

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.**

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

*Service Appeal No.7354/2021*

Date of Institution.....25.08.2021  
Date of Hearing.....08.12.2022  
Date of Decision.....08.12.2022

**Mr. Falak Niaz**, Assistant Director BS-17, Directorate of Science & Technology, ST & IT Department Government of Khyber Pakhtunkhwa.

.....*Appellant*)

Versus

1. **The Government of Khyber Pakhtunkhwa** through Chief Secretary Civil Secretariat, Peshawar.
2. **The Secretary** to Government of Khyber Pakhtunkhwa Establishment Department, Civil Secretariat Peshawar.
3. **The Secretary** to Government of Khyber Pakhtunkhwa ST & IT Department, Civil Secretariat Peshawar.
4. **The Director Science & Technology**, Directorate of Science & Technology, Government of Khyber Pakhtunkhwa.
5. **Mr. Muhammad Akif Khan**, Assistant Director (BPS-17), Directorate of Science and Technology.....(*Respondents*)

Present:

Falak Niaz,  
Appellant.....In Person.

Mr. Muhammad Riaz Khan Paindakhel,  
Assistant Advocate General.....For respondents.

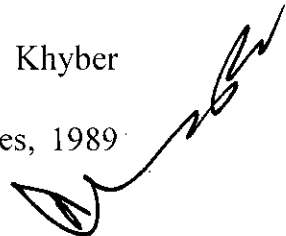
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**APPEAL UNDER SECTION-4 OF THE SERVICE TRIBUNAL ACT, 1974, AGAINST THE IMPUGNED FINAL SENIORITY LIST OF ASSISTANT DIRECTORS BS-17 AND NETWORK MANAGER BS-17 DATED 10.03.2021 BEING ILLEGAL AND WRONG WHEREIN THE APPELLANT WAS DROPPED FROM SENIORITY NO.2 TO SENIORITY NO.3 AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF THE NINETY DAYS.**

## **JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** This appeal is against the final seniority list of Assistant Directors BS-17 and Network Managers BS-17 dated 10.03.2021, whereby the appellant was allegedly dropped from seniority No.2 to seniority No.3.

2. The facts, as narrated in the appeal, are that on the recommendations of the Khyber Pakhtunkhwa Public Service Commission, the appellant was appointed as Assistant Director (BS-17) in the Directorate of Science and Technology, on regular basis, in the year 2015; that Khyber Pakhtunkhwa Establishment of Information Technology Board (Amendment) Act, 2018 was promulgated and according to section 3 of the Act, the Directorate of Information Technology, ceased to be an attached department of the Science and Technology and Information Technology Department of the Government and was merged into the Board; that all the civil servants serving in the Directorate of Information Technology were given option either to continue as civil servants or they might opt for the employment of the board and such option was to be exercised within thirty days of the commencement of the Act; that the employees who did not opt for their absorption in the board were to be absorbed in the Directorate of Science & Technology and they could continue to be governed and regulated in accordance with the Khyber Pakhtunkhwa Civil Servants Act, 1973 and the Rules made thereunder; that before absorption i.e. promulgation of the Act of 2018, the appellant had already been the employee of the Directorate of Science & Technology, where separate seniority list was maintained; that, section 8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 and rule 17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989



gave protection of seniority to the appellant, which, according to the appellant, were silent regarding determination of seniority of the absorbed employees, whereas as per the Establishment & Administration Department (Regulation Wing) Letter No. SOR-I(E&AD)1-200/98 dated 08.06.2001 "Policy for Declaring Government Servant as Surplus and their subsequent absorption/adjustment, although the employees of the erstwhile Directorate of Information Technology were not declared surplus but still Government of Khyber Pakhtunkhwa Surplus Pool Policy para-6 clause (a to d) would be followed while determining seniority of the absorbed employees; that any backdated seniority could not be granted to the absorbed employee and his inter-se seniority, on absorption, was required to be maintained at the bottom; that the private respondent Muhammad Akif Khan was appointed as Assistant Director (BS-17) on 07.04.2014 and was later on absorbed in the Directorate of Science and Technology; that rule 17(3) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 states that the seniority inter-se of civil servants (appointed to a service, cadre or post) shall be determined "*in the event of merger/restructuring of the departments, attached departments or subordinate offices, the inter se seniority of civil servants affected by merger/restructuring as aforesaid shall be determined in accordance with the date of their regular appointment to a cadre or post*"; that the mentioned rule 17(3) was not applicable in the instant case because the private respondent was initially appointed in the Directorate of Information Technology (DOIT), the merger/restructuring of erstwhile Directorate of Information Technology took place with the Khyber Pakhtunkhwa Information Technology Board and not with the Directorate of Science & Technology and only employees of Ex-DOIT, who had given written option for absorption, were absorbed in the Directorate of Science & Technology; so in the instant case policy of absorption would apply for the purpose of determination of seniority; that the private respondent Muhammad

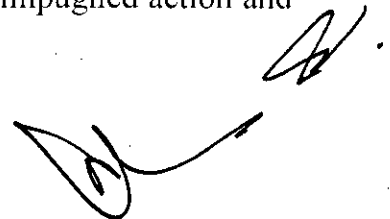
Akif Khan was placed at serial No.1 in the tentative seniority list (16.01.2020) of Assistant Directors & Network Administrators without keeping in view the impugned legislation and absorption of an employee would deprive the seniority and progression of career of meritorious civil servants; that the appellant challenged the tentative seniority list; that in a meeting, the final seniority of BS-17 was discussed and rectified and a corrected seniority list was issued on 12.06.2020, wherein the appellant was placed at his proper place, S.No.2, but on an observation of the Secretary Establishment, the final seniority list was issued on 10.03.2021, relegating the appellant in seniority by placing him at serial No.3 and placing respondent No.5 at serial No.1; that the appellant filed departmental appeal on 22.03.2021 for rectification of the seniority list and on receiving no response from the department, he filed this appeal.

3. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant.

4. We have heard the appellant in person and learned law officer for the respondents.

5. Reiterating the facts and the grounds urged in the memorandum and grounds of appeal, it was contended by the appellant that the impugned actions by the respondents were not justified and it was prayed that the same might be set aside restoring the seniority of appellant as prayed by him in his appeal.

6. On the other side the learned law officer defended the impugned action and prayed for dismissal of the appeal.



7. Admittedly on promulgation and commencement of the Khyber Pakhtunkhwa Establishment of Information Technology Board (Amendment) Act, 2018, vide Section-3A status of Directorate of Information Technology employees was dealt with. Relevant part of section 3A is reproduced as under:

*"Insertion of new section in the Khyber Pakhtunkhwa Act No. XI of 2011, --In the said Act, after section 3, the following new section 3A shall be inserted namely:*

*"3A Status of the Directorate of information Technology and its employees. On commencement of the Khyber Pakhtunkhwa establishment of Information Technology Board (Amendment) Act, 2018,-*

*(i).....*

*(ii).....*

*(iii) All the civil servants serving in Directorate of Information Technology, shall be given an option, either to continue to serve as civil servant or may opt for the employment of the Board. The option shall be exercised within a period of thirty days after the commencement of the Khyber Pakhtunkhwa Establishment of Information Technology Board (Amendment) Act, 2018. Those employees, who do not opt for their absorption in the Board, shall be absorbed in the Directorate of Science and Technology where they can continue to be governed and regulated in accordance with the Khyber Pakhtunkhwa Civil Servants Act, 1973 and the rules made there under;"*

8. Clause(iii) of the above section is very much clear regarding governance and regulation of the employees, who did not opt for their absorption in the Board and they were to be absorbed in the Directorate of Science and Technology where they were to be governed and regulated in accordance with the Khyber Pakhtunkhwa Civil Servant Act, 1973 and the rules made thereunder.

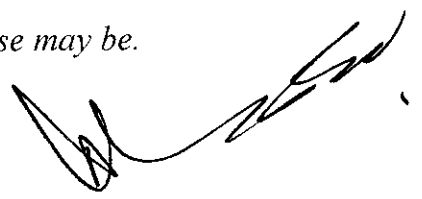
9. There is no denying the fact that both the appellant and private respondent were initially recruited as Assistant Directors BS-17, on the recommendation of the Khyber Pakhtunkhwa Public Service Commission. The appellant was appointed on 20.11.2015 while the private respondent was appointed on 07.04.2014.

10. The contention of the appellant is that he, being already employed in the Science and Technology and Information Technology, Khyber Pakhtunkhwa, was

to rank senior on absorption of private respondent from another department to his department, irrespective of the fact whether private respondent No.5 was appointed earlier than the appellants. He relied on the surplus pool policy of the government notified vide No. SOR-I(E&AD)1-200/98 dated 08.06.2001. But clause (iii) of Section 3A of the Act of 2018 has required that the services of the absorbed civil servant would be governed and regulated in accordance with the Khyber Pakhtunkhwa Civil Servants Act, 1973 and the rules made thereunder, therefore, reliance of the appellants on the surplus pool policy and his contending that seniority of private respondent would be determined on the analogy of the surplus pool policy, is totally misconceived, irrelevant and unjustified for the reason that, when the Act of 2018 has required regulation and governance of services of the absorbed employees under the Khyber Pakhtunkhwa Civil Servants Act, 1973 and the rules made thereunder then we have to see the case under the provisions of Section-8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 and Rule-17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules 1989 and we cannot look the matter in correlation to the surplus pool policy as contended by the appellants.

11. Section-8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 pertains to Seniority and is reproduced below:

8. (1) For proper administration of service, cadre or 2[post] the appointing authority shall cause a seniority list of the members for the time being of such service cadre or 3[post] to be prepared but nothing herein contained shall be construed to confer any vested right to a particular seniority in such service, cadre or 4[post] as the case may be.



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

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

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

15. Similarly Rule-17 of the Punjab Pakhtunkhwa Civil Servants Act, 1973 is

also reproduced as under:

17. Seniority:- (1) The seniority inter se of civil servants appointed to a service, cadre or post shall be determined -

(a) in the case of persons appointed by initial recruitment in accordance with the order of merit assigned by the Commission for as the case may be the Departmental Selection Committee; provided that persons selected for appointment to post in an earlier selection shall rank senior to the persons selected in a later selection; and

(b) in the case of civil servants appointed otherwise, with reference to the date of their continuous regular appointment in the post; provided that civil servants selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter se seniority as in the lower post.

Explanation-I - If a junior person in a lower post is promoted to a higher post temporarily in the public interest, even though continuing later permanently in the higher post, it would not adversely affect the interest of his senior in fixation of his seniority in the higher post.

Explanation-II - If a junior person in a lower post is promoted to a higher post by superseding a senior person and subsequently that senior person is also promoted the person promoted first shall rank senior to the person promoted subsequently, provided that junior person shall not be deemed to have superseded a senior person if the

*case of the senior person is deferred for the time being for want of certain information or for incomplete record or for any other reason not attributing to his fault or demerit.*

*Explanation-III:- A junior person shall be deemed to have superseded a senior person only if both the junior and the senior persons were considered for the higher post and the junior person was appointed in preference to the senior person.*

*(2) Seniority in various cadres of civil servants appointed by initial recruitment vis-à-vis those appointed otherwise shall be determined with reference to the dates of their regular appointment to a post in that cadre; provided that if two dates are the same, the person appointed otherwise shall rank senior to the person appointed by initial recruitment.*

**(3) In the event of merger/restructuring of the Departments, Attached Departments or Subordinate Offices, the inter se seniority of civil servants affected by the merger/restructuring as aforesaid shall be determined in accordance with the date of their regular appointment to a cadre or post.**

*(4) The inter-se-seniority of civil servants in a certain cadre to which promotion is made from different lower posts, carrying the same pay scale shall be determined from the date of regular appointment/promotion of the civil servants in the lower post.*

*Provided that if the date of regular appointment of two or more civil servants in the lower post is the same, the civil servant older in age, shall be treated senior.*

13. In the absence of any specific provision in the Act of 2018 regarding fixation of seniority of the absorbed employees vis-à-vis the employees already working in the department/institution, where the employees are being absorbed, coupled with the fact that the appellant as well as private respondent No.5, both, were initially recruited in BS-17 as Assistant Director, on the recommendation of the Khyber Pakhtunkhwa Public Service Commission but obviously in different selection processes, the private respondent being selectee of the earlier selection while the appellant being selectee of the later selection. In such a situation clause (a) sub-rule (1) and sub-rule(3) of Rule-17 of the above Rules, would come into play. According to clause (a) of sub-rule (1), the persons selected in an earlier





selection shall rank senior to the persons selected in later selection. The private respondent, admittedly, being selectee of the earlier is thus to rank senior to the appellant and was rightly placed senior. Similarly, sub-rule (3) of rule 17 also requires that in the event of merger/restructuring of the Departments, Attached Departments or Subordinate Offices, the inter se seniority of civil servants affected by the merger/restructuring as aforesaid shall be determined in accordance with the date of their regular appointment to a cadre or post. Both the appellant and the private respondent are regular employees having been appointed on the recommendations of the Khyber Pakhtunkhwa Public Service Commission but, as aforesaid, through different selection processes and on different dates but fact remains that both were appointed as Assistant Directors in BS-17. The regular appointment of the private respondent was made in the year 2014 while that of the appellant was made in the year 2015, therefore, the seniority of the appellant and of the private respondent was correctly determined. Reliance is placed on 1998 SCMR 633 titled "*Zahid Arif versus Government of NWFP etc*", wherein the august Supreme Court of Pakistan held as under:

*"----R. 17(a)---Constitution of Pakistan (1973), Art. 212(3)---Seniority-- Appointment of civil servant to post in later selection---Petitioner's name had been placed next to respondents although he had been placed higher on merit list than respondents---Civil servant's appeal against seniority list had been dismissed mainly on the ground that respondents being nominees for first batch were to rank higher than civil servant on account of their initial selection---Rule 17(a), North-West Frontier Province (Appointment, Promotion and Transfer) Rules, 1989, provided that person selected for appointment to post in earlier selection would rank senior to person selected in later selection--"*

Similarly in 1996 PLC (CS) 85 titled "*Dr Badshah Gul versus Prof. Dr Shafiq Ahmad and 19 others*", the august Supreme Court was pleased to have found that holding of post and continuous regular appointment to that post was determining

factor for inter se seniority. It was added that, when two different teaching institutions wherein doctors were employed, were amalgamated and merged together....After merger of two institutions inter se seniority was to be determined amongst the doctors teaching in both the institutions---Post would, therefore, be the determining factor for deciding inter se seniority between civil servants holding the same post. As mentioned above, both the appellant and the private respondent are holder of the same post and grade, the private respondent being selected and appointed earlier than the appellant, would rank senior after merger and in view of the provisions of section 3A of the Act of 2018 by way of which the services of the absorbed employees were to be governed and regulated by the Khyber Pakhtunkhwa Civil Servants Act, 1973 and the rules made thereunder.

14. This being so this appeal has no merits and is, therefore, dismissed. We direct that the costs shall abide by the result of this appeal. Consign.

**15. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 8<sup>th</sup> day of December, 2022.***

  
**KALIM ARSHAD KHAN**  
Chairman

  
**FAREEHA PAUL**  
Member (Executive)

**ORDER**

8<sup>th</sup> Dec, 2022

1. Appellant in person present, Mr. Muhammad Riaz Khan Paindakhel, Asst: AG for respondents present.

2. Vide our detailed judgement of today placed on file, this being so this appeal has no merits and is, therefore, dismissed. We direct that the costs shall abide by the result of this appeal. Costs shall follow the event. Consign.

3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 8<sup>th</sup> day of December, 2022.*



**(Kalim Arshad Khan)**  
Chairman



**(Fareeha Paul)**  
Member(Execution)

**APPEAL No.7354/2021**

**FALAK NIAZ**

**VS**

**GOVERNMENT OF KHYBER PAKHTUNKHWA**

Through

The Chief Secretary, Govt of Khyber Pakhtunkhwa,  
Civil Secretariat, Peshawar.

Respondent No.1

The Secretary, Establishment Department,  
Govt of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar

Respondent No.2

The Secretary, Science & Technology and Information  
Technology Department, Govt of Khyber Pakhtunkhwa,

Respondent No.3

The Director Science & Technology (S&T),  
The Directorate General of Science & Technology (DoST),  
Khyber Pakhtunkhwa, Peshawar.

Respondent No.4

Mr. Muhammad Akif Khan, Assistant Director,  
Directorate General of Science & Technology (DoST),  
Khyber Pakhtunkhwa, Peshawar

Respondent No. 5

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**Subject: Joint Para wise comments of the Respondents No.1 to 4.**

Respectfully Sheweth,

**PRELIMINARY OBJECTIONS:**

1. The appellant has no locus standi and cause of action to file the instant appeal.
2. The instant Appeal is based on equivocal and ambiguous statements.
3. The appellant has concealed the material facts from this honorable Service Tribunal.
4. The appellant has not come to this honorable Service Tribunal with clean hands.
5. The present Appeal is liable to be dismissed for non-joinder/ misjoinder of necessary and proper parties.
6. The instant appeal is against the prevailing law and rules.
7. The appellant is estopped by his own conduct to file the instant appeal.
8. The instant Appeal is not maintainable in the present form and also in the present circumstances of the issue.

**FACTS:**

1. Pertains to the petitioner's personal identity, character and profile hence, no comments.
2. The appellant Mr. Falak Niaz was appointed on regular basis through the KP PSC (Khyber Pakhtunkhwa Public Service Commission) vide Notification No. FS/E/PF/6-1/2015/15926-32. (**Annexure-D**).
3. **Correct** to the extent that the Directorate of Science & Technology and Directorate of Information Technology were Two (2) separate attached departments of the same administrative department, i.e., Department of Science and Technology and Information Technology.
4. **Correct** to the extent that the regular employees of the Erstwhile Directorate of Information Technology were given an option either to continue their regular services in the Directorate of Science & Technology or accept being absorbed in the KP IT Board as per Section 3(A) Clause (iii) of the Khyber Pakhtunkhwa Establishment of Information Technology Board (Amendment) Act, 2018 dated 5<sup>th</sup> March, 2018. (**Annexure-E**). The Section 3(A) Clause (iii) is reproduced herein as follows: *"All the civil servants serving in Directorate of Information Technology, shall be given an option, either to continue as civil servant or may opt for the employment of the board. The option may be exercised within a period of thirty days after the commencement of the Khyber Pakhtunkhwa Information Technology Board (Amendment) Act, 2018. Those employees who do not opt for their absorption in the board, shall be absorbed in the Directorate of Science & Technology, where they can continue to be governed and regulated in accordance with the Khyber Pakhtunkhwa Civil Servants Act, 1973 and the rules made there under; and"*.

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The regular employees of the erstwhile Directorate of Information Technology did not opt for employment in the KP IT Board and opted for continuation of their services and merger in the Directorate of Science & Technology. Consequently, Department of Science & Technology and Information Technology issued a Notification regarding appointment of the regular employees of erstwhile Directorate of Information Technology in the Directorate of Science & Technology (**Annexure-F**). The appellant has tried to give an impression that the employees were absorbed in the Directorate of Science & Technology from surplus pool and started their services anew which is a wrong conjecture. The Act clearly defines their status as being regular officiating employees who will continue their services in the Directorate of Science & Technology.

5. **Correct** to the extent that the appellant was appointed before the merger and continuation of services of the employees of the erstwhile Directorate of Information Technology in the Directorate of Science & Technology. It is obvious that seniority list is maintained individually at every other department and the Directorate of S&T was no exception.

6. The appellant has tried to mislead the Tribunal by giving a conjectural statement that APT Rules 1989 are silent regarding the determination of seniority of absorbed employees while in the same breath, he tries to refer to another policy namely "Surplus Pool Policy and then builds an argument that the only recourse available in such a scenario is to follow the stated "Surplus Pool Policy" while determining the seniority of the merged employees. This vague argument and arbitrary statement will be tested in the light of logic and reason while remaining within the ambit of relevant rules and regulations. 1<sup>st</sup> argument; from where it occurs that the employees of the erstwhile Directorate of IT were declared as surplus. Their organization was abolished and its functions were transferred to an autonomous organization, i.e., KP IT Board while they were given two options as per the KP IT Board Amendment Act 2018: either to join the KP IT Board as autonomous employees or continue services as civil servants in the Directorate of S&T under the administrative control of Science & Technology and Information Technology Department. 2<sup>nd</sup> argument; these employees opted for the latter and opted for continuation of their services in the Directorate of Science & Technology. Now, the seniority will be maintained from the date of their regular appointment in the government. Reference to Section 17, Clause (2) and Clause (3) of the APT Rules 1989. Clause (2) *"Seniority in various cadres of civil servants appointed by initial recruitment vis-à-vis those appointed otherwise shall be determined with reference to the dates of their regular appointment to a post in that cadre; provided that if two dates are the same, the person appointed otherwise shall rank senior to the person appointed by initial recruitment. Clause (3) In the event of merger/restructuring of the*

*[Handwritten signature]*

*Departments, Attached Departments or Subordinate Offices, the inter se seniority of civil servants affected by the merger/restructuring as aforesaid shall be determined in accordance with the date of their regular appointment to a cadre or post.” (Annexure-G).*

Under the said rules, it becomes quite clear that Mr. Akif Khan (Respondent No. 5) being appointed earlier to Mr. Falak Niaz shall rank senior to the appellant.

- 7. Correct to the extent that Mr. Akif Khan was appointed as Assistant Director (BPS-17) in the ex-Directorate of IT on 07-04-2014 (**Annexure-H**) and after the promulgation of the KP IT Board Amendment Act 2018, his services were merged in the Directorate of Science & Technology after exercising his option to continue his services as civil servant (**Annexure-I**). It ensures that there is no break in his service and he has been considered to be regularly officiating since his day of initial appointment as stated.
- 8. The appellant has once again tried to mislead the honorable court by quoting half-baked statement and rules. Mr. Akif Khan or for that matter other employees have been merged and they are continuing their services in the Directorate of Science & Technology. Now, they are regular employees of the Directorate of Science & Technology and not vice versa. Their services are protected by the Act of the Assembly and it must be borne in mind that law supersedes everything, rules & Regulations. Rules & Regulations are subservient to law and not the other way around.
- 9. Mr. Akif Khan was placed at serial No. 1 in the Final seniority list dated 10-03-2021 (**Annexure-J**) as he was appointed through KP Public Service Commission in the erstwhile Directorate of Information Technology before the appointment of the other officers of same cadre as reflected in the seniority list. As their services got merged in the Directorate General of Science & Technology alongwith with post with protection of their services. It was therefore natural that seniority will be determined according to the prevalent rules and regulations. The rules and regulations clearly show that a person appointed on regular basis earlier than other officers will be considered senior in comparison. Therefore, Surplus Pool Policy cannot be applied on the employees of erstwhile Directorate of information Technology as they were not rendered to surplus pool of the Establishment Department. The parent department of the Directorate of Information Technology and Directorate of Science & Technology is the same, i.e., ST & IT Department.

The appellant has referred to the meeting held on 30-06-2020 wherein he was placed at serial No. 2. However, that was a tentative seniority list and not a final seniority list. Thereafter, a final seniority list was issued by the ST & IT

department after consultation with the Establishment Department wherein Mr. Akif Khan was placed at Serial No. 1 as per his initial regular appointment date. The relevant reference is made to Section 17, Clause (2) and Clause (3) of the APT Rules 1989 Clause (2). *“Seniority in various cadres of civil servants appointed by initial recruitment vis-à-vis those appointed otherwise shall be determined with reference to the dates of their regular appointment to a post in that cadre; provided that if two dates are the same, the person appointed otherwise shall rank senior to the person appointed by initial recruitment. Clause (3) In the event of merger/restructuring of the Departments, Attached Departments or Subordinate Offices, the inter se seniority of civil servants affected by the merger/restructuring as aforesaid shall be determined in accordance with the date of their regular appointment to a cadre or post.”*(Annexure-G)

As Per Sl.No. 3 CIVIL SERVANTS (SENIORITY) RULES, 1993; [4A. *“In the event of merger of Ministries, Divisions, Attached Departments or Subordinate Offices, the inter se seniority of civil servants, other than those belonging to regularly constituted occupational Groups and Services, shall be determined in accordance with the date of regular appointment to a cadre or post”*] (Annexure-K). This rule alone is clear enough to rest the concerns of the appellant as Mr. Akif Khan was appointed to the post of Assistant Director before the appellant Mr. Falak Niaz. Therefore, as per the relevant rule, Mr. Akif Khan is senior by virtue of being appointed on regular basis prior to the appointment of Mr. Falak Niaz.

10. It is stated that the “Surplus Pool Policy” does not apply to 16 employees of the erstwhile Directorate of IT as they were merged / adjusted in the Directorate of S&T while their services were in light of the Act of the assembly. Therefore, this opinion is like trying to divert attention of the honourable Tribunal by stating wishful statements and highlighting handpicked parts of various rules which tantamounts to misleading of facts. Final seniority list was issued by the ST & IT Department after due consultation with the Establishment Department. (Annexure-J)

*S. Akif Khan*

11. It is once again reiterated that Mr. Akif Khan was placed at serial No. 1 in the Final seniority list dated 10-03-2021, as he was appointed through KP Public Service Commission in the erstwhile Directorate of Information Technology before the appointment of the other officers of same cadre as reflected in the seniority list. As their services got merged in the Directorate General of Science & Technology with protection of their services. It was therefore natural that seniority will be determined according to the prevalent rules and regulations. The rules and regulations clearly show that a person appointed on regular basis earlier than other officers will be considered senior to all such officers. Seniority will always be considered from the date of regular appointment. Therefore, incumbents will be placed in the seniority list from the date of their regular



appointment in the government in the light of Khyber Pakhtunkhwa Civil Servants Act, 1973 and rule 17(1)(a) of the (Appointment, Promotion and Transfer Rules, APT Rules), 1989. Moreover, the instant Service Appeal is not maintainable on the following grounds:-

**12. GROUNDS:**

A. **Incorrect.** The impugned actions / inactions of the respondents were in accordance with Law and rules.

B. When the appeal itself is illegal and based on individual interests and the grounds taken are flimsy, then the appellant can no longer hope that the competent authority may pay heed to illegal requests.

C. The plea is based on emotions and personal interests. If not so, then the appellant may be asked as to what was the mistake of the employees of the erstwhile Directorate of IT that their organization was abolished and their services rendered to the Directorate of S&T. These were administrative decisions taken by the government and the government employees were bound to abide by such decisions whether they liked it or not. Also, their services were rendered to the Directorate of S&T on the basis of continuation. They were not declared surplus nor were their services rendered to the surplus pool of the establishment department for further adjustment. Their parent department was the same i.e ST & IT Department and there cadre was also the same so the decision was taken logically.

D. This statement is a figment of imagination based on mere wish, nothing more.

There is a constant reiteration of the same argument that merger can be only carried out through "Surplus Pool Policy". Well, the appellant may be reminded that Law assumes ascendancy over every other matter. Rules and policies are made under the law and not the other way around in the wider context. Law is promulgated after consideration of taking interests of people in totality and is never restricted to just individual cases. In the present case, the regular employees of the Erstwhile Directorate of Information Technology were given an option either to continue their regular services in the Directorate of Science & Technology or accept being absorbed in the KP IT Board as per Section 3(A) Clause (iii) of the Khyber Pakhtunkhwa Establishment of Information Technology Board (Amendment) Act, 2018 dated 5<sup>th</sup> March, 2018. (Annexure-E). The Section 3(A) Clause (iii) is reproduced herein as follows: **"All the civil servants**

*Handwritten signature*

*...serving in Directorate of Information Technology, shall be given an option, either to continue as civil servant or may opt for the employment of the board. The option may be exercised within a period of thirty days after the commencement of the Khyber Pakhtunkhwa Information Technology Board (Amendment) Act, 2018. Those employees who do not opt for their absorption in the board, shall be absorbed in the Directorate of Science & Technology, where they can continue to be governed and regulated in accordance with the Khyber Pakhtunkhwa Civil Servants Act, 1973 and the rules made there under; and”.*

The regular employees of the erstwhile Directorate of Information Technology did not opt for employment in the KP IT Board and opted for continuation of their services and absorption in the Directorate of Science & Technology. Consequently, Department of Science & Technology & Information Technology issued a Notification regarding appointment of the regular employees of erstwhile Directorate of Information Technology in the Directorate of Science & Technology (**Annexure-F**). The appellant has tried to give an impression that the employees were absorbed in the Directorate of Science & Technology from surplus pool and that they started their services anew which is factually and legally wrong and is based on conjecture.

- E. As explained in para D Section 3(A) Clause (iii) is reproduced herein as follows:  
*“All the civil servants serving in Directorate of Information Technology, shall be given an option, either to continue as civil servant or may opt for the employment of the board. The option may be exercised within a period of thirty days after the commencement of the Khyber Pakhtunkhwa Information Technology Board (Amendment) Act, 2018. Those employees who do not opt for their absorption in the board, shall be absorbed in the Directorate of Science & Technology, where they can continue to be governed and regulated in accordance with the Khyber Pakhtunkhwa Civil Servants Act, 1973 and the rules made there under; and” (**Annexure-E**).*

F. Tentative seniority list was issued by the ST & IT Department wherein the incumbents were placed at their respective positions as per dates of their initial regular appointment (**Annexure-L**).

G. The appellant did submit an appeal regarding the tentative seniority list, however; it may be reiterated that appeal on weak legal and administrative grounds could not be considered as was the case here. It is once again clarified that the "Surplus Pool Policy" does not apply to the 16 employees of the erstwhile Directorate of IT as they were adjusted in the Directorate of S&T.

H. As explained above.

I. **Incorrect.** As explained above.

J. **Incorrect.** Seniority list was issued with due regard to laws, rules and regulations.

K. **Incorrect.** All norms of justice have been taken care of in the current case.

L. The appellant must be aware of the fact that his case is also arbitrary in nature and the statements made in the appeal are highly objectionable and presumptuous in nature.

*J. S. Ka*

M. **Correct.** However, no one is benefited as no violation of rules has occurred in the current case.

N. **Incorrect.** No one is deprived of his legal rights of seniority in an arbitrary manner as alleged by the appellant. Detail reply is given in paras ibid.

O. It is therefore prayed that the said appeal may be dismissed summarily as being arbitrary in nature and without any cogent legal grounds. Therefore, no relief may be granted to the appellant as per his wishes. As doing so would deprive other respondents and officers/officials of this Directorate and other government departments of their due rights and set a wrong precedent

PRAYER:

It is humbly prayed before the honourable Service Tribunal that the subject appeal being baseless, devoid of merits may be dismissed with costs.

CHIEF SECRETARY  
THROUGH SECRETARY ST & IT  
Govt. of Khyber Pakhtunkhwa  
(Respondent No.1)

SECRETARY  
ESTABLISHMENT Department  
Govt. of Khyber Pakhtunkhwa  
(Respondent No. 2)

SECRETARY  
ST & IT Department  
Through Deputy Secretary (Admn), ST & IT  
Department  
Govt. of Khyber Pakhtunkhwa  
(Respondent No.3)

DIRECTOR  
SCIENCE & TECHNOLOGY  
Govt. of Khyber Pakhtunkhwa  
(Respondent No.4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

**APPEAL No.7354/2021  
FALAK NIAZ**

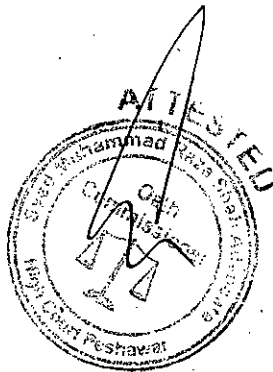
VS

**GOVERNMENT OF KHYBER PAKHTUNKHWA  
Through**

- The Chief Secretary, Govt of Khyber Pakhtunkhwa,  
Civil Secretariat, Peshawar. Respondent No.1
- The Secretary, Establishment Department,  
Govt of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar Respondent No.2
- The Secretary, Science & Technology and Information  
Technology Department, Govt of Khyber Pakhtunkhwa, Respondent No.3
- The Director Science & Technology (S&T),  
The Directorate General of Science & Technology (DoST),  
Khyber Pakhtunkhwa, Peshawar. Respondent No.4
- Mr. Muhammad Akif Khan, Assistant Director,  
Directorate General of Science & Technology (DoST),  
Khyber Pakhtunkhwa, Peshawar Respondent No.5

**AFFIDAVIT**

I Iftikhar Ali, Superintendent BPS-17 Directorate General of Science and Technology Khyber Pakhtunkhwa being authorized Officer to file the joint Para-wise comments pertaining to Appeal No. 7354/2021 titled Falak Niaz VS Govt. of Khyber Pakhtunkhwa, hereby solemnly declare on oath that the subject comments to be submitted before the honorable Court are true and facts based to the best of my knowledge. Furthermore, nothing has been concealed from the honorable Court.



*Iftikhar Ali*  
06/04/2022

(Iftikhar Ali)  
Superintendent  
CNIC NO. 16102-6256975-7  
0345-9289160

07 APR 2022



"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.  
JUDICIAL COMPLEX (OLD), KHYBER ROAD, PESHAWAR.

No.

Appeal No. 7354 of 20 21

Falak Niaz

Appellant/Petitioner

Versus

The Commr. of KPk Chief Secy

Respondent

Respondent No. 3

Notice to:

The Secretary to Commr. of KPk  
ST & IT Deptt. Civil Secretariat Peshawar

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal on 23/12/21 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No. .... dated .....

Given under my hand and the seal of this Court, at Peshawar this 16.11.21

Day of Nov 20 21

For Reply  
DSE  
2021/11/11

IMMED

Registrar,  
Khyber Pakhtunkhwa Service Tribunal,  
Peshawar.  
SA(E)  
AB  
18-11-21

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.  
2. Always quote Case No. While making any correspondence.

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**

**PESHAWAR**

7354

Appeal No. \_\_\_\_\_ /2021

Mr. FALAK NIAZ

VS

Govt: OF KP

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APPELLANT  
Mr. FALAK NIAZ

THROUGH:



(SYED NOMAN ALI BUKHARI)  
ADVOCATES, PESHAWAR

Date 23-08-21



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR**

1

Appeal No. \_\_\_\_\_ /2021

Mr. Falak Niaz, Assistant Director BS-17,  
Directorate Of Science & Technology,  
ST&IT Department Govt Of KP.

**APPELLANT**

**VERSUS**

1. The Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat, Peshawar.
2. The Secretary to Govt: of Khyber Pakhtunkhwa Establishment Department Civil Secretariat Peshawar.
3. The Secretary to Govt: of Khyber Pakhtunkhwa, ST&IT Department Civil Secretariat Peshawar.
4. The Director S&T, Directorate of Science & Technology Govt: of Khyber Pakhtunkhwa.
5. MR. Muhammad Akif Khan, Assistant Director (BPS-17), Directorate of Science and Technology.

**RESPONDENTS**

.....

**SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED FINAL SENIORITY LIST OF ASSISTANT DIRECTORS BS-17 AND NETWORK MANAGER BS-17 DATED 10.03.2021 BEING ILLEGAL AND WRONG. WHEREIN THE APPELLANT WAS DROPPED FROM SENIORITY NO. 2 TO SENIORITY NO. 3, AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF THE NINETY DAYS.**

.....

**PRAYER**

ON THE ACCEPTANCE OF THIS APPEAL, THE APPELLANT MAY BE DECLARED SENIOR FROM RESPONDENT NO.5 OF ASSISTANT DIRECTOR BS-17 & NETWORK MANAGER BS-17 AND THE RESPONDENTS MAY PLEASE BE DIRECTED TO CORRECT THE IMPUGNED FINAL SENIORITY LIST DATED 10.03.2021 OF ASSISTANT DIRECTOR BS-17 & NETWORK MANAGER BS-17 AND PLACE THE NAME OF APPELLANT AT PROPER POSITION (S. NO. 2) IN SENIORITY LIST ACCORDING TO SENIORITY RULES. ANY OTHER REMEDY WITH THIS AUGUST TRIBUNAL DEEMS FIT AND PROPER MAY ALSO BE AWARDED THE FAVOR OF THE APPELLANT.

.....

**RESPECTFULLY SHEWETH**

**FACTS**

1. That the appellant is law abiding citizen of Pakistan and have every legal right protect under Constitution of Islamic Republic of Pakistan.
2. That appellant was appointed as Assistant Director (BS-17) in the Directorate of Science & Technology on regular basis through Khyber Pakhtunkhwa Public Service Commission in the year 2015 and work with full zeal and zest since appointment. Copy of Appointment order attached is Annexure-A.
3. That according to Rule of Business, the Science & Technology and Information Technology Department ((issued, vide No.SO (O&M)/E&A/2-24/2005 dated 22-11-2011 Schedule-I at S.No. 22 (a&b)), the Directorate of Science & Technology and Directorate of Information Technology were two separate, attached /independent department/entities of ST&IT on the Technical, Functional, Administrative, Services rules, Seniority, Financial, Current and developmental budget, PR code, Sanction posts, Regulatory control over all activities etc. (copy of Rule of Business of the Science & Technology and Information Technology Department is attached as Annexure-B).

4. That Khyber Pakhtunkhwa Establishment of Information Technology Board (Amendment) Act 2018 (Khyber Pakhtunkhwa Act No. IV of 2018) was promulgated by the Provincial Assembly wherein Section 3 clearly states that "the Directorate of Information Technology, shall cease to be an attached department of Science & Technology and Information Technology Department of Government, and shall be merged into Board" and "All the civil servants serving in the Directorate Of Information Technology, shall be give an option, either to continue to as a civil servants or may opt for the employment of the board. The option will be exercise within thirty days after commencement of Khyber Pakhtunkhwa Establishment of Information Technology Board (Amendment) Act 2018 (Khyber Pakhtunkhwa Act No. IV of 2018). Those employees, who do not opt for their absorption in the board, shall be absorbed in the Directorate of Science & Technology where they can continue to be governed and regulated in accordance with the Khyber Pakhtunkhwa civil servants act, 1973 and the rules made under;" After exercising option for absorption by the erstwhile DoIT employees into the Directorate of Science & Technology, the absorption notification No.SOE/ST&IT/KP/1-9/Merging of DoIT-KPITB/17/V-II dated April 06, 2018 of erstwhile Directorate of Information Technology employees into Directorate of Science & Technology was issued. (copy of **Khyber Pakhtunkhwa Establishment of Information Technology Board (Amendment) Act 2018 (Khyber Pakhtunkhwa Act No. IV of 2018)** and absorption notification No.SOE/ST&IT/KP/1-9/Merging of DoIT-KPITB/17/V-II dated April 06, 2018 is attached as Annexure-C &D).

5. That before the absorption of employees of erstwhile Directorate of Information Technology, the appellant was appointed as Assistant Director (BS-17) in the Directorate of Science & Technology on regular basis through Khyber Pakhtunkhwa Public Service Commission. Moreover, separate seniority was maintained by the Directorate of Science & Technology as per Khyber Pakhtunkhwa Civil Servant Act, 1973 (Copy of tentative Seniority issued in the Directorate of S&T Annexure-E).

6. That Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion and Transfer) (APT) Rules 1989 section 8 read with seniority rules 17 that give protection in seniority of the appellant. It is further stated the Khyber Pakhtunkhwa Civil Servant Act, 1973 Section 8 and Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer)

*[Handwritten signature]*

Rules 1989 are silent regarding determination of the seniority of absorbed employee, while as per Establishment & Administration Department (Regulation Wing) Letter NO. SOR-1(E&AD).1-200/98, Dated: 8<sup>th</sup> June, 2001 "Policy for Declaring Government Servant as surplus and their subsequent Absorption/ Adjustment" although the employees of erstwhile DoIT were not declared surplus but still Government of Khyber Pakhtunkhwa Surplus Pool Policy para-6 clause (a to d) will be followed while determining seniority of the absorbed employees, the only rule covering seniority fixation of absorbed/ adjusted employees under para 6-b(a to d) "In case, however, he is adjusted in his respective cadre but in department other than his parent department, he shall be placed at the bottom of seniority list of that cadre". Any backdated seniority cannot be granted to any absorbee and his inter-se seniority, on absorption in the cadre shall be maintained at the bottom as provided under the rules regulating seniority. This has further been supported in the judgments passed by Peshawar High Court Peshawar in writ petition No. 2942/2013 dated 19-08-2014 (Shaukat Ali Yousafzai Vs Govt of KP) and Supreme Court of Pakistan Judgment various constitution Petition No. 89/2011 other petitions on the Sindh Civil Servants (Regularization of absorption) Act 2011 date of hearing 16<sup>th</sup> to 19<sup>th</sup>, 29<sup>th</sup> to 30<sup>th</sup> April 2013 and 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> May 2013. (Copy of Establishment & Administration Department (Regulation Wing) Letter NO. SOR-1(E&AD).1-200/98, Dated: 8th June, 2001, Peshawar High Court Judgment and Supreme Court of Pakistan Judgment are attached as Annexure-F, G & H).

7. That Mr. Muhammad Akif Khan was initially appointed as Assistant Director (BPS-17) in the erstwhile Directorate of Information Technology, on 07-04-2014 and later on by giving in writing option was absorbed in the Directorate of Science and Technology through KPIT Board Act 2018 (Khyber Pakhtunkhwa Act No. IV of 2018) and as per Clause (iii) of Section 3A of the ibid Act, it necessitates absorption of the regular employees of the Directorate of Information Technology into the Directorate of Science & Technology, who do not opt for employment in the KPIT Board.
8. That Since, Mr. Muhammad Akif Khan Assistant Director has been absorbed in the Directorate of Science & Technology from erstwhile DoIT, and Rules-17(3) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules 1989 Seniority states that "The seniority inter se of civil servants (appointed to a service,

cadre or post) shall be determined "In the event of merger/restructuring of the Departments, Attached Departments or Subordinate Offices, the inter se seniority of civil servants affected by the merger/restructuring as aforesaid shall be determined in accordance with the date of their regular appointment to a cadre or post " the mentioned rules 17(3) in the instant case is not applicable because in the instant case respondent no.5 is initially appointed in the Directorate of Information Technology, the merger/restructuring of erstwhile DoIT take place with Khyber Pakhtunkhwa Information Technology Board, not with the Directorate of Science & Technology and only employees of Ex-DoIT who given written option for absorption, are absorbed in the Directorate of Science & Technology. So in the instant case Policy of Absorption apply for the purpose of determination of Seniority. (Copy of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules 1989 sub rules 17(3) is attached Annexure-I).

9. That as in the light of Khyber Pakhtunkhwa Civil Servant Act, 1973 Section 8 and Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules 1989 seniority rules 17 and Establishment & Administration Department (Regulation Wing) Letter NO. SOR-1(E&AD).1-200/98, Dated: 8TH June /2001 "Policy for Declaring Government Servant as Surplus and their Subsequent Absorption/ Adjustment", Mr. Muhammad Akif Khan, Assistant Director is placed at serial No. 01 in the tentative seniority list of Assistant Directors & Network Manager BPS-17 dated 16.01.2020 without keeping in view the impugned legislation absorption of an employee would deprive the seniority and progression of career of meritorious civil servants. The filed detailed objection dated 27.01.2020 on the tentative seniority list, no response then again submitted On 09.03.2020 and 17.03.2020. The respondent No. 3 issued letter to all officers on 26-06-2020 called meeting on 30-06-2020 at 11:00am which was attended by the following officers:
- i. Secretary ST&IT Department Chairman
  - ii. Additional Secretary, ST&IT Department
  - iii. Director-ST, Directorate of S&T
  - iv. SO(E), ST&IT Department
  - v. Wiqar Ahmad AD(P&D), DoST
  - vi. Falak Niaz AD, DoST
  - vii. M.Akif Khan AD, DoST
  - viii. Ziaullah Khan N/S Manager, DoST

(19)

6

Final seniority of BS-17 was discussed and rectified corrected seniority list dated 12.06.2020 was issued wherein appellant was bring to his proper place S.No2, along with minute of the meeting. Copy of tentative seniority list Notification No.SOE/ST&IT/KP/2-36/KC/2018-19 dated 16-01-2020 and objection on tentative seniority list No.Dirtt/S&T/KP/P.F/AD(FN)/20 dated 27-01-2020, dated 09-03-2020, dated 17-03-2020, minutes of meeting and seniority list dated 30.06.2020 is attached as annexure-J, K, L, M,N & O

10. That, the respondent No. 2 returns the case with following observations for clarification & examination to respondent No.3.

**SUBJECT: REFERENCE DIRECTIONS IN PARA 11-12**

S#	Observations
i	The Administrative Department has forwarded seniority lists of BS-19, BS-18 and BS-17 officers for approval of the Chief Secretary, The Administrative Department was required to submit seniority lists separately as the Chief Secretary Khyber Pakhtunkhwa is the competent authority for approval of seniority lists of officers of BS-18 and BS-19 officers whereas Secretary Establishment for BS-17 officers(Annex-XII)
ii	The sanctioned strength of the cadre/posts, copies of budget book of the Financial Year-2020-21, certificate of the Administrative department that seniority lists is final, undisputed and not sub-judice, and place of posting of the incumbents included in the seniority lists have not been found attached with the Note.
iii	As per notification dated 06-04-2018 at (Annex-XIII) on cessation of Directorate of IT 16 employees were absorbed in the Directorate of Science and Technology after opting to remain as civil servants. <b>Although they were not declared surplus but still Government of Khyber Pakhtunkhwa Surplus Pool Policy para-6 clause A to D will be followed while determining seniority of the employees so absorbed.</b> The Administrative Department may were adjusted against initial recruitment quota in the Directorate of Science & Technology or otherwise.
iv	Mr. Akif Khan Assistant Director has been reflected in the tentative seniority lists at S.No.3 of BS-17 officers. He has submitted application (Annex-XIV) for placement of his due position under para-6 of the Surplus Pool Policy and Rules-17(2) of Civil Servants (Appointment, Promotion and Transfer) Rules 1989. The Administrative Department may comment upon his

request in light of existing rules.

the respondent No. 02 return the case with observations in para 30-31 to respondent No. 03 dated 11-12-2020, the respondent No.03 replied comprehensively clarified the position vide para 32-40 dated 18-12-2020 (Copy of Observation raised by respondent No.02 dated 11-12-2020 & reply of respondent No. 03 date 18-12-2020 is attached annexure-P & Q).

11. That thereafter, final seniority list dated 10.03.2021 was issued wherein appellant was placed at s.no3 while respondent no.5 placed at s.no.1 while aggrieved of the same has filed departmental appeal on final seniority list No. Nil dated 22-03-2021 and have been requested to be reversed/rectified the final seniority list but after lapse of considerable time there is no outcome of the appeal /representation all went in vain. Hence, the appellant constrained to file this service appeal before this August Tribunal on the following grounds amongst others. **Final seniority list Notification No.SOE/ST&IT/KP/2-96/2020/582 dated 10-03-2021 and appeal on final seniority list No. Nil dated 22-03-2021 is attached Annexure-R & S).**

#### GROUNDS

- A. That the impugned actions/inaction on the part of the respondents vide which the appellant has been deprived of due right is smacked with malafied, illegal wrong, unlawful against vested right of the petitioners, unauthorized and unconstitutional.
- B. That not responding on Departmental appeal within statutory period of 90 days and the impugned seniority list is against the law, illegal, unlawful, without and lawful authority, thus calling interference of this learned tribunal.
- C. That the Directorate of Science & Technology was not part of the merger as per KPIT Board Act 2018 (Khyber Pakhtunkhwa Act No. IV of 2018) , Merger of Directorate of IT take place with KPIT Board, while employees are by giving option to be absorbed in Directorate Science & Technology, they can be adjusted any other department on vacant posts, then why the appellant/ petitioner seniority/promotion is affected in department serving since 20-11-2015.
- D. That, the impugned legislation act the employees of Directorate of IT are directly merged in It Board and the respondent no.5 was absorbed in Directorate of Science & Technology; directly. The

absorption/adjustment is only carried out through Absorption Policy issued by Establishment & Administration Department (Regulation Wing) Letter NO. SOR-1(E&AD).1-200/98. Dated: 8th June, 2001. Government of Khyber Pakhtunkhwa Surplus Pool Policy para-6 clause (a to d) will be followed while determining seniority of the absorbed employees, the only rule covering seniority fixation of absorbed/adjusted employees under para 6 b (a to d) "In case, however, he is adjusted in his respective cadre but in department other than his parent department, he shall be placed at the bottom of seniority list of that cadre".

E. That The Supreme Court of Pakistan with direction a copy of this judgment be sent to the Chief Justice, Sindh High Court through Registrar for circulating it amongst the learned Judges. A copy of this judgment be also sent to all the Chief Secretaries of the Provinces as well as the Secretary, Establishment Division, Government of Pakistan, Islamabad, with the direction to streamline the service structure of civil servants in line with the principles laid down in this judgment. Any backdated seniority cannot be granted to any absorbee and his inter-se seniority, on absorption in the cadre shall be maintained at the bottom as provided under the rules regulating seniority. (Supreme Court of Pakistan Judgment various constitution Petition No. 89/2011 other petitions on the Sindh Civil Servants (Regularization of absorption) Act 2011 date of hearing 16th to 19th, 29th to 30th April 2013 and 7th, 8th and 9th May 2013).

F. That, it is pertinent to mention here that the respondent No. 03 issue tentative seniority of officers on 16-01-2020 directly without furnished from the head of attached department, while the Service Rules was notified 31-01-2020. As the appellant tentative seniority list may be prepared and sent by Director S&T, of Directorate S&T. Which clearly indicate bad intentions & deprive the appellant from due right in seniority by the respondent No.03, if service rules are not notified then how seniority is issue? As per rules Seniority is always issued on notified service rules.

G. That, the appellant file objection dated 27-01-2020 & 09-01-2020 to respondent No. 3 on tentative seniority list, even a single line reply on the appeal is not given. The appellant file appeal to the respondent No. 2, the respondent No. 02 also returns the case with following observations for clarification & examination to respondent No.3.

**SUBJECT: REFERENCE DIRECTIONS IN PARA 11-12**

S#	Observations
----	--------------





i	The Administrative Department has forwarded seniority lists of BS-19, BS-18 and BS-17 officers for approval of the Chief Secretary, The Administrative Department was required to submit seniority lists separately as the Chief Secretary Khyber Pakhtunkhwa is the competent authority for approval of seniority lists of officers of BS-18 and BS-19 officers whereas Secretary Establishment for BS-17 officers(Annex-XII)
ii	The sanctioned strength of the cadre/posts, copies of budget book of the Financial Year-2020-21, certificate of the Administrative department that seniority lists is final, undisputed and not sub-judice, and place of posting of the incumbents included in the seniority lists have not been found attached with the Note.
iii	As per notification dated 06-04-2018 at (Annex-XIII) on cessation of Directorate of IT 16 employees were absorbed in the Directorate of Science and Technology after opting to remain as civil servants. <b>Although they were not declared surplus but still Government of Khyber Pakhtunkhwa Surplus Pool Policy para-6 clause A to D will be followed while determining seniority of the employees so absorbed.</b> The Administrative Department may were adjusted against initial recruitment quota in the Directorate of Science & Technology or otherwise.
iv	Mr. Akif Khan Assistant Director has been reflected in the tentative seniority lists at S.No.3 of BS-17 officers. He has submitted application (Annex-XIV) for placement of his due position under para-6 of the Surplus Pool Policy and Rules-17(2) of Civil Servants (Appointment, Promotion and Transfer) Rules 1989. The Administrative Department may comment upon his request in light of existing rules.

the respondent No. 02 return the case with observations in para 30-31 to respondent No. 03 dated 11-12-2020, the respondent No.03 replied comprehensively clarified the position vide para 32-40 dated 18-12-2020.

H. The **absorption** has neither been defined by the KP Civil Servant Act 1973 nor by KP Civil Servants (Appointment, Promotion and Transfer) Rules 1989. Therefore the final seniority list is sub-judice /disputed and the Appellant in the final seniority list before absorption was at S.No 02 and after absorption is at S.No 03. In the light of Service Rules Notification vide No.SOE/ST&IT/KP/2018-19/Vol:VI dated 31-01-2020" *By promotion on the basis of seniority-cum-fitness, from amongst Assistant Directors, Internet Information Service Manager & Network*

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*Managers having at least Five year service*. Before absorption neither these posts/employees exist in the Directorate of Science & Technology nor reflected in the budget copy of FY-2015-16, 2016-17 and 2017-18 while after KPIT Board amendment Act 2018, in FY2018-19 their posts have been reflected/created/shifted by Finance Department in the Directorate of Science & Technology. The Directorate of Information Technology re-structuring/merger did not take place with Directorate of Science & Technology, the merger/re-structuring of DoIT take place in the KP. IT Board. Then how/why the seniority of the appellant in the parent attached department is affected by merger? While Mr. Muhammad Akif Khan Assistant Director BS-17 has neither serve a single day in the Directorate of Science & Technology nor made arrival after absorption in the Directorate of S&T. He is on leave/deputation at the office of the Chief Secretary, Performance Management & Reform Unit before and after absorption. While the appellant is enthusiastically serving in the Directorate of S&T from last five years and eight months and seniority is affected without cogent reason/rules. **Copy of service rules is attached as annexure-T.**

- I. That the impugned seniority list is against the norms of service law and principles of natural justice and dictums of the apex courts.
- J. That the impugned seniority list is the worst example of favoritism, nepotism and colorful exercise of powers which is not warranted under law.
- K. That All person placed in similar circumstances must be treated alike and the reasonable classification must be based on reasonable ground in a particular set of circumstances but the same in any case must not offend the spirit of Article 25 of the constitution. Person equally placed must be treated alike in the matter of rights, privileges and liabilities under the rules of equal protection of law.
- L. In Dr. Munir Ahmad and 37 others Vs Govt of Pakistan Finance Division, Islamabad and 4 others (2007 PLC(CS) 285) the Honorable Supreme court of Pakistan held as:

“Concept of equal protection and equality before law is hallmark of the constitutional scheme recognized by not only the preamble, objective resolution, Article 4, 25 and 27 of the constitution but also the principle of policy contained in Article 37 of the constitution. Equal protection and equal treatment of citizen similarly placed is universally accepted and recognized principle which has been explained by many others in text books and judges in precedents, statutory function in a democratic

setup cannot make any individual distinction for any extraneous reason in exercise of discretion must be free of arbitrariness and caprice."

- M. That according to Section-8 of the Civil Servant Act 1973 and section-17 of APT Rules 1989, it is the legal right of every civil servant to properly placed in seniority list according to his seniority position, but the same benefits was not extended to the appellatant which is the violation of law and rules.
- N. That the appellatant was not treated according to the law and rules and has been deprived from his legal right of seniority in arbitrary manner without fault on his part.
- O. That the appellatant craves permission of this honorable tribunal to rely on other grounds at the time of arguments and produce any additional document if required in support of instant service appeal.

It is therefore most humbly prayed that the appeal of the appellatant may be accepted as prayed for.

APPELLANT  
Mr. FALAK NIAZ

THROUGH:

(SYED NOMAN ALI BUKHARI)  
ADVOCATES, PESHAWAR

**CERTIFICATE:**

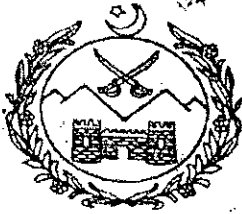
It is certified that no other service appeal earlier has been filed between the present parties in this Tribunal, except the present one.

DEPONENT

**LIT OF BOOKS:**

- 1. Constitution of the Islamic Republic of Pakistan, 1973.
- 2. The ESTA CODE.
- 3. Any other case law as per need.

(SYED NOMAN ALI BUKHARI)  
ADVOCATE HIGH COURT



Establishment Section

(25)

3

**FATA SECRETARIAT**  
(ADMINISTRATION, INFRASTRUCTURE & COORDINATION DEPARTMENT)  
**WARSAK ROAD PESHAWAR**

**NOTIFICATION:-**

No.FS/E/PF/6-1/2015/15926-32. On the recommendations of Khyber Pakhtunkhwa Public Service Commission Peshawar, the competent authority (Chief Secretary Khyber Pakhtunkhwa) has been pleased to appoint Mr. Falak Niaz S/O Taj Gul resident of Village Shagai Miangan Tehsil Safi Mohmand Agency as Assistant Director in Science & Technology and Information Technology Department Khyber Pakhtunkhwa in BS-17 (Rs.20680-1555-51780) plus other usual allowances as admissible under the rules with immediate effect on the following terms and conditions:-

**TERMS & CONDITIONS:-**

- i. The above post, for all intents and purposes, shall be within the definition of Civil Servants and he shall be entitled for GP Fund, Pension and Gratuity.
  - ii. He shall be governed by the Khyber Pakhtunkhwa Civil Servants Act 1973 and all the laws applicable to the Civil Servants and rules framed thereunder.
  - iii. He will be governed by such rules and orders relating to leave, T.A and Medical Attendance as may be prescribed by the Government.
  - iv. He will be on probation initially for a period of one year extendable for further period of one year.
  - v. His services will be liable to termination at any time without assigning any reason before the expiry of the period of probation/extended period of probation, if his work during this period is found unsatisfactory. In such an event, he will be given one month's notice of termination from service or one month's pay in lieu thereof.
  - vi. His seniority will be determined in accordance with the merit assigned by the Khyber Pakhtunkhwa Public Service Commission.
  - vii. He will be governed by the Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) Rules 2011 and Government Servants (Conduct) Rules 1987 and any other instructions which may be issued by the Government from time to time.
  - viii. In case he wishes to resign at any time, a month notice shall be necessary or in lieu thereof, a month's pay shall be deposited.
  - ix. He will not be entitled to any TA/DA on appointment.
2. In case the above terms and conditions are acceptable, an **UNDERTAKING** to this effect on a Bond worth Rs.30/- signed and duly attested by the Oath Commissioner should be produced in Administration, Infrastructure & Coordination Department FATA Secretariat within a month time.
  3. If the above terms and conditions of appointment are acceptable to him, he should report to Administration, Infrastructure & Coordination Department FATA Secretariat for duty within 30 days on the receipt of this Notification failing which the appointment shall be deemed to has been cancelled.

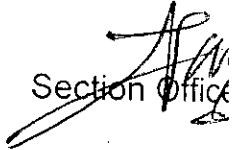
**ADDITIONAL CHIEF SECRETARY (FATA)**

26

Dated 20 /11/2015

Copy to:-

1. Secretary ST&IT Department Khyber Pakhtunkhwa
2. Accountant General Khyber Pakhtunkhwa
3. Additional Accountant General (PR) Sub Office Peshawar
4. PS to Chief Secretary Khyber Pakhtunkhwa
5. PS to Additional Chief Secretary FATA Secretariat
6. PS to Secretary (Admn, Infra: & Coord) Department FATA Secretariat
7. Individual concerned

  
Section Officer

27

EXTRAORDINARY  
GOVERNMENT



REGISTERED NO. PIII  
GAZETTE

**KHYBER PAKHTUNKHWA**

Published by Authority

PESHAWAR, MONDAY, 5<sup>TH</sup> MARCH, 2018.

**PROVINCIAL ASSEMBLY SECRETARIAT,  
KHYBER PAKHTUNKHWA**

**NOTIFICATION**

Dated Peshawar, the 5<sup>th</sup> March, 2018.

No. PA/Khyber Pakhtunkhwa/Bills-170/2018/4835.—The Khyber Pakhtunkhwa Establishment of Information Technology Board (Amendment) Bill, 2018 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 19<sup>th</sup> February, 2018 and assented to by the Governor of the Khyber Pakhtunkhwa on 28<sup>th</sup> February, 2018 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

**THE KHYBER PAKHTUNKHWA ESTABLISHMENT OF INFORMATION TECHNOLOGY  
BOARD (AMENDMENT) ACT, 2018**

(KHYBER PAKHTUNKHWA ACT NO. IV OF 2018)

*(First published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa, (Extraordinary), dated the 5<sup>th</sup> March, 2018).*

AN  
ACT

*further to amend the Khyber Pakhtunkhwa  
Establishment of Information Technology Board Act, 2011*

WHEREAS it is expedient further to amend the Khyber Pakhtunkhwa Establishment of Information Technology Board Act, 2011 (Khyber Pakhtunkhwa Act No. XI of 2011), for the purposes hereinafter appearing;

1. **Short title and commencement.**—(1) This Act may be called the Khyber Pakhtunkhwa Establishment of Information Technology Board (Amendment) Act, 2018.

(2) It shall come into force at once.

2. **Substitution of Preamble of the Khyber Pakhtunkhwa Act No. XI of 2011.**-- In the Khyber Pakhtunkhwa Establishment of Information Technology Board Act, 2011 (Khyber Pakhtunkhwa Act No. XI of 2011), hereinafter referred to as the said Act, for the existing Preamble, the following shall be substituted, namely:

"WHEREAS it is expedient to provide for the establishment of the Khyber Pakhtunkhwa Information Technology Board for promotion, planning, execution, supervision, evaluation and regulation of the Information and Communication Technology, Information and Communication Technology enabled services and education for public and private sectors of the Province of the Khyber Pakhtunkhwa and for matters connected therewith or ancillary thereto;

It is hereby enacted as follows:".

3. **Insertion of new section in the Khyber Pakhtunkhwa Act No. XI of 2011.**--In the said Act, after section 3, the following new section 3A shall be inserted namely:

"3A. **Status of the Directorate of Information Technology and its employees.**--On commencement of the Khyber Pakhtunkhwa Establishment of Information Technology Board (Amendment) Act, 2018,-

- (i) the Directorate of Information Technology, shall cease to be an Attached Department of Science and Technology and Information Technology Department of Government, and shall be merged into Board and the Board shall, take over the functional, administrative, financial and regulatory control over all the activities, offices, projects, centers, etc. of the Directorate of Information Technology, for the disposal of its functions;
- (ii) all the movable and immovable assets and liabilities including furniture, fixture, equipment, vehicles, record, data etc. of the Directorate of Information Technology shall be transferred to the Board and ownership of such assets shall vest in the Board;
- (iii) all the civil servants serving in Directorate of Information Technology, shall be given an option, either to continue to serve as civil servant or may opt for the employment of the Board. The option shall be exercised within a period of thirty days after the commencement of the Khyber Pakhtunkhwa Establishment of Information Technology Board (Amendment) Act, 2018. Those employees, who do not opt for their absorption in the Board, shall be absorbed in the Directorate of Science and Technology where they can continue to be governed and regulated in accordance with the Khyber Pakhtunkhwa Civil Servants Act, 1973 and the rules made there under; and

**KHYBER PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 5<sup>th</sup> MARCH, 2018 188**

(iv) projects of the Directorate of Information Technology along with its employees shall be transferred to the Board for the completion of remaining activities of such projects."

**4. Amendment of section 4 of the Khyber Pakhtunkhwa Act No. XI of 2011.--In the said Act, in section 4,-**

(i) for sub-section (5), the following shall be substituted, namely:

"(5) Government may at any time terminate the nomination of any member mentioned at clause (h) of sub-section (1), by assigning cogent reasons."; and

(ii) for sub-section (7), the following shall be substituted, namely:

"(7) The members at clause (h) of sub-section (1), shall be entitled to an amount of rupees twenty thousand as honoraria for attending a meeting of the Board."

**5. Amendment in section 7 of the Khyber Pakhtunkhwa Act No. XI of 2011.--In the said Act, in section 7, in sub-section (2),-**

(a) in clause (a) for the words "private sector", the words "public and private sectors" shall be substituted;

(b) in clause (c), the word "and" appearing at the end shall be deleted;

(c) for clause (d), the following shall be substituted, namely:

"(d) supervise, evaluate and lead telecom regulators, operators and service providers for provision of wide range of high quality, efficient, cost effective and competitive information and communication technology services throughout the Province, in order to reduce broadband bandwidth tariffs; improve access, protect consumer rights and interests and regulate arrangements with the service providers of sharing their revenue with the Board, derived from provision of services in the Province;"

(d) for clause (e) the following shall be substituted, namely:

"(e) plan, develop and establish Software Technology Parks, Technology Cities for Information and Communication Technology and Electronic manufacturing and Information Technology Parks in the Province;" and

(e) in clause (m), the full stop appearing at the end shall be replaced by semicolon and thereafter the following new clauses shall be added, namely:



- (n) finance, promote, train and develop the human resource and entrepreneurs of the Province in the field of information and communication technology, within Pakistan as well as abroad;
- (o) launch Research and Development Programs and up-gradation of its infrastructure;
- (p) monitor and evaluate the outcome and results of Information and Communication Technology projects initiated by Government in the Province and provide policy guidelines to Government departments, Government organizations, semi-autonomous and autonomous agencies under the administrative control of Government, Research and Development institutions for their restructuring and enhancement of Information and Communication Technology activities;
- (q) advise and regulate Government departments, Government organizations, semi-autonomous and autonomous agencies under the administrative control of Government on the introduction and usage of Information and Communication Technology;
- (r) promote usage of Information and Communication Technology by awarding scholarships, awards, certificates, holding of conferences, expos, seminars, workshops, in-service training and acquiring higher education;
- (s) plan, execute, monitor, evaluate and regulate computerization, automation and all Information and Communication Technology related initiatives, activities and projects in Government departments, Government organizations, semi-autonomous and autonomous agencies under the administrative control of Government;
- (t) plan, execute, monitor and regulate electronic governance and mobile governance of Government departments;
- (u) promote, establish, monitor, evaluate and regulate electronic commerce, electronic payments, electronic payment gateways and electronic payment service providers in the Province;
- (v) establish venture capital fund, angel investment fund, crowd sourcing fund, private equity fund or any other variant of fund, for financing, investing and holding equity share in technology startup businesses;
- (w) enter into Concession Contract under the Khyber Pakhtunkhwa Public Private Partnerships Act, 2014, for promoting Public Private Partnership;
- (x) establish academia-industry linkages; and

**191. KHYBER PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 5<sup>th</sup> MARCH, 2018.**

**8. Amendment in section 11 of the Khyber Pakhtunkhwa Act No. XI of 2011.--In the said Act, in section 11, in sub-section (3), for clause (a), the following shall be substituted, namely:**

“(a) one-line budget from Government;”.

**9. Amendment in section 12 of the Khyber Pakhtunkhwa Act No. XI of 2011.--In the said Act, in section 12, the words “as grant-in-aid” shall be deleted.**

**10. Amendment in section 13 of the Khyber Pakhtunkhwa Act No. XI of 2011.--In the said Act, in section 13, after sub-section (2), the following new sub-section (3) shall be inserted, namely:**

“(3) The Board may, in addition to the audit under sub-section (2), cause its accounts to be audited by any other external auditor.”.

**11. Repeal.-The Khyber Pakhtunkhwa Establishment of Information Technology Board (Amendment) Ordinance, 2017 (Khyber Pakhtunkhwa Ordinance No. IV of 2017) is hereby repealed.**

**BY ORDER OF MR. SPEAKER  
PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA**

**(NASRULLAH KHAN KHATTAK)  
Secretary  
Provincial Assembly of Khyber Pakhtunkhwa**

Printed and published by the Manager,  
Staty. & Ptg. Deptt., Khyber Pakhtunkhwa, Peshawar.

33



GOVERNMENT OF KHYBER PAKHTUNKHWA  
ST & IT DEPARTMENT

Dated Peshawar, the 6th April, 2018

1394 To 4409

**NOTIFICATION**

No.SOE/ST&IT/KP/1-9/Merging of DoIT-KPITB/17/V-II In pursuance of clause (iii) of Section 3A of the Khyber Pakhtunkhwa Establishment of Information Technology Board (Amendment) Act, 2018 (Khyber Pakhtunkhwa Act No. IV of 2018), the following officers/officials after exercise of their option to continue as civil servants, are hereby absorbed in Directorate of Science and Technology, Khyber Pakhtunkhwa, with immediate effect:-

S. No.	Name of Officers/officials	Designation/BPS
1-	Mr. Bilal Jabbar	Deputy Director (BPS-18)
2-	Mr. Muhammad Akif	Assistant Director (BPS-17)
3-	Mr. Abdul Basit	IIS Manager (BPS-17)
4-	Mr. Zia Ullah Khan	Network/System Manager (BPS-17)
5-	Mr. Shah Saood	Accountant (BPS-16)
6-	Mr. Naveed Iqbal	Assistant (BS-16)
7-	Mr. Jafar Raza	Computer Operator (BS-16)
8-	Mr. Muhammad Kashif	Computer Operator (BS-16)
9-	Mr. Nazim Khan	Junior Clerk (BS-11)
10-	Mr. Wadan Gul	Driver (BS-7)
11-	Mr. Farhad Ullah	Driver (BS-7)
12-	Mr. Muhammad Waris Khan	Naib Qasid (BS4)
13-	Mr. Abdul Naveed	Naib Qasid (BPS-4)
14-	Mr. Fazal Wahid	Naib Qasid (BPS-03)
15-	Mr. Falak Niaz	Chowkidar (BS-4)
16-	Mr. Shahriyar	Chowkidar (BPS-03)

2- The officers/officials shall be governed and regulated in accordance with the Khyber Pakhtunkhwa Civil Servants Act, 1973 and the rules made there under.

Track No. 8721  
Date 11-04-2018  
Sent to  
From

CHIEF SECRETARY  
KHYBER PAKHTUNKHWA

**Endst. No. and date even:-**

Copy forwarded to:-

- 1- The Accountant General, Khyber Pakhtunkhwa.
- 2- The Secretary to Speaker, Provincial Assembly, Khyber Pakhtunkhwa.
- 3- Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
- 4- All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
- 5- Secretary to govt. of Khyber Pakhtunkhwa, Finance Department w/r to his letter No.BOIV/FD/1-27(C)/2017-18 dated 26-3-2018.
- 6- Chairman, Khyber Pakhtunkhwa Public Service Commission, Fort Road Peshawar.
- 7- PSO to Chief Secretary, Khyber Pakhtunkhwa.
- 8- Manager, Government Printing Press Department, for publication in the Official Gazette
- 9- Director Science & Technology Khyber Pakhtunkhwa
- 10- Director Information Technology, Khyber Pakhtunkhwa
- 11- PS to Senior Minister for -IT, Khyber Pakhtunkhwa.
- 12- PS to Additional Chief Secretary (P&D) Khyber Pakhtunkhwa.
- 12-PS to Secretary ST&IT, Khyber Pakhtunkhwa.
- 13-PA to Managing Director KP IT Board.
- 14-Officers/officials concerned.

SECTION OFFICER (ESTT)

(34)

**THE <sup>1</sup>KHYBER PAKHTUNKHWA CIVIL SERVANTS  
(APPOINTMENT, PROMOTION & TRANSFER) RULES, 1989**

PART-I

GENERAL

1. **Short title and commencement:** - (1) These rules may be called the <sup>2</sup>[Khyber Pakhtunkhwa] Civil Servants (Appointment, Promotion and Transfer) Rules, 1989.

(2) They shall come into force at once.

2. **Definitions:-**(1) In these rules, unless the context otherwise requires:-

(a) "Appointing Authority" in relation to a post, means the persons authorized under rule 4 to make appointment to that post;

(b) "Basic Pay Scale" means the Basic Pay Scale for the time being sanctioned by Government, in which a post or a group of posts is placed;

(c) "Commission" means the <sup>3</sup>[Khyber Pakhtunkhwa] Public Service Commission;

<sup>4</sup>(d) "Departmental Promotion Committee" means a committee constituted for making selection for promotion or transfer to such posts under a Department, or offices of Government, which do not fall within the purview of the Provincial Selection Board;

<sup>5</sup>(dd) "Departmental Selection Board" means a Board constituted for the purpose of making selection for initial recruitment /appointment to posts under a Department or office of Government in Basic Pay Scale 17 not falling within the purview of the Commission:

Provided that more than one such committees may be constituted for civil servants holding different scales of pay".

(e) "Departmental Selection Committee" means a committee constituted for the purpose of making selection for initial appointment to posts under a department, or office of Government [in Basic Pay Scale 17 and below not falling within the purview of the Commission];

(f) "Post" means a post sanctioned in connection with the affairs of the Province, but not allocated to all Pakistan Unified Grades ; and

<sup>1</sup> For the words "NWFP" or "North-West Frontier Province", wherever occurred, the words "Khyber Pakhtunkhwa" substituted by the Khyber Pakhtunkhwa Laws (Amendment) Act, 2011 (Khyber Pakhtunkhwa Act No. IV of 2011) published in the Khyber Pakhtunkhwa Government Gazette Extraordinary dated 2<sup>nd</sup> April, 2011

<sup>2</sup> Sub. by the Khyber Pakhtunkhwa Act No. IV of 2011.

<sup>3</sup> Sub. by the Khyber Pakhtunkhwa Act No. IV of 2011.

<sup>4</sup> Substituted by Clause (d) of sub-rule (1) of Rule 2 vide Notification No. SOR-I (S&GAD) 4-1/80 (Vol-II) dated 14-01-92

<sup>5</sup> Clause (dd) added by Notification No. SOR-III (S&GAD) 2-7/86, dated 8-12-1994

PART-VI

SENIORITY

17. **Seniority :-**( 1) the seniority inter se of civil servants <sup>47</sup>(appointed to a service, cadre or post) shall be determined:-

- (a) in the case of persons appointed by initial recruitment, in accordance with the order of merit assigned by the Commission <sup>48</sup>[or as the case may be, the Departmental Selection Committee;] provided that persons selected for appointment to post in an earlier selection shall rank senior to the persons selected in a later selection; and
- (b) in the case of civil servants appointed otherwise, with reference to the date of their continuous regular appointment in the post; provided that civil servants selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter se seniority as in the lower post.

**Explanation-I:-** If a junior person in a lower post is promoted to a higher post temporarily in the public interest, even though continuing later permanently in the higher post, it would not adversely effect the interest of his seniors in fixation of his seniority in the higher post.

**Explanation-II:-** If a junior person in a lower post is promoted to a higher post by superseding a senior person and subsequently that senior person is also promoted the person promoted first shall rank senior to the person promoted subsequently; provided that junior person shall not be deemed to have superseded a senior person if the case of the senior person is deferred for the time being for want of certain information or for incomplete record or for any other reason not attributing to his fault or demerit.

**Explanation-III:-** A junior person shall be deemed to have superseded a senior person only if both the junior and the senior persons were considered for the higher post and the junior person was appointed in preference to the senior person.

(2) Seniority in various cadres of civil servants appointed by initial recruitment vis-à-vis those appointed otherwise shall be determined with reference to the dates of their regular appointment to a post in that cadre; provided that if two dates are the same, the person appointed otherwise shall rank senior to the person appointed by initial recruitment.

<sup>49</sup>(3) In the event of merger/restructuring of the Departments, Attached Departments or Subordinate Offices, the inter se seniority of civil servants affected by the merger/restructuring as aforesaid shall be determined in accordance with the date of their regular appointment to a cadre or post.

<sup>50</sup>(4) The inter-se-seniority of civil servants in a certain cadre to which promotion is made from different lower posts, carrying the same pay scale shall be determined from the date of regular appointment/promotion of the civil servants in the lower post.

Provided that if the date of regular appointment of two or more civil servants in the

<sup>47</sup> Substituted for the words appointment to a post in the same basic pay scale in a cadre by Notification No. SOR-I(S&GAD)4-1/80, dated 17-05-1989.

<sup>48</sup> The words inserted by Notification No. SOR-I(S&GAD)4-1/80/II, dated 04-02-1996.

<sup>49</sup> Sub-rule (3) of Rule 17 added vide Notification No. SOR-I(E&AD)4-1/80/IV, dated 28-5-2002.

<sup>50</sup> Sub-rule (4) of Rule 17 added vide Notification No.SOR-VI (E&AD) 1-3/2008 dated 19-11- 2009.

lower post is the same, the civil servant older in age, shall be treated senior.

**18. General Rules:** - In all matters not expressly provided for in these rules, civil servants shall be governed by such rules as have been or may hereafter be prescribed by Government and made applicable to them.

**19. Repeal:-** The <sup>51</sup>[Khyber Pakhtunkhwa] Civil Servants (Appointment, Promotion and Transfer) Rules, 1975, are hereby repealed.

(Authority; No. SORI(S&GAD)4-1/80, dated 13<sup>th</sup> May, 1989)

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<sup>51</sup> Sub.by the Khyber Pakhtunkhwa Act No. IV of 2011.



GOVERNMENT OF KHYBER PAKHTUNKHWA  
ST & IT DEPARTMENT PESHAWAR

Dated Peshawar, the 7<sup>th</sup> April, 2014

37

Notification

NO. SOE/ST&IT/KP/1-37/AKT/02. On the recommendations of the Khyber Pakhtunkhwa Public Service Commission, the competent authority is pleased to appoint Mr. Muhammad Akif *vs* Atta-ur-Rehman of Mardan as Assistant Director (BPS-17) (Rs. 18000-12-00-40000) in the Directorate of Information Technology, Khyber Pakhtunkhwa subject to the terms and conditions mentioned hereunder:-

Terms and conditions:

- a) He shall be governed by the Khyber Pakhtunkhwa Civil Servants Act, 1973 and the Rules made there-under.
  - b) He shall, initially, be on probation for a period of one year extendable for further one year.
  - c) His services will be liable to termination at any time without assigning any reason before the expiry of the period of probation/extended period of probation, if his performance during this period is not found satisfactory. In such an event, he will be given one month prior notice of termination from service or one month pay in lieu thereof. In case he wishes to resign at any time, one month prior notice shall be necessary or in lieu therefore, one month's pay shall be forfeited.
- 2- If the above terms and conditions are acceptable to him, he should report for duty within 15 days after the issuance of this notification.

SECRETARY TO GOVT. OF KP  
ST&IT DEPARTMENT

Endst. of even No. and date:

Copy forwarded to:-

- 1- Accountant General, Khyber Pakhtunkhwa.
  - 2- Director Examination, Khyber Pakhtunkhwa Public Service Commission, 2 Fort Road, Peshawar w/r to his letter No. PSC-SR/23978 dated 26-2-2014.
  - 3- PSO to Chief Secretary, Khyber Pakhtunkhwa.
  - 4- Director Information Technology, Khyber Pakhtunkhwa.
  - 5- PS to Secretary ST&IT Department, Khyber Pakhtunkhwa.
  - 6- Manager, Government Printing Press Department, Peshawar.
  - 7- Officer concerned.
- Personal file.

(WAMIQ)  
SECTION OFFICER (ESTT)

2



GOVERNMENT OF KHYBER PAKHTUNKHWA  
ST & IT DEPARTMENT

Dated Peshawar, the 6th April, 2018

1394 To 4409

**NOTIFICATION**

No.SOE/ST&IT/KP/1-9/Merging of DoIT-KP/ITB/17/V-II In pursuance of clause (iii) of Section 3A of the Khyber Pakhtunkhwa Establishment of Information Technology Board (Amendment) Act, 2018 (Khyber Pakhtunkhwa Act No. IV of 2018), the following officers/officials after exercise of their option to continue as civil servants, are hereby absorbed in Directorate of Science and Technology, Khyber Pakhtunkhwa, with immediate effect:-

S. No.	Name of Officers/officials	Designation/BPS
1-	Mr. Bilal Jabbar	Deputy Director (BPS-18)
2-	Mr. Muhammad Akif	Assistant Director (BPS-17)
3-	Mr. Abdul Basit	IIS Manager (BPS-17)
4-	Mr. Zia Ullah Khan	Network/System Manager (BPS-17)
5-	Mr. Shah Saood	Accountant (BPS-16)
6-	Mr. Naveed Iqbal	Assistant (BS-16)
7-	Mr. Jafar Raza	Computer Operator (BS-16)
8-	Mr. Muhammad Kashif	Computer Operator (BS-16)
9-	Mr. Nazim Khan	Junior Clerk (BS-11)
10-	Mr. Wadan Gul	Driver (BS-7)
11-	Mr. Farhad Ullah	Driver (BS-7)
12-	Mr. Muhammad Waris Khan	Naib Qasid (BS4)
13-	Mr. Abdul Naveed	Naib Qasid (BPS-4)
14-	Mr. Fazal Wahid	Naib Qasid (BPS-03)
15-	Mr. Falak Niaz	Chowkidar (BS-4)
16-	Mr. Shahriyar	Chowkidar (BPS-03)

2- The officers/officials shall be governed and regulated in accordance with the Khyber Pakhtunkhwa Civil Servants Act, 1973 and the rules made there under.

Track No. 8731  
Date 11-04-2018  
CHIEF SECRETARY  
KHYBER PAKHTUNKHWA  
Status: \_\_\_\_\_  
Remarks: \_\_\_\_\_  
Date: \_\_\_\_\_

**Endst. No. and date even:-**

Copy forwarded to:-

- 1- The Accountant General, Khyber Pakhtunkhwa.
- 2- The Secretary to Speaker, Provincial Assembly, Khyber Pakhtunkhwa.
- 3- Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
- 4- All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
- 5- Secretary to govt. of Khyber Pakhtunkhwa, Finance Department w/r to his letter No.BOIV/PD/1-27(C)/2017-18 dated 26-3-2018.
- 6- Chairman, Khyber Pakhtunkhwa Public Service Commission, Fort Road Peshawar.
- 7- PSO to Chief Secretary, Khyber Pakhtunkhwa.
- 8- Manager, Government Printing Press, Department, for publication in the Official Gazette
- 9- Director Science & Technology Khyber Pakhtunkhwa
- 10- Director Information Technology, Khyber Pakhtunkhwa
- 11- PS to Senior Minister for -IT, Khyber Pakhtunkhwa.
- 12- PS to Additional Chief Secretary (P&D) Khyber Pakhtunkhwa.
- 13- PS to Secretary ST&IT, Khyber Pakhtunkhwa.
- 13- PA to Managing Director KP IT Board.
- 14- Officers/officials concerned.

SECTION OFFICER (ESTT)



**NOTIFICATION:**

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**No. SOE/ST&IT/KP/2-96/2020** In pursuance of Section 8 of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule 17 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, the Final Seniority List of Assistant Directors and Network Manager (as stood on 15-02-2021) Directorate of Science and Technology, Khyber Pakhtunkhwa is hereby notified as under:-

S. No	Name Of Officer/ Official	Fathers Name	Qualification	Domicile	Date Of Birth	Date of 1 <sup>st</sup> entry into Government Service	Date of Appointment to present post	Whether Promotee or direct appointment	Place of posting
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1	Muhammad Akif Khan Assistant Director (BS-17)	Atta Ur Rehman	Ph.D	Mardan	26-05-1982	30-06-2011	07-04-2014	Direct appointment	Deputy Coordinator IT, PMRU office C.S
2	Wiqar Ahmad Assistant Director (P&D) (BS-17)	Noor Muhammad	M.Sc (Economics)/ MBA (F)	Charsadda	10-05-1979	23-09-2015	23-09-2015	Direct appointment	Directorate of S&T Khyber Pakhtunkhwa
3	Falak Niaz Assistant Director (BS-17)	Taj Gul	B.Sc Engg/ MBA	Mohmand	20-02-1986	20-11-2015	20-11-2015	Direct appointment	Directorate of S&T Khyber Pakhtunkhwa
4	Zia Ullah Khan Network Manager (BS-17)	Aman Ullah Khan	MIT	DI Khan	09-01-1978	30-06-2011	29-09-2016	Direct Appointment	Directorate of S&T Khyber Pakhtunkhwa

M. J. 19/3/21  
M. J. 19/3/21



Secretary,  
Science Technology & Information Technology,  
Govt. of Khyber Pakhtunkhwa

(40)

8/11

**Copy forwarded to the:-**

1. Director, Directorate of Science & Technology, Khyber Pakhtunkhwa.
2. Muhammad Akif Khan Assistant Director, Directorate of S&T, Khyber Pakhtunkhwa/PMRU.
3. Wiqar Ahmad Assistant Director (P&D), Directorate of S&T, Khyber Pakhtunkhwa.
4. Falak Niaz Assistant Director, Directorate of S&T, Khyber Pakhtunkhwa
5. Ziaullah Khan Network/System Manager, Directorate of S&T, Khyber Pakhtunkhwa.
6. PS to Secretary, ST&IT Department, Govt. of Khyber Pakhtunkhwa .
7. P.A to Additional Secretary, ST&IT Department, Govt. of Khyber Pakhtunkhwa.
8. P.A to Deputy Secretary, ST&IT Department, Govt. of Khyber Pakhtunkhwa.

  
Section Officer (Establishment)

6

M.T. \*PC # 02 Job No. 5855(13)MS Wing

For Official Use



**A MANUAL ON  
APPOINTMENT, PROMOTION  
AND TRANSFER  
(Edition -2013)**

Compiled & Published By:

**PAKISTAN PUBLIC ADMINISTRATION RESEARCH CENTRE  
ESTABLISHMENT DIVISION  
CABINET SECRETARIAT  
ISLAMABAD**

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**Sl.No. 3  
CIVIL SERVANTS (SENIORITY) RULES, 1993**

In exercise of the powers conferred by section 25 of the Civil Servants Act, 1973 (LXXI of 1973), read with section 8 thereof, the President is pleased to make the following rules, namely:—

1. *Short title, application and commencement.*— (1) These rules may be called the Civil Servants (Seniority) Rules, 1993.

(2) They shall apply to all civil servants except those governed under:—

- (i) the Police Service of Pakistan (Composition Cadre and Seniority) Rules, 1985;
- (ii) the Occupational Groups and Services (Probation, Training and Seniority) Rules, 1990; and
- (iii) the Establishment Division's O.M. No.1/2/74-ARC, dated 23rd January, 1974, amended *vide* O.M. No.2/1/75-ARC, dated 3rd March, 1976, and as amended from time to time.

(3) They shall come into force at once.

2. *Seniority on initial appointment.*— (1) Persons initially appointed on the recommendations of the selection authority through an earlier open advertisement shall rank senior to those appointed through a subsequent open advertisement.

(2) If two or more persons are recommended in open advertisement by the selection authority, their inter se seniority shall be determined in order of merit assigned by the selection authority.

(3) If only one candidate is recommended in open advertisement by the selection authority, he shall count his seniority from:—

- (a) the date of recommendation by the selection authority, if he was already holding the same post on *ad-hoc* basis.
- (b) the date of his joining the post after being recommended by the selection authority if he was not already holding the same post.

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3. *Seniority on promotion.*—Seniority in a service, cadre or post to which a civil servant is promoted shall take effect from the date of regular promotion to that service, cadre or posts:-

Provided that—

- (a) Civil servants selected for promotion to higher posts on an earlier date shall be senior to those selected for such promotion on a later date;
- (b) Civil servants selected for promotion to higher posts in one batch shall on their promotion to the higher post, retain their *inter se* seniority as in the lower post; and
- (c) Civil servants eligible for promotion who could not be considered for promotion in the original reference in circumstances beyond their control or whose case was deferred while their juniors were promoted to the higher post, shall, on promotion, without supersession, take their seniority with the original batch.

4. *Seniority on appointment by transfer.*—Seniority in service, cadre or post to which a civil servant is appointed by transfer shall take effect from the date of regular appointment to the service, cadre or post;

Provided that—

- (a) persons belonging to the same service, cadre or post selected for appointment by transfer to a service, cadre or post in one batch shall, on their appointment, take *inter se* seniority in the order of their date of regular appointment in their previous service, cadre or post; and
- (b) persons belonging to different services, cadre or posts selected for appointment by transfer in one batch shall take their *inter se* seniority in the order of the date of their regular appointment to the post which they were holding before such appointment and, where such date is the same, the person older in age shall rank senior.

\*[4A. In the event of merger of Ministries, Divisions, Attached Departments or Subordinate Offices, the *inter se* seniority of civil servants, other than those belonging to regularly constituted

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\* Added *vide* Estt. Div.'s Notification S.R.O No. 01(I)/2002, dated 1-1-2002.

Occupational Groups and Services, shall be determined in accordance with the date of regular appointment to a cadre or post].

5. *Seniority of officers of the Armed Forces on induction in civil posts.*— Officers of the Armed Forces of Pakistan who are inducted in a civil service, cadre or post in accordance with the Government orders and instructions shall take seniority in that service, cadre or post from the date of such induction:

Provided that the officers inducted in one batch shall, on induction, retain their *inter se* seniority as in the Armed Forces of Pakistan.

6. *Inter se seniority of civil servants appointed in the same calendar year.*— Persons appointed by transfer in a particular calendar year shall, as a class, be senior to those appointed by promotion or by initial appointment to such posts in that year, and persons promoted to higher posts in a particular calendar year shall, as a class, be senior to those appointed by initial appointment to such posts in that year.

7. *Repeal and savings.*— The General Principles of seniority circulated *vide* Establishment Division's O.M.No.1/16/ 69-D.II, dated the 31st December, 1970\*, and all other existing rules, orders and instructions relating to seniority except—

- (i) the Police Service of Pakistan (Composition, Cadre and Seniority) Rules, 1985;
- (ii) the Occupational Groups and Services (Probation, Training and Seniority) Rules, 1990; and
- (iii) the Establishment Division's O.M.No.1/2/74-ARC dated 23rd January, 1974, amended *vide* O.M. No. 2/1/75-ARC, dated the 3rd March, 1976 and as amended from time to time ;are hereby repealed.

[Authority.— Estab. Div.'s S.R.O. 163(1)/93, dated 28-2-1993].

#### Sl.No. 4 CIVIL SERVANTS (CONFIRMATION) RULES, 1993

In exercise of the powers conferred by section 25 of the Civil Servants Act, 1973 (LXXI of 1973), the President is pleased to make the following rules, namely:-

1. *Short title, Commencement and application.*—(1) These Rules, may be called the Civil Servants (Confirmation) Rules, 1993.

\* Sl. No. 158, pp 224-229, Estacode, 1989.



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- (2) They shall come into force at once.
- (3) They shall apply to all civil servants.

2. *Definitions.*— In these Rules, unless there is anything repugnant in the subject or context,

- (a) "Foreign Service" means service in which a civil servant receives his pay with the sanction of Government from any source other than the Federal Consolidated Fund; and
- (b) "lien" means the title of a civil servant to hold substantively a post on which he has been confirmed.

3. *General Principles of confirmation.*— (1) A civil servant initially appointed to a post, on probation including a civil servant promoted or appointed to a post on transfer, shall on satisfactory completion of his probation, be eligible for confirmation in that post:

Provided that the confirmation shall be made only against a permanent post:

Provided further that two or more civil servants shall not be confirmed in the same post and at the same time or in a post on which another civil servant holds a lien:

Provided also that a civil servant shall not be confirmed on two or more posts at the same time.

(2) A civil servant shall be considered for confirmation strictly in order of his seniority.

(3) No confirmation shall be made against the post vacated on dismissal, removal or compulsory retirement of a civil servant until his appeal against such dismissal or, as the case may be, removal or retirement is finally decided.

4. The confirmation shall be made on the recommendations of the Confirmation Committee constituted for the purpose and with the approval of the authorities specified below:-

Posts	Composition of the Committees	Confirming authorities	Remarks
1	2	3	4
Posts in BPS 20 and above	Secretary of the Administrative Ministry or an authority controlling the Service/Cadre/Post as Chairman, Additional Secretary or a Joint Secretary	Prime Minister	



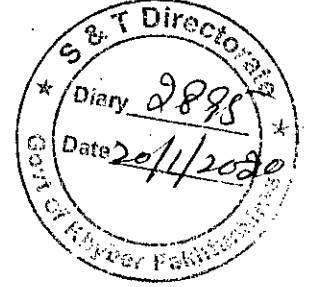
GOVERNMENT OF KHYBER PAKHTUNKHWA  
SCIENCE & TECHNOLOGY AND INFORMATION  
TECHNOLOGY DEPARTMENT

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No. SOE/ST&IT/KP/2-36/KC/2018-19/Vol-VI/31  
Dated Peshawar, 16.01.2020

To

- 1) Dr. Khalid Khan, Director (BS-19),
- 2) Mr. Abid Suhail, Deputy Director (BS-18)
- 3) Mr. Bilal Jabbar, Deputy Director (BS-18)
- 4) Muhammad Akif Khan, Assistant Director (BS-17)
- 5) Mr. Wiqar Ahmad, Assistant Director (P&D) (BS-17)
- 6) Mr. Falak Niaz, Assistant Director (BS-17)
- 7) Mr. Zia Ullah Khan, Network Manager (BS-17)
- 8) Mr. Fawad Khan, Superintendent (BS-17)



Directorate of Science and Technology, Khyber Pakhtunkhwa.

**Subject: - TENTATIVE SENIORITY LIST OF ALL THE OFFICERS (BPS-16 TO 19).**

I am directed to enclose herewith a copy of tentative seniority list of all the officers (BPS-17 to BPS-19) for your information. If you have any query/objection on this Seniority list, it may be communicated within fortnight after receipt of this letter.

Section Officer (Establishment)

Encl: as above

Endst. of Even No. & Date.

Copy to:-

*20/1/2020  
Falak Niaz*

1. Director, Directorate of Science and Technology, Khyber Pakhtunkhwa for necessary action please.
2. The Section Officer (Coordination), ST & IT Department Govt. of Khyber Pakhtunkhwa.
3. PS to Secretary, ST & IT Department Govt. of Khyber Pakhtunkhwa.
4. PA to Additional Secretary, ST & IT Department Govt. of Khyber Pakhtunkhwa.
5. PA to Deputy Secretary (Admn), ST & IT Department Govt. of Khyber Pakhtunkhwa.

Section Officer (Establishment)



GOVERNMENT OF KHYBER PAKHTUNKHWA  
SCIENCE & TECHNOLOGY AND INFORMATION TECHNOLOGY DEPARTMENT

**NOTIFICATION:**

**No. SOE/ ST&IT/ KP/ 2-36/ KC/ 2018-19/**

In pursuance of Section 8 of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule 17 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, the tentative joint Seniority list of Assistant Directors (as stood on 14-1-2020) Directorate of S&T, Khyber Pakhtunkhwa, is hereby notified/circulated for general information.

S. No	Name of Officer/ Official	Father Name	Qualification	Domicile	Date of Birth	Date of 1 <sup>st</sup> entry into Government Service	Date of Appointment to present post	Whether Promotee or direct appointment
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	Muhammad Akif Khan Assistant Director (B-17)	Atta Ur Rehman	Ph.D	Mardan	26-5-1982	30-6-2011	08-4-2014	Direct appointment
2.	Wiqar Ahmad Assistant Director (P&D) (B-17)	Noor Muhammad	M.Sc (Economics) / MBA (F)	Charsadda	19-05-1979	23-09-2015	23-09-2015	Direct appointment
3.	Falak Niaz Assistant Director (B-17)	Taj Gul	B.Sc Engg/ MBA	Mohmand	20-2-1986	20-11-2015	20-11-2015.	Direct appointment