

EP 391/2019

14.07.2021

Petitioner in person and Mr. Muhammad Adeel Butt, Addl. AG alongwith Gul Rehman, AC for the respondents present.

Representative of the respondents produced copy of notification No. Estt.II/SA/310/15/EP/391/19/28858-61, dated 09.11.2020, while implementing the judgment of this Tribunal, promoted the petitioner as Superintendent w.e.f. 18.06.2013.

In view of the above, the present execution petition is filed and consigned to the record room.


Chairman

24.12.2020

Nemo for petitioner and Asstt. AG for the respondents present.

Due to absence/non-representation of petitioner, instant proceedings are adjourned to 08.02.2021 before S.B.


Chairman

08.02.2021

Nemo for parties.

Kabir Ullah Khattak learned Additional Advocate General present.

On the preceding date, proceedings were adjourned to 08.02.2021. The petitioner is once again absent. His counsel also failed to attend the Tribunal on his behalf, therefore, petitioner/counsel and respondents be put on notice for 07.04.2021 before S.B.

*Noted
OK
17/2/21*



(Rozina Rehman)
Member (J)

07.04.2021

Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 14.07.2021 for the same as before.


READER

Department, is not in consonance with the spirit of the judgment passed by this august Tribunal therefore, by doing so the judgment of this Tribunal has not been implemented as mandated hence, the reply so submitted alongwith the notification dated 08.07.2015 stands nowhere and are therefore, rejected. The respondents are directed to give effect and implement the judgment of the august Tribunal in its letter and spirit by submitting implementation order on or 21.09.2020 before S.B.


(MUHAMMAD JAMAL KHAN)
MEMBER

21.09.2020 Counsel for the petitioner and Addl. AG alongwith Muhammad Arif, Superintendent for the respondents present.

Representative of respondents states that the matter is lying with the S.M.B.R for final order in the light of court directions. He, therefore, requests for some more time. Allowed. Adjourned to 04.11.2020 before S.B.


Chairman

04.11.2020 Junior counsel for petitioner is present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents is also present.

Implementation report not submitted. Learned Additional Advocate General requests for further time. Adjourned to 24.12.2020 on which date to come up for implementation report before S.B.


(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

3. On the other hand, learned counsel for the petitioner submitted that submission of para-wise reply during the course of Execution proceeding is unprecedented there is no such practice in vogue. He invited the attention of the bench to the judgment of this august Tribunal passed on 01.04.2019 whereby the appeal of the appellant/petitioner was accepted as prayed for and while making to reference to his prayer he has sought for setting-aside the impugned order dated 07.04.2015 while declaring notification dated 23.01.2015 as irrational malafide and disadvantageous to the service career of the petitioner together with considering the case of petitioner for promotion to the post of Superintendent with effect from 18.06.2013 while respondents have notified his promotion with immediate effect which is contrary to the mandate and contours of the judgment of this august Tribunal .

4. While dilating upon the issues involved the august Division Bench of this august Tribunal opined categorically as to whether the amended service rules could effect judicially the appellant at the time his promotion case was in pipeline and even the date of meeting of DPC was fixed which could not be held due to tragic incident of Army Public School. The amended rules were notified on 23.01.2015. That while making reference to the judgment of Hon'ble Supreme Court of Pakistan reported as 2012 SCMR 695 and other judgments being relied upon by the learned counsel for the petitioner resolved the controversy by prohibiting the competent authority not to debar the petitioner from the right of his seniority position in the joint seniority list. It was also observed by the august Tribunal that the amended rules notified on 23.01.2015 appears to be an attempt to create a new tiers of ministerial staffs at the Commissioner Office level which is not in consonance with the devolution plan as there are two types of governments in the province, Provincial level and District level cadres therefore, it was held out rightly that denying appellant the right of seniority on the basis of joint seniority list for promotion is not according to the basic cannon of justice and the appeal was accordingly allowed as prayed for. According to the dictates and mandate of this judgment the case of the petitioner for promotion has to be considered from the date when he was eligible for the same and that is with effect from 18.06.2013 therefore, the order with regard to notifying the promotion of the petitioner with effect from 08.07.2015 made by the Government of Khyber Pakhtunkhwa Revenue and Estate

22.06.2020

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

Implementation report was not produced and a request was made for adjournment. Last chance is given to the respondents with the direction to submit implementation report on 05.08.2020 before S.B.



(Rozina Rehman)
Member (J)

05.08.2020

Mr. Taimur Ali Khan, Advocate for the petitioner is present. Mr. Kabirullah Khattak, Additional AG alongwith representative of the department Mr. Mukhtiar Ali, Assistant Secretary, are also present.

2. The perusal of the record reveal that implementation report of the judgment of this august Tribunal dated 01.04.2019 was sought from the respondents as per the dictates of previous order sheet. In this regard the learned Additional Advocate General submitted para-wise reply of respondents No. 1, 2 & 3 in Execution Petition, the gist of which is that Divisional Cadre Ministerial Service Rules were notified on 23.01.2015 after proper approval of standing service rules committee with further approval of the Chief Secretary vide which the post of Superintendent was declared the District Cadre Post and on 27.06.2019 the referred to rules have further been amended and the post of Superintendent has been declared as Division Cadre Post. Since the appellant was permanent employee of Deputy Commissioner, Bannu, his case could not be placed before Departmental Promotion committee as District Cadre Rules were not available prior to 23.01.2015 and his case was deferred until the finalization of District Cadre Ministerial Service Rules notified by the Department. That subsequently petitioner was promoted as Superintendent on his own turn on availability of vacancy in Deputy Commissioner Office Bannu, according to para-vi of promotion policy 2009, therefore, the learned AAG concluded that the judgment of this august Tribunal has been implemented.

02.01.2020

Nemo for petitioner. Addl. AG alongwith M/S Muhammad Arif, Superintendent, Mushtaq, Computer Operator and Rizwanullah, P.S for respondents present.

Parawise reply by respondents No. 1, 2 and 3 has been submitted which is placed on record. To come up for further proceedings on 17.02.2020 before S.B.


Chairman

17.02.2020

Counsel for the petitioner present. Mr. Riaz Ahmad Paindakheil, Assistant AG alongwith M/S Arif, Superintendent on behalf of respondents No. 1, 2 & 5, Rizwanullah, Private Secretary on behalf of respondent No. 3 and Wali Muhammad, Reader on behalf of respondent No. 4 present. Representative of respondent No. 4 submitted reply. The same is placed on record. Learned counsel for the petitioner seeks adjournment. Adjourned to 30.03.2020 for further proceeding before S.B.


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

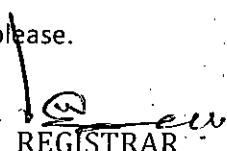


30.03.2020

Due to public holiday on account of COVID-19, the case is adjourned for the same on 22.06.2020 before S.B.

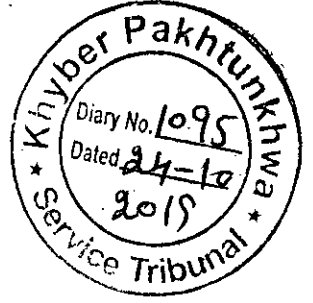

Reader

Form- A
FORM OF ORDER SHEET

Court of _____
Execution Petition No. 391/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	24.11.2019	<p>The execution petition of Mr. Bashirullah submitted today by Mr. Taimur Ali Khan Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	25/10/19	<p>This execution petition be put up before touring S. Bench on <u>22/11/19</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	22.11.2019	<p>Counsel for the petitioner present.</p> <p>Notices be issued to the respondents for submission of implementation report on 02.01.2020 before S.B.</p> <p style="text-align: right;"> Chairman.</p>

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



Execution petition No. 391 /2019
In Service Appeal No.310/2015

Mr. Bashir Ullah, Superintendent,
Deputy Commissioner Office, Bannu.

PETITIONER

VERSUS

1. The Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The senior member Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
3. The commissioner, Bannu Division Bannu.
4. The deputy commissioner Bannu.
5. The Secretary-I, Government of KP, Board of Revenue, Peshawar.

RESPONDENTS

.....

**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED 01.04.2019 OF THIS
HONOURABLE SERVICE TRIBUNAL IN
LETTER AND SPIRIT.**

.....

RESPECTFULLY SHEWETH:


1. That the petitioner has filed an appeal bearing No.310/2015 in this august Service Tribunal against the impugned order dated 07.04.2015, whereby the appeal against the notification dated 23.01.2015 to the extent of promotion to the post of superintendent has been rejected with the prayer that the order dated 07.04.2015 may be set aside and also declared the notification dated 23.01.2015 as irrational, malafide and disadvantageous to the service carrer of the appellant. And the respondent may further please be directed to consider the appellant for promotion to the

post of superintendent w.e.from 18.06.2013 on the basis of rules dated 2.07.2010 and also consider the promotion of the appellant under these rules as the promotion of the appellant was in pipeline.
(Copy of appeal is attached as Annexure-A)

2. That the said appeal was decide on 01.04.2019 and the Honourable Tribunal was kind enough to accept the appeal as prayed for.
(Copy of judgment dated 01.04.2019 is attached as Annexure-B)
3. That the petitioner has waited for more than six months for implementation of judgment dated 1.04.2019, but the respondents did not implement the judgment dated 01.04.2019 of this august Service Tribunal till date.
4. That in-action and not fulfilling formal requirements by the respondents after passing the judgment of this august Service Tribunal, is totally illegal amount to disobedience and Contempt of Court.
5. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the respondents are legally bound to implement the judgment of this Honourable Service Tribunal in letter and spirit.
6. That the petitioner has having no other remedy except to file this execution petition for Implementation of judgment dated 01.04.2019 of this august Service Tribunal.

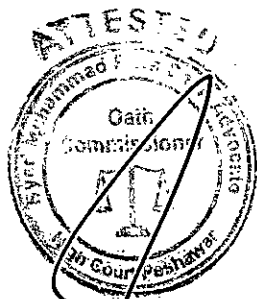
It is, therefore, most humbly prayed that the respondents may be directed to implement the judgment dated 01.04.2019 of this august Service Tribunal in letter and spirit. Any other remedy, which this august Service Tribunal deems fit and appropriate may also be awarded in favour of petitioner.

*CA Khalid
Abdul Walid
(Advocate)*

PETITIONER
THROUGH: 
(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT,
&
(ASAD MAHMOOD)
ADVOCATE HIGH COURT

AFFIDAVIT:

It is affirmed and declared that the contents of the execution petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this august Service Tribunal.



[Handwritten Signature]

DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

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A (4)

Appeal No. 310 /2015

Mr. Bashir Ullah, Assistant,
Office of the Commissioner,
Bannu Division, Bannu.

APPELLANT

VERSUS

1. The Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
3. The Commissioner, Bannu Division Bannu,
4. The Deputy Commissioner, Bannu.
5. The Secretary-I, Government of KPK, Board of Revenue, Peshawar.

RESPONDENTS

.....
APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 7.4.2015 WHEREBY THE APPEAL AGAINST THE NOTIFICATION DATED 23.1.2015 TO THE EXTENT OF PROMOTION TO THE POST OF SUPERINTENDENT HAS BEEN REJECTED FOR NO GOOD GROUNDS.

PRAYER:

.....
THAT ON ACCEPTANCE OF THIS APPEAL, THE ORDERS DATED 7.4.2015 MAY BE SET ASIDE AND ALSO DECLARED THE NOTIFICATION DATED 23.1.2015 AS IRRATIONAL, MALAFIDE AND DISADVANTAGEOUS TO THE SERVICE CAREER OF THE APPELLANT. THE RESPONDENTS MAY FURTHER PLEASE BE DIRECTED TO CONSIDER THE APPELLANT FOR PROMOTION TO THE POST OF SUPERINTENDENT W.E.F. FROM 18.6.2013 ON

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THE BASIS OF RULES DATED 2.7.2010 AND ALSO TO CONSIDER THE PROMOTION OF APPELLANT UNDER THESE RULES AS THE PROMOTION OF THE APPELLANT WAS IN PIPELINE. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND PROPER THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWETH:

1. That the appellant was appointed as Assistant in the Commissioner, Bannu Division, Bannu vide order dated 9.9.1992 and after devolution plan the appellant was adjusted as Assistant in the office of ACO. After re-establishment of the office of Commissioner, the appellant was posted as Superintendent (OPS) Commissioner Office, Bannu Division, Bannu vide order dated 18.4.2014. Copies of Orders are attached as Annexure-A, B and C.
2. That the appellant's record was good through out, no adverse entries against the appellant. It is also worth to mention here that the appellant remained on the top of seniority list of Assistant maintained at Divisional level till 2014. The official at Sl. No.1 is working as Naib Tehsildar AND has forgo his promotion, therefore, the appellant comes to Sl. No.1 of the seniority list. Copy of Seniority list is attached as Annexure-D.
3. That previously in the rules the post of Superintendent was required to be filled in by promotion on the basis of seniority cum fitness from amongst the holder of the posts of Assistant (B-11) with at-least 5 years service as such in the offices of DCO, DOR, EDO, F&P and P.A. in the Province, but vide Notification dated 2.7.2010 the amendments were brought against come Sl. No.1 in column-5 as by promotion on the basis of seniority cum fitness from amongst the Assistant (B-14) with at least 5 years service in the offices of Divisional commissioner, Additional Commissioner, DCO, DOR, and ACs, and DEDO, F&P, PA at divisional level, which means that the post is to be filled in on the basis of joint seniority list of Assistant in the offices

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mentioned in Column -5 to be maintained at divisional level. Since then the appellant has been enjoyed top position in the seniority list. Copy of Rules and Amended rules are attached as Annexure-E and F.

4. That keeping in view the amended rules of 2007, the Commissioner office Bannu vide letter dated 27.3.2014 requested the BOR to fill the vacant post of Superintendent on the basis of promotion and in the said letter the appellant name was recorded at Sl. No.1. The Commissioner Bannu Division Bannu again on 25.4.2014 wrote a letter to DC Lakki Mawat in which he was directed to sent ACR synopsis of one Niamatullah, Naib, Tehsildar for promotion and resolve the issue of promotion to the post of Superintendent which had been delayed inordinately. Similarly on 9.5.2014, the Commissioner Bannu Division Bannu requested the DOR to make promotion to the post of Superintendent line vacant since long and work was suffering badly. The Commissioner Bannu vide order dated 19.11.2014 again made similar request. Copy of letters are attached as Annexure-G, H, I and J.

5. That on 2.12.2014, the BOR in reference to the previous correspondence asked the Commissioner Bannu to sent the working pay of the concerned official for placing before the same DPC for promotion to the post of Superintendent. The Commissioner office on 3.12.2014 submitted the detailed working paper to the BOR for the purpose of promotion to the post of superintendent. Copies of letter and working paper are attached as Annexure-K and L.

6. That the BOR vide letter dated 9.12.2014 informed the concerned offices to attend the DPC meeting for the said purpose scheduled on 16.12.2014 at 11.00 am but to incident of Army Public School on 16.12.2014, the DPC meeting could not convened. Copy of letter is attached as Annexure - M.

7. That the appellant promotion under consideration in pipeline and during that period the impugned notification dated 23.1.2015 was issued in which the

ATTESTED

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(7) 107

promotion to the post of Superintendent was notified on the basis of seniority of the Assistant of the Commissioner office by excluding the offices of the DC office etc. Against the said Notification, the appellant filed Departmental Appeal on 3.2.2015 but the same has been rejected for no good ground on 7.4.2015, hence the present appeal on the following grounds amongst the others. Copies of Notification, Appeal and Rejection order are attached as Annexure-N, O and P.

GROUND:

- A) That the impugned orders dated 7.4.2014 and Notification dated 23.1.2015 are against the law, facts, norms of justice and material on record, therefore, liable to be set aside.
- B) That the rejection order dated 7.4.2014 is not a speaking order which against the spirit of Section-24(A) of the General Clauses Act and Hon'ble Supreme Court's judgement reported as 1991 SCMR Page-2330.
- C) That the appellant has attained top seniority position on the divisional level and his promotion case was also in pipeline, therefore, the respondent were required to first finalize the promotion case of the appellant, keeping in view the verdict in a case by the Hon'ble Supreme Court of Pakistan reported as 2012 SCMR 965. Thus, that aspect and verdict of the Supreme Court has also been violated.
- D) That the valuable rights in the shape of seniority as well as promotion on the basis of divisional seniority were accrued to the appellant which under the principle of fair play and equity can not be damaged.
- E) That the impugned Notification dated 31.1.2015 is discriminatory and irrational case for promotion to the post of Superintendent and seniority of the commissioner office is to be sought which no doubt limit the prospect of promotion in Commissioner

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8/1/83

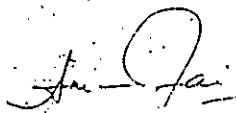
office, whereas through same notification for promotion to the post of Private Secretary (B-17) sonority is to be sought on divisional basis of the offices of Commissioner, DC, P.A. in which no doubt the prospect of promotion increased for P.S of all the three offices, therefore, the impugned notification is damaging the services career of the appellant in case of promotion the post of Superintendent.

- F) That even otherwise in a meeting dated 20.2.2015 it is approved at Sl. No.15 of the minutes, chaired by the Honourable Chief Secretary of the province, that Commissioner will be the competent authority for BPS-16 and 17 official but despite that the SMBR office indulges itself in promotion case which is in total violation of the approved Agenda. Copy of Agenda is attached as Annexure-Q.
- G) That the appellant has not been treated fairly and has been kept deprived from the benefit of promotion from his due date in an arbitrary manner which is totally unwarranted in the eyes of law.
- H) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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

APPELLANT
Bashir Ullah Khan

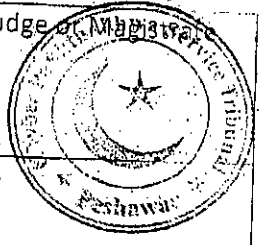
THROUGH:


(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

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B9 96

Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge
1	2	3
<p style="text-align: center;">BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</p> <p style="text-align: center;">Appeal No. 310/2015</p> <p>Date of Institution ... 10.04.2015 ✓ Date of Decision ... 01.04.2019 ✓</p> <p>Mr. Bashirullah Assistant, Office of the Commissioner Bannu Division, Bannu.</p> <p style="text-align: right;">-----Appellant</p> <ol style="list-style-type: none"> The Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar. The Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar. The Commissioner, Bannu Division Bannu. The Deputy Commissioner, Bannu. The Secretary-I, Government of Khyber Pakhtunkhwa, Board of Revenue, Peshawar. <p style="text-align: right;">-----Respondents</p> <p>Mr. Hamid Farooq Durrani.....Chairman Mr. Hussain Shah.....Member</p> <p>JUDGMENT HUSSAIN SHAH, MEMBER (E): - Appellant, learned counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney on behalf of the respondents present.</p> <ol style="list-style-type: none"> The appellant was appointed as Assistant in the office of Commissioner Bannu vide order dated 09.09.1992. Due to devolution plane the offices of Divisional Commissioner, were disbarred and the appellant was adjusted in the office of Assistant Coordination Officer however after recreation of the offices of the Commissioner in the province the appellant was posted as 		



ST/AM

01.04.2019

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Khyber Pakhtunkhwa Service Tribunal, Peshawar

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Superintendent on OPS basis on 18.04.2014. According to the final joint seniority list of Assistants as stood on 31.12.2013 the appellant was at serial No.2 while one Mr. Naimat Ullah was working at that time as Naib Tehsildar in the capacity of OPS. According to the District Ministerial Service Rule 2001 the post of superintendent was meant to be filled by promotion on the basis of seniority come fitness from amongst the holder of the post of Assistant with at least five year service in the offices of DCO, DRO/Collector and EDO (F&P) and Political Agent Offices in the Province. However the then existing rules were amended vide impugned notification dated 23.01.2015 to the disadvantage of the appellant in terms of debarring the appellant for promotion to the post of Superintendent (BPS-17). Being aggrieved by the impugned notification the appellant preferred a departmental appeal against the impugned notification which was rejected on 07.04.2015 and hence the instant service appeal before this Tribunal on 10.04.2015.

3. Learned counsel for the appellant argued that the impugned notification appears to be having no rational and is against the law, facts, norms of justice and the objective reality on grounds. The rejection order dated 07.04.2014 is not a speaking order and without any legally rational basis/grounds which impliedly means that the appellate authority failed to present any convincing reasons or giving any judicious justification for depending the newly notified service rules. He further argued that in view of the seniority position of the appellant at divisional level a working

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ATTESTED

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paper was in process to finalized the promotion case of the appellant but due to the tragic incident of APS Peshawar the meeting of the Promotion Committee could not held at the schedule that viz 16.12.2014. It was further contended that the impugned notification of 23.01.2015 restricted the already accrued right of seniority for promotion to the post of superintendent in the office of Commissioner Bannu. The learned counsel for the appellant presented the judgment of superior courts i.e. 2012 SCMR-965 wherein the Hon'ble Supreme Court established the proposition that *"amended rules did not permit the department to over look the rights of employees created under the law by applying the amended rule to the extend benefit to those who were not in run for promotion at the time when the right of the employees for promotion matured on basis of the seniority list."*

The learned counsel submitted at the bar the case laws in the judgment of 2010 PLC(C.S.) 760, 2012 PLC(C.S.) 142, 1997 SCMR-515, 2015 PLC (C.S.) 215 and Appeal No. 323/2015.

4. The learned Deputy District Attorney contested the argument of the learned counsel for the appellant and the facts and grounds of the appeal and argued that the amended rules notified vide Notification No. Esst: I/II/135/SSRC/2033 dated 23.01.2015 on the direction of the government so that the post of Superintendent is to be filled on the basis of seniority maintained separately in each office and the competent of joint seniority was changed. He further stated that the competent authority is empowered under Section 26

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 CHAIRMAN
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

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of the Civil Servant Act to make such rules as appear to the competent authority to be necessary or expedient for carrying out for the purpose of the Civil Servant Act as such the amended rules notified by the Board of Revenue is according to law/rules. In Para wise comments on behalf of respondent No.2 it has been admitted that the Assistant of the Office of Commissioner and Deputy Commissioner were illegible for promotion to the post of Superintendent on the basis of joint seniority list in divisional level but the amended rules 23.01.2015 the post of Superintendent was reserved for promotion for the Assistants of the office of Commissioners while the post of Superintendent in the office of Deputy Commissioner were made reserved for the promotion of the Assistant in the offices of Deputy Commissioner. It is also admitted that the promotion case of the appellant was under process between Board of Revenue, Commissioner Bannu and Deputy Commissioner Lakki Marwat. It has further been stated that the meeting of Departmental Promotion Committee was schedule to consider the promotion case of the appellant but he was not consider due to being a permanent employee of the Deputy Commissioner Office.

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 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

- 5. Arguments heard. File perused.
- 6. The case under consideration was examined in the light of the record of the case and the arguments of the counsel of the appellant and learned DDA. The key question before the tribunal is as to whether the amended service rules could affect judiciously

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the appellant at the time his promotion case was in pipe line and even the date of the meeting of DPC was fixed but the said meeting could not held due to tragic incident of APS on the same date 16.12.2014 and the amended rules were notified on 23.01.2015, after a time of a month or so, this question is analyzed in the context of the Hon'ble Supreme Court judgment report as 2012 SCMR-695. This judgment and so many other judgments, relied by the learned counsel for the appellant, categorically resolve the controversy and prohibit the competent authorities not to debar the appellant from the right of seniority position in the joint seniority list.

7. The Tribunal also noted that the amended rules notified on 23.01.2015 appears to be an attempt to create a new tiers of ministerial staff i.e. at the commissioner offices level which is not in consonance with the devolution plan because presently there are two types of governments in the province viz provincial level and district level cadres.

8. In view of the above discussion this tribunal is of the firm opinion that denying the appellant from the right of seniority on the basis of joint seniority list for promotion is not according to the basic canon of justice hence the appeal is accepted as prayed.

9. This tribunal also suggest to the provincial government to review the amended rules, notified on 23.01.2015 in the light of the two tiers of employees i.e. Provincial level employee and District level employees.

10. The present service appeal is disposed off in the above terms:

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ATTESTED

Signature
 Khuda D. Khan
 Service Tribunal,
 Peshawar

ATTESTED

14/101

Parties are left to bear their own costs. File be consigned to the record room.

(HAMID FAROOQ DURRANI)
CHAIRMAN

(HUSSAIN SHAH)
MEMBER

ANNOUNCED
01.04.2019

Certified to be true copy
Khyber Pakhtunkhwa
Services Tribunal,
Peshawar

Date of Presentation of Application 22-04-19
 Number of Words 2400
 Copying Fee 14-00
 Urgent 2-00
 Total 16-00
 Name of Copyist [Signature]
 Date of Completion of Copy 22-04-19
 Date of Delivery of Copy 22-04-19

ATTESTED

[Signature]

VAKALAT NAMA

NO. _____/2019

..IN THE COURT OF KP Service Tribunal Peshawar

Bashir Ullah (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Chief Secretary & others (Respondent)
(Defendant)

I/We, Bashir Ullah

Do hereby appoint and constitute **Taimur Ali Khan, 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 _____/2019

(B)

(CLIENT)

ACCEPTED

[Signature]

TAIMUR ALI KHAN

Advocate High Court

BC-10-4240

CNIC: 17101-7395544-5

Cell No. 0333-9390916

[Signature]
Abdul Wahid

(Advocate)

OFFICE:

Room # FR-8, 4th Floor,
Bilour Plaza, Peshawar,
Cantt: Peshawar



GOVERNMENT OF KHYBER PAKHTUNKHWA,
BOARD OF REVENUE,
REVENUE & ESTATE DEPARTMENT.

Peshawar dated the 09/11/2020.

NOTIFICATION:

No. Estt:II/SA/310/15/E.P/391/19/_____ In pursuance of Service Tribunal judgment dated 01.04.2019 read with order dated 19.08.2020, the promotion order of Mr. Bashir Ullah as Superintendent office of the Deputy Commissioner Bannu notified with immediate effect on 08.07.2015 may be read promoted as Superintendent w.e.f 18.06.2013.

Note:- Commissioner Bannu Division may make further arrangement of the arrears if any at his own level.

By order of
Senior Member

No. Estt:II/SA/310/15/E.P/391/19/ 28858-61

Copy forwarded to the:-

1. Commissioner Bannu Division, Bannu for necessary action.
2. Deputy Commissioner Bannu.
3. District Accounts Officer Bannu.
4. Officer concerned.


Assistant Secretary (Estt)

BEFORE THE PESHAWAR HIGH COURT BANNU BENCH.

Execution Petition No. 391/2019.

Mr. Bashir Ullah, Superintendent Deputy Commissioner office Bannu.....Petitioner


VERSUS

Senior Member Board of Revenue and others.....Respondents

PARAWISE REPLY OF RESPONDENT NO. 1, 2 & 3 ON EXECUTION PETITION IS AS UNDER.

1. Incorrect. Divisional Cadre Ministerial Service Rules were notified on 23.01.2015 after proper approval of Standing Service Rules Committee with further approval of the Chief Secretary vide which the post of Superintendent was declared the District Cadre Post (Annexure-A). On 27.06.2019 the said rules have further been amended and the post of Superintendent has been declared as Divisional Cadre post (Annexure-B) as prayed by the appellant in his appeal.
2. Correct to the extent of Judgment dated 01.04.2019 and amendments have been notified on 27.06.2019.
3. Incorrect. The judgment dated 01.04.2019 has already been implemented by declaring the post of Superintendent as Divisional Cadre post.
4. As in Para-3 above.
5. As in preceding Paras.
6. As in Para-2 & 3 above.

Since the notification dated 23.01.2015 has been reviewed and the post of Superintendent has been declared as Divisional Cadre post as prayed in appeal of the appellant. Beside, the appellant has been promoted as Superintendent on his own turn on availability of vacancy (Annexure-C) with immediate effect as according to Para-VI of the Promotion Policy, 2009, promotion will always be notified with immediate effect (Annexure-D) and has been given seniority with effect from the date of his regular promotion. According to Rule 8(4) of the Khyber Pakhtunkhwa Civil Servants Act, 1973 seniority in a post, service or cadre to which a Civil Servant is promoted shall take effect from the date of regular appointment to that post. The order of this Tribunal dated 27.06.2019 has been implemented in letter and spirit, therefore the Execution Petition of the appellant having no legal grounds may be rejected.


Senior Member

GOVERNMENT OF KHYBER PAKHTUNKHWA,
BOARD OF REVENUE,
REVENUE & ESTATE DEPARTMENT

Peshawar Dated the 23/01/2015

NOTIFICATION

No. 2074/Estt:III/135/SSRC. In pursuance of provisions contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa, Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Revenue & Estate Department, in consultation with Establishment Department and the Finance Department, hereby lays down the method of recruitment qualification and other condition specified in column 3 to 5 of the Appendix to this Notification and applicable to posts borne on the cadre strength of Deputy Commissioners specified in column 2 of the said Appendix.

APPENDIX

S.No	Nomenclature of posts with BPS	Minimum qualification for appointment by initial recruitment	Age Limit	Method of Recruitment
1	2	3	4	5
1.	Superintendent (BPS-17)		By promotion, on the basis of seniority-cum-fitness, from amongst the Assistants (BPS-16) of the district concerned with atleast five years service in the offices of respective Deputy Commissioner and Political Agents.

	Senior Scale Stenographer (BPS-16)	(i) At least Second Class Bachelor's Degree, from a recognized university; (ii) a speed of 70 words per minute in shorthand in English and 45 words per minutes in typing; and (iii) Knowledge of computer using MS Word, MS Excel.	20 to 32 years	(a) Sixty percent by promotion, on the basis of seniority-cum-fitness, from amongst the Stenographers with atleast five years service as such in the offices of respective Deputy Commissioners and Political Agents; and (b) forty percent by promotion, on the basis of seniority-cum-fitness, from amongst the Computer Operators with atleast five years service as such in the offices of respective Deputy Commissioners and Political Agents: Provided that if no suitable person is available for promotion then by initial recruitment.
3.	Assistant (BPS-16)	At least Second Class Bachelor's Degree from a recognized University.	20 to 30 years	(a) Seventy five percent by promotion, on the basis of seniority-cum-fitness, from amongst the Senior Clerks with atleast five years service as Junior and Senior Clerk in the Offices of Deputy Commissioners and Political Agents of district concerned; and (b) twenty five percent by initial recruitment from amongst the candidates of the district concerned.
4.	Head Clerk (BPS-14)	By transfer from amongst Senior Clerks (BPS-14) of the district concerned.
5.	Stenographer (BPS-14)	(i) At least Second Class Intermediate or equivalent qualification from a recognized Board;	18 to 30 years	By initial recruitment from amongst the candidates of the district concerned.

		(ii) a speed of 50 words per minute in shorthand in English and 35 words per minute in typing; and (iii) knowledge of computer in using MS Word, MS Excel.		
6.	Senior Clerk (BPS-14)		By promotion, on the basis of seniority-cum-fitness, from amongst the Junior Clerks of the district concerned with atleast two years service as such.
7.	Computer Operator (BPS-12)	(i) At least Second Class Bachelor's Degree in Computer Science/ Information Technology(BCS/BIT four years), from a recognized university; (ii) 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 28 years	By initial recruitment from amongst the candidates of the district concerned.
8.	Pesh Imam (BPS-12)	Sanad in Dars-e- Nizami or a Sanad of Fazail-e-Arabi Note: Preference will be given Hafiz-e-Quran.	18-to 32 years	By initial recruitment from amongst the candidates of the district concerned.
9.	Sub Engineer (BPS-11)	Diploma in Associate Engineering in Civil Technology from Board of Technical Education with certificate in Computer Aided Design (CAD) from recognized Institution.	18-30 years	By initial recruitment from amongst the candidates of the district concerned.
10.	Junior Clerk (BPS-11)	(i) At least Second Class Secondary School Certificate 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 percent by promotion, on the basis of seniority-cum-fitness, from amongst the Qasids and Naib Qasids including holders of other equivalent posts in the district concerned with two years service as such, who have passed Secondary School Certificate Examination; and (b) sixty seven percent by initial recruitment from

				<p>the candidates of the district concerned.</p> <p>Note: For the purpose of promotion there shall be maintain a common seniority list of Qasid and Naib Qasid etc with reference to the date of their appointment:</p> <p>Provided that no separate seniority list of Matric and non-matric BS-1 (Class-IV) employees can be maintained being single cadre. Their seniority shall be fixed with reference to the date of their regular appointment.</p> <p>Provided further that where a senior official does not possess the requisite qualification at the time of filling up a vacancy, the official next junior to him possession the requisite qualification shall be promoted in preference to the senior official or officials.</p>
11.	Reader/Record Keeper (BPS-7)	At least second division in Secondary School Certificate or equivalent qualification from a recognized Board.	18 to 30 years	By initial recruitment from amongst the candidates of the district concerned.
12.	Alhamad (BPS-5)	At least Second Class Secondary School Certificate or equivalent qualification from a recognized Board.	18-30 years	By initial recruitment from amongst the candidates of the district concerned.
13.	Driver (BPS-4)	Literate having LTV driving license issued by the competent authority. Preference will be given to those who have sufficient experience in driving, repair and maintenance of vehicles.	18-32 years	By initial recruitment from amongst the candidates of the district concerned.
14.	Khadim (BPS-4)	Literate. Note: Preference will be given to Hafiz-e-Quran	18-32 years	By initial recruitment from amongst the candidates of the district concerned.

15.	Process Server (BPS-2)	Literate.	18-32 years	By initial recruitment from amongst the candidates of the district concerned.
16.	Qasid (BPS-2)		---	By promotion on the basis of Seniority-cum-fitness, from amongst the Naib Qasids with two years as such.
17.	Naib Qasid/ Chowkidar/Sw. eeper/ Mali (BPS-1)	Literate.	18-32 years	By initial recruitment from amongst the candidates of the district concerned."

Sd/-

SECRETARY TO GOVERNMENT OF
KHYBER PAKHTUNKHWA
REVENUE & ESTATE DEPARTMENT

No. 2075-14/Estt:I/II/135/SSRC

Copy forwarded for information and necessary action to the:-

1. Secretary to Government of Khyber Pakhtunkhwa Establishment Department.
2. Secretary to Government of Khyber Pakhtunkhwa Finance Department.
3. Secretary to Government of Khyber Pakhtunkhwa Law Department.
4. Secretary Khyber Pakhtunkhwa Public Service Commission.
5. Registrar Peshawar High Court.
6. Accountant General Khyber Pakhtunkhwa.
7. All Commissioners / Political Agents in Khyber Pakhtunkhwa.
8. All Deputy Commissioners, in Khyber Pakhtunkhwa.
9. Private Secretary to Minister for Revenue Khyber Pakhtunkhwa.
10. Controller, Government Printing Press Peshawar with the request to publish the above notification in the official Gazette and supply 50 printed copies thereof to the undersigned for record.


DEPUTY SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA
REVENUE & ESTATE DEPARTMENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Execution Petition No. 391/2019 in Service Appeal No. 310/2015

Bashir Ullah Khan..... Appellant

VS

Chief Secretary Khyber Pakhtunkhwa and Others..... Respondents.

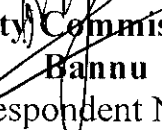
Respectfully sheweth:

Joint Para wise comments/reply of respondents No. 4 are as under:-

Facts

1. Correct to the extent that the appellant has filed an appeal before Service Tribunal against the order dated 07.04.2015.
2. Correct to the extent of judgment dated 01.04.2019.
3. The post of superintendent has been declared by the Government as Divisional Cadre post.
4. As in Para 3 above.
5. As in preceding Paras.
6. As in Para 2 & 3 above.

In view of the above facts and circumstances, it is therefore, requested that execution petition may kindly be dismissed.


Deputy Commissioner,
Bannu
Respondent No.4

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

Execution Petition No. 391/2019.

Mr. Bashir Ullah, Superintendent Deputy Commissioner office Bannu.....Petitioner.

VERSUS

Senior Member Board of Revenue and others.....Respondents.

**PARAWISE REPLY OF RESPONDENT NO. 1, 2 & 3 ON EXECUTION
PETITION IS AS UNDER.**

1. Incorrect. Divisional Cadre Ministerial Service Rules were notified on 23.01.2015 after proper approval of Standing Service Rules Committee with further approval of the Chief Secretary vide which the post of Superintendent was declared the District Cadre Post (Annexure-A). On 27.06.2019 the said rules have further been amended and the post of Superintendent has been declared as Divisional Cadre post (Annexure-B) as prayed by the appellant in his appeal.
2. Correct to the extent of Judgment dated 01.04.2019 and amendments have been notified on 27.06.2019.
3. Incorrect. The judgment dated 01.04.2019 has already been implemented by declaring the post of Superintendent as Divisional Cadre post.
4. As in Para-3 above.
5. As in preceding Paras.
6. As in Para-2 & 3 above.

As the appellant was permanent employee of Deputy Commissioner Office Bannu: his case could not be placed before Departmental Promotion Committee as District Cadre Rules were not available prior to 23.01.2015. The case of the appellant for promotion as Superintendent was placed before Departmental Promotion Committee on 16.12.2014, wherein it was decided to place the case of appellant before the Departmental Promotion Committee after the District Cadre Ministerial Service Rules approved by the Government and notified by the Department (Annexure-C). The case of the appellant was not considered on the basis of joint seniority list at Divisional level, as majority of DPC members were of the view that promoting an Assistant of Deputy Commissioner office against vacancy in Commissioner office shall deprive the Assistants of Commissioner office from promotion. The Assistants of Commissioner office were not eligible for promotion against vacancies in districts, therefore the removal of anomaly was processed for approval of SSRC.

Now the notification dated 23.01.2015 has been reviewed and the post of Superintendent has been declared as Divisional Cadre post as prayed in appeal of the appellant. Beside, the appellant has been promoted as Superintendent on his own turn on availability of vacancy (Annexure-D) in Deputy Commissioner office Bannu with immediate effect as according to Para-VI of the Promotion Policy, 2009, promotion will always be notified with immediate effect (Annexure-E) and has been given seniority with effect from the date of his regular promotion. According to Rule 8(4) of the Khyber Pakhtunkhwa Civil Servants Act, 1973 seniority in a post, service or cadre to which a Civil Servant is promoted shall take effect from the date of regular appointment to that post. The order of this Tribunal dated 27.06.2019 has been implemented in letter and spirit, therefore the Execution Petition of the appellant having no legal grounds may be rejected.


Senior Member

GOVERNMENT OF KHYBER PAKHTUNKHWA,
BOARD OF REVENUE,
REVENUE & ESTATE DEPARTMENT

Peshawar Dated the 27/06/2019

NOTIFICATION

No. Estt: I/II/135/SSRC /

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, the Revenue & Estate Department in consultation with the Establishment Department and Finance Department, hereby directs that in this Department's Notification No. 5869/Admn:I/II/296/Amendment, dated: 13.06.2006, the following further amendments shall be made, namely:

AMENDMENTS

In the Appendix,-

- (a) against Serial No. 1, in column No. 5, for the existing entry, the following shall be substituted, namely:

"By promotion, on the basis of seniority cum-fitness, from amongst the Assistants with five years' service as such in the offices of Commissioners and Deputy Commissioners on the basis of joint seniority list of Assistants of the Division concerned.";

- (b) against Serial No. 2, in column No. 5, for the existing entry the following shall be substituted, namely:

"By promotion, on the basis of seniority cum-fitness, from amongst the Senior Scale Stenographers with at least five years' service as such in the offices of the Commissioners and Deputy Commissioners at Divisional level."; and

- (c) against Serial No. 7A, in column No. 5, for the existing entry, the following shall be substituted, namely:

"By transfer from amongst Senior Clerks of the office of the Commissioner of the Division concerned."

Sd/-

SECRETARY TO GOVERNMENT OF
KHYBER PAKHTUNKHWA
REVENUE & ESTATE DEPARTMENT

MINUTES OF THE DEPARTMENTAL PROMOTION COMMITTEE MEETING.

A meeting of Departmental Promotion Committee was held on 16.12.2014 at 11.00 am in the office of Secretary Revenue & Estate Department under his Chairmanship for consideration of the promotion of Assistant (BPS-16) to the post of Superintendent (BPS-17) in Bannu Division. Following attended.

1. Mr. Irfanullah Wazir,
Deputy Secretary,
Finance Department.

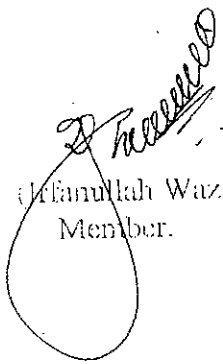
Member

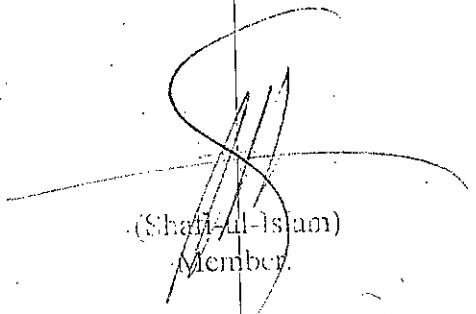
2. Mr. Shafi-ul- Ahmad,
Section Officer (Regulation-IV),
Establishment Department.

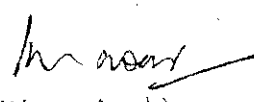
Member

ITEM No.1. Promotion of Assistant BPS-16 to the post of Superintendent BPS-17 in Bannu Division.

During introduction of the members, it was pointed out that Mr. Zahoor Ahmad Accounts Officer (F&P) Deputy Commissioner, Office Bannu was not legally authorized by Commissioner, Bannu Division to represent him in the meeting. The committee members noted that District Cadre Ministerial Service Rules have also not been notified by the Department, therefore, it was unanimously agreed that the promotion case of Assistant to the post of Superintendent BPS-16 may be placed before the Departmental Promotion Committee after the District Cadre Ministerial Service Rules have been approved by Government and notified by the Department.


(Irfanullah Wazir)
Member.


(Shafi-ul-Islam)
Member.


(Waqar Ayub)
Chairman.

GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT

Peshawar dated the 8/07/2015

NOTIFICATION

No. Estt:II/DPS/Suptd:/_____ On the recommendation of Departmental Promotion Committee, the following Assistant (BS-16) of the offices mentioned against their names are promoted as Superintendent (BS-17) on regular basis with immediate effect:-

S.No.	Name of official	Offices
1.	Amir Jan, Assistant	Commissioner office Bannu
2.	Bashirullah Khan, Assistant	Deputy Commissioner office Bannu
3.	Sultan Bahadur, Assistant	Deputy Commissioner office Malakand

Consequent upon their promotion, they will be on probation for a period of one year in terms of Section-6(2) of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule 15 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules-1989.

Sd/-
Senior Member

End: No. Estt:II/DPS/Suptd:/ 16522-26

Copy forwarded to the: -

1. Commissioner Bannu & Malakand Division with the request to issue posting orders of the officials.
2. Deputy Commissioners Bannu and Malakand District.
3. District Accounts Officer, Bannu and Malakand District.
4. Officials concerned.
5. Office Order File.

Secretary-I

ESTA CODE [Establishment Code Khyber Pakhtunkhwa]

Inter-se-seniority in the lower grade can be determined, the officer older in age shall be treated senior.

- (e) If a civil servant is superseded he shall not be considered for promotion until he earns one PER for the ensuing one full year.
- (f) If a civil servant is recommended for promotion to the higher basic scale/post by the PSB/DPC and the recommendations are not approved by the competent authority within a period of six months from such recommendations, they would lapse. The case of such civil servant would require placement before the PSB/DPC afresh.

VI. Date of Promotion:

Promotion will always be notified with immediate effect.

VII. Notional Promotion:

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

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

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

IX. Promotion in case of pending investigations by NAB:

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

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