


FORM OF ORDER SHEET

Court of _____

Case No.- 296/2023

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. Sareer Khan 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  REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

APPEAL No. 296 /2023

SAREER KHAN VS GOVT. OF KPK & OTHERS

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APPELLANT

THROUGH:

NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. _____/2023

Mr. Sareer Khan, Social Welfare Officer (BPS-17),
Social Welfare, Special Education & Women Empowerment Department,
District Bannu.

..... 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 Center for Mentally Retarded & Physically Handicapped Children, Bannu vide order dated 03.07.2013 and assumed charge on 04.07.2013. Copy of the Appointment Order^{Charbon report} is attached as Annexure **A & B.**
2. 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 **C & D.**

3. That after framing of new service rules notified on 25.09.2019, the promotion quota of the appellant was washed away whereafter the colleague of the appellant approached Service Tribunal in service appeal No.666/2020 for setting aside the impugned Service Rules which was decided in his favor. Copy of the Judgment/Order dated 02.02.2022 are attached as AnnexureE.
4. That upon failure of department to implement the ibid judgment of the Service Tribunal the colleague of 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 Tribunal. Copies of Implementation Petition and Order are attached as AnnexureF & G.
5. 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 is attached as AnnexureH.
6. 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 AnnexureI.
7. That the appellant feeling aggrieved and having no other remedy filed the instant service appeal on following grounds inter alia.

GROUND:

- 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: 06-02-2023


APPELLANT
SAREER KHAN

THROUGH:


NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT


KAMRAN KHAN


WALEED ADNAN


UMAR FAROOQ MOMAND


MUHAMMAD AYUB


& KHANZAD GUL
ADVOCATES

AFFIDAVIT

I, Sareer Khan, Social Welfare Officer (BPS-17), Social Welfare, Special Education & Women Empowerment Department, District Bannu, 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

4- "A"



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

5

Dated Peshawar the 3/7/2013

ORDER

No. E-17/54/DSW/Vol-18/ 672-89. In pursuance of the recommendations of the Khyber Pakhtunkhwa Public Service Commission and acceptance of the terms and conditions offered to them vide this Directorate's letter No. E-17/54/Vol-18/DSW/614-19 dated 01-07-2013, the following candidates are hereby appointed as Social Case Workers (BPS-16) and posted against the vacant posts mentioned against each.

→ P-55

S. No.	Name of officer	Designation	Place of posting
1	Mr. Alamgir S/O Amin Khan	Social Case Worker (BPS-16)	Government School for Deaf Children, Haripur.
2	Mr. Sabir Khan S/O Haider Gul	Social Case Worker (BPS-16)	Centre for Mentally Retarded & Physically Handicapped Children, Mansehra.
	Mr. Saeed Khan S/O Khan Rehman	Social Case Worker (BPS-16)	Centre for Mentally Retarded & Physically Handicapped Children, Bannu

They shall be on probation, initially, for a period of one year w.e.f the date of their arrival, extendible for a further period of one year.

Sd/--
Director
Social Welfare, Spl: Edu: & WE
Khyber Pakhtunkhwa

Copy to:-

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Assistant Director (Budget & Accounts) Directorate of Social Welfare, Spl: Edu: & WE, Khyber Pakhtunkhwa, Peshawar.
3. The Assistant Director (Admn) Directorate of Social Welfare, Spl: Edu: & WE, Khyber Pakhtunkhwa, Peshawar.
4. The Section Officer-II, Social Welfare, Spl: Edu: & Women Empowerment Department, Khyber Pakhtunkhwa.
5. The District Officers, Social Welfare, Special Education & Women Empowerment Department, Haripur, Mansehra & Bannu, with the remarks to communicate the arrival reports of the officers to this Directorate urgently.
6. The District Accounts Officers, Haripur, Mansehra & Bannu.
7. The Principal, Government School for Deaf Children, Haripur.
8. The Managers, Centres for Mentally Retarded & Physically Handicapped Children, Bannu & Mansehra.
9. P.A to Director, Social Welfare, Spl: Edu: & Women Empowerment, Khyber Pakhtunkhwa.
10. The officers concerned, with the remarks to report for duty at their respective stations immediately, under intimation to this Directorate.


✓ 11. Personal File.

Assistant Director (Estt.)
Social Welfare, Spl: Edu: & WE
Khyber Pakhtunkhwa

-5-
"B"

CHARGE ASSUMPTION REPORT.

Consequent upon my appointment as Social Case Worker (BPS-16) vide order No. E-17/54/DSW/Vol-18/672-89 dated 03-07-2013, I, Mr. Sareer Khan hereby assume the charge of the post of Social Case Worker (BPS-16) in Center for Mentally Retarded & Physically Handicapped Children Bannu today on Thursday 04-07-2013 (F.N).


Sareer Khan

Social Case Worker (BPS-16)
Center for Mentally Retarded & Physically
Handicapped Children Bannu

No. D/SW/BU/2013-01, Dated 04/07/2013

Copy to:-

1. The District Accounts Officer Bannu.
2. The Section Officer -II, Social Welfare, Special Education & Women Empowerment, Khyber Pakhtunkhwa.
3. The Assistant Director (Estt.) Directorate of Social Welfare, Special Education & Women Empowerment, Khyber Pakhtunkhwa.
4. The District Officer Social Welfare Bannu.
5. Manger/Principal Center for Mentally Retarded & Physically Handicapped Children Bannu
- ✓ 6. P.A to-Director, Social Welfare, Special Education & Women Empowerment, Khyber Pakhtunkhwa Peshawar.
7. *Officer concerned*



Sareer Khan
Social Case Worker (BPS-16)
Center for Mentally Retarded & Physically
Handicapped Children Bannu



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

091-9224253

No. E-17/16/DSW/Vol-10/ 2538-39
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.


Assistant Director
(Establishment)

Copy forwarded to

1. PA to DSW.


Assistant Director
(Establishment)

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)-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)-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	Sanctione d Strength	Total Fille d	Total Vacan t	50% Promotio n Quota Share	No of Posts filled Through Promotio n	No of Posts to be filled through Promotio n
1	Superintende nt 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	Sanctione d Strength	Share of Promotio n Quota	No of Posts Filled through Promotio n	Remainin g Promotion Quota	Presentl y Vacant posts
1	Social Welfare Officer BPS-17	44	8.8 say 9	05	04	04
2	Superintenden t 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

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

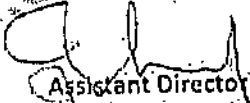
S.No	Name of Officer	Date of 1 st Entry into Govt. Service	Length of Service up to 31.10.2018:			Remarks
			Year	Month	Days	
1	Mr. Faisal Khan	01.07.2011	11	01	00	The officers fulfil the eligibility criteria for promotion
2	Mr. Hanid	03.07.2013	05	03	28	
3	Mr. Sabir Khan	03.07.2013	05	03	28	
4	Mr. Saqeer 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	The officer does not fulfil the criteria.
7	Mst. Kiran Irshad	01-06-2017	01	05	00	

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:

- a. Are holding the present post on regular basis and none of them is serving on Adhoc basis.
- b. 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.
- c. 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.
- d. The vacant posts of Social Welfare Officer & Superintendent/ Manager (BPS-17) lying vacant are on regular budget side.
- e. No. officers included in the panel of promotion was granted extra ordinary leave (leave without pay)
- f. The PERs /Synopsis of PERs in respect of the above mentioned Officers are placed on board at (Annexure-F).
- g. 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 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 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)

S. No.	Name of Officer	Designation/ BPS	Willingness Order
1	Mr. Fayad 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 Jamal 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,
JAMRUDD ROAD PESHAWAR

Dated Peshawar, the 19/03/2019

No. E-17/17/DSW/Vol-6/1992-19 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)I-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 Peshawar	
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	

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 S# 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

Assistant Director
Establishment



-12- @ "D"

3236

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

No. SOI/USD/1-200/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.

02 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~~ (4)

"E"

-13-

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

SERVICE APPEAL NO. 66/2020

Ms. Janna Shah, Social Case Worker (BPS-16),
277 Main Road, MRPs, Dir Upper.

4.65
15/12/2020

..... 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 & Women Empowerment Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
- 5- The Director (Social Welfare), Directorate of Social Welfare, Special Education & Women Empowerment, Gandhi 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 PROMOTION QUOTA RESERVED 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 APPELLATE ORDER DATED 16.12.2019 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED ON NO GOOD GROUNDS

Filed today
Magistrate

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.

re-submitted to stop
in April.

CP Registrar

4

-14-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 566/20

Date of Institution 15.01.2020

Date of Decision 02.02.2022

Applicant: Social Worker (BPS-16) C/o Centre for MRPs, Dera Ismail Khan (Appellant)

RESPONSE

Respondent: Chief Executive Officer, Peshawar, through Chief Executive Officer, Peshawar (Respondent)

For Appellant

For Respondent

AHMAD SULTAN TAREEN
ATIQU-UR-REHMAN WAZIR

CHAIRMAN
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 21-09-2008 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 25-11-2011, 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 18-03-2018 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 no posts were vacant in promotion quota. Similar 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 vide 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

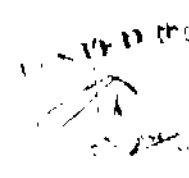
REGISTERED

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8-17-


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 category of promotion. On query the respondents has submitted draft service rules subject 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 post of Assistant Director Social Welfare Officer/Manager Administrative Officer/Rehabilitation Officer and Superintendent. The respondents further mention that draft service rules are under process and will be done in due course.


It is submitted that post of the appellant is a subordinate post of BPS-17. The appellant in the first instance was promoted to such post from a lower post and the cadre was brought within the promotion list of BPS-17. The respondents and submit that the appellant is not a holder of post of administrative officers. Contentions of the respondents to the effect that the appellant is not eligible for promotion to the post of Manager BPS-17 is not tenable. The appellant was promoted to such post from a lower post and the cadre was brought within the promotion list of BPS-17. The respondents are not to be allowed to amend the service rules in such a manner without any valid reason. It would be detrimental to the interests of the appellant which however is not subject of undue delay. When a post is brought within the domain of the promotion list, it 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,



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 line of. In such a situation, equity and fair play demands that the provisions should apply on them for the purpose of promotion until arrival of new rules. Merit and seniority of the cadres needs good appreciation of the seniority of the appellant posts in light of Civ. Servants (Seniority) Rule, 1993. The appellant is an experienced person, who shall not be deprived of his fundamental right of equality, justice and protection from discrimination. The appellant as well as other employees of the same zone and they shall not suffer for no reason form having their seniority and the right of the respondents which will be considered and taken into account. As per the provisions of the rules.

In the view of the foregoing discussion, the instant appeal is rejected. The appellant's appeal dated 29-09-2019 is set aside to the extent of Social Case No. 22/2019 dated 22-09-2019. The appellant is directed to file a fresh appeal for the purpose of promotion to the post of [redacted] in the time prescribed in the rules. The appellant is directed to file a fresh appeal for the purpose of promotion to the post of [redacted] in the time prescribed in the rules. The appellant is directed to file a fresh appeal for the purpose of promotion to the post of [redacted] in the time prescribed in the rules.


 A. MASOOD KHAN
 CHAIRMAN


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

TESTED

 [Redacted Name]

(D) "F"

-19-

**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 MRPH, 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, Jamurd 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:

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:

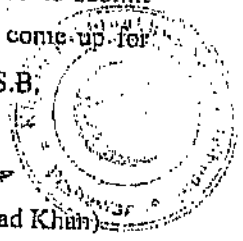
Noor Mohammad Khattak
Advocate, High Court, Peshawar

"5" -21-

23rd June, 2022

Counsel for the petitioner present. Mr. Muhammad Riaz Khan Paindakhel. 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.



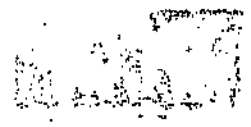
(Kalim Arshad Khan)
Chairman

20.07.2022

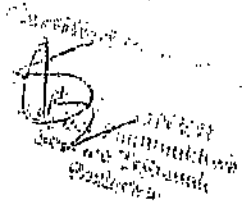
Counsel for the petitioner present. Mr. Muhammad Adeel Butt, Addl. AG alongwith Haidar Ali Senior Clerk for the respondents present.

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)



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

86

Dated Peshawar the 4th October 2022

NOTIFICATION:

No. SQII/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 Welfare 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-II

To,

The Chief Secretary,
Khyber Pakhtunkhwa, Peshawar.

23- "9"

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 Center for Mentally Retarded & Physically Handicapped Children, Mansehra vide order dated 03.07.2013.
- 2- 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.
- 3- That after framing of new service rules notified on 25.09.2019, the promotion quota of the appellant was washed away whereafter the colleague of the appellant approached Service tribunal in service appeal No.666/2020 for setting aside the impugned Service Rules which was decided in his favor.
- 4- That upon failure of department to implement the ibid judgment of the Service Tribunal the colleague of 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 Tribunal.
- 5- 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

Sareer Khan,

Social Welfare Officer (BPS-17),
Social Welfare, Special Education
& Women Empowerment Department,
District Bannu.

VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

APPEAL NO: _____ OF 2023

Sayed Khan

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Govt

(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. ____/____/202

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)