

16.06.2021

Appellant with counsel and Mr. Muhammad Adeel Butt, Addl. AG alongwith Naheed Gul, Assistant for respondents present.

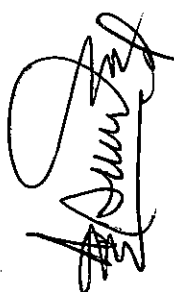
After arguing the case at certain length with reference to the rules making authority of Respondents No. 1, 2 & 3 in the matter of the impugned Service Rules dated 03.04.2018, in relation to officers and servants of Khyber Pakhtunkhwa Service Tribunal; the appellant sought withdrawal of appeal and in pursuance to the said request, he was required to submit application for withdrawal, if so willing.

The application has been submitted for withdrawal of appeal. Consequently, the appeal in hand is dismissed as withdrawn and the restraint order passed during the course of proceedings of the appeal as interim relief remains no more effective.


Before parting, it is apt to observe that Notification No. SOE-V/E&AD/13-02/2018, dated 03.04.2018 of the Government of Khyber Pakhtunkhwa Establishment Department (Establishment Wing), as selectively impugned before the Tribunal, would reveal that it was issued on the strength of Rule 3(2) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989. It is clearly evident on the face of said Notification that the Establishment Department in consultation with the Finance Department laid down the method of recruitment, qualification and other conditions specified in column Nos. 3



to 5 of the Appendix for their applicability to the posts in the office of Services Tribunal Khyber Pakhtunkhwa. Sub-rule (2) of Rule 3 of the Khyber Pakhtunkhwa (Appointment, Promotion and Transfer) Rules provides that the method of recruitment, qualifications and other conditions applicable to posts shall be such as laid down by the Department concerned in consultation with the Services & General Administration Department (S&GAD) and the Finance Department. If the Establishment Department was substitute of the S&GAD while consulting with the Finance Department to lay down the method of recruitment etc., then there should be mention of the Khyber Pakhtunkhwa Service Tribunal as the department concerned as per requirement of Rule 3 (2) ibid but the Registrar of Tribunal has not been cited as consultee in the said notification. It seems that the Establishment Department acted in dual capacity in the matter of said notification both a substitute of S&GAD and as controlling department of the Khyber Pakhtunkhwa Service Tribunal treating the latter as an attached department. At this juncture, a question arises whether an Executive Department of the Government is competent to exercise administrative control on officers and staff of the Khyber Pakhtunkhwa Service Tribunal which is a statutory body established under Provincial legislation in pursuance to command of the Constitution of Islamic Republic of Pakistan under Article 212.



In order to make the things conveniently understandable for answer to the said question, it may be expounded that the Khyber Pakhtunkhwa Service Tribunal is an entity shaped by an Act of Provincial Assembly and set up to make judgments in area of its activity independent from administrative control of the government whose actions in the area of terms and conditions of Provincial services are subject to judicial review by Tribunal. So, it would be highly anomalous to allow control of the functionaries of the Tribunal, obviously making its integral part, to an Executive Department of the government. Even otherwise, such an arrangement would be a contraindication in view of Rule 25 of Khyber Pakhtunkhwa Service Tribunal Rules, 1974 which plainly provides that the administrative functions of the Tribunal including the appointments of staff shall be performed by the Chairman on behalf of the Tribunal. Section 11 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 provides that the Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act. Needless to say that the functionaries of the Khyber Pakhtunkhwa Service Tribunal including officers and servants by nature of their duties contribute towards carrying out the purposes of Khyber Pakhtunkhwa Service Tribunal Act, 1974. The proper Service Rules for the ministerial establishment of the Tribunal regarding their terms and conditions of service are amiss so far. Rule 25 of Khyber Pakhtunkhwa Service Tribunal Rules, 1974 referred before is not efficacious enough

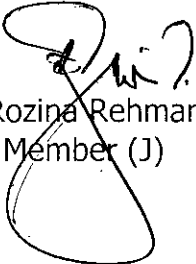


to deal with all eventualities of the service requirements of the officers and servants of the Tribunal. On the other hand, the notification dated 03.04.2018 of the Government of Khyber Pakhtunkhwa Establishment Department is not validly issued and so, it cannot serve as proper substitute of the rules required to be framed under Section 11 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.

The Registrar of this Tribunal is directed to work out a draft for Service Rules of the officers and servants of the Khyber Pakhtunkhwa Service Tribunal. It may be beneficial, if clues are taken from the Peshawar High Court Ministerial Establishment (Terms and Conditions of Service) Rules, 2020, Khyber Pakhtunkhwa Revenue Authority Employees (Appointment, Promotion and Transfer) Regulation, 2017, Khyber Pakhtunkhwa Public Service Commission Officers and Servants (Terms & Conditions of Service) Regulation, 1985 and from Service Rules/Regulations of such other statutory bodies.

There is no order as to costs. File be consigned to the Record Room.


ANNOUNCED
16.06.2021


(Rozina Rehman)
Member (J)


Chairman

16.04.2021

Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 07.06.2021 for the same as before.


Reader

07.06.2021

Appellant in person present.

Kabirullah Khattak learned Additional Advocate General for the respondents present.

Appellant sought adjournment on the ground that his counsel is not available due to general strike on the call of Khyber Pakhtunkhwa Bar Council. Adjourned. To come up for arguments on 16.06.2021 before D.B. ~~_____~~
~~_____~~


(ROZINA REHMAN)
MEMBER (J)


22.12.2020

Appellant in person and Mr. Kabirullah Khattak learned Addl; AG alongwith Mr. Naheed Gul Assistant for respondents present.

Due to COVID-19, the case is adjourned for the same on 05.02.2021 before D.B.



Reader

05-02-2021 Due to public holiday the case is adjourned for the same on 05-03-2021

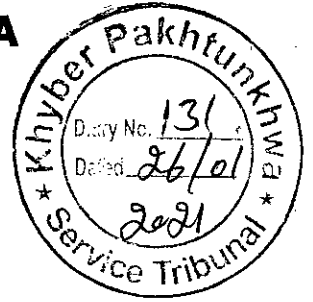

Reader

04.03.2021

Due to COVID-19, the case is adjourned for the same on 16.04.2021 before D.B


READER

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



*put up to the court with
relevant appeal.*

Appeal No. 502/2019

Mr. Syed Haris Shah

V/S

Govt of KPK etc.

**APPLICATION FOR FIXING OF AN EARLY
DATE OF HEARING IN THE ABOVE
APPEAL INSTEAD OF 05-02-2021.**

RESPECTFULLY SHEWETH:

1. That the above titled appeal is pending before this august Tribunal and fixed for hearing on 05-02-2021.
2. That the appellant's seniority/promotion is badly affected due to impugned amendment in the rules. So the appellant challenge the same in Service Tribunal.
3. The this Hon'ble Court has restrained the respondents from finalization of recruitment vide order sheet dated 14-07-2020.
4. That now the KPPSC going to conduct interviews for initial recruitment against the post of Assistant Registrar and Storekeeper on the disputed rules. If the initial recruitment was made against the said post then the appellant's case will be suffered a lot and will be become infructuous.
5. That the appellant has a good prima facie case and all the ingredients are in favor of appellant.
6. That if the respondents are not restrained from finalizing the recruitment process till the Disposal of the above mention appeal. Then the appellant will suffer from irrespective loss.

It is, therefore, most humbly prayed that the instant appeal may please be fixed on an early date.

*Respondents have
been restrained to
finalize recruitment to
posts in issue.
shall remain posted to
the date already fixed in
the matter.*

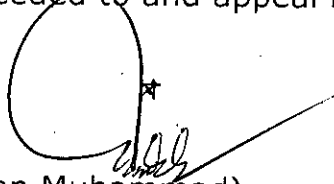
THROUGH:

Haris Shah
26/1/2021
APPELLANT
Syed Haris Shah

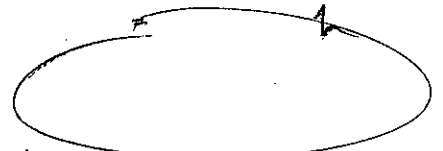
Noman Ali Bukhari
27/1/21
(SYED NOMAN ALI BUKHARI)
ADVOCATE, HIGH COURT.

03.09.2020

Mr. Muhammad Asif Yousafzai, Advocate for the appellant is present. Mr. Usman Ghani, District Attorney alongwith representative of the department Mr. Zar Muhammad, Assistant for the respondents are also present. Learned counsel for the appellant requested for adjournment that due to happening of certain urgency to one of the learned counsel, arguments could not be addressed. Request is acceded to and appeal is adjourned to 09.10.2020.



(Mian Muhammad)
Member (Executive)




(Muhammad Jamal Khan)
Member (Judicial)

09.10.2020

Counsel for appellant present.

Mr. Muhammad Jan learned Deputy District Attorney alongwith Zar Muhammad Assistant for respondents present.

Former requests for adjournment; granted. To come up for arguments on 03.12.2020 before D.B.



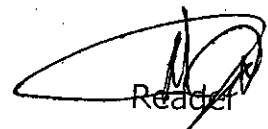
(Atiq ur Rehman Wazir)
Member (E)



(Rozina Rehman)
Member (J)

03.12.2020

Due to COVID-19, the case is adjourned to 22.12.2020 for the same as before.



Reader

14.07.2020

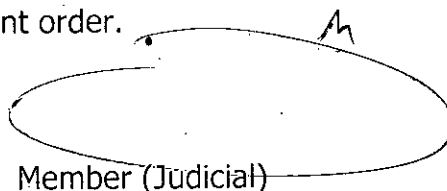
Appellant alongwith counsel and Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General alongwith Sultan Shah, Assistant for the respondents present.

The appellant had submitted an application for restraining the respondents from finalizing the recruitment process against the posts of Assistant Registrar and Store Keeper.

Notice of the application was given to the respondents who have submitted the reply today. The same is placed on record.

It is stated at the bar that the Khyber Pakhtunkhwa Public Service Commission had already conducted written examination for the posts in issue, however, the interview of candidates was postponed from 08.03.2020 due to spread of COVID, 19.

It is in the fitness of things to post instant appeal for hearing at the earliest. The matter is, therefore, adjourned to 05.08.2020 for arguments before the D.B. The respondents shall not finalize recruitment to the posts in issue in the meanwhile. The process, however, shall not be discontinued on the strength of instant order.



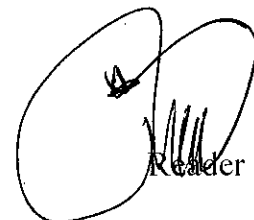
Member (Judicial)



Chairman

05.08.2020

Due to summer vacation case to come up for the same on 03.09.2020 before D.B.



Reader

02.07.2020

Appellant in person and Addl: AG alongwith Mr. Muqaddar Shah, Additional Registrar for respondent No. 4 present. Written reply on behalf of respondents no. 1 to 3 have already been submitted. Representative of respondent no. 4 stated that he ^{would} rely on written reply submitted by respondents no. 1 to 3.

Adjourned to 09.07.2020 for arguments before D.B.


MEMBER

09.07.2020

Appellant with counsel and Addl. AG alongwith Sultan Shah, Assistant for the respondents present.

The representative of respondents states that reply to stay application has though been prepared but is yet to be signed by respondents No. 1 to 3. He, therefore, seeks short adjournment for the needful.

Adjourned to 14.07.2020 for reply and arguments before the D.B.


Member


Chairman

Haris

17.06.2020

Appellant with counsel present. Mr. Riaz Khan Painsdakheil learned Assistant Advocate General alongwith Naqeeb Ullah Stenographer for the respondents present.

On 09.08.2019, a clear order was passed regarding fixation of instant appeal before a bench of which Chairman was not a member. Despite, the matter has today been posted for hearing before this bench. It is, therefore, adjourned for fixation before a D.B in the light of order dated 09.08.2019.



Member



Chairman

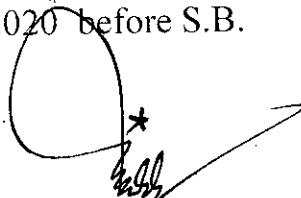
29.06.2020

Appellant alongwith counsel present.

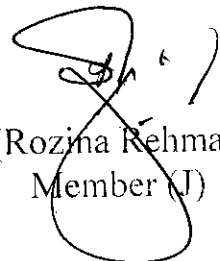
Mr. Kabir Ullah Khattak learned Additional Advocate General for the respondents present.

Arguments heard.

It was on 17.06.2020 when an application for replacing respondent No.4 as Registrar Khyber Pakhtunkhwa Service Tribunal, was submitted which application was not objected to by the learned AAG. The appellant is, therefore, accepted. Proper entries be made in the memo of appeal as well as in the relevant register with red ink. A request was made for adjournment as senior counsel is busy in other cases before Hon'ble Peshawar High Court Peshawar; granted. To come up for reply/comments on behalf of newly impleaded respondent No.4, on 02.07.2020 before S.B.



(Mian Muhammad)
Member(E)



(Rozina Rehman)
Member (J)

20.03.2020

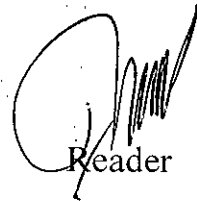
Appellant in person and Mr. Ziaullah, Deputy District Attorney for the respondents present. Appellant seeks adjournment on the ground that his counsel is not available today due to general strike of Khyber Pakhtunkhwa Bar Council. Adjourned to 25.03.2020 for reply on application as well as arguments before D.B.


(Mian Muhammad)
Member


(M. Amin Khan Kundi)
Member

25.03.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 17.06.2020 before D.B.


Reader

14.02.2020

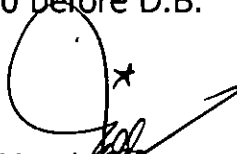
Appellant alongwith his counsel and Mr. Kabirullah Khattak, Additional AG for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 20.03.2020 for arguments before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

02.03.2020

Appellant with counsel present. Mr. Ziaullah, DDA for respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 13.03.2020 before D.B.


Member


Member

13.03.2020

Appellant with counsel present. Mr. Muhammad Jan, DDA alongwith Mr. Wasim Akhtar, Registrar for respondents present. Learned counsel for the appellant has already submitted application for restraining the respondents from finalizing the recruitment process against the post of Assistant Registrar and Store Keeper till the disposal of main appeal. Copy of this application is handed over to the respondents for submission of reply. To come up for reply on application as well as arguments on 20.03.2020 before D.B.


Member


Member

11.12.2019

Appellant in person present. Addl: AG for respondents present. Appellant seeks adjournment due to general strike of the Bar the case is adjourned. To come up for arguments on 26.12.2020 before D.B.


Member


Member

26.12.2019

Appellant with counsel present. Mr. Ziaullah, DDA for respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 22.01.2020 before D.B.

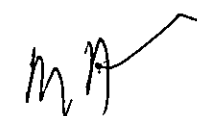

Member


Member

22.01.2020

Due to general strike on the call of the Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today. Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present. Adjourned to 14.02.2020 for further proceedings/arguments before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

06.11.2019


Appellant with counsel present. Mr. Usman Ghani learned District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 20.11.2019 before D.B.



Member


Member

20.11.2019

Appellant alongwith his counsel and Mr. Riaz Ahmad Paindakheil, Assistant AG alongwith Mr. Nageebullah, Stenographer for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned to 28.11.2019 for arguments before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

28.11.2019

Due to general strike of the Pakistan Bar Council, the case is adjourned. To come up on 11.12.2019 before D.B.


Member


Member

502/2019

09.08.2019

Counsel for the appellant and Mr. Muhammad Riaz Khan Paindakhel, Asstt. AG for the respondents present.

As the Chairman of this Tribunal has been arrayed as one of the respondents, though proforma, office is directed not to fix instant matter before the Chairman.

Adjourned to 16.09.2019 for written reply/comments before S.B.


Chairman

16.09.2019

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

Joint parawise comments received through diary of the office which are placed on record. To come up for arguments on 08.10.2019 before the D.B. The appellant may submit rejoinder, within a fortnight, if so advised.

Chairman 

08.10.2019

Appellant in person present. Addl: AG for respondents present. Appellant seeks adjournment as his counsel is not available today. Adjourn. To come up for arguments on 06.11.2019 before D.B.



Member


Member

25.04.2019

Counsel for the appellant Syed Haris Shah present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the post of Assistant Register shown at column No. 7, as per recruitment rules, ~~the same~~ ^{the same} is to be filled through initial recruitment whereas in column No. 8 ^{the} for post of Office Assistant is to be filled through quota of 75% promotion on the basis of seniority-cum-fitness amongst the Senior Clerks (BPS-14) with at least five years service and 25% through initial recruitment but the said criteria of 75% promotion on the basis of seniority-cum-fitness has not been mentioned for the post of Assistant Registrar (BPS-16) therefore, the respondent-department was required to mention the same criteria for initial recruitment of Assistant Registrar as mentioned for the post of Office Assistant and the recruitment rules of service Tribunal to this effect is liable to be rectified.

The contention raised by the learned counsel for the appellant needs consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter, notice be issued to the respondents for written reply/comments for 24.06.2019 before S.B.


Security & Process Fee


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

24.06.2019



Counsel for the appellant and Addl: AG for respondents present. Written reply/comments on behalf of respondent not submitted. Requested for adjournment. Adjourned. Case to come up for written reply/comments on 09.08.2019 before S.B.


(Ahmad Hassan)
Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. _____ 502/2019 _____

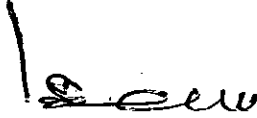
S.No.	Date of order proceedings	Order or other proceedings with signature of judge.
1	2	3
1-	15/04/2019	<p>The appeal of Syed Haris Shah resubmitted today by Syed Noman Ali Bukhari Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 15/4/19</p>
2-	22/04/19	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>25/04/19</u></p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Syed Haris Shah Office Assistant Khyber Pakhtunkhwa Service Tribunal Peshawar received today i.e. on 20.08.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Annexures of the appeal may be attested.
- 2- Annexures of the appeal may be flagged.
- 3- Service rules attached with the appeal are illegible which may be replaced by legible/better one.
- 4- Six more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

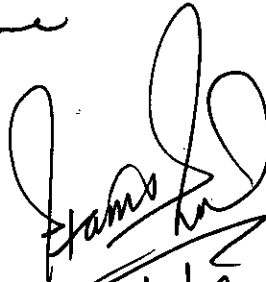
No. 1747 /S.T,

Dt. 29/8 /2018


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr.M. Asif Yousafzai Adv. Pesh.

*Resubmitted per
order complaining*


15/4/19

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 502 /2019


Syed Haris Shah

VS


Govt: Of KP


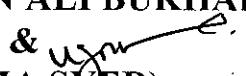
INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of Appeal	-----	1-5
2.	Copy of Appointment Order	A	06
3.	Copy of Promotion Order S/Clerk	B	07
4.	Copy of Promotion Order Assist:	C	08
5.	Copy of Impugned Notification/Rules	D	09-13
6.	Copy of Departmental Appeal	E	14-16
7.	Copy of Service Rules Establishment Department	F	17-20
08.	Vakalat nama	-----	21


APPELLANT

THROUGH:


(M. ASIF YOUSAFZAI)
Advocate Supreme Court


(SYED NOMAN ALI BUKHARI)
& 
(UZMA SYED)
Advocates, HIGH COURT.

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 502/2018

Syed Haris Shah, Office Assistant (BS-16)
Khyber Pakhtunkhwa Service Tribunal Peshawar.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1323

Dated 20/8/2018

(Appellant)

VERSUS

1. Govt: of Khyber Pakhtunkhwa through the Chief Secretary, Civil Secretariat Peshawar.
2. Govt: of Khyber Pakhtunkhwa through the Secretary Establishment, Civil secretariat Peshawar.
3. The Standing Rules Committee (SSRC) through its Chairman/ Secretary (Establishment, Civil Secretariat Khyber Pakhtunkhwa, Peshawar.

④ The Chairman, Khyber Pakhtunkhwa Service Tribunal through Registrar, Khyber Pakhtunkhwa Service Tribunal Peshawar. (Performa Respondent)

④ The Registrar, Khyber Pakhtunkhwa Service Tribunal Peshawar.

(Respondents)

replaced with
order sheet
dated 29-06-2020

Filed to-day

Registrar

20/8/18

Re-submitted to -day
and filed.

Registrar

15/4/18

.....
APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974
AGAINST THE IMPUGNED SERVICE RULES
NOTIFIED VIDE DATED 03.04.2018 TO THE EXTENT
OF S.NO.7, S. NO.8 AND S.NO.9. AND AGAINST NOT
TAKING ACTION ON THE DEPARTMENTAL APPEAL
OF THE APPELLANT.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE IMPUGNED SERVICE RULES VIDE NOTIFICATION DATED 03.04.2018 MAY BE MODIFIED AS FOLLOWING BELOW:

- 1. S.NO.7 BY MAKING ALL SENIOR CLERKS, STORE KEEPERS ELIGIBLE FOR PROMOTION ON JOINT SENIORITY TO THE POST OF ASSISTANT REGISTRAR, CASHIER CUM ASSISTANT AND OFFICE ASSISTANT.**
- 2. S.NO.8. TO COUNT PREVIOUS SERVICE RENDED AS JUNIOR CLERK AND SENIOR CLERK (BOTH 5 YEARS) FOR PROMOTION TO THE POST OF OFFICE ASSISTANT.**
- 3. S.NO.9 BY MAKING ALL BPS-16 (ASSISTANT REGISTRAR, OFFICE ASSISTANT & CASHIER CUM ASSISTANT) OFFICIALS ON JOINT SENIORITY BASIS TO THE POSTS OF BPS-17 (ADDITIONAL REGISTRAR, SUPERINTENDENT AND BUDGET AND ACCOUNT OFFICER).**
- 4. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO, BE AWARDED IN FAVOUR OF APPELLANT.**

RESPECTFULLY SHEWETH:

FACTS:

- 1. That the appellant joined the respondent department as Junior Clerk and then promoted to the Senior Clerk and now presently working as Office Assistant (BPS-16) on acting charge basis quite efficiently and up to entire satisfaction of his superiors. Copy of the orders are attached as Annexure-A, B & C.**
- 2. That the respondent department issued impugned service rules dated 03-04-2018 wherein, Sr. No. 9 of the notification Cashier cum Assistant BPS-16, Sr. No. 7 of the notification Assistant Registrar BPS-16 and Sr. No. 8 of the impugned service rules Office Assistant**

are Irrational, disadvantages to the service lights of petitioner. **Copy of impugned service rules is attached as annexure-D**

3. That appellant feeling aggrieved from the impugned service rules filed departmental appeal, but the same was not responded within statutory period of 90 days. **(copy of departmental appeal is attached as Annexure-E)**
4. That now the appellant come to this august Tribunal on the following grounds amongst others.

GROUND:

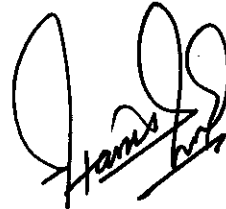
- A) That the impugned service rules dated 03-04-2018 are irrational, disadvantages against the spirit of Article 2A, 4, 25, 38 of the constitution and liable to be modified.
- B) That at present there are nine posts of Office Assistant out of which 2 posts are vacant and according to the quota distribution notified in the said notification/ rules appellant would have been promoted to the post Office Assistant instead of Acting Charge Basis if the length of service has been kept as of the Establishment Department as ***“seventy five per cent by promotion on the basis of seniority cum fitness from amongst senior clerks with 5 years’ service as junior and senior clerk”***. Thus on this point the appellant has been discriminated despite being in service of Pakistan. **Copy of the rules is attached as annexure-F.**
- C) That since the establishment of Tribunal the matters related to the Accounts and store handled by the Assistants and Clerks of Tribunal. Appellant being B.Com degree holder has been made responsible to look after the Store and to help Accountant (Office Assistant) in Accounts matter since his appointment, and now the above notification has narrowed down the appellant only to the post of Office Assistant, despite being also eligible for the post of Cashier cum Assistant. Thus the rules are not fair and discriminatory.
- D) That Senior Clerk of this Tribunal are channelized only to the post of Office Assistant, whereas, the post of storekeeper is piped to Cashier-cum-Assistant. which arrantly infringe the right for promotion of Senior Clerk.
- E) That Similarly, officials of BPS-14 (Senior Clerk and Store Keeper) are narrowed to one, one post despite having extra post of BPS-16 of Assistant Registrar, which clearly shows that the official of BPS-14

are not treated fairly and on equitable basis in the impugned notification and also because of narrowing the promotion prospects of the employees of Service Tribunal.

- F) That the post of the Cashier-cum-Assistant is being created because there is rush of work in Accounts Section of this Tribunal, as there are 5 presiding officers and 71 staff members and there is only 01 Office Assistant and 01 Senior Clerk are handling the Accounts and store of this Tribunal but the employees working as Senior Clerk and office assistant are debarred from the post of Cashier-Cum-Assistant which is also an irrationally in the impugned notification.
- G) That as a matter of fact, the senior clerk are channelized only to the post of Office Assistant which has same educational criteria as Assistant Registrar and still the appellant has deprived of promotion to the post of Assistant Registrar which is apparently prejudicial to the interest of limited employees of Service Tribunal as it will block their meager chances of promotion also.
- H) That appellant and his other colleagues have already suffered in their financial earnings due to their slow pace of promotion and less prospects of promotion as in spite of service for decades, they have availed quite limited opportunity of promotion as compared to other counterparts serving in other departments where the number of employees is large with numerous promotion chances.
- I) That in nutshell, those posts have been graced by notification, which has not been materialized yet. All those servants who have delivered their life time service to the department are treated like a step child. Even in similar functioning offices the Office Assistant are also channelized to the post of Additional Registrar in shape of promotion, while the appellant including other officials are kept deprived from same benefits.
- J) That the impugned notification is irrational, not based on intelligible differentia, disadvantageous and against the spirit of Article 2A, 4, 25 and 38 of the Constitution.
- K) That despite being in the service of Pakistan, the appellant has not been treated and given channel of promotion as given in other Government Departments and Administrative Tribunal. Thus the impugned notification is liable to be modified by concern authorities.
- L) That in light of numerous judgments of Superior Courts this august Tribunal has the jurisdiction to adjudicate upon the matter in hand.

- M) That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

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



APPELLANT
SYED HARIS SHAH

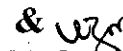
THROUGH:



(M. ASIF YOUSAFZAI)
Advocate Supreme Court



(SYED NOMAN ALI BUKHARI)



(UZMA SYED)
Advocates, HIGH COURT.

GOVERNMENT OF KPK, SERVICE TRIBUNAL, PESHAWAR**ORDER**

In consultation with the Departmental Selection Committee, the following candidates are appointed against the vacant posts of Junior Clerk (BPS-7) (5800-320-15400) under the rules on regular basis, in the Khyber Pakhtunkhwa Service Tribunal, Peshawar with immediate effect.

<u>NAME</u>	<u>ADDRESS</u>
1. Syed Haris Shah S/o Zarghun Shah	Haris Cottage Kainat Colony Hassan Garhi P.O Wapda House Shami Road Peshawar.
2. Syed Shahzad Ahmad S/o Syed Maqbool Ahmad	C/o Accountant Service Tribunal Peshawar.

They will be governed by such rules and regulations as may be issued from time to time by the Provincial Government, for the category of Civil Servant to which they belong. Their terms and conditions are as follows:-

1. Their service will be considered on regular basis but they will not be allowed pension and gratuity and will be entitled for grant of C.P Fund only.
2. Their services will be liable to termination on one month's notice from either side. In case of resignation without notice their one month's pay and allowances will be forfeited to Government.
3. They should be on probation for a period of one year, extendable for a further period of one year.
4. In case the candidates fail to join the posts/office within 15 days of the receipt of this order, their appointment shall stand automatically cancelled.
5. They should produce age/health fitness certificate.

**CHAIRMAN
KPK SERVICE TRIBUNAL
PESHAWAR**

ENDST. NO. 50-52 /ST, Dated Peshawar, the 12 / 01 /2012

Copies forwarded for information and necessary action to:-

- i. The Accountant General, KPK, Peshawar.
- ii. Selected candidates.
- iii. Office file.

**REGISTRAR
KPK SERVICE TRIBUNAL
PESHAWAR**

ATTESTED



Annex B. (7)
KHYBER PAKHTUNKWA, SERVICE TRIBUNAL, PESHAWAR

No. 761-63 /ST

Dated: 12/05/2016

OFFICE ORDER:

In pursuance with the Departmental Promotion Committee, Syed Haris Shah, Junior Clerk BPS-11 Khyber Pakhtunkhwa Service Tribunal is hereby promoted to the post of Senior Clerk BPS-14 with immediate effect.

CHAIRMAN
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

No. 761-63 /ST

Dated: Peshawar, the 12/05/2016

Copy forwarded for information and necessary action to:-

1. The Accountant General Khyber Pakhtunkhwa
2. Official Concerned
3. Office file

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

ATTESTED



KHYBER PAKHTUNKWA, SERVICE TRIBUNAL, PESHAWAR

No. 1372-74/ST

Dated: 10-07-2018

OFFICE ORDER:

On the recommendation of the Departmental Promotion Committee, Mr. Syed Haris Shah, Senior Clerk BPS-14 Khyber Pakhtunkhwa Service Tribunal is hereby promoted as Office Assistant BPS-16 on the acting charge basis under Rule 9 (1) of Appointment, Promotion and Transfer Rules 1989 with immediate effect.

CHAIRMAN
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

No. 1372-74/ST

Dated: Peshawar, the 10-07-2018

Copy forwarded for information and necessary action to:-

1. The Accountant General Khyber Pakhtunkhwa
2. Official Concerned
3. Office file

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

ATTESTED

Annex-D 9



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(Establishment Wing)

388
06/04/2018

NOTIFICATION

Dated 03-04-2018

No. SOE-V/E&AD/13-02/2018: In pursuance of the provisions contained in Sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 and supersession of this Department Notification No. SOR-I(S&GAD)4-2/82, dated 08-06-1988, Establishment Department, in consultation with the Finance Department, hereby lays down the method of recruitment, qualification and other conditions specified in column 3 to 5 of the following Appendix which shall be applicable to the posts in the office of Services Tribunal Khyber Pakhtunkhwa, specified in column 2 of the Appendix with immediate effect.

APPENDIX

S #	NOMENCLATURE OF POST	MINIMUM QUALIFICATION FOR APPOINTMENT BY INITIAL RECRUITMENT	AGE	METHOD OF RECRUITMENT
1	2	3	4	5
1.	Registrar (BS-18)	.....	.....	By promotion on the basis of seniority-cum-fitness, from amongst the Additional Registrars, Superintendents and Budget & Accounts Officers (BPS-17), with at least five years service as such: Provided that if no suitable officer is available for promotion, then by transfer. Note: A joint seniority list of Additional Registrars, Superintendents and Budget & Accounts officers shall be maintained for the purpose of promotion to the post of Registrar.
2.	Additional Registrar (BS-17)	By promotion on the basis of seniority-cum-fitness, from amongst the Assistant Registrars and Law Drafters (BPS-16), with at least five years service as such: Provided that if no suitable

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				<p>officer is available for promotion, then by transfer</p> <p>Note: A joint seniority list of Assistant Registrars & Law Drafters shall be maintained for the purpose of promotion to the post of Additional Registrar.</p>
3.	Superintendent (BPS-17)	.....	.....	By promotion, on the basis of seniority-cum-fitness, from amongst the Assistant (BPS-16), with at least five years service as such.
4.	Budget & Accounts Officer (BS-17)	.....	.....	By promotion, on the basis of seniority-cum-fitness, from amongst the Cashier-cum-Assistant (BPS-16), with at least three years service as such: Provided that if no suitable officer is available for promotion, then by transfer.
5.	Private Secretary (BS-17)	.....	.....	By promotion, on the basis of seniority-cum-fitness, from amongst the Personal Assistants (BPS-16) with at least two years service as such.
6.	Manager (MIS) (BPS-17)	.....	.....	By promotion, on the basis of seniority-cum-fitness, from amongst the Computer Operators (BPS-16), with at least five years service as such.
7.	Assistant Registrar (BS-16)	At least Second Class Bachelor Degree from a recognized University.	21 to 30 Years	By initial recruitment.
8.	Office Assistant (BS-16)	At least Second Class Bachelor's Degree from a recognized University	20 to 32 Years	a) Seventy Five percent by promotion, on the basis of seniority-cum-fitness, from amongst the Senior Clerks (BPS-14), with at least <i>five</i> years service as such; and b) Twenty Five percent by initial recruitment.
9.	Cashier Cum Assistant (BS-16)	By promotion, on the basis of seniority-cum-fitness, from amongst the Store Keeper (BPS-14) with at least 5

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				years service as such: Provided that if no suitable person is available for promotion, then by transfer.
10.	Personal Assistant (BS-16)	.....	.....	By promotion, on the basis of seniority-cum-fitness, from amongst the Senior Scale Stenographers (BPS-16) with at least three years service as such.
11.	Senior Scale Stenographer (BPS-16)	(a) At least Second Class Bachelor's Degree from a recognized university; (b) A speed of seventy (70) words per minute in shorthand in English and forty five (45) words per minute in typing in English; and (c) Knowledge of Computer in using MS Word and MS Excel.	20 to 32 Years	By promotion, on the basis of seniority-cum-fitness, from amongst Junior Scale Stenographers (BS-14), with three years service as such: Provided that if no suitable person is available for promotion, then by initial recruitment.
12.	Law Drafter (BS-16)	At least Second Class L.L.B from a recognized University.	25 to 32 Years	By initial recruitment.
13.	Computer Operator (BPS-16)	(a) At least Second Class Bachelor's Degree in Computer Science / Information Technology (BCS/BIT four years) from a recognized University; or (b) At least Second Class Bachelor's Degree from a recognized University with one year Diploma in Information Technology from a recognized Board of Technical Education.	18 to 32 Years	By initial recruitment.
14.	Senior Clerk (BPS-14)	.....	.....	By promotion, on the basis of Seniority-cum-fitness, from amongst Junior Clerks (BPS-11), with at least two years service as such.
15.	Store Keeper (BPS-14)	At least Diploma in Commerce or Business Administration in Second Division from a recognized	18 to 30 Years	By initial recruitment.

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		Board of Technical Education.		
16.	Junior Scale Stenographer (BPS-14)	i. At least Intermediate or its equivalent qualification in Second Division from a recognized Board; and ii. a speed of fifty (50) words per minute in Shorthand in English and thirty-five (35) words per minute in typing in English; and iii. Knowledge of Computer in using MS Word and MS Excel.	18 to 30 Years	By initial recruitment.
17.	Junior Clerk (BPS-11)	i) At least Secondary School Certificate with Second Division or equivalent qualification from a recognized Board; and ii) A speed of Thirty (30) words per minute in typing in English.	18 to 30 Years	a) Thirty-three percent by promotion, on the basis of Seniority-cum-fitness, from amongst Daftaries, Ballif Generator Operators, Photostat Operators, Nam Qasids, Process Servers, Chowkidars and Sweepers with two years service at such, who have passed Secondary School Certificate Examination; and b) Sixty-seven percent by initial recruitment.
18.	Driver (BPS-06)	Literate having LTV driving license. Preference shall be given to those who have sufficient experience in driving, repair and maintenance of vehicles.	18 to 40 Years	By initial recruitment.
19.	Daftari (BPS-04)	At least Second Class Secondary School Certificate or equivalent qualification from a recognized Board.	18 to 40 Years	By initial recruitment.
20.	Ballif (BPS-04)	At least Second Class Secondary School Certificate or equivalent qualification from a recognized Board.	18 to 40 Years	By initial recruitment.
21.	Generator Operator (BPS-04)	Relevant Certificate from a Recognized Technical Institute.	18 to 40 Years	By initial recruitment.

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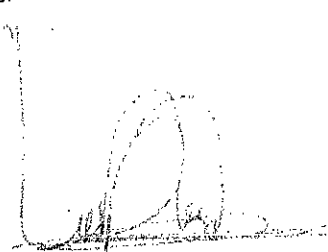
22.	Photostat Operator (BPS-04)	At least Second Class Secondary School Certificate or equivalent qualification from a recognized board with one year experience as Photocopier.	18 to 40 Years	By initial recruitment.
23.	Naib Qasid (BPS-03)	Literate	18 to 40 Years	By initial recruitment.
24.	Process Server (BPS-03)	Literate	18 to 40 Years	By initial recruitment.
25.	Chowkidar (BPS-03)	Literate with sound physique	18 to 40 Years	By initial recruitment.
26.	Sweeper (BPS-03)	Literate	18 to 40 Years	By initial recruitment.

**SECRETARY ESTABLISHMENT
GOVT: OF KHYBER PAKHTUNKHWA**

Endst: of Even No. & Date:-

Copy forwarded to the:-

1. All Administrative Secretaries to Govt: of Khyber Pakhtunkhwa.
2. Principal Secretary to Governor, Khyber Pakhtunkhwa.
3. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
4. Registrar, Peshawar High Court, Peshawar.
5. Registrar, Services Tribunal, Khyber Pakhtunkhwa, Peshawar.
6. Deputy Director I.T, Establishment & Administration Department for uploading on the official website of Establishment & Administration Department.
7. Manager, Govt: Printing Press, Peshawar for publication in the Govt: Gazette. He is requested to furnish 30 copies of the printed Notification to this Department and 10 copies to Law Department.
8. PS to Secretary, Establishment Department.
9. PS to Special Secretary (Estt), Establishment Department.
10. PA to Additional Secretary (Reg), Establishment Department.
11. PA to Deputy Secretary (Estt), Establishment Department.



(Akhtar Nawaz)
SECTION OFFICER (E-V)

ATTESTED

To

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

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 475

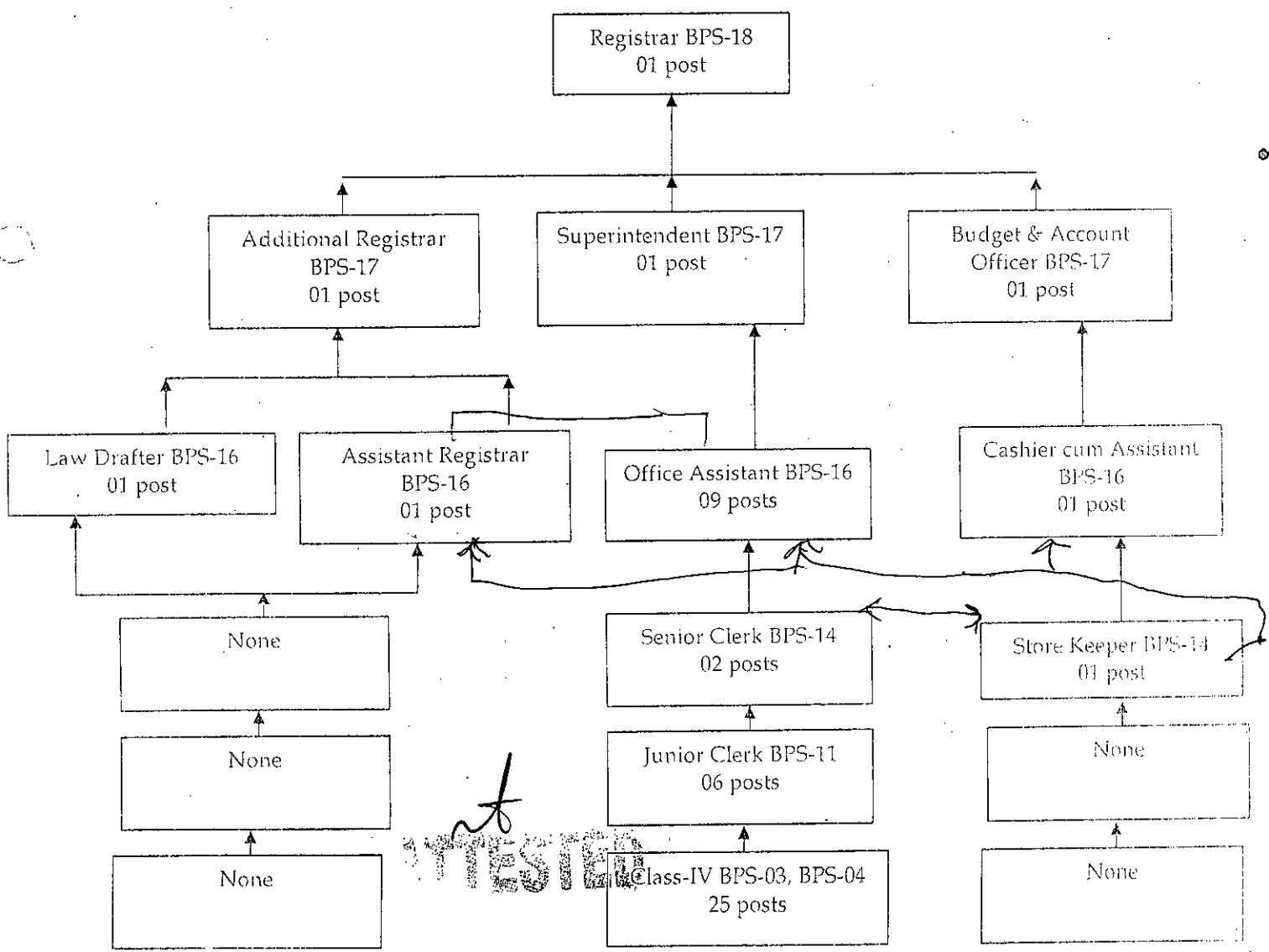
Date 24/04/2018

Subject: DEPARTMENTAL REPRESENTATION AGAINST THE NOTIFICATION NO. SOE-V/E&AD/13-02/2018 DATED 03-04-2018

May it please your good-self,

Being aggrieved of the Notification ibid, the appellatant submits this departmental Representation on the following facts and grounds:-

1. That Appellant is an employee of Khyber Pakhtunkhwa Service Tribunal Peshawar. Appellant initially joined the service as Junior Clerk on 12-01-2012, and at present serving as Senior Clerk. The appellatant will hardly promote to the post Office Assistant in his 38 years of service, because of the Benison bestowed by the said notification upon the Store Keeper.



(Copy of impugned rules are attached as Annex-A)

Serial No. 8 of the Notification (Office Assistant -BPS 16)

1. Presently, there are nine posts of Office Assistants out of which 2 posts are vacant and according to the quota distribution notified in the said notification appellant would have been promoted to the post of Office Assistant, if the length of service has been kept as of the Establishment Department which is as below:

"Seventy Five per cent by promotion, on the basis of the seniority-cum-fitness from amongst Senior Clerk with five year service as Junior and Senior Clerk."

Serial No. 9 of the Notification (Cashier-cum-Assistant BPS 16)

1. Since the establishment of this Tribunal the matter related to the Store being handled by the Junior & the Senior Clerk of this Tribunal. Appellant has been made responsible to look-after the store since appointment, and now the above notification has narrowed down the appellant only to the post of Office Assistant. It is worthy to add, that appellant is a B.com degree holder and is eligible for the post of Cashier-cum-Assistant.
2. The Senior Clerks of this Tribunal are channelized only to the post of Office Assistant, whereas the only post of Store Keeper is piped to Cashier-cum-Assistant. Which arrantly infringe the right for promotion of Senior Clerks.
3. The post of cashier cum assistant is being created because there is a rush of work in the accounts section of this Tribunal, as there are 5 presiding officers and 71 staff members and there is only 01 Office Assistant and 01 Senior Clerk are handling the accounts and store of this Tribunal.

Serial No. 7 of the Notification (Assistant Registrar-BPS-16)

1. As a matter of fact the Senior Clerks have an opening to Office Assistant which have same educational criteria as Assistant Registrar and still the appellant has been deprived of promotion to Assistant Registrar, which is apparently prejudicial to the interest of limited employees as it will block their meager chances of promotion.

ATTESTED

That appellant and his other colleagues have already suffered in their financial earnings due to their slow pace of promotion as in spite of service for decades, they had availed quite limited opportunity of promotion as compared

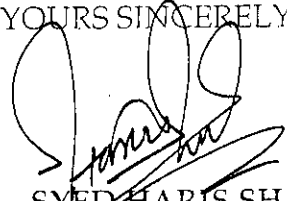
to other counterparts serving in other Departments where the number of employees is large with numerous promotion chances.

In a nutshell, those posts have been graced by the notification, which has not been materialized yet. All those servants who have delivered their lifetime services to the department are treated like a step child. Even in the similar functioning Offices (High Court etc) the Office Assistants: are channelized up to the post of Additional Registrar in shape of promotion.


It is, therefore, humbly requested that on acceptance of this departmental Representation, the impugned Notification dated 03/04/2018 may graciously be modified with suitable amendments as pointed out hereinabove to save the appellant and his other colleagues from discrimination and to provide them with suitable opportunity of career development as proposed by the Hon'ble Chairman of Service Tribunal. (copy of Proposed Rules are attached as Annex-B)

DATED : 23/04/2018

YOURS SINCERELY



SYED HARIS SHAH
SENIOR CLERK
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR


ATTESTED



**GOVERNMENT OF THE KHYBER PAKHTUNKHWA
ESTABLISHMENT AND ADMINISTRATION DEPARTMENT
(ESTABLISHMENT WING)**

NOTIFICATION

Peshawar, dated the 6th December 2012.

No SOE.IV(E&AD)/1-35/2012:- In pursuance of the provisions contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, and in supersession of all previous rules, issued in this behalf, the Establishment and Administration Department, in consultation with the Finance Department, hereby lays down the method of recruitment, qualifications and other conditions specified in column 3 to 5 of the Appendix to this Notification, which shall be applicable to posts in the Khyber Pakhtunkhwa Civil Secretariat, specified in column 2 of the said Appendix.

APPENDIX

S.No.	Nomenclature of posts.	Minimum qualification for appointment by initial recruitment.	Age limit.	Method of recruitment.
1.	2.	3.	4.	5.
1.	Superintendent.	-	-	By promotion, on the basis of seniority-cum-fitness, from amongst the holders of the post of Assistant with atleast five years service as such.

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ATTESTED

S.No.	Nomenclature of posts.	Minimum qualification for appointment by initial recruitment.	Age limit.	Method of recruitment.
1.	2.	3.	4.	5.
2.	Assistant.	Second Class Bachelor's Degree from a recognized University.	20 to 32 years.	(a) Seventy-five per cent by promotion, on the basis of seniority-cum-fitness, from amongst Senior Clerks with atleast five years service as Junior and Senior Clerk. (b) twenty-five per cent by initial recruitment.
3.	Senior Clerk.	-	-	By promotion, on the basis of seniority-cum-fitness, from amongst the Junior Clerk with atleast two years service as such.
4.	Junior Clerk.	(i) Matriculation with second division or equivalent qualification from a recognized Board; and (ii) a speed of 30 words per minute in typing.	18 to 30 years	(a) Thirty-three per cent by promotion, on the basis of seniority-cum-fitness, from amongst Daftaris, Gestetner Operators, Qasids and Naib Qasids including holders of other equivalent posts in the Secretariat with two years service as such, who have passed S.S.C Examination; and (b) sixty-seven per cent by initial recruitment. Note: For the purpose of promotion, there shall be maintained a common seniority list of Daftaries, Gestetner Operators, Qasids, Naib Qasids etc., with reference to the dates of their acquiring the Secondary School Certificate:

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ATTESTED

S.No.	Nomenclature of posts.	Minimum qualification for appointment by initial recruitment.	Age limit.	Method of recruitment.
1.	2.	3.	4.	5.
				Provided that- <ul style="list-style-type: none">(a) if two or more officials have acquired the Secondary School Certificate in the same session, the inter se seniority in the lower post shall be maintained for the purpose of determining seniority in the higher post;(b) where a senior official does not possess the requisite qualification at the time of filling up a vacancy, the official next junior to him possessing the requisite qualification shall be promoted in preference to the senior official or officials.

CHIEF SECRETARY
GOVERNMENT OF THE KHYBER PAKHTUNKHWA.

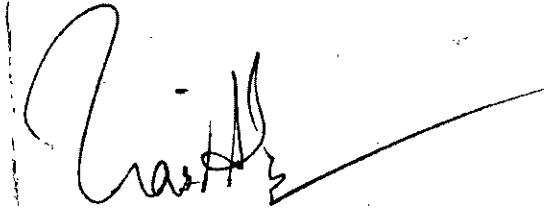
Art
ATTESTED

20

Endst: No. SOE-IV(E&AD)/1-35/2012, dated 6th December, 2012

Copy forwarded for information and necessary action to: -

1. All Administrative Secretaries to Government of Khyber Pakhtunkhwa, Civil Secretariat, Khyber Pakhtunkhwa, Peshawar.
2. The Addl: Chief Secretary (FATA), Khyber Pakhtunkhwa.
3. The Chairman, Khyber Pakhtunkhwa Public Service Commission.
4. The Senior Member of Board of Revenue.
5. Secretary to Governor, Governor's Secretariat, Khyber Pakhtunkhwa
6. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
7. The Secretary Provincial Assembly, Khyber Pakhtunkhwa.
8. The Chairman to Khyber Pakhtunkhwa Service Tribunal Peshawar.
9. The Private Secretary to Chief Secretary Khyber Pakhtunkhwa.
10. The Private Secretary to Secretary Establishment Department,
11. The P.A to Special Secretary (Estt), Establishment Department.
12. The P.A to Addl: Secretary (Estt/ Reg), Establishment Department.
13. The PA to Addl: Secretary (HRD Wing) Establishment Department.
14. All the Deputy Secretaries in Establishment Department.
15. All Section Officers, Establishment Department, Khyber Pakhtunkhwa Peshawar.
16. The Manager Government Printing Press for publication in the Extra Ordinary Gazette.



(NASIR AMAN)
SECTION OFFICER (E.IV)

ATTESTED

VAKALAT NAMA

NO. _____/20

IN THE COURT OF KoP Service Tribunal Peshawar

Syed Havis Shah (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

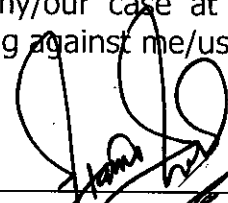
Govt of KoP (Respondent)
(Defendant)

I/We, Syed Havis Shah

Do hereby appoint and constitute **M. ASIF YOUSAFZAI AND SYED NOMAN ALI BUKHARI, Advocate High Court Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.


I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/20



(CLIENT)

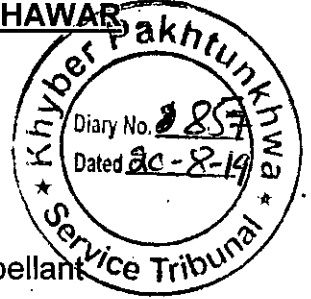
ACCEPTED


M. ASIF YOUSAFZAI
Advocate Supreme Court


SYED NOMAN ALI BUKHARI
Advocate High Court Peshawar.


UZMA SYED
Advocate High Court Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR



APPEAL NO. 502/2019

Syed Haris Shah.....Appellant

VERSUS

Government of Khyber Pakhtunkhwa etc.....Respondents

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

PRELIMINARY OBJECTIONS:

1. That the Petitioner has got no locus standi / cause of action to file the instant Service Appeal.
2. That the Petitioner has not come to this august Tribunal with clean hands. Hence, disentitle to any relief whatsoever.
3. That no discrimination injustice has been meted out to anyone.
4. That the Appeal is not based on facts and is unjustified.
5. That the Appeal is time barred.

ON FACTS:

1. Pertains to record.
2. Correct upto extent that Service Rules of Khyber Pakhtunkhwa Service Tribunal were notified on 03-04-2018. The referred Service Rules were approved and notified for the employees of Khyber Pakhtunkhwa Service Tribunal, in which every cadre has been given proper prospect of promotion to the next higher scale. For example:
Junior Clerk ► Senior Clerk ► Superintendent ► Registrar.
Assistant Registrar ► Additional Registrar ► Registrar.
Store keeper ► Cashier-Cum-Assistant ► Budget & Accounts Officer ► Registrar.

So, the said rules are neither irrational nor disadvantageous to the service right of petitioner. Rather the petitioner has not approached with clean hands to the august Tribunal on petty grounds and with malafide intentions wants to infringe upon the rights of the other employees of the tribunal. Moreover, it is evident from the service record of the Appellant that he has received promotion on fast track basis; since his appointment in 2012 i.e in six years, he has been promoted to Office Assistant post (Acting Charge) and upon completion of mandatory five year service, will actualize his two step promotion. However, the prospect / pyramid of promotion narrows down in every department in higher scales. Furthermore, the said service rules were notified after through deliberation by the SSRC committee, in which representative of Service Tribunal was also present. All the stake holders have unanimously agreed to the said


service rules before issuance. Thus the instant service appeal is liable to be dismissed on the basis as explained above.


- 3. Correct, the request of the petitioner was duly processed and according to law / rules / policy regretted on the basis as explained in Para supra-2.

GROUND:

- A. Incorrect. The notified Service Rules dated 03-04-2018, is by no way irrational and not in conflict with the spirit of Article 2A, 4, 25, 38 of constitution (and the appeal of the appellant is liable to be dismissed) as all the stake holders including representative from Law Department and Service Tribunal have unanimously agreed to the said service rules before being issued.
- B. Respondent No.4 might be in better position to testify the facts. However, as explained in Para-02 of the Facts and Ground-A above.
- C. Incorrect. As explained in Para supra-02 and Ground-A.
- D. Incorrect. As explained in Para supra-02 & Ground-A.
- E. Incorrect. The post of Assistant Registrar (BS-16) falls in initial quota and its promotion prospect is Assistant Registrar, Additional Registrar and Registrar. The detail reply has already been given in para supra-02.
- F. Respondent No.4 might be in better position to explain why he has assigned this task to Administrative Staff when there are sanctioned posts of concerned staff i.e. Budget & Accounts Officer (BS-17), Cashier-Cum-Assistant (BS-16) and Store Keeper (BS-14). However, detail reply has been given in Para supra-02.
- G. Incorrect. As explained in Para supra-02 and Ground-E.
- H. Incorrect. The fact is evident from his service record. Detail reply has been given in para supra-02.
- I. That Ground-I is unjustified. Detail reply has been given in Para supra-02.
- J. As explained in Ground-A.
- K. That Ground-K is incorrect and unjustified.
- L. Needs no comment.
- M. Thus the instant Service Appeal is liable to be dismissed on the bases as explained above.

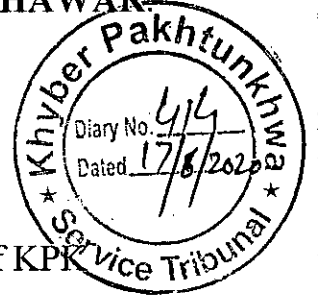
It is, therefore, prayed that appeal of the appellant may be dismissed as prayed for with cost.


 (Respondents No.1-3)


 (Respondent No.4)

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 502/2019



Syed Haris Shah

Vs

Govt of KPK

**APPLICATION FOR REPLACING THE RESPONDENT
NO.4 AS REGISTRAR SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR..**

RESPECTFULLY SHEWETH:

1. That the above mentioned appeal is pending before this august Tribunal today i.e 17-06-2020 for arguments.
2. That the respondent no 4 (Chairman, Khyber Pakhtunkhwa Service Tribunal) was made party in the instant appeal as proforma respondent which is not a necessary party but the Registrar Khyber Pakhtunkhwa Service Tribunal is necessary being member of the SSRC committee which may be arrayed at place of Respondent no. 4 (Chairman, Khyber Pakhtunkhwa Service Tribunal)

It is most therefore, humbly prayed that on acceptance of this application the respondent no.4 may be replaced as Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar in the panel of respondents in the instant appeal in interest of justice and to save the time of court. Any other remedy which this Tribunal deems fit and appropriate that may also be awarded in favour of the applicants.

Syed Haris Shah

Through:

(Syed Noman Ali Bukhari)
Advocate High Court.

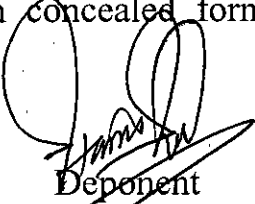
Put up before
the court
along with copy of
file.

Syed Haris Shah
17/6/2020

Recd

AFFIDAVIT:

It is affirmed on oath that the contents of application are true and correct and nothing has been concealed form this Honb'le Tribunal.


Deponent



0702 NDC 441

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 502/2019

Syed Haris Shah

Vs

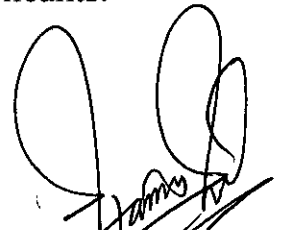
Govt of KPK

**APPLICATION FOR REPLACING THE RESPONDENT
NO.4 AS REGISTRAR SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR..**

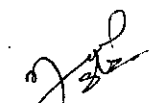
RESPECTFULLY SHEWETH:

1. That the above mentioned appeal is pending before this august Tribunal today i.e 17-06-2020 for arguments.
2. That the respondent no 4 (Chairman, Khyber Pakhtunkhwa Service Tribunal) was made party in the instant appeal as proforma respondent which is not a necessary party but the Registrar Khyber Pakhtunkhwa Service Tribunal is necessary being member of the SSRC committee which may be arrayed at place of Respondent no. 4 (Chairman, Khyber Pakhtunkhwa Service Tribunal)

It is most therefore, humbly prayed that on acceptance of this application the respondent no.4 may be replaced as Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar in the panel of respondents in the instant appeal in interest of justice and to save the time of court. Any other remedy which this Tribunal deems fit and appropriate that may also be awarded in favour of the applicants.



Syed Haris Shah

Through:


(Syed Noman Ali Bukhari)
Advocate High Court.

AFFIDAVIT:

It is affirmed on oath that the contents of application are true and correct and nothing has been concealed from this Honb'le Tribunal.


Deponent

SERVICE APPEAL NO. 502/2019

Syed Haris Shah..... Appellant

VERSUS

Government of Khyber Pakhtunkhwa etc. Respondents

REPLY ON BEHALF OF RESPONDENTS NO.1-4

1. Pertains to record hence no comment.
2. Incorrect. The referred Service Rules were approved and notified for the employees of Khyber Pakhtunkhwa Service Tribunal, in which every cadre has been given proper prospect of promotion to the next higher scale. For example:-
 - i. Junior Clerk ► Senior Clerk ► Assistant ► Superintendent ► Registrar.
 - ii. Assistant Registrar ► Additional Registrar ► Registrar.
 - iii. Store keeper ► Cashier-Cum-Assistant ► Budget & Accounts Officer ► Registrar.
3. No comments.
4. Incorrect. The petitioner has not approached with clean hands to the august Tribunal and on petty grounds with malafide intentions wants to infringe upon the rights of the other employees of the tribunal. Hence liable to be dismissed.
5. As explained in Sr No. 2 & 4.

Pray

It is humbly prayed that the instant application alongwith Service Appeal being devoid of merit may graciously be dismissed.


(Respondents No. 1-3)


(Respondents No. 4)

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1657-60/ST

Dated 15/07/2020

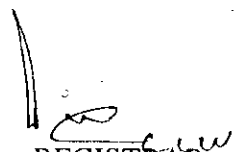
To

1. The Chief Secretary,
Government of Khyber Pakhtunkhwa,
Peshawar.
2. Secretary Establishment Department,
Government of Khyber Pakhtunkhwa,
Peshawar.
3. Standing Rules Committee through it's Chairman/Secretary Establishment
Department, Civil Secretariat,
Government of Khyber Pakhtunkhwa,
Peshawar.
4. Registrar Service Tribunal,
Government of Khyber Pakhtunkhwa,
Peshawar.

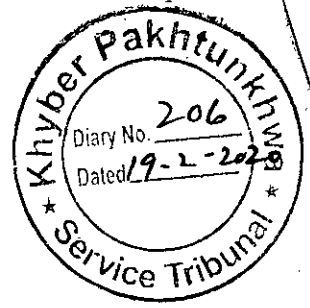
SUBJECT: - ORDER IN APPEAL NO. 502/2019, SYED HARIS SHAH.

I am directed to forward herewith a certified copy of order dated
14.07.2020 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.



put up to the court with
relevant appeal.

Appeal No. 502/2019

Mr. Syed Haris Shah

V/S

Govt of KPK etc.

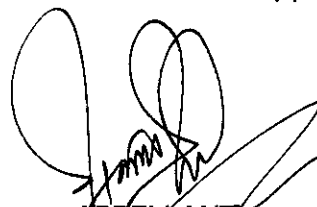
19/2/2020.

**APPLICATION FOR FIXING OF AN EARLY
DATE OF HEARING IN THE ABOVE
APPEAL INSTEAD OF 20-03-2020.**

RESPECTFULLY SHEWETH:

1. That the above titled appeal is pending before this august Tribunal and fixed for hearing on 20.03.2020.
2. That the appellants seniority/promotion is badly affected due to impugned amendment in the rules. So the appellant challenge the same in Service Tribunal.
3. That now the KPPSC going to conduct test for initial recruitment against the post of Assistant Registrar and Storekeeper on the disputed rules. If the initial recruitment was made against the said post then the appellants case will be suffered a lot and will be become infructuous.
4. That the appellant has a good prima facie case and all the ingredients are in favour of appellant.
5. That if the respondents are not restrained from finalizing the recruitment process till the Disposal of the above mention appeal. then the appellant will suffer from irrespective loss.

It is, therefore, most humbly prayed that the instant appeal may please be fixed on an early date.


APPELLANT
Syed Haris Shah

THROUGH:


(SYED NOMAN ALI BUKHARI)
ADVOCATE, HIGH COURT.

Be fixed for 02/03/2020
21/02/2020

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



Appeal No. 502/2019

Mr. Syed Haris Shah

V/S

Govt of KPK etc.

*put up to the court with
relevant appeal -*

.....

**APPLICATION FOR RESTRAINING THE
RESPONDENTS FROM FINALIZING THE
RECRUITMENT PROCESS AGAINST THE
POST OF ASSISTANT REGISTRAR AND
STORE KEEPER TILL THE DISPOSAL OF
MAIN APPEAL.**

19/2/2020

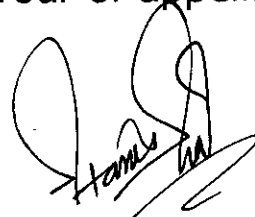
Reader

.....

RESPECTFULLY SHEWETH:

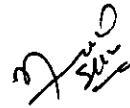
1. That the above titled appeal is pending before this august Tribunal and fixed for hearing on 20.03.2020.
2. That the appellant's seniority/promotion is badly affected due to impugned amendment in the rules. So the appellant challenge the same in Service Tribunal.
3. That now the KPPSC going to conduct test for initial recruitment against the post of Assistant Registrar and Storekeeper on the disputed rules. If the initial recruitment was made against the said post then the appellant's case will be suffered a lot and will be become infructuous.
4. That the appellant has a good prima facie case and all the ingredients are in favour of appellant.
5. That if the respondents are not restrained from finalizing the recruitment process till the Disposal of the above mention appeal. then the appellant will suffer from irrespective loss.

It is, therefore, most humbly prayed that the respondents may be restrained from finalizing the recruitment process on the disputed rules till the disposal of main appeal. Any other remedy with this august Tribunal deems fit may also be awarded in favour of appellant.



APPELLANT
Syed Haris Shah


THROUGH:



(SYED NOMAN ALI BUKHARI)
ADVOCATE, HIGH COURT.

AFFIDAVIT:

It is affirmed and declared that the contents of the above Application are true and correct.


Deponent

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 502/19

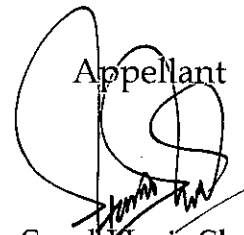
Syed Haris Shah vs Govt. of KPK

Subject: APPLICATION FOR WITHDRAWAL OF APPEAL

Sir,

1. That the appellant filed instant appeal against the notification dated 03-04-2018 of the Establishment Department, Govt. of Khyber Pakhtunkhwa.
2. That during the course of argument reached the conclusion that the notification dated 03-04-2018 has no sanctionary in the eye of law & void ab-initio, because the Establishment has no power to make rules for the Khyber Pakhtunkhwa Service Tribunal Peshawar.

Therefore, I want to withdraw the instant appeal because notification dated 03-04-2018 has no value in the eye of law.

Appellant

Syed Haris Shah
16/6/2021

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1014 /ST Dated 29 /06/ 2021

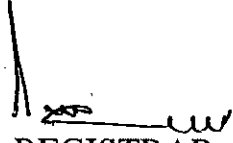
To

The Register Service Tribunal,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: JUDGMENT IN APPEAL NO. 502/2019, SYED HARIS SHAH.

I am directed to forward herewith a certified copy of Judgement dated 16.06.2021 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1014 /ST Dated 29 /06 / 2021

To

The Register Service Tribunal,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: JUDGMENT IN APPEAL NO. 502/2019, SYED HARIS SHAH.

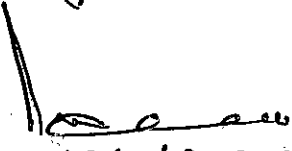
I am directed to forward herewith a certified copy of Judgement dated 16.06.2021 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR

KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

Placed on relevant file.


19/7/2021

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 502/2018

Khyber Pakhtunkhwa
Service Tribunal

Syed Haris Shah, Office Assistant (BS-16)
Khyber Pakhtunkhwa Service Tribunal Peshawar.

Diary No. 1323

Dated 20/8/2018

(Appellant)

VERSUS

1. Govt: of Khyber Pakhtunkhwa through the Chief Secretary, Civil Secretariat Peshawar.
2. Govt: of Khyber Pakhtunkhwa through the Secretary Establishment, Civil secretariat Peshawar.
3. The Standing Rules Committee (SSRC) through its Chairman/ Secretary (Establishment, Civil Secretariat Khyber Pakhtunkhwa, Peshawar.

④ The Chairman, Khyber Pakhtunkhwa Service Tribunal through Registrar, Khyber Pakhtunkhwa Service Tribunal Peshawar. (Performa Respondent)

④ The Registrar, Khyber Pakhtunkhwa Service Tribunal Peshawar. (Respondents)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED SERVICE RULES NOTIFIED VIDE DATED. 03.04.2018 TO THE EXTENT OF S.NO.7, S. NO.8 AND S.NO.9. AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT.

replaced with
mandate
dated 29-06-2020

Filed to-day
Registrar
20/8/18

Re-submitted to -day
and filed.

Registrar
15/4/18

16.06.2021

Appellant with counsel and Mr. Muhammad Adeel Butt, Addl. AG alongwith Naheed Gul, Assistant for respondents present.

After arguing the case at certain length with reference to the rules making authority of Respondents No. 1, 2 & 3 in the matter of the impugned Service Rules dated 03.04.2018, in relation to officers and servants of Khyber Pakhtunkhwa Service Tribunal; the appellant sought withdrawal of appeal and in pursuance to the said request, he was required to submit application for withdrawal, if so willing.

The application has been submitted for withdrawal of appeal. Consequently, the appeal in hand is dismissed as withdrawn and the restraint order passed during the course of proceedings of the appeal as interim relief remains no more effective.

Before parting, it is apt to observe that Notification No. SOE-V/E&AD/13-02/2018, dated 03.04.2018 of the Government of Khyber Pakhtunkhwa Establishment Department (Establishment Wing), as selectively impugned before the Tribunal, would reveal that it was issued on the strength of Rule 3(2) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989. It is clearly evident on the face of said Notification that the Establishment Department in consultation with the Finance Department laid down the method of recruitment, qualification and other conditions specified in column Nos. 3

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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to 5 of the Appendix, for their applicability to the posts in the office of Services Tribunal Khyber Pakhtunkhwa. Sub-rule (2) of Rule 3 of the Khyber Pakhtunkhwa (Appointment, Promotion and Transfer) Rules provides that the method of recruitment, qualifications and other conditions applicable to posts shall be such as laid down by the Department concerned in consultation with the Services & General Administration Department (S&GAD) and the Finance Department. If the Establishment Department was substitute of the S&GAD while consulting with the Finance Department to lay down the method of recruitment etc., then there should be mention of the Khyber Pakhtunkhwa Service Tribunal as the department concerned as per requirement of Rule 3 (2) *ibid* but the Registrar of Tribunal has not been cited as consultee in the said notification. It seems that the Establishment Department acted in dual capacity in the matter of said notification both a substitute of S&GAD and as controlling department of the Khyber Pakhtunkhwa Service Tribunal treating the latter as an attached department. At this juncture, a question arises whether an Executive Department of the Government is competent to exercise administrative control on officers and staff of the Khyber Pakhtunkhwa Service Tribunal which is a statutory body established under Provincial legislation in pursuance to command of the Constitution of Islamic Republic of Pakistan under Article 212.

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 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

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In order to make the things conveniently understandable for answer to the said question, it may be expounded that the Khyber Pakhtunkhwa Service Tribunal is an entity shaped by an Act of Provincial Assembly and set up to make judgments in area of its activity independent from administrative control of the government whose actions in the area of terms and conditions of Provincial services are subject to judicial review by Tribunal. So, it would be highly anomalous to allow control of the functionaries of the Tribunal, obviously making its integral part, to an Executive Department of the government. Even otherwise, such an arrangement would be a contraindication in view of Rule 25 of Khyber Pakhtunkhwa Service Tribunal Rules, 1974 which plainly provides that the administrative functions of the Tribunal including the appointments of staff shall be performed by the Chairman on behalf of the Tribunal. Section 11 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 provides that the Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act. Needless to say that the functionaries of the Khyber Pakhtunkhwa Service Tribunal including officers and servants by nature of their duties contribute towards carrying out the purposes of Khyber Pakhtunkhwa Service Tribunal Act, 1974. The proper Service Rules for the ministerial establishment of the Tribunal regarding their terms and conditions of service are amiss so far. Rule 25 of Khyber Pakhtunkhwa Service Tribunal Rules, 1974 referred before is not efficacious enough

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EX-111/1974
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


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to deal with all eventualities of the service requirements of the officers and servants of the Tribunal. On the other hand, the notification dated 03.04.2018 of the Government of Khyber Pakhtunkhwa Establishment Department is not validly issued and so, it cannot serve as proper substitute of the rules required to be framed under Section 11 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.

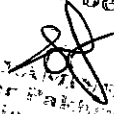
The Registrar of this Tribunal is directed to work out a draft for Service Rules of the officers and servants of the Khyber Pakhtunkhwa Service Tribunal. It may be beneficial, if clues are taken from the Peshawar High Court Ministerial Establishment (Terms and Conditions of Service) Rules, 2020, Khyber Pakhtunkhwa Revenue Authority Employees (Appointment, Promotion and Transfer) Regulation, 2017, Khyber Pakhtunkhwa Public Service Commission Officers and Servants (Terms & Conditions of Service) Regulation, 1985 and from Service Rules/Regulations of such other statutory bodies.

There is no order as to costs. File be consigned to the Record Room.

ANNOUNCED
16.06.2021


(Rozina Rehman)
Member (J)


Chairman

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REGISTRAR
Khyber Pakhtunkhwa
Service Tribunal
Peshawar