

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.**

Service Appeal No. 673/2018

Date of Institution ... 16.05.2018

Date of Decision ... 16.06.2022

Mohsin Ali Khan, Assistant Director Mineral, Khyber Pakhtunkhwa  
Peshawar.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Mineral,  
Civil Secretariat, Peshawar and three others.

... (Respondents)

-----  
MR. AMJAD ALI,  
Advocate

--- For appellant.

MR. KABIRULLAH KHATTAK,  
Additional Advocate General

--- For respondents.

MR. SALAH-UD-DIN  
MR. MIAN MUHAMMAD

--- MEMBER (JUDICIAL)  
--- MEMBER (EXECUTIVE)

JUDGMENT:

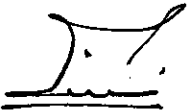
SALAH-UD-DIN, MEMBER:- Shortly stated the facts necessary for disposal of the instant service appeal are that the appellant was initially appointed as Assistant Director vide order dated 19.12.2009 upon recommendations of Public Service Commission. When working paper was prepared for promotion to the posts of Deputy Director (BPS-18), name of the appellant was also included in the same. The meeting of Provincial Selection Board for promotion of Assistant Director to the post of Deputy Director Minerals was held on 28.12.2017, however promotion of the appellant was deferred due to pendency of the case against him in Ehtisab Court. The departmental appeal of the appellant did not



yield any fruitful result, therefore, the appellant invoked the jurisdiction of this Tribunal for redressal of his grievance.

2. Notices were issued to the respondents, who submitted their para-wise reply, wherein they refuted the assertions made by the appellant in his appeal.

3. It is pertinent to mention herein that during the proceedings in the instant appeal on 14.09.2021, the appellant submitted an application for brining on record copies of Notification No. SO(E)/MDD/2-4/2019/3691-100 dated 13.05.2019 and Notification No. SO(E)/MDD/2-3/2019/11257-62 dated 14.07.2021, which was allowed and the aforementioned Notifications were made part of this appeal. According to the Notification No. SO(E)/MDD/2-4/2019/3691-100 dated 13.05.2019, the appellant has already been promoted to the post of Deputy Director, while according to Notification No. SO(E)/MDD/2-3/2019/11257-62 dated 14.07.2021, his seniority has been restored with effect from 05<sup>th</sup> January 2018 i.e the date when his juniors were promoted as Deputy Director on regular basis. Similarly, vide the aforementioned Notification dated 14.07.2021, the intervening period from 05.01.2018 to 13.05.2019 was held to be counted towards annual increment without arrears. Now the only grievance of the appellant is that the respondents were required to have promoted the appellant to the post of Deputy Director (BPS-18) with effect from 05.01.2018, when his colleagues and junior were promoted.



4. Arguments heard and record perused.

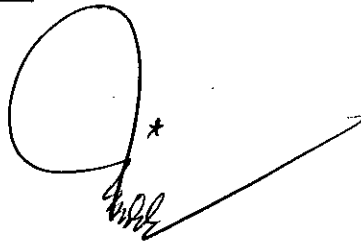
5. It is evident from the record that meeting of Provincial Selection Board was held on 28.12.2017 for promotion of Assistant Director (BPS-17) to the post of Deputy Director Minerals (BPS-18). In consequence of the aforementioned meeting of PSB, certain Assistant Directors (BPS-17) were promoted to the post of Deputy Directors Minerals (BPS-18), however the promotion of the appellant was deferred on the ground that a case was under process against him in Ehtisab Court. The appellant has now been promoted to the post of Deputy Director Minerals (BPS-18) vide Notification dated 13.05.2019 but with immediate effect and later

on another Notification dated 14.07.2021 was issued, whereby his seniority has been restored with effect from 5<sup>th</sup> January 2018, while the intervening period from 05.01.2018 to 13.05.2019 was held to be counted towards annual increments without arrears. It is an admitted fact that the appellant was merely deferred and not superseded; therefore, he was required to have been promoted with effect from 05.01.2018 i.e the date when his juniors were promoted. The appellant was also entitled to all consequential and back benefits.


6. In view of the above discussion, it is directed that the appellant shall be considered to have been promoted to the post of Deputy Director (BPS-18) with effect from 05.01.2018 with all consequential and back benefits. The competent Authority shall issue requisite corrigendum notification in this respect accordingly. The appeal in hand stands disposed of in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

16.06.2022

A handwritten signature in black ink, consisting of a large, stylized 'M' followed by a checkmark-like flourish.

(MIAN MUHAMMAD)  
MEMBER (EXECUTIVE)

A handwritten signature in black ink, consisting of a stylized 'S' followed by a horizontal line and a checkmark-like flourish.

(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

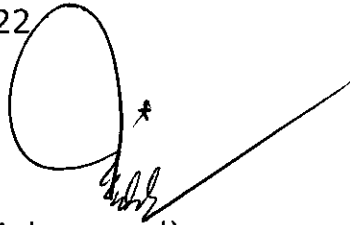
Service Appeal No. 673/2018

ORDER  
16.06.2022

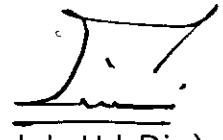
Appellant alongwith his counsel present. Mr. Sajid Anwar, Assistant alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, it is directed that the appellant shall be considered to have been promoted to the post of Deputy Director (BPS-18) with effect from 05.01.2018 with all consequential and back benefits. The competent Authority shall issue requisite corrigendum notification in this respect accordingly. The appeal in hand stands disposed of in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
16.06.2022



(Mian Muhammad)  
Member (Executive)



(Salah-Ud-Din)  
Member (Judicial)

14.04.2022

Junior to counsel for the appellant present. Mr. Kabirullah Khattak, Addl. AG for the respondents present.


Former made a request for adjournment on the ground that learned senior counsel for the appellant is not available today. Last opportunity is granted. To come up for arguments on 16.06.2022 before D.B.



(Rozina Rehman)  
Member (J)




Chairman



11.11.2021

Appellant alongwith his counsel Mr. Sardar Shoukat Hayat, Advocate, present. Mr. Said Muhammad, Assistant alongwith Mr. Noor Zaman Khattak, District Attorney for the respondents present.

Learned District Attorney stated at the bar that he is having no objection on making the notifications dated 13.05.2019 as well as 14.07.2021 as part of the appeal. In this respect, he endorsed no objection on the application filed by the appellant. The application is, therefore, allowed and the notifications dated 13.05.2019, as well as 14.07.2021 are made as part of the appeal. Learned counsel for the appellant sought time for arguments. Adjourned. To come up for arguments on 02.02.2022 before the D.B.


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

  
(Salah-Ud-Din)  
Member (J)

02.02.2022

Mr. Hafeezul Asad Advocate junior of learned counsel for the appellant present. Mr. Yousaf Khan Superintendent alongwith Mr. Naseer ud Din Shah Assistant Advocate General for the respondents present.

Junior of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is indisposed today. Adjourned. To come up for arguments on 14.04.2022 before the D.B.

  
(Rozina Rehman)  
Member (J)

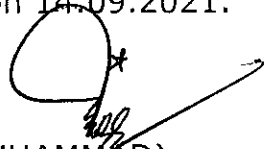
  
(Salah-Ud-Din)  
Member (J)

A.No. 673/2018  
Mohsin Ali Khan vs Govt

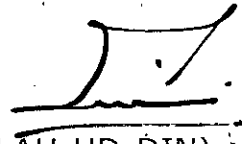
25.05.2021

Appellant alongwith counsel present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Former sought adjournment on the ground that he has not gone through the record. Adjourned. To come up for arguments before D.B on 14.09.2021.



(MIAN MUHAMMAD)  
MEMBER (EXECUTIVE)




(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

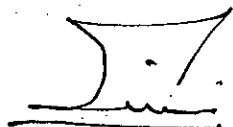
14.09.2021

Mr. Sardar Shoukat Hayat, Advocate, for the appellant present and submitted fresh Wakalat Nama, which is placed on file. Mr. Riaz Ahmed Painsakhel, Assistant Advocate General for the respondents present.

Learned counsel for the appellant submitted an application for bringing on record Notifications dated 13.05.2021 as well as 14.07.2021 on record and making the same as part of the appeal. Adjourned. To come up for reply as well as arguments on the application before the D.B on 11.11.2021.



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



(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

Restoration Application No. 462/2019

30.11.2020

Petitioner alongwith counsel and Addl. AG for the respondents present.

Instant application is with the prayer for restoration of appeal No. 673/2018, dismissed for non-prosecution on 16.12.2019.

It is noted in the application that on the relevant date the appellant/petitioner was busy in a funeral while his learned counsel was engaged in cases before the Honourable Peshawar High Court. There was a bomb blast near the High Court on that date which also caused panic amongst the advocates as well as litigants.

The application has been submitted on 20.12.2019 and the grounds agitated therein are worthy of credence in absence of the contrary. It is, therefore, allowed and the appeal is restored to its original number.

To come up for arguments on 10.02.2021 before the D.B.

  
(Mian Muhammad)  
Member(E)

  
Chairman

10.02.2021

Due to COVID-19, the case is adjourned for the same on 25.05.2021 before D.B.

  
READER



02.04.2020

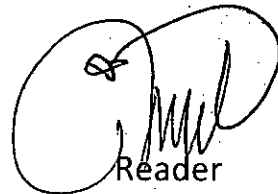
Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 29.06.2020 before D.B.



Reader

29.06.2020

Due to COVID19, the case is adjourned to 24.09.2020 for the same as before.



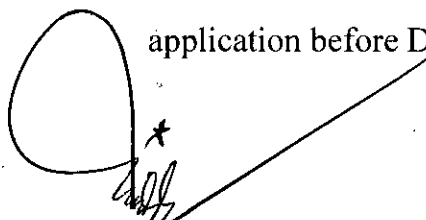
Reader

24.09.2020

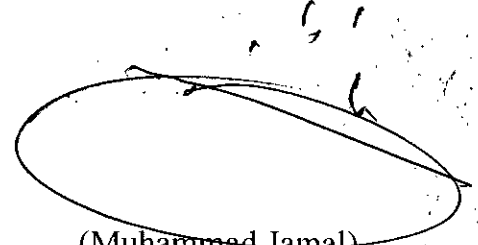
Appellant alongwith his counsel Mr. Hafeez Ul Asad Shangla, Advocate is present. Mr. Kabirullah Khattak, Additional Advocate General alongwith Mr. Muhammad Iqbal, Supdt for respondents is present.

Arguments on application for restoration of service appeal dismissed in default could not be heard due to non-availability of the original record which has to be requisitioned positively on the next date.

Adjourned to 30.11.2020 for reply and arguments on application before D.B.



(Mian Muhammad)  
Member (E)







(Muhammad Jamal)  
Member(J)

Form-A  
FORM OF ORDER SHEET

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

Appeal's Restoration Application No. 462/2019

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	20.12.2019	<p>The application for restoration of appeal No. 673/2019 submitted by Mr. Hafiz-ul-Asad Shangla Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This restoration application is entrusted to <del>S</del> Bench to be put up there on <u>26-02-20</u></p> <p style="text-align: right;"> CHAIRMAN</p>
2	26.02.2020	<p>Petitioner with counsel present. Notice of the present restoration application be issued to respondents for reply. Adjourn. To come up for reply and arguments on 02.04.2020 before D.B.</p> <p style="text-align: center;"> Member</p> <p style="text-align: right;"> Member</p>

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR

Civil Misc Application No 462 of 2019  
In Re:  
Service Appeal No 673/2018

Mohsin Ali Khan.....Applicant/Appellant

V E R S U S

Government of KP and others.....Respondents

I N D E X

S NO	DESCRIPTION OF DOCUMENTS	ANNEX	PAGES
1.	Application for restoration	-	01 - 03
2.	Affidavit	-	04
3.	Copy of the order dated 16-12-2019 of this Honourable Tribunal	'A'	05 - 06
4.	Wakalat Nama (in original)	-	07

Applicant/Appellant

Through:

~~HA~~  
(HAFEEZ UL ASAD SHANGLA  
Advocate,  
High Court, Peshawar  
Cell # 0314-5951897)

Dated: -20-12-2019

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR



Civil Misc Application No 462 of 2019  
In Re:  
Service Appeal No 673/2018

Mohsin Ali Khan, Assistant Director Mineral, Khyber Pakhtunkhwa,  
Peshawar.....Applicant/Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Mineral, Civil Secretariat, Peshawar
2. Chief Secretary (CS), Secretariat, Khyber Pakhtunkhwa, Peshawar
3. Chief Minister's KP Khyber Pakhtunkhwa in the capacity of Appellate Authority under KP Departmental Appeal Rules, 1986, Chief Minister's Secretariat, Khyber Pakhtunkhwa Peshawar
4. Provincial Selection Board for Promotion of Mineral Development Officer/Assistant Director (BPS-17) to Director (BPS-18) through Chief Secretary, CS Secretariat, Khyber Pakhtunkhwa, Peshawar.....Respondents

APPLICATION FOR THE RESTORATION OF ABOVE  
MENTIONED SERVICE APPEAL, WHICH WAS  
DISMISSED ON 16-12-2019 DUE TO NON-PROSECUTION

Respectfully Sheweth:-

The Applicant/Appellant humbly submits as under:-

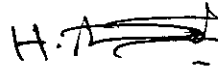
- 1) That the above titled service appeal was fixed for 16<sup>th</sup> December, 2019 which was dismissed for non-prosecution on the date fixed. (Copy of the order dated 16-12-2019 is attached as Annex 'A').
- 2) That one of the close relative of the Applicant/Appellant had died on the same date i.e. 16-12-2019 and Applicant/Appellant was busy in funeral, due to which the Applicant/Appellant failed to appear/attend this Honourable Tribunal on the date fixed.
- 3) That Counsel for the Applicant/Appellant was unable to appear before this Honourable Tribunal on the date fixed, due to his engagement in Honourable Peshawar High Court, Peshawar and also due to panic caused in Honourable High Court due to bomb blast on the date fixed 16-12-2019.
- 4) That the absence of Applicant/Appellant was not deliberate and intentional but due to the above mentioned reason.
- 5) That law, precedents and equity always favours the decision on merits but not on technicalities; hence appeal may graciously be restored.
- 6) That the Applicant/Appellant has got strong prima facie case and is very sanguine of its success.
- 7) That valuable right of Applicant/Appellant involved in the instant case and if the abovementioned appeal is not

restored, the Applicant/Appellant would suffer extreme irreparable loss; and would be forever deprived of his legal valuable rights.

- 8) That there exists no legal bar on acceptance of the instant application and this Honourable Tribunal has got ample powers to entertain and accept the instant application.
- 9) That others grounds will be raised at the time of arguments with the permission of this Honourable Court.

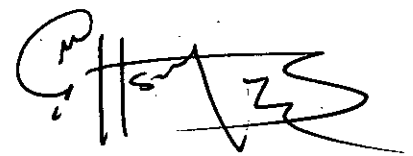
It is therefore, most humbly prayed that on acceptance of this Application, the above noted service appeal may kindly restored in larger interest of justice.

Applicant/Appellant  
Through:

  
(HAFEEZ UL ASAD SHANGLA)  
Advocate,  
High Court, Peshawar

Dated:-20-12-2019

Applicant/Appellant  
MOHSIN ALI KHAN



20/12/2019

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR

Civil Misc Application No \_\_\_\_\_ of 2019

In Re:

Service Appeal No 673/2018

Mohsin Ali Khan.....Applicant/Appellant

VERSUS

Government of KP and others.....Respondents

AFFIDAVIT

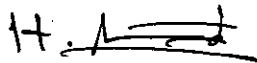
I, Mohsin Ali Khan, Assistant Director Mineral, Khyber Pakhtunkhwa, Peshawar, do hereby solemnly affirm and declare on oath that all the contents of this Application are true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this Honourable Court.

DEPONENT

CNIC # 13101-1058473-5

Cell # 0331-5705464

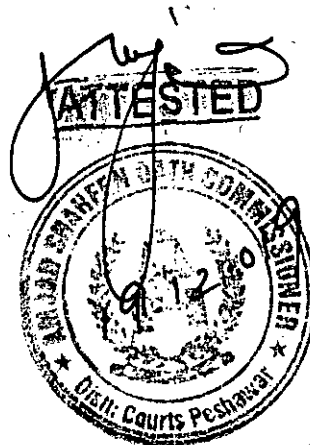
Identified by:-



(HAFEEZ UL ASAD SHANGLA)

Advocate

High Court, Peshawar



**BEFORE THE SERVICE TRIBUNAL KHYBER  
PAKHTUNKHWA PESHAWAR**



Amended Service Appeal No. \_\_\_\_\_/2019

Mohsin Ali Khan, Assistant Director Mineral,  
Khyber Pakhtunkhwa, Peshawar.....Appellant

**V E R S U S**

- 1) Govt. of Khyber Pakhtunkhwa through Secretary Mineral, Civil Secretariat, Peshawar
  - 2) Chief Secretary (CS), Secretariat, Khyber Pakhtunkhwa, Peshawar
  - 3) Chief Minister's KP Khyber Pakhtunkhwa in the capacity of Appellate Authority under KP Departmental Appeal Rules, 1986, Chief Minister's Secretariat, Khyber Pakhtunkhwa, Peshawar
  - 4) Provincial Selection Board for promotion of Mineral Development Officer/Assistant Director (BPS-17) to Director (BPS-18) through Chief Secretary, CS Secretariat, Khyber Pakhtunkhwa, Peshawar
- .....Respondents

AMENDED SERVICE APPEAL US 4 OF SERVICE TRIBUNAL ACT 1974, AGAINST THE ORDER DATED 28.12.2017 WHERE BY THE APPELLANT WAS ILLEGALLY AND UNLAWFULLY DEFERRED / DROPPED FROM PROMOTION TO THE POST OF DEPUTY DIRECTOR MINERALS (BPS 18), AGAINST WHICH THE DEPARTMENTAL APPEAL DATED 18.01.2018 WAS DISMISSED ON 08.05.2018 COMMUNICATED ON 22.05.2019.

Prayed in Appeal:

ON ACCEPTANCE OF THIS APPEAL THE RESPONDENTS MAY KINDLY BE DIRECTED TO CONSIDERED THE APPELLANT FOR PROMOTION TO THE POST OF DEPUTY DIRECTOR MINERALS BPS 18 FROM THE POST OF ASSISTANT DIRECTOR BPS 17 FROM THE

*Certified to be true copy*  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

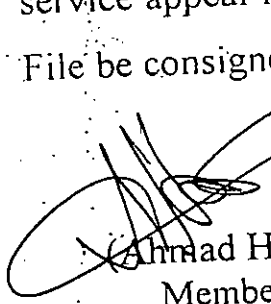



Appeal No. 673/2018  
Mohsin Ali vs Govt



16.12.2019

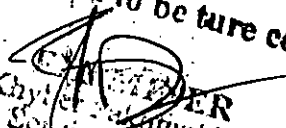
Appellant absent. Learned counsel for the appellant absent.  
Mr. Muhammad Jan learned Deputy District Attorney along with  
Muhammad Iqbal Superintendent present. Case called but neither  
the appellant nor his counsel turned up. Consequently the present  
service appeal is hereby dismissed in default. No order as to costs.  
File be consigned to the record room.

  
(Ahmad Hassan)  
Member

  
(Muhammad Hamid Mughal)  
Member

ANNOUNCED.  
16.12.2019

Date of Presentation of Copy ..... 17/12/19  
Number of Words ..... 800  
Copying Fee ..... 10  
Urgent .....  
Total ..... 10  
Name of Applicant .....  
Date of Presentation of Copy ..... 18-12-19  
Date of Delivery of Copy ..... 18-12-19


**Certified to be true copy**  
  
OFFICER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Appeal No. 673/2018,  
Mohsin Ali vs Govt

16.12.2019

Appellant absent. Learned counsel for the appellant absent. Mr. Muhammad Jan learned Deputy District Attorney alongwith Muhammad Iqbal Superintendent present. Case called but neither the appellant nor his counsel turned up. Consequently the present service appeal is hereby dismissed in default. No order as to costs. File be consigned to the record room.

  
(Ahmad Hassan)  
Member

  
(Muhammad Hamid Mughal)  
Member

ANNOUNCED.  
16.12.2019

28.06.2019

Clerk of counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Written reply on behalf of respondents not submitted. Learned Additional AG requested for further adjournment. Adjourned to 23.08.2019 for written reply/comments on amended appeal before S.B.

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

23.08.2019

Nemo for appellant. Addl. AG alongwith Sajid Anwar, Superintendent for the respondents present.


Representative of respondents submitted Parawise comments which are placed on file. The appeal is assigned to D.B for arguments on 15.11.2019. The appellant may submit rejoinder, within a fortnight, if so advised.

  
Chairman

15.11.2019

Learned counsel for the appellant present. Mr. Usman Ghani learned Deputy District Attorney for the respondent present. Learned counsel for the appellant submitted rejoinder which is placed on file and seeks adjournment. Adjourn. To come up for arguments on 16.12.2019 before D.B.


  
Member

  
Member

12.03.2019

Appellant alongwith his counsel present. Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for further proceeding as per preceding order sheet on 10.04.2019 before D.B.

  
(M. AMIN KHAN KUNDI)  
MEMBER

  
(M. HAMID MUGHAL)  
MEMBER

09.04.2019

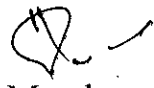
Appellant in person present. Addl: AG for respondents present. Appellant submitted amended appeal with spare sets which is placed on file. Notices be issued for submission of written reply/comments on amended appeal. Case to come up for written reply/comments on 13.05.2019 before S.B.

  
(Ahmad Hassan)  
Member

  
(M. Amin Khan Kundi)  
Member

13.05.2019

Appellant in person present. Notice of the amended appeal be issued to the respondents for 28.06.2019. Adjourn. To come up for further proceedings/reply to the amended appeal on the date fixed before S.B.

  
Member

27.11.2018

Appellant with counsel and Mr. Mr. Kabir Ullah Khattak learned AAG alongwith Mr. Said Muhammad Superintendent present. Representative of the respondents submitted reply on behalf of respondent No.1 & 2. Learned A.A.G stated that the respondent No.3 & 4 also relies on the same. Adjourn. To come up for rejoinder if any and arguments on 16.01.2019 before D.B.

  
Member

16.01.2019

Counsel for the appellant present. Mr. M. Jan, DDA for the respondents present.


At the time of institution of service appeal, the departmental appeal of the appellant was not decided, however, after institution of service appeal the same was decided on 08.05.2018 and the respondents have also annexed the departmental authority order with the comments. Therefore, counsel for the appellant is directed to challenge the same departmental authority order through amended appeal. To come up for amended appeal/arguments on 12.03.2019 before D.B.

  
(Ahmad Hassan)  
Member

  
(M. Amin Khan Kundi)  
Member

13.07.2018

Appellant in person present and requested for adjournment. Adjourned. To come up for preliminary hearing on 30.08.2018 before S.B.

  
(Muhammad Amin Kundi)  
Member

30.08.2018

Neither appellant nor his counsel present. Adjourned. To come up for preliminary hearing on 11.10.2018 before S.B.

  
(Ahmad Hassan)  
Member

11.10.2018

Counsel for the appellant Mr. Amjad Ali, Advocate present and heard in limine.

Contends that the appellant is senior but dropped from promotion on the allegation of enquiry which is utter violation of the judgment passed by the august Superior Courts.

Points raised need consideration. The appeal is admitted to regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments on 27.11.2018 before S.B. Counsel for the appellant submitted an application for interim relief. Notice of application be also given to the respondents for the date fixed.

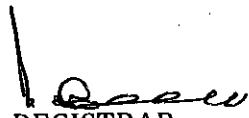

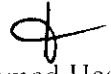
Appellant Deposited  
Security & Process Fee

  
Chairman

Form-A  
FORM OF ORDERSHEET

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

Case No. 673/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	16/05/2018	<p>The appeal of Mr. Mohsin Ali Khan presented today by Mr. Amjid Ali 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>
2-	18/05/18.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>31/05/18.</u></p> <p style="text-align: right;"> CHAIRMAN</p>
31.05.2018		<p>Counsel for the appellant present and seeks adjournment. Adjourned. To come up for preliminary hearing on 13.07.2018 before S.B.</p> <p style="text-align: right;"> (Ahmad Hassan) Member</p>

**BEFORE THE SERVICE TRIBUNAL KHYBER**  
**PAKHTUNKHWA PESHAWAR**

Service Appeal No. 673/2019

Mohsin Ali Khan.....Appellant

**V E R S U S**

Govt. of Khyber Pakhtunkhwa through Secretary Mineral, Civil Secretariat, Peshawar & others .....Respondents

**I N D E X**

S.No	Description of Documents	Annex	Pages
1.	Service Appeal & Affidavit		1-5
2.	Application for suspension & Affidavit		6-7
3.	Copies of working paper	"A"	8-11
4.	Copies of minutes of the meeting	"B"	12-13
5.	Copy of departmental appeal along with both covering letter	"C"	14-19
6.	Copy of grounds of writ petition and order dated 22.03.2018	"D"	20-28
7.	Copy of legal advice / opinion of Law Debarment	"E"	29
8.	Copy of the Para 4 & 5 of instructions	"F"	30-33
9.	Copy of the judgment	"G"	34-42
10.	Other Documents		43-44
11.	Wakalatnama		45

  
Appellant

Through

  
**ZARTAJ ANWAR**  
Advocate High Court



**BEFORE THE SERVICE TRIBUNAL KHYBER**  
**PAKHTUNKHWA PESHAWAR**

Amended Service Appeal No. \_\_\_\_\_/2019

Mohsin Ali Khan, Assistant Director Mineral,  
 Khyber Pakhtunkhwa, Peshawar.....**Appellant**

**V E R S U S**

- 1) Govt. of Khyber Pakhtunkhwa through Secretary Mineral, Civil Secretariat, Peshawar
- 2) Chief Secretary (CS), Secretariat, Khyber Pakhtunkhwa, Peshawar
- 3) Chief Minister's KP Khyber Pakhtunkhwa in the capacity of Appellate Authority under KP Departmental Appeal Rules, 1986, Chief Minister's Secretariat, Khyber Pakhtunkhwa, Peshawar
- 4) Provincial Selection Board for promotion of Mineral Development Officer/Assistant Director (BPS-17) to Director (BPS-18) through Chief Secretary, CS Secretariat, Khyber Pakhtunkhwa, Peshawar

.....**Respondents**

**AMENDED SERVICE APPEAL US 4 OF SERVICE TRIBUNAL ACT 1974, AGAINST THE ORDER DATED 28.12.2017 WHERE BY THE APPELLANT WAS ILLEGALLY AND UNLAWFULLY DEFERRED / DROPPED FROM PROMOTION TO THE POST OF DEPUTY DIRECTOR MINERALS (BPS 18), AGAINST WHICH THE DEPARTMENTAL APPEAL DATED 18.01.2018 WAS DISMISSED ON 08.05.2018 COMMUNICATED ON 22.05.2019.**

Prayed in Appeal:

**ON ACCEPTANCE OF THIS APPEAL THE RESPONDENTS MAY KINDLY BE DIRECTED TO CONSIDERED THE APPELLANT FOR PROMOTION TO THE POST OF DEPUTY DIRECTOR MINERALS BPS 18 FROM THE POST OF ASSISTANT DIRECTOR BPS 17 FROM THE**

**DATE WHEN HE WAS DEFERRED, THE RELUCTANCE ON THE PART OF THE RESPONDENTS BY NOT CONSIDERING / PROMOTING THE APPELLANT TO THE POST OF DEPUTY DIRECTOR MINERALS IS ILLEGAL UNLAWFUL AND WITHOUT LAWFUL AUTHORITY, AND BE PROMOTED FROM THE DATE OF DEFERMENT WITH ALL ARREARS AND BENEFITS.**

---

**Respectfully Sheweth:-**

Brief facts of the instant appeal are as under:

1. That the appellant was initially appointed as Assistant Director through Public Service Commission vide appointment order dated 19.12.2009 on regular basis in the respondents department.
2. That throughout appellant's service, appellant worked efficiently with no complaint what so ever by any person exists against the appellant.
3. That working paper of Provincial Selection Board was prepared for promotion to the post of Deputy Director (BPS-18), whereby the name of the appellant was included in the working paper. It is pertinent to mention that as per the working paper, the appellant along with other officers have been recommended to be promoted on regular basis. (Copies of working paper are Annexure "A").
4. That the meeting of the Provincial Selection Board for the promotion of Assistant Director to the post of Deputy Director Mineral (BPS-18) was held on 28.12.2017, whereby without lawful justification, the Provincial Selection Board deferred the case of the appellant for promotion due to pendency of the Ehtisab Court case. (Copies of minutes of the meeting are Annex "B").

5. That the appellant filed departmental appeal dated 18.01.2018, which is dispatched through proper channel through covering letter dated 19.01.2018 & 23.02.2018 to the respondent No.1, but no action was taken. (Copy of departmental appeal along with both covering letter are Annexure "C").
6. That being aggrieved, the appellant filed W.P.No.1287-P/2018 before the Hon'ble Peshawar High Court, Peshawar, which was disposed-off with the direction to the appellant to appear before respondent No.1, as his departmental appeal is still pending, and after providing opportunity to the appellant, the respondent No.1 will decide the appeal of appellant within thirty days. (Copy of grounds of writ petition and order dated 22.03.2018 are Annex "D")
7. That thereafter, appellant appeared before respondent No.1 and in the light of the direction of the Hon'ble High Court the departmental appeal of the appellant dated 18.01.2018 was dismissed on 08.05.2018 communicated on 22.05.2019 after the lapse of 90 days.
8. That the appellant, having no other efficacious remedy, approach this Hon'ble Tribunal on the following grounds:

**GROUND S:-**

- A. Because as per legal advice/ opinion of the Khyber Pakhtunkhwa Law Department dated 21.07.2016, promotion of a Civil Servant cannot be deferred due to pending disciplinary proceedings, hence, deferment of the appellant from promotion to BPS-18 is illegal and is against the opinion/ legal advice of the Law Department. (Copy of legal advice / opinion of Law Department is Annexure "E")
- B. Because as per Para-4 & 5 Of the Instructions of the Establishment Department dated 2006, promotion of a Civil Servant cannot be deferred on account of pending departmental proceedings, hence deferment of the appellant from promotion to BPS-18 is illegal and against instructions of the Establishment Department. (Copy of the Para 4 & 5 of instructions are Annexure "F")
- C. Because as per 2000 SCMR 645, PLJ 2015 Lahore 24 (DB), PLJ 2015 Lahore 45 and 2009 PLC (CS) 40, promotion of a

Civil Servant cannot be deferred due to pending departmental proceedings against the Civil Servant, hence deferment of the appellant from the promotion to BPS-18 is against the judgments of the Superior Courts. (Copy of the judgment is attached as Annexure "G").

- D. Because there is no bar for stoppage/ deferment of promotion of the appellant on ground of pending inquiry as appellant are to be presumed as innocent unless proved guilty.
- E. Because Ehtisab case is pending in the Court against the appellant including others. Formal charge was framed by the Court on 26.05.2016, and so far the statement of only one witness has been completed. In reference fourteen witnesses have been mentioned by the prosecution, which also indicates that conclusion of the case will consume sufficient time. The appellant will be debarred from benefits of promotion for such a long time without proof of any guilt.
- F. Because a person is presumed to be innocent until proved to be guilty by a competent Court of law. So far nothing has been proved by the department against the appellant. Till today the appellant is innocent in the eyes of law. Departmental Promotion Board fell into error by not recommending the appellant for promotion merely due to the pendency of a criminal case enquiry, hence the valuable rights of the appellant has been infringed.
- G. Because the august Supreme Court of Pakistan as well as different High Courts have clearly given the verdict in the subject matter that the pendency of an inquiry or even a presence of a minor penalty cannot come in the way of promotion of a civil servant as it is the right of every civil servant that he be considered for promotion along with his batch mates. It is pertinent to mention that in working paper, the appellant along with his other batch mates have been recommended for promotion on regular basis.
- H. Because the amended service appeal is filed on the directions of this Hon;able Tribunal when the departmental appeal of the appellant **DATED 18.01.2018 WAS DISMISSED ON 08.05.2018 COMMUNICATED ON 22.05.2019** after the lapse of 90 days.

It is, therefore humbly prayed that, the service appeal may kindly be accepted as prayed for.

*[Handwritten Signature]*  
Appellant

Through

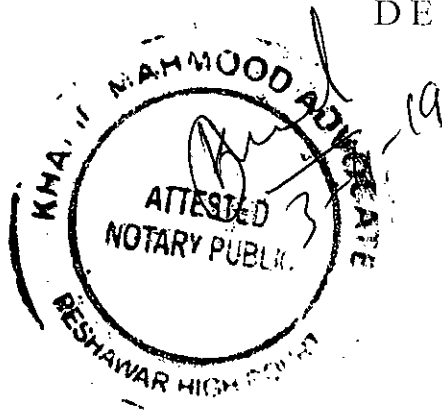
*[Handwritten Signature]*

ZARTAJ ANWAR  
Advocate, High Court

AFFIDAVIT

I, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Amended Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

*[Handwritten Signature]*  
DEPONENT



**BEFORE THE SERVICE TRIBUNAL KHYBER**  
**PAKHTUNKHWA PESHAWAR**

C.M. No. \_\_\_\_\_/2019

In

Amended Service Appeal No. \_\_\_\_\_/2019

Mohsin Ali Khan.....Appellant

**V E R S U S**

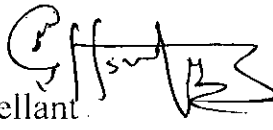
Govt. of Khyber Pakhtunkhwa through Secretary Mineral,  
 Civil Secretariat, Peshawar & others.....Respondents

**Application for interim relief to the effect  
 that, till the final decision of the final decision  
 of titled appeal, the respondents may  
 graciously be restrained from filling the post  
 of Deputy Director Mineral (BPS-18)**

Respectfully Sheweth:

1. That the above tilted service appeal is being filed before this Hon'ble Tribunal, along with instant application.
2. That the facts and ground of main appeal may kindly also be considered as part and parcel of this application.
3. That the applicant/ appellant has got a good prima facie and arguable case and is sanguine about its success.
4. That the balance of convenience also lies in favour of the applicant/ appellant.
5. That if the relief as prayed of in the heading of the application is not granted, the very purpose of accompanying appeal will became infructuos and the appellant would irreparable loss.

It is, therefore, respectfully prayed that on acceptance of this application, the respondents may graciously be directed not to fill the post of Deputy Director Mineral (BPS-18) till the final decision of the titled petition.

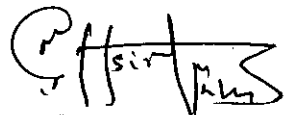
  
Appellant

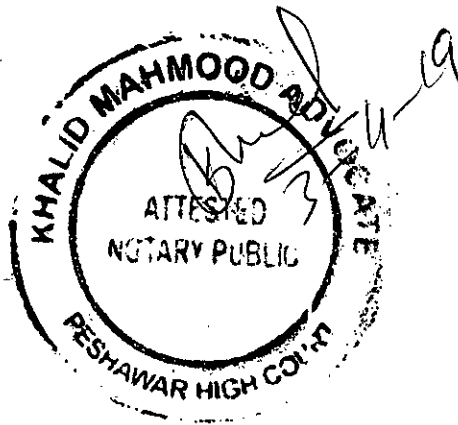
Through

  
**ZARTAJ ANWAR**  
Advocate High Court

**AFFIDAVIT**

I, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

  
DEPONENT



PSB-I

WORKING PAPER FOR PROVINCIAL SELECTION BOARD.

**Department:** DIRECTORATE GENERAL MINES AND MINERALS KHYBER PAKHTUNKHWA  
(GOVERNMENT OF KHYBER PAKHTUNKHWA MINERAL DEVELOPMENT  
DEPARTMENT).

1.	Nomenclature of the Post/Basic Scale	Deputy Director Technical (BS-18)															
2.	Service Group/Cader	Mines and Minerals															
3.	Sanction strength of cader	8 posts.															
4.		<table border="1"> <thead> <tr> <th>Direct</th> <th>Promotion</th> <th>Transfer</th> </tr> </thead> <tbody> <tr> <td>---</td> <td>100 %</td> <td>---</td> </tr> <tr> <td>---</td> <td>8 posts.</td> <td>---</td> </tr> <tr> <td>---</td> <td>1 post</td> <td>---</td> </tr> <tr> <td>---</td> <td>7 posts.</td> <td>---</td> </tr> </tbody> </table>	Direct	Promotion	Transfer	---	100 %	---	---	8 posts.	---	---	1 post	---	---	7 posts.	---
Direct	Promotion	Transfer															
---	100 %	---															
---	8 posts.	---															
---	1 post	---															
---	7 posts.	---															
i)	Percentage of share	---															
ii)	Nos of posts allocated To each category	---															
iii)	Present occupancy position	---															
iv)	No of vacancies in each category	---															
v)	How did the vacancy (ies) under Promotion quota accrue and since When?	The finance Department has created Two posts of Deputy Director Technical (BS-18) During the financial year 2016-17 and due to retirement of the incumbent and promotion, these posts have become with effect from 01/01/2015, 04/04/2015, 26/08/2015, 01/09/2016 and 20/06/2017 (Annexure-I, II, III, IV, V & VI).															
vi)	Recruitment Rules.	By Promotion on the basis of seniority-cum-fitness, from amongst the Assistant Directors (Technical) (Mining Engineer)/Geologist/Assistant Directors (Royalty) with at least five years service as such. (Annexure- VII).															
vii)	Required length of service	5-years service															
viii)	Whether to be promoted on Regular basis or appointed on Acting charges basis.	The officers in "Panel of officers for consideration" at S.No. 01 to 06 having the requisite length of service may be promoted on regular basis. While the officer at S.No. 07 of the same panel having short length of service about 04 months may be promoted on acting charge basis as per Rule-09 of part-II of appointment, promotion & transfer Rules-2011, (ESTA CODE revised addition-2011)															
ix)	Mandatory training, if any.	Not applicable															
x)	Minimum required Score on EI	60															

Signature \_\_\_\_\_

Designation \_\_\_\_\_

Date: \_\_\_\_\_



PANEL OF OFFICERS FOR CONSIDERATION.

No	Name of Officer with Qualification	Date of Birth	Date of 1 <sup>st</sup> entering into Govt. service	Date Of Appointment Promotion To BPS-17	Date of Regular Appointment promotion to the present scale	Whether Fulfilled the prescribed Length of Service	Quantified Scores	Missing PERs (if any)	Disciplinary Proceeding (if any)	Case (if any) In any court of Law including NAB Plan Bargaining with NAB	Mandatory Training for promotion	Research papers	Present posting	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
1	Mr. Saq Ahmad B.Sc Mining Engineering	15-04-1970	18-12-1994	20-12-2008	20-12-2005	Yes	76.25	Nil	Nil	Nil	Nil	Nil	Assistant Director (Technical) (BPS-17) H-Q Office	Eligible
2	Mr. Saq Aziz B.Sc L.L.B	20-05-1961	13-09-2008	20-12-2008	20-12-2005	Yes	77.50	Nil	1. The Minor Penalty "with holding of two increments for one year" was imposed vide notification No. SOE(MDD)4-S/2014 dated 04/08/2016. 2. The name of the officer has been included in embezzlement of royalty case in office of the Assistant Director Mineral Mardan vide Notification No. SOE(MDD)4-1 Vol-11/2017 dated 15/09/2017 and the enquiry is pending with the Enquiry Officer.	Nil	Nil	Nil	1. The Minor Penalty "with holding of two increments for one year" was imposed vide notification No. SOE(MDD)4-S/2014 dated 04/08/2016. 2. The name of the officer has been included in embezzlement of royalty case in office of the Assistant Director Mineral Mardan vide Notification No. SOE(MDD)4-1 Vol-11/2017 dated 15/09/2017 and the enquiry is pending with the Enquiry Officer.	

ATTACHED

Muhammad Zaheer Khan B.Sc Mining Engineering	19-01-1986	19-12-2009	19-12-2009	19-12-2009	Yes	78.57	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Eligible
Mr. Mehsin Ali Khan B.Sc Mining Engineering	15-05-21954	19-12-2009	19-12-2009	19-12-2009	Yes	78.57	Nil	Reference No. 4/2016 in the Court of Special Ehtesab Court-II Khyber Pakhtunkhwa, Peshawar against the officer regarding Feldspare case under file No. MDWALA/PL-Feldspare (100)/2007 is under process.	Nil	Nil	Nil	Nil	Reference No. 4/2016 in the Court of Special Ehtesab Court-II Khyber Pakhtunkhwa, Peshawar against the officer regarding Feldspare case under file No. MDWALA/PL-Feldspare (100)/2007 is under process.	
Mr. Ishaq Ahmad Saleem	06-04-1956	19-12-2009	19-12-2009	19-12-2009	Yes	72.86	Nil	The minor penalty of "Censure" has been imposed in the Departmental enquiry on the officer, vide letter No.9638-39/DGM/Admn/2942, dated 28/09/2015.	Certificate attached	Nil	H Q Office	The minor penalty of "Censure" has been imposed in the Departmental enquiry on the officer, vide letter No.9638-39/DGM/Admn/2942, dated 28/09/2015.		
Mr. Zaheer U'd Din S.A	01-04-1967	16-01-1991	12-04-2013	12-04-2013	Yes	78.00	Nil	1. Reference No. 4/2016 in the Court of Special Ehtesab Court-II Khyber Pakhtunkhwa, Peshawar against the officer regarding Feldspare case under file No. MDWALA/PL-Feldspare (100)/2007 is under process. 2. The name of the officer has been included in embezzlement of royalty case in office of the Assistant Director Mineral Mardan, vide Notification No. SOE(MDD)4-1/Vol-II/2017 dated 15/09/2017 and the enquiry is pending with the Enquiry Officer.	Nil	Nil	H Q Office	1. Reference No. 4/2016 in the Court of Special Ehtesab Court-II Khyber Pakhtunkhwa, Peshawar against the officer regarding Feldspare case under file No. MDWALA/PL-Feldspare (100)/2007 is under process. 2. The name of the officer has been included in embezzlement of royalty case in office of the Assistant Director Mineral Mardan, vide Notification No. SOE(MDD)4-1/Vol-II/2017 dated 15/09/2017 and the enquiry is pending with the Enquiry Officer.		

10

**ARREST**

	Mr. Hayat ur Rehman B.Sc Mining Engineering	27-02-1987	21-02-2013	21-02-2013	21-02-2013	No	77.50	Nil	Nil	Nil	Nil	Nil	ILQ Office	Not eligible due to non-completion of length of service
	Mr. Ihsan Ud Din B.Sc Mining Engineering	19-08-1987	26-08-2013	26-08-2013	26-08-2013	No		2013 2014 2015 2016	Nil	Nil	Nil	Nil	Mardan	Not eligible due to non-completion of length of service
	Mr. Qasim Jamal M.Sc Mineral Resource Management	01-06-1987	07-02-2014	07-02-2014	07-02-2014	No		2014 2015 2016	Nil	Nil	Nil	Nil	Mazehra	Not eligible due to non-completion of length of service
10	Mr. Asmat Ali B.Sc Mining Engineering	01-07-1985	07-03-2014	07-03-2014	07-03-2014	No		2014 2015	Nil	Nil	NE	Nil	D.I.Khan	Not eligible due to non-completion of length of service
11	Mr. Muhammad Rizq M.A	02-02-1966	11-02-1996	23-03-2015	23-09-2015	No		2015 2016	Nil	Nil	EN	Nil	Abbottabad	Not eligible due to non-completion of length of service

Certified that the officer at S.No 1 to 6 included in the panel are eligible for promotion in all respects. While the officer at S.No. 7 of the same panel having short length of service about four months may be Promoted on acting charge basis as per rule 9 of the part-II of appointment of promotion rules 2011 (ESTA CODE Revised addition 2011)

Signature: \_\_\_\_\_  
 Designation: \_\_\_\_\_  
 Date: 30/10/17

11

12  
ANNEX "B"

MEM NO (16)

MINERALS DEVELOPMENT DEPARTMENT  
(Meeting of PSB held on 28.12.2017)

*[Handwritten signature/initials]*

SUBJECT: PROMOTION OF ASSISTANT DIRECTOR BS-17 TO THE POST OF DEPUTY DIRECTOR MINERAL BS-18.



Secretary Mines & Minerals Development apprised the Board that due to creation, retirement and promotion, seven (07) posts of Deputy Director Technical BS-18 are lying vacant.

2. According to service rules the post is required to be filled as under:-

"By promotion, on the basis of seniority cum fitness, from amongst the Assistant Directors (Technical) (Mining Engineer)/Geologist/Assistant Directors (Royalty) with at least five years service as such."

3. The service record of the officer included in the panel was discussed as follows:

S.NO	NAME OF OFFICER	RECOMMENDATIONS OF THE BOARD
1.	Mr. Saqib Ahmad	His date of birth is 18.04.1970. He joined government service on 18.12.1994 and was promoted to BS-17 on 20.12.2008. No enquiry is pending against him. His service record upto 2016 is generally good.  The Board recommended the Officer for promotion to the post of Deputy Director BS-18 on regular basis. He will be on probation for a period of one year.
2.	Mr. Sher Ayaz	His date of birth is 20.05.1961. He joined government service on 13.09.1982 and was promoted to BS-17 on 20.12.2008. The Secretary Mines was directed to inform the enquiry Officer to speed up the instant enquiry and submit report at the earliest.  The Board recommended to defer his promotion.
3.	Mr. Muhammad Zulfakal Khan	His date of birth is 19.01.1986. He joined government service on 19.12.2009 in BS-17. No enquiry is pending against him. His service record upto 2016 is generally good.  The Board recommended the Officer for promotion to the post of Deputy Director BS-18 on regular basis. He will be on probation for a period of one year.
4.	Mr. Mohsin Ali Khan	His date of birth is 15.05.1984. He joined government service on 19.12.2009 in BS-17. According to Mineral

*[Handwritten signature]*

ATTESTED

		Development department a case is under process against him in Ehtisab Court.
5.	Mr. Ishlaq Ahmad Saleem	<p>The Board recommended to defer his promotion.</p> <p>His date of birth is 06.04.1986. He joined government service on 19.12.2009 in BS-17. He has been imposed a minor penalty of censure on 28.09.2015. No enquiry is pending against him. His service record upto 2016 is generally good.</p> <p>The Board recommended the Officer for promotion to the post of Deputy Director BS-18 on regular basis. He will be on probation for a period of one year.</p>
6.	Mr. Zahoor ud Din	<p>His date of birth is 01.04.1962. He joined government service on 16.01.1991 and was promoted to BS-17 on 12.04.2012. According to Mineral Development department he is included in Ehtisab Court case and an enquiry is pending against him.</p> <p>The Board recommended to defer his promotion.</p>
7.	Mr. Hayat ur Rehman	<p>His date of birth is 27.02.1987. He joined government service on 21.02.2013 in BS-17. He has not yet completed prescribed length of service for promotion. No enquiry is pending against him. His service record upto 2016 is generally good.</p> <p>The Board recommended the Officer for appointment to the post of Deputy Director BS-18 on acting charge basis.</p>

*Attested*

~~ATTESTED~~

14  
ANNEX C<sup>3</sup>  
11  
HON'BLE CHIEF MINISTER KHYBER PAKHTUNKHWA,  
PESHAWAR.

THROUGH PROPER CHANNEL

DEPARTMENTAL APPEAL AGAINST THE ORDER  
NO. SO(E)/MDD/2-4/2017 DATED PESHAWAR  
JANUARY 05, 2018 WHEREBY THE APPELLANT  
HAS BEEN DEFERRED FOR PROMOTION DUE  
TO PENDENCY OF A CRIMINAL CASE.

PRAYER IN APPEAL:-

BY ALLOWING THE INSTANT APPEAL AND  
DIRECTING THE COMPETENT AUTHORITY TO  
CONSIDER THE NAME OF THE APPELLANT FOR  
PROMOTION TO THE POST OF DEPUTY DIRECTOR  
(BPS-18) DIRECTORATE GENERAL, MINES AND  
MINERALS, KHYBER PAKHTUNKHWA PESHAWAR  
ON REGULAR BASIS, W.E.F FROM 05/01/2018,  
IRRESPECTIVE OF PENDENCY OF CRIMINAL CASE.

RESPECTFULLY SHEWETH;

Appellant submits as under:-

FACTS OF THE CASE:-

1. That the appellant Mr. Mohsin Ali Khan was appointed as Assistant Director through Public Service Commission on

~~AWESTED~~

19/12/2009 on regular basis in the Mineral department.

- 2. That throughout appellant service, appellant worked efficiently. No complaint by any person exists against the appellant.
- 3. That working paper of Provincial Selection Board was prepared for promotion to the post of Deputy Director (BPS-18), whereby the name of the appellant is included in the working paper. It is pertinent to mention that as per the working paper, the appellant along with other officers have been recommended to be promoted on regular basis (working paper marked as Annexure "B").
- 4. That meeting of the PSB for the promotion of Assistant Director to the post of Deputy Director Mineral (BPS-18) was held on 28/12/2017, whereby without lawful justification, the PSB deferred the case of the appellant for promotion due to pendency of an Ehtisab Court case (Minutes of meeting marked "C")
- 5. That feeling aggrieved against the impugned order, the instant appeal is filed before your honour for favorable consideration inter-alia on following grounds:- (Impugned order Annex; "A")

**ATTESTED**



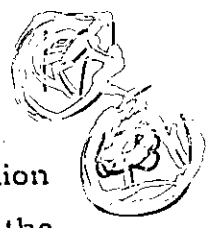
**GROUNDS:-**

- A) That Ehtisab case is pending in the court again appellant including others. Formal charge was framed by the court on 26/05/2016, and so far the statement of only one witness has been completed. In reference fourteen witnesses have been mentioned by the prosecution which also indicates that conclusion of the case will consume sufficient time. The appellant will be debarred from benefits of promotion for such a long time without proof of any guilt.
  
- B) That a person is presumed to be innocent until proved to be guilty by a competent court of law. So far nothing has been proved by the department against the appellant. Till today the appellant is innocent in the eyes of law. Departmental Promotion Board fell into error by not recommending the appellant for promotion merely due to the pendency of a criminal case, hence the valuable rights of the appellant have been infringed.
  
- C) That August Supreme Court of Pakistan as well as different High Courts have clearly given the verdict in the subject matter that the pendency of an inquiry or even a presence of a minor penalty cannot come in the way of promotion of a civil servant as it is the right of every civil servant that

**ATTACHED**

... promotion along with





his batch mates. It is pertinent to mention that in working paper (Annex "B"), the appellant along with his other batch mates have been recommended for promotion on regular basis. (Annexed as "D" to "F").

IN VIEW OF THE ABOVE, IT IS HUMBL Y  
PRAYED THAT ON ACCEPTANCE OF THE  
INSTANT APPEAL, DIRECTIONS BE GIVEN TO  
THE CONCERNED AUTHORITY TO CONSIDER  
THE APPELLANT FOR PROMOTION ON  
REGULAR BASIS TO THE POST OF DEPUTY  
DIRECTOR (BPS-18) MINERAL W.E.F 5/01/2018.  
(MARKED "A").

Peshawar dated: 18/01/2018

*[Handwritten Signature]*  
APPELLANT

*[Handwritten Signature]*  
18-1-18

~~ATTESTED~~

To,

The Director General,  
Mines and Minerals, Khyber Pakhtunkhwa,  
Peshawar.

Through:- Proper Channel

Subject: APPEAL OF MOHSIN ALI KHAN BEFORE THE HON'ABLE CHIEF  
MINISTER KHYBER PAKHTUNKHWA, PESHAWAR.

Kindly referred to the subject above and to state that the undersigned filed appeal against the order No. SO(E)/MDD/2-4/2017 dated 05-01-2018, whereby the appellant has been deferred for promotion due to pending of criminal case ~~and inquiry~~ on 18-01-2018, but since then no decision or any information has been communicated to the appellant.

It is therefore requested to kindly forward my application / reminder to the Competent Authority for further necessary action please.

MOHSIN ALI KHAN  
Assistant Director (Tech), 23/02/18  
H/Q Office, Peshawar.

Received  
23-2-18

~~ATTESTED~~

19



To,

The Director General,  
Mines and Minerals, Khyber Pakhtunkhwa,  
Peshawar.

Through:- Proper Channel

Subject: APPEAL OF MOHSIN ALI KHAN BEFORE THE HON'ABLE CHIEF  
MINISTER KHYBER PAKHTUNKHWA, PESHAWAR.

Kindly referred to the subject above and to state that the undersigned filed appeal against the order No. SO(E)/MDD/2-4/2017 dated 05-01-2018, whereby the appellant has been deferred for promotion due to pending of criminal case ~~and inquiry~~ on 18-01-2018, but since then no decision or any information has been communicated to the appellant.

It is therefore requested to kindly forward my application / reminder to the Competent Authority for further necessary action please.

MOHSIN ALI KHAN  
Assistant Director (Tech), 23/2/18  
H/Q Office, Peshawar.

Received  
Q.M.A.  
23-2-18

ATTACHED

20

ANNEX D

BEFORE THE HONOURABLE PESHAWAR HIGH COURT PESHAWAR

6



W.P.No. \_\_\_\_\_/2018

- 1. Zahoor-ud-Din, Assistant Director Mineral, KP Peshawar.
- 2. Mohsin Ali Khan, Assistant Director Mineral, KP Peshawar.

.....Petitioners

VERSUS

- 1. Govt. of Khyber Pakhtunkhwa Secretary Mineral, Civil Secretariat, Peshawar.
- 2. Chief Secretary (CS), Secretariat, Khyber Pakhtunkhwa, Peshawar.
- 3. Chief Minister's KP in the capacity of Appellate Authority under KP Departmental Appeal Rules, 1986, Chief Minister's Secretariat, Khyber Pakhtunkhwa Peshawar.
- 4. Provincial Selection Board for promotion of Mineral Development Officer/ Assistant Director (BPS-17) to Director (BPS-18) through Chief Secretary, CS Secretariat, Khyber Pakhtunkhwa, Peshawar.

.....Respondents

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973

~~ATTESTED~~

EXAMINER  
Peshawar High Court

28 MAR 2018

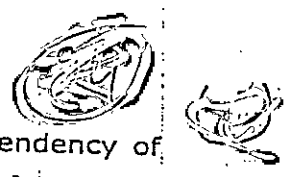
~~ATTESTED~~

RESPECTFULLY SHEWETH:-

1. That petitioner No.1 was Initially appointed as Royalty Inspector on 16.01.1991 on regular basis in the department and was later promoted to the post of Assistant Director on 12.04.2012, serving and posted as such in Mineral Development Department at Peshawar.
2. That petitioner No.2 was appointed as Assistant Director through Public Service Commission on 19.12.2009 on regular basis in the Mineral Department.
3. That throughout petitioners' service, petitioners worked efficiently. No complaint by any person exists against the petitioners.
4. That working paper of Provincial Selection Board was prepared for promotion to the post of Deputy Director (BPS-18), whereby the name of the petitioners was included in the working paper. It is pertinent to mention that as per the working paper, the petitioners alongwith other officers have been recommended to be promoted on regular basis (Copies of working paper are Annex "B")
5. That the meeting of the Provincial Selection Board for the promotion of Assistant Director to the post of Deputy Director Mineral (BPS-18) was held on 28.12.2017, whereby without lawful justification, the Provincial Selection Board deferred the case of

**ATTESTED**

**ATTESTED**  
 EXAMINER  
 Peshawar Legal Court  
 28 MAR 2018



the petitioners for promotion due to pendency of the Ehtisab Court case. (Copies of minutes of the meeting are Annex "C")

6. That the petitioners filed departmental appeal dated 18.01.2018, which is dispatched through proper channel through covering letter dated 19.01.2018 & 23.02.2018 to the respondent No.1, but not responded so far. (Copy of both departmental appeals alongwith both covering letters are Annex "D")

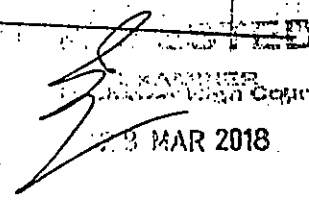
7. That finding no other efficacious remedy, the petitioners approach this hon'ble Court for following grounds:-

GROUNDS

A. Because as per legal advice/ opinion of the Khyber Pakhtunkhwa Law Department dated 21.07.2016, promotion of a Civil Servant cannot be deferred due to pending disciplinary proceedings, hence, deferment of the petitioners from promotion to BPS-18 is illegal and is against the opinion/ legal advice of the Law Department. (Copy of legal advice / opinion of Law Department is Annex "E")

B. Because as per Para-4 & 5 of the Instructions of the Establishment Department dated 2006, promotion of a Civil Servant cannot be deferred on account of pending departmental proceedings, hence deferment of the petitioners from promotion to BPS-18 is illegal and against instructions of the

**ATTESTED**

  
KABUL  
Ehtisab Court  
9 MAR 2018

Establishment Department. (Copy of the Para 4 & 5 of instructions are Annex "F")

C. Because as per 2000 SCMR 645, PLJ 2015 Lahore 24 (DB), PLJ 2015 Lahore 45 and 2009 PLC (CS) 40, promotion of a Civil Servant cannot be deferred due to pending departmental proceedings against the Civil Servant, hence deferment of the petitioners from the promotion to BPS-18 is against the judgments of the Superior Courts. (Copies of the judgments Ibid are Annex "G")

D. Because there is no bar for stoppage/ deferment of promotion of the petitioners on ground of pending inquiry as petitioners are to be presumed as innocent unless proved guilty.

E. Because the alleged so-called inquiry as initiated on 15.09.2017 against thirteen persons including the petitioners. According to notification, the said enquiry was to be completed within 30 days, the inquiry has not been concluded and is still in progress for more than four months with no completion in sight to ascertain the truth. It is also pertinent to mention that against the same charges, an FIR has been lodged against forty five persons excluding the petitioners. Petitioners are not charged in the FIR, which also shows the innocence of the petitioners with regard to the charges. (Copy FIR, charge sheet in Reference No.4/2016 is Annex "H & I")

F. Because Ehtisab case is pending in the Court against the petitioners including others. Formal

ATTESTED

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EXAMINER  
Peshawar High Court

28 MAR 2018

charge was framed by the Court on 26.05.2016, and so far the statement of only one witness has been completed. In reference fourteen witnesses have been mentioned by the prosecution, which also indicates that conclusion of the case will consume sufficient time. The petitioners will be debarred from benefits of promotion for such a long time without proof of any guilt.

G. Because a person is presumed to be Innocent until proved to be guilty by a competent Court of law. So far nothing has been proved by the department against the petitioners. Till today the petitioners are Innocent in the eyes of law. Departmental Promotion Board fell into error by not recommending the petitioners for promotion merely due to the pendency of a criminal case enquiry, hence the valuable rights of the petitioners have been infringed.

H. Because the august Supreme Court of Pakistan as well as different High Courts have clearly given the verdict in the subject matter that the pendency of an inquiry or even a presence of a minor penalty cannot come in the way of promotion of a civil servant as it is the right of every civil servant that he be considered for promotion alongwith his batch mates. It is pertinent to mention that in working paper (Annex "B"), the petitioners alongwith his other batch mates have been recommended for promotion on regular basis.

**ATTESTED**

EXAMINER  
Peshawar High Court

28 MAR 2018

**ATTESTED**



It is, therefore humbly prayed that, on acceptance of this writ petition, the respondents may kindly be directed to consider petitioners for promotion to BPS-18 (Deputy Director Mineral) from BPS-17 (Assistant Director) by deciding departmental appeals strictly in accordance with Law Department opinion dated 21.07.2016, Para-4.5 of the Instructions of the Establishment Department, Superior Courts judgments 2000 SCMR 645, PLJ 2015 Lahore 24 (DB), PLJ 2015 Lahore 45 and 2009 PLC (CS) 40, Civil Servant Act, 1973 and PMS Rules, 2007 within shortest possible time please.

**INTERIM RELIEF**

By way of interim relief, it is, prayed that, the respondents may graciously be directed not to fill the posts of Deputy Director Mineral (BPS-18) till the final decision of titled petition.

Petitioners

Through

Amjad Ali (Mardan)  
Advocate  
Supreme Court of Pakistan

**CERTIFICATE**

It is certify that, no such like writ petition has earlier been filed by the petitioner before this Hon'ble Court.

**LIST OF BOOKS**

1. Constitution of Pakistan, 1973
2. Other case laws as per need.

Advocate



**ATTESTED**

EXAMINER  
Peshawar High Court

28 MAR 2018

**ATTESTED**

*Ab*

**JUDGMENT SHEET  
PESHAWAR HIGH COURT, PESHAWAR  
JUDICIAL DEPARTMENT**



**Writ Petition No.1284-P of 2018  
With Interim Relief**

**JUDGMENT**

Date of hearing.....22-03-2018.....

Pctitioners: (ZAhoor-ud-Din and another) by Mr. Amjad Ali  
(Mardan), Advocate.

Respondents:(Government of Khyber Pakhtunkhwa and  
others) by Mr. Waqar Ahmad Khan, AAG.

\*\*\*\*\*

**YAHYA AFRIDI, C.J.-** Zahoor-ud-Din and

another, petitioners, seek the constitutional

jurisdiction of this Court, praying that:

*"It is, therefore, humbly prayed that, on acceptance of this writ petition, the respondents may kindly be directed to consider petitioners for promotion to BPS-18 (Deputy Director Mineral) from BPS-17 (Assistant Director) by deciding departmental appeals strictly in accordance with Law Department opinion dated 21.07.2016, para4.5 of the Instructions of the Establishment Department, Superior Courts judgments 2000 SCMR 645, PLJ 2015 Lahore 24(DB), PLJ 2015 Labore 45 and 2009 PLC (CS) 40, Civil Servant Act, 1973 and PMS Rules, 2007 within shortest possible time please."*

*9*

**ATTESTED**

**ATTESTED**  
COMMISSIONER  
Peshawar High Court  
28 MAR 2018

2. In essence, the grievance of the petitioner is that the departmental appeal of the petitioners is pending adjudication before the respondents.

3. The appeal of the petitioners is stated to be pending before the worthy Secretary Mineral, Government of Khyber Pakhtunkhwa, Peshawar/ respondent No.1 which requires to be decided. The petitioners are directed to appear before the worthy Secretary Mineral on 29.03.2018 at 10.00 AM. Surely, the petitioners should be provided sufficient opportunity to plead their case. Thereafter, the worthy Secretary is to decide the matter within thirty days. In case, the relief sought by the petitioners cannot be granted then reason in writing be recorded for the same, and copy thereof be transmitted to the worthy Director, Human Rights Cell of this Court. The worthy AAG also undertook to ensure that the

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ATTESTED  
 29 MAR 2018


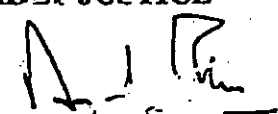
appeal of the petitioners pending before respondent

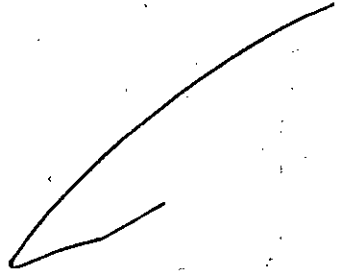
No.1 is decided within the given time.

This writ petition is disposed of,

accordingly.

Announced:  
Dt.22-03-2018.

  
CHIEF JUSTICE  
  
JUDGE



CERTIFIED TO BE TRUE COPY  
Examiner  
Peshawar High Court, Peshawar  
Authorized Under Article 87 of  
The Constitution of Pakistan 1973  
28-MAR-2018

No. 16080

Date of Presentation 28/3/18

No of Pages 2


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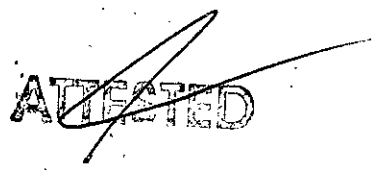
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Total 28/3/18

Date of 28/3/18

Recd: 28/3/18

 F-100  
(DB) Hon'ble Mr. Justice Yahya Afridi, Chief Justice  
Hon'ble Mr. Justice Muhammad Ayub Khan, Judge.

  
ATTACHED

29

ANNEX "E"

*[Handwritten notes and scribbles]*

*[Handwritten signatures and initials]*

GOVERNMENT OF KHYBER PAKHTUNKHWA  
PARLIAMENTARY AFFAIRS &  
HUMAN RIGHTS DEPARTMENT

File No. Secy (H) P. 2 (H)  
Dinno: 5225  
Date: 21-7-2016

No. SO(OP-II)/LD/5-6/2012-VOL-II 9954-16  
DATED: PESH: TH 21 JULY, 2016

To

The Secretary to Govt of Khyber Pakhtunkhwa,  
Public Health Engineering Department.

Subject: ADVICE REGARDING IMPLEMENTATION OF  
RECOMMENDATIONS OF THE DEPARTMENTAL  
PROMOTION COMMITTEE IN VIEW OF PENDING INQUIRY.

Dear Sir,

I am directed to refer to your Department's letter No.SO(East)/PHED/1-1/2016/I.R Karak dated 18-07-2016 on the subject noted above and to state that in accordance with para-V of Promotion Policy, 2009 promotion of a civil servant will be deferred in addition to para-IV of the said policy if disciplinary or Departmental proceedings are pending against him. Whereas, the Supreme Court of Pakistan in its Judgement, 2000 SCMR 645, declared that " Mere fact that some disciplinary proceedings were pending against the respondent was not a sufficient ground to stop the promotion of Civil servant. However, it would not deter the Authorities to continue with disciplinary proceeding against the Civil servant, if any, justly, fairly and accordance with law." Similarly in other decisions as cited, 2008 PLC (CS) 551, 2007 PLC (CS) 718, 2007 PLC (CS) P-4, which allows the promotion of civil servant even some disciplinary proceedings are pending against the civil servant. Hence, the promotion case/ notification of civil servant cannot be deferred due to an anticipated formal inquiry which is tantamount to punishment in advance.

2. So, in light of Judgement of the Supreme Court it seems that the Promotion Policy is deficient on the point and needs to be updated in line with the Supreme Court Judgement as the decision of the superior Court always have over-riding effect on sub-ordinate legislation and policies.

*[Handwritten initials]*

302-V

Yours Faithfully,

Section Officer (Opinion-II)

Encls: of even No. & date.

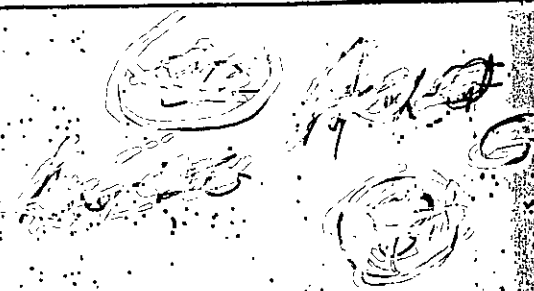
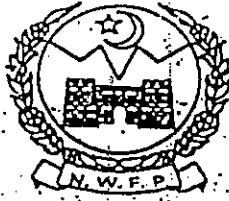
Copy forwarded for information to :-

1. The P.S to Secretary Law, Department.
2. The P.S to Secretary Establishment Department for information.

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ATTESTED



# INSTRUCTIONS ON

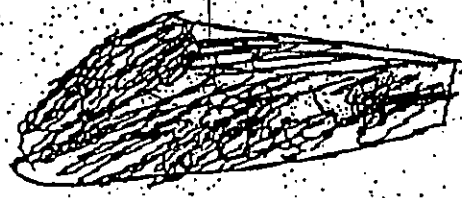
# PERFORMANCE EVALUATION REPORT

Director  
General  
Secretariat  
Peshawar  
N.W.F.P.

Compiled by  
Establishment & Administration Department  
Government of N.W.F.P.

CIVIL SECRETARIAT, PESHAWAR.

Corrected  
upto March, 2006



~~ATTESTED~~

FOREWORD

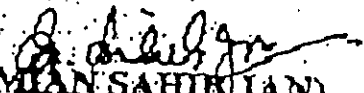
Performance Evaluation Report plays an important role in the career planning of a Government servant. It is the most frequently used document in the service record of an employee. The Government servants, Reporting and Countersigning officers are responsible to initiate, complete and maintain PERs of their subordinates in accordance with the prescribed procedure and in stipulated period of time. For completion of this task, they need approved guidelines and instructions.

A compendium of "Instruction on Performance Evaluation Reports" was last compiled and published in the year 2000. However, on introduction of the Local Government Ordinance 2001, District Governments were established and powers of appointment, promotion and transfers in respect of Government servants in BS-1 to BS-15 were delegated to District officers. Consequently the Reporting Officers and Countersigning Officers in respect of many employees were changed which necessitated amendments in the instructions. The instructions also needed streamlining and updation which necessitated their fresh publication.

A committee headed by Mr. Muhammad Hamayun Khan, Special Secretary Regulation, Mr. Akbar Khan, Deputy Secretary (Regulation-III) and Mr. Muhammad Jamil Section Officer (Secret) Establishment & Administration Department, rendered appreciable services and contribution to update these instructions. Without their efforts, compilation of this compendium of instructions would have not been possible. The new edition of instructions will greatly help and facilitate the Reporting Officers as well as the Countersigning Officers to evaluate the performance and conduct of their subordinates objectively and in a realistic manner.

Suggestions, if any, for improvement in this compendium of instructions would be welcomed and appreciated which may be addressed to the Secretary Establishment Government of NWFP, Civil Secretariat, Peshawar or faxed on 091-9210447.

March, 9<sup>th</sup>. 2006.

  
(MEEN SAHIB JAN)  
Secretary to Government of NWFP  
Establishment Department.

~~ATTESTED~~

be considered as adverse in the case of an officer who fulfills the condition of length of service for promotion to the next higher grade and should be communicated to him.

(iii) It has been decided that if an officer is adjudged unfit for continued retention in service such an entry should be treated as adverse and should be communicated to the officer concerned.

**4.4 Un-finalized Departmental Proceedings:-** In the case of an officer against whom departmental proceedings are in progress, no mention whatsoever should be made about it in his Performance Evaluation Report. Only when such proceedings have been finalized, and the punishment, if any, has been awarded/exonerated should be mentioned in his Evaluation Report. In such a case complete copy of the final order may be placed, as is usually done, on his Character Roll.

4.5. According to the instructions (vide Para 4.4) no mention should be made in the Evaluation Report of a Government Servant, of the departmental proceedings which may be in progress against him, unless such proceedings have been finalized, and the punishment, if any, has been awarded. There is no bar to a Government servant being considered for promotion during the pendency of departmental proceedings against him. However, in such cases, a copy each of the charge sheet and the statement of allegations should be placed before the Provincial Selection Board or the Departmental Promotion Committee, as the case may be vide Establishment Division's O.M. No. 2/20/67-D.I., dated the 13<sup>th</sup> November, 1967 (printed at S. No. 118 of chapter V of the Establishment Manual, Volume-I, Reprint, 1968 and page 615 of, ESTACODE).

4.6. According to the instructions contained in the Establishment Division's letter No. 9(1)/58-SE.III, dated the 8<sup>th</sup> May, 1958 (Para 4.4) no mention whatsoever can be made about a departmental inquiry pending against an officer in the Evaluation Report. However, there should be no harm in making as mention about a criminal case pending against an officer in his C.R.

4.7 **Evaluation Report:-** If there are any adverse remarks in the Evaluation Reports prepared by NIPA and Administrative

ADMITTED





**Judgment**

the appeal of the Inspector-General of Police against the order of the Punjab Service Tribunal, Lahore in Appeal No.3097 of 1997, made the following observation:-

"5. We have heard the learned counsel for the petitioner Dr. A.Basit learned senior counsel for the respondent/caveator and perused the available material on record. The Tribunal was right in holding that the respondent had not been promoted by superseding any officer senior to her. She was entitled to be promoted from the date her A juniors were promoted. There was no valid reason not to consider her case for promotion as DSP as above. The impugned order appears to be just, fair and equitable. Mr. Ghuman was unable to substantiate his plea that the impugned order suffers from any illegality. Be that as it may, no substantial question of public importance is involved to warrant interference in these proceedings."

4. The petitioner not implemented the above order passed by this Court. The respondent therefore, approached the High Court for redress of her grievance. The contempt application was also filed on 25-1-1999 wherein notice was issued to the petitioner, who took the plea that the respondent could not be promoted as some disciplinary proceedings had been initiated against her. The contention was repelled by the learned Judge in Chambers vide the impugned order, dated 27-9-1999, which is to the following effect:-

"The learned Advocate-General says that the petitioner has been suspended from service and as such the question of her promotion does not arise. The learned counsel for the petitioner has, however, placed on record, a copy of the order, passed by the Punjab Service Tribunal on 30-8-1999, whereby the order of suspension of the petitioner has been suspended. That being so, there is no hurdle left in the way the respondent for implementation of the orders passed by this Court. The needful shall now be done within one week from today failing which coercive process shall be issued against the respondents. "

5. The learned Additional Advocate-General, Punjab submitted that the High Court fell into error by not considering in true perspective that the disciplinary proceedings have been initiated against the respondent and, therefore, there was genuine hurdle in the way of petitioner to promote her in accordance with the orders passed by the Supreme Court as well as the High Court.

6. We are afraid that the mere fact that some disciplinary proceedings are pending against the respondent is not a sufficient ground to disregard the order passed by this Court. However, we may clarify that promotion of the respondent as DSP will not debar the petitioner to continue with the disciplinary proceedings against the respondent if any, justly, fairly and in accordance with law.

7. With the above observation, the petition is dismissed and leave to appeal declined.

M.B.A./Z-33/S Petition dismissed.

**ATTESTED**

34 ANNEX "G"

Judgment

<http://www.plsbeta.com/LawOnline/law/content21.asp?Cases=20...>

2009 P L C (C.S.) 40

[Lahore High Court]

Before Hafiz Tariq Nasim, J

MUHAMMAD AFZAL KHAN

Versus

GOVERNMENT OF PUNJAB through Secretary to Government of the Punjab, C&W Department and another

Writ Petition No.5857 of 2008, decided on 20th June, 2008.

(a) Civil service---

—Promotion cannot be claimed as matter of right---Principles.

The civil servant cannot claim promotion as a matter of right, but it is an inalienable right to every civil servant that he be considered for promotion along with his batch mates, if he fulfills eligibility criteria.

(b) Civil Service---

—Promotion, consideration for---Meaning---Consideration for promotion means a just and fair consideration and not as a matter of routine.

(c) Punjab Civil Servants Act (VIII of 1974)---

---S. 8---Constitution of Pakistan (1973), Art.199---Constitutional petition---Promotion---Non-consideration of petitioner's case for promotion by Selection Board repeatedly on ground of pendency of enquiry against him---Validity---Pendency of enquiry and minor penalties could not come in way of promotion---Enquiry must be concluded within a specific period---Enquiry proceedings pending against petitioner for an indefinite period smacked of arbitrariness and mala fide---Hanging sword on head of a civil servant in form of pendency of enquiry would reflect only to deprive him of his lawful right of promotion---Treatment meted out to petitioner could not sustain in eye of law---Consideration for promotion would mean a just and fair consideration and not as a matter of routine---High Court directed authority to place petitioner's case before Selection Board within specified time, which would consider his case fairly, justly and independent of pendency of enquiry, if not finalized on day of consideration of his case for promotion.

Zarar Khan v. Government of Sindh and others PLD 1980 SC 310; Captain Sarfraz Ahmad Mufti v. Government of the Punjab and others 1991-SCMR 1637; Maj. Ziaul Hassan, Home Secretary and others v. Mrs. Naseem Chaudhry 2000 SCMR 645; Ch. Yar Muhammad Durraina v. Government of the Punjab and another 1992 PLC (C.S.) 95; Sh. Muhammad Riaz v. Government of the Punjab 2003 PLC (C.S.) 1496 and Writ Petition No.2573 of 2000 ref.

of 4

ATTESTED

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udgement

<http://www.plsbctd.com/LawOnline/law/content21.asp?CaseId=20...>

**(d) Civil Service---**

**---Promotion---Pendency of enquiry and minor penalties against civil servant not a hurdle in way of his promotion.**

**Masood Ahmad Riaz for Petitioner.**

**Naeem Masood, Asstt. A.-G. Punjab with Humayun Akhtar Sabi, Deputy Director Legal for Respondents.**

**ORDER**

**HAFIZ TARIQ NASIM, J.---**The backdrop of this writ petition is that the petitioner being senior most Executive Engineer BS-18 of the Communication Works Department, Government of Punjab was expecting his promotion as Superintending Engineer in BS-19 in the year 2003 but he was deferred. In spite of his deferment he remained in the field for five long years when again on 23-5-2008 the petitioner's case of promotion was taken up by respondent No.1 who prepared working paper and placed it before the Provincial Selection Board, who recommended for deferment of the petitioner on the plea of pendency of some inquiry. The petitioner continuously persuaded for the redressal of his grievance since 2003 but with no result and finally filed this writ petition with the following prayer:--

- "(I) Petition may kindly be accepted with costs.
- (II) Respondents may kindly be directed to place the petitioner's case of promotion as Superintending Engineer in BS-19 before the Provincial Selection Board within a period of one month positively.
- (III) Respondent No.2 who is the Chairman of Provincial Selection Board may very kindly be directed to consider Petitioner's promotion case fairly, justly and without being influenced by the pendency of any inquiry.
- (IV) Respondents may kindly be further directed to consider the petitioner for promotion as Superintending Engineering in BS-19 from 9-7-2003 when the petitioner was eligible for such promotion and when his case was first placed before the Provincial Selection Board.
- (V) Impugned show-cause notice dated 8-1-2004 and order of inquiry dated 5-9-2007 may kindly be set aside.
- (VI) Petitioner may also kindly be granted such other relief/reliefs to which he is found entitled."

**2. Learned counsel for the petitioner submits that so far prayer No. V in respect of setting aside of show-cause notice and order of enquiry is concerned, he does not press the same and it be treated deleted from the prayer clause. However, the learned counsel argued the case in respect of other prayers with vehemence and contends that the petitioner is being victimized with no fault of him, rather on extraneous consideration, with ulterior motive and malice and it is well-settled law that any action, which is based on mala fide cannot be termed as a legal action in the eye of law.**

**ATTORNEY**



**Judgment**

<http://www.plsbeta.com/LawOnline/law/content21.asp?Casesdes=20...>

Further submits that mere pendency of enquiry cannot deprive the petitioner from his lawful right of fair consideration for further promotion. Learned counsel referred Zarar Khan v. Government of Sindh and others PLD 1980 SC 310, Captain Sarfraz Ahmad Mufti v. Government of the Punjab and others 1991 SCMR 1637, Maj. Ziaul Hassan, Home Secretary and others v. Mrs. Naseem Chaudhry 2000 SCMR 645, Ch. Yar Muhammad Durraiana v. Government of the Punjab and another 1992 PLC (C.S.) 95, Sh. Muhammad Riaz v. Government of the Punjab 2003 PLC (C.S.) 1496 and a recent judgment in Writ Petition No.2573 of 2008 titled as Sanjida Irshad v. Secretary Health and others, in support of this contentions.

3. On the other hand learned Assistant Advocate-General submits that consideration for promotion of course is right of a civil servant but no civil servant can ask for promotion as a matter of right. Further submits that the petitioner's promotion case was repeatedly placed before the Punjab Selection Board but due to some cogent reasons the petitioner could not be promoted. However, being a deferred case the petitioner's case shall be reconsidered in the forthcoming PSB's meeting.

4. Arguments heard. Record perused.

5. There is no cavil from the proposition that the civil servant cannot claim promotion as a matter of right but it is also undisputed fact A that it is an inalienable right of every civil servant that he be considered for promotion along with his batch mates when he fulfills eligibility criteria and it must be noted that consideration for promotion means a just and fair consideration and not as a matter of routine.

6. It is well-established law laid down by the apex Court that pendency of enquiry and even minor penalties cannot come in the way of promotion. In the present case the departmental representative, who produced the record did not disclose any penalty available in the petitioner's record except pendency of enquiry. However, when confronted with the sole question that how much time it should take to finalize the enquiry, no satisfactory reply could be given by the departmental representative.

7. Surprisingly keeping the civil servant continuously for a long period in facing certain enquiries and without concluding the proceedings for an indefinite period smacks arbitrariness and smells mala fides when now a days there is a specific provision that enquiry must be concluded in a specific time. Hanging sword on the heads of certain civil servants in the form of pendency of enquiry reflects only to deprive from their further lawful right of promotion, which can be termed an exploitation and nothing else because there is no bar on the part of administration to reach on logical conclusion and then impose penalty on that very civil servant if he is found guilty, when this part of the administration is unfettered then such like treatment, which is meted out to the petitioner cannot sustain in the eye of law.

8. In the attending circumstances, I have no other option except to allow the writ petition. The respondents are directed to place the petitioner's promotion case before the Provincial Selection Board within a period of two months positively from today and the PSB shall consider the petitioner's promotion case fairly, justly and particularly independent of pendency of enquiry if the same is not finalized on the day of consideration for promotion. The exercise must be concluded within two months and result thereof be conveyed to the Deputy Registrar. (J.) of this Court. The writ petition is accepted in the above terms.

S.A.K./M-245/L

Petition accepted.

10/12/2015

January 2015

PLJ 2015 Lahore 24 (DB)  
 [Multan Bench Multan]  
 Present: SHAHID WAHEED AND SHAH KHAWAR, JJ.  
 MUHAMMAD SALEEM--Petitioner  
 versus  
 GOVERNMENT OF PUNJAB through its Chief Secretary  
 and 6 others--Respondents  
 W.P. No. 14949 of 2012, decided on 15.7.2014.



Constitution of Pakistan, 1973-

Art. 199--Promotion Policy Rules, 2010, R. 9(iv)--Promotion--Deferment was raising on creditability and unblemished career--Policy was challenged--Validity--Superior Courts--Civil servant against whom a departmental inquiry or criminal proceedings were pending was not an outcast for purpose of consideration of his case for promotion and there was no bar on his promotion--Any policy of government including Promotion Policy 2002 of Government of Punjab cannot come in its way and has become redundant. [P. 27] A & B

Mr. Muhammad Ali Siddiqui, Advocate for Petitioner.  
 Mr. M. Aurangzeb Khan, A.A.G. along with Saleem Akhtar Qureshi, District Officer Co-Operative Multan for Respondents No. 1, 2 and 3.  
 Date of hearing: 25.6.2014.

ORDER

In the instant writ petition, the petitioner being a civil servant has challenged the vires of Sub-Rule (IV) of Rule 9 of the Promotion Policy, 2010 and decision of Provincial Selection Board with respect to the deferment of the petitioner for promotion as same being Un-Islamic, Un-Constitutional, discriminatory and against the fundamental rights of the petitioner.

2. The question of law to be determined by this Court is reproduced is under:  
 "Whether promotion of the civil servant could be deferred which he otherwise entitled to, on a sole ground that a case or inquiry is pending against him in which he is yet to be proven guilty?"
3. Brief facts of the case are that the petitioner was appointed on 07.04.1984 as Assistant Registrar (BS-16) through Punjab Public Service Commission.
4. The promotion of the petitioner in BS-19 has been due since 04.12.2011 on the retirement of one Fayyaz-ul-Hassan Farooqi senior to him. However, he has not been promoted since that date.
5. On 1.3.2012, vide Notification No. SO(E)7-3/96(P-III), a final seniority list was issued by the Secretary Co-Operatives whereby, the petitioner was placed at Serial No. 1 and Respondents No. 4 to 7 were placed at Serial Nos. 2, 3, 4 and 5 respectively.
6. On 24.07.2012, meeting of the Provincial Selection Board-I was held whereby, Respondents No. 4 to 7 were promoted to BS-19 and the promotion of the petitioner was deferred.
7. Learned counsel for the petitioner contends that the promotion of the petitioner was deferred which he otherwise is entitled to, as per the impugned rule. Further submits that the petitioner has a spotless career and is at verge of his retirement. Till today, not an FIR as well as not a single inquiry has been registered and initiated against him; hence his deferment is raising questions on his creditability and unblemished career, that requires kind interference by this Hon'ble Court. Reliance is placed on Captain Sarfraz Ahmdd Mufti vs. Government of the Punjab and others (1991 SCMR 163); Mq Ziaul Hassan, Home Secretary and others vs. Mrs. Naseem Chaudhry (2000 SCMR 645), Sh. Muhammad Qazi vs. Government of Punjab [(2003 PLC (CS) 1496] and Muhammad Afzal Khan vs. Government of Punjab through Secretary to Government of the Punjab, C&W Department and another [(2009 PLC (CS) 40)].
8. Report and parawise comments were filed by the respondents. One of the preliminary objections was that the matter relates with the terms and conditions of promotion and the petitioner has not availed his remedy by way of filing appeal before the Punjab Service Tribunal, hence Constitutional petition is not maintainable.
9. On facts, Respondents No. 1 & 2 also controverted the prayer made by the petitioner by contending that the promotion case of the petitioner was placed before the Punjab Selection Board, but the Board deferred the same due, to the reason that an FIR No. 18/2010 Police Station Anti-Corruption

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Establishment Multan is pending against the petitioner, and the petition is hit by the Promotion Policy 2010. However, a post in BS-19 has been reserved for the petitioner, subject to his exoneration from the above said case and will be granted promotion from the date when his juniors were promoted.  
10. I have given anxious consideration to the arguments advance by learned counsel for the petitioner and the learned AAG, Punjab.

11. Before arriving at a conclusion that the Policy under challenge is sustainable under the law or not, it will be proper to understand spirit of Article 8 of the Constitution of Pakistan 1973, which is re-produced herein under:-

8. Laws inconsistent with or in derogation of Fundamental Rights to be void.--(1) Any law, or any custom or usage having the force of law, insofar as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights so conferred and any law made in contravention of this clause shall, to the extent of such contravention, be void.

12. Admittedly in the constitution, the Superior Courts have been mandated to ascertain either any law is inconsistent with the rights conferred by the Constitution i.e. Fundamental Rights. In *Tarig Cotton Mills Ltd and another vs. Joint Registrar, Joint Stock Companies and another* (1989 CLC 2013), it is held that the State is prohibited to make any law which curtails or take away any Fundamental Right and any law so made shall to the extent of inconsistency with such right, is to be void. The same principal of law has been enunciated in *Sharaf Faridi vs. The Federation of Islamic Republic of Pakistan through Prime Minister of Pakistan and another* (PLD 1989 Karachi 404), it was held that limitation has been placed on the legislature not to curtail the Fundamental Rights or abridge them by any law.

13. Question of law raised by the petitioner is answered in following terms:-

(i) Any judgment passed by the Hon'ble Supreme Court of Pakistan, in which a question of law has been determined, is binding on all the Courts subordinate to the Apex Court, as contemplated in Article 189 of the Constitution of Islamic Republic of Pakistan, 1973.

(ii) The petition in hand has been filed on the touch stone of above quoted judgments of the Hon'ble Supreme Court of Pakistan.

(iii) In the case of *Maj Zail-ul-Hassan, Home Secretary vs. Mrs. Naseem Ch.* (2006 SCMR 645), the Hon'ble Supreme Court has held that:

"We are afraid that the mere fact that some disciplinary proceedings are pending against the respondent is not a sufficient ground to disregard the Order passed by this Court. However, we may clarify that promotion as DSP will not debar the petitioner to continue with the disciplinary proceedings against the respondent if any, justly, fairly and in accordance with law."

(iv) In case titled as *Captain Sarfraz Ahmad Mustfi vs. Government of Punjab & others* [(2003 SCMR 1637)] the Hon'ble Supreme Court upheld judgment of the High Court in which the High Court had directed departmental authorities that case of civil servant be placed before Promotion Board. The High Court had referred to certain Policy letters of the Government under which respondent civil servant's case for promotion merited consideration, but he was illegally ignored.

(v) In the same manner, in case of *Sh. Muhammad Riaz. vs. Govt. of Punjab through Secretary Communication and Works and another* [(2003 PLC (C.S) 1496)] it was held that "withholding of promotion is a penalty and therefore refused to issue a formal notification of the promotion of the petitioner, after he had been recommended by the Provincial Selection Board, which was duly approved by the Competent Authority, was illegal and arbitrary in as much as that it was withheld on the ground of an anticipated departmental inquiry.

14. A principle of law has been enunciated by the Superior Courts. The nutshell of the same is that a civil servant against whom a departmental inquiry or criminal proceedings are pending is not an outcast for the purpose of consideration of his case for promotion and there is no bar on his promotion.

15. The above quoted judgments, in which question of law has been settled, have attained finality and force of law. Any policy of the Government including the Promotion Policy 2002 of the Government of the Punjab cannot come in its way and has become redundant.

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10. For what has been discussed above, the instant writ petition is allowed. Sub Rule (iv) of Rule 9 of the Promotion Policy, 2002 of the Government of Punjab is hereby declared Un-Constitutional, against the spirit of Article 8 of the Constitution and against the principles of law enunciated by the Hon'ble Superior Courts of Pakistan. The respondent Department is directed to place the case of the petitioner to the Provincial Promotion Board and his case may be considered for promotion within a period of 30 days.  
(R.A.) Petition allowed

ATTESTED

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January 2015

PLJ 2015 Lahore 45  
[Multan Bench Multan]

Present: SIAH KHAWAR, J.

SHAMA KHAN ZAFAR--Petitioner

versus

DISTRICT COORDINATION OFFICER, LODHRAN etc.--Respondents

W.P. No. 15606 of 2012, decided on 14.4.2014.

Constitution of Pakistan, 1973--

---Art. 199--Constitutional petition--Promotion to next higher grade--Appointment against leave vacancy--Seniority list of employees--Juniors were promoted--Inquiry was pending--Disciplinary proceedings pending against civil servant was not sufficient ground to disregard lawful right of four consideration for promotion--Validity--Mere pendency of departmental inquiry or in presence of minor penalty, a civil servant cannot be denied of his fundamental rights to be considered for promotion where his batch mates and even juniors are considered and promoted--Petitioner, who is a teacher by profession, must have gone through frustration and mental stress due to denial of his legal right--Concept of administration of justice has been defined and interpreted by a number of judicial pronouncements. [P. 49] A & B

Mr. Nour Ahmad Khan Meo, Advocate for Petitioner.

Mr. Aurangzeb Khar, Assistant Advocate General, Punjab for Respondents.

Date of hearing: 14.04.2014

ORDER

Through instant writ petition, the petitioner has called in question his non-consideration by the Departmental Promotion Committee for promotion to next higher grade i.e. BS-16 under uplift and upward mobility [Pay Package w.e.f. 1.12.2009].

2. Relevant facts giving rise to the filing of the instant writ petition are that the petitioner was appointed as PTC vide Letter No. 11079 dated 31.12.1984 and joined his duties at Government Primary School, Dera Mehro Markaz Karor Pacca, Lodhran. Later on, he was temporarily adjusted as EST against the leave vacancy of Mr. Hazoor Bakhsh, EST vide Letter No. 7870/Admn dated 28.10.1985 with the condition that appointment against leave vacancy is temporary up till 31.08.1986 and after the said date he was to report back at his original post i.e. PTC. Instead of report back to his original post the said teacher was adjusted as EST against the post of Mr. Hazoor Bakhsh vide Letter No. 3365/Admn dated 10.08.1986 by the competent authority. On query regarding verification/confirmation of posting of the petitioner as EST by the Deputy District Education Officer, Kehror Pacca as well as the Incharge Head Master, Govt. High School, Bahawal Garh, Tehsil Kehror Pacca, District Lodhran vide letters dated 27.09.2010 and 16.08.1986 respectively, the District Education Officer informed that the services of the petitioner as EST had already been confirmed/verified vide Letter No. 3365 dated 16.08.1986 on permanent basis.

3. Subsequently, the Chief Minister of the Punjab vide notification dated 06.11.2009 approved the structure for uplift and upward mobility of Primary and Elementary School Teachers (Male and Female) of all categories in Punjab w.e.f. 01.12.2009 as per ratio given below:--

Category of Teacher	Initial Level		Level I		Level II	
	Pay Scale	Ratio of Post	Pay Scale	Ratio of Post	Pay Scale	Ratio of Post
PSTs (Male & Female)	HS-9	50%	BS-12	35%	BS-14	15%
ESTs (Male & Female)	BS-11	50%	BS-15	35%	BS-16	15%

http://www.punjabcourts.com/PLJ201245.htm

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BS-14	7%	BS-15	35%	BS-16	15%
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This report was submitted to the ESIs (General), District Lodhran was prepared in which the petitioner was placed at Sr. No. 17. The meeting of Departmental Promotion Committee, Lodhran was convened on 11.08.2011 and the petitioner, whose seniority was rated at Sr. No. 17, was not considered for the benefit of next higher grade BS-16 and his juniors, who were assigned seniority at Serial No. 18 to 65, were awarded BS-16. When the petitioner approached the Executive District Officer (Education), Lodhran, he was informed that his name was not considered by the Departmental Promotion Committee due to the reason that his inquiry was pending on the basis of an Audit Para in respect of his irregular appointment against the post as EST.

4. The petitioner prayed that a direction may be issued to the respondents to place his case before the Departmental Promotion Committee for fair consideration to award grade BS-16 under the structure of uplift and upward mobility at par with his batch mates.

5. Notice was issued to the respondents who filed report and para-wise comments wherein, it is mentioned that in the year 2006-09, the audit scrutiny was conducted by the Audit Department of office of the Deputy District Education Officer (M) Tehsil Kahrur Pacca. The Audit Officer raised the objection regarding appointment of the petitioner as EST at Government Middle School Mohammad Saeed Tehsil Kahrur Pacca in the shape of Advance Audit Para No. 02 that the appointment of the petitioner is irregular and needs an inquiry into the matter and an inquiry officer was deputed to look into the matter.

6. Learned counsel for the petitioner has argued that the pendency of inquiry on the basis of Audit Para could not have been made basis for non-consideration of the petitioner in the next higher grade BS-16. He contended that it is a well established law laid down by the Hon'ble Superior Courts that the pendency of inquiry and even minor penalty cannot come in the way of promotion. Reliance has been placed on *Maj. Ziaul Hossan, Home Secretary and others versus Mrs. Naseem Chaudhry* (2001 SCMR 645), *Mrs. Sanjida Irshad, Assistant Director Nursing, Bahawalpur versus Secretary to Government of the Punjab Health Department Lahore and others* [2008 PLC (C.S) 1019] and *Muhammad Afzal Khan versus Government of Punjab through Secretary to Government of the Punjab C&W Department and another* [2009 PLC (C.S.) 40]. The Hon'ble Supreme Court of Pakistan in its judgment has held that some disciplinary proceedings pending against the civil servant is not a sufficient ground to disregard his lawful right of fair consideration for promotion. Moreover, the Hon'ble High Court in the above cited judgment has held that the civil servant cannot claim promotion as a matter of right, but it is an inalienable right to every civil servant that he be considered for promotion along with his batch mates, if he fulfills eligibility criteria.

7. During the course of arguments, learned Assistant Advocate General Punjab has fairly commented that a civil servant cannot be disregarded for promotion if one is not otherwise ineligible. He has fully agreed with the judgments passed by the Hon'ble Superior Courts on this issue.

8. I have given my anxious consideration to the arguments advanced by learned counsel for the petitioner as well as learned Assistant Advocate General and have perused the record with their able assistance.

9. This is an admitted position that the Chief Minister of the Punjab approved the structure of uplift and upward mobility of Primary and Elementary School Teachers of all categories vide notification dated 06.11.2009. In pursuance of the said notification, EST and other cadres were to be awarded next higher grade BS-15 & BS-16 on the basis of date of their regular appointments and length of service on the recommendations of District Selection Committee, Lodhran. Consequently, the District Education Officer, Lodhran notified seniority list for such promotion and petitioner's seniority was reckoned at Sr. No. 17 in the said list. The Departmental Promotion Committee was convened on 11.08.2011 but the petitioner's name was not placed before the same, as a result of which the juniors to the petitioner, who were assigned seniority against Sr. Nos. 18 to 65 were awarded BS-16. From the para-wise comments filed by the respondents, it is made clear that the name of the petitioner was not placed before the Departmental Promotion Committee due to the reason that an inquiry on the basis of advance Audit Para was pending against him.

10. As held by the Hon'ble Superior Courts of the country that the pendency of inquiry and one minor penalty cannot come in the way of promotion of a civil servant. Further that civil servant cannot claim promotion as a matter of right but it is also undisputed fact that it is an inalienable right of every civil servant that he be considered for promotion along with his batch mates.

10/08/2011

ATTESTED

11. Surprisingly in the instant case, the petitioner was deprived to be considered for promotion at his inquiry regarding Audit Para was pending.

12. Article 23 of the Constitution of Islamic Republic of Pakistan, 1973 speaks about the right of individuals to be dealt with in accordance with law, to enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan. In the same manner, Article 25 of the Constitution of Islamic Republic of Pakistan, 1973 ensures equality of citizens by mandating that all citizens are equal before law and are entitled to equal protection of law.

13. Chapter 1 of the Constitution of Islamic Republic of Pakistan, 1973 is an integral part of the Constitution and all State functionaries are duty bound to extend these rights across the board to the citizen. It is not necessary for State functionaries to have performed their Constitutional obligations after intervention of the Hon'ble Superior Courts. Under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 this Court has the jurisdiction to protect and enforce the fundamental rights of the citizens which have been denied. According to Article 5 of the Constitution of Islamic Republic of Pakistan, 1973, loyalty to State and obedience to Constitution and law is the inviolable obligation of every citizen wherever he may be and of every other person for the time being within Pakistan. The word "citizen" does not confine to the ordinary citizen of the country but also covers person's functions in connection with the affairs of the Federation, Province or a legal authority. All the State functionaries are duty bound to strictly adhere to the Constitution and specially Articles 4, 5 and 25 of the Constitution of Islamic Republic of Pakistan, 1973 while dealing with their day to day business. They should not wait for intervention of the Hon'ble Superior Courts but to extend equal treatment and protection of law whenever they are seized of the matters of the aggrieved persons.

14. In the present case, the respondents were mindful of the fact that there are number of judgments passed by the Hon'ble Superior Courts having decided question of law that mere pendency of departmental enquiry or in the presence of minor penalty, a civil servant cannot be denied of his fundamental rights to be considered for promotion where his batch mates and even juniors are considered and promoted. The department sat over the case of the petitioner for a long time waiting for the decision of this Court. The name of the petitioner could have been placed in the next scheduled meeting of Departmental Promotion Committee but the needful was not done in complete determent. The petitioner, who is a teacher by profession, must have gone through frustration and mental stress due to denial of his legal right. The concept of administration of justice has been defined and interpreted by a number of judicial pronouncements. Reference could be placed on the judgment passed by the Hon'ble Supreme Court of Pakistan in case titled *Samiullah Khan Marwat*

*versus Government of Pakistan* and another reported in [2003 SCMR 11401, in which concept of administration of justice has been interpreted, the relevant portion of the judgment is reproduced as under:

"The exercise of powers by the public functionaries in derogation to the direction of law would amount to disobey the command of law and the Constitution. The concept of administration of justice is not confined only to the judicial system rather every person discharging the functions in relation to the rights of people is bound to act fairly, justly and in accordance with law."

15. In the aforementioned circumstances, I have no other option except to allow the instant writ petition. The respondents are directed to place petitioner's promotion case before the Departmental Promotion Committee, Lodhran within a period of two months from the receipt of this order and the Departmental Promotion Committee shall consider the promotion case of the petitioner in highly fair and just manner. The result of the Departmental Promotion Committee shall be conveyed to this Court through the Deputy Registrar (Judicial). The instant writ petition is allowed in the above terms.

(R.A.) Petition allowed

ATTESTED

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①

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

Service Appeal No. 673 /2018

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 691

Dated 16/05/2018

Mohsin Ali Khan,  
Assistant Director Mineral, KP Peshawar.

.....Appellant.



**VERSUS**

1. Govt. of Khyber Pakhtunkhwa through Secretary Mineral, Civil Secretariat, Peshawar.
2. Chief Secretary (CS), Secretariat, Khyber Pakhtunkhwa, Peshawar.
3. Chief Minister's KP in the capacity of Appellate Authority under KP Departmental Appeal Rules, 1986, Chief Minister's Secretariat, Khyber Pakhtunkhwa Peshawar.
4. Provincial Selection Board for promotion of Mineral Development Officer/ Assistant Director (BPS-17) to Director (BPS-18) through Chief Secretary, CS Secretariat, Khyber Pakhtunkhwa, Peshawar.

.....Respondents


SERVICE APPEAL U/S 4 OF SERVICE  
TRIBUNAL ACT, 1974 FOR DIRECTING  
THE RESPONDENTS TO CONSIDER  
PETITIONER FOR PROMOTION TO BPS-  
18 (DEPUTY DIRECTOR MINRAL) FROM  
BPS-17 (ASSISTANT DIRECTOR) IN  
ACCORDANCE WITH LAW DEPARTMENT  
OPINION DATED 21.07.2016, PARA-4.5  
OF THE INSTRUCTIONS OF THE

Filed to-day

Registrar

16/5/18

ATTESTED



Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

12.03.2019

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Appellant alongwith his counsel present. Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for further proceeding as per preceding order sheet on 10.04.2019 before D.B.



*MA*  
(M. AMIN KHAN KUNDI)  
MEMBER

*[Signature]*  
(M. HAMID MUGHAL)  
MEMBER

Copy  
*[Signature]*  
Khalid  
Service Inspector  
Faisalabad

Date of Disposal	03-04-19
Number of Pages	1200
Copying Fee	800
Urgent	200
Total	1000
Name of Officer	<i>[Signature]</i>
Date of Issue	03-04-19
Date of Delivery of Copy	03-04-19

27.11.2018



Appellant with counsel and Mr. Mr. Kabir Ullah Khattak learned AAG alongwith Mr. Said Muhammad Superintendent present. Representative of the respondents submitted reply on behalf of respondent No.1 & 2. Learned A.A.G stated that the respondent No.3 & 4 also relies on the same. Adjourn. To come up for rejoinder if any and arguments on 16.01.2019 before D.B.

Member

16.01.2019

Counsel for the appellant presents Mr. M. Jan, DDA for the respondents present.

At the time of institution of service appeal, the departmental appeal of the appellant was not decided, however, after institution of service appeal the same was decided on 08.05.2018 and the respondents have also annexed the departmental authority order with the comments. Therefore, counsel for the appellant is directed to challenge the same departmental authority order through amended appeal. To come up for amended appeal/arguments on 12.03.2019 before D.B.

(Ahmad Hassan)  
Member

(M. Amin Khan Kundi)  
Member

**ATTESTED**

Khayal  
Service Tribunal,  
Peshawar

**POWER OF ATTORNEY**

In the Court of Khyber Pakhtun Khana Service Tribunal Peshawar  
Mohsin Ali

} For  
} Plaintiff  
} Appellant  
} Petitioner  
} Complainant

**VERSUS**

Govt of KPK and others.

} Defendant  
} Respondent  
} Accused  
}

Appeal/Revision/Suit/Application/Petition/Case No. \_\_\_\_\_ of \_\_\_\_\_  
Fixed for \_\_\_\_\_

I/W, the undersigned, do hereby nominate and appoint

**ZARTAJ ANWAR ADVOCATE**, my true and lawful attorney, for me in my same and on my behalf to appear at Peshawar to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions. An appeal, statements, accounts, exhibits. Compromise or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc, and to apply for and issue summons and other writs or sub-poena and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

**AND** to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

**AND** I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

**PROVIDED** always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

**IN WITNESS** whereof I/we have hereto signed at \_\_\_\_\_  
the \_\_\_\_\_ day to \_\_\_\_\_ the year 2013  
Executant/Executants \_\_\_\_\_  
Accepted subject to the terms regarding fee \_\_\_\_\_

Mohsin Ali  
Adalat  
Peshawar

Zartaj Anwar  
**Zartaj Anwar**

Advocate High Courts  
ADVOCATES, LEGAL ADVISORS, SERVICE & LABOUR LAW CONSULTANT  
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CNIC:17301-1610454-5

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

Service Appeal No. 673 /2018

Mohsin Ali Khan.....Appellant

**VERSUS**

Govt. of Khyber Pakhtunkhwa through  
Secretary Mineral and others.....Respondents

**I N D E X**

S#	Description of documents.	Annexure	Pages.
1.	Memo of appeal		1-6
2.	Interim application with affidavit		7-8
3.	Addresses of the parties.		9
4.	Copies of working paper	B	10-13
5.	Copies of minutes of the meeting	C	14-15
6.	Copy of departmental appeal alongwith both covering letter	D	16-21
7.	Copy of grounds of writ petition and judgment dated 22.03.2018	E	22-30
8.	Copy of legal advice / opinion of Law Debarment 21.07.2016	F	31
9.	Copy of the Para 4 & 5 of instructions	G	32-34
10.	Copies of the judgments	H	34/A-34/K
11.	Copy FIR	I	35-36
12.	Copy of charge	J	37-43
13.	Wakalantama		44

Appellant

Through

  
**Amjad Ali (Mardan)**

Advocate

Supreme Court of Pakistan

Clerk of Counsel

Imran

Cell No.0321-9870175

(1)

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

Service Appeal No. 673 /2018

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 691

Dated 16/05/2018

Mohsin Ali Khan,  
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**VERSUS**

1. Govt. of Khyber Pakhtunkhwa through Secretary Mineral, Civil Secretariat, Peshawar.
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3. Chief Minister's KP in the capacity of Appellate Authority under KP Departmental Appeal Rules, 1986, Chief Minister's Secretariat, Khyber Pakhtunkhwa Peshawar.
4. Provincial Selection Board for promotion of Mineral Development Officer/ Assistant Director (BPS-17) to Director (BPS-18) through Chief Secretary, CS Secretariat, Khyber Pakhtunkhwa, Peshawar.

.....Respondents

SERVICE APPEAL U/S 4 OF SERVICE  
TRIBUNAL ACT, 1974 FOR DIRECTING  
THE RESPONDENTS TO CONSIDER  
PETITIONER FOR PROMOTION TO BPS-  
18 (DEPUTY DIRECTOR MINRAL) FROM  
BPS-17 (ASSISTANT DIRECTOR) IN  
ACCORDANCE WITH LAW DEPARTMENT  
OPINION DATED 21.07.2016, PARA-4.5  
OF THE INSTRUCTIONS OF THE

Filed to-day

Registrar

16/5/18



(2)

ESTABLISHMENT DEPARTMENT,  
SUPERIOR COURTS JUDGMENTS 2000  
SCMR 645, PLJ 2015 LAHORE 24 (DB),  
PLJ 2015 LAHORE 45 AND 2009 PLC  
(CS) 40, CIVIL SERVANT ACT, 1973  
AND PMS RULES, 2007.

**RESPECTFULLY SHEWETH:-**

1. That appellant was initially was appointed as Assistant Director through Public Service Commission on 12.12.2009 on regular basis in the Mineral Department. ~~(Copies of appointment)~~  
~~(Copies of appointment)~~
2. That throughout appellant's service, appellant worked efficiently. No complaint by any person exists against the appellant.
3. That working paper of Provincial Selection Board was prepared for promotion to the post of Deputy Director (BPS-18), whereby the name of the appellant was included in the working paper. It is pertinent to mention that as per the working paper, the appellant alongwith other officers have been recommended to be promoted on regular basis **(Copies of working paper are Annex "B")**
4. That the meeting of the Provincial Selection Board for the promotion of Assistant Director to the post of Deputy Director Mineral (BPS-18) was held on 28.12.2017, whereby without lawful justification, the Provincial Selection Board deferred the case of the appellant for promotion due to pendency of

the Ehtisab Court case. **(Copies of minutes of the meeting are Annex "C")**

(3)

5. That the appellant filed departmental appeal dated 18.01.2018, which is dispatched through proper channel through covering letter dated 19.01.2018 & 23.02.2018 to the respondent No.1, but no action was taken. **(Copy of departmental appeal alongwith both covering letter are Annex "D")**
6. That being aggrieved, the appellant filed W.P.No.1287-P/2018 before the Hon'ble Peshawar High Court, Peshawar, which was disposed-off with the direction to the appellant to appear before respondent No.1, as his departmental appeal is still pending, and after providing opportunity to the appellant, the respondent No.1 will decide the appeal of appellant within thirty days. **(Copy of grounds of writ petition and order dated 22.03.2018 are Annex "E")**
7. That thereafter, appellant appeared before respondent No.1 and despite the clear direction of the hon'ble High Court the departmental appeal of the appellant has not been decided till date.
8. That as the statutory period as described in law has already been lapse, therefore, finding no other efficacious remedy, the appellant approach this hon'ble Tribunal Court for following grounds:-

### **GROUND**

- A. Because as per legal advice/ opinion of the Khyber Pakhtunkhwa Law Department dated 21.07.2016, promotion of a Civil Servant cannot be deferred due to pending disciplinary proceedings, hence,

(4)

deferment of the appellant from promotion to BPS-18 is illegal and is against the opinion/ legal advice of the Law Department. (**Copy of legal advice / opinion of Law Department is Annex "F"**)

B. Because as per Para-4 & 5 of the Instructions of the Establishment Department dated 2006, promotion of a Civil Servant cannot be deferred on account of pending departmental proceedings, hence deferment of the appellant from promotion to BPS-18 is illegal and against instructions of the Establishment Department. (**Copy of the Para 4 & 5 of instructions are Annex "G"**)

C. Because as per **2000 SCMR 645, PLJ 2015 Lahore 24 (DB), PLJ 2015 Lahore 45 and 2009 PLC (CS) 40**, promotion of a Civil Servant cannot be deferred due to pending departmental proceedings against the Civil Servant, hence deferment of the appellant from the promotion to BPS-18 is against the judgments of the Superior Courts. Copy of the Judgement is Annex H  
Annex "H"

D. Because there is no bar for stoppage/ deferment of promotion of the appellant on ground of pending inquiry as appellant are to be presumed as innocent unless proved guilty.

E. Because the alleged so-called inquiry as initiated on 15.09.2017 against thirteen persons including the appellant. According to notification, the said enquiry was to be completed within 30 days, the inquiry has not been concluded and is still in progress for more than four months with no

completion in sight to ascertain the truth. It is also pertinent to mention that against the same charges, an FIR has been lodged against forty five persons excluding the appellant . Appellant are not charged in the FIR, which also shows the innocence of the appellant with regard to the charges. **(Copy FIR, charge sheet in Reference No.4/2016 is Annex "I & J")**

(5)

- F. Because Ehtisab case is pending in the Court against the appellant including others. Formal charge was framed by the Court on 26.05.2016, and so far the statement of only one witness has been completed. In reference fourteen witnesses have been mentioned by the prosecution, which also indicates that conclusion of the case will consume sufficient time. The appellant will be debarred from benefits of promotion for such a long time without proof of any guilt.
- G. Because a person is presumed to be innocent until proved to be guilty by a competent Court of law. So far nothing has been proved by the department against the appellant. Till today the appellant is innocent in the eyes of law. Departmental Promotion Board fell into error by not recommending the appellant for promotion merely due to the pendency of a criminal case enquiry, hence the valuable rights of the appellant has been infringed.
- H. Because the august Supreme Court of Pakistan as well as different High Courts have clearly given the verdict in the subject matter that the pendency of an inquiry or even a presence of a minor penalty cannot come in the way of

(6)

promotion of a civil servant as it is the right of every civil servant that he be considered for promotion alongwith his batch mates. It is pertinent to mention that in working paper (Annex "B"), the appellant alongwith his other batch mates have been recommended for promotion on regular basis.

*It is, therefore humbly prayed that, on acceptance of this appeal, the respondents may kindly be directed to consider appellant for promotion to BPS-18 (Deputy Director Minral) from BPS-17 (Assistant Director) in accordance with Law Department opinion dated 21.07.2016, Para-4.5 of the Instructions of the Establishment Department, Superior Courts judgments **2000 SCMR 645, PLJ 2015 Lahore 24 (DB), PLJ 2015 Lahore 45 and 2009 PLC (CS) 40, Civil Servant Act, 1973 and PMS Rules, 2007** within shortest possible time please.*

Appellant

Through

**Amjad Ali (Mardan)**

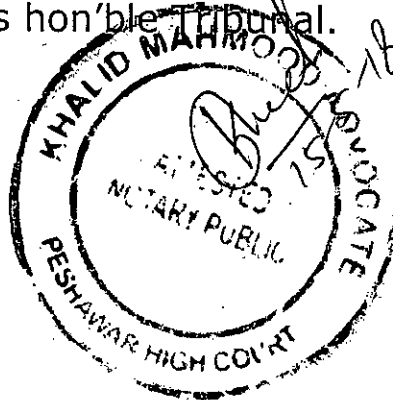
Advocate

Supreme Court of Pakistan

AFFIDAVIT

I, do hereby affirm and declare on oath that the contents of the appeal are true and correct to the best of my knowledge and belief and nothing material has been concealed from this hon'ble Tribunal.

Deponent



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

(7)

Service Appeal No. \_\_\_\_\_/2018

Mohsin Ali Khan.....Appellant

**VERSUS**

Govt. of Khyber Pakhtunkhwa through  
Secretary Mineral and others.....Respondents

***APPLICATION FOR INTERIM RELIEF  
TO THE EFFECT THAT, TILL THE  
FINAL DECISION OF TITLED  
APPEAL, THE RESPONDENTS MAY  
GRACIOUSLY BE RESTRAINED FROM  
FILLING THE POST OF DEPUTY  
DIRECTOR MINERAL (BPS-18)***

**Respectfully Sheweth:**

1. That the above titled appeal is being filed before this hon'ble Tribunal alongwith instant application.
2. That the grounds of main appeal may kindly also be considered as part and parcel of this application.
3. That the appellant is having a good prima-facie case in his favour and is also sanguine about its success.
4. That balance of convenience also lies in faovur of appellant.

5. That if the relief as prayed for in the heading of this application is not granted, the very purpose of accompanying appeal will become infructuous. (8)

It, is therefore, prayed that, on acceptance of this application, the respondents may graciously be directed not to fill the post s of Deputy Director Mineral (BPS-18) till the final decision of titled petition.

Appellant

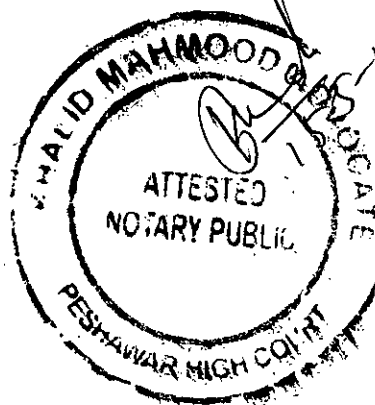
Through

**Amjad Ali (Mardan)**  
Advocate  
Supreme Court of Pakistan

#### AFFIDAVIT

I, do hereby affirm and declare on oath that the contents of the Application are true and correct to the best of my knowledge and belief and nothing material has been concealed from this hon'ble Tribunal.

Deponent



(9)

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

Service Appeal No. \_\_\_\_\_/2018

Mohsin Ali Khan.....Appellant

**VERSUS**

Govt. of Khyber Pakhtunkhwa through  
Secretary Mineral and others.....Respondents

**MEMO OF ADDRESSES**

**APPELLANT**

Mohsin Ali Khan,  
Assistant Director Mineral, KP Peshawar.

**RESPONDENTS**

1. Govt. of Khyber Pakhtunkhwa through Secretary Mineral, Civil Secretariat, Peshawar.
2. Chief Secretary (CS), Secretariat, Khyber Pakhtunkhwa, Peshawar.
3. Chief Minister's KP in the capacity of Appellate Authority under KP Departmental Appeal Rules, 1986, Chief Minister's Secretariat, Khyber Pakhtunkhwa Peshawar.
4. Provincial Selection Board for promotion of Mineral Development Officer/ Assistant Director (BPS-17) to Director (BPS-18) through Chief Secretary, CS Secretariat, Khyber Pakhtunkhwa, Peshawar.

Appellant

Through

  
**Amjad Ali (Mardan)**

Advocate

Supreme Court of Pakistan



(10)  
Annexure "B"

PSB-I

**WORKING PAPER FOR PROVINCIAL SELECTION BOARD.**

**Department: DIRECTORATE GENERAL MINES AND MINERALS KHYBER PAKHTUNKHWA  
(GOVERNMENT OF KHYBER PAKHTUNKHWA MINERAL DEVELOPMENT  
DEPARTMENT).**

1.	Nomenclature of the Post/Basic Scale	Deputy Director Technical (BS-18)		
2.	Service Group/Cader	Mines and Minerals		
3.	Sanction strength of cader	8 posts.		
4.		<b>Direct</b>	<b>Promotion</b>	<b>Transfer</b>
	i) Percentage of share	---	100 %	---
	ii) Nos of posts allocated To each category	---	8 posts.	---
	iii) Present occupancy position	---	1 post	---
	iv) No of vacancies in each category	---	7 posts.	---
	v) How did the vacancy (ies) under Promotion quota accrue and since When?	The Finance Department has created Two posts of Deputy Director Technical (BS-18) During the financial year 2016-17 and due to retirement of the incumbent and promotion, these posts have become with effect from 01/01/2015, 04/04/2015, 26/08/2015, 01/09/2016 and 20/06/2017( Annexure-I,II,III,IV,V & VI).		
	vi) Recruitment Rules.	By Promotion on the basis of seniority-cum-fitness, from amongst the Assistant Directors (Technical)(Mining Engineer)/Geologist/Assistant Directors (Royalty) with at least five years service as such. (Annexure- VII).		
	vii) Required length of service	5-years service		
	viii) Whether to be promoted on Regular basis or appointed on Acting charges basis.	The officers in "Panel of officers for consideration" at S.No. 01 to 06 having the requisite length of service may be promoted on regular basis. While the officer at S.No. 07 of the same panel having short length of service about 04 months may be promoted on acting charge basis as per Rule-09 of part-II of appointment, promotion & transfer Rules-2011.(ESTA CODE revised addition-2011)		
	ix) Mandatory training, if any.	Not applicable		
	x) Minimum required Score on EI	60		

**ATTESTED**

Signature \_\_\_\_\_

Designation \_\_\_\_\_

Date: \_\_\_\_\_

**PANEL OF OFFICERS FOR CONSIDERATION.**

Sl No	Name of Officer with Qualification	Date of Birth	Date of 1 <sup>st</sup> entering into Govt. service	Date Of Appointment Promotion To BPS-17	Date of Regular Appointment promotion to the present scale.	Whether Fulfilled The prescribed Length of Service.	Quantified Scores	Missing PERs (if any)	Disciplinary Proceeding (if any)	Case (if any) In any court of Law including NAB Plea Bargaining with NAB	Mandatory Training for promotion	Research papers	Present posting	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
1	Mr. Siraj Ahmad B.Sc. Mining Engineering	18/04/1970	18/12/1994	20/12/2008	20/12/2008	Yes	76.25	Nil	Nil	Nil	Nil	Nil	Assistant Director (Technical) (BPS-17) H*Q Office	Eligible
2	Mr. Sher Ayyz B.Sc L.L.B	20-05-1961	13-09-2008	20-12-2006	20-12-2008	Yes	77.50	Nil	1. The Minor Penalty "with holding of two increments for one year" was imposed vide notification No. SOE(MDD)/4-8/2014 dated 04/08/2016. 2. The name of the officer has been included in embezzlement of royalty case in office of the Assistant Director Mineral Mardan vide Notification No. SOE(MDD)/4-1/Vol-II/2017 dated 15/09/2017 and the enquiry is pending with the Enquiry Officer.	Nil	Nil	=do=	1. The Minor Penalty "with holding of two increments for one year" was imposed vide notification No. SOE(MDD)/4-8/2014 dated 04/08/2016. 2. The name of the officer has been included in embezzlement of royalty case in of the Assistant Director Mineral Mardan vide Notification No. SOE(MDD)/4-1 Vol-II/2017 dated 15/09/2017 and the enquiry is pending with the Enquiry Officer.	

**ATTACHED**

	Muhammad Zulkifal Khan B.Sc Mining Engineering	19-01-1986	19-12-2009	19-12-2009	19-12-2009	Yes	78.57	Nil	Nil	Nil	Nil	Nil	Nil	Eligible
4	Mr. Mohsin Ali Khan B.Sc Mining Engineering	15-05-21984	19-12-2009	19-12-2009	19-12-2009	Yes	78.57	Nil	Reference No. 4/2016 in the Court of Special Ehtesab Court-II Khyber Pakhtunkhwa. Peshawar against the officer regarding Feldspare case under file No. MDW/MA/PL-Feldspare (100)/2007 is under process.	Nil	Nil	News sheet	Reference No. 4/2016 in the Court of Special Ehtesab Court-II Khyber Pakhtunkhwa. Peshawar against the officer regarding Feldspare case under file No. MDW/MA/PL-Feldspare (100)/2007 is under process.	
5	Mr. Ishfaq Ahmad Saleem	06-04-1986	19-12-2009	19-12-2009	19-12-2009	Yes	72.86	Nil	The minor penalty of "Censure" has been imposed in the Departmental enquiry on the officer, vide letter No.9638-39/DGM M/Admn/2942, dated 28/09/2015.	Certificate attached	Nil	H Q Office	The minor penalty of "Censure" has been imposed in the Departmental enquiry on the officer, vide letter No.9638-39/DGM M/Admn/2942, dated 28/09/2015.	
6	Mr. Zahoor Uddin B.A	01-04-1967	16-01-1991	12-04-2012	12-04-2012	Yes	78.00	Nil	1. Reference No. 4/2016 in the Court of Special Ehtesab Court-II Khyber Pakhtunkhwa, Peshawar against the officer regarding Feldspare case under file No. MDW/MA/PL-Feldspare (100)/2007 is under process. 2. The name of the officer has been included in embezzlement of royalty case in office of the Assistant Director Mineral Mardan, vide Notification No. SOE(MDD)/4-1/Vol-II/2017 dated 15/09/2017 and the enquiry is pending with the Enquiry Officer.	Nil	Nil	H Q Office	1. Reference No. 4/2016 in the Court of Special Ehtesab Court-II Khyber Pakhtunkhwa, Peshawar against the officer regarding Feldspare case under file No. MDW/MA/PL-Feldspare (100)/2007 is under process. 2. The name of the officer has been included in embezzlement of royalty case in office of the Assistant Director Mineral Mardan, vide Notification No. SOE(MDD)/4-1/Vol-II/2017 dated 15/09/2017 and the enquiry is pending with the Enquiry Officer.	

ACCEPTED

1	Mr. Hayat ur Rehman 3.Sc Mining Engineering	27-02-1987	21-02-2013	21-02-2013	21-02-2013	No	77.50	Nil	Nil	Nil	Nil	Nil	H.Q Office	Not eligible due to non-completion of length of service
5	Mr. Ihsan Ud Din B.Sc Mining Engineering	19-08-1987	26-08-2013	26-08-2013	26-08-2013	No	---	2013 2014 2015 2016	Nil	Nil	Nil	Nil	Mardan	Not eligible due to non-completion of length of service
9	Mr. Qasim Jamal M.Sc Mineral Resource Management	01-06-1987	07-02-2014	07-02-2014	07-02-2014	No	--	2014 2015 2016	Nil	Nil	Nil	Nil	Manshera	Not eligible due to non-completion of length of service
10	Mr. Asmat Ali B.Sc Mining Engineering	01-07-1985	07-03-2014	07-03-2014	07-03-2014	No	---	2014 2015	Nil	Nil	Nil	Nil	D.I.Khan	Not eligible due to non-completion of length of service
11	Mr. Muhammad Riaz M.A	02-02-1966	11-02-1996	23-09-2015	23-09-2015	No	---	2015 2016	Nil	Nil	EN	Nil	Abbottabad	Not eligible due to non-completion of length of service

Certified that the officer at S.No 1 to 6 included in the panel are eligible for promotion in all respects. While the officer at S.No. 7 of the same panel having short length of service about four months may be Promoted on acting charge basis as per rule 9 of the part-II of appointment of promotion rules 2011 (ESTA CODE Revised addition 2011)

ATTESTED

Signature: \_\_\_\_\_  
Designation: \_\_\_\_\_  
Date: 30/12/17

ITEM NO (16)

MINERALS DEVELOPMENT DEPARTMENT  
(Meeting of PSB held on 28.12.2017)

*Ann-C*  
*Ann-C*

SUBJECT: PROMOTION OF ASSISTANT DIRECTOR BS-17 TO THE POST OF DEPUTY DIRECTOR MINERAL BS-18.

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Secretary Mines & Minerals Development apprised the Board that due to creation, retirement and promotion, seven (07) posts of Deputy Director Technical BS-18 are lying vacant.

2. According to service rules the post is required to be filled as under:-

"By promotion, on the basis of seniority cum fitness, from amongst the Assistant Directors (Technical) (Mining Engineer)/Geologist/Assistant Directors (Royalty) with at least five years service as such."

3. The service record of the officer included in the panel was discussed as follows:-

S.NO	NAME OF OFFICER	RECOMMENDATIONS OF THE BOARD
1.	Mr. Siraj Ahmad	<p>His date of birth is 18.04.1970. He joined government service on 18.12.1994 and was promoted to BS-17 on 20.12.2008. No enquiry is pending against him. His service record upto 2016 is generally good.</p> <p>The Board recommended the Officer for promotion to the post of Deputy Director BS-18 on regular basis. He will be on probation for a period of one year.</p>
2.	Mr. Sher Ayaz	<p>His date of birth is 20.05.1961. He joined government service on 13.09.1982 and was promoted to BS-17 on 20.12.2008. The Secretary Mines was directed to inform the enquiry Officer to speed up the instant enquiry and submit report at the earliest.</p> <p>The Board recommended to defer his promotion.</p>
3.	Mr. Muhammad Zulkifal Khan	<p>His date of birth is 19.01.1986. He joined government service on 19.12.2009 in BS-17. No enquiry is pending against him. His service record upto 2016 is generally good.</p> <p>The Board recommended the Officer for promotion to the post of Deputy Director BS-18 on regular basis. He will be on probation for a period of one year.</p>
4.	Mr. Mohsin Ali Khan	<p>His date of birth is 15.05.1984. He joined government service on 19.12.2009 in BS-17. According to Mineral</p>

ATTESTED

*[Handwritten signature and stamp]*

		Development department a case is under process against him in Ehtisab Court.
		The Board recommended to defer his promotion. (15)
5.	Mr. Ishfaq Ahmad Saleem	His date of birth is 06.04.1986. He joined government service on 19.12.2009 in BS-17. He has been imposed a minor penalty of censure on 28.09.2015. No enquiry is pending against him. His service record upto 2016 is generally good.  The Board recommended the Officer for promotion to the post of Deputy Director BS-18 on regular basis. He will be on probation for a period of one year.
6.	Mr. Zahoor ud Din	His date of birth is 01.04.1962. He joined government service on 16.01.1991 and was promoted to BS-17 on 12.04.2012. According to Mineral Development department he is included in Ehtisab Court case and an enquiry is pending against him.  The Board recommended to defer his promotion.
7.	Mr. Hayat Rehman	His date of birth is 27.02.1987. He joined government service on 21.02.2013 in BS-17. He has not yet completed prescribed length of service for promotion. No enquiry is pending against him. His service record upto 2016 is generally good.  The Board recommended the Officer for appointment to the post of Deputy Director BS-18 on acting charge basis.

*Attested*

ATTESTED

Annex-D

Annex D

(16)

HON'BLE CHIEF MINISTER KHYBER PAKHTUNKHWA,  
PESHAWAR.

THROUGH PROPER CHANNEL

DEPARTMENTAL APPEAL AGAINST THE ORDER  
NO. SO(E)/MDD/2-4/2017 DATED PESHAWAR  
JANUARY 05, 2018 WHEREBY THE APPELLANT  
HAS BEEN DEFERRED FOR PROMOTION DUE  
TO PENDENCY OF A CRIMINAL CASE.

PRAYER IN APPEAL:-

BY ALLOWING THE INSTANT APPEAL AND  
DIRECTING THE COMPETENT AUTHORITY TO  
CONSIDER THE NAME OF THE APPELLANT FOR  
PROMOTION TO THE POST OF DEPUTY DIRECTOR  
(BPS-18) DIRECTORATE GENERAL, MINES AND  
MINERALS, KHYBER PAKHTUNKHWA PESHAWAR  
ON REGULAR BASIS, W.E.F FROM 05/01/2018,  
IRRESPECTIVE OF PENDENCY OF CRIMINAL CASE.

ATTESTED

**RESPECTFULLY SHEWETH;**

**Appellant submits as under:-**

FACTS OF THE CASE:-

1. That the appellant Mr. Mohsin Ali Khan was appointed as Assistant Director through Public Service Commission on

(17)

(18)

19/12/2009 on regular basis in the Mineral department.

2. That throughout appellant service, appellant worked efficiently. No complaint by any person exists against the appellant.
3. That working paper of Provincial Selection Board was prepared for promotion to the post of Deputy Director (BPS-18), whereby the name of the appellant is included in the working paper. It is pertinent to mention that as per the working paper, the appellant along with other officers have been recommended to be promoted on regular basis (working paper marked as Annexure "B").
4. That meeting of the PSB for the promotion of Assistant Director to the post of Deputy Director Mineral (BPS-18) was held on 28/12/2017, whereby without lawful justification, the PSB deferred the case of the appellant for promotion due to pendency of an Ehtisab Court case (Minutes of meeting marked "C")
5. That feeling aggrieved against the impugned order, the instant appeal is filed before your honour for favorable consideration inter-alia on following grounds:- (Impugned order Annex; "A")

ATTESTED



(18)

(18)

GROUNDS:-

- A) That Ehtisab case is pending in the court again appellant including others. Formal charge was framed by the court on 26/05/2016, and so far the statement of only one witness has been completed. In reference fourteen witnesses have been mentioned by the prosecution which also indicates that conclusion of the case will consume sufficient time. The appellant will be debarred from benefits of promotion for such a long time without proof of any guilt.
- B) That a person is presumed to be innocent until proved to be guilty by a competent court of law. So far nothing has been proved by the department against the appellant. Till today the appellant is innocent in the eyes of law. Departmental Promotion Board fell into error by not recommending the appellant for promotion merely due to the pendency of a criminal case, hence the valuable rights of the appellant have been infringed.
- C) That August Supreme Court of Pakistan as well as different High Courts have clearly given the verdict in the subject matter that the pendency of an inquiry or even a presence of a minor penalty cannot come in the way of promotion of a civil servant as it is the right of every civil servant that he be considered for promotion along with


ATTESTED

his batch mates. It is pertinent to mention that in working paper (Annex "B"), the appellant along with his other batch mates have been recommended for promotion on regular basis. (Annexed as "D" to "F").

IN VIEW OF THE ABOVE, IT IS HUMBLY PRAYED THAT ON ACCEPTANCE OF THE INSTANT APPEAL, DIRECTIONS BE GIVEN TO THE CONCERNED AUTHORITY TO CONSIDER THE APPELLANT FOR PROMOTION ON REGULAR BASIS TO THE POST OF DEPUTY DIRECTOR (BPS-18) MINERAL W.E.F 5/01/2018. (MARKED "A").

Peshawar dated: 18/01/2018

  
APPELLANT

  
18-1-18

  
ATTESTED

20

To,

The Director General,  
Mines and Minerals, Khyber Pakhtunkhwa,  
Peshawar.

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Through:- Proper Channel

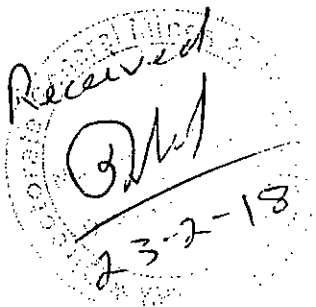
Subject: APPEAL OF MOHSIN ALI KHAN BEFORE THE HON'ABLE CHIEF MINISTER KHYBER PAKHTUNKHWA, PESHAWAR.

Kindly referred to the subject above and to state that the undersigned filed appeal against the order No. SO(E)/MDD/2-4/2017 dated 05-01-2018, whereby the appellant has been deferred for promotion due to pending of criminal case ~~and inquiry~~ on 18-01-2018, but since then no decision or any information has been communicated to the appellant.

It is therefore requested to kindly forward my application / reminder to the Competent Authority for further necessary action please.

ATTESTED 

  
MOHSIN ALI KHAN  
Assistant Director (Tech), 23/02/18  
H/Q Office, Peshawar.



21

To,

The Director General,  
Mines and Minerals, Khyber Pakhtunkhwa,  
Peshawar.

Through:- Proper Channel

Subject: APPEAL OF MOHSIN ALI KHAN BEFORE THE HON'ABLE CHIEF  
MINISTER KHYBER PAKHTUNKHWA, PESHAWAR.

Kindly referred to the subject above and to state that the undersigned filed appeal against the order No. SO(E)/MDD/2-4/2017 dated 05-01-2018, whereby the appellant has been deferred for promotion due to pending of criminal case ~~and inquiry~~ on 18-01-2018, but since then no decision or any information has been communicated to the appellant.

It is therefore requested to kindly forward my application / reminder to the Competent Authority for further necessary action please.

ATTESTED

MOHSIN ALI KHAN  
Assistant Director (Tech), 23/02/18  
H/Q Office, Peshawar.

Received  
23-2-18

Aix - E

(22)

SEAL OF HIGH COURT PESHAWAR

**BEFORE THE HONOURABLE PESHAWAR HIGH COURT PESHAWAR**

W.P.No. \_\_\_\_\_/2018

1. Zahoor-ud-Din, Assistant Director Mineral, KP Peshawar.

2. Mohsin Ali Khan, Assistant Director Mineral, KP Peshawar.

.....Petitioners

**VERSUS**

1. Govt. of Khyber Pakhtunkhwa Secretary Mineral, Civil Secretariat, Peshawar.

2. Chief Secretary (CS), Secretariat, Khyber Pakhtunkhwa, Peshawar.

3. Chief Minister's KP in the capacity of Appellate Authority under KP Departmental Appeal Rules, 1986, Chief Minister's Secretariat, Khyber Pakhtunkhwa Peshawar.

4. Provincial Selection Board for promotion of Mineral Development Officer/ Assistant Director (BPS-17) to Director (BPS-18) through Chief Secretary, CS Secretariat, Khyber Pakhtunkhwa, Peshawar.

.....Respondents

**WRIT PETITION UNDER ARTICLE**  
**199 OF THE CONSTITUTION OF**  
**ISLAMIC REPUBLIC OF PAKISTAN,**  
**1973**

ATTACHED

**TESTED**  
EXAMINER  
Peshawar High Court

28 MAR 2018

RESPECTFULLY SHEWETH:-

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(4)

1. That petitioner No.1 was initially appointed as Royalty Inspector on 16.01.1991 on regular basis in the department and was later promoted to the post of Assistant Director on 12.04.2012, serving and posted as such in Mineral Development Department at Peshawar.
2. That petitioner No.2 was appointed as Assistant Director through Public Service Commission on 17.12.2009 on regular basis in the Mineral Department.
3. That throughout petitioners' service, petitioners worked efficiently. No complaint by any person exists against the petitioners.
4. That working paper of Provincial Selection Board was prepared for promotion to the post of Deputy Director (BPS-18), whereby the name of the petitioners was included in the working paper. It is pertinent to mention that as per the working paper, the petitioners alongwith other officers have been recommended to be promoted on regular basis (Copies of working paper are Annex "B")
5. That the meeting of the Provincial Selection Board for the promotion of Assistant Director to the post of Deputy Director Mineral (BPS-18) was held on 28.12.2017, whereby without lawful justification, the Provincial Selection Board deferred the case of

ATTESTED

ATTESTED  
EXAMINER  
Peshawar High Court  
28 MAR 2018

(24) (1)

the petitioners for promotion due to pendency of the Ehtisab Court case. **(Copies of minutes of the meeting are Annex "C")**

6. That the petitioners filed departmental appeal dated 18.01.2018, which is dispatched through proper channel through covering letter dated 19.01.2018 & 23.02.2018 to the respondent No.1, but not responded so far. **(Copy of both departmental appeals alongwith both covering letters are Annex "D")**

7. That finding no other efficacious remedy, the petitioners approach this hon'ble Court for following grounds:-

**GROUNDS**

A. Because as per legal advice/ opinion of the Khyber Pakhtunkhwa Law Department dated 21.07.2016, promotion of a Civil Servant cannot be deferred due to pending disciplinary proceedings, hence, deferment of the petitioners from promotion to BPS-18 is illegal and is against the opinion/ legal advice of the Law Department. **(Copy of legal advice / opinion of Law Debarment is Annex "E")**

B. Because as per Para-4 & 5 of the Instructions of the Establishment Department dated 2006, promotion of a Civil Servant cannot be deferred on account of pending departmental proceedings, hence deferment of the petitioners from promotion to BPS-18 is illegal and against instructions of the

ATTESTED

ATTESTED  
EXAMINER  
Peshawar High Court  
28 MAR 2018

(25) (4)

Establishment Department. (Copy of the Para 4 & 5 of instructions are Annex "F")

C. Because as per 2000 SCMR 645, PLJ 2015 Lahore 24 (DB), PLJ 2015 Lahore 45 and 2009 PLC (CS) 40, promotion of a Civil Servant cannot be deferred due to pending departmental proceedings against the Civil Servant, hence deferment of the petitioners from the promotion to BPS-18 is against the judgments of the Superior Courts. (Copies of the judgments *ibid* are Annex "G")

D. Because there is no bar for stoppage/ deferment of promotion of the petitioners on ground of pending Inquiry as petitioners are to be presumed as innocent unless proved guilty.

E. Because the alleged so-called Inquiry as initiated on 15.09.2017 against thirteen persons including the petitioners. According to notification, the said enquiry was to be completed within 30 days, the inquiry has not been concluded and is still in progress for more than four months with no completion in sight to ascertain the truth. It is also pertinent to mention that against the same charges, an FIR has been lodged against forty five persons excluding the petitioners. Petitioners are not charged in the FIR, which also shows the innocence of the petitioners with regard to the charges. (Copy FIR, charge sheet in Reference No.4/2016 is Annex "H & I")

F. Because Ehtisab case is pending in the Court against the petitioners including others. Formal

ATTESTED

ATTESTED

EXAMINER  
Peshawar High Court

28 MAR 2018



(26) (5)

charge was framed by the Court on 26.05.2016, and so far the statement of only one witness has been completed. In reference fourteen witnesses have been mentioned by the prosecution, which also indicates that conclusion of the case will consume sufficient time. The petitioners will be debarred from benefits of promotion for such a long time without proof of any guilt.

G. Because a person is presumed to be innocent until proved to be guilty by a competent Court of law. So far nothing has been proved by the department against the petitioners. Till today the petitioners are Innocent In the eyes of law. Departmental Promotion Board fell into error by not recommending the petitioners for promotion merely due to the pendency of a criminal case enquiry, hence the valuable rights of the petitioners have been infringed.

H. Because the august Supreme Court of Pakistan as well as different High Courts have clearly given the verdict in the subject matter that the pendency of an inquiry or even a presence of a minor penalty cannot come in the way of promotion of a civil servant as it is the right of every civil servant that he be considered for promotion alongwith his batch mates. It is pertinent to mention that in working paper (Annex "B"), the petitioners alongwith his other batch mates have been recommended for promotion on regular basis.

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EXAMINER  
Peshawar High Court

28 MAR 2018

27/ (circled)

It is, therefore humbly prayed that, on acceptance of this writ petition, the respondents may kindly be directed to consider petitioners for promotion to BPS-18 (Deputy Director Mineral) from BPS-17 (Assistant Director) by deciding departmental appeals strictly in accordance with Law Department opinion dated 21.07.2016, Para-4.5 of the Instructions of the Establishment Department, Superior Courts judgments 2000 SCMR 645, PLJ 2015 Lahore 24 (DB), PLJ 2015 Lahore 45 and 2009 PLC (CS) 40, Civil Servant Act, 1973 and PMS Rules, 2007 within shortest possible time please.

**INTERIM RELIEF**

By way of interim relief, it is, prayed that, the respondents may graciously be directed not to fill the posts of Deputy Director Mineral (BPS-18) till the final decision of titled petition.

Petitioners

Through

  
Amjad Ali (Mardan)  
Advocate  
Supreme Court of Pakistan

**CERTIFICATE**

It is certify that, no such like writ petition has earlier been filed by the petitioner before this Hon'ble Court.

**LIST OF BOOKS**

1. Constitution of Pakistan, 1973
2. Other case laws as per need.

Advocate



**ATTESTED** 

**ATTESTED**

EXAMINER  
Peshawar High Court

28 MAR 2018

(28)

**JUDGMENT SHEET**  
**PESHAWAR HIGH COURT, PESHAWAR**  
**JUDICIAL DEPARTMENT**

**Writ Petition No.1284-P of 2018**  
**With Interim Relief**

**JUDGMENT**

Date of hearing.....22-03-2018.....

Petitioners: (Zahoor-ud-Din and another) by Mr.Amjad Ali  
(Mardan), Advocate.

Respondents:(Government of Khyber Pakhtunkhwa and  
others) by Mr.Waqar Ahmad Khan, AAG.

\*\*\*\*\*

**YAHYA AFRIDI, C.J.-** Zahoor-ud-Din and

another, petitioners, seek the constitutional

jurisdiction of this Court, praying that:

*"It is, therefore, humbly prayed that, on acceptance of this writ petition, the respondents may kindly be directed to consider petitioners for promotion to BPS-18 (Deputy Director Mineral) from BPS-17 (Assistant Director) by deciding departmental appeals strictly in accordance with Law Department opinion dated 21.07.2016, para4.5 of the Instructions of the Establishment Department, Superior Courts judgments 2000 SCMR 645, PLJ 2015 Lahore 24(DB), PLJ 2015 Labore 45 and 2009 PLC (CS) 40, Civil Servant Act, 1973 and PMS Rules, 2007 within shortest possible time please."*

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CLERK  
Peshawar High Court  
28 MAR 2018

2. In essence, the grievance of the petitioner is that the departmental appeal of the petitioners is pending adjudication before the respondents.

3. The appeal of the petitioners is stated to be pending before the worthy Secretary Mineral, Government of Khyber Pakhtunkhwa, Peshawar/ respondent No.1 which requires to be decided. The petitioners are directed to appear before the worthy Secretary Mineral on 29.03.2018 at 10.00 AM. Surely, the petitioners should be provided sufficient opportunity to plead their case. Thereafter, the worthy Secretary is to decide the matter within thirty days. In case, the relief sought by the petitioners cannot be granted then reason in writing be recorded for the same, and copy thereof be transmitted to the worthy Director, Human Rights Cell of this Court. The worthy AAG also undertook to ensure that the

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20 MAR 2018

appeal of the petitioners pending before respondent

No.1 is decided within the given time.

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This writ petition is disposed of,

accordingly.

**Announced:**  
**Dt.22-03-2018.**

*[Signature]*  
CHIEF JUSTICE  
*[Signature]*  
JUDGE

*[Large handwritten mark]*

CERTIFIED TO BE TRUE COPY  
Examiner  
Peshawar High Court, Peshawar  
Authorised Under Article 87 of  
the Qanun-e-shunad Order 1984  
28 MAR 2018

No. 16080  
Date of Presentation 28/3/18  
No of Pages 2  
Copying Fee ---  
Urgent Fee ---  
Total ---  
Date of Receipt 28/3/18  
State of Delivery ---  
Receipt ---

*[Signature]* E.Jan'c  
(DE) Hon'ble Mr. Justice Yahya Afridi, Chief Justice  
Hon'ble Mr. Justice Muhammad Ayub Khan, Judge.

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(31) Annex - F

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GOVERNMENT OF KHYBER PAKHTUNKHWA  
PARLIAMENTARY AFFAIRS &  
HUMAN RIGHTS DEPARTMENT

Post Box (P.O.) No. 101  
Dinny, 52715  
Date: 21/7/2016

No. SO(OP-II)/LD/S-6/2012-VOL-II 22514-16  
DATED: PESH: TH 21 JULY, 2016

To

The Secretary to Govt of Khyber Pakhtunkhwa,  
Public Health Engineering Department.

Subject: ADVICE REGARDING IMPLEMENTATION OF  
RECOMMENDATIONS OF THE DEPARTMENTAL  
PROMOTION COMMITTEE IN VIEW OF PENDING INQUIRY.

Dear Sir,

I am directed to refer to your Department's letter No.SO(Estt)/PHED/1-1/2016/I.R Karak dated 18-07-2016 on the subject noted above and to state that in accordance with para-V of Promotion Policy, 2009 promotion of a civil servant will be deferred in addition to para-IV of the said policy if disciplinary or Departmental proceedings are pending against him. Whereas, the Supreme Court of Pakistan in its Judgement, 2000 SCMR 645, declared that " Mere fact that some disciplinary proceedings were pending against the respondent was not a sufficient ground to stop the promotion of Civil servant. However, it would not deter the Authorities to continue with disciplinary proceeding against the Civil servant, if any, justly, fairly and accordance with law." Similarly in other decisions as cited, 2008 PLC (CS) 551, 2007 PLC (CS) 716, 2007 PLC (CS) P-4, which allows the promotion of civil servant even some disciplinary proceedings are pending against the civil servant. Hence, the promotion case/ notification of civil servant cannot be deferred due to an anticipated formal inquiry which is tantamount to punishment in advance.

2. So, in light of Judgement of the Supreme Court it seems that the Promotion Policy is deficient on the point and needs to be updated in line with the Supreme Court Judgement as the decision of the superior Court always have over-riding effect on sub-ordinate legislation and policies.

Yours Faithfully,

Section Officer (Opinion-II)

Endst: of even No. & date.

Copy forwarded for information to :-

1. The P.S to Secretary Law, Department.
2. The P.S to Secretary Establishment Department for information.

ACCEPTED

Handwritten signatures and initials at the bottom of the page.



(32) ~~Annex~~ G  
No. 06

# INSTRUCTIONS ON

## PERFORMANCE EVALUATION REPORT

Compiled by  
Establishment & Administration Department  
Government of N.W.F.P.

CIVIL SECRETARIAT, PESHAWAR.

Corrected  
upto March, 2006

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## FOREWORD

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Performance Evaluation Report plays an important role in the career planning of a Government servant. It is the most frequently used document in the service record of an employee. The Government servants, Reporting and Countersigning officers are responsible to initiate, complete and maintain PERs of their subordinates in accordance with the prescribed procedure and in stipulated period of time. For completion of this task, they need approved guidelines and instructions.

A compendium of "Instruction on Performance Evaluation Reports" was last compiled and published in the year 2000. However, on introduction of the Local Government Ordinance 2001, District Governments were established and powers of appointment, promotion and transfers in respect of Government servants in BS-1 to BS-15 were delegated to District officers. Consequently the Reporting Officers and Countersigning Officers in respect of many employees were changed which necessitated amendments in the instructions. The instructions also needed streamlining and updation which necessitated their fresh publication.

A committee headed by Mr. Muhammad Hamayun Khan, Special Secretary Regulation, Mr. Akbar Khan, Deputy Secretary (Regulation-III) and Mr. Muhammad Jamil Section Officer (Secret) Establishment & Administration Department, rendered appreciable services and contribution to update these instructions. Without their efforts, compilation of this compendium of instructions would have not been possible. The new edition of instructions will greatly help and facilitate the Reporting Officers as well as the Countersigning Officers to evaluate the performance and conduct of their subordinates objectively and in a realistic manner.

Suggestions, if any, for improvement in this compendium of instructions would be welcomed and appreciated which may be addressed to the Secretary Establishment Government of NWFP, Civil Secretariat, Peshawar or faxed on 091-9210447.

  
(MIAN SAHIB JAN)

Secretary to Government of NWFP  
Establishment Department.

March, 9<sup>th</sup>, 2006.

ATTACHED



be considered as adverse in the case of an officer who fulfills the condition of length of service for promotion to the next higher grade and should be communicated to him.

(iii) It has been decided that if an officer is adjudged unfit for continued retention in service such an entry should be treated as adverse and should be communicated to the officer concerned.

**4.4 Un-finalized Departmental Proceedings:-** In the case of an officer against whom departmental proceedings are in progress, no mention whatsoever should be made about it in his Performance Evaluation Report. Only when such proceedings have been finalized, and the punishment, if any, has been awarded/exonerated should be mentioned in his Evaluation Report. In such a case complete copy of the final order may be placed, as is usually done, on his Character Roll.

4.5. According to the instructions (vide Para 4.4) no mention should be made in the Evaluation Report of a Government Servant, of the departmental proceedings which may be in progress against him, unless such proceedings have been finalized, and the punishment, if any, has been awarded. There is no bar to a Government servant being considered for promotion during the pendency of departmental proceedings against him. However, in such cases, a copy each of the charge sheet and the statement of allegations should be placed before the Provincial Selection Board or the Departmental Promotion Committee, as the case may be vide Establishment Division's O.M. No. 2/20/67-D.I., dated the 13<sup>th</sup> November, 1967 (printed at S. No. 118 of chapter V of the Establishment Manual, Volume-I, Reprint, 1968 and page 615 of, ESTACODE).

4.6. According to the instructions contained in the Establishment Division's letter No. 9(1)/58-SE.III, dated the 8<sup>th</sup> May, 1958 (Para 4.4) no mention whatsoever can be made about a departmental inquiry pending against an officer in the Evaluation Report. However, there should be no harm in making as mention about a criminal case pending against an officer in his C.R.

**4.7 Evaluation Report:-** If there are any adverse remarks in the Evaluation Reports prepared by NIPA and Administrative

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<http://www.pakistanlawsite.com/LawOnline/law/content21.asp?Case...>

Judgement

2000 S C M R 645

[Supreme Court of Pakistan]

Present: Irshad Hasan Khan, Munawar Ahmed Mina  
and Ch. Muhammad Arif, JJ

Maj. ZIAUL HASSAN, HOME SECRETARY  
and others---Petitioners

versus

Mrs. NASEEM CHAUDHRY---Respondent

Criminal Petition No. 510-L of 1999, decided on 20th October, 1999.

(On appeal from the judgment, dated 27-9-1999 of the Lahore High Court, Lahore in  
Cr.Org.No.279-W of 1999).

Civil service-

---Promotion---Supreme Court had found that civil servant had not been promoted by superseding any officer senior to her; she was entitled to be promoted from the date her juniors were promoted and there was no valid reason not to consider her for the promotion---Mere fact that some disciplinary proceedings were pending against the civil servant was not a sufficient ground to disregard the order passed by the Supreme Court--Promotion of civil servant, however, would not debar the Authorities to continue with the disciplinary proceedings against the civil servant, if any, justly, fairly and in accordance with law.

Inspector-General of Police, Punjab, Lahore and others v. Mrs. Naseem Chaudhry and others C.  
P.L.A. No. 1617-L of 1997 ref.

Ghulam Haider Alghazali, Additional Advocate-General, Punjab and Rao Muhammad Yusuf,  
Advocate-on-Record for Petitioners.

Respondent in person.

Date of hearing: 20th October, 1999.

### JUDGMENT

IRSHAD HASAN KHAN, J.---This petition is directed against the judgment, dated 27-9-1999 passed by the Lahore High Court in Cr. Original No.279-W of 1999

2. The dispute herein relates to the promotion of the respondent as Deputy Superintendent of Police.

3. This Court through judgment, dated 15-4-1999 passed in C.P.L.A. No. 1617-L of 1997 entitled The Inspector General of Police, Punjab, Lahore etc. v. Mrs. Naseem Chaudhry, etc., while dismissing

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the appeal of the Inspector-General of Police against the order of the Punjab Service Tribunal, Lahore in Appeal No.3097 of 1997, made the following observation:--

"5. We have heard the learned counsel for the petitioner Dr. A.Basit learned senior counsel for the respondent/caveator and perused the available material on record. The Tribunal was right in holding that the respondent had not been promoted by superseding any officer senior to her. She was entitled to be promoted from the date her A juniors were promoted. There was no valid reason not to consider her case for promotion as DSP as above. The impugned order appears to be just, fair and equitable. Mr. Ghuman was unable to substantiate his plea that the impugned order suffers from any illegality. Be that as it may, no substantial question of public importance is involved to warrant interference in these proceedings."

4. The petitioner not implemented the above order passed by this Court. The respondent therefore, approached the High Court for redress of her grievance. The contempt application was also filed on 25-1-1999 wherein notice was issued to the petitioner, who took the plea that the respondent could not be promoted as some disciplinary proceedings had been initiated against her. The contention was repelled by the learned Judge in Chambers vide the impugned order, dated 27-9-1999, which is to the following effect:--

"The learned Advocate-General says that the petitioner has been suspended from service and as such the question of her promotion does not arise. The learned counsel for the petitioner has, however, placed on record, a copy of the order, passed by the Punjab Service Tribunal on 30-8-1999, whereby the order of suspension of the petitioner has been suspended. That being so, there is no hurdle left in the way the respondent for implementation of the orders passed by this Court. The needful shall now be done within one week from today failing which coercive process shall be issued against the respondents. "

5. The learned Additional Advocate-General, Punjab submitted that the High Court fell into error by not considering in true perspective that the disciplinary proceedings have been initiated against the respondent and, therefore, there was genuine hurdle in the way of petitioner to promote her in accordance with the orders passed by the Supreme Court as well as the High Court.

6. We are afraid that the mere fact that some disciplinary proceedings are pending against the respondent is not a sufficient ground to disregard the order passed by this Court. However, we may clarify that promotion of the respondent as DSP will not debar the petitioner to continue with the disciplinary proceedings against the respondent if any, justly, fairly and in accordance with law.

7. With the above observation, the petition is dismissed and leave to appeal declined.

M.B.A./Z-33/S

Petition dismissed.

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2009 P L C (C.S.) 40

[Lahore High Court]

Before Hafiz Tariq Nasim, J

MUHAMMD AFZAL KHAN

Versus

GOVERNMENT OF PUNJAB through Secretary to Government of the Punjab, C&W Department and another

Writ Petition No.5857 of 2008, decided on 20th June, 2008.

(a) Civil service---

---Promotion cannot be claimed as matter of right---Principles.

The civil servant cannot claim promotion as a matter of right, but it is an inalienable right to every civil servant that he be considered for promotion along with his batch mates, if he fulfills eligibility criteria.

(b) Civil Service---

---Promotion, consideration for---Meaning---Consideration for promotion means a just and fair consideration and not as a matter of routine.

(c) Punjab Civil Servants Act (VIII of 1974)---

---S. 8---Constitution of Pakistan (1973), Art.199---Constitutional petition---Promotion---Non-consideration of petitioner's case for promotion by Selection Board repeatedly on ground of pendency of enquiry against him---Validity---Pendency of enquiry and minor penalties could not come in way of promotion---Enquiry must be concluded within a specific period---Enquiry proceedings pending against petitioner for an indefinite period smacked of arbitrariness and mala fide---Hanging sword on head of a civil servant in form of pendency of enquiry would reflect only to deprive him of his lawful right of promotion---Treatment meted out to petitioner could not sustain in eye of law---Consideration for promotion would mean a just and fair consideration and not as a matter of routine---High Court directed authority to place petitioner's case before Selection Board within specified time, which would consider his case fairly, justly and independent of pendency of enquiry, if not finalized on day of consideration of his case for promotion.

Zarar Khan v. Government of Sindh and others PLD 1980 SC 310; Captain Sarfraz Ahmad Mufti v. Government of the Punjab and others 1991 SCMR 1637; Maj. Ziaul Hassan, Home Secretary and others v. Mrs. Nascem Chaudhry 2000 SCMR 645; Ch. Yar Muhammad Durraina v. Government of the Punjab and another 1992 PLC (C.S.) 95; Sh. Muhammad Riaz v. Government of the Punjab 2003 PLC (C.S.) 1496 and Writ Petition No.2573 of 2000 ref.

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**(d) Civil Service---**

---Promotion---Pendency of enquiry and minor penalties against civil servant not a hurdle in way of his promotion.

Masood Ahmad Riaz for Petitioner.

Naeem Masood, Asstt. A.-G. Punjab with Humayun Akhtar Sabi, Deputy Director Legal for Respondents.

**ORDER**

**HAFIZ TARIQ NASIM, J.**---The backdrop of this writ petition is that the petitioner being senior most Executive Engineer BS-18 of the Communication Works Department, Government of Punjab was expecting his promotion as Superintending Engineer in BS-19 in the year 2003 but he was deferred. In spite of his deferment he remained in the field for five long years when again on 23-5-2008 the petitioner's case of promotion was taken up by respondent No.1 who prepared working paper and placed it before the Provincial Selection Board, who recommended for deferment of the petitioner on the plea of pendency of some inquiry. The petitioner continuously persuaded for the redressal of his grievance since 2003 but with no result and finally filed this writ petition with the following prayer:--

- "(I) Petition may kindly be accepted with costs.
- (II) Respondents may kindly be directed to place the petitioner's case of promotion as Superintending Engineer in BS-19 before the Provincial Selection Board within a period of one month positively.
- (III) Respondent No.2 who is the Chairman of Provincial Selection Board may very kindly be directed to consider Petitioner's promotion case fairly, justly and without being influenced by the pendency of any inquiry.
- (IV) Respondents may kindly be further directed to consider the petitioner for promotion as Superintending Engineering in BS-19 from 9-7-2003 when the petitioner was eligible for such promotion and when his case was first placed before the Provincial 'Selection Board.
- (V) Impugned show-cause notice dated 8-1-2004 and order of inquiry dated 5-9-2007 may kindly be set aside.
- (VI) Petitioner may also kindly be granted such other relief/reliefs to which he is found entitled."

2. Learned counsel for the petitioner submits that so far prayer No. V in respect of setting aside of show-cause notice and order of enquiry is concerned, he does not press the same and it be treated deleted from the prayer clause. However, the learned counsel argued the case in respect of other prayers with vehemence and contends that the petitioner is being victimized with no fault of him, rather on extraneous consideration, with ulterior motive and malice and it is well-settled law that any action, which is based on mala fide cannot be termed as a legal action in the eye of law.

ATTACHED

10/1/2015

January 2015

PLJ 2015 Lahore 24 (DB)  
[Multan Bench Multan]  
Present: SHAHID WAHEED AND SHAH KHAWAR, JJ.  
MUHAMMAD SALEEM--Petitioner

versus  
GOVERNMENT OF PUNJAB through its Chief Secretary  
and 6 others--Respondents  
W.P. No. 14949 of 2012, decided on 15.7.2014.

Constitution of Pakistan, 1973-

---Art. 199--Promotion Policy Rules, 2010, R. 9(iv)--Promotion--Deferment was raising on creditability and unblemished career--Policy was challenged--Validity--Superior Courts--Civil servant against whom a departmental inquiry or criminal proceedings were pending was not an outcast for purpose of consideration of his case for promotion and there was no bar on his promotion--Any policy of government including Promotion Policy 2002 of Government of Punjab cannot come in its way and has become redundant. [P. 27] A & B

Mr. Muhammad Ali Siddiqui, Advocate for Petitioner.

Mr. M. Aurangzeb Khan, A.A.G. along with Saleem Akhtar Qureshi, District Officer Co-Operative Multan for Respondents No. 1, 2 and 3.

Date of hearing: 25.6.2014.

ORDER

In the instant writ petition, the petitioner being a civil servant has challenged the vires of Sub-Rule (IV) of Rule 9 of the Promotion Policy, 2010 and decision of Provincial Selection Board with respect to the deferment of the petitioner for promotion as same being Un-Islamic, Un-Constitutional, discriminatory and against the fundamental rights of the petitioner.

2. The question of law to be determined by this Court is reproduced is under:

"Whether promotion of the civil servant could be deferred which he otherwise entitled to, on a sole ground that a case or inquiry is pending against him in which he is yet to be proven guilty?"

3. Brief facts of the case are that the petitioner was appointed on 07.04.1984 as Assistant Registrar (BS-16) through Punjab Public Service Commission.

4. The promotion of the petitioner in BS-19 has been due since 04.12.2011 on the retirement of one Fayyaz-ul-Haasan Farooqi senior to him. However, he has not been promoted since that date.

5. On 1.3.2012, vide Notification No. SO(E)7-3/96(P-III), a final seniority list was issued by the Secretary Co-Operatives whereby, the petitioner was placed at Serial No. 1 and Respondents No. 4 to 7 were placed at Serial Nos. 2, 3, 4 and 5 respectively.

6. On 24.07.2012, meeting of the Provincial Selection Board-I was held whereby, Respondents No. 4 to 7 were promoted to BS-19 and the promotion of the petitioner was deferred.

7. Leaned counsel for the petitioner contends that the promotion of the petitioner was deferred which he otherwise is entitled to, as per the impugned rule. Further submits that the petitioner has a spotless career and is at verge of his retirement. Till today, not an FIR as well as not a single inquiry has been registered and initiated against him; hence his deferment is raising questions on his creditability and unblemished career, that requires kind interference by this Hon'ble Court. Reliance is placed on Captain Sarfraz Ahmdd Mufti vs. Government of the Punjab and others (1991 SCMR 163), Ma Ziaul Hassan, Home Secretary and others vs. Mrs. Naseem Chaudhry (2000 SCMR 645), Sh. Muhammad Riaz vs. Government of Punjab [(2003 PLC (CS) 1496] and Muhammad Afzal Khan vs. Government of Punjab through Secretary to Government of the Punjab, C&W Department and another [(2009 PLC (CS) 40)].

8. Report and parawise comments were filed by the respondents. One of the preliminary objections was that the matter relates with the terms and conditions of promotion and the petitioner has not availed his remedy by way of filing appeal before the Punjab Service Tribunal, hence Constitutional petition is not maintainable.

9. On facts, Respondents No. 1 & 2 also controverted the prayer made by the petitioner by contending that the promotion case of the petitioner was placed before the Punjab Selection Board, but the Board deferred the same due to the reason that an FIR No. 18/2010 Police Station Anti-Corruption

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Establishment. Multan is pending against the petitioner, and the petition is hit by the Promotion Policy 2010. However, a post in BS-19 has been reserved for the petitioner, subject to his exoneration from the above said case and will be granted promotion from the date when his juniors were promoted.

10. I have given anxious consideration to the arguments advance by learned counsel for the petitioner and the learned AAG, Punjab.

11. Before arriving at a conclusion that the Policy under challenge is sustainable under the law or not, it will be proper to understand spirit of Article 8 of the Constitution of Pakistan 1973; which is re-produced herein under:-

"8. Laws inconsistent with or in derogation of Fundamental Rights to be void.--(1) Any law, or any custom or usage having the force of law, insofar as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights so conferred and any law made in contravention of this clause shall, to the extent of such contravention, be void."

12. Admittedly in the constitution, the Superior Courts have been mandated to ascertain either any law is inconsistent with the rights conferred by the Constitution i.e. Fundamental Rights. In *Tariq Cotton Mills Ltd and another vs. Joint Registrar, Joint Stock Companies and another* (1989 CLC 2013), it is held that the State is prohibited to make any law which curtails or take away any Fundamental Right and any law so made shall to the extent of inconsistency with such right, is to be void. The same principal of Law has been enunciated in *Sharaf Faridi vs. The Federation of Islamic Republic of Pakistan through Prime Minister of Pakistan and another* [PLD 1989 Karachi 404], it was held that limitation has been placed on the legislature not to curtail the Fundamental Rights or abridge them by any law.

13. Question of law raised by the petitioner is answered in following terms:-

(i) Any judgment passed by the Hon'ble Supreme Court of Pakistan, in which a question of law has been determined, is binding on all the Courts subordinate to the Apex Court, as contemplated in Article 189 of the Constitution of Islamic Republic of Pakistan, 1973.

(ii) The petition in hand has been filed on the touch stone of above quoted judgments of the Hon'ble Supreme Court of Pakistan.

(iii) In the case of *Maj Zail-ul-Hassan, Home Secretary vs. Mrs. Naseem Ch.* (2000 SCMR 645), the Hon'ble Supreme Court has held that:

"We are afraid that the mere fact that some disciplinary proceedings are pending against the respondent is not a sufficient ground to disregard the Order passed by this Court. However, we may clarify that promotion as DSP will not debar the petitioner to continue with the disciplinary proceedings against the respondent if any, justly, fairly and in accordance with law."

(iv) In case titled as *Captain Sarfraz Ahmad Mufti vs. Government of Punjab & others* [(sic) SCMR 1637] the Hon'ble Supreme Court upheld judgment of the High Court in which the High Court had directed departmental authorities that case of civil servant be placed before Promotion Board. The High Court had referred to certain Policy letters of the Government under which respondent civil servant's case for promotion merited consideration, but he was illegally ignored.

(v) In the same manner, in case of *Sh. Muhammad Riaz, vs. Govt. of Punjab through Secretary Communication and Works and another* [(2003 PLC (C.S) 1496)] it was held that "withholding of promotion is a penalty and therefore refused to issue a formal notification of the promotion of the petitioner, after he had been recommended by the Provincial Selection Board, which was duly approved by the Competent Authority, was illegal and arbitrary in as much as that it was withheld on the ground of an anticipated departmental inquiry.

14. A principle of law has been enunciated by the Superior Courts. The nutshell of the same is that a civil servant against whom a departmental inquiry or criminal proceedings are pending is not an outcast for the purpose of consideration of his case for promotion and there is no bar on his promotion.

15. The above quoted judgments, in which question of law has been settled, have attained finality and force of law. Any policy of the Government including the Promotion Policy 2002 of the Government of the Punjab cannot come in its way and has become redundant.

ATTORNEY

January 2015

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10. For what has been discussed above, the instant writ petition is allowed. Sub Rule (iv) of Rule 9 of the Promotion Policy 2002 of the Government of Punjab is hereby declared Un-Constitutional, against the spirit of Article 8 of the Constitution and against the principles of law enunciated by the Hon'ble Superior Courts of Pakistan. The respondent Department is directed to place the case of the petitioner to the Provincial Promotion Board and his case may be considered for promotion within a period of 30 days.

(R.A.) Petition allowed

ATTESTED



PLJ 2015 Lahore 45  
[Multan Bench Multan]

Present: SHAH KHAWAR, J.

SHAMA KHAN ZAFAR--Petitioner

versus

DISTRICT COORDINATION OFFICER, LODHRAN etc.--Respondents

W.P. No. 15606 of 2012, decided on 14.4.2014.

Constitution of Pakistan, 1973--

----Art. 199--Constitutional petition--Promotion to next higher grade--Appointment against leave vacancy--Seniority list of employees--Juniors were promoted--Inquiry was pending--Disciplinary proceedings pending against civil servant was not sufficient ground to disregard lawful right of four consideration for promotion--Validity--Mere pendency of departmental inquiry or in presence of minor penalty, a civil servant cannot be denied of his fundamental rights to be considered for promotion where his batch mates and even juniors are considered and promoted--Petitioner, who is a teacher by profession, must have gone through frustration and mental stress due to denial of his legal right--Concept of administration of justice has been defined and interpreted by a number of judicial pronouncements. [P. 49] A & B

Mr. Noor Ahmad Khan Meo, Advocate for Petitioner.

Mr. Aurangzeb Khan, Assistant Advocate General, Punjab for Respondents.

Date of hearing: 14.04.2014

**ORDER**

Through instant writ petition, the petitioner has called in question his non-consideration by the Departmental Promotion Committee for promotion to next higher grade i.e. BS-16 under uplift and upward mobility (Pay Package w.e.f. 1.12.2009).

2. Relevant facts giving rise to the filing of the instant writ petition are that the petitioner was appointed as PTC *vide* Letter No. 11079 dated 31.12.1984 and joined his duties at Government Primary School, Dera Mehro Markaz Karor Pacca, Lodhran. Later on, he was temporarily adjusted as EST against the leave vacancy of Mr. Hazoor Bakhsh, EST *vide* Letter No. 7870/Admn dated 28.10.1985 with the condition that appointment against leave vacancy is temporary up till 31.08.1986 and after the said date he was to report back at his original post i.e. PTC. Instead of report back to his original post the said teacher was adjusted as EST against the post of Mr. Hazoor Bakhsh *vide* Letter No. 3365/Admn dated 10.08.1986 by the competent authority. On query regarding verification/confirmation of posting of the petitioner as EST by the Deputy District Education Officer, Khehror Pacca as well as the Incharge Head Master, Govt. High School, Bahawal Garh, Tehsil Khehror Pacca, District Lodhran *vide* letters dated 27.09.2010 and 16.08.1986 respectively, the District Education Officer informed that the services of the petitioner as EST had already been confirmed/verified *vide* Letter No. 3365 dated 16.08.1986 on permanent basis.

3. Subsequently, the Chief Minister of the Punjab *vide* notification dated 06.11.2009 approved the structure for uplift and upward mobility of Primary and Elementary School Teachers (Male and Female) of all categories in Punjab w.e.f. 01.12.2009 as per ratio given below:--

Category of Teacher	Initial Level		Level I		Level II	
	Pay Scale	Ratio of Post	Pay Scale	Ratio of Post	Pay Scale	Ratio of Post
PSTs (Male & Female)	BS-9	50%	BS-12	35%	BS-14	15%
ESTs (Male & Female)	BS-11	50%	BS-15	35%	BS-16	15%

<http://www.pljlawsonline.com/Item/PLJ2015L45.htm>

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Mof's (Encl. No. M. A. F.)	BS-14	7%	BS-15	35%	BS-16	15%
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That regard the seniority list of ESTs (General), District Lodhran was prepared in which the petitioner was placed at Sr. No. 17. The meeting of Departmental Promotion Committee, Lodhran was convened on 11.08.2011 but the petitioner, whose seniority was rated at Sr. No. 17, was not considered for the benefit of next higher grade BS-16 and his juniors, who were assigned seniority at Serial No. 18 to 65 were awarded BS-16. When the petitioner approached the Executive District Officer (Education), Lodhran, he was informed that his name was not considered by the Departmental Promotion Committee due to the reason that his inquiry was pending on the basis of an Audit Para in respect of his irregular appointment against the post as EST.

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1. The petitioner prayed that a direction may be issued to the respondents to place his case before the Departmental Promotion Committee for fair consideration to award grade BS-16 under the structure of uplift and upward mobility at par with his batch mates.

5. Notice was issued to the respondents who filed report and para-wise comments wherein, it is mentioned that in the year 2006-09, the audit scrutiny was conducted by the Audit Department of office of the Deputy District Education Officer (M) Tehsil Kahrur Pacca. The Audit Officer raised the objection regarding appointment of the petitioner as EST at Government Middle School Mohammad Saeed Tehsil Kahrur Pacca in the shape of Advance Audit Para No. 02 that the appointment of the petitioner is irregular and needs an inquiry into the matter and an inquiry officer was deputed to look into the matter.

6. Learned counsel for the petitioner has argued that the pendency of inquiry on the basis of Audit Para could not have been made basis for non-consideration of the petitioner in the next higher grade BS-16. He contended that it is a well established law laid down by the Hon'ble Superior Courts that the pendency of inquiry and even minor penalty cannot come in the way of promotion. Reliance has been placed on *Maj. Ziaul Hossan, Home Secretary and others versus Mrs. Naseem Chaudhry* (2000 SCMR 645), *Mrs. Sanjida Irshad, Assistant Director Nursing, Bahawalpur versus Secretary to Government of the Punjab Health Department Lahore and others* [2008 PLC (C.S) 1019] and *Muhammad Afzal Khan versus Government of Punjab through Secretary to Government of the Punjab C&W Department and another* [2009 PLC (C.S.) 40]. The Hon'ble Supreme Court of Pakistan in its judgment has held that some disciplinary proceedings pending against the civil servant is not a sufficient ground to disregard his lawful right of fair consideration for promotion. Moreover, the Hon'ble High Court in the above cited judgment has held that the civil servant cannot claim promotion as a matter of right, but it is an inalienable right to every civil servant that he be considered for promotion along with his batch mates, if he fulfills eligibility criteria.

7. During the course of arguments, learned Assistant Advocate General Punjab has fairly commented that a civil servant cannot be disregarded for promotion if one is not otherwise ineligible. He has fully agreed with the judgments passed by the Hon'ble Superior Courts on this issue.

8. I have given my anxious consideration to the arguments advanced by learned counsel for the petitioner as well as learned Assistant Advocate General and have perused the record with their able assistance.

9. This is an admitted position that the Chief Minister of the Punjab approved the structure of uplift and upward mobility of Primary and Elementary School Teachers of all categories *vide* notification dated 06.11.2009. In pursuance of the said notification, EST and other cadres were to be awarded next higher grade BS-15 & BS-16 on the basis of date of their regular appointments and **length of service on the recommendations** of District Selection Committee, Lodhran. Consequently, the District Education Officer, Lodhran notified seniority list for such promotion and petitioner's seniority was reckoned at Sr. No. 17 in the said list. The Departmental Promotion Committee was convened on 11.08.2011 but the petitioner's name was not placed before the same, as a result of which the juniors to the petitioner, who were assigned seniority against Sr. Nos. 18 to 65 were awarded BS-16. From the para-wise comments filed by the respondents, it is made clear that the name of the petitioner was not placed before the Departmental Promotion Committee due to the reason that an inquiry on the basis of advance Audit Para was pending against him.

10. As held by the Hon'ble Superior Courts of the country that the pendency of inquiry and one minor penalty cannot come in the way of promotion of a civil servant. Further that civil servant cannot claim promotion as a matter of right but it is also undisputed fact that it is an inalienable right of every civil servant that he be considered for promotion alongwith his batch mates.

**ATTESTED**

11. Surprisingly, in the instant case, the petitioner was deprived to be considered for promotion at next higher grade BS-16 before Departmental Promotion Committee, Lodhran on the sole reason that his inquiry regarding Audit Para was pending.

12. Article 1 of the Constitution of Islamic Republic of Pakistan, 1973 speaks about the right of individuals to be dealt with in accordance with law, to enjoy the protection of law and to be treated in accordance with law as the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan. In the same manner, Article 25 of the Constitution of Islamic Republic of Pakistan, 1973 ensures equality of citizens by mandating that all citizens are equal before law and are entitled to equal protection of law.

13. Chapter 1 of the Constitution of Islamic Republic of Pakistan, 1973 is an integral part of the Constitution and all State functionaries are duty bound to extend these rights across the board to the citizen. It is not necessary for State functionaries to have performed their Constitutional obligations after intervention of the Hon'ble Superior Courts. Under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 this Court has the jurisdiction to protect and enforce the fundamental rights of the citizens which have been denied. According to Article 5 of the Constitution of Islamic Republic of Pakistan, 1973, loyalty to State and obedience to Constitution and law is the inviolable obligation of every citizen wherever he may be and of every other person for the time being within Pakistan. The word "citizen" does not confine to the ordinary citizen of the country but also covers a person's functions in connection with the affairs of the Federation, Province or a legal authority. All the State functionaries are duty bound to strictly adhere to the Constitution and specially Articles 4, 5 and 25 of the Constitution of Islamic Republic of Pakistan, 1973 while dealing with their day to day business. They should not wait for intervention of the Hon'ble Superior Courts but to extend equal treatment and protection of law whenever they are seized of the matters of the aggrieved persons.

14. In the present case, the respondents were mindful of the fact that there are number of judgments passed by the Hon'ble Superior Courts having decided question of law that mere pendency of departmental inquiry or in the presence of minor penalty, a civil servant cannot be denied of his fundamental rights to be considered for promotion where his batch mates and even juniors are considered and promoted. The department sat over the case of the petitioner for a long time waiting for the decision of this Court. The name of the petitioner could have been placed in the next scheduled meeting of Departmental Promotion Committee but the needful was not done in complete determent. The petitioner, who is a teacher by profession, must have gone through frustration and mental stress due to denial of his legal right. The concept of administration of justice has been defined and interpreted by a number of judicial pronouncements. Reference could be placed on the judgment passed by the Hon'ble Supreme Court of Pakistan in case titled *Samiullah Khan Marwat*

*versus Government of Pakistan* and another reported in [2003 SCMR 11401, in which concept of administration of justice has been interpreted, the relevant portion of the judgment is reproduced as under:

"The exercise of powers by the public functionaries in derogation to the direction of law would amount to disobey the command of law and the Constitution. The concept of administration of justice is not confined only to the judicial system rather every person discharging the functions in relation to the rights of people is bound to act fairly, justly and in accordance with law."

15. In the aforementioned circumstances, I have no other option except to allow the instant writ petition. The respondents are directed to place petitioner's promotion case before the Departmental Promotion Committee, Lodhran within a period of two months from the receipt of this order and the Departmental Promotion Committee shall consider the promotion case of the petitioner in highly fair and just manner. The result of the Departmental Promotion Committee shall be conveyed to this Court through the Deputy Registrar (Judicial). The instant writ petition is allowed in the above terms.

(R.A.) Petition allowed

ATTESTED

گورنمنٹ ہسپتال پیٹریا، کراچی۔ فون نمبر: 7228613۔ فیکس نمبر: 720.06.2011۔ (8) (م س) (پی ایس)۔ قلم نمبر: 05-22

ابتدائی اطلاع رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زبردستہ ۱۵۴ مجموعہ ضابطہ نو جداری

حذران

انٹی کرپشن

مقام	ضلع	تاریخ و وقت وقوع	سال
۲۰۱۵ دفعہ اولیٰ اوقات	ع	۲۰۱۶ سال	2015
تاریخ اوقات	حکایتی نمبر	حکایتی نمبر	
28/03/2017	11/10/2017	11/10/2017	
نام و کونٹ اعلان ذہندہ مستفید	نام و کونٹ اطلاع دہندہ	مقرر کیفیت جرم (مستوفیہ) حال اگر کوئی باگیا ہو	پہلے دو مقامات سے اور بہت
علی اکبر خان	علی اکبر خان	کے ذمہ دار	
۲۲۰-۹۵۶-۹۱۹-۹۲۰-۹۶۸-۹۷۱/۵۰۲			
بم و کونٹ لازم	کارروائی برقی کے منتقلی کی اگر اطلاع درج کرنے میں تاخیر ہو اور وہ بیان کرے	بم و کونٹ لازم	
تقدیر و انٹی کی تاریخ اوقات	بم و کونٹ لازم		

صلح حذران، ڈیپٹی سول سٹیٹ انجینئر، ابتدائی اطلاع کے درج کر کے حقیقت حذران سے جاننے کے بعد ان کے بلڈ کارڈ کے ذریعے اور کوالیٹی کے طور پر پولیس رپورٹ میں ملنے والی تصویر کے خلاف ایچ ڈی سی سی کے خلاف ایک رپورٹ دہرائی گئی ہے تاکہ باضابطہ ذرائع سے یہ اطلاع تکمیل کے ساتھ ملے۔

تعمیراتی کاموں کے دوران ان کی طرف سے کاروبار کی حالت اور باہر سے درآمدی رقم کو مستحق قرار دیا گیا ہے۔ ان کے پاس کاروبار کی حالت اور باہر سے درآمدی رقم کو مستحق قرار دیا گیا ہے۔ ان کے پاس کاروبار کی حالت اور باہر سے درآمدی رقم کو مستحق قرار دیا گیا ہے۔

ان کے پاس کاروبار کی حالت اور باہر سے درآمدی رقم کو مستحق قرار دیا گیا ہے۔ ان کے پاس کاروبار کی حالت اور باہر سے درآمدی رقم کو مستحق قرار دیا گیا ہے۔ ان کے پاس کاروبار کی حالت اور باہر سے درآمدی رقم کو مستحق قرار دیا گیا ہے۔

ان کے پاس کاروبار کی حالت اور باہر سے درآمدی رقم کو مستحق قرار دیا گیا ہے۔ ان کے پاس کاروبار کی حالت اور باہر سے درآمدی رقم کو مستحق قرار دیا گیا ہے۔ ان کے پاس کاروبار کی حالت اور باہر سے درآمدی رقم کو مستحق قرار دیا گیا ہے۔

ان کے پاس کاروبار کی حالت اور باہر سے درآمدی رقم کو مستحق قرار دیا گیا ہے۔ ان کے پاس کاروبار کی حالت اور باہر سے درآمدی رقم کو مستحق قرار دیا گیا ہے۔ ان کے پاس کاروبار کی حالت اور باہر سے درآمدی رقم کو مستحق قرار دیا گیا ہے۔

ان کے پاس کاروبار کی حالت اور باہر سے درآمدی رقم کو مستحق قرار دیا گیا ہے۔ ان کے پاس کاروبار کی حالت اور باہر سے درآمدی رقم کو مستحق قرار دیا گیا ہے۔ ان کے پاس کاروبار کی حالت اور باہر سے درآمدی رقم کو مستحق قرار دیا گیا ہے۔

ATTACHED



IN THE COURT OF SUBHAN SHER, JUDGE  
SPECIAL EHTEESAB COURT-II, KHYBER PAKHTUNKHWA PESHAWAR

Reference No. 04/2016

KPK Ehtesab Commission ...VS... Muhammad Riaz & others

CHARGE

I, Subhan Sher, Judge, Special Ehtesab Court-II Khyber Pakhtunkhwa, hereby charge you accused namely;

1. Muhammad Riaz, aged about 50/51 years, Assistant Director Mineral Development, Mines & Mineral Department Khyber Pakhtunkhwa, presently posted as Assistant Director (Royalty) Headquarter office, Peshawar.
2. Mohsin Ali Khan, aged about 32 years, Assistant Director Mineral Development, Mines & Mineral Department Khyber Pakhtunkhwa, presently posted as Assistant Director Minerals Development, Swat.
3. Noor-ul-Islam aged about 46/47 years, Assistant Director Mineral Development, Mines & Mineral Department Khyber Pakhtunkhwa, presently posted as Assistant Director Minerals Development, Mardan.
4. Zahoor-ud-Din aged about 49/50 years, Assistant Director Mineral Development, Mines & Mineral Department Khyber Pakhtunkhwa, presently posted as Assistant Director Minerals Development, Headquarters office, Peshawar.
5. Nazir Ahmed, aged about 63 years, s/o Abdul Haq, r/o Attar Sheesha, Shah Kot, District Mansehra.
6. Ashraf Ali aged about 41 years s/o Ali Zaman r/o Shah Kot, District Mansehra, as follow:-

Firstly:- That you accused No.1 Muhammad Riaz posted as Mineral Development Officer during the period from 10.07.2006 to 06.11.2008, as DDO from 23.09.2010 to 31.10.2011 and Assistant Director, Mineral Department, Mansehra from 07.05.2015 to 31.10.2015, during your these tenures in the above mentioned capacities, in connivance with your co-accused at serial No. 2 to 6 and in furtherance of your

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common intention and common object of you all, fraudulently and illegally issued 1500 Transit Challans to your co-accused No.5, Nazir Ahmad from 28.06.2008 to 28.06.2011 for Feldspar mining area, but in fact no practical excavation/work was executed in the said area during the above mentioned period and thus you failed to exercise your authority required under the law as you were bound to inspect practically the area at the time of issuance of challans mentioned above. Similarly, you did not prepare the working papers for the cancellation of the lease to licensing authority and willfully failed to fulfill your duties, and you accused caused to suffer public exchequer huge monetary loss to the tune of Rs. 64,204,000/- and thereby committed offences as defined u/s 23 of the Khyber Pakhtunkhwa Ehtesab Commission Act 2014 (as amended upto date) punishable under section 24 read with schedule thereto of the said Act and within the cognizance of this Court.

**secondly:-** That you accused No.2 Mohsin Ali while posted as Assistant Director Mineral Department, Mansehra w.e.f 31.10.2011, during this tenure, your co-accused No.5 Nazir Ahmad filed an application for renewal of the mining lease on 14.06.2012 after 9 months and 25 days of the expiry of the period for filing application for renewal of mining lease, you accused No.2 was required under the law to prepare and submit the working papers for cancellation of mining lease, but you illegally, fraudulently kept the said application in your office and had not acted upon. Similarly, you accused named above posted as Assistant Director Mineral Department, Mansehra w.e.f. 25.07.2013 to 14.04.2014 but during this tenure too, you did not prepare and submit the working papers to competent authority for cancellation of mining lease. During your above mentioned tenures, your co-accused No.5 through authority letter dated 23.10.2013 without the permission of the Licensing Authority sublet the leased area to your co-accused No.6 (Ashraf Ali), who involved in unauthorized mining but you accused did not take any action against above named co-accused No.6 and has been failed to stop the unauthorized

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mining which was continued till 12.10.2015 and thus you willfully failed to fulfill your duties and responsibilities under the law, illegally benefited your co-accused No.5 by suppressing the application in your office and allowing the sublettee your co-accused No.6 for unauthorized and illegal excavation and you accused caused to suffer public exchequer huge monetary loss to the tune of Rs. 64,204,000/- and thereby committed offences as defined u/s 23 of the Khyber Pakhtunkhwa Ehtesab Commission Act 2014 (as amended upto date) punishable under section 24 read with schedule thereto of the said Act and within the cognizance of this Court.

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Thirdly:-

That you accused No.3 Noor-ul-Islam while posted as Assistant Director Mineral Development, Manshara w.e.f. 02.04.2013 to 29.07.2013 and 18.11.2014 to 06.05.2015, the application filed by your co-accused No.5 on 14.06.2012 in the office tenure of your co-accused No.2 for the renewal of the mining lease, deliberately it was kept pending from 14.06.2012 to 10.04.2015 whereas you accused were duty bound to prepare and submit the working papers to the competent authority for cancellation of mining lease but you with malafide intentions did not fulfill the same. Similarly, in your second office tenure you accused illegally and unlawfully did not prepare the working papers for the cancellation of mining lease. Furthermore, you accused illegally issued 200 challans in your second tenure from Serial No.1701 to 1900 of the Challan book on 17.02.2015 to unauthorized and illegal sublettee your co-accused No.6 inspite of the fact that the mining lease had been expired on 19.08.2012. So you accused named above willfully failed to fulfill your duties and responsibilities and illegally benefited the unauthorized sublettee your co-accused No.6 and you accused caused to suffer public exchequer huge monetary loss to the tune of Rs. 64,204,000/- and thereby committed offences as defined u/s 23 of the Khyber Pakhtunkhwa Ehtesab Commission Act 2014 (as amended upto date) punishable under section 24 read with schedule thereto of the said Act and within the cognizance of this Court.

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Fourthly:- That you accused No.4 Zahir-ud-Din, while posted as Assistant Director Development, Mansehra w.e.f from 23.04.2014 to 14.11.2014, your co-accused No.5 (Nazir Ahmad) had already filed an application for renewal of mining lease on 14.06.2012. This application under the law was time-barred, so you accused were required to prepare and submit the working papers to the competent authority for cancellation of mining lease but inspite of doing this, you accused illegally and fraudulently issued 200 challans from 1501 to 1700 on 02.06.2014 to your co-accused. You accused willfully failed to fulfill your duties and responsibilities and illegally benefited the unauthorized and illegal sublettee your co-accused No.6 and you accused caused to suffer public exchequer huge monetary loss to the tune of Rs. 64,204,000/- and thereby committed offences as defined u/s 23 of the Khyber Pakhtunkhwa Ehtesab Commission Act 2014 (as amended upto date) punishable under section 24 read with schedule thereto of the said Act and within the cognizance of this Court.

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Fifthly: That you accused No.5 Nazir Ahmad were granted mining lease vide No. MDW/MA/ML-Feldspar(100)/2007 over an area of 299.163 acres near Village Shahkot, district Mansehra on 20.08.2007 for the period of 5 years valid upto 19.08.2012, but you accused did not work in the said lease area since June, 2008 to May, 2010, but even then you were receiving transit challans from your co-accused No.1 since 28.06.2008 to 28.06.2011 and you accused received 1500 challans during the period and utilized it; whereas, this area was idle since 2008 to May, 210. Inspite of directions issued by the Assistant Director Mineral Development, Mansehra you willfully did not submit the monthly production report showing raising and dispatches of feldspar since June, 2008 to Feb, 2011 and did not deposit the deed rent and annual rent as well. You accused also sublet the mining area to your co-accused No.6 illegally and without the permission of the licensing authority through authority letter dated 23.10.2013. You accused in connivance with accused No.1, 2, 3, 4 and 6 remained involved in unauthorized mining of feldspar and due to this,

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you accused caused to suffer public exchequer huge monetary loss to the tune of Rs. 64,204,000/- and thereby committed offences as defined u/s 23 of the Khyber Pakhtunkhwa Ehtesab Commission Act 2014 (as amended upto date) punishable under section 24 read with schedule thereto of the said Act and within the cognizance of this Court.

**Sixthly:** That you accused No.6, Ashraf Ali remained involved in unauthorized mining of feldspar from 23.10.2013 to October, 2015 under the cover of authority letter dated 23.10.2013 and in connivance with your co-accused No. 2, 3, 4 and 5, you accused illegally obtained the transit Challans from your co-accused No. 3 and 4 and utilized them and due to this practice, you accused caused to suffer public exchequer huge monetary loss to the tune of Rs. 64,204,000/- and thereby committed offences as defined u/s 23 of the Khyber Pakhtunkhwa Ehtesab Commission Act 2014 (as amended upto date) punishable under section 24 read with schedule thereto of the said Act and within the cognizance of this Court.

**Seventhly:-** That you all accused at serial No. 1 to 6 during posting in different categories, working in official and private capacities and in connivance of you all illegally assisted and facilitated one another in excavating mines in utter violation of the laws by misusing your authority and due to your above mentioned illegal acts, you all six accused caused to suffer public exchequer huge monetary loss to the tune of Rs. 64,204,000/- and thereby committed offences as defined u/s 23 of the Khyber Pakhtunkhwa Ehtesab Commission Act 2014 (as amended upto date) punishable under section 24 read with schedule thereto of the said Act and within the cognizance of this Court.

And I hereby direct that you be tried by me on the said charges.

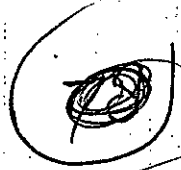
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*[Signature]*  
Judge Special,  
Ehtesab Court-II, KPK  
Peshawar

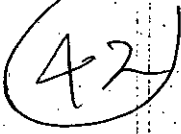
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Note: - The charges have been read over to the accused and explained in their own language.



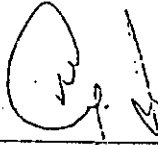
Q: Have you heard and understood the same?

A: Yes.

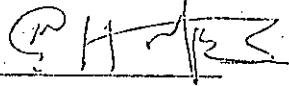
Q: Do you plead guilty to the charges?

A: No.

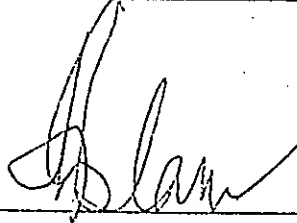
1. Muhammad Riaz



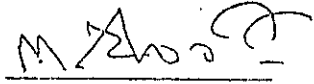
2. Mohsin Ali Khan



3. Noor-ul-Islam



4. Zahoor-ud-Din



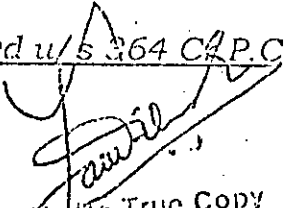
5. Nazir Ahmed



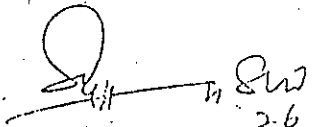
5. Ashraf Ali



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Peshawar

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Judge Special,  
Ehtesab Court-II, KPK  
Peshawar

  
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