T.C teachers, they were not posted anywhere--- Service Tribunal allowed appeals filed by civil servants and directed departmental authority to issue posting orders--- Grievance raised by Authorities was that Service Tribunal did not have any jurisdiction to issue direction to them and appeal filed by civil servants was not maintainable as there was no final order--- Validity--- Powers conferred in R227 of North West Frontier Province Service Tribunals Act, 1974, were not intended to enlarge the scope of S.4 of North West Frontier Province Service Tribunals Act, 1974--- Such power was available to Service Tribunal while hearing an appeal and question of maintainability of an appeal was to be answered with reference to Ss.4 & 7 of North West Frontier Province Service Tribunals Act, 1974--- There had not been such an order within the contemplation of S.4 of North West Frontier Province Service Tribunals Act, 1974, which could be brought under challenge before North West Frontier Province Service Tribunal--- Relief claimed by civil servants through appeals was in the nature of a command to departmental authority to give them suitable posting--- In essence, the civil servants were seeking writ of Habeas Corpus which jurisdiction the Service Tribunal did not possess--- Question for leave to appeal was converted into appeal and judgment rendered by Service Tribunal was set aside--- Appeal was allowed. [1635, 1637] B & H

Petition dismissed

Secretary to the Government of N.W.F.P., Agriculture Department v. Asmatullah Khan and others 2003 PLC (C.S.) 1289; Muhammad Amjad Malik v. Pakistan State Oils Co. Ltd. and others 2003 PLC (C.S.) 318; Muhammad Zahid Iqbal and others v. D.E.O. Peshawar and others 2006 SCMR 285; Muhammad Sarwar v. The State Education Board and others 1969 SC 278 and Board of Intermediate and Secondary Education, Peshawar through its Chairman and another v. Mst. Salma Afroz and 2005 PLD 1992 SC 263 ref.

Secretary to the Government of N.W.F.P., Agriculture Department v. Asmatullah Khan and others 2003 PLC (C.S.) 1289; Muhammad Amjad Malik v. Pakistan State Oils Co. Ltd. and others 2003 PLC (C.S.) 318; Muhammad Zahid Iqbal and others v. D.E.O. Peshawar and others 2006 SCMR 285; Muhammad Sarwar v. The State Education Board and others 1969 SC 278 and Board of Intermediate and Secondary Education, Peshawar through its Chairman and another v. Mst. Salma Afroz and 2005 PLD 1992 SC 263 ref.

Jurisdiction---

Question of jurisdiction--- Raising for the first time...

*Talib*  
*Syed Jamshed Ali*

*original or appellate case*

*2030/2005*  
*6136/20*

Court—Principles—Question of jurisdiction goes to the root of case and can be raised for the first time even while appearing before the highest Court of country. Only constraint where a party could be said to have estopped to raise question of jurisdiction would be where the party itself invoked jurisdiction of Court or Tribunal and on the result being unfavourable, repudiates its own action and throws challenge to jurisdiction of such Court or Tribunal but even in such a case, it depends on facts of that case. Yet another case where question of jurisdiction may not be entertained for the first time before superior Courts could be when the equities are plainly against the person raising objection and upheld consequence would be to perpetuate all ill-gotten gain or to bring about a plainly unjust consequence. Objection to jurisdiction should not be shut even though raised for the first time before Supreme Court. [p. 1636] C & E

#### (d) Administration of justice—

Duty of Court or Tribunal—Non-engaging of counsel by a party. Effect—Court or Tribunal has to decide lis before it in accordance with law and parties are not bound to engage a counsel. Justice according to law is the duty of Court, which can neither be abdicated in favour of whims or ignorance of litigants or their lawyers nor it be avoided or evaded on the pretext that a question of law going to the root of the case was not raised promptly. [p. 1636] D

#### (e) Jurisdiction—

Territorial or pecuniary jurisdiction—Scope—Objection to territorial or pecuniary jurisdiction is regulated by Civil Procedure Code, 1908 and Sui Valuation Act, 1887, respectively. [p. 1637] F

#### (f) Jurisdiction—

Conferring of jurisdiction—Principle—Jurisdiction is conferred either Constitution or law. Consent or acquiescence has never been considered as a factor conferring jurisdiction. [p. 1637] G

Maulvi Aziz-ur-Rehman v. Ahmad Khan and others 2004 SC 1622; Ali Muhammad and others v. Muhammad Shafi and others 1996 SC 292; Shagufta Begum v. The Income-Tax Officer, Circle Zone-B, Lahore PLD 1989 SC 360 and Haji Abdullah Khan and others v. Nisar Muhammad Khan and others PLD 1965 SC 690, rel.

M. Saeed Khan, A.A.-G. for Petitioners (in all cases).

Khushdil Khan Mohmand, Advocate Supreme Court and Adam Khan, Advocate-on-Record for Respondents (in all cases).

#### ORDER

SYED JAMSHED ALI, J.—This order shall dispose of Civil Petitions Nos 786, 787 and 788-P of 2004 because common questions of law and fact are involved therein. The facts of the cases are briefly noted hereunder.

Qamar Dost Khan, respondent in C.P. No. 786-P of 2004, Gul Zaman Khan, respondent in C.P. No. 787-P of 2004 and Saeed Anwar in C.P. No. 788-P of 2004 claimed to have been appointed as PTC teachers under separate orders dated 23-4-1998. Their grievance in the appeals before the N.W.F.P. Service Tribunal was that the departmental authorities were not issuing any posting order. Qamar Dost Khan, respondent in C.P. No. 786-P of 2004, stated to have made a representation on 4-12-1999 to the Incharge Monitoring Cell and a complaint and a departmental representation on 21-10-2002 for a suitable posting and then approached the learned N.W.F.P. Service Tribunal by filing appeals on 1-2-2003.

The appeals were contested on a number of grounds including that appeals were barred by time, and these were not maintainable as the respondents were not civil servants, since they had never taken over the charge of the post. On facts, the position taken was that the orders of appointment of the respondents were invalid and dubious. As far as respondents, Gul Zaman Khan, respondent in C.P. No. 787-P of 2004 and Saeed Anwar, respondent in C.P. No. 788-P of 2004, are concerned, apart from the objections noted above, an additional objection was taken that they were not duly qualified on the date of submission of the applications.

The learned Service Tribunal, however, relying on their own judgment in Appeal No. 2879 of 2000 titled Nasrullah v. D.E.O. (M) Primary, Dir Lower and others, allowed all the three appeals notwithstanding their observation that "it is the burden of respondent-department to verify the authenticity of the claims of the appellants through fresh departmental enquiry, if they so desire".

The learned Additional Advocate-General, submits that the departmental appeal lay only against a final order and in these cases there was no order to be assailed before the learned Service Tribunal. The respondents were not permitted to join the posts because their appointment orders were forged and bogus and, therefore, they never acquired the status of a civil servant to invoke section 4 of the N.W.F.P. Service Tribunals Act, 1974 and that the so-called departmental appeal was filed by Qamar Dost Khan on 21-10-2002 and was not against any order, it was for directing a posting. In the other appeals, he submits that no representation was filed, even it be

before the learned N.W.F.P. Service Tribunal. The relief claimed by the respondents through the appeal was in the nature of a command to the departmental authority to give them suitable posting. In essence, they were seeking assistance or writ of mandamus which jurisdiction the learned Tribunal did not possess.

8. The contention of the learned counsel for the respondents that the question of non-maintainability of the appeals before the learned Tribunal in the absence of a final order of the departmental authority not having been raised before the learned Tribunal, could not be allowed to be raised before this Court, has not impressed us for the reason that the question of jurisdiction goes to the root of the case and could be raised for the first time even while appealing before the highest Court of the country. It is a fundamental principle of law that a Court of Tribunal should decide the lit before it in accordance with law and parties are bound to engage a Counsel. Justice according to law is the duty of a Court which can neither be abdicated in favour of the whim or ignorance of the litigants or their lawyers, nor it be avoided or evaded on the pretext that a question of law going to the root of the case was not raised promptly. In making the above observations, I am fortified by the following observations of this Court in Muhammad Sarwar v. The State PLD 1969/SC 278

"It appears that the Judges were not properly advised, but it can be said that there is a well known adage that a Judge wears the law of the country on the sleeve of his robe."

The rule laid down was reiterated in Board of Intermediate and Secondary Education, Lahore through its Chairman and another v. Salma Afroz and 2 others PLD 1997/SC 263. The only constraint on a party could be said to be estopped to raise question of jurisdiction would be where the party itself invoked jurisdiction of Court or Tribunal and on the result being unfavourable repudiates his own act and throws challenge to the jurisdiction of the said Court or Tribunal. Even in such a case it will depend on the facts of that case. Yet in a case where question of jurisdiction may not be entertained for the first time before superior Courts could be when the equities are against the person raising objection and if upheld the consequence would be to perpetuate an ill gotten gain or to bring about a plainly unjust consequence. Examined on the basis of the above stated principles, we do not see that the objection to jurisdiction should be shut even if raised for the first time before this Court. We find yet another reason for permitting the objection to be raised and that is to clarify the mind of the learned Tribunal lest the impugned judgment

with the subject matter jurisdiction and not the territorial or personal jurisdiction. Objections to the said jurisdictions are provided respectively by the Code of Civil Procedure and the Suits Act.

We may also add that jurisdiction is conferred by either statute or law. Consent or acquiescence has never been considered a factor conferring jurisdiction. The judgments of this Court in support of the above view point are: Maulvi Aziz-ur-Rehman v. Ahmad and others 2004 SCMR 1622, Ali Muhammad and others v. Muhammad Shafi and others PLD 1996/SC 295, Shagufta Begum v. The Tax Officer, Circle XI, Zone-B, Lahore PLD 1989/SC 360 and Baullah Khan and others v. Nisar Muhammad Khan and others PLD 1965/SC 690.

Accordingly, these petitions are converted into appeals, are allowed and the judgment of the learned Service Tribunal is set aside.

Appeal allowed.

2006 S.C.M.R. 1637  
[Supreme Court of Pakistan]

Present: Javed Iqbal and Abdul Hamid Dogar, JJ

ATA ULLAH KHAN and others---Petitioners

versus

Mst. SURRAYA PARVEEN---Respondent

Petition No. 102 of 2005, decided on 13th March, 2006

(On appeal from the order, dated 2-12-2004 of the Lahore High Court, Lahore passed in Civil Revision No. 1461 of 2003)

Pre-emption Act (IX of 1990)---

Constitution of Pakistan (1973), Art. 185 (3)--- Superior right of pre-emption--- Shafi Khan and Shafi Jir--- Talb-i-Muwatibbat and Iqbal Shahad--- Proof--- Pre-emptor, on coming to know about sale on 20-12-2005, immediately disclosed her intention to pre-empt the suit land of village in presence of witnesses--- Sale was kept secret and pre-emptor had knowledge of pre-emptor after about two months and 24 days--- Factum was established and not rebutted--- Factum of sending notice to Iqbal Shahad on the same day i.e. 22-6-1995 after getting it attested by Iqbal Shahad and 10-12-1995 by Iqbal Shahad and 10-12-1995 by Iqbal Shahad and 10-12-1995 by Iqbal Shahad. Iqbal Shahad had categorically stated that she had superior right on the

6/36/20  
original/amended  
dismissed

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 19/2011

Date of Institution ... 30.12.2010

Date of Decision ... 15.12.2017

Mr. Abdul Waheed, SET, GHS No.3 Abbottbad.

... (Appellant)

VERSUS

1. The Executive District Officer, Elementary and Secondary Education, Abbottabad and 4 others.

... (Respondents)

MR. Khaled Rahman,  
Advocate

--- For appellant.

MR. MUHAMMAD RIAZ FAINDAKHEL,  
Assistant Advocate General

--- For respondents.

MR. AHMAD HASSAN,  
MR. MUHAMMAD AMIN KHAN KUNDI

... MEMBER (Executive)  
... MEMBER (Judicial)

JUDGMENT

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

FACTS

2. The brief facts are that the appellant was appointed SET on 29.07.1935. The appellant obtained M.Ed on 01.03.2001. As per policy of the government dated 13.07.2002, he was allowed three advance increments on getting higher qualification. That the Finance Department issued notification dated 30.03.2009 by allowing increments for untrained period to the entire teaching community, hence the appellant also benefited from the said notification and reached the maximum of BPS-16. In the light of notification dated 11.08.1991, the appellant



was entitled for personal pay, which has been denied to him. He filed departmental on 27.09.2010, but without any response, hence, the instant service appeal on 30.12.2010.

### ARGUMENTS

3. Learned counsel for the appellant argued that he was appointed as SET on 27.09.1985. That after qualifying M.Ed from Allama Iqbal Open University on 01.03.2001 three advance increments on higher professional qualification were granted/allowed to him vide notification dated 13.07.2002. The Finance Department vide notification dated 30.03.2009 allowed increments for untrained service period to all the teachers serving in the department. That the appellant also benefited from the aforementioned notification and reached the maximum of BPS-16 i.e Rs. 5490 on 01.12.2000. Resultantly increments granted on obtaining M.Ed to the appellant stood usurped. That pay of the appellant should have been fixed as personal pay in the light of notification of the Finance Department dated 11.08.1991. He filed departmental appeal on 02.09.2010 which was not decided within the statutory period, hence the instant service appeal. He further argued that judgment of this Tribunal dated 21.06.2006 passed in service appeal no. 846/2004 was implemented by the Finance Department vide letter dated 10.11.2008. Case of the appellant being identical in nature deserves similar treatment. Reliance was placed on 2005 SCMR 499, 2009 SCMR 01 and Peshawar High Court, Peshawar dated 03.06.2017 passed in writ petition no. 913-P/2014.

4. On the other hand learned Assistant Advocate General argued that a cursory reading of Section-4 of Service Tribunal Act 1974 shows that it is only against a final order, original or appellate that an appeal can be filed in Service

Tribunal. In the instant service appeal the appellant has not challenged any original or appellate order passed by a departmental authority and from which he is aggrieved. Appellant is seeking directions from this Tribunal to the respondents for grant of advance increment on getting higher qualification. Issuance of directions is not the job of Service Tribunal. Moreover, after promulgation of Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increment on Higher Qualification Act No. IX-2012, he is not entitled for advance increments. Reliance was placed on 1990 SCMR 1106, 2016 PLC 1042, 2006 SCMR 1630 and judgment of this Tribunal dated 20.09.2017 passed in service appeal no. 467/2012.

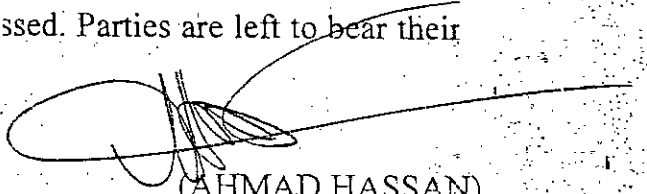
#### CONCLUSION.

5. This Tribunal deems it appropriate to first decide the issue of parameters given in Section-4 of Service Tribunal Act 1974 for filing service appeal which is reproduced below:-

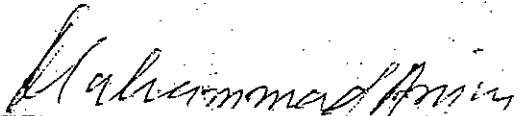
*"Any civil servant aggrieved by any order whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may; within days of the promulgation of such order to him, or within six months of the establishment of the appropriate Tribunal, whichever is later, prefer an appeal to the Tribunal."*

Learned counsel for the appellant when confronted on the above mentioned section of law conceded that no original or appellate order passed by the respondents is available to be challenged through the instant service appeal. As he has not challenged any departmental order but seeking directions from this Tribunal to the respondents which is beyond our jurisdiction. In these circumstances no effective remedy can be granted in favour of the appellant. In view of case law reported as 1990 SCMR 1106 the appeal is not maintainable. After having deliberated on the issue of jurisdiction there is hardly any need to touch the merits of the case.

6. As a sequel to above, the appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.



(AHMAD HASSAN)  
MEMBER.

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

ANNOUNCED  
15.12.2017





**TO BE SUBSTITUTED FOR THE SAME NUMBER AND DATE**

**GOVERNMENT OF THE KHYBER PAKHTUNKHWA  
HOME AND TRIBAL AFFAIRS DEPARTMENT**

*Peshawar, dated the 29<sup>th</sup> September, 2020.*

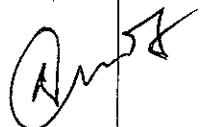
**NOTIFICATION**

**No. SO(Prosecution)/HD/1-5/2020/Vol-I:**

in pursuance of the provisions contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Home and Tribal Affairs Department, in consultation with the Establishment Department and the Finance Department, hereby lays down the method of recruitment, qualification and other conditions, specified in column Nos, 3 to 5 of the Appendix to this Notification, which shall be applicable to various posts of Anti-Terrorism Courts, as specified in column No. 2 of the said Appendix.

**APPENDIX**

1.	2.	3.	4.	5.
S.#	Nomenclature of post.	Minimum qualification for appointment by initial recruitment.	Age limit.	Method of recruitment.
1.	Superintendent.	—	—	By promotion, on the basis of seniority-cum-fitness, from amongst Assistants, Senior Scale Stenographer and Computer Operators, with at least five years service as such.  <b>Note:</b> For the purpose of promotion there shall be maintained a joint seniority list of Assistants, Senior Scale Stenographer and Computer Operators.

2.	Senior Scale Stenographer	<p>(a) At least Second Class Bachelor's Degree, from a recognized University;</p> <p>(b) a speed of seventy (70) words per minute in Shorthand and forty five (45) words per minute in typing;</p> <p>(c) In the districts where Urdu is the Court language, speed of thirty (30) words per minute in typing in Urdu as well; and</p> <p>(d) knowledge of computer in using MS Word, MS Excel.</p>	20-32 years	By Initial recruitment
3.	Assistant.	<p>At least Second Class Bachelor's Degree from a recognized University.</p> 	20 to 32 years.	<p>(a) Seventy-five percent (75 %) by promotion, on the basis of seniority-cum-fitness, from amongst Senior Clerks, with at least five (05) years service as Junior and Senior Clerks; and</p> <p>(b) twenty-five percent (25 %) by initial recruitment.</p>
4.	Computer Operator.	<p>At least-</p> <p>(a) Second Class Bachelor's Degree in Computer Science / Information Technology (BCS/ BIT four years) from a recognized University; or</p> <p>(b) Second Class Bachelor's Degree from a recognized University with one year Diploma in Information Technology from a recognized Board of Technical Education.</p>	20 to 32 years.	By initial recruitment.
5.	Senior Clerk.		----	By promotion, on the basis of seniority-cum-fitness, from amongst Junior Clerks with at

Deputy District Attorney  
Khyber Pakhtunkhwa  
Service Tribunal Peshawar

20/3/20  
6/3/20

Amir

6.	Junior Clerk.	At least- (a) FA/ F.Sc with second division or its equivalent qualification from a recognized Board; and  (b) a speed of thirty (30) words per minute in typing.	18 to 30 years.	least two years service as such.  (a) Forty (40%) per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Naib Qasids, Chowkidars and Sweepers including holders of other equivalent posts, who have passed FA/F.Sc Examination or its equivalent qualification from a recognized Board, with two years service as such; and  (b) sixty (60%) per cent by initial recruitment.  <u>Note:</u> For the purpose of promotion, there shall be maintained a common seniority list of Naib Qasids, Chowkidars, Sweepers etc. with reference to the dates of their acquiring the FA/ F.Sc qualification:  Provided that-  (i) if two or more officials have acquired the FA/F.Sc qualification in the same session, the inter se seniority in the lower post shall be maintained for the purpose of determining seniority in the higher post;  (ii) 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
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				<p>promoted in preference to the senior official or officials:</p> <p>Provided further that the condition of FA/F.Sc or its equivalent qualification from a recognized Board, as laid down at clause (a), shall not apply for a period of four years from the date of commencement of this Notification to the existing matriculate incumbents of the post of Naib Qasid, Chowkidar and Sweeper including holders of other equivalent posts for promotion to the post of Junior Clerk (BPS-11).</p>
7.	Driver.	<p>(a) Secondary School Certificate or equivalent qualification from a recognized Board; and</p> <p>(b) LTV license in case of light duty vehicle with at least five years' experience as such.</p>	18 to 40 years.	By initial recruitment.
8.	Naib Qasid.	Preferably literate.	18 to 40 years.	By initial recruitment.
9.	Chowkidar.	Preferably literate.	18 to 40 years.	By initial recruitment.
10.	Sweeper.	Preferably literate.	18 to 40 years.	By initial recruitment.

**SECRETARY TO**  
**GOVERNMENT OF KHYBER PAKHTUNKHWA**  
**HOME AND TRIBAL AFFAIRS DEPARTMENT**

Endst: number even dated 07<sup>th</sup> October, 2020.

**Copy forwarded to:**

1. The Secretary to Government of Khyber Pakhtunkhwa, Establishment Department.
2. The Secretary to Government of Khyber Pakhtunkhwa, Finance Department.
3. The Secretary to Government of Khyber Pakhtunkhwa, Law, Parliamentary Affairs & Human Rights Department.
4. Registrar, Peshawar High Court, Peshawar.
5. The Member Inspection Team/Focal Person, Peshawar High Court.
- ✓ 6. All the Administrative Judges, Anti-Terrorism Courts, Khyber Pakhtunkhwa. *Peshawar*
7. The Manager, Government Printing & Stationery Department, Shami Road, Peshawar for publication in the Government Gazette. He is requested to supply 10 gazette copies to this Department.
8. PS to Secretary Home Department, Khyber Pakhtunkhwa.

*Arshad Khan*  
(Arshad Khan)

Section Officer (Prosecution)

091-9210541

*07/10/2020*

Promotion --- 4(b)(i) --- Jurisdiction to  
--- fitness to hold a particular post  
falls in the domain of DPC/PSB

*(Handwritten signature)*

6/36/20

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Service Appeal No. 12449/2020

Date of Institution ... 21.10.2020

Date of Decision ... 25.02.2021

Kifayatullah, Tehsildar, Peshawar.

*(Handwritten signature)*  
Deputy District Attorney  
Khyber Pakhtunkhwa  
(Appellant) v. Deputy District Attorney  
Khyber Pakhtunkhwa  
Service Tribunal Peshawar

VERSUS

The Govt. of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat,  
Peshawar and two others. ... (Respondents)

Present:

MR. KHALID REHMAN, --- For Appellant.  
Advocate

MR. MUHAMMAD RASHEED, --- For respondents.  
Deputy District Attorney

MR. MIAN MUHAMMAD --- MEMBER (Executive)  
MR. HAMID FAROOQ DURRANI, --- CHAIRMAN

JUDGEMENT.

MIAN MUHAMMAD, MEMBER (E):- The instant service appeal has been instituted under Section-4 of the Khyber Pakhtunkhwa Services Tribunal Act, 1974, against the impugned notification dated 02.07.2020 whereby the appellant stands deferred for promotion to PMS (BS-17) and the impugned appellate order dated 22.09.2020 vide which departmental appeal of the appellant was turned down.

FACTS.

02. Brief facts leading to the service appeal are that the appellant was initially appointed as Naib Tehsildar (BS-14) through Public Service Commission in 2009

who was then promoted to the post of Tehsildar (BS-16) on 17.1.2019. The Provincial Selection Board in its meeting dated 09.06.2020 deferred the promotion case of the appellant on the ground that CPLA of the respondent departments was pending in the Apex court and his promotion will be decided after outcome of the CPLA. The appellant feeling aggrieved with the notification dated 02.07.2020, preferred departmental appeal which was rejected by the competent authority on 22.09.2020, hence, the instant service appeal before the Services Tribunal on 21.10.2020.

03. We have heard the arguments of learned counsel for the appellant as well as Deputy District Attorney for respondents and perused the record thoroughly.

ARGUMENTS.

04. Learned counsel for the appellant contended that Provincial Selection Board has made CPLA as basis for deferment of the appellant's promotion to higher post in BS-17 (PMS). Background of the CPLA is that the appellant had been removed from service on disciplinary proceedings and the Khyber Pakhtunkhwa Services Tribunal reinstated him in service through its judgement dated 20.11.2015 in service appeal No. 1099/2014 against which the respondent-department subsequently filed CPLA in the august Supreme Court of Pakistan and which is still pending there. It was further argued that the PSB could not convene its scheduled meeting on 20.02.2020 when the appellant was on the panel of officers for consideration to be promoted to BS-17 in Provincial Management Service. It was therefore not his fault and as such was eligible for promotion from that date due to availability of vacancy falling in quota reserved for promotion at that very point of time. As a result of not

convening meeting of the PSB, 123 direct recruitees in BS-17 (PMS) recommended by the Public Service Commission were notified on 29.05.2020 rendering the appellant to become junior to them. He pleaded that as per principle, vacancy in a cadre or service group will have to be filled from promotion quota first and then in direct or initial quota. He quoted Section-9 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule-7(3) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules 1989 as well as para-V(a) of the Promotion Policy and submitted that deferment is recommended when inter-se-seniority is disputed/subjudice, disciplinary/departmental proceedings are pending or PER dossier of an officer is incomplete. The appellant was not hit by any of the category of deficiency and as such he was by all means eligible for promotion to BS-17. More so even in subsequent PSB meeting held on 09.06.2020 he was deferred on the ground that CPLA was pending in the Apex court and his earlier promotion as Tehsildar on 17.01.2019 was also conditional subject to the said CPLA. This is again an illegal and illogical ground and the appellant has been condemned unheard because no case of litigation could be held as a Bar to deprive him of promotion which is a vested right of the appellant. He quoted some other officers such as Fazal Hussain, Ghulam Habib, Atta Ur Rehman and Habib Arif etc who were recommended by the PSB despite the fact that their CPLA was pending before the Apex court at relevant point of time. To strengthen his arguments the learned counsel for the appellant placed reliance on order No. XX of Supreme Court Rules 1980, 1993 SCMR 2258, 2006 SCMR 1938 and 2010 PLC (C.S) 760.

05. Learned Deputy District Attorney, contrary to the arguments of learned counsel for the appellant, raised preliminary objection on maintainability of the



appeal under Section-4 (b)(i) and contended that determining the suitability of an officer for a particular post falls in the domain of DPC/PSB and as such the Services Tribunal has no jurisdiction on such issues to be adjudicated upon. It was further argued that the appellant has been promoted even to BS-16 as Tehsildar on 17.01.2019 on conditional basis because of pending CPLA in the august Supreme Court of Pakistan and second conditional promotion to BS-17 is not only unreasonable but also not covered under the relevant law, rules and promotion policy. He also raised objection on the contention of learned counsel for appellant with regard to the notification of direct recruitees dated 29.05.2020 mainly on the ground that it has neither been assailed nor impugned in the present memo of appeal. Similarly, 123 private respondents in notification dated 29.05.2020 have not been made party for the purpose of joinder and non-joinder and the service appeal has inner defects and liable to be dismissed even on ground of merits. Reliance was placed on case law reported as 2005 SCMR 1742, PLD 2008 Supreme Court 769.

### CONCLUSION.

06. Without touching the facts, circumstances and merits of the case the question of jurisdiction comes in the way of adjudication under Section-4 (b)(i) which stipulates that:-

**(b) no appeal shall lie to a Tribunal against an order or decision of a departmental authority determining—**  
**(i) the fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher post or grade.**

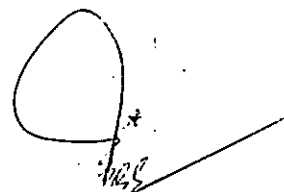
We understand that the Provincial Selection Board met on 09.06.2020 to determine the fitness or otherwise of the officers on penal for consideration to be promoted to next higher scale i.e from BS-16 to BS-17 and scrutiny of the documents/service

record was the prime and sole criteria before the PSB which the forum did take into consideration before making its recommendations to the competent Authority for approval. As this Tribunal is hit by the above mentioned provision of law, the service Appeal in hand is therefore, dismissed. Parties are left to bear their respective costs. File be consigned to the record room.

ANNOUNCED  
25.02.2021



(HAMID FAROOQ DURRANI)  
CHAIRMAN



(MIAN MUHAMMAD)  
MEMBER(E)

brother of the petitioner as well as Tanvir Ahmed Khan, the petitioner. The latter was produced as P.W.2 and thus, rightly of the view that he proved the list. The gold ornaments were wrongly excluded by the learned trial Court. On the case were very much mentioned in the list Exh.P.2 which stands already proved. Such ornaments could not be considered as a gift to wife because gifts are given by the husband. The list contained only those articles which were given by the parents of the lady at the time of marriage, which always is a part of dowry. Rather the entire dowry is a gift for the lady from the parents.

4. All the three Courts having rightly appreciated the evidence and having arrived at correct conclusion, there being no force in the instant petition, it is hereby dismissed and leave to appeal refused.

S.A.K./A-88/S

Leave refused.

2005 S C M R 1742

[Supreme Court of Pakistan]

Present: Javed Iqbal and Muhammad Nawaz Abbasi, JJ.

ABID HUSSAIN SHERAZI---Petitioner

versus

SECRETARY M/O INDUSTRIES AND PRODUCTION,  
GOVERNMENT OF PAKISTAN, ISLAMABAD---Respondent

Civil Petition No.898 of 2004, decided on 27th July, 2005.

(On appeal from the judgment dated 29-1-2004 of Federal Service Tribunal, Islamabad, passed in Appeal No.1034(K) of 1999).

(a) Civil Service---

---Promotion---Principles---Promotion is neither a vested right nor it can be claimed with a retrospective effect---Whenever there is a change of grade or post for the better, there is an element of selection involved which is promotion and it is not earned automatically, but under an order of the competent Authority to be passed after consideration of comparative suitability and the entitlement of those incumbents---Promotion or pro forma promotion by civil servant can be claimed under the law which can be considered when question of promotion is taken up---Civil servant, cannot call upon the Service Tribunal to direct the Department to fill the promotion post forthwith or

2005 Abid Hussain Sherazi v. Secretary, M/O Industries & Production (Javed Iqbal, J) 1743

on a particular date and not to keep the post vacant or under consideration. [pp. 1744, 1745] A, B & C

Muhammad Umar Malik v. Federal Service Tribunal PLD 1987 SC 172; Government of the Punjab v. Muhammad Awain Shahid 1991 SCMR 696 and Muhammad Yousaf v. Chairman, Railway Board/Secretary 1999 SCMR 1559 ref.

(b) Constitution of Pakistan (1973)---

---Art. 25---Equality of citizens---Article 25 of the Constitution guarantees a similarity of treatment and not identical treatment---Protection of equal laws does not mean that all laws must be uniform, it means that among equals the law should be equal and should be equally administered and that the like should be treated alike, and that there should be no denial of any special privilege by reason of birth, creed or the like and also equal subjection of all individuals and classes to the ordinary law of the land. [p. 1745] D

Om Prakash v. The State AIR 1955 All. 275; Balochistan Bar Association v. Government of Balochistan PLD 1991 Quetta 7; Zakaria v. Trustees of the Port of Karachi PLD.1968. Kar. 73; Abdul Fatah v. Government of Hyderabad AIR 1953 Hyd. 100 and Sheoshankar v. State of Government of Madhya Pradesh AIR 1951 Nag. 58 ref.

F.K. Butt, Advocate Supreme Court and Ejaz Muhammad Khan Advocate-on-Record (absent) for Petitioner.

Nemo for Respondents.

Date of hearing: 27th July, 2005.

JUDGMENT

JAVED IQBAL, J.--- This petition for leave to appeal is directed against the judgment, dated 29-1-2004 passed by learned Federal Service Tribunal, Islamabad, whereby the appeal preferred on behalf of petitioner has been dismissed.

2. Precisely stated the facts of the case as enumerated in the judgment impugned are to the effect that "the appellant was appointed as LDC in BPS-5 in the Department of Explosives, Karachi on 15-7-1986 and was promoted as UDC in BPS-7 on 20-12-1989 and later promoted to the post of Assistant on 10-8-1994. Appellant submitted request for antedation of promotion from the date he became eligible for promotion which was recommended by the respondent's Chief Inspector vide his OM No. PF-280/411, dated 26-9-1997 but was rejected vide respondent's memorandum dated 10-9-1999 on the ground that his appeal for antedation of promotion was not covered under section 22(2) of the Civil

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Deputy District Attorney  
Khyber Pakhtunkhwa  
Service Tribunal Peshawar

6/36/20

Constitution of Islamic Republic of Pakistan that "the Article guarantees a similarity of treatment and not identical treatment. The protection of equal laws does not mean that all laws must be uniform. It means that among equals the law should be equal and should be equally administered and that the like should be treated alike, and that there should be no denial of any special privilege by reasons of birth, creed or the like and also equal subjection of all individuals and classes to the ordinary law of the land Om Prakash v. The State AIR 1955 All. 275; Balochistan Bar Association v. Government of Balochistan PLD 1991 Quetta 7; Zakaria v. Trustees of the Port of Karachi PLD 1968 Kar. 73; Abdul Fatah v. Government of Hyderabad AIR 1953 Hyd. 100 and Sheoshankar v. State of Government of Madhya Pradesh AIR 1951 Nag. 58.

In the light of what has been discussed hereinabove, the question of violation of Article 25 of the Constitution of Islamic Republic of Pakistan does to arise. The petition being meritless is dismissed and leave refused.

M.B.A./A-170/S

Leave refused.

2005 S C M R 1746

[Supreme Court of Pakistan]

Present: Rana Bhagwandas and Saiyed Saeed Ashhad, JJ

Mst. SHAHIDA MAQSOOD---Petitioner

versus

PRESIDENT OF PAKISTAN and another---Respondents

C.P.L.A. No.829-K of 2003, heard on 21st June, 2005.

Constitution of Pakistan (1973)---

---Art. 199(1)(a)---Constitutional jurisdiction of High Court---Scope---Territorial jurisdiction of High Court---Impugned action of the authority should have been taken by it within the territorial jurisdiction of the High Court, for exercise of its jurisdiction---High Court has power to issue a direction to a person performing functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not permitted by law to do or to do anything he is required by law to do within its territorial jurisdiction. [p. 1750] A

Asghar Hussain v. Election Commission of Pakistan PLD 1968 SC 387 and Sandalbar Entérprise (Pvt.) Ltd. v. Central Board of Revenue PLD 1997 SC 334 distinguished.

Sabir Din v. Government of Pakistan 1979 SCMR 555; Messrs Al-Iblagh Limited, Lahore v. The Copyright Board, Karachi 1985 SCMR-758 and Amin Textile Mills (Pvt.) Ltd. v. Islamic Republic of Pakistan PLD 1998 SCMR 2389 and Anoud Power Generation Limited v. Federation of Pakistan PLD 2001 SC 340 ref.

Kunwar Mukhtar Ahmed, Advocate Supreme Court and Ahmadullah Faruqi, Advocate-on-Record for Petitioner.

Nadcem Azhar Siddiqui, Deputy Attorney-General of Pakistan for Respondents on Court notice.

Date of hearing: 21st, June, 2005.

### JUDGMENT

RANA BHAGWANDAS, J.--- This petition is directed against an order of the Sindh High Court, dated 21-8-2003 passed in C.P. No.D-1375 of 2002 dismissing the same for lack of territorial jurisdiction.

2. Facts of the case appear to be that the petitioner addressed a letter, dated 31-10-2000 to the Collector Sales Tax and Central Excise, Rawalpindi informing him about the evasion of excise duty by Pakistan Telecommunication Company Limited, Headquarters, Islamabad (hereinafter referred to as P.T.C.L.). While referring to the balance sheets of the Company for the years 1996-97 to 1998-99, petitioner made a disclosure of fact that the P.T.C.L. was not paying Central Excise Duty in respect of overseas calls made from Pakistan at the prescribed rate of excise duty thereby causing huge loss of revenue. As per calculation of the petitioner, P.T.C.L. evaded an amount of Rs.16,95,22,57,150 in the years 1996-97, 1997-98 and 1998-99. During the course of arguments before the Federal Tax Ombudsman, petitioner's husband, as representative, claimed that a sum of Rs.4,91,517.25 was short deposited by way of Central Excise Duty. She also alleged that P.T.C.L. was guilty of evasion of Central Excise Duty on international calls terminating in Pakistan amounting to Rs.3,520,555,450. The third item of evasion of Central Excise Duty was in respect of trade debts, which, according to the balance sheets up to 30-6-1999 stood at Rs.24,58,96,17,000. She further complained that duty was not being charged on services rendered through telex, telephone and other services. As no response was received by the petitioner from the Collector, she filed a complaint before the Federal Tax Ombudsman which was disposed of with the observation that the Collectorate of Sales Tax had already taken action and settled the matter up to June, 1998 with P.T.C.L. whereas action for subsequent period was in hand. Consequently, petitioner was not entitled to any reward.