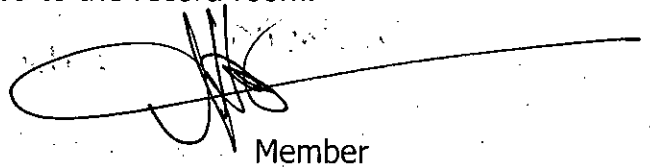


04.07.2019

Counsel for the petitioner and Addl. AG for the respondents present. .

Learned counsel for the petitioner stated at the bar that grievance of the petitioner has been redressed at departmental level and he is under instructions from his client not to further pursue the execution petition in hand. He made a request for withdrawal of the above execution petition. His signatures were also obtained on the margin of order sheet.

Therefore, the present execution petition is dismissed as withdrawn. File be consigned to the record room.

A handwritten signature in black ink, consisting of a large loop followed by several vertical strokes and a long horizontal line extending to the right.

Member

Announced:
04.07.2019

Form- A
FORM OF ORDER SHEET

Court of _____
Execution Petition No. 207/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	07.05.2019	The execution petition of Mr. Javed Rehman submitted today by Mr. Hassan U.K. Afridi Advocate may be entered in the relevant register and put up to the Court for proper order please. REGISTRAR 7/5/19
2-	24/05/19	This execution petition be put up before S. Bench on 24/05/19
	23.05.2019	Learned counsel for the petitioner present. Notice of the present execution petition be issued to the respondents for implementation report/comments. To come up for implementation report/parawise comments on 04.07.2019 before S.B. I hereby withdraw my instant petition 04.07.2019
		CHAIRMAN Member

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

C.M. Implementation No. 207 / 2019

In
Service Appeal No.340/2017

Javed Rehman.....**Appellant**

VERSUS

**Government of Khyber Pakhtunkhwa through
Chief Secretary, & others**.....**Respondents**

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4.	Covering letter with application	B	10-12
5.	Departmental Appeal <i>with letter</i>	C	13-15
6.	Wakalatnama		16-

Javed Rehman

Petitioner /Appellant
Through

Hassan U.K Afridi

Advocate

Supreme Court of Pakistan

Dated 06.05.2019

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

C.M. Implementation No. 207 /2019
In
Service Appeal No.340/2017



Javed Rehman S/o Ghulam Habib,
Presently posted as Inspector Excise &
Taxation Narcotic Control Office.....**Appellant**

V E R S U S

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar
2. Secretary Excise & Taxation Department, Khyber Pakhtunkhwa, Peshawar
3. Director General Excise & Taxation Department, Khyber Pakhtunkhwa Shami Road, Peshawar
4. Standing Service Rules Committee through its Chairman, Secretary E&T Department, Khyber Pakhtunkhwa, Peshawar**Respondents**

**Application for implementation of the
order/judgment passed by this Hon'ble
Tribunal on 23.11.2018**

Respectfully Sheweth:

1. That the petitioner/appellant field service appeal No.340/2017, which has been disposed off with the direction to the respondents to decide the departmental appeal pending

2

before the respondents, within 90 days on 23.11.2018.

2. That the petitioner/appellant delivered to the respondents through covering letter on 21.01.2019.
3. That more than 90 days have been elapsed but no order has been announced by the respondents.

It is, therefore humbly prayed that on acceptance of this application, the respondents may kindly be directed to decide the departmental Appeal of petitioner/appellant pending before them since 2017.

Petitioner /Appellant
Through


Hassan U.K Afridi
Advocate
Supreme Court of Pakistan

Dated 06.05.2019

3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

C.M. Implementation No. _____/2019

In

Service Appeal No.340/2017

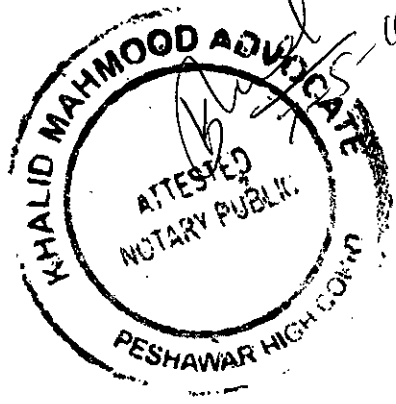
Javed Rehman.....**Appellant**

VERSUS

Government of Khyber Pakhtunkhwa through
Chief Secretary, & others.....**Respondents**

AFFIDAVIT

I, Javed Rehman S/o Ghulam Habib, Presently posted as Inspector Excise & Taxation Narcotic Control Office, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



Javed Rehman

DEPONENT

4737



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Service Appeal No. 737 /2017

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 806

Dated 13-7-2017

Javed ur Rehman S/o Ghulam Habibi,
Presently posted as Inspector Excise, Taxation,
Narcotics control Office, Karak.....Appellant

V E R S U S

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar
2. Secretary Excise & Taxation Department, Khyber Pakhtunkhwa, Peshawar
3. Director General Excise & Taxation Department, Khyber Pakhtunkhwa Shami Road, Peshawar
4. Standing Service Rules Committee through its Chairman, Secretary E&T Department, Khyber Pakhtunkhwa, PeshawarRespondents

APPEAL Under section 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT,
1974

Filed to-day
Registrar
E/T/D

Prayer in Appeal:-

On acceptance of this appeal, the
respondents may kindly be directed


ATTESTED

Registrar
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar.

10.10.2018

Appellant in person and Mr. Ziaullah, Deputy, District Attorney alongwith Mr. Noman, Inspector for the respondents present. Appellant requested for adjournment on the ground that his counsel is not available today. Adjourned. To come up for arguments on 23.11.2018 before D.B.


(Ahmad Hassan)
Member


(Muhammad Amin Kandi)
Member




Order


23.11.2018

Counsel for the appellant present. Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Noman Akhtar, Inspector for respondents present. Arguments heard and record perused.

This appeal is also disposed off as per detailed judgment of today placed on file in connected service appeal No. 340/2017 titled "Javed Sultan -vs- The Govt: of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and three others". Parties are left to bear their own cost. File be consigned to the record room.

Announced:
23.11.2018


(Ahmad Hassan)
Member


(Hamid Farooq Durani)
Chairman

Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Copy _____ 27-11-18
Number of Words _____ 800
Copying Fee _____ 6/-
Urgent _____
Total _____ 6/-
Name of Copyist _____
Date of Completion of Copy _____ 19-12-18
Date of Delivery of Copy _____ 19-12-18

60

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 340/2017

Date of Institution ... 06.04.2017
Date of Decision ... 23.11.2018



Javed Sultan S/O Sultan Ahmad Shah,
R/o Mohallah Sangerh, District Hangu Presently Inspector Excise and Taxation
Office, Kohat. ... (Appellant)

VERSUS

1. The Govt: of Khyber Pakhtunkhwa through Chief Secretary, Civil
Secretariat, Peshawar and three others. ... (Respondents)

MR. HASSAN U.K AFRIDI,
Advocate

--- For appellant.

MR. MUHAMMAD JAN,
Deputy District Attorney

--- For respondents.

MR. AHMAD HASSAN,
MR. HAMID FAROOQ DURANI

--- MEMBER (Executive)
--- CHAIRMAN

JUDGMENT

AHMAD HASSAN, MEMBER.-

This judgment shall dispose of the instant service appeal as well as connected
service appeal no. 737/2017 titled Javed ur Rehman as similar question of law and
facts are involved therein.

2. Arguments of the learned counsel for the parties heard and record perused.

FACTS

3. The short facts of the case are that the appellant has prayed for promotion from the
post of Inspector to Assistant Excise and Taxation Officer (AETO) in relaxation of Rule
7(3) of the Departmental Examination Rules, 1950. He preferred an undated departmental

ATTESTED

EXAMINER
Khyber Pakhtunkhwa Service Tribunal

appeal, which was not responded within the stipulated period, hence, the instant service appeal on 06.04.2017.

ARGUMENTS

4. Learned counsel for the appellant argued that he appeared in the departmental promotion examination for the post of Assistant Excise and Taxation Officer in 2006 and passed all the papers in higher grade, except Excise Law Paper-II in lower grade (50% marks). He made another attempt in 2009 but could not improve his previous position. That Mr. Muhammad Qamar, Nizakat Ali and Falak Naz, Inspectors serving in the said department filed service appeal for promotion from the rank of inspector to Assistant Excise and Taxation Officer, as per Rule 7(3) of the Departmental Examination Rules 1950. This Tribunal vide judgment dated 08.12.2015 this Tribunal remitted the case to the respondents for examination on the analogy of previous precedent and grant of relaxation contained in the said rules provided the case was otherwise fit for the same. The respondents' vide order dated 10.11.2016 waived off the condition of higher grade in favour of the above appellants. The appellant through his departmental appeal also sought similar relief but was not responded within the stipulated period, hence, the instant service appeal. Reliance was placed on case law reported as 2018 SCMR 330, 2009 SCMR 1 and judgment of this Tribunal dated 14.09.2017 passed in service appeal no. 293/2017.

5. On the other hand learned Deputy District Attorney argued that according to the Excise and Taxation Service Rules, 2010 passing departmental examination in higher grade was mandatory for promotion to the post of Assistant Excise and Taxation officer. The appellant did not fulfill this condition, hence, was not eligible for promotion. An undated departmental appeal was forwarded by the Excise and Taxation Officer, Kohat.

on 17.12.2016, which was badly time barred. No application for condonation of delay had been submitted by the appellant. On this score alone the present appeal was not maintainable.

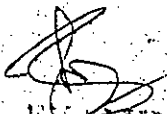
CONCLUSION

6. Having gone through the record, it transpired that though the appellant was aggrieved of notification dated 30.03.2010 but did not challenge it in time. Even his departmental appeal was silent on this account. His departmental appeal was badly barred by time so strictly speaking, present service appeal was not maintainable. Learned counsel for the appellant failed to justify the delay caused in preferring the departmental appeal.

7. On the other hand, learned counsel for the appellant relied on judgment of this Tribunal dated 08.12.2015 and 14.09.2017 in which relief was granted to the appellants by the respondents. The principle of consistency and parity demanded identical treatment should have been extended to the appellant by the respondents to meet the ends of justice. Our viewpoint is further augmented by 1996 SCMR 1185 in which the august Supreme Court of Pakistan held that:-

"If the Service Tribunal or Supreme Court decides a point of law relating to the terms of civil servant which covers not only the case of civil servant who litigated, but also of other civil servant, who may not taken any legal proceedings, in such a case, the dictates and rule of good governance demands that the benefits of such judgment by Service Tribunal/Supreme Court be extended to other civil servant, who may not be parties to the litigation instead of compelling them to approach the Service Tribunal or any other forum".

ATTESTED


 M. WAINER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

8. As departmental appeal preferred by the appellant was not decided by the respondents within the stipulated period, so we deem it appropriate to remit this case back to them for



OFFICE OF THE EXCISE, TAXATION AND NARCOTICS CONTROL
OFFICER/ MOTOR REGISTERING AUTHORITY/
ASSISTANT COLLECTOR G-1

0928-9270125

BANNU
ctobannu@gmail.com

(10)

No 3778 /E&T

Dated Bannu the 21 / 01 / 2019

To:

The Director,
Excise, Taxation & Narcotics Control Department,
D.I.Khan (Region)

Subject: RELAXATION/ WAIVING OFF DEPARTMENTAL EXAMINATION
IN THE LIGHT OF JUDGMENT OF KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL DATED 23/11/2018

Memo.

The application in respect of Mr. Javed-ur-Rehman, Inspector of this office is sent herewith for further necessary action please.

cte

Excise, Taxation & Narcotics Control Officer,
Motor Registering Authority,

BANNU

mf
21/1/2019

To:- The Secretary,
Excise, Taxation & Narcotics
Control Department, Khyber Pakhtunkhwa
Peshawar.

Through Proper Channel

Subject:- RELAXATION / WAIVING OFF DEPARTMENTAL
EXAMINATION IN THE LIGHT OF JUDGMENT OF
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
DATED 23-11-2018.

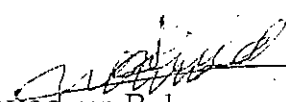
Respected Sir,

It is most humbly submitted that I had preferred a departmental appeal on 16-03-2017 for waiving off two papers of departmental examination (Taxation Law & Property Tax and Civil Law) which I had passed in lower standard on the basis of the relief as was given to Muhammad Qamar, Nazakat Ali (Inspectors of this department) in the light of Khyber Pakhtunkhwa Service Tribunal Judgment dated 08-12-2015. But my appeal was not decided and I was compelled to file appeal in the said Service Tribunal. The judgment of the Service Tribunal dated 23-11-2018 in connection with my appeal No. 737/2017 is enclosed herewith.

It is, therefore, requested that I may please be promoted as per my seniority in the light of the above said judgments of the Khyber Pakhtunkhwa Service Tribunal.

Dated 21-01-2019

Yours Obediently,


Javed-ur-Rehman
Inspector Excise, Taxation &
Narcotics Control Office Bannu.



GOVERNMENT OF KHYBER PAKHTUNKHWA
OFFICE OF THE DIRECTOR, EXCISE & TAXATION,
DIKHAN REGION DIKHAN.

12

No. 78 /Dir. DIKHAN REGION Dated 11/02/2019.

To


The Director General,
Excise, Taxation & Narcotics Control,
Khyber Pakhtunkhwa, Peshawar.

Subject:- RELAXATION/WAIVING OFF DEPARTMENTAL EXAMINATION IN THE
LIGHT OF JUDGEMENT OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
DATED 23/11/2018.

Respected Sir,

Enclosed find herewith letter No. 3778/E&T dated 21/01/2019 on the
subject alongwith its enclosure received from Excise, Taxation & Narcotics Control Officer
Bannu for perusal and consideration please.

Encl:- (-)


Director.

Endst. No. 79 /Dir. ET&NC

Copy to :-

The Excise, Taxation & Narcotics Control Officer, Bannu for information with ref.
to his No. & dated cited above.


Director.

13

3508

To:

The Secretary Excise Taxation & Narcotics
Control Khyber Pakhtoonkhawa Peshawar.

Through Proper Channel

Subject: PROMOTION TO THE RANK OF AETO.

Respected Sir,

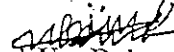
It is respectfully submitted that I have passed two papers of departmental examination in higher standard and two papers in lower standard. It has come into my notice that I am being superseded because of having passed two papers in lower standard.

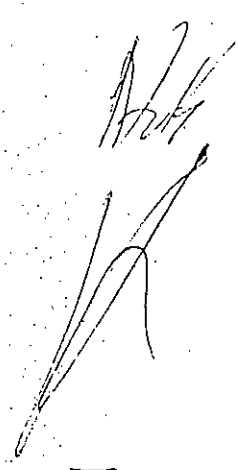
The Honorable Service Tribunal KPK, Peshawar, in its judgment (copy enclosed) announced on 08-12-2015 in response to appeal No 201/2014, 202/2014 and 203/2014, filed by Muhammad Qamar, Nizakat Ali, and Falak Nawaz respectively, directed the respondent department to consider the appellants for promotion by relaxing the requirement of departmental examination under rule 7 (3) of examination rules 1950, as this discretion had already been exercised by the government vide its notifications dated 22-06-2010 and 13-08-2012 even after the enforcement of the rules of 2010.

It is, therefore, requested that as my case is of the same nature, I may not please be superseded and promoted as AETO as per my seniority.

Thanking you,

16/3/17

Yours obediently,

Javed-Ur-Rehman
Inspector Excise Taxation & Narcotics
Control Office Karak.





OFFICE OF THE EXCISE TAXATION &
NARCOTICS CONTROL OFFICER
DISTRICT KARAK.

324

389



14

No. 4033

Dated Karak the: 16/3/17

To,

The Deputy Director,
Excise Taxation & Narcotics
Control Department D.I Khan
Region, D.I Khan.

Subject:

PROMOTION TO THE POST OF AETO

Memo,

The application in respect of Mr. Javed-ur-Rehman, Inspector of this office, is sent herewith for onward submission please.

Excise Taxation & Narcotics
Control officer Karak.

16/3/17

[Handwritten signature]

15

(Handwritten initials)

(Handwritten initials)



OFFICE OF THE DEPUTY DIRECTOR EXCISE, TAXATION AND NARCOTICS CONTROL D.I.KHAN REGION

No. _____

Date: 17-3-2017

To

The Director General,
Excise, Taxation & Narcotics Control Department,
Khyber Pakhtunkhwa Peshawar.

Subject: PROMOTION TO THE RANK OF A.E.T.O

Memo:

The application in respect of Mr. Javed-ur-Rehman, Inspector of Excise & Taxation & Narcotics Control office Karak is sent herewith for further necessary action please.

sd

DEPUTY DIRECTOR,
EXCISE, TAXATION & NARCOTICS CONTROL
D.I.KHAN REGION.

No. 216 /E&T

Dated D.I.Khan the / /

Copy forwarded to the Excise, Taxation & Narcotics Control Officer, Karak with reference to his letter No.4033 dated 16/03/2017

DEPUTY DIRECTOR,
EXCISE, TAXATION & NARCOTICS CONTROL,
D.I.KHAN REGION.

(Large handwritten signature)

(Handwritten initials)



ایڈریس اور دستخط:

بار کونسل اہار ایسوسی ایشن نمبر: 10/10/32

رابطہ نمبر: 0300-9151963



541



10

کوہاٹ بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب: سرسید ٹرسٹ، خیبر پختونخواہ

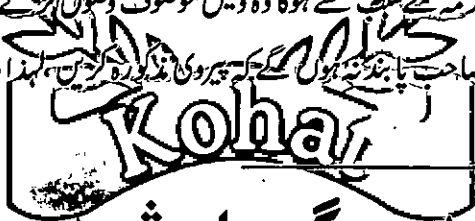
منجانب:	
<p>جاوید الرحمن</p>	
دعوی:	دعوی:
علت نمبر:	علت نمبر:
مورخہ:	مورخہ:
تھانہ:	تھانہ:

بابت تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ آن مقام سے کلبہ کی طرف سے درخواست کی گئی ہے کہ اس کے بارے میں کوہاٹ بار ایسوسی ایشن کو مطلع کیا جائے کہ صاحب نے موصوف کو مقدمہ کی کل کارروائی کو مکمل ہونے کے بعد ہی کوہاٹ بار ایسوسی ایشن کو مطلع کیا جائے گا۔

راضی نامہ کرنے کے وقت کالٹ کو فیصلہ بر حلیہ دینے جواب دعوی اقبال دعوی اور درخواست سے از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری کی تک طرفہ فیصلہ کی درخواست اور منسوخی، نیز دائر کرنے اپیل نظر ثانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہر اہمیا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو بھی وہی جملہ ذمہ داریاں اختیار حاصل ہوں گے اور اس کا ساختہ پروا نہ ہوگی۔

مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سب سے ہوگا وہ وکیل موصوف وصول کرنے کا حقدار ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب یا ہندو ہوں گے کہ پیروی نہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے۔



المرقوم گواہ شد

مقام کیلئے منظور ہے۔