


FORM OF ORDER SHEET

Court of _____

Case No. - 294/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	08/02/2023	<p>The appeal of Mr. Jamal Shah presented today by Mr. Noor Muhammad Khattak Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on <u>10-2-23</u>. Parcha Peshi is given to appellant/counsel.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

APPEAL No. 294 /2023

JAMAL SHAH

VS

GOVT. OF KPK & OTHERS

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APPELLANT

THROUGH:


NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT

-1-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. _____/2023

Mr. Jamal Shah, Social Welfare Officer (BPS-17),
Social Welfare, Special Education & Women Empowerment Department,
Directorate of Special Education, Peshawar.

..... APPELLANT

VERSUS

- 1- Govt. of KPK through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary, Social Welfare, Special Education & Women Empowerment, Khyber Pakhtunkhwa.
- 3- The Director, Social Welfare, Special Education & Women Empowerment, Khyber Pakhtunkhwa, Peshawar.

..... RESPONDENTS

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION DATED 04.10.2022 WHEREBY THE APPELLANT WAS PROMOTED TO THE POST OF SOCIAL WELFARE OFFICER (BPS-17) WITH IMMEDIATE EFFECT INSTEAD OF DUE DATE I.E. 28.03.2019 AND AGAINST THE INACTION OF THE RESPONDENT BY NOT DECIDING THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:

That on acceptance of this appeal the impugned notification dated 04.10.2022 may very kindly be rectified/modified and the appellant may kindly be considered for ante dated promotion to the post of Social Welfare Officer BPS-17 w.e.f 28.03.2019 with all back benefits. Any other remedy which this august Tribunal deems fit, may also be awarded in favor of the appellant.

R/SHWETH:

ON FACTS:

The appellant submits as under:

1. That the appellant was appointed as Social Case Worker (BPS-16) in the ADP Scheme titled "Establishment of MR PH Centre at Dir Upper" vide order dated 14.05.2012 whereafter he submitted his arrival report dated 23.05.2012. Copies of the Appointment Order and Arrival Report are attached as Annexure **A & B.**
2. That the appellant started performing his duty quite efficiently up to the entire satisfaction of his superiors but unfortunately he was terminated whereafter the appellant approached the August Peshawar High Court, Peshawar for his reinstatement in the writ petition 2510-P/2016 whereby the respondents were directed to reinstate the appellant vide Judgment/Order dated 17.03.2016.

Copy of the Judgment/ Order dated 17.03.2016 is attached as AnnexureC.

3. That subsequently the appellant was reinstated provisionally vide order dated 22.11.2016 subject to the outcome of the CPLA/Review Petition pending in the Supreme Court of Pakistan. Copy of the Order dated 22.11.2016 is attached as Annexure....D.
4. That the appellant was reinstated in compliance with the judgment dated 17.03.2016 of the August Peshawar High Court in Writ Petition No.2510-P/2016 and Judgment dated 04.11.2019 of August Supreme Court of Pakistan vide order dated 03.02.2020. Copies of the Order dated 03.02.2020 and Judgment are attached as Annexure E & F.
5. That the name of the appellant was forwarded to the Departmental Promotion Committee (DPC) vide letter dated 16.11.2018 for his promotion to (BPS-17) but DPC was rescheduled for 28.03.2019 due to framing of new Service Rules. Copies of the letter dated 16.11.2018 and Letter dated 21.03.2019 are attached as Annexure G & H.
6. That after framing of new service rules notified on 25.09.2019, the promotion quota of the appellant was washed away whereafter the appellant, feeling aggrieved, filed service appeal No.666/2020 before the August Service Tribunal for setting aside the impugned Service Rules which was decided in favor of the appellant. Copy of the Judgment/Order dated 02.02.2022 are attached as Annexure I.
7. That upon failure of department to implement the ibid judgment of the Service Tribunal the appellant filed implementation petition No.274/2022 before the Service Tribunal whereupon the respondent department was directed to conditionally implement the judgment of the August Service. Copies of Implementation Petition and Order are attached as Annexure J & K.
8. That consequently the appellant was conditionally promoted to the post of Social Welfare Officer (BPS-17) with immediate effect vide impugned notification dated 04.10.2022 instead of due date i.e. 28.03.2019 and assumed charge of Social Welfare Officer BPS-17 on 07.10.2022. Copy of the Impugned Order dated 04.10.2022 and Charge Assumption are attached as Annexure L & M.
9. That appellant feeling aggrieved from the action and inaction of the respondents by issuing the impugned order dated 04.10.2022 whereby the appellant was promoted with immediate effect instead of due date i.e. 28.03.2019, preferred departmental appeal but to no avail. Copy of the Departmental Appeal is attached as Annexure N.
10. That the appellant feeling aggrieved and having no other remedy filed the instant service appeal on following grounds inter alia:

GROUND:

-3-

- A- That the action and inaction of the respondents by issuing the impugned order dated 04.10.2022 whereby the appellant was promoted with immediate effect instead of due date i.e. 28.03.2019 is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.
- B- That appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the respondent department has acted arbitrary and malafidely by not considering the appellant for promotion from due date.
- D- That the treatment meted out to the appellant is clearly based on discrimination and malafide and as such the respondents violated the principle of natural justice.
- E- That respondents violated Article 38(e) of the Constitution of Islamic Republic of Pakistan 1973, according to which state is bound to eliminate disparity in the income and earning of individuals including persons in the services of the Federation, thus in light of the above quoted constitutional provision the respondents are duty bound to grant ante dated promotion/notional promotion to the post of Social Welfare Officer (BPS-17).
- F- That according to Section.9 of the Civil servant Act, 1973 read with Rule.17 of the appointment, promotion and transfer Rules and Notional promotion policy the appellant is fully entitled for the grant of ante dated promotion.
- G- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may very graciously be accepted as prayed for, please.

Dated:


**APPELLANT
JAMAL SHAH**

THROUGH:


**NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT**

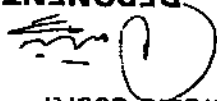

KAMRAN KHAN

WALEED ADNAN

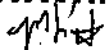
AFFIDAVIT

I, Mr. Jamal Shah, Social Welfare Officer (BPS-17), Social Welfare, Special Education & Women Empowerment Department, Directorate of Special Education, Peshawar, do hereby solemnly affirm that the contents of this Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

DEPONENT



UMAR FAROOQ MOMAND
MUHAMMAD AYUB
& KHANZAD GUL
ADVOCATES



"A" -5- ✓

X

GOVERNMENT OF KHYBER PAKHTUNKHWA
DIRECTORATE OF SOCIAL WELFARE SPECIAL EDUCATION
AND WOMEN EMPOWERMENT JAMRUD ROAD PESHAWAR

DATED PESHAWAR THE 14-05 /2012

ORDER.

No. E-17/65/DSW/4257-54 On the recommendation of Departmental Selection Committee, and approval of the competent authority, Mr Malik Jamal Shah S/O Shahab, Village Tar patar Malik Khel District Dir Upper, is hereby appointed as Social Case Worker in the ADP scheme titled "Establishment of MR & PH Centre at Dir Upper" on the following terms and conditions:

- i. That this appointment shall be purely on contract and fixed pay basis (BPS-16) initially for the period up to 30.06.2012, however is likely to be extended on yearly basis.
- ii. That the official shall be entitled to get monthly pay @ Rs. 30,000/- (Thirty Thousand only).
- iii. That the contract can be terminated without assigning any reason.
- iv. That the contract can be terminated at one month's written notice from either side.
- v. That this appointment shall automatically be terminated on abolition of the Establishment of MR & PH Centre at Dir Upper.
- vi. That no TA/D.A shall be admissible for joining the duty.
- vii. That his appointment is subject to medical fitness and verification of antecedents.
- viii. On expiry / completion of the contract/project, services of the appointee in the project shall stand terminated and shall not confer on his any right of absorption elsewhere or regularization of his services.
- ix. Rest of terms & conditions will be the same as mentioned in the agreement bond, signed by the appointee with the Government of Khyber Pakhtukhwa, Social Welfare, Special Education and Women Empowerment.
- x. 5% Annual Increment up to the maximum of pay is admissible under the rules.
- xi. If you accept the offer of appointment on the above term & condition, you are directed to please report for duty to the District Officer Social Welfare, Department District Dir Upper, with in 15 days of the receipt of this order. In case you did not join your duty with in the stipulated period, the offer shall be deemed cancelled.

Sd/-
Director
Social Welfare, S.E & W.E

Copy forwarded to:

1. The District Accounts Officer, Dir Upper.
2. The District Officer, Social Welfare, Department Dir Upper.
3. The Incharge, MR & PH Centre Dir Upper.
4. PS to Minister for Social Welfare Special Education & Women Empowerment Khyber Pakhtukhwa.
5. PS to Secretary, Social Welfare, Special Education & Women Empowerment Khyber Pakhtukhwa.
6. Malik Jamal Shah S/O Shahab, Village Tar patar Malik Khel District Dir Upper.

o/c
Assistant Director (Admn)
Social Welfare, S.E & W.E

To

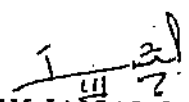
The District Officer
Social welfare, Special Education
& Women Empowerment Department
Dir Upper.

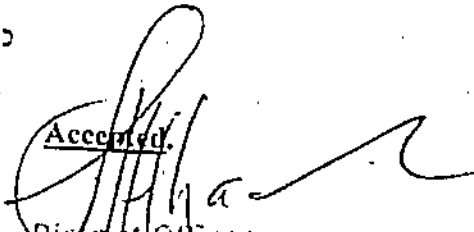
SUBJECT:- ARRIVAL REPORT.

In Compliance with the order of the Director Social Welfare, Special Education & Women Empowerment Department Khyber Pakhtun Khwa order No.E-17/65/DSW/4249-54 dated 14-05-2012.

I hereby submit my Arrival report for duty as Social Case Worker to day on 23-05-2012
(F/Noon)

The report may be accepted Please.


(MALIK JAMAL SHAH)
S/O SHAHAB
SOCIAL CASE WORKER
MR & PH CENTRE DIR UPPER.

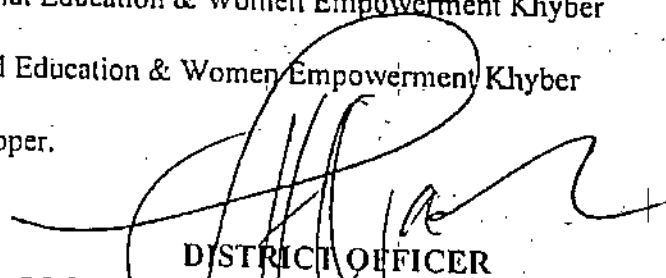

Accepted.
District Officer
Social Welfare Department
Dir Upper

Endst:No.DO/SW/DU/ 2257-62

Dated Dir, the 23/05/2012.

Copy forwarded to:-

1. The Director Social Welfare, Special Education & Women Empowerment Department Khyber Pakhtunkhwa Peshawar.
2. The District Accounts Officer Dir Upper.
3. PS to Minister for Social Welfare Special Education & Women Empowerment Khyber Pakhtunkhwa.
4. PS to Secretary Social Welfare, Special Education & Women Empowerment Khyber Pakhtunkhwa
5. The Incharge, MR & PH Centre Dir Upper.
6. Official Concerned.


DISTRICT OFFICER
SOCIAL WELFARE, SPECIAL EDUCATION
& WOMEN-EMPOWERMENT DEPARTMENT
DIR UPPER.

-7- "C"

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT)

WP No. 2510-P-2015

JUDGMENT.

Date of hearing 17-03-2016.

Appellant/Petitioner Muhammad Ibrahim by Gaz Ansari

Respondent Chief Secretary by - Rab Nawaz Khan AGC.

WAQAR AHMAD SETH, J:- Muhammad

Ibrahim and others, petitioners herein, through the instant constitutional petition, seek issuance of an appropriate writ with the following prayer:-

"On acceptance of this Writ Petition an appropriate Writ may please be issued declaring that Petitioners to have been validly appointed on the post correctly mentioned against their names in the heading of this petition in the Establishment of Deaf and Dump School Takhtbhai Mardan, Govt. School for Hearing Impaired Children at Manda Lower Dir & Govt. School for Mentally Retarded & Physically Handicapped Children at Upper Dir, they worked against the said posts with no complaint whatsoever, the scheme against which the petitioners were appointed, has been brought on regular budget, similarly placed employees working were regularized when their project were brought on regular side while the petitioners were terminated vide separate orders dated 26.05.2015 &

26.06.2015. The notice of termination and termination orders so issued are illegal, unlawful, without lawful authority and of no legal effect, the same are liable to be struck down, the petitioners also entitled to be reinstated and regularized in line with the regularization of other staff, or any other remedy deemed proper may also be allowed".

2. Brief facts of the case are that the Government of Khyber Pakhtunkhwa has established ADP Scheme titled "Establishment of Deaf and Dump School Takhtbhai Mardan, Govt. School for Hearing Impaired Children at Manda Lower Dir & Govt. School for Mentally Retarded & Physically Handicapped Children at Upper Dir". The respondents advertised different posts and the petitioners, holding prescribed qualification, were appointed in different capacities against the posts, mentioned in the heading of Writ Petition, on contract basis, which was extended from time to time and lastly it was extended upto 30.6.2015. The respondents placed the performance of different projects including ADP Scheme titled "Establishment of Deaf and Dump School

Takhtbhai Mardan, Govt. School for Hearing Impaired Children at Manda Lower Dir & Govt. School for Mentally Retarded & Physically Handicapped Children at Upper Dir" before Evaluation Committee specifically constituted for shifting of ADP Scheme from developmental budget to revenue/current, who considered and recommended the same from developmental budget to current budget w.e.f. 1.7.2015 but simultaneously, directions for termination of employees of these schools were issued vide order dated 25.5.2015. The petitioners were served with a notice of termination and thereafter, vide order dated 1.6.2015, their services were terminated. Hence, the instant Writ Petition.

3. Comments were called from respondents No. 2 to 4 which they accordingly furnished and raised certain objections including the jurisdiction of this Court under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973. They further stated that according to section 10(V) & (VI) of the Policy Governing Appointment against Project Posts, services of the

WA

B

employees are to be terminated after conversion of ADP Scheme to the current budget and the petitioners were well aware of the said fact while accepting terms and conditions of service mentioned in their appointment orders and they cannot claim regularization of their services, hence, the respondents prayed for dismissal of the writ petition.

4. Arguments heard and record perused.

5. Facts not denied by the respondents, are that petitioners were appointed after proper advertisement against the post of an ADP scheme / project titled "Establishment of Deaf and Dump School Takhtbhai Mardan, Govt. School for Hearing Impaired Children at Manda Lower Dir & Govt. School for Mentally Retarded & Physically Handicapped Children at Upper Dir", and to this effect separate PC-1 was duly approved and revised. All the petitioners being qualified for different posts applied for the same and were selected on the recommendations of Departmental Selection Committee and with the approval of Competent Authority were

appointed on different dates in the years 2011 & 2012, on contract basis in BPS-16 etc. Their contract was extended from time to time without any break. Vide impugned orders dated 25.5.2015, the services of petitioners were terminated allegedly due to transfer of funds from Developmental Budget to that of Revenue side with effect from 1.7.2015.

6. Record is suggestive that all the petitioners were appointed after proper advertisement, test and on the recommendations of Departmental Selection Committee with the approval of competent authority and there is no charge of ineligibility against any of the petitioners nor in the comments it is offered that any of the petitioners is inefficient and incompetent. In exactly similar circumstances, this Court have reinstated and regularized the services of all project employees which, project were subsequently converted into regular side and all those judgments are upheld recently by the apex court in their judgment dated 24.2.2016. Since, the appointment of petitioners as project employees, the

method of appointment was through departmental selection committee. The project was funded by ADP, however, keeping in view the progress made, the importance and utility of the projects, the services of the petitioners were extended from time to time, but on contract basis, without any break and by now they may have become overage, but they have surely gained the knowledge and experience in the said project, therefore, they have the preferential right to be regularized against their respect posts instead of terminating their services and filling up of the said posts through fresh recruits. The policy of the government that after the conversion of the project into regular budgetary post, the employees shall have no right against the same, however, they may be considered for fresh appointment, if eligible is not appealing to the mind. We have not been impressed by the arguments of learned counsel for the respondents and the tricky act of the respondents, for the reasons that an employee at the time of appointment has little to enforce any condition upon the department / employer of

his choice. A similarly question was raised before the apex Court titled Ikrām Bari and 524 others. Vs National Bank of Pakistan through president and another (2005 SCMR 100) which is reproduced as under:-

"It is difficult to countenance the approach of the Bank that the temporary Godown staff and the dally wages employees should be continued to be governed on disgraceful terms and conditions of service for an indefinite period. In view of section 24-A of the General Clauses Act, 1897, the National Bank was required to act reasonably, fairly and justly. An employee being jobless and in fear of being show the door had no option but to accept and continue with the appointment on whatever conditions it was offered by the Bank. In the case of Pakistan v. Public at large PLD 1987 SC 304, it was contended before the Shariat Appellate Bench of this Court that the provisions of law impugned therein amounted to a contract between the government and the civil servant and thus they involved his consent. It was observed that in fact it as not in the nature of a free consent between the agent. On one hand, State power was projected in the forum of a statute and on the other; the civil servant had no choice of a bargain on those provisions when joining the services. He could not get it

changed. In *Habibullah v. Government of the Punjab and 5 others* PLD 1980 Lah. 37, it was held that the employer being placed in a position of authority and strength could always coerce employees to waive their legal protection and accept contractual terms at the pains of losing his job".

7. The earlier decision of this court was upheld by the apex Court regarding the employees of the ADP projects which were converted to regular budget, and on the analogy that they have to their credit unblemished and continues service to the department / project and due to laps of time they may have become overage and in order to avail their experience and utility they have the preferential right to be regularized instead of filling up the posts with fresh blood and as there is no irregularity or illegality committed at the time of their appointment, therefore, we deemed it appropriate to regularize their services against the converted project. Learned AAG who was directed vide order dated 3.3.2016 by this court to confirm as to whether, after the termination of the appointment of the petitioners, any one has been

appointed or not. Today the learned AAG along with representative of respondents / department confirmed that all the posts are lying vacant.

8. In view of what has been discussed above we allow the instant writ petition by terminating the impugned order dated 26.5.2015 & 26.6.2015 and directed the respondents to reinstate the petitioners against their respective posts, however, petitioners would not be entitled to any wages for the intervening period as they have not performed any job / work.

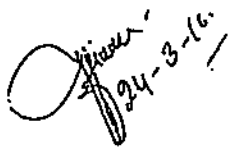
ANNOUNCED.
Dated: 17.3.2016


JUDGE


JUDGE

Nowab Shah

=====


24-3-16

LEGIBLE COPY

**Government of Khyber Pakhtunkhwa
Directorate of Social Welfare Special Education
& Women Empowerment
Jamrud Road**

Peshawar the 22nd Nov, 2016

OFFICE ORDER

No. E-18/54/DSW/2016/18979-19005. In pursuance of the decision of the Honorable Supreme Court of Pakistan in Civil Appeal No. 1-P/2013 dated 24.02.2016 (WP. 2510-P/2015) and Administrative Department Notification No. SO-II(SWD)II-198/2015/PC/1220-26 dated 16.11.2016, the following Ex-Project Employee of School for Deaf Children, Takhtbhai District Mardan, Government School for Hearing Impaired Children Munda District Dir Lower and Centre for Mentally & Physically Retarded Children Dir Upper are hereby provisionally reinstated from the date of their assumption of charge of the posts.

S No	Name	Designation with BPS	Proposed Post, BPS and station
1.	Ibrahim	SCW B-16	SCW B-16 Deaf School Takhtbhai District Mardan
2.	Junaid Khan	Junior Clerk	Junior Clerk B-11 Deaf School Munda Dir Lower
3.	Ghalib Khan	Driver	Driver B-5 Deaf School Takhtbhai District Mardan
4.	Muhammad Raziq	Naib Qasid	Naib Qasid B-3 Deaf School Takhtbhai Mardan
5.	Shahid Khan	Chowkidar	Chowkidar B-3 Deaf School Takhtbhai Mardan
6.	Nisar Ahmad	SCW	SCW B-16 HIC Munda D/L
7.	Hayat Ullah	SOM	SOM B-11 HIC, Munda D/L
8.	Gul Muhammad	Driver	Driver B-5 HIC Munda D/L
9.	Imtiaz Ahmad	Naib Qasid	Naib Qasid B-3 HIC Munda Dir Lower
10.	Rehman Ullah	Chowkidar	Chowkidar B-3 HIC Munda Dir Upper
11.	Fazal ur Rehman	Project Manager	Manager B-16 MRPH, Dir Upper
12.	Jamal Shah	SCW	SCW B-16 MRPH Dir Upper
13.	Shad Muhammad	Chowkidar	Chowkidar B-3 MRPH Dir Upper
14.	Naziat	Religious Teacher	Religious Teacher B-7 MRPH Dir Upper
15.	Bilal Ahmad	Junior Clerk	Junior Clerk B-11 MRPH Dir Upper
16.	Nasrullah	Driver	Driver B-5 MRPH, Dir Upper
17.	Gul Hakim	Naib Qasid	Naib Qasid B-3 MRPH Dir Upper

2. The above officials are Directed to report for duty to Principals / DO (SW) concerned on or before 25.11.2016. The Provisional reinstatement is subjected to the fate of the CPLAs/Review Petition pending in the Supreme Court of Pakistan.

Sd/-

**Director (SWSE&WE)
Khyber Pakhtunkhwa**

Copy for information to:

1. District Accounts Officer, Mardan, Dir Lower and Dir Upper.
2. PS to Secretary (SW)
3. DO (SW) Mardan, Dir Lower & Dir Upper.
4. Official Concerned.
5. PA to DSW
6. Office Copy.

"E"

-17-

18

TO BE SUBSTITUTED BEARING THE SAME NO. & DATE

Government of Khyber Pakhtunkhwa
Directorate of Social Welfare, Special Education and
Women Empowerment Jamrud Road Peshawar

Dated Peshawar the 03/02/2020

ORDER:

No. E-18/54/DSW/2020/3521-31 In compliance with the judgment dated 17.03.2016 of the Peshawar High Court Peshawar in Writ Petition No. 2510-P/2015 titled "Muhammad Ibrahim & others VS Government of Khyber Pakhtunkhwa and judgment dated 04.11.2019 of the Supreme Court of Pakistan in Civil Petition No. 355-P/2016 titled "Government of Khyber Pakhtunkhwa VS Muhammad Ibrahim & Others" and in supersession of this Directorate's Order No. E-18/54/DSW/2016/18979-19005 dated 22.11.2016, the employees of the following institutions, are hereby re-instated and adjusted against the vacant posts mentioned against their names w.e.f 01.07.2015:

S.No	Name	Designation	Adjusted as
1	Mr. Muhammad Ibrahim	Social Case Worker (BPS-16)	<u>Social Case Worker (BPS-16)</u> in Govt. School for Deaf Children Swabi.
2	Mr. Junaid Khan	Junior Clerk (BPS-11)	<u>Junior Clerk (BPS-11)</u> Govt. School for Deaf Children Takht Bhai Mardan
3	Mr. Ghalib Khan	Driver (BPS-5)	<u>Driver (BPS-5)</u> Govt. School for Deaf Children Takht Bhai Mardan
4	Mr. Muhammad Raziq	Naib Qasid (BPS-3)	<u>Naib Qasid (BPS-3)</u> Govt. School for Deaf Children Takht Bhai Mardan
5	Mr. Shahid Khan	Chowkidar (BPS-3)	<u>Chowkidar (BPS-3)</u> Darul Aman Mardan
6	Mr. Nisar Ahmad	Social Case Worker (BPS-16)	<u>Social Case Worker (BPS-16)</u> Govt. School for Deaf Children Timergara Dir Lower
7	Mr. Hayatullah	Senior Oral Master	<u>Senior Oral Master (BPS-11)</u> Govt. School for Deaf Children Munda Dir Lower
8	Mr. Gul Muhammad	Driver	<u>Driver (BPS-5)</u> Govt. School for Deaf Children Munda Dir Lower
9	Mr. Imtiaz Ahmad	Naib Qasid	<u>Naib Qasid (BPS-3)</u> Govt. School for Deaf Children Munda Dir Lower
10	Mr. Rahmanullah	Chowkidar	<u>Chowkidar (BPS-3)</u> Govt. School for Deaf Children Munda Dir Lower
11	Mr. Fazal ur Rahman	Project Manager	<u>Manager (BPS-16)</u> MR & PHC Dir Upper
12	Mr. Jamal Shah	Social Case Worker	<u>Social Case Worker (BPS-16)</u> Artificial Limbs Workshop Peshawar
13	Mr. Shad Muhammad	Chowkidar	<u>Chowkidar (BPS-3)</u> MR & PHC Dir Upper
14	Mst. Naziat	Religious Teacher	<u>Religious Teacher (BPS-7)</u> Govt. School for Deaf Children Munda Dir Lower
15	Mr. Bilal Ahmad	Junior Clerk	<u>Junior Clerk (BPS-11)</u> MR & PHC Dir Upper
16	Mr. Nasrullah	Driver	<u>Driver (BPS-5)</u> MR & PHC Dir Upper
17	Mr. Gul Hakim	Naib Qasid	<u>Naib Qasid (BPS-3)</u> MR & PHC Dir Upper

2. The intervening period w.e.f 01.07.2015 to 17.03.2016 shall be treated as leave without pay.

(PTO)

-18-

3. The re-instatement shall be subject to the judgment of the Honorable Supreme Court of Pakistan in review petition filed by the Government of Khyber Pakhtunkhwa Social Welfare, Special Education & Women Empowerment Department.

Sd/-
Director
(SW, SE & WE)

Copy forwarded to the:

1. Accountant General, Khyber Pakhtunkhwa Peshawar.
2. District Accounts Officers, Mardan, Dir Lower, Swabi & Dir Upper.
3. Section Officer (Lit) Social Welfare, SE & WE Khyber Pakhtunkhwa.
4. The Assistant Directors (Litigation) & (Estab-I) Directorate of Social Welfare.
5. Manager, Artificial Limbs Workshop Peshawar.
6. District Officers, Social Welfare Mardan, Dir Lower, Swabi & Dir Upper
7. Superintendent, Darul Aman Mardan.
8. Govt. School for Deaf Children Swabi C/O District Officer (SW) Swabi
9. Social Case Worker, Govt. School for Deaf Children Takht Bhai Mardan.
10. Social Case Worker, Govt. School for Deaf Children Munda Dir Lower.
11. Manager, Center for Mentally Retarded & Physically Handicapped Children Dir Upper.
12. PA to Director (SW)
13. Officials concerned.


Assistant Director
(Establishment-I)

"F" 
-19-

SUPREME COURT OF PAKISTAN
(Review Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed, CJ
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
Mr. Justice Muhammad Ali Mazhar

CIVIL REVIEW PETITIONS NO.742 AND 744 OF 2019

IN

CIVIL PETITIONS NO.355-P OF 2016 AND 407-P OF 2019

[Review against the order dated 4.11.2019, passed by this Court in C.Ps. No.355-P of 2016 and 407-P of 2019]

Government of Khyber Pakhtunkhwa ...Petitioners
through Chief Secretary and others (in both cases)

Versus

Muhammad Ibrahim and others
(in CRP.742 of 2019)

Ikram ul Haq and another ...Respondents
(in CRP.744 of 2019)

For the Petitioners : Mr. Shumail Ahmed Butt,
Advocate General, Khyber Pakhtunkhwa

For Respondents : Mr. Muhammad Shoaib Shaheen, ASC
(in CRP.742 of 2019)


Mr. Zia ur Rehman Tajik, ASC
Syed Rifaqat Hussain Shah, AOR
(in CRP.744 of 2019)

Date of Hearing : 13.09.2021

ORDER

GULZAR AHMED, CJ. Both these Civil Review Petitions are time barred by 24 days. The applications for condonation of delay (CMAs No.12082 and 12084 of 2019) have been filed in which the only reason given is that the lengthy correspondence between various tiers of the department and the process of taking decision by Constituted Law Committee for fitness of the cases for filing of the Civil Review Petitions. The

ATTESTED


Senior Court Associate
Supreme Court of Pakistan
Islamabad



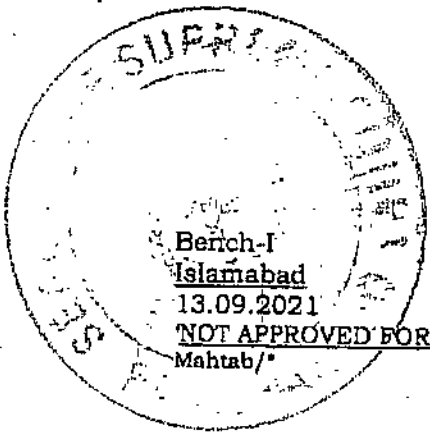
ground as is urged in the applications was never considered sufficient cause for condonation of delay and the learned Advocate General, Khyber Pakhtunkhwa, is unable to explain as to why such ground be accepted now. Even otherwise, each days' delay is not explained, which is the requirement of law. Further, no affidavit of the official of the department, in support of the applications, is filed. The applications for condonation of delay are, therefore, meritless and the same are dismissed. Consequently, both the Civil Review Petitions are dismissed as time barred.

Sd/-HCJ

Sd/-J

Sd/-J

Certified to be True Copy



Senior Court Associate
Supreme Court of Pakistan
Islamabad

GR No: 812-P/21 Civil/Criminal
 Date of Presentation: 25-10-21
 No of Words: 600
 No of Pages: 6
 Retention Fee: 500
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 Court Fee: 872
 Date of Commencement: 24/10/21
 Date of Delivery: 08-11-2021
 Compared by: [Signature]
 Received by: _____

"6"

-21-



09-9224263

Government of Khyber Pakhtunkhwa
Directorate of Social Welfare, Special Education and
Women Empowerment Janrud Road Peshawar.

No. E-17/16/DSW/Vol-10/ 2138-39
Dated Peshawar the 16/11/2018

To

The Section Officer-II,
Social Welfare, SE & WE,
Khyber Pakhtunkhwa.


SUBJECT: WORKING PAPER FOR PROMOTION.


I am directed to refer to the subject and to enclose here with the Working Paper along with all relevant Annexures for Promotion of Social Case Worker/ Field Officer BPS-16 to the post of Social Welfare Officer/Manager/Superintendent BPS-17, for further necessary action please.

Encl: As above.

Copy forwarded to

1. PA to DSW.


Assistant Director
(Establishment)


Assistant Director
(Establishment)




WORKING PAPER

Subject: PROMOTION OF SOCIAL CASE WORKER/ FIELD OFFICER/ SUPERVISOR (BPS-16) TO THE POST OF SOCIAL WELFARE OFFICER, SUPERINTENDENT/ MANAGER BPS-17.

According to the rules the incumbents(s) of the post of Social Case Worker/ Field Officer/ Supervisor BPS-16 with (5) years of service as such are to be promoted to any of the following three posts.

- Social Welfare Officer BPS-17
- Superintendent BPS-17 DarulKafala/Darulaman/Welfare Home &
- Manager BPS-17 MR & PH

1. Social Welfare Officer (BPS-17)

There are 44 sanctioned posts of Social Welfare Officers (BPS-17) in Social Welfare, Special Education and Women Empowerment Department Khyber Pakhtunkhwa (Annexure-A). In terms of S.No.3, Column-7 of the Notification No. SO-II (SW)II-12/99 dated: 21.09.2006 (Annexure-B), the following method has been prescribed for recruitment of Social Welfare Officers (BPS-17):

- (a) "Twenty Percent by promotion, on the basis of seniority-cum-fitness from amongst the Supervisor/ Field Officers and Social case workers with five-year service as such; and
- (b) Eighty percent by initial recruitment".

Table-A

Sanctioned strength of SWOs	Total Filled at Present	Vacant Posts	20% Promotion quota	Filled through promotion	Remaining promotion quota	Remarks
44	41	4	8.8 say 9	5	4	

2. Superintendent (BPS-17) DarulKafala/Darulaman/Welfare Home & Manager BPS-17 MR & PH.

There are 17 sanctioned posts of Superintendent (BPS-17) DarulKafala/Darulaman and 10 sanctioned posts of Manager/ Principal Mentally Retarded & Physically Handicapped Children in Social Welfare, Special Education and Women Empowerment Khyber Pakhtunkhwa, (Annexure-C). Thus on the whole, total number of the sanctioned post of above mentioned Superintendent and Manager/ Principal are 27 for which the prescribed method of recruitment in terms of S.No.(iv) Column-5 of the Notification No. SO-II(SWD)II-12/2011/2823-34 Dated: 29-11-2011 (Annexure-D), is as follow:

WORKING PAPER

Subject: PROMOTION OF SOCIAL CASE WORKER / FIELD OFFICER / SUPERVISOR (BPS-16) TO THE POST OF SOCIAL WELFARE OFFICER, SUPERINTENDENT / MANAGER BPS-17

According to the rules the incumbents of the post of social Case Worker / Field Officer / Supervisor BPS-16 with 5 years of service as such are to be promoted to any of the following three posts.

- Social Welfare Officer BPS-17
- Superintendent BPS-17 Darulkafala / Darulaman/Welfare Home &
- Manager BPS-17 MR & PH

1. Social Welfare Officer (BPS-17)

There are 44 sanctioned posts of Social Welfare Officers (BPS-17) in Social Welfare, Special Education and Women Empowerment Department Khyber Pakhtunkhwa (Annexure-A). In terms of S. No 3, Column-7 of the Notification No SOII (SW)II-12/99 dated 21.09.2006 (Annexure-B), the following method has been prescribed for recruitment of Social Welfare Officer (BPS-17).

- (a) Twenty Percent by promotion, on the basis of seniority-cum-fitness from amongst the Supervisor/Field Officer and Social Workers with five year service as such; and
- (b) Eighty percent by initial recruitment.

Table-A

Sanctioned Strength of SWOs	Total Filled at Present	Vacant Posts	20% Promotion Quota	Filled through promotion	Remaining promotion quota	Remarks
44	41	4	8.8 say 9	5	4	

2. Superintendent (BPS-17) Darulkafala/Darulaman/Welfare Home & Manager BPS-17 MR&PH.

There are 17 sanctioned posts of Superintendent (BPS-17) Darulkafala/arulaman and 10 sanctioned posts of Manager / Principal Mentally Retarded & Physically Handicapped Children in Social Welfare, Special Education and Women Empowerment Khyber Pakhtunkhwa (Annexure-C). Thus on the whole, total number of the sanctioned post of above mentioned Superintendent and Manager/ Principal are 27 for which the prescribed method of recruitment in terms of S. No. (iv) Column-5 of the Notification No. SO-II(SWD)II-12/2011/2823-34 dated 29.11.2011 (Annexure-D), is as follow:

- a) Fifty percent by initial recruitment.
- b) Fifty percent by promotion from amongst the holder of the post of Field Officer / Supervisor and Social Case Worker (BPS-16) with at least 5-years of service as such.

Table-B

S.No.	Nomenclature & BPS of the Post	Sanctioned Strength	Total Filled	Total Vacant	50% Promotion Quota Share	No. of Posts filled Through Promotion	No. of Posts to be filled Through Promotion
1	Superintendent (BPS-17)	17	05	12	8.5 say 9	02	07
2	Manager/ Principal (BPS-17)	10	02	08	05	Nil	05
Total		27	07	20	14	02	12

Thus as per Rules a total of 14 out of 27 posts of Superintendent/ Manager BPS-17 are to be filled through promotion from amongst the holder of the post of Social Case Worker / Supervisor/ Field Officer (BPS-16) in which only 02 have been filled thus so far and 12 more are to be filled as such.

Table -C below summarizes Table-A & B

Table-C

S.No.	Nomenclature & BPS of the Post	Sanctioned Strength	Share of Promotion Quota	No. of Posts Filled Through Promotion	Remaining Promotion Quota	Presently Vacant Posts
1	Social Welfare Officer (BPS-17)	44	8.8 say 9	05	04	04
2	Superintendent (BPS-17)	17	8.5 say 9	02	07	12
3	Manager/ Principal (BPS-17)	10	05	Nil	05	08
Total		71	23	07	16	24

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- a) Fifty percent by initial recruitment
- b) Fifty percent by promotion from amongst the holder of the post of Field Officer / Supervisor and Social Case Worker (BPS-16) without at least 5 years of Service as such.

Table-B

S N o	Nomenclature & BPS of the post	Sanctioned Strength	Total Filled	Total Vacant	50% Promotion Quota Share	No of Posts filled Through Promotion	No of Posts to be filled through Promotion
1	Superintendent BPS-17	17	05	12	8.5 say 9	02	07
2	Manager / Principal BPS-17	10	02	08	05	Nil	05
	Total	27	07	20	14	02	12

Thus as per Rules a Total of 14 out of 27 posts of Superintendent / Manager BPS-17 are to be filled through promotion from amongst the holder of the post of Social Care Worker / Supervisor / Field Officer (BPS-16) in which only 02 have been filled thus so far and 12 more are to be filled as such.

Table-C below summarizes Table-A&B

Table-C

S N o	Nomenclature & BPS of the Post	Sanctioned Strength	Share of Promotion Quota	No of Posts Filled through Promotion	Remaining Promotion Quota	Presently Vacant posts
1	Social Welfare Officer BPS-17	44	8.8 say 9	05	04	04
2	Superintendent BPS-17	17	8.5 say 9	02	07	12
3	Manager / Principal BPS-17	10	05	Nil	05	08
	Total	71	23	07	16	24

-24-

There are presently 07 Officers in the seniority list of Social Lane Workers/ Field Officer/ Supervisor (Annexure-E), their particulars are as under

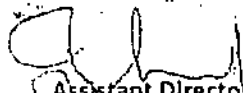
S.No	Name of Officer	Date of 1 st Entry into Govt. Service	Length of Service up to 31.10.2018			Remarks
			Year	Month	Days	
1	Mr. Faisal Khan	01.07.2011	11	01	00	The officers fulfil the eligibility criteria for promotion
2	Mr. Hamid	03.07.2013	05	03	28	
3	Mr. Sabir Khan	03.07.2013	05	03	28	
4	Mr. Saeed Khan	04.07.2013	05	03	27	
5	Mr. Alamgir	04.07.2013	05	03	27	
6	Mr. Jamal Shah	25.11.2016	02	00	06	
7	Mst. Kiran Irshad	01-06-2017	01	05	00	The officer does not fulfill the criteria.

As is, evident, apart from officer at S. No. 7 the rest of the officers from S. No. 1 to S.No. 6 possess the prescribed length of service, required for promotion to the post of Social Welfare Officer & Superintendent/ Manager (BPS-17) and thus are eligible to be promoted as such on regular basis.

It is certified that the Officers included in the panel of promotion:

- Are holding the present post on regular basis and none of them is serving on Adhoc basis.
- Have the prescribed maximum length of qualifying service / experience as required for promotion on regular basis under the rules except the officer at Sr. No. 7.
- Neither any anti-corruption/departmental enquiry is pending against the above mentioned Officers nor was any penalty imposed against them during their entire service period.
- The vacant posts of Social Welfare Officer & Superintendent/ Manager (BPS-17) lying vacant are on regular budget side.
- No. officers included in the panel of promotion was granted extra ordinary leave (leave without pay)
- The PERs /Synopsis of PERs in respect of the above mentioned Officers are placed on board at (Annexure-F).
- Willingness for promotion based on priority in r/o Officers included in the panel for promotion is (are) placed as (Annexure-G).

The Departmental Promotion Committee is requested to determine the suitability of the Officers for promotion as Social Welfare Officers & Superintendent/ Manager (BPS-17) on regular basis.


Assistant Director
(Establishment)

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There are presently, 07 officers in the seniority list of Social Case Workers / Field Officer / Supervisor (Annexure-E), their particulars are as under:

S NO	Name of Officer	Date of 1 st Entry into Govt Service	Length of Service upto 31.10.2018			Remarks
			Year	Month	Days	
1	Mr Faisal Khan	01.07.2011	11	01	00	The Officers fulfill the eligibility criteria or promotion
2	Mr Hamid	03.07.2013	05	03	28	
3	Mr Sabir Khan	03.07.2013	05	03	28	
4	Mr Sareer Khan	04.07.2013	05	03	27	
5	Mr Alamgir	04.07.2013	05	03	27	
6	Mr Jajmal Shah	25.11.2016	02	00	06	
7	Mst Kiran Irshad	01.06.2017	01	05	00	The Officer does not fulfill the criteria

As is, evident apart from officer at S No. 7 the rest of the officers from S. NO 1 to S No 6 possess the prescribed length of service, required for promotion to the post of Social Welfare Officer & Superintendent / Manager BPS-17 and thus are eligible to be promoted as such on regular basis.

It is certified that the officers included in the panel of promotion:

- Are holding the present post on regular basis and none of them is serving on adhoc basis.
- Have the prescribed maximum length of qualifying service / experience as required for promotion on regular basis under the rules except the officer at Sr No. 7.
- Neither any anti-corruption / departmental enquiry is pending against the above mentioned officers nor any penalty imposed against them during their entire service period.
- The vacant posts of Social Welfare Officer & Superintendent / Manager BPS-17 lying vacant are on regular budget side.
- No officers included in the panel of promotion was granted extra ordinary leave (leave without pay)
- The PERs/Synopsis of PERs in respect of the above mentioned officers are placed on board at (Annexure-F)
- Willingness for promotion, based on priority in r/o Officers included in the panel for promotion is (are) placed as (Annexure-G)

The Departmental Promotion Committee is requested to determine the suitability of the Officers for promotion as Social Welfare Officers & Superintendent / Manager BPS-17 on Regular Basis.

Assistant Director

(Establishment)

-25-

S. No.	Name of Officer	Designation/ BPS	Willingness Order
1	Mr. Faisal Khan	Social Case Worker (BPS-16)	1. Manager 2. Social Case Worker 3. Superintendent Institutes
2	Mr. Hamid	Social Case Worker (BPS-16)	1. Manager 2. Social Case Worker 3. Superintendent Institutes
3	Mr. Sabir Khan	Social Case Worker (BPS-16)	1. Manager 2. Social Case Worker 3. Superintendent Institutes
4	Mr. Saeed Khan	Social Case Worker (BPS-16)	1. Manager 2. Social Case Worker 3. Superintendent Institutes
5	Mr. Alamgir	Social Case Worker (BPS-16)	1. Manager 2. Social Case Worker 3. Superintendent Institutes
6	Mr. Malik Jinnal Shah	Social Case Worker (BPS-16)	1. Manager 2. Social Case Worker 3. Superintendent Institutes


ASSISTANT DIRECTOR
Establishment

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S No	Name of Officer	Designation / BPS	Willingness Order
1.	Mr Faisal Khan	Social Case Worker BPS-16	1- Manager 2- Social Case Worker 3- Superintendent Institutes
2.	Mr Hamid	Social Case Worker BPS-16	1- Manager 2- Social Case Worker 3- Superintendent Institutes
3.	Mr Sabir Khan	Social Case Worker BPS-16	1- Manager 2- Social Case Worker 3- Superintendent Institutes
4.	Mr Sareer Khan	Social Case Worker BPS-16	1- Manager 2- Social Case Worker 3- Superintendent Institutes
5.	Mr Alamgir	Social Case Worker BPS-16	1- Manager 2- Social Case Worker 3- Superintendent Institutes
6.	Mr Malik Jamal Shah	Social Case Worker BPS-16	1- Manager 2- Social Case Worker 3- Superintendent Institutes

**Assistant Director
(Establishment)**



GOVERNMENT OF KHYBER PAKHTUNKHWA
DIRECTORATE OF SOCIAL WELFARE, SPECIAL EDUCATION &
WOMEN EMPOWERMENT, OPPOSITE ISLAMIA COLLEGE,
JAMRUD ROAD PESHAWAR

Dated Peshawar, the 19/03/2019

No. E-17/17/DSW/Vol-6/1942-44 In pursuance of Section 8 (1) of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Sub-Rule (b) & (4) of Rule 17 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfers) Rules 1989 added vide Notification No.SOR-VI(E&AD)1-3/2008 dated 19-11-2009. Tentative Seniority list of Social Case Worker/Field Officer (BPS-16) Social Welfare, Special Education & Women Empowerment Department, Khyber Pakhtunkhwa as stood on 31.12.2018.

S #	Name	Father Name	Qualification	Domicile	Date of Birth	Date of 1 st Appointment	Date of Present Appointment	Place of Present Posting	Remarks
1.	Faisal Khan	Aurangzeb	M.A (Anthrop:)	Charsadda	20-04-1982	01-07-2011	01-07-2011	Govt. Institute for Visually Impaired Children Charsadda	
2.	Hamid	Khair Gul	M.A (Sociology)	Khyber Agency	13-12-1984	03-07-2013	03-07-2013	Directorate of Social Welfare Peshawar	
3.	Sabir Khan	Haidar Gul	M.A (Anthrop:)	Malakand Agency	15-03-1984	03-07-2013	03-07-2013	Mental Retarded & Physically handicapped Mansehra	
4.	Sareer Khan	Khan Rehman	M.A (Sociology)	Momand agency	25-05-1980	04-07-2013	04-07-2013	Secretariat Social welfare KPK	
5.	Alamgir	Amin Khan	M.A(Sociology)	Swabi	03-03-1986	04-07-2013	04-07-2013	District Officer S.W Swabi	
6.	Malik Jamal Shah	Shahab Ud Din	M.A Social work	Dir Lower	02-04-1987	25-11-2016	25-11-2016	Directorate of Social welfare	

Assistant Director
Establishment

Copy forwarded to :-

1. The Assistant Director (Admin), Directorate of Social Welfare, SE & WE Khyber Pakhtunkhwa, Peshawar.
2. The District Officers, Social Welfare, SE & WE, Charsadda, Malakand, Swabi, Mansehra.
3. The Officers at Sr# 1 to 3 above are requested to circulate the above tentative Seniority list among the incumbents and submit any objection/correction within 15 days of the receipt of this letter.

Assistant Director
Establishment

"H" -27-



GOVERNMENT OF KHYBER PAKHTUNKHWA
ZAKAT, USHR, SOCIAL WELFARE, SPECIAL EDUCATION
& WOMEN EMPOWERMENT DEPARTMENT

3236

No. SOI/SWD/11-209/DPC/2018/PC
Dated Peshawar the 21st March 2019

To: The Director,
Social Welfare, Special Education &
Women Empowerment Khyber Pakhtunkhwa.

Subject: WORKING PAPER FOR PROMOTION

Dear Sir,

I am directed to refer to this Department letter of even number dated 14.03.2019 on the subject noted above and to state that meeting of Pre-Departmental Promotion Committee is re-scheduled and will be held on 28th March, 2019 under the chairmanship of Secretary Social Welfare, Special Education & Women Empowerment Department Khyber Pakhtunkhwa in his office at 11:00 AM.

You are therefore requested to kindly make it convenient to attend the meeting on the above mentioned date and time.

Muhammad Saud
(Muhammad Saud)
Section Officer-II

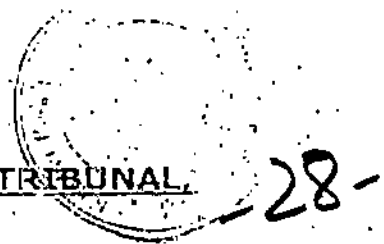
Endst: of Even No. & Date:-

Copy for information is forwarded to the:

1. Deputy Director (Admn.), Directorate of Social Welfare, Special Education & Women Empowerment to attend the said meeting.
2. PS to Secretary Social Welfare, Special Education & Women Empowerment Department.

Muhammad Saud

~~ANNEX A~~ (9)
"9"



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

SERVICE APPEAL NO. 666 / 2020

Mr. Jamal Shah, Social Case Worker (BPS-16),
O/O Centre for MRP, Dir Upper.

Slary No. 365
Dated 15/11/2020

APPELLANT

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
- 2- The Secretary (Finance) Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
- 3- The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The Secretary (Social Welfare) Special Education & Woman Empowerment Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
- 5- The Director (Social Welfare), Directorate of Social Welfare, Special Education & Women Empowerment, Jamrud Road, Peshawar.

RESPONDENTS

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED SERVICE RULES NOTIFIED ON 25.9.2019 WHEREBY THE PROMTION QUOTA RESREVED FOR THE CADRE OF THE APPELLANT TO THE POST OF MANAGER AND SOCIAL WELFARE OFFICER (BPS-17) HAS BEEN WASHED AWAY AND AGAINST THE IMPUGNED APELLATE ORDER DATED 16.12.2019 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REGERITED ON NO GOOD GROUNDS

Filed to-day
Registrar
15/11/2020

PRAYER: That on acceptance of this appeal the impugned Service Notified on 25.9.2019 may be set aside and the respondents may kindly be directed to restore/revive the old service rules Notified on 21.9.2006 amended on 29.11.2011. That the respondents may further please be directed that not to disturbed the quota reserved for the cadre of the appellant to the post of Manager & Social Welfare Officer (BPS-17). Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

submitted to-day
Regd.

Registrar
24/11/20

ATTESTED

Registrar

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-29-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 666/020

Date of Institution ... 15.01.2020

Date of Decision ... 02.02.2022

Mr. Jamal Shah, Social Case Worker (BPS-16). O/o Centre for MRPH, Dir Upper
(Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa, through Chief Secretary Khyber
Pakhtunkhwa, Civil Secretariat Peshawar and others. (Respondents)

Noor Muhammad Khattak,
Advocate ... For Appellant

Muhammad Adeel Butt,
Additional Advocate General ... For respondents

AHMAD SULTAN TAREEN ... **CHAIRMAN**
ATIQU-UR-REHMAN WAZIR ... **MEMBER (EXECUTIVE)**


JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):-

Brief facts of the

case are that the appellant was initially appointed as Social Case Worker (SCW) BPS-16 vide order dated 22-11-2016. Under the old rules notified on 21-09-2006, the SCW had the channel of promotion to the post of Superintendent Welfare Home BPS-17 and to the post of Social Welfare Officer BPS-17. Such rules were further amended vide order dated 29-11-2011, whereby 50% quota was reserved for the cadres of Field Officers/Supervisors and SCW to the post of Superintendent Welfare Home/Manager BPS-17. As per seniority list dated 19-03-2019 in respect of SCW BPS-16, the appellant stood as serial No 8 and the appellant was quite hopeful for promotion to the post of Social Welfare Officer BPS-17, as nine posts were vacant in promotion quota. Similarly promotion of the

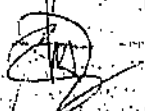
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appellant was also due for the cadre of Superintendent and Manager BPS-17, as total 12 posts were vacant, but in the meanwhile the impugned service rules brought in field wide notification dated 25-09-2019, by virtue of the impugned service rules, promotion quota of the appellant to the posts of Manager, Superintendent and Social Welfare Officer BPS-17 has been washed away by lifting the cadre of the appellant as block cadre. Feeling aggrieved, the appellant filed departmental appeal before the appellate authority, which was regretted by the appellate authority vide impugned order dated 16-12-2019, hence the instant service appeal with prayers that the impugned notification dated 25-09-2019 may be set aside and the respondents may be directed to restore/revive the old service rules notified on 21-09-2006 amended on 29-11-2011 with further prayers not to disturb the quota reserved for the cadre of the appellant to the post of Manager & Social Welfare Officer BPS-17.

02. Learned counsel for the appellant has contended that the impugned service rules dated 25-09-2019 and the impugned appellate order dated 16-12-2019 are against law, rules and norms of natural justice and material on record, hence not tenable and liable to be set aside; that the appellant has not been treated in accordance with law, as such the respondents violated Article-4 and 25 of the Constitution; that the treatment meted out to the appellant is clear violation of Fundamental Rights of the appellant as enshrined in the Constitution; that as per Article-37 of the Constitution, the state is bound to promote social justice and eradication of social evils and accordingly the action and inaction of the respondents squarely falls within the violation of the said Article; that in spite of eligibility and seniority, the appellant has been ignored by the respondents from promotion, as such the impugned service rules dated 25-09-2019 are based on mala fide and arbitrary intentions; that the appellant has been discriminated by the respondents as such, the respondents violated the principle of natural justice; that action of the respondents by issuing the impugned service rules is violative of

ATTESTED



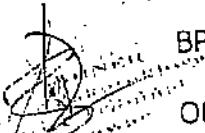
Article-38 (e) of the Constitution; that in light of Section-9 of the Civil Servant Act, 1973 read with Rule-7 of the Khyber Pakhtunkhwa (Appointment, Promotion & Transfer) Rules, 1989, the appellant is fully entitled for promotion to the next grade.

03. Learned Additional Advocate General for the respondents has contended that the service rules are framed, amended or repealed by standing service rules committee, having representation from administration department, establishment department, law department and Finance department; that the existing service rules have been framed under a legal mandate in accordance with principle of fair play giving equal opportunity to all the cadres adequate prospects of career progression; that complete re-structuring of the department is under process and efforts are underway to provide suitable ladder of promotion to all cadres including the appellant; that draft service rules under the proposed re-structuring are under process, where avenue of promotion @ 5% by promotion to BPS-17 from amongst the SCW has been proposed, which will be done in due course of time and grievance of the appellant will be settled in due course.

04. We have heard learned counsel for the parties and have perused the record.

05. As per old service rules notified on 21-09-2006, promotion prospects for the post of SCW to the post of Superintendent Welfare Home BPS-17 was 100% on the basis of promotion from amongst the posts of Supervisor/Field Officer/SCW/ Office Superintendent with at least five years service as such. Besides, promotion to the post of Social Welfare Officer BPS-17 was also @ 20% from amongst the holders of posts of Field Officers/Supervisors and SCW with at least five years service as such. Such Rules were amended vide notification dated 29-11-2011, where promotion to the post of Superintendent Welfare Home/Manager BPS-17 was made @ 50% by promotion from amongst the holder of posts of Field Officers/Supervisor and SCW with at least five years service as such. Service rules

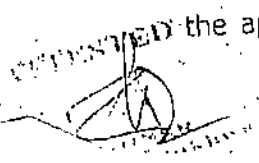
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were further amended vide notification dated 25-09-2019, where the post of Manager BPS-17 is to be filled @ 10% by promotion from amongst the administrative officers with at least three years service as such and post of the Social Welfare Officer BPS-17 is to be filled @ of 10% by promotion from amongst the holder of post of field officers with at least five years service as such, hence the post of the appellant i.e. Social Case Worker is totally removed from the channel of promotion. On query the respondents has submitted draft service rules in respect of the cadre of the appellant, where promotion @ 5% from amongst the holder of posts of SCW and Office Superintendent is proposed to be promoted to the posts of Assistant Director/Social Welfare Officer/Manager/Administrative Officer/ Rehabilitation Officer and Superintendent. The respondents further informed that draft service rules are under process and will be done in due course of time.

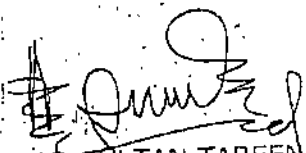
06. We have observed that cadre of the appellant had a separate seniority and separate job description. In the first place, deletion of such cadre from promotion is not justifiable as such cadre was holding a prominent position in promotion in previous service rules and sudden deletion of the cadre from promotion seems to be an act of omission. Contention of the respondents to the effect that service rules are in the making does not hold force, as the appellant as well as his other colleagues were in promotion zone, as is evident from record, hence leaving them in the lurch without any service rules would be detrimental to the interest of the appellant, which however is not allowable. Undoubtedly, amendments in rules does fall within the domain of the respondents but they cannot be allowed if the amendment so made are in conflict with fundamental rights or ultra vires or mala fide. In the instant case, the appellant and his colleagues were under consideration for promotion, in the meanwhile the amended rules were brought in field, where no remedy is available for the post of the appellant, rather post of the appellant is deleted from the list of promotion,

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hence their promotions were stopped and asked them to wait for a set of another amendments in the rules, which is illogical. It may take years, while restructuring the departments and making rules for it; but at the moment, keeping them deprived of promotion due to fresh amendment, where the post of appellant is excluded from promotion, rather these amended rules in its essence are not meant for the post of the appellant and service rules pertaining to the appellant is in the pipe line. In such a situation, equity and fair play demands that the old rules shall apply on them for the purpose of promotion until arrival of new rules. Moreover merger of two cadres needs deep appreciation of the seniority of the holder of posts in light of Civil Servants (Seniority) Rule, 1993. The appellant is an aggrieved person, who shall not be deprived of his fundamental right of equality before law and protection from discrimination. The appellant as well as his other colleagues are in promotion zone and they shall not suffer for delay in formulating service rules at belated stage by the respondents, which ultimately would suffer the appellant as well as his other colleagues.

07. In view of the foregoing discussion, the instant appeal is accepted. The impugned service rules dated 25-09-2019 is set aside to the extent of Social Case Workers and the service rules, 2006 amended in 2011 are revived for the purpose of promotion of the appellant as well as his other colleagues till the time, proper service rules are framed for Social Case Workers. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
02.02.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

ATTESTED


Secretary, Government of Punjab
Lahore

34-

① "J"

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Implementation Petition No. 274 /2022

In

Appeal No. 666/2020



Mr. Jamal Shah, Social Case Worker (BPS-16),
O/O Center for MRP, Distract Dir Upper

.....PETITIONER

VERSUS

- 1- The Government of Khyber Pakhtunkhwa, through Chief Secretary Khyber Pakhtunkhwa Peshawar.
- 2- The Secretary Finance Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
- 3- The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The Secretary (Social Welfare) Special Education & Women Empowerment Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
- 5- The Director (Social Welfare), Directorate of Social Welfare, Special Education & Women Empowerment, Jamrud Road, Peshawar.

.....RESPONDENTS

**IMPLEMENTATION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT/OBEY THE
JUDGMENT DATED 02.02.2022 OF THIS
HONORABLE SERVICE TRIBUNAL IN LETTER AND
SPIRIT**

R/SHEWETH:

- 1- That the petitioner filed service appeal bearing No. 666/2020 before this august Service Tribunal against the impugned Service Rules whereby promotion quota reserved for the cadre of the appellant to the post of Manager and Social Welfare Officer BPS-17 has been washed away.
- 2- That the appeal of the petitioner/appellant was fixed before divisional bench of this Honorable Tribunal on 02-02-2022 and the divisional bench of this Honorable Tribunal very graciously allowed the Service appeal of the appellant vide its judgment dated 2-2-2022. The concluding Para of judgment is under:

35-



In view of the forgoing discussion, the instant appeal is accepted. The impugned service rules dated 25-09-219 is set aside to the extent of Social Case Workers and the service rules, 2006 amended in 2011 are revived for the purpose of promotion of the appellant as well as his other colleagues till time proper service rules are framed for Social Case Workers". Copy of the judgment dated 02-02-2002 is attached as annexure.....A.

- 3- That after obtaining copy of the order dated 02-02-2022 the petitioner/appellant applied to the Department for its implementation but the respondent Department turned a deaf ear to the petitioner.
- 4- That since the passage of more than 02 months of time the department has not implemented or obeyed the judgment dated 02-02-2022 passed by this Honorable Tribunal.
- 5- That the petitioner has no any other remedy but to file this implementation petition.

It is therefore, most humbly prayed that the respondents may be directed to implement the judgment dated 02-02-2022 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

Petitioner


JAMAL SHAH

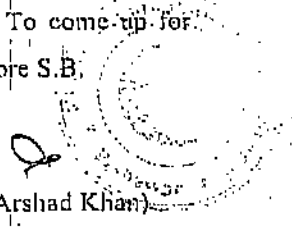
Through:


Noor Mohammad Khattak
Advocate, High Court, Peshawar

"K" -36-

23rd June, 2022 Counsel for the petitioner present. Mr. Muhammad Riaz Khan Painsakhel. Asst. AG alongwith Mr. Naseeb Khan, SO for respondents present.

Respondents are directed through Asst. AG to submit implementation report on the next date. To come up for implementation report on 20.07.2022 before S.B.

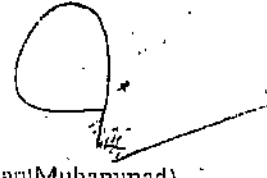


(Kalim Arshad Khan)
Chairman

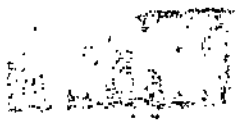
20.07.2022

Counsel for the petitioner present. Mr. Muhammad Adeel Butt, Addl. AG alongwith Haidar Ali Senior Clerk for the respondents present.

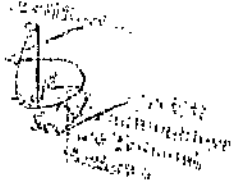
Learned Additional Advocate General states that the respondent department filed CPLA in the august Supreme Court of Pakistan against the judgment under implementation. The respondent department is under obligation to either get the Service Tribunal judgement dated 02.02.2022 suspended or to implement the judgement conditionally subject to the outcome of CPLA. Adjourned. To come up for further proceedings on 18.08.2022 before S.B.



(Mian Muhammad)
Member (E)



22-7-22
Sen.
10/1
11/1
22/7/22
22/7/22





GOVERNMENT OF KHYBER PAKHTUNKHWA
ZAKAT USHR, SOCIAL WELFARE, SPECIAL EDUCATION
& WOMEN EMPOWERMENT DEPARTMENT

86

Dated Peshawar the 4th October 2022

NOTIFICATION:

No. SOII/SWD/11-209/DPC/2022 6969-74 :- Consequent upon the Service Tribunal Judgment in service appeal No. 666/2020 implementation petition No. 274/2022, and subsequent recommendations of the Departmental Promotion Committee in its meeting held on 01.09.2022 under the chairmanship of Secretary Social Welfare Special Education & Women Empowerment Department the competent authority has been pleased to conditionally promote the following Social Case Workers (BS-16) of the Directorate of Social Welfare Special Education & Women Empowerment to the post of Social Welfare Officer (BS-17) with immediate effect subject to the outcome of CPLA in Apex Court: -

S. No.	Name of the official	From	To
1	Mr. Faisal Khan	Social Case Worker (BS-16)	Social Welfare Officer (BS-17)
2	Mr. Sabir Khan	Social Case Worker (BS-16)	Social Welfare Officer (BS-17)
3	Mr. Sareer Khan	Social Case Worker (BS-16)	Social Welfare Officer (BS-17)
4	Mr. Jamal Shah	Social Case Worker (BS-16)	Social Welfare Officer (BS-17)

02. The officers on promotion shall remain on probation for a period of one year extendable for another one year in terms of Section 6(2) of Khyber Pakhtunkhwa Civil Servant Act, 1973 read with Rule 15 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules 1989.

SECRETARY

Endst: of Even No. & Date:-

Copy is forwarded to the:

1. Accountant General, Khyber Pakhtunkhwa
2. Director Social Welfare, Special Education & Women Empowerment, Khyber Pakhtunkhwa.
3. PS to Secretary Social Welfare, Special Education & Women Empowerment Department Peshawar.
4. Officers concerned.

SECTION OFFICER-JI

"M" -38-

ET



Government of Khyber Pakhtunkhwa
Directorate of Social Welfare, Special Education &
Women Empowerment, Jamrud Road, Peshawar

CHARGE ASSUMPTION REPORT

No. E-2/198/DSW/2724-28 In compliance with Secretary to Government of Khyber Pakhtunkhwa, Social Welfare, Special Education & Women Empowerment Department Notification No.SOII/SWD/II-209/DPC/2022/6969-74 dated 04.10.2022, I hereby assume the charge of the post of Social Welfare Officer (BPS-17) in Social Welfare, Special Education & Women Empowerment Department today on 07.10.2022.

(Jamal Shah)

8/c Social Welfare Officer (BPS-17)

Copy to:

1. The Accountant General, Khyber Pakhtunkhwa
2. The Director, Social Welfare, SE & WE
3. PS to Secretary (SW, SE & WE)
4. Section Officer-II, Social Welfare Department w/r to his notification quoted above.

(Jamal Shah)

8/c Social Welfare Officer (BPS-17)

To,

The Chief Secretary,
Khyber Pakhtunkhwa, Peshawar.

"N"

-39-

Through Proper Channel:

Subject: DEPARTMENTAL AGAINST THE IMPUGNED NOTIFICATION DATED 04.10.2022 WHEREBY THE APPELLANT WAS PROMOTED TO THE POST OF SOCIAL WELFARE OFFICER (BPS-17) WITH IMMEDIATE EFFECT INSTEAD OF DUE DATE I.E. 28.03.2019.

Respected Sir,

- 1- That the appellant was appointed as Social Case Worker (BPS-16) in the ADP Scheme titled "Establishment of MR PH Centre at Dir Upper" vide order dated 14.05.2012 whereafter he submitted his arrival report dated 23.05.2012.
- 2- That the appellant started performing his duty quite efficiently up to the entire satisfaction of his superiors but unfortunately he was terminated whereafter the appellant approached the August Peshawar High Court, Peshawar for his reinstatement in the writ petition 2510-P/2016 whereby the department were directed to reinstate the appellant vide Judgment/Order dated 17.03.2016.
- 3- That subsequently the appellant was reinstated provisionally vide order dated 22.11.2016 subject to the outcome of the CPLA/Review Petition pending in the Supreme Court of Pakistan.
- 4- That the appellant was reinstated in compliance with the judgment dated 17.03.2016 of the August Peshawar High Court in Writ Petition No.2510-P/2016 and Judgment dated 04.11.2019 of August Supreme Court of Pakistan vide order dated 03.02.2020.
- 5- That the name of the appellant was forwarded to the Departmental Promotion Committee (DPC) vide letter dated 16.11.2018 for his promotion to (BPS-17) but DPC was rescheduled for 28.03.2019 due to framing of new Service Rules.
- 6- That after framing of new service rules notified on 25.09.2019, the promotion quota of the appellant was washed away whereafter the appellant, feeling aggrieved, filed service appeal No.666/2020 before the August Service Tribunal for setting aside the impugned Service Rules which was decided in favor of the appellant.
- 7- That upon failure of department to implement the ibid judgment of the Service Tribunal the appellant filed implementation petition No.274/2022 before the Service Tribunal whereupon the department was directed to conditionally implement the judgment of the August Service.
- 8- That consequently the appellant was conditionally promoted to the post of Social Welfare Officer (BPS-17) with immediate effect vide impugned notification dated 04.10.2022 instead of due date i.e. 28.03.2019 and assumed charge of Social Welfare Officer BPS-17 on 07.10.2022.

It is therefore most humbly requested that on acceptance of this departmental appeal the impugned notification dated 04.10.2022 may very kindly be rectified/modified and the appellant may kindly be considered for ante dated promotion to the post of Social Welfare Officer BPS-17 w.e.f 28.03.2019 with all back benefits.

Dated : 18-10-2022

Yours Sincerely

Jamal Shah,

Social Welfare Officer (BPS-17),
Directorate of Social Welfare,
Special Education & Women Empowerment,
Peshawar.

VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

APPEAL NO: _____ OF 2023

Jamal Shah

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Govt & others

(RESPONDENT)
(DEFENDANT)

I/We Appellant

Do hereby appoint and constitute **Noor Mohammad Khattak Advocate Supreme Court** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. _____/_____/2023


CLIENT

ACCEPTED

NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

(BC-10-0853)

(15401-0705985-5)


KAMRAN KHAN


UMAR FAROOQ MOHMAND


WALEED ADNAN

&


MUHAMMAD AYUB
ADVOCATES

OFFICE:

Flat No. (TF) 291-292 3rd Floor,
Deans Trade Centre, Peshawar Cantt.
(0311-9314232)