

*Execution Petition No. 336/2019
Fazli Rahim Khattak vs Govt*

01.01.2020

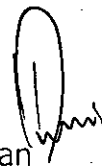
Petitioner in person. Mr. Sajid Superintendent for respondent No. 3 and Mr. Shahab Khattak, Advocate for respondent No. 4 present.

Learned counsel for respondent No. 4 has produced copy of memo dated 26.11.2019 whereby the respondent No. 2 has been sent the Working Paper pertaining to petitioner for further action.

Sufficient time has elapsed while the judgment under implementation has not been executed. Even the representative of respondents No. 1 and 2 is not in attendance today. In the circumstances, respondent No. 2 shall be put on notice for appearance through a responsible officer for next date of hearing. Implementation report shall also be submitted on the adjourned date.

Adjourned to 30.01.2020 before S.B.

Chairman

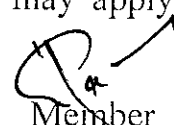


30.01.2020

Petitioner in person present. Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Shahab Khattak Legal Advisor present. Learned AAG stated that the august Supreme Court of Pakistant has suspended the operation of judgment under implementation and to this effect, he submitted copy of order dated 13.01.2020 passed in CP No.558-P of 2017.

In view of above, the present execution petition is adjourned sine die. File of the present execution petition may be kept dormant in the record room till further orders. Either party may apply for restoration/revival of the instant execution petition.

Member



24.10.2019

Nemo for the petitioner. Mr. Zia Ullah Learned Deputy District Attorney (for respondent No. 3) and learned counsel for respondent No. 4 present.

Learned counsel for respondent No. 4 requests for further time to submit the implementation report as the said respondents are short of requisite record.

Adjourned to 22.11.2019 before S.B.


Chairman

22.11.2019

Petitioner in person, Addl. AG alongwith Muhammad Shafiq, Senior Clerk for respondents No. 1 to 3 and counsel for respondent No. 4 present.

Learned counsel for respondent No. 4 states that settlement between the petitioner and the concerned respondent is underway and will be finalized shortly.

Adjourned to 01.01.2020 on which date the respondents shall positively come up with implementation report.

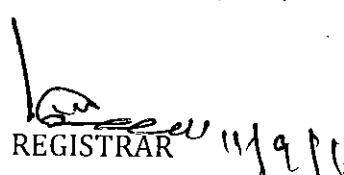



Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 336/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	11.09.2019	<p>The execution petition of Mr. Fazli Rahim Khattak submitted today by him may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR 11/9/19</p>
2-	13/09/19.	<p>This execution petition be put up before S. Bench on <u>27/09/2019.</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	26.09.2019	<p>Petitioner in person present.</p> <p>Issue notices to respondents for submission of implementation report on 25.10.2019 before S.B.</p> <p style="text-align: right;"> Chairman</p>

Said Rasool Badshah

22.10.2019

Petitioner alongwith his counsel and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Shakeel, Superintendent for the respondents present.

Representative of respondents has produced copy of order dated 11.09.2019 whereby the petitioner has been reinstated for the purpose of inquiry. It is also provided in the order that the petitioner did not claim any financial benefits during the reinstatement period.

Learned counsel for the petitioner strongly objects to the content of reinstatement order as say that the same is not in line with the contents under execution. Through the judgment, the order of termination pertaining to the petitioner was set-aside while the respondents were allowed opportunity to conduct de-novo inquiry in accordance with law. The judgment therefore, never required the reinstatement of petitioner merely for the purpose of de-novo inquiry.

In view of the objections of learned counsel for petitioner and also contents of judgment under implementation, the respondents are required to issue/modify reinstatement order in accordance with the relief granted by Tribunal.

Adjourned to 25.11.2019 for further proceeding before S.B.

Chairman

Reprinted.

BEFORE THE KHUYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Execution Petition No 336 / 2019

IN APPEAL NO 240/2013 / ~~2019~~

929

Fazli Rahim Khattak, Ex Lecturer GTVC Gulbahar Peshawar 11-9-2019

.....Petitioner

VERSUS

1. The Govt, of Khuber Pakhtunkhwa Through Chief Secretary, Civil Secretariat, Peshawar
2. The Secretary to Govt, of Khuber Pakhtunkhwa, Industries, Commerce, Min: Development, Labour & Tech: Education Department, Civil Secretariat, Peshawar
3. The Secretary to Govt, of Khuber Pakhtunkhwa, Finance Department, Civil Secretariat, Peshawar
4. The Managing Director, Technical Education and Manpower Training, TEVTA, Khyber Pakhtunkhwa, Attached Department Complex, Khyber Road, Peshawar

.....Respondents

IMPLEMENTATION PETITION FOR DIRECTING THE
RESPONDENT DEPARTMENT TO IMPLEMENT THE ORDER
DATED 16-10-2017 IN APEAL NO 240/2013 IN LETTER
AND SPIRIT

R/SHEWETH:

1. I was serving against the post of Senior Instructor (BPS-17), therefore, I approached the departmental authority in the first instance and then to the Hon,ble Khyber Pakhtunkhwa Service Tribunal in Service Appeal No. 142/1993 for grant of BPS-17 ever since my appointment and regularization as such. My appeal did not find favour with the Honible Tribunal vide Judgment dated 27.07.1994, where-after I approached the Apex Court in Civil Appeal No. 129/1995 which was partially allowed vide Judgment dated 11.06.1998 and I was allowed benefits of BPS-17 from the dated of appointment till passing the Judgment. The Judgment of the Apex Court has been partially implanted as arrears up till

1993 have been granted to me while the remaining are still outstanding.

2. That due to litigation the Department without any just cause turned biased towards me and transferred me to a far-situated situated institute at Ghzi by way of punishment and started teasing me false pretexts of absence and thus removed from service on 04-04-2000. The order accordingly challenged by me before the Service Tribunal in Service Appeal N o 2188/2000 which was then allowed vide Judgment dated 11.06.2000.
3. Subsequently I filed Service Appeal No. 240/2013 in the Khuber Pakhtunkhwa Service Tribunal, Peshawar for grant of arrears for the period from 31.05.2002 till dated or retirement. Case has been decided in my favour on 16-10-2017 (Annex-A). During the last two (2) years department has not yet implemented judgment of the Service Tribunal. It may be added that CPLA has been filed against judgment of the Tribunal but no Stay Order has been issued by the Supreme Court of Pakistan so far. I am a senior citizen aged sixty seven (67) & can't afford further delay.
4. It is humbly requested that the Service Tribunal may initiate Contempt proceedings against the Managing Director TEVTA, Khyber Pakhtunkhwa for non implementation of judgment of the Service Tribunal



PETITIONER

Fazli Rahim Khattak S/O Abdul Ghafoor
Lecturer (BPS-17) Government Technical
Institute Gulbahar Peshawar
Home address: House No-57 Sector E OPF
Colony Budny Road Peshawar
CNIC No 17301-2473357-3
Cell No: 0315-9594160

Dated: 11-09-2019

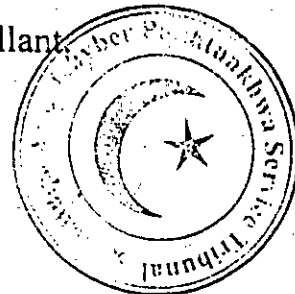
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. _____/2013

M.W.F. Province
Services V. Appellant
Entry No. 93
Dated 08-1-2013

Fazal Raheem Khattak,
Ex-Instructor/Lecturer,
GTVC, Gulbahar, Peshawar.....Appellant

Versus



1. The Govt. of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. The Secretary to Govt. of Khyber Pakhtunkhwa, Industries, Commerce, Min: Development, Labour & Tech: Education Department, Civil Secretariat, Peshawar.
3. The Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department, Civil Secretariat, Peshawar.
4. The Director General, Technical Education and Manpower Training, Khyber Pakhtunkhwa, Attached Department Complex, Khyber Road, Peshawar.

.....Respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION DATED 09.07.2011 WHEREBY APPELLANT WAS ALTHOUGH PROMOTED TO THE POST OF INSTRUCTOR/LECTURER (RELATED STUDIES) (BPS-17) BUT W.E.F. 07.06.2011 INSTEAD OF 31.05.2002 AND THAT TOO WITHOUT ARREARS OF PAY AND OTHER ATTACHED SERVICE BENEFITS FOR WHICH APPELLANT FILED DEPARTMENTAL REPRESENTATION BUT THE

ATTESTED

Signature
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Filed today

8/1/2013

Submitted to
led.

28/1/13

(1)

SAME WAS NOT DECIDED WITHIN THE
STATUTORY PERIOD OF 90 DAYS.

PRAYER:


On acceptance of the instant appeal, the impugned Notification dated 09.07.2011 may graciously be modified and appellant be considered for antedation of promotion to the post of Instructor/Lecturer (Related Studies) (BPS-17) w.e.f. 31.05.2002 instead of 07.06.2011 alongwith arrears of pay and other attached service benefits.

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

1. That the appellant was appointed as Junior Instructor (BPS-14) against the post of Senior Instructor (BPS-17) vide office order dated 17.04.1980(*Annex:-A*).
2. That since appellant was serving against the post of Senior Instructor (BPS-17), therefore, he approached the departmental authority in the first instance and then to the Hon'ble Khyber Pakhtunkhwa Service Tribunal in Service Appeal No.142/1993 for grant of BPS-17 ever since his appointment and regularization as such. The appeal of the appellant did not find favour with the Hon'ble Tribunal vide Judgment dated 27.07.1994, whereafter appellant approached the Apex Court in Civil Appeal No.129/1995 which was partially allowed vide Judgment dated 11.06.1998 (*Annex:-B*) and appellant was allowed benefits of BPS-17

ATTESTED



EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

(12)

from the date of appointment till passing the Judgment. The Judgment of the Apex Court has been partially implemented as arrears up till 1993 have been granted to the appellant while the remaining are still outstanding.

3. That due to litigation, the Department without any just cause turned biased towards the appellant and transferred him to a far-situated institute at Ghazi by way of punishment and started teasing him by false pretexts of absence and thus removed him from service on 04.04.2000. The order was accordingly challenged by appellant before the Service Tribunal in Service Appeal No.2188/2000 which was then allowed vide Judgment dated 11.06.2000.
4. That thereafter once again on the same grounds appellant was dismissed from service vide order dated 06.02.2003, which too was challenged by appellant before the Hon'ble Service Tribunal in Service Appeal No.400/2003 and the same was also allowed vide Judgment dated 26.04.2007 (Annex:-C) and appellant was reinstated into service.
5. That during the period when appellant was deliberately got engaged into litigation, juniors to appellant were promoted to the next higher grade i.e. BPS-17 vide Notification dated 31.03.2001 (Annex:-D), therefore, on reinstatement into service, appellant made series of applications to the Department for his promotion to the post of

ATTESTED


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Service Tribunal,
Peshawar



Instructor/Lecturer (Related Studies) (BPS-17) w.e.f. the date juniors to him were promoted to the next higher grade but the requests of appellant remained a remote cry in the wilderness. It was quite belated when appellant was at the verge of his retirement that the Department realized its apathy and thus took up the matter vide Minutes of the Meeting held on 07.06.2011 (*Annex:-E*) and recommended the appellant for promotion to BPS-17 w.e.f. the date his juniors to him were promoted, however, in the meanwhile appellant retired on reaching the age of superannuation on 11.06.2011 and his promotion was notified vide impugned Notification dated 09.07.2011 (*Annex:-F*).

6. That under the previous policy as well as under the settled law, appellant is entitled for promotion w.e.f. the date juniors to him were promoted to (BPS-17) with all attached benefits but vide the impugned Notification *ibid*, appellant's promotion has been ordered w.e.f. the date of holding of DPC Meeting i.e. 07.06.2011 in accordance with the Promotion Policy of 2009 and not from the due date, however, he has been granted seniority w.e.f. 31.05.2002 and intervening period has been counted as increments but without arrears under F.R. 26(c), which is illegal and against the settled principle of law on the subject.

That accordingly appellant preferred Departmental Representation (*Annex:-G*) to Respondent No.1 for antedation of his promotion as

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XAMINER
Pachankhiwa
Tribunal,
Peshawar



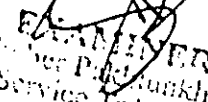
Instructor/Lecturer (Related Studies)(BPS-17)

w.e.f. 31.05.2002 along with arrears of pay and other attached benefits but the same was not decided within the statutory period hence this appeal inter alia on the following grounds;

Grounds:

- A. That Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully refused to consider the appellant for the requisite promotion, which is unjust, unfair and hence not sustainable in the eye of law.
- B. That admittedly appellant was eligible for promotion against the post of Instructor/Lecturer (BPS-17) with effect from the due date but the promotion was delayed by the Department by one pretext or the other and finally the same was notified after the retirement of appellant and given effect to from 07.06.2011 instead of 31.05.2002, which has resulted in huge financial loss to the appellant without any lawful justification.
- C. That appellant cannot be punished or deprived of his right of promotion from the due date due to the acts of the public functionaries who unlawfully refused to promote the appellant in due course of time, therefore, the impugned Notification with its effect from the date of the DPC i.e. 07.06.2011 is illegal and appellant is entitled to antedated

ATTESTED


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Peshawar
Service Tribunal,
Peshawar

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promotion with effect from the due date.

- D. That it is a settled legal proposition that whenever promotion of a civil servant is delayed for want of a certain deficiency or any other reason not attributable to him, he cannot be deprived of the promotion from the date when he is eligible for promotion and vacancy do exists.
- E. That the case of the appellant cannot be governed by the Provincial Promotion Policy of the Government 2009 inas much as the same relates to a period much before 2009 while the Promotion Policy of 2009 has no retrospective effect.

It is, therefore, humbly prayed that the instant appeal may graciously be accepted as prayed for above.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant.

Appellant
Through
Khaled Rahman,
Advocate, Peshawar.

Dated: 01 / 01 / 2013

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 08-11-17
 Number of Pages 24/50
 Copying Fee 14
 Urgent _____
 Total 16
 Name of Officer MM
 Date of Completion 28-11-2017
 Date of Delivery of _____ 28-11-2017

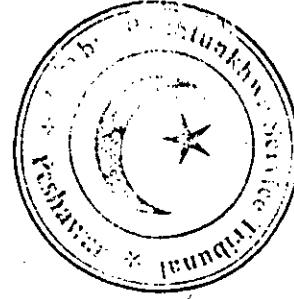


BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 240/2013

Date of Institution ... 08.01.2013

Date of Decision ... 16.10.2017



Fazal Raheem Khattak,
Ex-Instructor/Lecturer,
GTVC, Gulbahar, Peshawar.

... (Appellant)

VERSUS

1. The Govt: of Khyber Pakhtunkhwa through Chief Secretary, civil Secretariat,
Peshawar, and 3 others.

... (Respondents)

MR. KHALID REHMAN,
Advocate

For appellant.

MR. MUHAMMAD JAN,
Deputy District Attorney

For respondents.

MR. AHMAD HASSAN,
MR. MUHAMMAD HAMID MUGHAL

MEMBER (Executive)
MEMBER (Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER.- Arguments of the learned counsel for the
parties heard and record perused.

FACTS

2. The brief facts are that vide impugned notification dated 09.07.2011, the
appellant was promoted to the post of Instructor/ Lecturer (Related
Studies)(BPS-17) w.e.f 07.06.2011 instead of 31.05.2002 and that too without
arrears of pay and other connected service benefits. The appellant filed
departmental representative but the same was not decided within the statutory
period of 90 days, hence, the instant service appeal.

ATTESTED

MEMBER
Khyber Pakhtunkhwa
Service Tribunal.


(2)

ARGUMENTS

3. The learned Counsel for the appellant argued that having been entangled in protracted litigation the appellant was deprived of his promotion to BPS-17 in time. The period in which he was engaged in litigation, juniors to the appellant were promoted to BPS-17 vide notification dated 31.03.2001. Upon reinstatement time and again through applications/representation he agitated the issue of his promotion to the post of Instructor/Lecturer (related studies BPS-17) but to no avail. Thereafter in pursuance of meeting of DPC held on 07.06.2011 the appellant was recommended for promotion to BPS-17 w.e.f the date of holding of DPC meeting i.e 07.06.2011. However, on reaching the age of superannuation the appellant retired from service on 16.06.2011 but promotion was notified vide notified dated 09.07.2011. He further argued that the appellant was eligible for promotion w.e.f 31.05.2002 the day when his juniors got promotion to BPS-17. The appellant cannot be deprived of his right of promotion from the due date due to negligence of respondents, hence, impugned notification dated 07.06.2011 is illegal and the appellant is entitled for antedate promotion. The case of the appellant is not governed under the Promotion Policy of 2009, as it relates to 2002 and the policy in hand cannot be given retrospective effect. Reliance was placed on 2007 SCMR 1355, 2010 PLC (C.S) 760 and 2014 PLC (C.S) 585.

4. On the other hand the learned DDA argued that though right of filing of written reply by the respondents was closed by this Tribunal on 02.03.2017 and representation of the department was also not present during the hearing of the case. However, the learned DDA while assisting the court argued that on account of absence from duty disciplinary proceedings were initiated against

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

the appellant and major penalty of dismissal from service was imposed on him vide impugned order dated 06.02.2003. Thereafter upon acceptance of his appeal he was reinstated in service. He was rightly promoted by the respondents-department vide order dated 09.07.2011. According to instructions of the Provincial Government promotion is always made with immediate effect and it is not a vested right of a civil servant. His case was dealt with by the respondents under Promotion Policy of 2009. Reliance was placed on 2005 SCMR 1742 and judgment of this Tribunal dated 15.09.2017 passed in appeal no. 935/2015.

CONCLUSION.

5. A careful perusal of the entire record would reveal that appellant due to prolong litigation spread over period of more than one decade was deprived of his legitimate right of promotion at the relevant time. This is further corroborated by para one of the minutes of the DPC meeting held on 07.06.2011, wherein his case of promotion to BPS-17 was cleared/ approved by the competent forum. Relevant portion is reproduced below:

"That the promotion case of Mr. Fazli Rahim Khattak, Junior Instructor (Related Studies) BPS-14 could not be timely placed before the Departmental Promotion committee and the official is now reaching the age of superannuation on 16.06.2011. It could be an inadvertent omission or a typical example of human apathy and indifferent behavior on the part of staff of DG/TE office. As per Provincial Govt. policy contained in circular no. SOR-I(S&GAD)1-29/75; dated 13.04.1987, cases of inadvertent omission due to clerical error or plain negligence are to be considered for promotion as soon as the mistake comes to notice."

ATTESTED

E. KAMINER
Member Peshawar
Service Tribunal,
Peshawar

The respondents utterly failed to come up with any solid justification for deliberate/intentional delay in promotion case of the appellant. It is a well settled legal proposition that whenever the promotion of a civil servant is

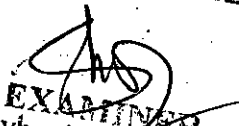
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delayed for want of certain deficiencies or any other reason not attributable to him he cannot be deprived of the promotion from the date of when he become eligible for the same. As his case dates back to 2002 so sanity demands it should not be dealt with under the Promotion Policy of 2009. The said policy cannot be applied retrospectively. Attention is also invited to circular dated 13.04.1987, wherein the word "inadvertent" is mentioned but in this case it was an "advertant deliberate/intentional act" on the part of the respondents to deprive the appellant of his right of promotion to BPS-17. In 2010 PLC (C.S) 760 Supreme Court of Pakistan held that:-

"Promotion---delay---legitimate expectancy, principle of -- Civil servant was not promoted despite availability of vacancy---Service Tribunal allowed the appeal filed by civil servant and directed the authorities to consider him for promotion from the date when he became eligible for the post as there was vacancy available then---validity--- State functionaries were mandated to act with certain amount of reasonableness---Such canon of due process of law was not observed in processing civil servant's promotion matter---having acquired requisite experience and having authored number of articles required for post in question, the civil servant had legitimate expectancy for the post in question---Judgment passed by Service Tribunal was neither against the rules nor the law declared---Civil servant was eligible to be considered for promotion when substantive vacancy in promotion quota was available."

6. Similarly this issue has also been dilated and decided in 1985 SCMR 1158, 1997 SCMR 515, 2013 SCMR 544, 2017 SCMR 399, 1998 PLC (C.S) 980 and 1997 PLC (C.S) 197. So far as judgment of this Tribunal dated 15.09.2017 passed in service appeal no 935/2015 is concerned, it is not similar to the case of the appellant. It is clarified that Mr. Habib Ullah Jan, Range Officer, Wildlife (BPS-16) was promoted on acting charge basis on 19.12.2013 and regular promotion was notified on 12.03.2015 with immediate effect. He sought antedate promotion w.e.f. 01.07.2014 (the date on which the post was

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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created). Request of the appellant was not considered as the post against which he was promoted on acting charge basis was reserved for initial recruitment through Public Service Commission. In case he was given antedate promotion then many officers appointed through initial recruitment between 1.07.2014 and 12.03.2015 shall become junior to the appellant. Similarly reference made to the case of Mr. Ibbal Hussain Khattakin the said judgment is quite relevant and can also be attracted in the case of the appellant. In this case the august Supreme Court of Pakistan upheld the decision of this Tribunal regarding antedate promotion.

7. In view of the foregoing, the instant appeal is accepted and promotion case of the appellant be considered for the post of Instructor/Lecturer (Related studies) (BPS-17) w.e.f 31.05.2002 instead of 07.06.2011. However, it needs to be mentioned that this Tribunal vide judgment dated 26.04.2007 while accepting service appeal bearing No.44/2003 earlier filed by the appellant, directed that the period intervening the passing of order dated 06.2.2003 of dismissal of the appellant from service and his reinstatement in service i.e 26.04.2007 shall be treated as extra-ordinary leave (leave without pay). Parties are left to bear their own cost. File be consigned to the record room.

Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

SD/

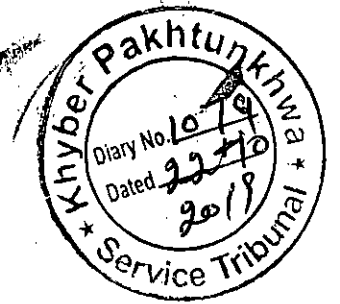
(MUHAMMAD HAMID MUGHAL)
MEMBER

SD/

(AHMAD HASSAN)
MEMBER

ANNOUNCED
16.10.2017

صائب حیر میں
سروس ٹریبونل کیس اور
Execution Petition No 336/19
صائب عالی



گزارش ہے کہ مورخہ 24/10/2019 میں

تین دن کے سہ روزہ میں سوالیہ مسائل
پر جماعتی بحث ہوئی ہے

میرا Execution Petition No 336/18 مورخہ 25/10/2019

میرا میں درخواست ہے کہ میرا تاریخ کے دن کا نوٹ
کا آنے سے قاصر ہوں۔ اور مناسب تاریخ مقرر کرنے

فخر الحق صاحب

Executive Instructor

H.No :- E-57 O.P.F Colony

Peshawar.

Date 22/10/2019

Put up to the court with
relevant petition.

Reader

22/10/19.

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 37 /ST

Dated 8 /01 / 2020


To

The Industries & Commerce, Mineral Development Labour & Technical
Education Department,
Government of Khyber Pakhtunkhwa,
Peshawar.

SUBJECT: - ORDER IN EXECUTION PETITION NO. 336/2019, MR. FAZLI RAHIM KHATTAK.

I am directed to forward herewith a certified copy of order dated 01.01.2020 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.



Khyber Pakhtunkhwa
Technical Education & Vocational Training
Authority KP TEVTA
Old Bazar Road, University Town
Peshawar

TEVTA
KHYBER PAKHTUNKHWA

~~10750~~ / F-~~10750~~ / 10750

Dated 26 / 11/2019

Section Officer (III),
Govt. of Khyber Pakhtunkhwa,
Industries and Technical Education Department.

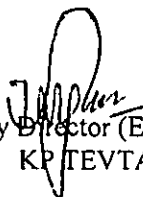
**IMPLEMENTATION OF JUDGMENT DATED 16.10.2017 OF
KHYBER PAKHTUNKHWA SERVICE ON JUDGMENT DATED
16.10.2017 PASSED BY KHYBER PAKHTUNKHWA SERVICES
TRIBUNAL PESHAWAR IN SERVICE APPEAL NO.240/2013 TITLED
FAZAL RAHEEM KHATTAK VS: SECRETARY ICL AND OTHERS**

I am directed to refer to Finance Department letter No.SO(Lit-II) /FD2-1438/2013
dated 22.11.2019 on the subject noted above and to enclose herewith the requisite working paper of
Mr. Fazali Rahim Khattak, Ex-Lecturer GTVC, Gul Bahar Peshawar for further necessary action
please.

Being time limit case, this may please be treated as top priority basis.

Encl: As (Above)

26
R


Deputy Director (Estt.)
KP TEVTA

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

RESENT:
MR. JUSTICE GULZAR AHMED, CJ
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE SAJJAD ALI SHAH

S Civil Petition No. 658-P of 2017
(Against the Judgment dated 16.10.2017 of the
KPK Service Tribunal, Peshawar passed in
Appeal No. 240 of 2013)

Govt. of KPK through Chief Secy.
Civil Secretariat, Peshawar & others ... Petitioner(s)

Versus

Fazal Rahcem Khattak ... Respondent(s)

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

For the Respondent(s): N. R.

Date of Hearing: 13.01.2020

ORDER

Gulzar Ahmed, CJ. We have heard the learned Additional Advocate General, KPK. He contends that the respondent being a habitual absentee was dismissed from service in the year 2000 for being absent from service. His appeal was accepted by the Service Tribunal and the matter was remanded to the Department for *de novo* inquiry. On completion of *de novo* inquiry he was found guilty and was dismissed from service in 2003. He filed Service Appeal which was allowed by the Service Tribunal vide its judgment dated 26.4.2007 directing his reinstatement in service with the direction to consider the intervening period of passing the order dated 6.2.2003 of his dismissal from service and his reinstatement in service on 26.4.2007 as extraordinary leave (leave without pay). No back benefits was allowed by the Tribunal vide judgment dated 26.4.2007. We note that the very DPC in its meeting held on 7.6.2011 apparently did not have full record of service of the respondent. The Tribunal in the impugned judgment

ATTESTED

Senior Court Associate
Supreme Court of Pakistan

has also not dealt with such issue and just found the respondent to be entitled for grant of promotion despite the fact that when his batch-mates were promoted he was not in service as also at the time of DPC meeting, therefore, his case for promotion could not have been considered at the relevant time. Leave to appeal is granted, inter alia, to consider the above controversy. The appeal shall be heard on the available record. However the parties may file additional documents within a period of one month. As the matter relates to service, the appeal shall be fixed for hearing immediately after a period of three months. In the meantime, the operation of the impugned judgment shall remain suspended.

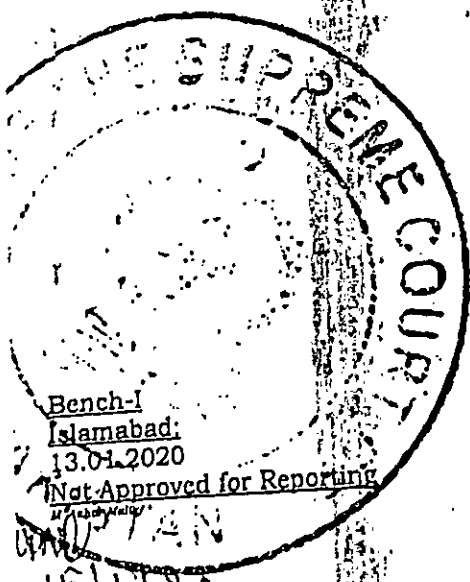
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