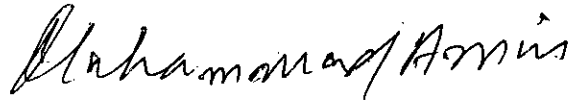


03.04.2019

Learned counsel for the petitioner present. Mr. Mian Amir Qadir learned District Attorney alongwith Jan Bakhsh Said Superintendent present. Learned counsel for the petitioner furnished copy of ~~office~~ order dated 14.02.2019 and stated that the grievance of the petitioner has been redressed and is no more interested in the present petition.

In view of the above, the present petition is dismissed being not pressed. No order as to costs. File be consigned to the record room.



(M. Amin Kundi)
Member
Camp Court, Swat



(M. Hamid Mughal)
Member
Camp Court, Swat

ANNOUNCED.

03.04.2019

Application No. 353/2018 under Section 12(2) CPC.

06.03.2019


Counsel for the applicants present.

The learned counsel for the applicants vehemently contended that the proceedings in Service Appeal No. 546/2017 were taken at the back of applicants. They were, on 05.07.2018, placed ex-parte although no notice for appearance was ever sent to them.

In view of the arguments of learned counsel, notice of instant application be issued to the respondents. The original record of Service Appeal No. 546/2017 shall also be requisitioned for the next date. Adjourned to 03.04.2019 before the D.B at camp court, Swat.

The application is accompanied by another application for orders restraining the official respondents from preparing the seniority list in pursuance to the judgment under question. Notice of application be also given to the respondents for the next date.


Member


Chairman
Camp Court, Swat

08.01.2019

Petitioner in person present and requested for adjournment on the ground that his counsel is not available today. Adjourned. To come up for further proceeding on 05.03.2019 before S.B at camp court Swat.


MA
(Muhammad Amin Khan Kundi)
Member
Camp Court Swat

05.03.2019

Counsel for the petitioner present.

By way of instant miscellaneous application the petitioner has questioned the validity of judgment of this Tribunal passed in Service Appeal No. 546/2017 under Section 12(2) CPC.

The impugned judgment has been passed by a Division Bench, therefore, instant application be also laid before the D.B on 06.03.2019 at camp court, Swat.


Chairman
Camp Court, Swat

FORM OF ORDERSHEET

Court of _____

Misc. Application No. 353/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	02/10/2018 3-10-18	<p>The application U/S 12(2) CPC submitted by Mr. Fazal Ullah and 6 others through Mr. Nawabzada Advocate, may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR 11/10/18.</p> <p>This application be put up before S. Bench on <u>19-10-2018</u></p> <p style="text-align: right;"><i>[Signature]</i> MEMBER</p>
2-	19.10.2018	<p>Main Service Appeal bearing No. 546 of the year 20147 was heard at Camp Court Swat. The present case, therefore be sent to the learned Chairman for appropriate orders.</p> <p style="text-align: right;"><i>[Signature]</i> Member</p> <p>This Misc. application pertains to territorial limits of Malakand Division, therefore, is fixed for further proceedings on 08.01.2019 before S.B at camp court Swat.</p> <p style="text-align: right;"><i>[Signature]</i> Chairman</p>
	23.11.2018 23-11-2018	

BEFORE CHAIRMAN SERVICE TRIBUNAL, PESHAWAR.

misc. Application no. 353/2018

C. M No. _____/2018

In _____

Service Appeal No. 546 of 2017

Fazal Ullah and others.....Appellants

Versus

District Education Officer (Female) Dir Lower & others

.....Defendants

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3.	Earlier Service Appeal No. 546/2017	9-12
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5.	Notices to respondent	15-18
6.	Judgment dated 06/09/2018 and order sheets	19-23
7.	Notification dated 02/08/2017	0-24
8.	Judgment dated 06/02/2017	25-29
9.	Wakalat Nama	

Applicants

Fazlullah and others

Through:

Arshad
Arshad Hussain Yousafzai
Advocate Supreme Court

&

Nawabzada
Nawabzada

Advocate, Peshawar.

Cell No. 0307-5992006

Dated: - 02-10-2018

BEFORE CHAIRMAN SERVICE TRIBUNAL, PESHAWAR.

Misc: application no. 353/18

C. M No. _____/2018

In

Service Appeal No. 546 of 2017

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1137

Dated 2-10-18

1. Fazal Ullah (Junior Clerk) Presently posted at GGHS Beyarai Dir Lower.
2. Muhammad Nazeer (Junior Clerk) Presently posted at GGHS Bakh Kandai, Dir Lower.
3. Fazal Mula Junior Clerk) Presently posted at GGHS Badwan Dir Lower.
4. Muhammad Zamin (Junior Clerk) Presently posted at GGHS Kotigram Dir Lower.
5. Muhammad Sadiq (Junior Clerk) Presently posted at GGHS Khanabad (Dukrai) Dir Lower.
6. Aurang Zeb (Junior Clerk) Presently Posted at SDEO (F) Office Samar Bagh Dir Lower.
7. Asil Muhammad (Junior Clerk) Presently Posted GGHS Osakai, Dir Lower.Applicants

Versus

1. District Education Officer (Female) Dir Lower.
2. Director Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. Fazal Malik (Naib Qasid) Presently Posted District Education Office (F) Dir Lower.Respondents

=====

APPLICATION UNDER SECTION 12 (2) CODE OF CIVIL
PROCEDURE 1908, BY CHALLENGING THE VALIDITY OF
ORDER / JUDGMENT PASSED BY THIS HONOURABLE
TRIBUNAL VIDE ORDER DATED 06.09.2018, WHERE BY THE

APPLICANTS BEING NECESSARY PARTY TO THE PROCEEDINGS WERE CONDEMD UNHEARD AND THE ORDER / JUDGMENT WAS OBTAINED ON THE BASIS OF FRAUD AND MIS-REPRESENTATION BY THE PRIVATE RESPONDENT NO. 3 NAMELY FAZAL MALIK.

=====

Respectively sheweth:

1. That the applicants are working in the education department and has rendered valuable services, upto the utmost satisfaction of their superior officers.
2. The applicant was promoted as Junior Clerk vide order dated 05.12.2016 by the department being one of the senior most class-IV employee as employees from serial No.1 to Serial No.11 of the seniority list were held eligible and entitled for promotion whereas the appellant being the junior most employee was not considered for promotion as his name was placed on Serial No.51 of the seniority list.
3. That being aggrieved from the above-mentioned order dated 05.12.2016, appellant namely Fazal Malik filed the above-mentioned appeal before this Honorable Tribunal, wherein he challenged the promotion order of the applicants and his other colleagues and the applicants were also arrayed in the column of respondents No. 3 to 9.
4. That during the course of proceedings the applicant (respondent) was not properly served and was proceeded exparte and ultimately the appeal was allowed by this Honorable Tribunal vide order dated 06.09.2018, wherein the promotion order of the applicant dated

05.12.2016 was set aside without affording an opportunity of hearing to the applicant, thus they were condemned unheard.

5. That the appellant raised the contention that the applicant being 3rd divisioner in the S.S. C examination is not entitled to the promotion whereas the appellant being 2nd divisioner SSC has superior rights to be promoted under the rules, which amounts to mis-representation on his part as according to Notification issued on dated 2nd August, 2017, provision contained in Sub-rule 2 of Rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment , promotion and Transfer) Rules 1989, wherein amendment has been made in the said rules and promotion has been based on seniority-cum-fitness along-with two years service and as such having SSC qualification. Hence there is no criterion of 2nd or 3rd divisioner employees. (Copy of the Notification date 2nd August 2017 is attached herewith).
6. That the appellant has obtained the order / Judgment from this Honorable Tribunal through Mis-representation and fraud, thus the same is liable to be set aside.
7. That the applicant were not aware of any proceedings before this Honourable Tribunal and had no knowledge of any order / judgment having being passed against him.
8. That the appellant has obtained the order / judgment by fraud and misrepresentation in as much as no effort was made to serve the applicant hence on this score the order / judgment dated 06.09.2018 is liable to be set aside.
9. That the appellant by concealing the relevant facts has obtained the order / judgment which has been obtained by fraud and

misrepresentation moreover, the appellant has concealed amendment made in the relevant Rules from this Honorable tribunal in order to commit fraud.

10. That under the circumstances, the order / judgments dated 06.09.2018 recorded by this Honorable tribunal is against the facts, material on the record and law on the subject and the same is liable to be set aside.
11. That the applicants craves permission of this Honourable Court to advance any other ground at the time of hearing and to submit any other arguments/documents if necessary, in support of this application.

It is, therefore, most humbly prayed that on acceptance of this application under section 12 (2) CPC the order / judgment dated 06.09.2018 may graciously be set aside being obtained on fraud and mis-representation of law and facts

Any other relief, with this Honorable Tribunal deemed just and proper may also be granted to the applicants not specifically prayed for herein.

Through:

Applicants
Fazlullah and others


Arshad Hussain Yousafzai

Advocate Supreme Court

&
Nawabzada

Advocate, Peshawar.

Dated: - 02-10-2018

CERTIFICATE:

Certified that as per information furnished by my client no such like 12 (2) CPC application on the subject has earlier been filed before this hon'ble tribunal.


ADVOCATE

BEFORE CHAIRMAN SERVICE TRIBUNAL, PESHAWAR.

C. M No. _____/2018

In

Service Appeal No. 546 of 2017

Fazal Malik (Naib Qasid).....Appellant

Versus

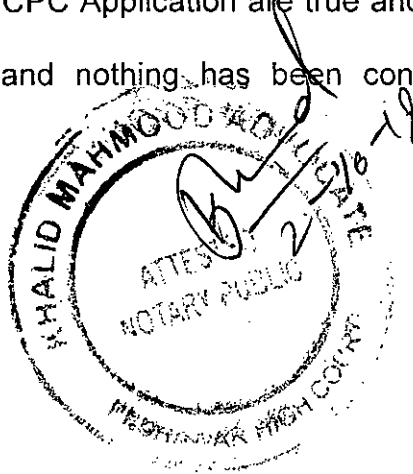
District Education Officer (Female) Dir Lower & others

.....Defendants

=====

AFFIDAVIT

I, Fazlullah (Junior Clerk) presently posted at Govt Girls High School Biarai, Lower Dir, do hereby solemnly affirm and declare on oath that the contents of instant 12 (2) CPC Application are true and correct to the best of my knowledge and believe and nothing has been concealed from this hon'ble Tribunal.



Fazlullah
DEPONENT

BEFORE CHAIRMAN SERVICE TRIBUNAL, PESHAWAR.

C. M No. _____/2018

In

Service Appeal No. 546 of 2017

Fazal Malik (Naib Qasid).....Appellant

Versus

District Education Officer (Female) Dir Lower & others

.....Defendants

**APPLICATION FOR RESTRAINING THE OFFICIAL
RESPONDENTS TO PREPARED THE SENIORITY LIST
ON THE BASIS OF POLICY DATED 28/01/2013.**

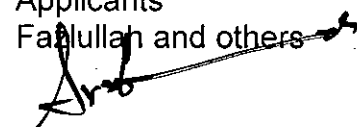

=====

Respectively sheweth:

1. That the applicants submitting the instant 12 (2) CPC Petition where no date has been fixed so far.
2. That after the introducing of the policy dated 02/08/2017 the applications are entitled to be consider their promotion on the strength of policy mentioned above.

3. That the respondent No. 3 is at Serial No. 51 and he has no expectancy to be consider so if the official respondents adopt the promotion process on the strength of policy 2013 in existence of the policy 2017 the applicants would suffer.

It is, therefore, humbly prayed that on acceptance of this application, the official may kindly be restrained to prepare the promotion process on the strength of policy 2013 till the final disposal of the instant 12 (2) CPC Application. .

Applicants
Fazlullah and others
Through: 
Arshad Hussain Yousafzai
Advocate Supreme Court
& 
Nawabzada
Advocate, Peshawar.

Dated: - 02-10-2018

BEFORE CHAIRMAN SERVICE TRIBUNAL, PESHAWAR.

C. M No. _____/2018

In

Service Appeal No. 546 of 2017

Fazal Malik (Naib Qasid).....Appellant

Versus

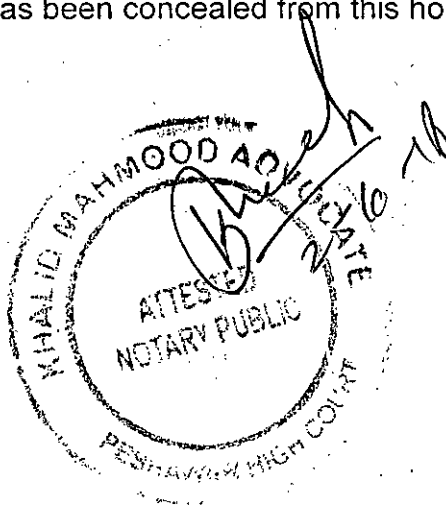
District Education Officer (Female) Dir Lower & others

.....Defendants

=====

AFFIDAVIT

I, Fazlullah (Junior Clerk) presently posted at Govt Girls High School Biarai, Lower Dir, do hereby solemnly affirm and declare on oath that the contents of instant application are true and correct to the best of my knowledge and believe and nothing has been concealed from this hon'ble Tribunal.



Fazlullah
DEPONENT

9

**BEFORE THE KHYBER PAKHTOON KHWA SERVICES
TRIBUNAL, PESHAWAR**

Service Appeal No. 546 /2017.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 528

Dated 19-5-2017

Fazal Malik (Naib Qasid)

Presently Posted at District Education Office (Female)

Dir Lower.....Appellant

V E R S U S

1. District Education Officer (Female) Dir (Lower).
2. Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.

↓ 3. Muhammad Nazir (Junior Clerk)

Presently posted at GGHS Bakh Kandai, Dir Lower.

↓ 4. Fazal Mula (Junior Clerk)

Presently posted at GGHS Badwan Dir Lower.

↓ 5. Muhammad Zamin (Junior Clerk)

Presently posted at GGHS Kotigram Dir Lower.

↓ 6. Muhammad Sadiq (Junior Clerk)

Presently posted at GGHS Khanabad (Dukrai) Dir Lower.

↓ 7. Aurang Zeb (Junior Clerk)

Presently posted at SDEO (F) Office Samar Bagh Dir Lower.

↓ 8. Fazlullah (Junior Clerk)

Presently posted at GGHS Beyarai Dir Lower.

↓ 9. Asil Muhammad (Junior Clerk)

Presently posted GGHS Osakai Dir Lower.....Respondents



Private
Responses
from 3 to 9
are placed
Ex-parte
vide order
sheet date
5/7/18

Filed to-day

Registrar

19/5/17.

Re-submitted to-day
Filed.

Registrar

26/5/17.

APPEAL UNDER SECTION 4 OF KHYBER
PAKHTUNKHWA SERVICES TRIBUNAL ACT
1974 AGAINST THE IMPUGNED OFFICE
ORDERS DATED: 05.12.2016 THROUGH
RESPONDENT Nos. 3 to 9 WERE PROMOTED
TO THE POSTS OF JUNIOR CLERK AGAINST
THE LAW AND RULES.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

PRAYER IN APPEAL:

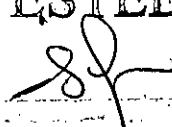
On acceptance of this appeal the impugned promotion Order dated:05.12.2016 of respondents No.3 to 9 may kindly be set aside and the appellant may kindly be promoted to next higher rank i-e Junior Clerk according to 33% quota reserve for Class-IV with all back benefits of service.

Respectfully Sheweth:

1. That initially the appellant joined the respondent/department on 16.06.2008 as Naib Qasid and as such performing his duties with zeal and zest and till date no complaint what so ever has been recorded from any quarter.(Copy of appointment order is annexure-A)
2. That the appellant was hopeful that soon he will be promoted to next higher rank i-e junior clerk according to 33% quota reserve for Class-IV employees but with utmost surprise of the appellant vide impugned office order dated:05.12.2016, respondents Nos.3 to 9 were promoted to the posts of junior clerks on reserved 33% quota, that too without caring for the relevant rules and policy.(Copies of impugned office order dated:05.12.2016 and policy are annexure-B)
3. That when the appellant got knowledge about the impugned promotion order so against the same, the appellant filed departmental appeal before the Resp No.2 but same was not decided within statutory period (Copy of departmental appeal is annexure-C)

That being aggrieved from the impugned orders, the appellant approached this Hon'ble Tribunal on the following grounds amongst other inter alia:

ATTESTED


EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

GROUNDS:

- A. That the impugned promotion order is against facts, law and relevant policy, hence untenable being unjust and unfair.
- B. That the whole departmental proceedings of departmental promotion committee was based on personal whims and wishes and they have promoted their blue eyed without caring for the policy and rules.
- C. That in other districts of the province, the respondents adopted different criteria for promotion to the rank of junior clerk according 33% reserved quota of Class-IV, but in the appellant's district/office the respondents have totally violated the relevant policy and rules and promoted his nears and dears which on one hand is classical example of discrimination and on others is illegal. (Copies selection process for promotion of other district is annexure-D)
- D. That any other ground may be adduced during the course of argument, with the kind permission of this Hon'ble Court.

It is, therefore, most humbly prayed, that *On acceptance of this appeal the impugned promotion Order dated:05.12.2016 of respondents No.3 to 9 may kindly be set aside and the appellant may kindly be promoted to next higher rank i-e Junior Clerk according to 33% quota reserve for Class-IV with all back benefits of service.*

Certified to be true copy
EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

Dated: 16/05/2017

Appellant

Fazal Malik

Through

Shams ul Hadi
 Advocate, Peshawar.

12

BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE
TRIBUNAL, PESHAWAR

Service Appeal No. _____/2017.

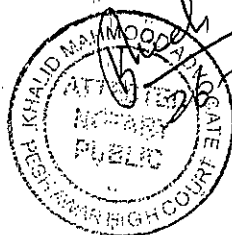
Fazal Malik.....Appellant

V E R S U S

District Education Officer(F) and others.....Respondents

AFFIDAVIT

I, **Shams ul Hadi**, Advocate, Peshawar do hereby as per information conveyed to me by my client solemnly affirm and declare that the contents of the **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



→
ADVOCATE

RE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR/CAMP
COURT SWAT

SERVICE APPEAL NO. 848 /2017.

Fazal Malik S/O Munir Khan Village Shekawlai Tehsil Timergara District Dir Lower.
.....Appellant

VERSUS

1. District Education Officer female Dir lower at Timergara
2. Director (Elementary & Secondary Education), Khyber Pakhtunkhwa Peshawar.
3. Muhammad Nazir JC GGHS Bagh Kandai.
4. Fazal Maula JC GGHS Badwan.
5. Muhammad Zamin JC GGHS Kotigram.
6. Muhammad Sadiq JC GGHS Khan Abad.
7. Aurang Zeb JC Office of the SDEO (F) Samar Bagh.
8. Fazal Ullah JC GGHS Beyari.
9. Asil Muhammad JC GGHS Osakai.



.....Respondents

PARA WISE COMMENTS/REPLY FOR AND ON BEHALF OF THE RESPONDENTS NO 1, To 9

Respectfully Sheweth:-

Preliminary Objections:-

1. The appellant has got no locus standi or cause of action to file the instant appeal.
2. The appellant has concealed the material fact from this Hon! Able Tribunal, hence liable to be dismissed.
3. The appellant has not approached this Honorable Tribunal with clean hands.
4. The appellant has filed the instant appeal on malafide motives.
5. The instant appeal is against the prevailing laws & rules.
6. This instant appeal is based on malafide intension for gaining illegal and unauthorized service benefits from the respondents

ON FACTS.

Respectfully Sheweth.

1. This para relates to the appellant, hence need no comments.

ATTESTED

[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

51 ✓ 14

Incorrect: Because the appellant is junior one and at S.No. 39 in the seniority for the post of Junior Clerk at time of promotion of the appellant. Only senior most Class-IV employees from S.No. 01 to S.No.11 from seniority list have been promoted for the post of Junior Clerks. (Copy of the Seniority list attached as Annexure A). However the appellant will be promoted to the post of Junior Clerks on his own turn in future under 33% Quota reserved for class-iv employees promotion. The promotion order vide Endost: No. 5421-24 dated 05/12/2016 has been issued as per rules and policy (33% Quota reserved for Class- IV copy attached as annexure B.

3. No Comments.

ON GROUNDS:-

- (A) Incorrect: Because the said promotion order has been issued as per rules and policy and no un-justice has been done with appellant.
- (B) Incorrect: Because in impartial Departmental Promotion committee comprising of 5 Members was constituted/framed for promotion of eligible Class IV employees. They recommended the promotion of seven Class IV employee to the post of Junior Clerks as per rules and policy as well as per Honorable Peshawar High Court Peshawar proceeding/ Judgement. (copy attached as Annexure-C)
- (C) Incorrect: as stated above in Para B.
- (D) ~~Corrects~~ If having any other plea would be argued during arguments with permission of Honorable Court.

It is therefore most humbly requested that in the light of the above mentioned facts, this baseless appeal may kindly be dismissed to discourage such kinds of appellants

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

DIRECTOR ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA PESHAWAR

(Respondent No.02)

Im. d. l. m. g.
DISTRICT EDUCATION OFFICER (F)
DIR LOWER AT TIMERGARA
(Respondent No.01)

*Verified Subject to
connection, attachment of all annexures
and approval of
AAE + Director
15/3/2018*

Date of Presentation of Application _____
 Number of Words 4800
 Copying Fee 26
 Urgent 2
 Total 28
 Name of Copies _____
 Date of Completion of Copy 2-10-2018
 Date of Delivery of Copy 2-10-2018

"A"

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

Regg
No.

APPEAL No.....546..... of 20 17

Fazal Malik

Appellant/Petitioner

Versus

DEO (Female) DIX (Lawyer)

RESPONDENT(S)

Notice to Appellant/Petitioner Fazal Malik (Cumb Daxid)
Presently Posted at District Education
Officer (Female) DIX LAWYER

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 14-8-2017 at 8:00 AM

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

16

“B”

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

No.:

Appeal No. 659 of 20

Balch + Rawan Appellant/Petitioner

Versus

Secy Edm Pesh Respondent

Respondent No. 2

11/9/17
 Notice to:

Director Education ICPIC Peshawar

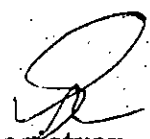
WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 22/8/2017 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

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

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

Given under my hand and the seal of this Court, at Peshawar this 25

Day of 7/17 2017


 Registrar,
 Khyber Pakhtunkhwa Service Tribunal,
 Peshawar.

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

17

"B"

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

No.

TB

Appeal No. 546 of 20

17

Fazal Malik Appellant/Petitioner
Versus

DEO, District Dera Ismael Khan Respondent

Respondent No. 1

Notice to: Dist. Education Officer (Female)
Dera Ismael Khan

WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 21/1/2018 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

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

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

Given under my hand and the seal of this Court, at Peshawar this 21/1/2018

Day of Jan 20 18

(at Camp Area Dera Ismael Khan)

Registrar,

Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

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

"B"

18

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

No.

TB

Appeal No. 546 of 20 17

Fazal Malik Appellant/Petitioner

Versus

DEO, (F) DIX Respondent

Respondent No. 2

Notice to:

Director Ele & Sec. Edn. K.P.K. Pesh.

WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 31/1/2018 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

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

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

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

Day of Jan 20 18

(at Camp Court Swat)

Registrar,

Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

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

15-1-18

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
CAMP COURT SWAT.

Service Appeal No.546/2017

Date of Institution ... 19.05.2017

Date of Decision ... 06.09.2018



Fazal Malik(Naib Qasid)
Presently posted at District Education Office (Female) Dir Lower.
... (Appellant)

VERSUS

1. District Education Officer (Female) Dir (Lower) and 8 others.
... (Respondents)

Mr.Shams Ul Hadi,
Advocate

For appellant.

Mr.Usman Ghani,
District Attorney

For respondents

MR. AHMAD HASSAN,
MR. SUBHAN SHER

MEMBER(Executive)
CHAIRMAN

JUDGMENT

ATTESTED

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for

the parties heard and record perused.

[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal.
Peshawar

FACTS

2. The brief facts are that appellant is aggrieved of promotion order dated 05.12.2006 whereby class-IV employees were promoted (against 33% quota) to the post of Junior Clerks. Feeling aggrieved, the appellant filed departmental which was not responded within the stipulated period, hence, the instant service appeal.

ARGUMENTS

3. Learned counsel for the appellant argued that vide order dated 05.12.2016 respondent no.3 to 9 were promoted to the post of junior clerk against the quota earmarked in the service rules. Those who were promoted were having 3rd division in SSC, whereas 2nd division in SSC was prescribed in the service rules.

Promotion made by the respondents was against the spirit of rules, hence, illegal, unlawful and not sustainable in the eyes of law.

4. Learned District Attorney argued that name of the appellant was reflected at Sr. 51 of the seniority list, while those who got promotion their name were appearing at Sr. no. 1 to 11 of the said list. As such, he was not illegible for promotion. He would be promoted as Junior Clerk on his turn in accordance with the rules.

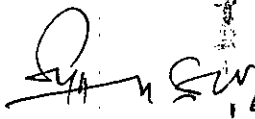
CONCLUSION.


5. It is not disputed that the appellant was not eligible for promotion as Junior Clerk. However, respondents no.3 to 9 considered by the Departmental Promotion Committee in its meeting held on 02.12.2016 were also not eligible for promotion as they did not fulfill the requirements prescribed in service rules. The promoted officials had obtained 3rd division in SSC examination on the other hand as per requirement of service rules only candidates having only 2nd division in SSC were eligible for promotion. As such the Departmental Promotion Committee failed to properly scrutinize the cases of promotion, which were illegal, unlawful and not sustainable in the eyes of law.

6. As a sequel to above, the appeal is accepted and the impugned order dated 05.12.2016 is set aside. Respondents are directed to consider the promotion case afresh strictly in accordance with law and rules. Parties are left to bear their own costs. File be consigned to the record room.

Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ANNOUNCED
06.09.2018


(SUBHAN SHER)
6.9.2018


(AHMAD HASSAN)
Member
Camp court Swat

Chairman, Date of Presentation of Application 2-10-2018

Number of Words 800

Copying Fee 6-00

Urgent 2-00

Total 8-00

Name of Copy 800

Date of Completion 2-10-2018





Date of Delivery of Copy 2-10-2018

Form- A
FORM OF ORDER SHEET

21

Court of _____

Case No. 546/2017

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	26/05/2017	<p>The appeal of Mr. Fazal Malik resubmitted today by Mr. Shamsul Hadi Advocate, may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 56/5/17</p>
2-	29-5-17	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>13-06-2017</u></p> <p style="text-align: right;"> CHAIRMAN</p>
13.06.2017		<p>Clerk of counsel for the appellant present and requested for adjournment. Adjournment granted. To come up for preliminary hearing on 12.07.2017 before S.B.</p> <p style="text-align: right;"> Chairman</p>
		<p style="text-align: center;">ATTESTED</p> <p style="text-align: center;"></p> <p style="text-align: center;">EXAMINER Khyber Pakhtunkhwa Service Tribunal, Peshawar</p>

12.07.2017
12.10.2017

None present on behalf of the appellant. Notice be issued to Counsel for the appellant present and seeks adjournment. Appellant and his counsel for preliminary hearing for 14.08.2017 before S.B. Adjourned. To come up for preliminary hearing on 07.11.2017 before S.B.


(Muhammad Amin, Khan Kundi)
(AHMAD HASSAN)
MEMBER

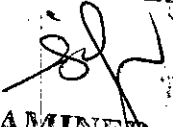
22/8/2017

Clerk of counsel for the appellant present and requested for adjournment as his counsel is not available due to strike of the bar. To come up for preliminary hearing on 13/9/2017 before SB.


(GUL ZEB KHAN)
MEMBER

13.09.2017

Clerk of counsel for the appellant present and seeks adjournment. Granted. To come up for preliminary hearing on 12.10.2017 before S.B.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar


Chairman


12.10.2017

Counsel for the appellant present and seeks adjournment. Adjourned. To come up for preliminary hearing on 07.11.2017 before S.B.


(AHMAD HASSAN)
MEMBER


07.11.2017

None for the appellant present. Notices be issued to the appellant and his counsel. To come up for preliminary hearing on 05.12.2017 before S.B.


(AHMAD HASSAN)
MEMBER

05.12.2017

Counsel for the appellant present and seeks adjournment. Adjourned. To come up for preliminary hearing on 03.01.2018 at Camp court, Swat.


(Gul Zeb Khan)
Member (E)

05.01.2018

Learned counsel for the appellant present. Preliminary arguments heard.

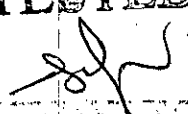
Aggrieved from promotion order dated 05.12.2006 whereby class four servants were promoted (against 33% quota) to the post of Junior Clerks, the appellant (Naib Qasid) has filed the present appeal. Learned counsel for the appellant contended inter alia that the impugned promotion order was issued in violation of law and rules and is also discriminatory.


In the interest of justice the present appeal is admitted for regular hearing, subject to all legal/just objections including limitation.

The appellant is directed to deposit security and process fees within 10 days thereafter, notices be issued to respondents for written reply/comments. To come up for written reply/comments on 31.01.2018 before S.B at camp court Swat.

Appellant Deposited
Security Process Fee

ATTESTED




(Muhammad Hamid Mughal)
Member
Camp Court, Swat

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

31.01.2018

Clerk of the counsel for appellant present and Addl: AG for respondents present. Written reply not submitted. Learned Addl: AG requested for adjournment. Adjourned. To come up for written reply/comments on 07.03.2018 before S.B at Camp Court Swat.

[Signature]
Chairman
Camp Court, Swat

07.03.2018

Clerk to counsel for the appellant and Addl: AG alongwith Mr. Muhammad Shoib, ADD for respondents present. Written reply not submitted. Seeks adjournment. Adjourned. To come up for written reply on 03.04.2018 before the S.B. at camp court, Swat.

07.03.2018

[Faded text]
Chairman
Camp court, Swat
[Faded text]

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Camp court, Swat

ATTACHED

[Handwritten signature]


POSTAL
SERVICE
POSTAL

546/17

23

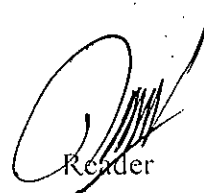
03.04.2018

Clerk of counsel for the appellant and Mr. Usman Ghani, District Attorney alongwith Muhammad Shoaib, ADO for official respondents No. 1 and 2 present and reply filed. None present on behalf of private respondents No. 3 to 9. Last opportunity granted. To come up for written reply/comments of respondents No. 3 to 9 on 08.05.2018 before S.B at camp court, Swat.


Chairman
Camp court, Swat

09.05.2018

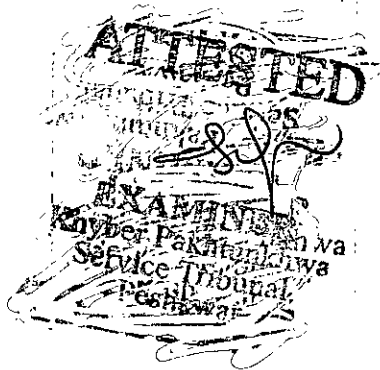
The Tribunal is non-functional due to retirement of the Worthy Chairman. To come up for the same on 05.06.2018 before the S.B at camp court, Swat.


Reader

05.06.2018


Neither the appellant nor his counsel is present. Mr. Usman Ghani, District Attorney for official respondents No. 1 & 2 present. None present on behalf of private respondents No. 3 to 9. Very last chance is given to private respondents No. 3 to 9 for submission of written reply. To come up for written reply on 05.07.2018 before S.B at camp court, Swat.


Chairman
Camp Court, Swat



05.07.2018

Appellant with counsel present. Mr. Muhammad Jan learned Deputy District Attorney for official respondents present. No one present on behalf of private respondents No.3 to 9, hence placed ex-parte. To come up for rejoinder, if any and arguments on 06.09.2018 before the D.B at camp court, Swat.


Chairman
Camp court, Swat.


Order

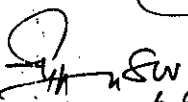
06.09.2018

Appellant Fazal malik in person alongwith his counsel Mr. Shams Ul Hadi, Advocate present. Mr. Usman Ghani, District Attorney for respondents present. Arguments heard and record perused.

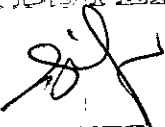
Vide detailed judgment of today of this Tribunal placed on file, the appeal is accepted. In the circumstances, parties are left to bear their own costs. File be consigned to the record room.

Announced:
06.09.2018


Member
Camp Court Swat


Chairman 6.9.2018

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar



24

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

NOTIFICATION

Peshawar, dated the August 2, 2017.

No. SO(PE)4-10/SSRC/Ministerial staff/2013:- 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 Elementary and Secondary Education Department, in consultation with the Establishment Department and the Finance Department, hereby directs that in this Department's Notification No. SO(PE)4-10/SSRC/Ministerial Staff/2013 dated: 28.01.2013, the following amendments shall be made, namely:

AMENDMENTS

In the Appendix,-

(i) Against Sr. No. 9, in column No. 5(a), for the existing entry, the following entry in column 5 (a) shall be substituted:

- a) Thirty three per cent by promotion on the basis of Seniority-Cum-Fitness from amongst the Daftaries, G/Operators, Qasids and Naib Qasids including other equivalent posts in the attached department/offices/institutions with two year service as such having SSC qualification.

SECRETARY

Endst. No. & Date as above.

Copy forwarded to:-

1. The Secretary to Govt. of Khyber Pakhtunkhwa, Establishment Department.
2. The Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department.
3. The Secretary to Govt. of Khyber Pakhtunkhwa, Law Department.
4. The Secretary to Govt. of Khyber Pakhtunkhwa, Public Service Commission Peshawar.
5. The Accountant General, Khyber Pakhtunkhwa Peshawar.
6. The Director (E&SE) Khyber Pakhtunkhwa Peshawar.
7. The Director Education (FATA) Khyber Pakhtunkhwa, Peshawar.
8. The Director Curriculum & Teachers Education Abbottabad.
9. The Director (PITE) Khyber Pakhtunkhwa Peshawar.
10. The Director ESRU, Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
11. The Deputy Director (EMIS) E&SE Department.
12. All Deputy Commissioners in Khyber Pakhtunkhwa.
13. All District Education Officers, Elementary & Secondary Education Khyber Pakhtunkhwa.
14. All District Accounts Officers, Khyber Pakhtunkhwa / Agency Accounts Officers.
15. All Agency Education Officers.
16. P.S to Governor, Khyber Pakhtunkhwa.
17. P.S to Chief Minister, Khyber Pakhtunkhwa.
18. P.S to Chief Secretary, Khyber Pakhtunkhwa.
19. PS to Minister E&SE Khyber Pakhtunkhwa Peshawar.
20. PS to Secretary E&SE Department.
21. Mr. Akbar Khan Mohmand, Provincial President Class-IV Association, Khyber Pakhtunkhwa.
22. Master File.

(NAIK MUHAMMAD)
SECTION OFFICER

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 82 /2015

Ali Bahadar,
Chowkidar, GHS Blambat,
District Dir Lower.....Appellant

K.P.S. Peshawar
Case No. 38
Date 19-1-2015

VERSUS

1. The District Education Officer (Male),
District Dir Lower.
 2. The Director,
Elementary & Secondary Education,
Khyber Pakhtunkhwa,
Dabgari Garden, Peshawar.
3. Bakht Zarin S/o Muhammad Zarin,
presently posted as Junior Clerk
GHS Damtal, District Dir Lower.....Respondents

*Respondent No 3
Presented as per
vide order dated
06-7-15.
Ravi*

SERVICE APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE TRIBUNALS
ACT, 1974 AGAINST THE IMPUGNED ORDER
DATED 19.11.2014 WHEREBY WHILE IGNORING
THE APPELLANT FOR PROMOTION TO THE POST
OF JUNIOR CLERK UNDER THE 33% QUOTA
RESERVED FOR CLASS-IV EMPLOYEES, JUNIORS
TO THE APPELLANT INCLUDING RESPONDENT
NO.3 WERE PROMOTED TO THE POSTS OF JUNIOR
CLERKS AGAINST WHICH APPELLANT
PREFERRED DEPARTMENTAL REPRESENTATION
ON 08.12.2014 BUT THE SAME WAS REJECTED VIDE
LETTER DATED 27.12.2014.

19/1/15

19/1/15

[Signature]

Date of Order or proceedings.	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
2	3
06.02.2017	<p align="center">BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL CAMP COURT SWAT</p> <p align="center">Service Appeal No. 82/2015</p> <p align="center">Ali Bahadar Versus District Education Officer (Male), District Dir Lower and others.</p> <p align="center"><u>MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:</u></p> <p>Counsel for the appellant and Mr. Muhammad Zubair, Senior Government Pleader alongwith Mr. Fayaz ud Din, ADO for respondents present:</p> <p>2. Ali Bahadar, hereinafter referred to as the appellant has preferred the instant service appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against impugned order dated 19.11.2014 vide which he was declined promotion and officials junior to him promoted and where-against his departmental appeal dated 08.12.2014 was rejected on 27.12.2014 and hence the instant service appeal on 19.01.2015.</p> <p>3. Brief facts giving rise to the present appeal are that the appellant was serving as Chowkidar and posted at GHS Blambat, District Dir Lower and his name was enlisted in the seniority at S.No. 29 while that of Fazullah at S.No. 35 and private respondent No. 3 Bakht Zarin at S. No. 71. The said persons were promoted and appellant ignored and hence the instant service appeal.</p> <p>4. Learned counsel for the appellant has argued that the posts were advertized in Daily "Mashriq" on 19.10.2012 wherein applications for initial</p>

appointment against the post of Junior Clerk as well as for promotion from Class-IV employees were advertised. That the appellant was eligible for promotion as Junior Clerk at the time of vacancy falling in 33% quota reserved for promotion of Class-IV employees. That the appellant was declined promotion as he was not having Secondary School Certificate in Second Division. That the policy of passing S.S.C in second division was introduced on 28.01.2013 which could not be given retrospective effect. Reliance was placed on cases law reported as 2015-SCMR-43 (Supreme Court of Pakistan), 2005-SCMR-1785 (Supreme Court of Pakistan), 2013-CLC-839 (Supreme Court AJ&K), 2012-SCMR-864 (Supreme Court of Pakistan), 2016 PLC(C.S)601 (Supreme Court of Pakistan), 2012-SCMR-965 (Supreme Court of Pakistan) and PLD 2014 Peshawar-210.

5. Learned Government Pleader has argued that the policy in vogue at the time of finalization of appointment was followed by the competent authority according to which the appellant was not eligible for promotion as he was having SSC certificate in third Division while the requirement was that of SSC in second division. That the impugned order would therefore warrant no interference.

6. We have heard arguments of learned counsel for the parties and perused the record.

7. It is an admitted fact that the appellant was a class-IV employee of Education Department and was senior-cum-fit at the time of advertisement of the posts of Junior Clerks as he was holding the requisite qualification at the time of the vacancy and its advertisement. The policy was amended on 28.01.2013 and those holding SSC certificates in second division were

considered entitled to promotion. Since the policy could not be given retrospective effect and the same was not in vogue at the time of availability of vacancies of Junior Clerk meant for promotion of class-IV employees and even on the date of advertisement of the same in the newspapers as such we are of the view that the appellant was entitled to promotion against one of the seats meant for promotion of class-IV employees and the impugned order dated 19.11.2014 is, therefore, against law and facts is liable to be set aside.

8. In view of the above we are constrained to accept the present appeal and as a consequence thereof we direct that the appellant be considered for promotion as Junior Clerk against the seats reserved for class-IV employees in accordance with the rules in vogue at the time of advertisement of the said post and in case the appellant is found eligible at the relevant time then he shall be deemed to have been promoted w.e.f. 19.11.2014, in accordance with his position in the seniority list. Parties are left to bear their own costs. File be consigned to the record room.

Approved *off. M. K. ...*

Signature

Signature
Signature
 17.02.2017

1502

Signature
 17.02.2017
 17.02.2017

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) DIR LOWER.
OFFICE ORDER

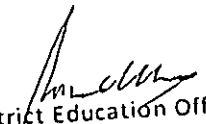
Consequent upon the judgement of August Service Tribunal Khyber Pakhtunkhwa Peshawar dated 6/2/2017 in Service Appeal No,82/2015, Mr, Ali Bahadar Chowkidar GHS Balambat declared eligible for the post of Junior Clerk by the court at the time of advertisement dated 19/10/2012, is hereby promoted to the post of Junior Clerk and further adjusted at GHS Jawzo from the date of his taking over the charge.
 Note;- Charge report should be submitted to all concerned.

(DR. Hafiz Mohammad Ibrahim)
 District Education Officer
 (Male) Dir lower.

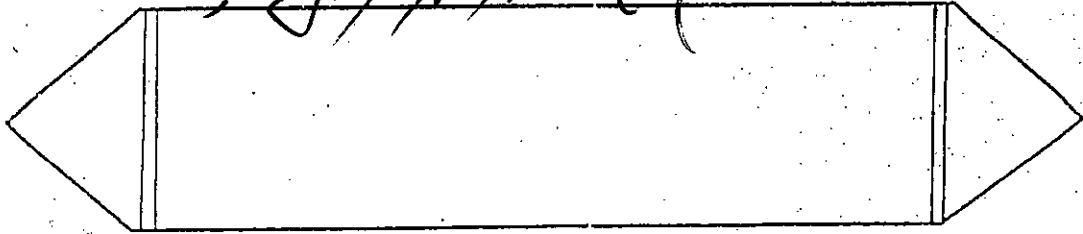
Endst; No. 2687-91 / Dated Timergara the 10 / 3 / 2017

Copy of the above is forwarded to:

1. The Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar.
2. The District Accounts Officer Dir lower.
3. The Principal GHS Balambat.
4. Headmaster GHS Jawzo.
5. The Official concerned.


 District Education Officer
 (Male) Dir lower.

بعد الترخیح سے



2 مخدوم
 فضل اللہ وغیرہ بنام ایجوکیشن
 دیپ نور وغیرہ

موزخہ
 مقدمہ
 دعویٰ
 جرم

باعث تحریر آنکے

سید حفیظ
 Asif Malik
 7, Aurangzeb Rd, Pt. Badar, 15

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ
 آن مقام کے **کسٹومر** کیلئے **ارشد علی دوست** کی درخواست پر **داد** / **سید حفیظ**
 مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
 وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
 بسورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
 زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری کی طرف یا اپیل کی برآمدگی اور منسوخی
 نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
 کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
 ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ
 پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جائزہ التوائے مقدمہ کے سبب سے وہوگا۔
 کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
 مذکور کریں۔ لہذا ادا کالت نامہ لکھ دیا کہ مندر ہے۔

المترقوم _____ ماہ _____ 20____
 العباد العباد

مقام **کسٹومر** کے لئے منظور ہے۔

Advocate ASC

Advocate

Advocate

Mr. Nazam, Pagan, M. Nazam, M. Nazam, M. Nazam, M. Nazam, M. Nazam