

Appeal No. 241/2013
Mr. Abdul Karim

11.

20.12.2013

Appellant in person present and submitted an application

for adjournment. Application is accepted. To come up for preliminary hearing on 10.02.2014.



Member

12.

10.02.2014

No one is present on behalf of the appellant. Notices be issued to the appellant/counsel for the appellant for preliminary hearing on 20.03.2014.



Member

13.

20.03.2014

Counsel for the appellant present and submitted an application for sine die adjournment. Application accepted. The case is, therefore, adjourned sine die.



Member

7.

10.07.2013


Clerk of counsel for the appellant. In pursuance of the Khyber Pakhtunkhwa Service Tribunals (Amendment) Ordinance 2013, (Khyber Pakhtunkhwa ord. II of 2013) the case is adjourned on note Reader for proceedings as before on 06.08.2013.


Reader

8.

06.08.2013

No one is present on behalf of the appellant. Case is adjourned. To come up for preliminary hearing on 25.09.2013.

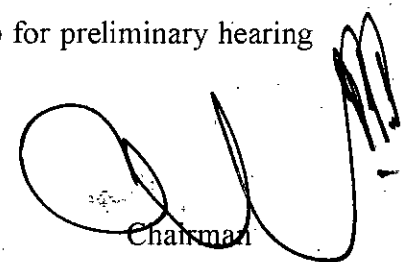

Member

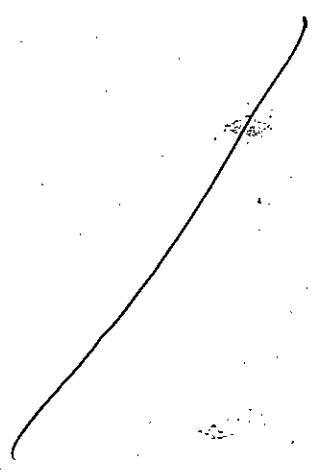
9.



25.9.2013

Mr. Gul Nawaz, Advocate on behalf of counsel for the appellant present, and requested for adjournment due to pre-occupation of learned counsel for the appellant in the Supreme Court of Pakistan, Islamabad. To come up for preliminary hearing on 06.11.2013.

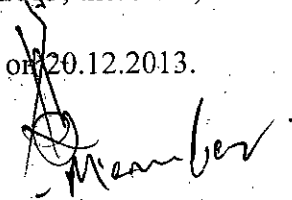

Chairman



10.


06.11.2013

Since 6th November 2013 has been declared as holiday by the Provincial Govt vide Notification dated 05.11.2013, therefore, case adjourned to come up for preliminary hearing on 20.12.2013.


Member


4.
23.4.2013

Appellant with counsel present and heard. Counsel for the appellant contended that the similar nature cases of colleagues of the appellant are admitted before this Tribunal. Counsel for the appellant is directed to produce appeal No's or proper file of those cases. To come up for preliminary hearing on 2.5.2013.


Member

5.
2.5.2013

Assistant to counsel for the appellant present and requested for adjournment. Case adjourned to 10.6.2013 for preliminary hearing.


Member

6.
10.6.2013

Munshi to Counsel for the appellant present. In pursuance of the Khyber Pakhtunkhwa Service Tribunals (Amendment) Ordinance 2013, (Khyber Pakhtunkhwa ord. II of 2013), the case is adjourned on note Reader for proceedings as before on 10.7.2013.


Reader

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 341/2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	04/02/2013	<p style="text-align: center;">The appeal of Mr. Abdul Kamal resubmitted today by Mr. Muhammad Amin Khattak Lachi Advocate may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR</p>
2	7-2-2013.	<p style="text-align: center;">This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>20-3-2013</u></p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>
3.	20-3-2013.	<p style="text-align: center;"><i>Appellant present. Request for adjournment. To come up for 23-4-2013.</i></p> <p style="text-align: right;"><i>[Signature]</i></p>

The appeal of Mr. Abdul Kamal son of Sar Gul Khan received today i.e. on 23/01/2013 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days:-

- 1- Appeal may be got signed by the appellant.
- 2- Annexures of the appeal may be attested.
- 3- Index of the appeal may be prepared according to the appeal.
- 4- Annexures of the appeal may be annexed serial wise as mentioned in the memo of appeal.
- 5- Four more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 167 /S.T.

Dt. 24/01 /2013.

Lao
REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

MR.M. AMIN KHATTAK LACHI ADV. PESH.

4/2/2013

Resubmitted after compliance

4/2/13

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA

PESHAWAR

Service Appeal No. 341 / 2013

Mr. Abdul Kamal. Appellant

Versus

Chief Secretary, Government
Khyber Pakhtunkhwa Peshawar and another Respondents

I N D E X

S.No	Description of Documents	Annexure	Pages
1.	Appeal		1-3
2.	Affidavit		4
3.	Addresses of parties		5
4.	Copy of letter to the Chief Secretary with registry receipt		6-8
5.	Copy of letter dated 20.03.1982		9-10
6.	Copy of notification dated 14.06.1993		11-12
7.	Copy of notification dated 17.07.1999		13
8.	Copy of notification dated 08.12.2007		14-15
9.	Copy of judgment dated 11.03.2009		16-21
10.	Copy of judgment dated 24.05.2012		22-27
11.	Wakalatnama		

[Signature]
Appellant

Through

[Signature]

Date: /01/2013

Muhammad Amin Khattak Lachi
Advocate,
Supreme Court of Pakistan
Office: A-11, Bilal Plaza Shoba
Bazaar Peshawar
Cell:0300-9151041

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BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

Service Appeal No. 341 2013

N.W.F.P. Service Tribunal
Case No. 184
Dated 23/1/13

Mr. Abdul Kamal S/o Sar Gul Khan
Deputy Secretary Judicial/ Home
Khyber Pakhtunkhwa Peshawar. Appellant

Versus

1. Chief Secretary, Government Khyber Pakhtunkhwa Peshawar.
2. Secretary, Establishment Department Government Khyber Pakhtunkhwa Peshawar.

APPEAL UNDER SECTION 4 OF THE NWFP SERVICE TRIBUNAL ACT 1974 RED WITH RELEVANT RULES TO THE EFFECT THAT APPELLANT SENIORITY BE CONSIDERED FOR BPS-17 wef 14.06.1993 AND FOR BPS-18 WITH EFFECT FROM 2002 AS ANTEDATED.

Respectfully Shewith:

Brief Facts:

1. That appellant appointed as Tehsildar BPS-16 through Khyber Pakhtunkhwa PCS in 1982 and notification was issued on 20.03.1982 (Copy attached)
2. That appellant promoted to BPS-17 on temporary basis 14.06.1993 through notification No. SOS-II (S&GAD) 2 (125)/88 as a extra assistant commissioner (Copy is attached).
3. That on 17.07.1999 appellant services were regularized through notification No. SOS-II (S &GAD) 2 (192) /96 (99) in BPS-17 (Copy attached).

Filed to-day
23/1/13

Submitted to-day
and filed.
4/2/13

4. That on 08/12/2007 the competent authority on the recommendation of selection board service board promoted BPS-18 on regular basis (Copy of notification dated 08.12.2007 is attached)
5. That appellant being aggrieved from the seniority on BPS-17 and 18 with effect from 17.07.1999 and 08.12.2007 filed department appeal before the competent authority but appellant was not redressed, finding no alternative, hence this appeal filed on the following grounds:


GROUND:

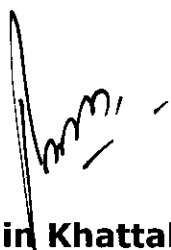
- A. That notification of the appellant regarding the regularization/ seniority with effect from 17.07.1999 and 08.12.2007 are illegal and liable to be struck down and considered to be illegal.
- B. That the appellant was promoted in BPS-17 on 14.06.1993 and appellant performed his duty as extra assistant commissioner on the date of notification dated 14.06.1993 so right of the appellant are accrued in favoure of the appellant from the date of promotion on temporary basis and seniority should be considered when the vacancy in BPS-17 were available.
- C. That vacancies in BPS-17 were available since 1990 prior to appellant promotion to grade 17 similarly vacancy in grade 18 were available in the year 2002 but promotion was given to the appellant in 2007.
- D. That appellant relied upon the judgment of Supreme Court Civil Appeal No.860,861/2010 wherein it is held candidate cannot be punished for any delay caused by the department in processing his case for promotion. The order of promotion, therefore, has to be antedated to the date on which the vacancy for his turn became available or to the date on which he actually took charge of the post on officiating/ acting charge basis, whichever is later.

- E. That by not promoting the appellant antedated violating the fundamental rights of the appellant and seniority should be counted form the first appointment.
- F. That some other grounds may be adduced during the course of arguments.

It is, therefore, prayed that on acceptance of this appeal the promotion of the appellant may be considered in BPS-17 from 14.06.1993 and BPS-18 from 2002 and not from 17.07.1999 and 08.12.2007 respectively.

Date: /01/2013


Appellant
Through


Muhammad Amin Khattak Lachi
Advocate,
Supreme Court of Pakistan

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

Service Appeal No. _____ 2013

Mr. Abdul Kamal. Appellant

Versus

Chief Secretary, Government
Khyber Pakhtunkhwa Peshawar and another Respondents

A F F I D A V I T

I, Mr. Abdul Kamal S/o Sar Gul Khan Deputy Secretary Judicial/ Home
Khyber Pakhtunkhwa Peshawar, do hereby solemnly affirm and declare
that the contents of the accompanying **appeal** are true and correct to
the best of my knowledge and belief and nothing has been concealed
from this learned court.



[Handwritten Signature]
Deponent

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BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

Service Appeal No. _____ 2013

Mr. Abdul Kamal. Appellant

Versus

Chief Secretary, Government

Khyber Pakhtunkhwa Peshawar and another Respondents

ADDRESSES OF PARTIES

PETITIONER:

Mr. Abdul Kamal S/o Sar Gul Khan
Deputy Secretary Judicial/ Home
Khyber Pakhtunkhwa Peshawar

RESPONDENTS:

1. Chief Secretary, Government Khyber Pakhtunkhwa Peshawar.
2. Secretary, Establishment Department Government Khyber Pakhtunkhwa Peshawar.

Date: /01/2013


Appellant
Through


Muhammad Amin Khattak Lachi
Advocate,
Supreme Court of Pakistan

To

The Chief Secretary,
Government of Khyber Pakhtunkhwa
Peshawar.

6

Through: The Secretary,
Establishment Department
Government of Khyber Pakhtunkhwa
Peshawar.

Subject: **REQUEST FOR ANTEDATING OF SENIORITY AND PROMOTION IN PURSUANCE OF THE JUDGMENT OF THE SERVICES TRIBUNAL PESHAWAR NO.612/2008 & NO.613/2009 AND JUDGMENT OF THE SUPREME COURT OF PAKISTAN CIVIL APPEAL NO.C.AS.NO.860 TO 861 OF 2010.**

Respected Sir,

It is most humbly submitted that

1. we, namely Aqal Badshah, Atta ur Rehman, Siraj Ahmad, Amin ul Haq, Fazal Kareem, Abdul Kamal, Mujeeb ur Rehman, Inamullah Khan and Baseer Khan, were appointed as Tahsil Dar BPS-16 through Khyber Pakhtunkhwa Public Service Commission in 1982 and were promoted to BPS-17 on 29-10-1992 (Serial No.1 to 4) and 14-06-1993 (Serial No.5 to 9) respectively. We were regularized in BPS-17 on 14-03-97 and 17-07-99, instead of 29-10-92 and 14-06-93. We were promoted to Grade-18 w.e.f 08-12-2007.

2. The vacancies in Grade-17 were available since 1990 prior to our promotion to Grade-17. Similarly vacancies in Grade-18 were available since 2002 but we were given promotion in 2007.

3. In pursuance of the above cited judgments (Copies enclosed for ready reference) we request for antedated seniority w.e.f 29-10-92 (Serial No.1 to 4) and 14-06-93 (Serial No.5 to 9) in BPS-17 and antedated seniority and promotion w.e.f. 2002 in BPS-18 and accordingly in BPS-19 please.


ATTESTED

Most of us are going to be retired within coming two to five years. Our juniors have been promoted to Grade-19 and are due for promotion to BPS-20. if we are not granted antedated seniority and promotion we will bear irreparable losses. *and will be deprived of our fundamental rights.*

With regards.

Yours obediently,

1. Aqal Badshah

2. Atta ur Rehman

3. Siraj Ahmad

4. Atta ul Haq

5. Faza Kareem

6. Abdul Kamal

24/9/12

7. Mujeeb ur Rehman

8. Inamullah Khan

9. Baseer Khan

Syed. Mujeeb-ur-Rahman

[Signature]
ATTESTED

(9) 5

BOARD OF REVENUE,
NORTH WEST FRONTIER PROVINCE,
No. 7213 /Admn:1/239,
Dated Peshawar the 20/3/1962.

From:

The Secretary,
Board of Revenue, NWFP.

To:

The Director,
Health Services, NWFP, Peshawar.

Subject:- SELECTION OF DIRECT TEHSILDAR CANDIDATES/MEDICAL
EXAMINATION.

Memorandum:

On the recommendations of the Public Service Commission NWFP, Peshawar, the following persons have been selected as direct Tehsildar Candidates (Grade-16) :-

<u>Sl:No.</u>	<u>Name & Address.</u>
1.	Mr. Abdul Munir Khan S/O Jehangir Khan, Incom Tax Inspector, Circle No.1, Peshawar.
2.	Mr. Aqal Badshah S/O Noor Gul, C/O Munawar Khan, Laboratory Attendant, Civil Engineering Department, Engineering University Peshawar.
3.	Mr. Atta-ur-Rehman S/O Abdul Ghafoor Village Dagai, P.O. Lund Khwar, Tehsil & District, Mardan.
4.	Mr. Siraj Ahmed S/O Nisar Ahmed, Mohallah Khuidad Khil, Village & P.O. Marghus, Tehsil Swabi, Distt: Mardan, (Lecturer Political Science Department University of Peshawar.
5.	Mr. Amin-ul-Haq S/O Mohammad Junaid, C/O Department of Psychology, University of Peshawar.
6.	Mr. Anwar Zeb S/O Jehanzeb, Mohallah Piran, Village & P.O. Pabbi, District Peshawar.
7.	Mr. Fazli Karim S/O Sahibul Haq, Senior Clerk, Deputy Commissioner's Office Dir at Timargara.
8. ✓	Mr. Abdul Kamal S/O Sar Gul Khan, C/O Yar Mohammad Steno Typist, Agriculture Directorate, Peshawar.
9.	Syed Mujibur Rehman S/O Syed Faqirullah, Village Mazara, P.O. Shabqadar Fort, Tehsil Charsadda, District Peshawar.
10.	Mr. Inamullah S/O Haji Qadar Gul, Village Kharkai P.O. Dargai, Malakand Agency.
11.	Mr. Basir Khan S/O Mohammad Nawaz Khan, Political Science Department, Peshawar University.

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12. Mr. Mussarat Hussain S/O Khawaja Mohammad Khan,
Mohallah Bejori, Village & P.O. Saffa, Tehsil
and District Manshera.

13. Mr. Kamranzeb S/O Jehanzeb Khan, Commissioner
House, Dera Ismail Khan.

2/ It is requested that necessary medical examination of
the above mentioned candidates may please be arranged and report
of the medical fitness (in duplicate) forwarded to the undersigned
confidentially at an early date.

3/ Instructions with regard to the medical examination
may be directly communicated to the candidates.

Wm
SECRETARY,
BOARD OF REVENUE, N.W.F.P.

Endst: No. 7214-30 / adm: I/239. *Wm* D: 20-3-82

Copy forwarded to :-

1. All direct Tehsildars candidates with the direction to
- contact the office of the Director, Health Services,
N.W.F.P., Peshawar for further instructions about the
medical examination immediately.
2. ✓ Personal File.
3. Office order file.

Wm
SECRETARY,
BOARD OF REVENUE, N.W.F.P.

MIR QASIM
18-3-1982

(11)

24/7

GOVERNMENT OF N.W.F.P.
SERVICES AND GENERAL ADMIN. DEPARTMENT
(SERVICES WING)

Dated Peshawar, the 14th June, 1993

NOTIFICATION

No.SOS-II(S&GAD)2(125)/88 P. The Governor NWFP in consultation with the Provincial Selection Board, is pleased to order the promotion of the following Tehsildars (BPS-16) as Extra Assistant Commissioners (BPS-17) in the former PCS (EB) Cadre, with immediate effect, on purely temporary basis and as a stop gap arrangement until further orders :-

- i) Mr Fazal Karim.
- ii) Mr Abdul Kamal ✓
- iii) Mr Inamullah Khan.
- iv) Mr Abdul Baseer Khan.

2- The above promotion will not confer on them any right of regular appointment or seniority as Extra Asstt: Commissioners.

3- On their promotion as Extra Assistant Commissioners, the following postings/transfers are hereby ordered with immediate effect :-

Sl No	Name of officer	From	To
1.	Mr Fazal Karim, Tehsildar Munda.	On promotion	Services placed at the disposal of Commissioner Kohat Division for further posting.
2.	Mr Abdul Kamal, Tehsildar Kohat	-do-	Services placed at the disposal of Commissioner Bannu Division for further posting.
3.	Mr Inamullah Khan, Tehsildar Daggar.	-do-	Services placed at the disposal of Commissioner Hazara Division for further posting.
4.	Mr Abdul Baseer Khan, Political Tehsildar Alizai (Kurram Agency)	-do-	Services placed at the disposal of Commissioner Kohat Division for further posting.
5.	Mr Ihsan Ali Khan	Section Officer (Leave Reserve) S&GAD.	Services placed at the disposal of Commissioner Malakand Division for further posting.

CHIEF SECRETARY,
GOVT. OF N.W.F.P.

Endst:No.SOS-II(S&GAD)2(125)/88 Dated Peshawar, the 14-6-1993

A copy is forwarded to :-

- 1) Senior Member Board of Revenue NWFP., Peshawar.
- 2) Secretary to Govt. of NWFP., Home & T.As Department.
- 3) Secretary to Governor NWFP.
- 4) Secretary to Chief Minister NWFP.

P.T.O.

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- 5) All Divisional Commissioners in NWFP.
- 6) All Deputy Commissioners/P.As in NWFP.
- 7) Accountant General NWFP., Peshawar.
- 8) All District Accounts Officers in NWFP.
- 9) Agency Accounts Officer Kurram (Parachinar).
- 10) PS to Chief Secretary NWFP.
- 11) PS to Secretary S&GAD.
- 12) SG (General) / B.O/Programmer/Librarian S&GAD.
- 13) All the officers concerned.
- 14) Manager Govt. Printing Press Peshawar.
- 15) Office order file.
- 16) P.O. of the officers concerned.
- 17) Pay Bill Clerk, S&GAD.

Bishillah Shah 14/6/93

(BISHILLAH SHAH)
Section Officer (Services-II)

(13)

**GOVERNMENT OF N.W.F.P.
SERVICES & GENERAL ADMIN: DEPARTMENT
(SERVICES WING)**

Dated Peshawar, the 17th July, 1999

NOTIFICATION

No.SOS-II(S&GAD)2(192)/96(99) :- The competent authority in consultation with the Provincial Selection Board is pleased to order the regular promotion of the following E.A.Cs with immediate effect :-

S.No. Name of EAC with present posting

- (1) Mr Abdul Akbar (EAC)
Deputy Secretary, Board of Revenue
NWFP Peshawar.
- (2) Mr Abdul Kamal (EAC)
A.P.A. Bara (Khyber Agency)
- (3) Mr Abdul Baseer(EAC)
A.P.A. Landi Kotal (Khyber Agency)

SECRETARY S&GAD.

Endst: No.SOS-II(S&GAD)2(192)/96(99) Dated 17.7.1999

A copy is forwarded to :-

- (1) Senior Member Board of Revenue NWFP.
- (2) Commissioner Peshawar Division Peshawar.
- (3) P.A. Khyber Agency.
- (4) Accountant General NWFP Peshawar.
- (5) Agency Accounts Officer Khyber.
- (6) PS to Chief Secretary NWFP.
- (7) SO(Secret)/Programmer S&GAD.
- (8) Officers concerned.
- (9) Manager Govt. Printing Press Peshawar.
- (10) Office order file.

(Signature)
(BISMILLAH SHAH) 17/7/99
Section Officer(Services.II)

W
ATTESTED

GOVERNMENT OF H.P. P.
 SERVICES & GENERAL ADMINISTRATION DEPARTMENT
 (SERVICES DIVISION)

Dated Peshawar, the 17th July, 1999

NOTIFICATION

No. 202-II(SGAD) 2(192) \96(99) :- The competent authority

in consultation with the Provincial Selection Board is
 pleased to order the regular promotion of the following

B.A. in with immediate effect :-

S.No. Name of B.A. with present posting

- | | |
|-----|---|
| (1) | Mr Abdul Kader (BAC)
Deputy Secretary, Board of Revenue
WFP Peshawar. |
| (2) | Mr. Abdul Kader (BAC)
A.P.A. B.A. (Khyber Agency) |
| (3) | Mr Abdul Kader (BAC)
A.P.A. B.A. (Khyber Agency) |

SECRETARY SGAD.

Encl: No. 202-II(SGAD) 2(192) \96(99) Dated 17.7.1999

A copy is forwarded to :-

- (1) Senior Member Board of Revenue WFP.
- (2) Commissioner Peshawar Division Peshawar.
- (3) P.A. Khyber Agency.
- (4) Accountant General WFP Peshawar.
- (5) Agency Account Officer Khyber.
- (6) PS to Chief Secretary WFP.
- (7) SO (Secret) / Programmer SGAD.
- (8) Officers concerned.
- (9) Manager Govt. Printing Press Peshawar.
- (10) Office order file.

Section Officer (Services) II
 (M. I. SHAH)
 17/7/99

ATTN: ...



GOVERNMENT OF N.-W.F.P.
ESTABLISHMENT & ADMINISTRATION
DEPARTMENT

14

Dated Peshawar, the 8th December, 2007

NOTIFICATION

NO.SO(E-I)E&AD/4-2/2007

The Competent Authority on the recommendations of the Provincial Selection Board is pleased to promote the following officers of PCS (Executive Group) from BS-17 to BS-18 on regular basis with immediate effect:-

S.No.	Name of officer
1.	Mr. Sadiq Hussain Jadoon
2.	Mr. Aqal Badshah
3.	Mr. Siraj Ahmad
4.	Mr. Amin-ul-Haq
5.	Mr. Mutahir Zeb
6.	Mr. Zakaullah Khattak
7.	Mr. Aamir Latif
8.	Mr. Ghulam Muhammad
9.	Mr. Anwar Zeb Khan
10.	Mr. Fazal Karim
11.	Mr. Abdul Kamal
12.	Mr. Mujeeb-ur-Rehman
13.	Mr. Inam Ullah
14.	Mr. Baseer Khan

2. The officers on promotion will remain on probation for a period of one year in terms of Section 6(2) of NWFP Civil Servants Act, 1973 read with Rule-15(1) of NWFP Civil Servants (Appointment, Promotion & Transfer) Rules, 1989.

3. Consequent upon the above, the following adjustments are made henceforth:-

S.No.	Name of officer	From	To
1.	Mr. Sadiq Hussain Jadoon (PCS EG BS-18)	D.O. (R&E) Haripur	D.O. (R&E) Haripur
2.	Mr. Aqal Badshah (PCS EG BS-18)	OSD E&AD	Deputy Secretary, Home & T.As Deptt: against vacant post.
3.	Mr. Siraj Ahmad (PCS EG BS-18)	Director, Local Govt: Civil Sectt: FATA	Director, Local Govt: Civil Sectt: FATA
4.	Mr. Amin-ul-Haq (PCS EG BS-18)	DCO, Battagram	DCO, Battagram In his own pay and scale
5.	Mr. Mutahir Zeb (PCS EG BS-18)	Deputy Secretary, Home & T.As Deptt.	Deputy Secretary, Home & T.As Deptt.
6.	Mr. Zakaullah Khattak (PCS EG BS-18)	Deputy Secretary, Home & T.As Deptt.	Deputy Secretary, Home & T.As Deptt.

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GOVERNMENT OF N.W.F.P.
ESTABLISHMENT & ADMINISTRATION
DEPARTMENT

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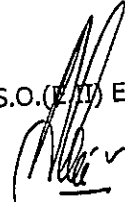
7.	Mr. Aamir Latif (PCS EG BS-18)	DCO, Lakki Marwat	DCO, Lakki Marwat in his own pay and scale
8.	Mr. Ghulam Muhammad	D.O. (Finance) Chitral	EDO (F&P) Chitral in his own pay and scale against vacant post.
9.	Mr. Anwar Zeb Khan (PCS EG BS-18)	D.O.(R&E) Mansehra	D.O.(R&E) Mansehra
10.	Mr. Fazal Karim (PCS EG BS-18)	D.O. (R&E) Dir Upper	D.O. (R&E) Dir Upper
11.	Mr. Abdul Kamal (PCS EG BS-18)	ACO, Peshawar	ACO, Peshawar
12.	Mr. Mujeeb-ur-Rehman (PCS EG BS-18)	APA Lower Kurram, Kurram Agency	APA Lower Kurram, Kurram Agency
13.	Mr. Inam Ullah Khan (PCS EG BS-18)	Awaiting posting	Deputy Secretary, Zakat, Ushr Deptt. against vacant post.
14.	Mr. Baseer Khan (PCS EG BS-18)	Deputy Secretary, Civil Secretariat FATA	Deputy Secretary, Civil Secretariat FATA

CHIEF SECRETARY,
GOVERNMENT OF N.W.F.P.

Endst. No. & date even

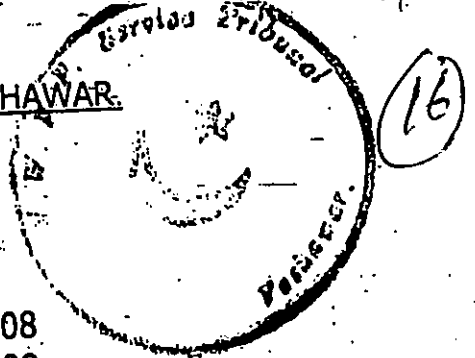
Copy forwarded to the:-

1. Additional Chief Secretary (FATA) Civil Sectt: FATA
2. Additional Chief Secretary, P&D Department.
3. Secretary to Governor, NWFP.
4. Principal Secretary to Chief Minister, NWFP.
5. All Administrative Secretaries in NWFP
6. Accountant General, NWFP.
7. District Coordination Officer, Haripur/Battagram/Lakki Marwat/Chitral/ Mansehra /Dir Upper/Peshawar
8. Political Agent, Kurram Agency
9. District Accounts Officer Haripur/Battagram/Lakki Marwat/Chitral/ Mansehra/ Dir Upper/Peshawar
10. Agency Accounts Officer, Kurram Agency.
11. PS to Chief Secretary, NWFP.
12. PS to Secretary Establishment, E&A Department.
13. PS to Special Secretary (Reg.)/Section Officer (Secret)/S.O.(E&A), E&A Deptt:
14. Officers concerned.
15. Manager, Govt Printing Press, Peshawar.


8.12.2007
(ABDUL JALIL)
SECTION OFFICER (E-I)
PHONE & FAX # 091-9210529

ZIA/**

BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR.



Appeal No. 612/2008

Date of Institution. .. 16.04.2008
Date of Decision .. 13.03.2009

Muhammad Iqbal Khattak,
Assistant Political Agent, Khar Bajaur Agency. ... (Appellant)

VERSUS

1. Government of NWFP through Secretary Establishment Department, Peshawar.
2. Govt. of NWFP through Chief Secretary, Peshawar. (Respondents)

APPEAL U/S 4 OF THE NWFP SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION NO.SOE.II (E&D) 2 (192)2007 DATED 19.2.2008 WHEREBY THE APPELLANT WAS PROMOTED ON REGULAR BASIS W.E.F. 19.2.2008 INSTEAD OF 30.11.1999 AND ORDER NO.SOE:II (E&D) 2(192) WHEREBY HIS DEPARTMENTAL APPEAL WAS DISMISSED.

MR. SHAKEEL AHMAD,
Advocate

For appellant.

MR. ZAHID KARIM KHALIL,
Addl. Government Pleader,

For respondents.

MR. JUSTICE (R) SALIM KHAN,
MR. BISMILIAH SHAH,

CHAIRMAN.
MEMBER.

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JUDGMENT

JUSTICE (R) SALIM KHAN, CHAIRMAN. - The present appeal No. 612 of 2008 by Muhammad Iqbal Khattak and appeal No. 613 of 2009 by Ahmad Khan involved similar questions of law, therefore, these are taken together for arguments and disposal.

2. Muhammad Iqbal Khattak was promoted as Tehsildar on regular basis vide order dated 28.12.1988. He was promoted to PCS(E.G) (BPS-17) on temporary basis vide notification dated 06.03.1996. He contended that many posts became vacant, but the appellant was promoted to (BPS-17) on regular basis on 19.2.2008 with immediate effect, instead of ante-dating of his promotion to the date on which the vacancy fell to his turn in the

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NWFP Service Tribunal
Peshawar

seniority lists of officers of PCS (E.G). His departmental appeal was rejected on 22.03.2008. The present appeal was filed on 16.4.2008 which is within time. The case of Ahmad Khan (Appellant) is similar to the case of Muhammad Iqbal Khattak on facts also. His appeal is also within time.

3. The respondents contested the appeal on many grounds, including the ground that no one could claim a vested right in promotion or in the terms and conditions for promotion to a higher post.

4. We heard the arguments and perused the record.

5. The learned counsel for the appellants contended that the appellants were temporarily posted to BPS-17 post on 06.3.1996, but they remained silent, because they did not have a vested right for promotion to a higher post. The appellants have already been considered for promotion and have been found eligible and fit for regular promotion to BPS-17 post, therefore, the principles embodied in the judgment of the August Supreme Court of Pakistan reported as 1990 SCMR 1321 are not applicable to their cases. In fact, the vacancies had become available for the appellants as early as on 30.11.1999, and it was the responsibility of the official respondents to expeditiously deal with the cases of the appellants for their regular promotion. The appellants could not be punished for no fault on their side, or for delay caused by the official respondents in processing the cases of the appellants. He relied on 1997 PLC (C.S)-77, wherein it has been held in para.3 as under:-

"On behalf of the Government it is contended that no civil servant has a right to claim that he should be promoted from a back date even though a vacancy may be existing on the date from which the promotion is being claimed. This is no doubt true but there are no orders by the Government that the respondents/petitioners should be held up for some time. The delay in making the promotions occurred entirely due to the reason that the officials of the Education Department could not carry out a fairly simple exercise within a reasonable period. In the circumstances it will not be appropriate for this Civil Petition to interfere with the order of the Service Tribunal. Leave is refused."

This judgment was in the petition for leave to appeal against the judgment dated 19.02.1995 of the Punjab Service Tribunal. It is worth-mentioning that

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the judgments cited as 1990 SCMR 1321 and cited as 1997 PLC (C.S) 77 are on two different aspects of the same subject.

6. Ante-dating of promotion, after consideration of the candidate aspiring for such promotion, after he was found eligible and fit for such promotion and is promoted, is an established principle of law. Such a candidate cannot be punished for any delay caused by the department in processing his case for promotion. The order of promotion, therefore, has to be ante-dated to the date on which the vacancy for his turn became available or to the date on which he actually took charge of the post on officiating/acting charge basis, whichever is later.

7. The A.G.P contended that the present appeals were miserably time-barred and both the appellants were stopped by their own conduct to file the present appeals. In fact, the principle embodied in the judgment reported as 1990 SCMR 1321 was applicable to the cases of the appellants from 06.3.1996 to 18.2.2008. They could not claim promotion as of right. The principle embodied in the judgment reported as 1997 PLC (C.S) 77 became applicable to their case on 19.2.2008. Cause of action arose to the appellants for claiming ante-dation of their promotion as prayed for only when their cases were considered for promotion, they were found eligible and fit for promotion, and their promotion orders were issued, though with immediate effect. They filed their departmental appeals within time from the date of the impugned order dated 19.2.2008, and their appeals were rejected on 22.3.2008. They filed Service Appeals on 16.04.2008. The departmental appeals as well as the Service Appeals were well within time.

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8. The A.G.P further contended that, according to the proviso contained in sub-section (2) of Section 22 of the N.W.F.P Civil Servants Act 1973, "no representation shall lie on matters relating to the determination of fitness of a person to hold a particular post or to be promoted to a higher post or grade." Judgment cited as 1990 SCMR 1321 was, then, applicable and appellants could not file representation. This stage has already passed. The appellants have been considered for holding the higher post after their promotion to that higher post, and their fitness for such promotion and *[illegible]* been determined. The judgment cited as 1997

LC (C.S) 77 has become applicable after determination of fitness of the appellants. The question in these cases is not the determination of fitness but is the right of ante-dation of their promotion. The appellants had vested right for consideration of promotion on their turn, whenever it was, and, when found fit on determination of fitness, at any stage, they had a right to claim ante-dation of their promotion to the dates on which the vacancies were available for their respective turns or from the date on which they actually took the charge of their respective posts, whichever were later in time.

The A.G.P also contended that according to sub-rule (6) of Rule 9 of the N.W.F.P Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 "acting charge appointment shall not confer any vested right for regular promotion to the post held on acting charge basis." The appellants have never claimed any vested right for regular promotion to the post which they held on acting charge basis, on the basis of acting charge appointment. In fact, they did not have such a right. They remained silent for a long time, knowing that they did not have such a right on the basis of acting charge appointment. They, however, had a vested right, as civil servants, for consideration for promotion, when the authority was to consider someone for promotion against the vacancy. No other person could be considered till the appellants were so considered. They, therefore, had a vested right for ante-dation of their promotion only when they were regularly promoted, but from the date when the vacancy became available for their turn.

10. The A.G.P further contended that, according to the North West Frontier Province, Provincial Management Service Rules, 2007, notified on 11.05.2007 vide No. SOE.II(ED)2(14)2007, The NWFP Provincial Civil Service (Secretariat/Executive Group) Rules, 1997 were repealed. He was of the view that the N.W.F.P Provincial Management Service Rules, 2007 had come into force at once w.e.f. 11.05.2007, while the orders of promotion of the appellants were issued on 19.02.2008. He submitted that the promotion orders were covered by the new rules, therefore, the appellants could not claim any benefit out of the already repealed rules of 1997. In order to clarify this controversy, it is necessary to reproduce the relevant Rule 8 of the N.W.F.P Provincial Management Service Rules, 2007 which is as under:-

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"8. Repeal.- The North-West Frontier Province Provincial Civil Service (Secretariat/Executive Group) Rules, 1997 shall stand repealed after the retirement of existing incumbents of both the cadres. Separate seniority list of both the cadres shall be maintained under the existing rules and they shall be promoted at the ratio of 50:50. The existing incumbents of PCS (E.G) and (S.G) in different pay scales, for the purpose of their promotion, shall continue to be governed under the said service rules till the retirement of the last such incumbent."

The above rule, by itself, clarifies that the rules of 1997 shall not stand repealed before the retirement of the existing incumbents of both the cadres of Secretariat/Executive Groups, and shall remain in force till the retirement of the last such incumbent. It further clarified that separate seniority list of both the cadres shall be maintained under the existing rules. The existing rules for such incumbents are the N.W.F.P Provincial Civil Service (Secretariat/Executive Group) Rules, 1997. It was also clarified that such incumbents shall be promoted at the ratio of 50:50. It means that out of each two vacancies, one vacancy shall be given to Secretariat Group, while another vacancy shall be given to the Executive Group. Further clarification is to the effect that the existing incumbents of PCS (E.G) and (S.G) in different pay scales shall continue to be governed under the rules of 1997 for the purpose of their promotion, and this process is to continue till the retirement of last such incumbent. Both the appellants belonged to the Executive Group of Civil Servants. They were to be governed under the N.W.F.P Provincial Civil Service (Secretariat/Executive Group) Rules, 1997 before 11.05.2007, and they have to be governed under the above mentioned rules of 1997 till the retirement of the last incumbent of a post in Secretariat Group/Executive Group.

11. The cases of the appellants are, therefore, to be governed in accordance with the provisions of Section 8 (quoted above) of the new N.W.F.P Provincial Management Service Rules, 2007. The record shows that vacancies were available for the appellants but they were not promoted at the due time and their cases for promotion were delayed unnecessarily without any fault of the appellants. They, therefore, are entitled to ante-

...the date of taking over the charge of that

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12. In the light of the above, we accept both the appeals, and direct the official respondents to ante-date the promotion of each of the two appellants to the respective dates on which a vacancy became available for the respective turn of the appellants or from the respective dates of their taking charge of such vacancy on officiating/acting charge basis, whichever is later. The appellants are entitled to the costs of their respective litigation from the official respondents.

ANNOUNCED
11.03.2009

sd/- Justice S. Salem
sd/- Justice S. Chelvan
sd/- Justice S. Ramesh
Member

Handwritten signature and stamp of the court.

Number of pages	22
Number of words	2400
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Date of completion of copy	22/4/09
Date of delivery of copy	22/4/09

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IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

22

PRESENT:

MR. JUSTICE EJAZ AFZAL KHAN.

MR. JUSTICE MUHAMMAD ATHER SAEED.

C. As. No. 860 to 861 of 2010.

(On appeal against the judgment dt.
11.3.2009 passed by NWFP Service
Tribunal, Peshawar in Appeals No. 612
and 613 of 2003).

Govt. of NWFP throu Secy. Establishment and another. (in both cases)
Appellants

Versus.

Muhammad Iqbal Khattak.
Ahmed Khan.

(in CA.860/10)

(in CA.861/10)

Respondents

For the appellants:

Mian Muhibullah Kakakhel, Sr.ASC.
Miss. Tehmina Muhibullah, ASC.
Mir Adam Khan, AOR.
(in both)

For the respondents:

Hafiz S. A. Rehman, Sr.ASC.
Mr. Shakeel Ahmed, ASC
(in both).

Date of hearing:

24.05.2012.

J U D G M E N T

EJAZ AFZAL KHAN, J. — These appeals with the leave of the
Court have arisen out of the judgment dated 11.3.2009 of the Service
Tribunal whereby appeals filed by the respondents were allowed.

2. The points raised and noted while granting leave read as
under:

"We have heard the learned counsel at some length. We are
inclined to grant leave inter-alia on the point as to whether
the legal and factual aspects of the controversy have been
dilated upon and decided by the Tribunal in accordance with
relevant Rules i.e. Rule 8 of the NWFP, Provincial Civil
Service (Secretariat/Executive Group) Rules, 1997 and Rule
9(6) of the NWFP Civil Servants (Appointment, Promotion
and Transfer) Rules, 1989. It is also to be examined as to
whether that stop-gap-arrangement can be equated to that of
regular promotion and besides that the order passed by the
learned Service Tribunal could be made applicable to

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Tahsildars who are awaiting their promotion. Since a short question of law is involved in the matter, therefore, the case be listed after four weeks subject to limitation. In the meanwhile operation of the impugned judgment shall remain suspended".

3. Learned counsel appearing on behalf of the appellants contended that though the Governor of the Province in consultation with the Provincial Selection Board was pleased to order the promotion of the respondents in BPS-16 as Extra Assistant Commissioner in BPS-17 in the Ex-PCS (E.8) Cadre with immediate effect on purely temporary basis vide notification dated Peshawar 6th March, 1996, yet it could not earn them any benefit or entitle them to a vested right notwithstanding they have been promoted on regular basis with immediate effect vide notification dated 19.2.2008. They, the learned counsel added, could not have claimed any ante-dated promotion even on the occurrence of any vacancy in such scale in violation of Section 8 of the Civil Services Act or Rule 9 of NWFP Civil Service (Executive Group) Rules, 1997, as decidedly promotion is not a vested right. Appeal before the departmental authority, the learned counsel added, or before the Tribunal claiming ante-dated promotion was, therefore, misconceived. The learned Tribunal, the learned counsel maintained, could not have allowed such appeal when it tended to mar the seniority of many others in the run. The learned counsel to support his contention placed reliance on the cases of "Wajahat Hussain, Assistant Director, Social Welfare, Lahore and 7 others. Vs. Province of the Punjab, through Secretary, Social Welfare and Zakat, Lahore and 81 others" (PLD 1991 S.C. 82), "Sh. Anwar Hussain, Assistant Director, Labour Welfare, Lahore Region, Lahore. Vs. Government of the Punjab through Secretary, Labour Department and others" (1985 SCMR 1201), "Nazeer Ahmed. Vs. Government of Sindh through Chief Secretary Sindh, Karachi and 2 others" (2001 SCMR 352), "Government of Pakistan through Establishment

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Division, Islamabad and 7 others. Vs. Hameed Akhtar Niazi, Academy of Administrative, Walton Training, Lahore and others" (PLD 2003 S.C. 110).

The learned counsel next contended that a change in scale by means of promotion is not automatic but dependent on a process involving selection, therefore, any change in scale without such process being violative of the relevant law and rules, cannot be maintained. The learned counsel to support his contention placed reliance on the case of "Abid Hussain Sherazi. Vs. Secretary M/o Industries and Production, Government of Pakistan, Islamabad" (2005 SCMR 1742).

4. As against that learned counsel appearing on behalf of the respondents defended the impugned judgment by contending that where a vacancy occurs in the next higher scale, the Civil Servant officiating or working on acting charge basis thereagainst is not considered for promotion or the process of regular promotion is delayed on account of lethargic attitude of the competent authority or any other exigency so-called, the Civil Servant who is subsequently found fit for such promotion on regular basis cannot be deprived of the salary and other consequential benefits attached to such post. Learned counsel to support his contention placed reliance on the case of "Luqman Zareen and others. Vs. Secretary Education, NWFP and others" (2006 SCMR 1938). The learned counsel next contended that though the NWFP Civil Service (Secretariat Group) Rules, 1997 have been substituted by the NWFP Provincial Management Service Rules, 2007 but the rights of the existing incumbents of both the cadres have been protected by Rule 8 of the latter, therefore, the change in rules would not affect the service

structure of the respondents or rights accruing thereunder. The learned counsel next contended that if the concluding paragraph of the impugned judgment is read none of the rights of any of the officers including their seniority has been affected.

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5. We have gone through the entire record carefully and considered the submission of the learned counsel for the parties.

6. The record reveals that the Governor of the Province in consultation with the Provincial Selection Board was pleased to order the promotion of the respondents working in BPS-16 as Extra Assistant Commissioner in BPS-17 in Ex-PCS (E.B) Cadre. The respondents were, no doubt, promoted on temporary basis in the year 1996, all the same, what stands out to be taken notice of is, that it was not done without considering their eligibility and without involving the process of selection as is evident from the order itself. When asked whether the respondents were deficient in terms of qualification or experience to hold the post in the next higher scale at the time they were promoted temporarily, the reply of the learned counsel for the appellant was in no. When asked whether there was any impediment in the way of the respondents to be promoted to the next higher scale, at the time when a vacancy or two occurred in the said scale, again the answer was in no. When asked what restrained the appellants to defer or delay the process of selection to fill one or any number of vacancies occurring from time to time in the next higher scale, the reply of the learned counsel was that it was because of confusion created by the devolution plan. This answer, to say the least, is too vague to be plausible. When asked who was senior to the respondent and whose right of ranking senior has been affected or impaired by the impugned judgment, again the learned counsel could not refer to anything on the record.

7. There is no dispute with the proposition that the terms and conditions of the service of the respondents, in view of the provision contained in Rule 8 of NWFP Civil Service (Secretariat Group) Rules, 2007, shall continue to be governed by the erstwhile rules. There is also no dispute with the proposition that if the respondents were to hold a post on acting charge basis, they could also hold the same on regular basis. In the case of


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"Lugman Zareen and others Vs. Secretary Education, NWFP and others"

(2006 SCMR 1938), this Court while dealing with an identical issue held as under :-

"It is then a position admitted on all sides that nothing existed in the way of the petitioners on 31.8.2000 which could have disentitled them to regular promotion to the posts in question and that it was only the usual apathy, negligence and bureaucratic red-tapsim which had deprived the petitioners of the fruits that they deserved. The petitioners could not be permitted to be punished for the faults and inaction of others. We are of the view that where a post was available against which a civil servant could be promoted; where such a civil servant was qualified to be promoted to such a higher post; where he was put on the said higher post on officiating or acting charge basis only because the requisite exercise of allowing the regular promotion to the said post was being delayed by the competent authority and where he was subsequently, found fit for the said promotion and was so promoted on regular basis then he was entitled not only to the salary attaching to the said posts but also to all consequential benefits from the very date from which he had been put on the said post on officiating or acting charge basis and we hold accordingly".

While dealing with the reservations of the nature expressed by the learned counsel for the appellant, this Court held as under :-

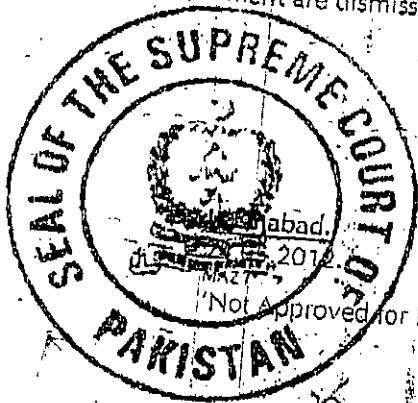
"A bare perusal of these judgments would thus, show that this Court had always accepted the principle that a person who was asked to hold a higher post to which he was subsequently promoted on regular basis, was entitled to the salary etc, attaching to such a post for the period that he held the same; that he would also be entitled to any other benefits which may be associated with the said post and further that if a vacancy existed in a higher grade to which

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which he was allowed to hold the said higher post unless justifiable reasons existed to hold otherwise.

When this being the state of things on factual and legal plain, we don't think the judgment of the learned Service Tribunal is open to any exception. The judgments rendered in the cases of "Wajahat Hussain, Assistant Director, Social Welfare, Lahore and 7 others. Vs. Province of the Puniab, through Secretary, Social Welfare and Zakat, Lahore and 81 others", "Sh. Anwar Hussain, Assistant Director, Labour Welfare, Lahore Region, Lahore. Vs. Government of the Punjab through Secretary, Labour Department and others", "Nazeer Ahmed. Vs. Government of Sindh through Chief Secretary Sindh, Karachi and 2 others", "Government of Pakistan through Establishment Division, Islamabad and 7 others. Vs. Hameed Akhtar Niazi, Academy. of Administrative, Walton Training, Lahore and others" and "Abid Hussain Sherazi. Vs. Secretary M/o Industries and Production, Government of Pakistan, Islamabad", (supra) cited by the learned counsel for the appellants are not applicable to the case in hand because of their distinguishable facts and features.

9. For the reasons discussed above, these appeals being without merit are dismissed.



Bel. Qasim Abbas Khan, J
Bel. Muhammad Atiq (Sueed), J

Suprintendent
Supreme Court of Pakistan
ISLAMABAD

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Case No: 5878/12
Date of Presentation: 25-5-12
No. of Words: 1800
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Court Fee stamp: 16-16
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Date of delivery of Copy: 21/5/12

WAKALATNAMA

IN THE COURT Service Tribunal Peshawar

Abdul Kamal

(Petitioner)
(Plaintiff)
(Applicant)
(Complainant)
(Appellant)
(Decree Holder)

VERSUS

Government & Others

(Respondent)
(Defendant)
(Accused)
(Judgment Debtor)

I/We, Abdul Kamal s/o Sar Gul.

_____ in the
above noted APPEAL, do hereby appoint and constitute
Mohammad Amin Khattak Lachi Advocate, Peshawar to appear, plead,
act, compromise, withdraw or refer to arbitration to me/ us as my/ our
Counsel in the above noted matter, without any liability for their default and
with the authority to engage/ appoint any other Advocate/ Counsel at my/
our matter.

Attested & accepted

CLIENT/S

M.A.L.

Gh. Hal.

Mohammad Amin Khattak Lachi
Advocate, High Court, Peshawar
Cell: 0301-8904498

BEFORE THE MEMBER SERVICE TRIBUNAL, KPK,
PESHAWAR

Abdul Kamal Appellant

Versus

Government & others Respondents

APPLICATION FOR ADJOURNMENT OF THE ABOVE CASE

Respectfully Sheweth:

1. That the above title case is pending before this Hon,able Court, which is fixed for today i.e. 20.12.2013.
2. That the counsel for the appellant is busy in Peshawar High Court, Circuit Bench, Bannu in case titled (1) **Sharif Khan "Vs" Islam Badshah (2) Islam Badshah "Vs" Sharif Khan (3) Abdul Wajid "Vs" Bashir-ud-Din (4) Aslam Gul "Vs" Khan Shirin**) and therefore will not be in a position to assist this Hon,able Court on the date fixed. It is, therefore, prayed that on acceptance of this application the above case may kindly be adjourned.

Appellant

Through

Date:20/12/2013

Muhammad Amin Khattak Lachi
Advocate,
Supreme Court of Pakistan

Through Clerk Abdul Kareem

A. Kareem

BEFORE THE SERVICE TRIBUNAL, KPK, PESHAWAR

In re:

S.A No. 341/2013

Abdul Kamal.....Appellant

Versus

Government & others.....Respondents

Application for signdai adjournment

Respectfully Sheweth:

1. That above titled case is pending before this Hon,able Tribunal,
which was fixed for 20.03.2014
2. That the promotion of appellant is due and expected and appellant
wants to sine die the instant appeal.

It is, therefore, prayed that on acceptance of this application
the instant appeal may be sine die adjourned.

Appellant

Through

Muhammad Amin Khattak Lachi
Advocate,
Supreme Court of Pakistan

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M/Abdul Kamal