

28.01.2021

Counsel for petitioner is present.

Respondents submitted copy of the judgment dated 19.01.2021 whereby order to the following effect has been passed. "Subject to notice and till the next date of hearing, the operation of the impugned judgment shall remain suspended" Vide judgment of august Supreme Court of Pakistan passed in Civil Petition No. 61-P of 2018 Captioned Government of Khyber Pakhtunkhwa through Chief Secretary Versus Naimat Ullah Khan.

Since the operation of the judgment passed by this Tribunal dated 17.11.2017 has been suspended therefore, in compliance thereof the execution proceedings initiated are stopped forthwith and the execution petition is adjourned sine-die and file is hereby consigned to the record room. The parties are to communicate to this Tribunal any information regarding passage of final judgment or vacation of the suspension order whenever made by the august Court and can submit application for revival of execution petition.

ANNOUNCED  
28.01.2021

  
  
(MUHAMMAD JAMAL KHAN)  
MEMBER (JUDICIAL)

**EP 417/2019**

09.12.2020 Petitioner in person and Jamil Shah, Asstt. for respondent No. 3 alongwith Addl. AG for the respondents present.

The representative of respondent No. 3 produced today a copy of letter dated 24.12.2019 which mentioned about the submission of application for early hearing of CPLA. Apart from the letter, the representative is not in the knowledge of the instant execution proceedings nor the pending CPLA. The respondents are required to depute a well-conversant official to represent them and assist this Tribunal. It is in the interest of justice that before taking punitive action against the respondents they be given an opportunity to explain through well-conversant official. The proceedings are adjourned to 28.01.2021 on which date the requisite implementation report shall positively be submitted in case the judgment under execution is neither suspended nor set aside by the Apex Court.

  
Chairman

09.09.2020

Petitioner in person and Addl. AG for the respondents present.

Learned AAG requests for further time to submit implementation report.

Instant Execution Petition has been adjourned on so many occasions without any <sup>gn</sup> process. The respondents shall, therefore, submit the requisite report without fail on next date of hearing.

Adjourned to 27.10.2020 before S.B.

  
Chairman

27.10.2020

Petitioner in person present.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

On the preceding date, a request was made by learned AAG for further time to submit implementation report, but till today, no report was submitted. The respondents are, therefore, directed to submit the requisite report without fail on the next date of hearing.

Adjourned to 09.12.2020 before S.B.

  
(Rozina Rehman)  
Member (J)

23.04.2020

Due to public holiday on account of COVID-19, the case is adjourned to 16.07.2020 for the same. To come up for the same as before S.B.



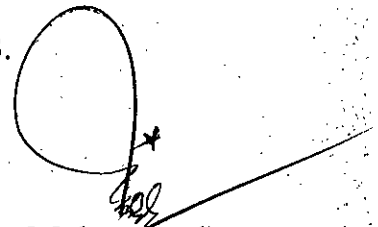
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16.07.2020

Petitioner in person and Addl: AG for respondents present.

Petitioner requests for adjournment.

Adjourned to 18.08.2020 before S.B.



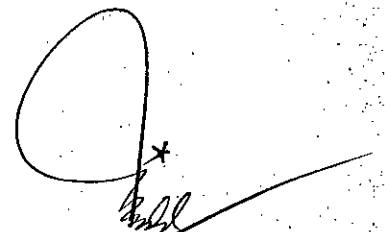
(Mian Muhammad)  
Member(E)

18.08.2020

Petitioner in person present. Mr. Ziaullah, DDA for respondent No.2 present.

Implementation report not submitted. Respondents are directed to come up with the detailed/complete implementation report. In case of failure, legal action shall invariably be taken against the respondents.

Adjourned to 03.09.2020 before S.B.



(Mian Muhammad)  
Member(E)

16.01.2020

Petitioner in person and Addl. AG alongwith Alamzaib, Superintendent for the respondents present.

Joint parawise comments on behalf of respondents No. 1 to 4 have been submitted and a copy thereof is handed over to the petitioner. To come up for further proceedings on 03.03.2020 before S.B.

  
Chairman

03.03.2020

Petitioner in person present. Addl: AG alongwith Mr. Afsar Shah, Sr. Probation Officer for respondents present. Learned Addl: AG seeks time to prepare the case. Adjourned. To come up for further proceedings on 17.03.2020 before S.B.

  
Member

17.03.2020




Appellant in person present. Mr. Kabirullah Khattak learned Addl. AG for the respondents present. Appellant submitted copy of judgment dated 07.08.2008, appeal No. 1039/2007 and order of Execution Petition No. 112/2008 which is placed on file. Adjourned. To come up for further proceedings on 23.04.2020 before S.B.

  
Member

Form- A  
FORM OF ORDER SHEET

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

Execution Petition No. 417/2019

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge  |
|-------|---------------------------|---|
| 1     | 2                         | 3   |
| 1     | 13.11.2019                | <p>The execution petition of Mr. Niamatullah Khan submitted today by him may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"><br/>REGISTRAR 13/11/19</p>  |
| 2-    | 14/11/19.                 | <p>This execution petition be put up before S. Bench on <u>06/12/19.</u></p> <p style="text-align: right;"><br/>CHAIRMAN</p>   |
|       | 06.12.2019                | <p>Petitioner in person present. Addl: AG for respondents present. Notices be issued to the respondents for submission of implementation report. To come up for further proceedings on 16.01.2020 before S.B.</p> <p style="text-align: right;"><br/>(Ahmad Hassan)<br/>Member</p> |

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Ijaz ul Ahsan  
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi

Civil Petition No. 51-P of 2018

(Against the judgment dated 17.11.2017 of the KPK Service Tribunal, Peshawar passed in Service Appeal No.1021/2016)

Government of KPK through Chief Secretary Peshawar etc.

...Petitioner(s)

Verus

Naimatullah Khan

...Respondent(s)

For the Petitioner(s): Mr. Zahid Yousaf Qureshi, Addl.A.G. KPK

For the Respondent(s): Not represented

Date of Hearing: 19.01.2021

**ORDER**

Ijaz ul Ahsan, J. Learned Additional Advocate

General submits that the service appeal of the respondent was patently barred by time. Further the impugned judgment of the learned Service Tribunal dated 17.11.2017 does not take note of the settled law on the subject that proforma promotion cannot be granted post-retirement. Places reliance on Muhammad Aslam Sultan Vs. Federation of Pakistan through General Manager, Pakistan Railways, HQRs, Lahore and another (2006 SCMR 1465). He maintains that it is an admitted fact that the respondent had retired from service in the year 2016 while the impugned judgment was rendered on 17.11.2017.

2. The points raised need consideration. Leave to appeal is granted, *inter alia*, to consider the aforesaid questions. The

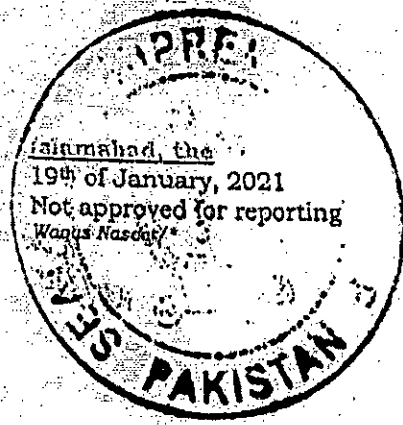
**ATTESTED**

*[Signature]*  
Senior Court Associate  
Supreme Court of Pakistan  
Islamabad

appeal shall be heard on the present record, however, the parties are at liberty to file additional documents, if any, within a period of one month. Office is directed to fix the appeal expeditiously, preferably, after three months.

3. Subject to notice and till the next date of hearing, the operation of the impugned judgment shall remain suspended.

Sd-J  
Sd-J



Certified to be True Copy

*[Signature]*  
Senior Court Associate  
Supreme Court of Pakistan  
Islamabad

|                      |          |                |
|----------------------|----------|----------------|
| GR No:               | 1292/21  | Civil/Criminal |
| Date of Presentation | 19-1-21  | _____          |
| No of Words          | 800      | _____          |
| No of Pages          | 6        | _____          |
| Request              | 5.00     | _____          |
| Copy Fee             | 3.72     | _____          |
| Court Fee            | 8.72     | _____          |
| Date of ...          | 23-1-21  | _____          |
| Date of ...          | 25/01/21 | _____          |
| Complaint            |          | _____          |
| Received by          | M. Saeed | _____          |

123



**Before the Khyber Pakhtunkhwa, Service Tribunal Peshawar.**

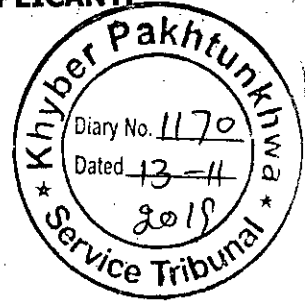
Execution Petition No. 417/2019

In Service Appeal No. 1021/2016.

NAIMAT ULLAH KHAN-----

**PETITIONER/APPLICANT.**

**Retired Director,  
Directorate of Reclamation and probation,  
Home Department.  
R/O House. No. 08/ Street No. 1 J/3 Phase-2  
Hayat Abad Peshawar.**



**VS**

1. Chief Secretary, Government of Khyber Pakhtunkhwa.
2. Secretary Home, Government of Khyber Pakhtunkhwa.
3. Secretary Establishment, Government of Khyber Pakhtunkhwa.
4. Director, Directorate of Reclamation and Probation,  
Home Department.

**RESPONDENT.**

Subject: - **Application for initiating Execution/Implementation of Judgement dated 17.11.2017 directing the respondents to implement the Judgment of this Honorable Tribunal in letter and Spirit.**

Respectfully sheweth,

1. That the applicant has filed Service Appeal No. 1021/2016 in this Honorable Tribunal.
2. That Service Appeal was entertained and allowed vide Judgement dated 17.11.2017 (copy enclosed as Annexure-A). in favour of the applicant in the following terms:-

**"Consequently this Tribunal is Constrained to accept the appeal of the applicant in terms to the effect that respondent department is directed to consider the case of the appellant for promotion to the post of Deputy Director BPS-17 w.e.f. clarification order of Khyber Pakhtunkhwa Service Tribunal dated 03-06-2009**

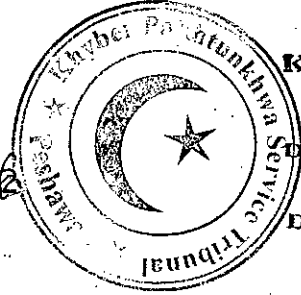
3. That the applicant thereafter approached the respondents for implementation of the Judgement and orders of this Honorable Tribunal by submitting various applications and personal visits, however they gave a deaf ear to all requests of the applicant (copies of applications are enclosed as Annexure-B & C).
4. That the respondents are willfully floating and violating the judgement dated 17.11.2017 of this Honorable Tribunal and not implementing in letter and spirit and had made themselves liable to be proceeded against for not complying with the orders of this Honorable Tribunal.

It is therefore humbly prayed that on acceptance of instant application, the respondents may be directed to implement the judgement of this Honorable Tribunal dated 17.11.2017 in Service Appeal No. 1021/2016 in letter & spirit without further delay for the sake of Justice and Rule of Law.

Your's faithfully,

**Naimat Ullah Khan (In Person)  
Ex- Director Reclamation and  
Probation Home Department.**

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



SERVICE APPEAL NO: 1021 / 2016

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 1031

Dated 30/9/2016

**NAIMATULLAH KHAN,**  
(Retired Director, Directorate of Reclamation & Probation),  
R/o House No. 08, Street No. 1, J-3,  
Phase II, Hayatabad, Peshawar.

*Appellant*

**VERSUS**

1. **GOVERNMENT OF KHYBER PAKHTUNKHWA,**  
Through Chief Secretary, Civil Secretariat, Peshawar.
2. **SECRETARY HOME,**  
Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. **DIRECTOR,**  
Directorate of Reclamation & Probation, Government of Khyber  
Pakhtunkhwa, Peshawar.
4. **SECRETARY ESTABLISHMENT,**  
Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

*Respondents*

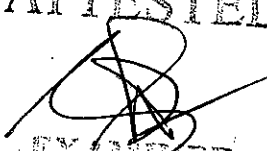
**Filed to-day**



**Registrar**

30/9/16

**APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL ACT, 1974 AGAINST IMPUGNED APPELLATE ORDER NO.  
SOR.III(E&AD) 4-15/2014 DATED 28.06.2016 COMMUNICATED VIDE  
COVERING LETTER DATED 05.09.2016 WHEREBY THE  
DEPARTMENTAL APPEAL / REPRESENTATION OF THE APPELLANT  
HAS BEEN REGRETTEED.**

**ATTESTED**

  
**REGISTRAR**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

| Sr. No  | Date of order/ proceedings | Order or other proceedings with signature of Judge or Magistrate |
|---|----------------------------|--|
| 1   | 2                          | 3  |
| <div style="text-align: right; margin-bottom: 10px;">  </div> <p style="text-align: center;"><b>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</b></p> <p style="text-align: center;"><b>Service Appeal No. 1021/2016</b></p> <p style="text-align: center;">Date of Institution ... 30.09.2016<br/>Date of Decision ... 17.11.2017</p> <p>Naimat Ullah Khan,<br/>(Retired Director, Directorate of Reclamation &amp; Probation)<br/>R/o House No. 08, Street No. 1 J-3,<br/>Phase II Hayatabad, Peshawar. <span style="float: right;"><b>Appellant -</b></span></p> <p style="text-align: center;"><b>Versus</b></p> <ol style="list-style-type: none"> <li>1. The Government of Khyber Pakhtunkhwa, through Chief Secretary, Civil Secretariat, Peshawar.</li> <li>2. Secretary Home, Government of Khyber Pakhtunkhwa Civil Secretariat, Peshawar.</li> <li>3. Director, Directorate of Reclamation &amp; Probation, Government of Khyber Pakhtunkhwa, Peshawar.</li> <li>4. Secretary Establishment, Government of Khyber Pakhtunkhwa, Civil Secretariat Peshawar. <span style="float: right;"><b>Respondents</b></span></li> </ol> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>MUHAMMAD HAMID MUGHAL, MEMBER:</u> - Learned</p> <p>17.11.2017 ✓<br/>counsel for the appellant and Mr. Zia Ullah, learned District Attorney of respondent present.</p> <p>2. The appellant has filed the present appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the respondents and challenged the order dated 10.05.2016 of his promotion from the post of Probation Officer (BS-16) to the post Deputy Director (BS-17) w.e.f 19.07.2012 instead of 07.08.2008. The appellant has also made impugned the order dated 28.06.2016 whereby the departmental application/appeal of the appellant was regretted.</p> <p>3. Learned counsel for the appellant argued that by virtue of</p> <div style="margin-top: 20px;"> <p><b>ATTESTED</b></p> <p></p> <p><b>EXAMINER</b><br/>Khyber Pakhtunkhwa<br/>Service Tribunal,<br/>Peshawar</p> </div> |                            |  |

judgment dated 07.08.2008 of Khyber Pakhtunkhwa Service Tribunal passed in appeal bearing No. 1039/2007 and clarification order of the KP Service Tribunal dated 03.06.2009, the appellant became the senior most Probation Officer and one post in the higher grade was pending vacant since 25.01.2008 when Mr. Mualim Jan, Deputy Director (BS-17) was promoted to BS-18, however due to the court cases the meeting of D.P.C was delayed till 19.07.2012 and then due to the stay orders the notification of promotion of the appellant to the post of Deputy Director (BS-18) was delayed till 10.05.2016. Further argued that since the appellant was the senior most Probation Officer and became eligible to be promoted in the higher grade, the respondent department should have promoted the appellant w.e.f 07.08.2008 on the date the Khyber Pakhtunkhwa Service Tribunal passed judgment in favor of the appellant. Learned counsel for the appellant requested that the respondent department be directed to promote the appellant to the post of Deputy Director (BS-18) w.e.f 07.08.2008 instead of 19.07.2009. Learned counsel for the appellant stated that since the appellant has not filed any departmental appeal for promotion to the post of Director (BS-19) as such the appellant shall not press the prayer/present appeal for promotion to the post of Director.

4. As against that Learned District Attorney resisted the present appeal and argued that since the matter was sub-judice and stay orders were issued from the court hence it was beyond the competency of the respondent department to issue order of

**ATTESTED**

**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

promotion of appellant prior to the year 2016. Further argued that according to the promotion policy, the promotion will always be notified with immediate effect and not retrospectively.

5. Arguments heard. File perused.

6. It is not disputed that the appellant became the senior most Probation Officer as a result of judgment of Khyber Pakhtunkhwa Service Tribunal dated 07.08.2008 passed in appeal bearing No 1039/2007 and clarification order of Khyber Pakhtunkhwa Service Tribunal dated 03.06.2009. There is also no dispute that one post of Deputy Director (BS-18) fell vacant on 25.01.2008 but due to the court cases the meeting of the D.P.C was delayed and then held on 19.07.2012, however since the matter was still subjudice the promotion order of the appellant was issued on 10.05.2016 whereby the appellant was promoted to the post of Deputy Director (BS-18) w.e.f the date of D.P.C meeting i.e 19.07.2012. It is not the appellant to blame for delay in convening D.P.C meeting, hence for delay in convening the meeting of D.P.C the appellant should not be made to suffer. Consequently this Tribunal is constrained to accept the appeal of the appellant in terms to the effect that the respondent department is directed to consider the case of the appellant for promotion to the post of Deputy Director (BS-18) w.e.f clarification order of Khyber Pakhtunkhwa Service Tribunal dated 03.06.2009. Parties are left to bear their own costs. File be consigned to the record room after its completion.

Announced SD/- M. Hamid Mughal, Member  
17.11.2017 SD/- Ahmad Hassan, Member

Certified to be true copy  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Date of Presentation of Application 29-11-2017  
Number of Words 1000  
Copying Fee 8  
Urgent 2  
Total 10  
Name of Copyist [Signature]  
Date of Completion of Copy 29-11-2017  
Date of Delivery of Copy 29-11-2017

[Circular Stamp]

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To,

SECRETARY,  
Home & Tribal Affairs Department,  
Government of Khyber Pakhtunkhwa,  
Civil Secretariat, Peshawar.

Subject: DEPARTMENTAL APPEAL / REPRESENTATION FOR THE PURPOSE OF REGULAR PROMOTION TO THE POST OF DIRECTOR (BS-18) IN LIGHT OF THE SERVICE RULES AND JUDGMENT OF HONOURABLE SERVICE TRIBUNAL DATED 17.11.2017.

Home & Tribal Affairs Department  
Issue No. \_\_\_\_\_  
Dialy No. 628  
Dated 30/11/2017

Respected Sir,

I, NAIMATULLAH KHAN, (Retired Director), Directorate of Reclamation & Probation), R/o House No. 08, Street No. 1, J-3, Phase II, Hayatabad, Peshawar, Applicant, submit instant Departmental Appeal / Representation for subject purpose, for your honor's sympathetic & benevolent considerations, as under: -

1. That, Applicant was lastly serving as Director, Directorate of Reclamation & Probation, Government of Khyber Pakhtunkhwa however on attaining the age of superannuation, he was retired on 08.09.2016.
2. That, vide Judgment dated 07.08.2008 and clarification dated 03.06.2009 of Honourable Service Tribunal, Peshawar, Applicant's Seniority was determined, copies of the Judgment dated 07.08.2008 & clarification dated 03.06.2009 are attached as Annexure A & B.
3. That, it is important to mention here that the Department also approached Apex Court in shape of CPLA against Order in Applicant's case, with the intention to delay the matter, however the same was later on withdrawn on 28.02.2012.

4. That, Applicant was promoted as Deputy Director BPS-17 on 10.05.2016 with effect from 19.07.2012 by the Department; copy of the Promotion Order is attached as Annexure C.
5. That, since the post of Deputy Director was vacant since 25.01.2008; moreover the right to gain seniority of the Applicant was determined by the Honourable Tribunal on 07.08.2008, therefore, Applicant approached the Honourable Service Tribunal for give further retrospective effect to the Order dated 10.05.2016.
6. That, the Honourable Tribunal vide its detailed Judgment, partially accepted the Appeal of the Applicant vide Order dated 17.11.2017 and allowed further retrospective effect to the Order of Promotion dated 10.05.2016 from 03.06.2009 instead of 19.07.2012, copy of the Judgment dated 17.11.2017 is attached as Annexure D.
7. That, Appellant was holding the charge of Director, as well w.e.f. 01.10.2013, copy of the Order dated 01.10.2013 is attached as Annexure E.
8. That, during the course of employment and before reaching the age of superannuation, the Department further promoted Applicant to the post of Director vide Order dated 06.09.2016, on acting charge basis, copy of the Promotion Order dated 06.09.2016 is attached as Annexure F.
9. That, it merits mentioning here that the Promotion Order dated 06.09.2016 was issued on acting charge basis keeping in view Rule 9 of Khyber Pakhtunkhwa Appointment, Promotion & Transfer Rules 1989 because Applicant's length of service as Deputy Director was less than 5 years, copies of the Service Rules and APT Rules, 1989 are attached as Annexure G & H.
10. That, now in pursuance of Judgment of the Honourable Tribunal dated 17.11.2017; the Applicant has been allowed the Promotion as Deputy Director w.e.f 03.06.2009 which means that Applicant was eligible to be considered for Promotion to the vacant post of Director w.e.f 04.06.2014.

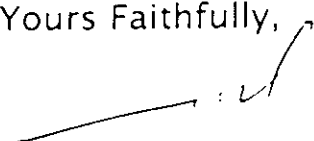


11. That, previously the Applicant was handicapped to claim the promotion from the Department due to pendency of different Service Appeals before Honourable Tribunal.
12. That, Applicant is being discriminated under mala fide intention and is deprived of his legal right of promotion due to the circumstances beyond his control.
13. That, it is now well settled principle of law that the promotion is to be given from the date when the post became vacant.
14. That, now the Applicant has no grudges with any incumbent above or below his name in the seniority List but he just wants to ante-date / correct the date of his regular promotion as Director from the date of vacancy.

It is, therefore, requested that subject Departmental Appeal / Representation may please be accepted and Applicant be considered and promoted to the post of Director from the date when he became eligible in the year 2014 in terms of Judgment of the Honourable Tribunal & Service Rules on the subject with such other relief as may deem fit in the circumstances of the case may also be granted.

Thanking You,

Yours Faithfully,



30/11/17

**NAIMATULLAH KHAN,**

(Retired Director),

Directorate of Reclamation & Probation,

R/o House No. 08, Street No. 1, J-3,

Phase II, Hayatabad, Peshawar

To

The Secretary  
Home and Tribal Affairs Department  
Government of Khyber Pakhtunkhwa  
Civil Secretariat Peshawar

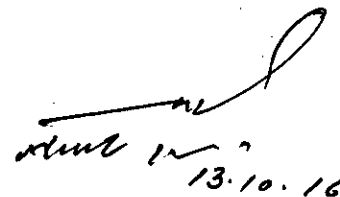
Subject: - **IMPLEMENTATION OF SERVICE APPEAL NO.1021 OF 2016  
JUDGMENT IN FAVOR OF MR. NAIMT ULLAH KHAN EX-DIRECTOR  
RECLAMATION AND PROBATION DEPARTMENT OF HOME**

Sir

It is humbly submitted and to refer Home Department Notification No. SO (Prison) HD/1-77/2012 Dated 10-05-2016 regarding Promotion of the undersigned to the post of **Deputy Director (BPS-17)** Reclamation and probation w.e.f 19-7-2012 and to request that Service Tribunal in service appeal No.1021-2016 directed the Department to consider the case of the applicant for Promotion to the post of **Deputy Director BPS-17** w.e.f clarification order of K.P Service Tribunal dated 03-6-2009 (Copy attached).

It is therefore requested that my case may kindly be processed accordingly that I may be able to get pension benefits and oblige.

Dated .13, October, 2016

  
13.10.16

**NAIMT ULLAH KHAN**  
**Ex-Director Reclamation and**  
**Probation Home Department**

House No.8 Street No.1 J/3Phase -2  
Hayat Abad Peshawar  
No.0331-9409261

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

**Execution Petition No. 417/2019**

In service appeal No. 1021/2016

Naimatullah Khan, Retired Director,

Directorate of Reclamation & Probation, Home Department,

R/O House No. 08, Street No. 1, J-3,

Phase II , Hayatabad Peshawar.....**Appellant.**

Versus

1. Chief Secretary, Government of Khyber Pakhtunkhwa.
2. Secretary, Home & Tribal Affairs Department, Govt of Khyber Pakhtunkhwa.
3. Secretary Establishment, Govt of Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
4. Director, Directorate of Reclamation & Probation, Home Department, Khyber Pakhtunkhwa, .....**Respondents.**

**JOINT PARA WISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1 to 4.**

**Respectfully Sheweth:-**

**FACTS.**

1. As per record.
2. The petitioner was adjusted from the surplus pool as Assistant Director (BPS-16) on 13-03-1999, not in 1995(F/A) & assumed the charge on 17-3-1999 (F/B). The Provincial Government abolished the posts of Assistant Director (BPS-16) vide order No.2/15-J-2000/17945 dated 24-12-2001 (F/C). The petitioner was readjusted as Parole/Probation Officer (BPS-16) in the Directorate of Reclamation & Probation vide No. KC-4/22-SO (Prs)HD/2002 dated 13-02-2002 (F/D). As per Surplus Pool Policy, he was adjusted at the bottom of seniority list of Parole/Probation Officers, but the Petitioner challenged his adjustment as Probation Officer in Khyber Pakhtunkhwa Service Tribunal vide Appeal No.1039/07. The Service Tribunal decided the appeal on 07-08-2008 (F/E). The Khyber Pakhtunkhwa Service Tribunal further clarified Para-5 of the order dated 07-08-2008 on 03-06-2009 (F/F). After issuance of clarification from the Service Tribunal dated 03-06-2009, the seniority list was prepared in the light of Service Tribunal judgment and the Department also filed CPLA in the August Supreme Court of Pakistan. The Government withdraw the CPLA 201/P on 28-02-2012 (F/G), and his case for promotion to the post of Deputy Director (BPS-17) forwarded for DPC, the DPC meeting held on 19-07-2012. But before the issuance of Notification, **Mr. Muhammad Yousaf, Parole/ Probation Officer filed an appeal No. 536/12 in the Khyber Pakhtunkhwa Service Tribunal and the Tribunal stay the issuance of the promotion Notification (F/H).. The Service Tribunal decided the appeal by the way of mutual understanding between the petitioner and Mr. Muhammad Yousaf Parole/Probation Officer dated 01-04-2016(F/I).** After the decision of Service Tribunal dated 1-4-2016, the petitioner was promoted to the post of Deputy Director (BPS-17) on 10-05-2016 with effect from the date of approval of the DPC dated

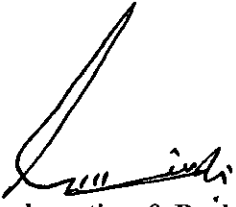
**19-07-2012( (F/J).** As per Service Rules of the Directorate, 5 years' service is required for the promotion to the post of Director (BPS-18), but the petitioner had not completed the required length of service i.e. (5 years). Therefore the petitioner was promoted on acting charge basis vide Notification No.SO(Prs)HD/1-77/R&P/Promo /2012 dated 06/09/2016 **(F/K).** Thus the petitioner availed the benefits of double promotion within 04 months i.e. Deputy Director (BPS-17) with back benefits & Director (BPS-18).

The delay was not caused by the Government but the matter was sub-judice and the Khyber Pakhtunkhwa Service tribunal stay his Notification on appeal of Mr. Muhammad Yousaf Probation Officer. It was beyond the competency of the respondents to issue order of promotion prior to the finality of appeal filed by Mr. Muhammad Yousaf Probation Officer against the petitioner. Moreover as per S.No. VI of the Promotion Policy 2009, **Promotion will always be notified with immediate effect (F/L).** In the light of such policy the petitioner was given promotion on **10-5-2016** from the date of approval of DPC 19-7-2012.

3. **The recent Judgment of the Service Tribunal dated 17-11-2017 , the Government has filed CPLA NO. 61-P/2018 dated 1-2-2018 and also made request for early hearing. (F/M)**
4. **As per para-3 above.**

**Pray:-**

It is humbly prayed that as per S.No. VI of the Promotion Policy 2009, **Promotion will always be notified with immediate effect.** In the light of such policy the petitioner was given promotion on **10-5-2016 with effect from the date of approval of DPC 19-7-2012.** The recent judgment of the Honourable Khyber Pakhtunkhwa Service Tribunal dated 17-11-2017 the August Supreme Court of Pakistan, the Government has filed **CPLA No. 61-P/2018 dated 1-2-2018 , and also made request for early hearing ,** therefore it is prayed that till the decision of the August Supreme Court of Pakistan the present petition / Execution may kindly be kept pending.

  
**Director, Reclamation & Probation  
Khyber Pakhtunkhwa Peshawar  
(Respondent No. 1 to 4)**

12  
1/4

OFFICE OF THE  
INSPECTOR GENERAL OF PRISONS,  
N.W.F.P., PESHAWAR.

NO. 3373 DATED 13/3/99

ORDER

In pursuance of the instructions contained in the Services & General Administration Department letter No. SOCC(S&GAD) Surplus Pool/98 dated 11-3-99 and Home Department letter No. 4/22-SO (Prs)HD/99 dated 12-3-99, the following officers are hereby adjusted/absorbed in the NWFP Reclamation and Probation Department against the posts noted against each with immediate effect :-

| S.NO. | Name of Officer/<br>Designation with<br>BPS.                        | Adjusted as                          | Department where<br>adjusted.                             |
|-------|---|--------------------------------------|---|
| 1.    | Mr. Rehman Shah,<br>Manager, Employment<br>Exchange (BPS-16)        | Assistant<br>Director (BPS-16)       | Reclamation and<br>Probation Department at<br>Abbottabad. |
| 2.    | Mr. Shafiullah,<br>Manager, Employment<br>Exchange (BPS-16)         | Assistant<br>Director (BPS-16)       | Reclamation and<br>Probation Department at<br>Kohat.      |
| 3.    | Mr. Niamatullah,<br>Manager, Employment<br>Exchange (BPS-16)        | Assistant<br>Director (BPS-16)       | Reclamation and<br>Probation Department<br>at Bannu.      |
| 4.    | Mr. Abdul Munim Khan,<br>Manager, Employment<br>Exchange (BPS-16)   | Parole/Probation<br>Officer (BPS-16) | Reclamation and<br>Probation Department<br>at Swabi.      |
| 5.    | Mr. Ali Akbar,<br>Manager, Employment<br>Exchange (BPS-16)          | Parole/Probation<br>Officer (BPS-16) | Reclamation and<br>Probation Department<br>at Mardan.     |
| 6.    | Mr. Hidayatullah,<br>Manager, Employment<br>Exchange (BPS-16)       | Parole/Probation<br>Officer (BPS-16) | Reclamation and<br>Probation Department<br>at Peshawar.   |
| 7.    | Mr. Muhammad Iqbal Shah<br>Manager, Employment<br>Exchange (BPS-16) | Parole/Probation<br>Officer (BPS-16) | Reclamation and<br>Probation Department<br>at D.I. Khan.  |

ANDST: NO. 3374-89 /..

INSPECTOR GENERAL OF PRISONS  
NWFP, PESHAWAR.

Copy of the above is forwarded to :-

- 1- The Secretary to Government of NWFP, Home and T.A Department Peshawar, for information with reference to his letter referred to above.
- 2- The Secretary to Government of NWFP, Services and General Administration Department Peshawar, for information with reference to his letter referred to above.
- 3- The Deputy Director, Reclamation and Probation Department NWFP, Peshawar for information and necessary action. A copy of Home Department/S&GAD letter referred to above is enclosed.
- 4- The Assistant Director, Reclamation and Probation Department Hazara Division Abbottabad.
- 5- The Assistant Director, Reclamation and Probation Department Kohat Division Kohat.

Contd....page.2

- 6- The Assistant Director, Reclamation and Probation Department Bannu Division Bannu.
- 7- The Assistant Director, Reclamation and Probation Department D.I.Khan Division D.I.Khan.
- 8- The Assistant Director, Reclamation and Probation Department Peshawar Division Peshawar.
- 9- The Assistant Director, Reclamation and Probation Department Mardan Division Mardan.  
for information and necessary action.
- 10- The Accountant General NWFP, Peshawar.
- 11- The District Accounts Officer Abbottabad.
- 12- The District Accounts Officer Kohat.
- 13- The District Accounts Officer Bannu.
- 14- The District Accounts Officer Mardan.
- 15- The District Accounts Officer D.I.Khan.
- 16- The District Accounts Officer Swabi.  
for information.

*Abdurnasir 13/3/90*  
ADMINISTRATIVE OFFICER,  
OFFICE OF THE INSPECTOR GENERAL  
PRISONS, NWFP, PESHAWAR.

"ANAYAT"

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F/A

13

OFFICE OF THE ASSISTANT DIRECTOR RECLAMATION & PROBATION  
DEPARTMENT BANNU DIVISION

CHARGE REPORT

In compliance with S & CAD NWFP Peshawar order No. SOCC(S&GAD) Surplus Pool/98 dated Peshawar the 11th March 1999 and Inspector General of Prisons NWFP order No. 3373 doted 13-3-99, I Mr Naimatullah Khan hereby assumed the charge as Assistant Director Reclamation and Probation Deptt at Bannu Division today on 17th March, 1999 forenoon.

|                    |
|--------------------|
| Prisons Department |
| General            |
| 17/3               |

*Naimatullah Khan*  
( Naimatullah Khan )  
Assistant Director,  
Reclamation & Probation Deptt  
Bannu Division.

No. 1-12/AD

Dated Bannu the 17-3-99.

Copy of the above is forwarded for information to the:-

1. Secretary to Govt of NWFP Home & TAs Department Peshawar.
2. Secretary to Govt of NWFP S& GA Deptt Peshawar.
3. Commissioner Bannu Division Bannu.
- 4-5. Sessions Judge Bannu/ Lakki Marwat.
- 6-7. Deputy Commissioners Bannu/Lakki Marwat.
8. Inspector General of Prisons, NWFP, Peshawar.
9. Deputy Director, Reclamation & probation Deptt NWFP Peshawar.
10. Distt Accounts Officer Bannu.
11. Superintendent Distt Jail Bannu.
12. Office Record.

*Naimatullah Khan*  
( Naimatullah Khan )  
Assistant Director,  
Reclamation & Probation Deptt  
Bannu Division.

2998  
24/3/99

14

OFFICE OF THE  
INSPECTOR GENERAL OF PRISONS,  
N.W.F.P, PESHAWAR.

NO.2/15-j-2000/17945

Dated 24-12-2001

ORDER

Consequent upon the abolition of 15 posts of the Reclamation and Probation Department vide Home and T.A Department Notification No.AC.4/22-50(Prs)HD/2001 dated 5-12-2001, services of the following officers/officials are hereby placed at the disposal of the Surplus Pool in Home and T.A Department with immediate effect :-

- Name of officer/official
1. Mr.Dilawar Khan, Assistant Director(BPS-16), Reclamation and Probation Department D.I.Khan Division.
  2. Mr.Niamatullah Khan, Assistant Director(BPS-16), Reclamation and Probation Department Bannu Division. ✓
  3. Mr.Shafiullah, Assistant Director(BPS-16), Reclamation and Probation Department Kohat Division.
  4. Mr.Amir-ud-Din, Assistant Director(BPS-16), Reclamation and Probation Department Malakand Division.
  5. Mr.Muhammad Qiyas Gul, Stenographer(BPS-12), Office of the Deputy Director, Reclamation and Probation Department NWFP Peshawar.
  6. Mr.Muhammad Quresh, Naib Qasid(BPS-1), Office of the Probation Officer Charsadda.
  7. Mr.Saifur Rehman, Naib Qasid(BPS-1), Office of the Assistant Director, Reclamation and Probation Department Peshawar Division.
  8. Mr.Zulfiqar, Naib Qasid(BPS-1), Office of the Assistant Director, Reclamation and Probation Department D.I.Khan Division.
  9. Mr.Abdullah Jan, Naib Qasid(BPS-1), Office of the Assistant Director, Reclamation and Probation Department D.I.Khan Division.
  10. Mr.Altaf Hussain, Chowkidar(BPS-1), Office of the Assistant Director, Reclamation and Probation Department Peshawar Division.
  11. Mr.Gulzar Hussain, Chowkidar(BPS-1), Office of the Assistant Director, Reclamation and Probation Department D.I.Khan Division.

NOTE

All the above named officers/officials should be relieved of their duties immediately and directed to report to the Surplus Pool in Home Department.

INSPECTOR GENERAL OF PRISONS  
NWFP PESHAWAR.

ENDST. NO. 17946-59 / ..

Copy of the above is forwarded to :-

- 1- The Secretary to Government of NWFP, Home and T.A Department Peshawar for information with reference to his Notification referred to above.
- 2- The Deputy Director, Reclamation and Probation Department NWFP, Peshawar ; for information and necessary action. The incumbents of remaining posts of the different offices, of Assistant Directors Reclamation and Probation Department, shall remain attached to the offices of concerned Probation Officers in the Districts.
- 3- The Assistant Director, Reclamation and Probation Department Peshawar Division.
- 4- The Assistant Director, Reclamation and Probation Department D.I.Khan Division.
- 5- The Assistant Director, Reclamation and Probation Department Bannu Division.

Contd....page.2



- 6- The Assistant Director, Reclamation and Probation Department Kohat Division.
- 7- The Assistant Director, Reclamation and Probation Department Malakand Division Swat.
- 8- The Probation Officer Charsadda.  
for information and necessary action.
- 9- The Accountant General NWFP Peshawar.
- 10- The District Accounts Officer D.I. Khan.
- 11- The District Accounts Officer Bannu.
- 12- The District Accounts Officer Kohat.
- 13- The District Accounts Officer Swat.
- 14- The District Accounts Officer Charsadda.  
for information.

*A. J. Khan*  
ADMINISTRATIVE OFFICER,  
FOR INSPECTOR GENERAL OF PRISONS,  
NWFP, PESHAWAR.

C

**GOVERNMENT OF NWFP**  
**HOME & TRIBAL AFFAIRS DEPARTMENT**  
 DATED PESH: THE 13<sup>TH</sup> FEB: 2002.

**ORDER:**

**No.KC.4/22-SO(Prisons) HD/2002.** The competent Authority is pleased to order the adjustment/ absorption of the following BPS-16 Officers (presently in the Suplus Pool of Home & T.As Deptt:) in the Departments indicated against their names in the existing vacancies with immediate effect:-

| S.No | Name & Desig: of the Officer with BPS.                           | To be adjusted as                                     | Department where adjusted   |
|------|--|---|---|
| 1-   | Mr. Dilawar Khan, Assistant Director R&P Department (BPS-16)     | Parole/ Probation Officer (BPS-16)                    | Reclamation and Probation Deptt NWFP                              |
| 2-   | Mr. Amir-ud-din, Assistant Director R&P Deptt: (BPS-16)          | ----do----  | ----do----  |
| 3-   | Mr. Naimatullah Khan, Assistant Director R&P Department (BPS-16) | ----do----  | ----do----  |
| 4-   | Mr. Shafiullah Khan, Assistant Director, R&P Department (BPS-16) | Assistant Programmer Planning & Development (BPS-16). | Planning and Development Department, District Govt. Lakki Marwat. |

2- On their adjustment/ absorption, the services of the above mentioned officers are hereby placed at the disposal of I.G.Prisons NWFP and DCO Lakki Marwat for issue of their formal adjustment orders accordingly.

**Secretary to Govt. NWFP**  
Home & TAS Department

Endrst: of even No./ date.

Copy forwarded to:-

- 1- The Accountant General NWFP Peshawar.
- 2- Inspector General of Prisons NWFP Peshawar.
- 3- District Coordination Officer, Lakki Marwat w/r to his letter NO. 457/DCO/LM/PS-2, dated 26/1/2002.
- 4- Budget Officer-III, Govt. of NWFP, Finance Deptt: for information & n/action.
- 5- Section Officer (General), Home & TAs Deptt for necessary action.
- 6- Deputy Director, R&P Deptt: NWFP Peshawar.
- 7- Officers concerned.

-----sd-----

**(MAQSOOD PERVEZ)**  
SECTION OFFICER (PRISONS)

DATE: FEB. 13/2002

ORDER.

NO. KC. 4, 21-SD (Prisons) NI/2002. The Competent Authority is pleased to order the adjustment/absorption of the following PPS-16 Officers (presently in the Surplus Pool of Home & T.A. Deptt.) in the Department indicated against their names in the adjoining vacancies with immediate effect:-

| S.No. | Name & Designation of the Officer in P.S.                         | To be assigned as                                    | Department |
|-------|---|--|------------|
| 1-    | Mr. Iqbal Khan, Assistant Director R&F Department (P.S-16)        | Assistant Director                                   | Prisons    |
| 2-    | Mr. Mirza-Din, Assistant Director R&F Deptt. (P.S-16)             | Assistant Director                                   | Prisons    |
| 3-    | Mr. Mirza-Ullah Khan, Assistant Director R&F Department (P.S-16)  | Assistant Director                                   | Prisons    |
| 4-    | Mr. Mirza-Ullah Khan, Assistant Director, R&F Department (P.S-16) | Assistant Programmer Planning & Development (P.S-16) | Prisons    |

2- On their adjustment/absorption, the names of the above mentioned officers are hereby placed at the disposal of I.G. Prisons NWP and ECO Lakkhi for issue of their final adjustment orders accordingly.

SECRETARY TO GOVT. NWP  
HOME & T.A. DEPARTMENT

Encl: as given No./date.

Copy forwarded to:-

- 1- The Accountant General NWP Ferozpur.
- 2- Inspector General of Prisons, NWP Ferozpur.
- 3- District Coordination Officer, Lakkhi Muray, w.r to his letter ID. 457/DTO, 11/5-2, dated 27/1/2002.
- 4- Budget Officer-III, Govt. of Punjab, for information & reaction.
- 5- Section Officer (General), Home & T.A. Deptt. for necessary action.
- 6- Director, R&F Deptt. for information.
- 7- Officers concerned.

*(Signature)*  
SECRETARY TO GOVT. NWP  
HOME & T.A. DEPARTMENT

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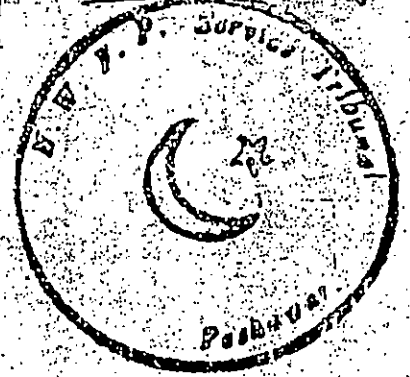
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(9) 11

BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR.

Appeal No: 1039/2007

Date of Institution. .... 24.10.2007  
Date of Decision ..... 07.08.2008



- ① Nimatullah Khan S/O Sher Bahadar Khan,  
Probation Officer, Bannu.
- ② Dilawar Khan, Probation Officer, D.I.Khan.
- ③ Amir-ud-Din S/O Jamal-ud-Din, Probation Officer, Swat. (Appellants)

VERSUS

1. Government of NWFP through Secretary, Home & Tribal Affairs Department, Peshawar.
2. The Director, Reclamation and Probation Department, Peshawar.
3. Inspector General of Prisons, NWFP Peshawar. (Respondents)

MR. MUHAMMAD ISA KHAN,  
Advocate  
MR. SHAKEEL ASGHAR,  
Addl. Government Pleader;

For appellant.

For respondents.

MR. JUSTICE (R) SALIM KHAN,  
DR. ABDUR RAUF,

CHAIRMAN,  
MEMBER.

JUDGMENT

JUSTICE (R) SALIM KHAN, CHAIRMAN.- Writ Petition No. 2155 of 2006 was filed by Nimatullah Khan, Dilawar Khan and Amir-ud-Din. Vide judgment of 11.10.2007, the Hon'ble judges of Peshawar High Court sent the said Writ Petition to this Tribunal on treating it as an appeal before this Tribunal to be decided in accordance with law and merits. It is worth-mentioning at this stage that each of the appellants had to file separate departmental appeals and separate service appeals before this Tribunal but, in accordance with the wishes of Peshawar High Court, this common writ petition by the three petitioners, was taken as appeal by all the three appellants.

2. It was contended by the appellants that they were working as Parole/Probation Officers (BPS-16) in the Reclamation and Probation Department of the N.W.F.P. They were redesignated as Assistant Directors. Petitioner No.1 was attached to surplus pool and he was adjusted as Assistant Director, R&P (BPS-16) against the quota of initial appointees. The posts of Assistant Director, R&P were abolished vide order dated 05.12.2001 after a period of about three months. The petitioners made representations for restoration of the posts of Assistant Director.

ATTESTED

The record shows that the representations were made by appellant No.1 and No.2. The department recommended the case of the appellants for restoration of posts. They further contended that before they were posted as Assistant Directors, they were the senior most on the seniority list. But after becoming surplus and repatriation to their own department from surplus pool, they were placed at the bottom of seniority lists. The Probation Officers, who were junior to them, became their seniors. Previously the recruitment rules were notified on 01.03.1990. Fresh rules were notified on 04.11.2006, allegedly to favour a single person.

3. The respondents contested the appeal. They contended that petitioners No. 2 and 3 were not readjusted as Assistant Directors but were promoted as Assistant Directors BPS-16 from the post of Probation Officer BPS-16. They further contended that representations of petitioners No. 1 and 2 were time-barred, being filed after a lapse of more than one and a half years, while petitioner No.3 had not submitted any representation. They contended that after the abolition of the posts of Assistant Director, the petitioners were declared surplus and sent to surplus pool vide notification dated 24.12.2001. They were adjusted as Probation Officers BPS-16 in their parent department, and they accepted the same position without any objection. Further contentions of the respondents were that the posts of Assistant Director could be abolished, the post of Deputy Director (BPS-17) was to be filled by promotion from amongst the holders of the posts of Parole/Probation officers. They further contested the appeal on other legal and factual grounds.

4. We heard the arguments and perused the record.

5. It is an admitted fact that, before appointment as Assistant Directors, the appellants were Parole Officers. Vide order dated 25.9.2001, Dilawar Khan, Amir-ud-Din and Muhammad Saleem were promoted as Assistant Directors BPS-16 from the posts of Parole/Probation Officers. According to rules notified on 01.03.1990, the post of Assistant Director was to be filled 80% by promotion on the basis of seniority-cum-fitness, from amongst Probation/Parole Officers with at least five years service as such. The appellants No. 2 and 3 were posted as Assistant Directors on promotion. The respondents have not denied that the appellant No.1 was also appointed as Assistant Director. On abolition of the posts of Assistant Director, the appellants had to be reverted back to their original posts, instead of sending them to surplus pool because they had a right to retain lien against the post of Probation/Parole Officer. They were wrongly placed in the

BVTC

surplus pool. Vide notification No. 1/7-SO(Prisons)HD/2006 dated 04.11.2006, was declared that the post of Assistant Director stood omitted due to abolition of the posts of Assistant Director, while the post of Deputy Director Reclamation Probation (BPS-17) was to be filled in by promotion on the basis of seniority-cum fitness from amongst the holders of the posts of Probation Officers/Parole Officers with atleast five years service such. This notification, rather, enhanced benefit to the appellants.

6. The defects, which hindered the way of the appellants, arose when they were wrongly sent to surplus pool, instead of reverting them back to their original posts of Probation/Parole Officers. They were entitled to be adjusted such as Probation/Parole Officers, on abolition of the posts of Assistant Director according to their own seniority in their basic cadre, which was not done. All the three appellants were neither fresh recruits nor they had gone from the surplus pool to any other cadre. Even, if it could be presumed for the sake of argument that the appellants were liable to be sent to the surplus pool, they had the right to regain their seniority when they were posted to their original cadre, after the posts on which they were promoted, were abolished. The appellants had to remain Probation/Parole Officers on such abolition of the posts of Assistant Director and were entitled to regain their original seniority.

7. The appellants <sup>have</sup> ~~have~~ sustaining continuous and recurring loss due to illegal and ab-initio void order of their placing in the surplus pool, without reverting them to their original posts of Probation/Parole Officers. The period of limitation therefore, did not run against the appellants, who had been deprived illegally of their legal right. We, therefore, declare that the appeals are within time.

8. In the light of the above discussion, we hold that the appellants were entitled to be reposted as Probation/Parole Officers on abolition of the posts of Assistant Director and they were entitled to regain their original seniority on abolition of the posts on which they were promoted. Their juniors Probation/Parole Officers in the cadre had to be made junior to them on their reversion to their original posts, inspite of the fact that the appellants were illegally placed in the surplus pool inspite of the lien against their original posts.

9. We, therefore, accept the appeal of all the three appellants and direct the official respondents to award the original seniority to the appellants.

ATTESTED  
EXAMINER  
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Probation/Parole Officers in their cadre to them, over and above their original juniors in the cadre. The parties are, however, left to bear their own costs.

10. Before parting with the judgment, it is necessary to declare that joining of the appellants in one appeal shall not be taken as precedent in other cases, because the Writ Petition, due to decision of the Hon'ble judges of the High Court, was, especially, taken up as joint appeal, as a special case.

ANNOUNCED  
07.08.2008

Jy-Justice M. Salem  
Chairman  
Jy-Dr. Akhish Ray  
Member

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| 03.6.2009           | <p>Petitioner in person and Zahid Karim Khalil, A.G.P alongwith Hidayatullah, Pay Roll Officer for the respondents present. Arguments already heard and record perused.</p> <p>2. The petitioner submitted that he has been posted as Probation/Pay Roll Officer in the cadre but has been placed junior to his juniors who have also been adjusted as Probation/Parole Officers.</p> <p>3. The respondents contested the petition. They submitted that the petitioner was not working in the respondent department initially. He was appointed in this department as Assistant Director.</p> <p>4. It was clearly mentioned in Para-5 of the judgment in Service Appeal No. 1039 of 2007 decided on 07.3.2008 that the appellant was appointed as Assistant Director while Dilawar Khan and Amir-ud-Din were posted as Assistant Directors on promotion. The petitioner, alongwith his two colleagues, was sent to surplus pool. In order to save the appellant from reversion to his original post, and in order to save the seniors from surplus pool, it was directed to adjust the petitioner as Probation/Parole Officer which is a post equivalent to his original post. It was expected at that time that the posts of the Assistant Director would be created again in the near future.</p> <p>5. There is nothing in the judgment to the effect that the petitioner has become junior to Dilawar Khan and Amir-ud-Din. But he cannot be adjusted in the department from a date on which he was not available to the department. With his date of adjustment as it is, the petitioner was remained senior to his other two colleagues (co-appellants) for the purpose of promotion/posting to</p> |

ATTENDED

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the higher post.

6. On clarifying the ambiguity, if any, as above, we dispose of the present petition with the above explanation. Parties are left to bear their own costs.

ANNOUNCED:

03.06.2009

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sd/-  
Chandrasekhar

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IN CASE

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313/2016.  
7/11/2016.

ED  
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ANNEXURE

THE SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction)

PRESENT:

- MR. JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY, HCJ
- MR. JUSTICE KHILJI ARIF HUSSAIN
- MR. JUSTICE TARIQ PARVEZ

S.P. NO. 201-P OF 2011 & CMA NO. 436-P OF 2011.  
against the judgment dated 14.4.201 and 7.8.2008  
of the Service Tribunal, Peshawar passed in EP No.  
20109.

Text of KPK etc.

Applicant/Petitioners

Versus

Respondent

Muhammad Khan

Syed Arshad Hussain Shah, Addl. AG

For the petitioners

In-person

For the applicant

N.R.

For the respondent

28.2.2012

Date of Hearing

ORDER

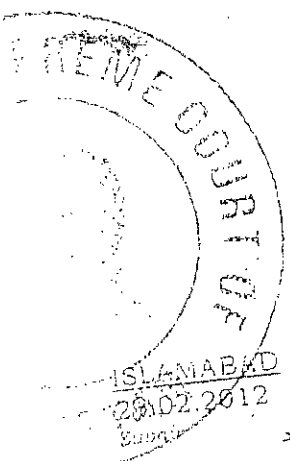
Learned counsel for the petitioner seeks permission

to withdraw the listed petition. Dismissed as withdrawn.

Sd/- Iftikhar Muhammad Chaudhry, CJ  
 Sd/- Khilji Arif Hussain, J  
 Sd/- Tariq Parvez, J

Certified to be True Copy

Superintendent  
Supreme Court of Pakistan  
ISLAMABAD



154-P/12

Sl. No: \_\_\_\_\_

Date of Presentation: 15/2/12

No. of Words: 200

No. of folios: 3-4

Regulation Fee Rs: 1-86

Copy Fee in: 6-00

Court Fee stamps: \_\_\_\_\_

Date of Completion of Copy: 16/2/12

Date of delivery of Copy: 16/2/12

Compared by: \_\_\_\_\_

Received by: \_\_\_\_\_

BEFORE THE HON'BLE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA

PESHAWAR

Appeal No 536/2012

MUHAMMAD YOUSAF, S/O KHADI KHAN, PROBATION OFFICER,  
DIRECTORATE OF RECLAMATION AND PROBATION DEPARTMENT



23

...APPELLANT

A.W.F. Peshawar

504

03/5/2012

VERSUS

1. THE SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA, HOME AND TRIBAL AFFAIRS DEPARTMENT, PESHAWAR.
2. THE DIRECTOR, RECLAMATION AND PROBATION DEPARTMENT, PESHAWAR.
3. AMEERUDDIN, S/O JAMALUDDIN, PROBATION OFFICER IN THE DIRECTORATE OF RECLAMATION AND PROBATION KHYBER PAKHTUNKHWA, OFFICE SITUATED AT CIVIL SECRETARIAT
4. NIAMAT ULLAH KHAN, S/O SHER BAHADUR KHAN, PROBATION OFFICER IN THE DIRECTORATE OF RECLAMATION AND PROBATION KHYBER PAKHTUNKHWA, OFFICE SITUATED AT CIVIL SECRETARIAT  
MR. DILAWAR KHAN, EX-PROBATION OFFICER, D.I.KHAN. R/O LAKKI MARWAT, PRESENTLY RESIDING AT D.I.KHAN. C/O PROBATION-OFFICER, D.I.KHAN DISTRICT COURTS.

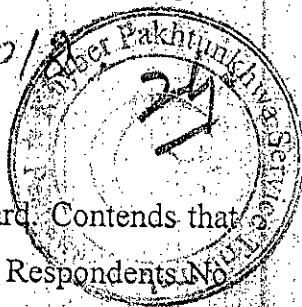
APPEAL U/S 4 OF THE N-W.F.P. SERVICES TRIBUNAL ACT, AGAINST PLACING OF RESPONDENTS NO. 3 & 4 SENIOR TO THE APPELLANT IN THE LATEST SENIORITY LIST AND DISMISSAL OF THE DEPARTMENTAL APPEAL VIDE ORDER DATED: 27-03-2012 OF RESPONDENT NO. 2

Respectfully Sheweth,

1. That appellant was appointed as a Probation officer through Public Service Commission on 12-04-1995.
2. That according to Seniority list circulated by Home and Tribal Affairs Department vide Notification No. 1/57-SO(Prs) HD / 2000 dated: 28-02-2000, the appellant was placed at Serial No. 5 before

11/5/12

Appeal No. 536/2012



3. 8.6.2012

Counsel for the appellants present and heard. Contends that the appellants were appointed as PRO on 12.4.1995. Respondents No. 3 and 5 on abolition of the department were placed in surplus pool and were transferred to R & P department on 17.3.1999, while the other incumbent Respondent No. 4 was appointed/adjusted on 12.3.1999 whereas Respondents No. 3 and 5 were adjusted vide letter dated 14.2.2011. The respondents filed appeal before the Service Tribunal which was decided on 7.8.2008 which was further clarified vide decision dated 3.6.2009. Counsel for the appellants further stated that on abolition of posts of Assistant Director, Respondent No. 4 was again sent to surplus pool and was adjusted as P.O on 3.2.2002 alongwith Respondents No. 3 and 5. The department has not correctly implemented the decision of the Tribunal as it was regarding inter-se seniority list but the department while issuing a final seniority list dated 27.3.2012 placed Respondents No. 3 and 5 senior to the appellants. The date of regular appointment of appellants is <sup>95</sup>4.4.85 and that of Respondent No. 4 is 17.3.1999 as A.D whereas Respondent No. 5 has been retired from service by then. The appellants preferred a departmental but the same has been rejected on 3.4.2012. Points raised need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellants are directed to deposit the security amount and process fee within 10 days. Thereafter notice be issued to the respondents. Case adjourned to 12.9.2012 for submission of written reply on main appeal and on application on 4.7.2012..

*Appellants' amount deposited.  
As receipt made Security  
attached with file.*

*Member Pakhtunkhwa Service Tribunal*

*[Signature]*  
Member

4. 8.6.2012

This case be put before the Final Bench 11 for further proceedings.

*[Signature]*  
Chairman

Date of receipt of copy 4.7.12  
Name of Court 1800  
Copy to 6  
Up to 1  
Total 8  
Name of [Signature]  
Number of Copy 11-7-2012  
Date of Copy 11-7-2012

4.7.2012.

Appellant with counsel and Mr. Sherafgan Khattak, AAG with Alamzeb, Superintendent for respondents No. 1 and 2, and private respondents No. 3 and 4 in person present. Respondents need further time. Notice be issued to respondent No. 5 through registered post and receipt be placed on file. Respondents may continue process of promotion but are restrained from issuance notification. To come up for written reply on main appeal as well as reply/arguments on stay application on 18.7.2012.

MEMBER

MEMBER

ATTESTED

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

H

①

F/A F/G

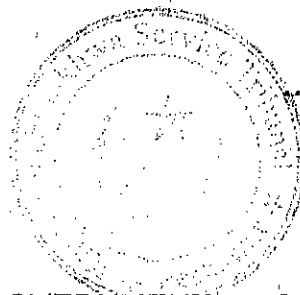
318  
25

BEFORE THE HON'BLE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA,

PESHAWAR

Appeal No 536/2012

MUHAMMAD YOUSAF, S/O KHADI KHAN, PROBATION OFFICER,  
DIRECTORATE OF RECLAMATION AND PROBATION DEPARTMENT



APPELLANT  
M. W. J. Farooq  
District Tribunal  
Case No. 504  
Dated 03/5/2012

VERSUS

1. THE SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA, HOME AND TRIBAL AFFAIRS DEPARTMENT, PESHAWAR.
2. THE DIRECTOR, RECLAMATION AND PROBATION DEPARTMENT, PESHAWAR.
3. AMEERUDDIN, S/O JAMALUDDIN, PROBATION OFFICER IN THE DIRECTORATE OF RECLAMATION AND PROBATION KHYBER PAKHTUNKHWA, OFFICE SITUATED AT CIVIL SECRETARIAT
4. NIAMAT ULLAH KHAN, S/O SHER BAHADUR KHAN, PROBATION OFFICER IN THE DIRECTORATE OF RECLAMATION AND PROBATION KHYBER PAKHTUNKHWA, OFFICE SITUATED AT CIVIL SECRETARIAT
5. MR. DILAWAR KHAN, EX-PROBATION OFFICER, D.I.KHAN. R/O LAKKI MARWAT, PRESENTLY RESIDING AT D.I.KHAN. C/O PROBATION OFFICER, D.I.KHAN DISTRICT COURTS.

File to copy  
3/5/2012

APPEAL U/S 4 OF THE N-W.F.P. SERVICES TRIBUNAL ACT, AGAINST PLACING OF RESPONDENTS NO. 3 & 4 SENIOR TO THE APPELLANT IN THE LATEST SENIORITY LIST AND DISMISSAL OF THE DEPARTMENTAL APPEAL VIDE ORDER DATED: 27-03-2012 OF RESPONDENT NO. 2

Respectfully Sheweth,

1. That appellant was appointed as a Probation officer through Public Service Commission on 12-04-1995.
2. That according to Seniority list circulated by Home and Tribal Affairs Department vide Notification No. 1/57-SO(Prs) HD / 2000 dated: 28-02-2000, the appellant was placed at Serial No. 5 before

11/5/12

26 353

01.04.2016

Appellant in person, Mr. Muhammad Jan, GP for official respondents No. 1 & 2 and private respondents No. 3 and 4 in person present. Appellant and private respondents No. 3 and 4 submitted application by stating therein that by way of mutual understanding between them the appellant want to withdraw his appeal. Application placed on file. The issue pertains to seniority and private respondent No. 5 was stated to have already retired. As such the appeal is dismissed as withdrawn. File be consigned to the record room. Application placed on file ✓ ✓

sd member

sd member

ANNOUNCED  
01.04.2016

4-4-2016

800

6-0

6-0

→

6-4-2016

6-4-2016



Government of Khyber Pakhtunkhwa  
Home & Tribal Affairs Department

Peshawar, dated the 10<sup>th</sup> May, 2016.

NOTIFICATION

No.SO(Prisons)-HD/1-77/R&P/2012The Competent authority has been pleased to promote Mr. Niamat Ullah Khan Probation Officer (BPS-16) to the post of Deputy Director (BPS-17) in the Directorate of Reclamation & Probation Khyber Pakhtunkhwa, on regular basis with effect from 19/07/2012.

2. The above named Officer shall be on probation for a period of one year extendable for another one year in terms Rule-15 of Appointment, Promotion & Transfer Rules, 1989.

Secretary to Government of  
Khyber Pakhtunkhwa Home, & Tribal  
Affairs department Peshawar

Copy forwarded for information and necessary action to: -

1. The Principal Secretary to Chief Minister Khyber Pakhtunkhwa,
2. The Accountant General Khyber Pakhtunkhwa, Peshawar, for information and necessary action.
3. The PS to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
4. The Director Reclamation & Probation, Khyber Pakhtunkhwa, Peshawar.
5. PS to Secretary Home, Khyber Pakhtunkhwa
6. PS to Special Secretary Home, Khyber Pakhtunkhwa
7. Officer concerned.
8. The Manager, Government Printing Press, Peshawar.
9. Master File/Office Order File.

(Khushi Muhammad Khan)  
Section Officer (Prisons)  
Ph. (091) 9210948 Fax. 9210201

arrears of Pay & allowance of such higher post through pro forma promotion or upgradation arising for the ante-dated fixation of his seniority. (Annexure-E).





F/A P/9  
25/1/16

Government of Khyber Pakhtunkhwa,  
Home & Tribal Affairs Department.

Peshawar, dated the 6<sup>th</sup> September, 2016.

**NOTIFICATION**

No. SO (Prison)/HD/1-77/R&P/Promo/2012. The Government of Khyber Pakhtunkhwa, on the recommendations of the Provincial Selection Board (PSB), is pleased to order promotion of Mr. Niamatullah Khan, Deputy Director (BPS-17), Reclamation & Probation, Khyber Pakhtunkhwa, to the post of Director (BPS-18), Reclamation & Probation, Khyber Pakhtunkhwa, on acting charge basis, with immediate effect, in the public interest.

**Secretary to Government of Khyber Pakhtunkhwa,  
Home & Tribal Affairs Department.**

Endst. No. & date even.

Copy forwarded to:

1. The Secretary to Governor, Governor's Secretariat, Khyber Pakhtunkhwa, Peshawar.
2. The Principal Secretary to Chief Minister, Chief Minister's Secretariat, Khyber Pakhtunkhwa, Peshawar.
3. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
4. The PSO to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
5. The Director, Reclamation & Probation, Khyber Pakhtunkhwa, Peshawar.
6. The Manager, Government Printing & Stationery Department, Shami Road, Peshawar for publication in the Government Gazette with the request to kindly furnish (20) Gazette copies of the Notification.
7. The PS to Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
8. The PS to Special Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.

  
Section Officer (Prisons)

within a period of six months from such recommendations, they would lapse. The case of such civil servant would require placement before the PSB/DPC afresh.

VI. Date of Promotion:

Promotion will always be notified with immediate effect.

VII. Notional Promotion:

In respect of civil servants who retire (or expire) after recommendation of their promotion by the PSB/DPC, but before its approval by the competent authority, their promotion shall be deemed to have taken effect from the date of recommendation of the PSB/DPC, as the case may be, and their pension shall be calculated as per pay which they would have received had they not retired/expired.

VIII. Promotion of Civil Servants who are awarded minor penalties.

- (a) The question of promotion to BS-18 and above in case of civil servants who have been awarded minor penalties has been settled by the adoption of quantification of PERs and CEI which allows consideration of such cases for promotion subject to deduction of 5 marks for each major penalty, 3 marks for each minor penalty and 1 mark for each adverse PER from the quantified score and recommendation for promotion on attaining the relevant qualifying threshold.
- (b) However, the CEI policy is not applicable to civil servants in BS-16 and below. In this case, the concerned assessing authorities will take into consideration the entire service record with weightage to be given for recent reports and any minor penalty will not be a bar to promotion of such a civil servant.

IX. Promotion in case of pending investigations by NAB:

If there are any NAB investigations being conducted against an officer, the fact of such investigations needs to be placed before the relevant promotion fora which may take a considered decision on merits of the case.

2. All the existing instructions on the subject shall stand superseded to the above extent, with immediate effect.

To be substituted by this Department letter No. & Dated Even.

30



GOVERNMENT OF KHYBER PAKHTUNKHWA  
LAW, PARLIAMENTARY AFFAIRS AND  
HUMAN RIGHTS DEPARTMENT

No.SO(Lit)/LD/9-13(111)Home/2017/1208-14 W/E  
Dated Peshawar the 12/01/2018

Directorate of (R & P)  
No. 283  
Date 23/1/18  
File 1021/16

To

1. The Advocate General, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary to Govt. of Khyber Pakhtunkhwa, Home & Tribal Affairs Department.
3. The Secretary to Govt. of Khyber Pakhtunkhwa, Establishment Department.

Subject:

SERVICE APPEAL NO.1021/2016 TITLED MR. NIAMATULLAH KHAN VS GOVERNMENT OF KHYBER PAKHTUNKHWA through Chief Secretary and others.

Dear Sir,

I am directed to refer to Government of Khyber Pakhtunkhwa Home & Tribal Affairs Department letter No.SO(Courts)/HD/3-1/2017, dated 07/12/2017 on the subject noted above and to forward herewith minutes of the meeting held on 03-01-2018 in Law Department (which are self explanatory) for perusal and further necessary action, please.

Yours faithfully,

(ALAM ZEB)  
SECTION OFFICER (Lit)

Endst: No.& Date Even.

Copy alongwith copy of minutes is forwarded to the:

1. Director Reclamation & Probation Khyber Pakhtunkhwa, Peshawar.
2. AIG / Legal for Inspector General of Police Khyber Pakhtunkhwa, Peshawar for information only.
3. PS to Secretary Law Department Khyber Pakhtunkhwa.
4. PA to Deputy Solicitor Law Department.

SECTION OFFICER (Lit)  
12-1-18

*Al ready proceed with  
Approved on demand  
D.H.C Peshawar*  
27/1/18  
22/1/18  
M. W. J. 2018  
S. J. 2018

SERVICE APPEAL NO.1021/2016 TITLED MR. NIAMATULLAH KHAN VS GOVT. OF KHYBER PAKHTUNKHWA THROUGH CHIEF SECRETARY AND OTHERS.

A meeting of the Scrutiny Committee was held on **03-01-2018** at **14:00 hours** in the office of Additional Secretary (Opinion) Law Department under his Chairmanship to determine the fitness of the subject case for filing of appeal / CPLA in the proper forum. Additional Advocate General (**Malik Akhtar Hussain**) was also present during the meeting being representative of Advocate General Khyber Pakhtunkhwa.

2. The meeting started with the recitation from the Holy Quran and thereafter Chairman of the Committee invited the representative of **Home Department Mr. Noor Wali Khan Deputy Secretary** to apprise the Committee about the background of the case. The representative informed the Scrutiny Committee that appellant has filed the present appeal / under section-4 of the Khyber Pakhtunkhwa Services Tribunal Act, 1974 against the respondents and challenged the order dated 10-05-2016 of his promotion from the post of Probation Officer (BPS-16) to the post of Deputy Director (BS-17) w.e.f 19-07-2012 instead of 07-08-2008. The appellant has also impugned the order dated 28-06-2016 whereby the Departmental application / appeal of the appellant was regretted. The Tribunal accepted the appeal and directed the respondents to consider the case of the appellant for promotion to the post of Deputy Director (BPS-18) w.e.f clarification Order of Khyber Pakhtunkhwa Services Tribunal dated 03-06-2009. Now the Department wanted to file CPLA on the following grounds:-

GROUND:-

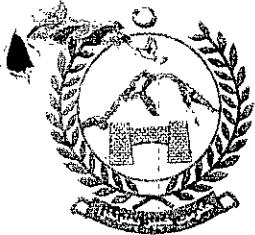
3. That Tribunal has not taken into consideration the available record placed before it. He further added that according to promotion policy, the promotion will always be notified with immediate effect and not retrospectively. The representative informed the Scrutiny Committee that huge financial implication were involved in the subject case. Therefore the same may be declared fit for filing of CPLA in the Supreme Court of Pakistan.

DECISION:-

4. After threadbare discussion it was decided with consensus by the Scrutiny Committee that the subject case was a fit case for filing of appeal / CPLA before the Supreme Court of Pakistan.

5. The representative of **Home Department** was advised to approach the office of Advocate General along with complete record of the case for doing the needful within the period of limitation under intimation to this Department.

  
(TAHIR IQBAL KHATTAK)  
DEPUTY SOLICITOR



Court Matter  
Urgent.

32  
DIRECTORATE OF RECLAMATION  
AND PROBATION, KHYBER PAKHTUNKHWA,  
PESHAWAR

Benevolent Fund Building R.No. 126-127-128 & 231  
P.No. 9213309, 9211207 Fax: 9210720

No. 334 D.R&P( )

Dated Peshawar the 19/1/2018

To

The Section Officer (Courts),  
Government of Khyber Pakhtunkhwa,  
Home & Tribal Affairs Department.

Subject:- SERVICE APPEAL NO.1021/2016 TITLED  
MR.NIAMATULLAH KHAN VS GOVERNMENT  
OF KHYBER PAKHTUNKHWA THROUGH CHIEF  
SECRETARY AND OTHERS.

I am directed to refer to Section Officer (Lit),  
Government of Khyber Pakhtunkhwa, Law, Parliamentary Affairs  
and Human Rights Department letter No.SO(Lit)/LD/9-13(111)  
Home/2017/142631-W/E dated 10-01-2018 on the subject noted above  
and to enclose herewith Power of Attorney and Demand Bill  
amounting to Rs.2200/- for early necessary action being court matter  
please.

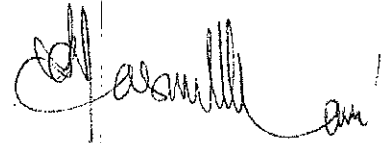
Encl:A.A.

DEPUTY DIRECTOR  
RECLAMATION & PROBATION  
KHYBER PAKHTUNKHWA.  
PESHAWAR

OFFICE OF THE ADVOCATE GENERAL KHYBER PAKHTUNKHWA  
PESHAWAR HIGH COURT BUILDING PESHAWAR

Demand

A sum of Rs. 2200/- (Rupees Two Thousands and two hundred only) is required as expenses for filing CPLA (Photo state, Binding, Supreme Court Tickets and Notices to the respondents etc) in the Supreme Court of Pakistan in its branch registry at Peshawar in connection with case title Appeal No. 1021/2016 Niamatullah Versus Govt. of KPK and others.



Advocate-on-Record  
Supreme Court of Pakistan  
Govt of Khyber Pakhtunkhwa  
Peshawar.

16/1/2

**POWER OF ATTORNEY**  
**IN THE SUPREME COURT OF PAKISTAN**  
**(APPELLATE JURISDICTION)**

Govt of KPK

PETITIONER(S)

Vs

Niamatullah

RESPONDENTS

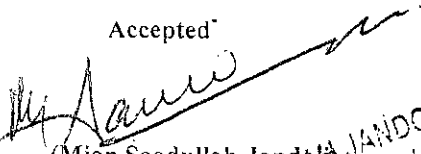
I, through Petitioner (Govt. of KPK) in the above Petition, do hereby appoint and constitute **Mian Saadullah Jandoli**, Advocate-on-Record, Supreme Court, for Govt. of Khyber Pakhtunkhwa the Attorney for the aforesaid Petitioner(s) to commence and prosecute appear and defend this action/appeal/suit/petition/reference on my/our behalf and all proceeding that may be taken in respect on any application connected with the same including proceeding in taxation and application for review, to draw and deposit money, to file and take back documents, to accept the proceeds of the Court, to appoint and instruct Counsel, to represent the aforesaid Petitioner(s) in the above matter and to do all things incidental to such acting for the aforesaid Petitioner(s).

Aforesaid Petitioner(s) hereby agrees/agree to ratify all acts done by the aforesaid Attorney in pursuance of this authority.

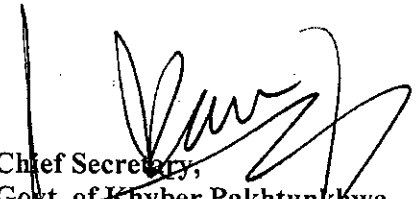
In witness whereof I/we do hereunto set my/our hand/hands

Signed with Official seal stamp

Accepted

  
(Mian Saadullah Jandoli)  
Advocate-on-Record  
Supreme Court of Pakistan  
(for KPK) Advocate-on-Record  
Office Khyber Pakhtunkhwa  
Office Khyber Pakhtunkhwa Building, Peshawar.  
Office Telephone: 9210312, 9210119


1-

  
Chief Secretary,  
Govt. of Khyber Pakhtunkhwa,  
Peshawar.  
**Chief Secretary**  
Govt. Of Khyber Pakhtunkhwa


2-

  
Secretary Home & Tribal Affairs  
Department Govt. of Khyber Pakhtunkhwa,  
Peshawar.

3-

  
Director Reclamation and  
Probation, Govt. of KPK,  
Peshawar.

4-

  
Secretary Establishment,  
Govt. of Khyber Pakhtunkhwa,  
Peshawar



35

**DIRECTORATE OF RECLAMATION  
AND PROBATION, KHYBER PAKHTUNKHWA,  
PESHAWAR**

Benevolent Fund Building R.No. 126-127-128 & 231  
P.No. 9213309, 9211207 Fax: 9210720

No. 5762 D.R&P Service Tribunal file  
Dated Peshawar the 24/12/19

To

The Secretary to Govt. of Khyber Pakhtunkhwa,  
Home & Tribal Affairs Department, Peshawar.

Attention: Section Officer (Courts)

Subject: - EXECUTION PETITION NO. 417/2019 IN SERVICE APPEAL NO. 1021/2016 (MR. NAIMATULLAH KHAN VERSUS GOVERNMENT OF KHYBER PAKHTUNKHWA).

R/Sir,

I am directed to refer to Home Department letter No. SO (Courts)/HD/6-1/2018 dated 19<sup>th</sup> December, 2019 on the subject noted above and to say that CPLA has been filed vide No. 61-P/2018 dated 01-02-2018 in the above subject case.

I am further directed to request that Advocate General Khyber Pakhtunkhwa may please be approached to submit application for early hearing in the instant case and copy of CPLA may also be obtained from Advocate General office for record please.

DEPUTY DIRECTOR (ADMN)  
RECLAMATION & PROBATION  
KHYBER PAKHTUNKHWA  
PESHAWAR