

06.05.2019

Petitioner absent. Learned counsel for the petitioner absent. Mr. Mian Amir Qadir learned District Attorney present. Case called but none appeared on behalf of petitioner. Consequently the present review petition is hereby dismissed in default. No order as to costs. File be consigned to the record room.




(Muhammad Hamid Mughal)
Member
Camp Court, Swat.

ANNOUNCED.
06.05.2019

07.01.2019

Neither petitioner nor his counsel present therefore, notice be issued to petitioner and his counsel for attendance for 04.03.2019 before S.B at camp court Swat.


(Muhammad Amin Khan Kundi)
Member
Camp Court Swat


04.03.2019

None for the appellant present. Mian Amir Qadir, District Attorney for respondents present. Notices be issued to the respondents for submission of implementation report on 01.04.2019 before S.B at camp court, Swat.


Member
Camp Court, Swat

01.04.2019

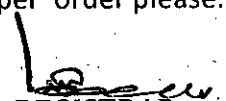

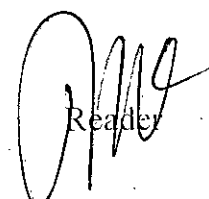
Learned counsel for the petitioner present. Learned counsel for the petitioner when confronted with the proposition that provision/remedy of review of judgment of this Tribunal is not available in the Khyber Pakhtunkhwa Service Law, seeks adjournment for arguments on the issue of maintainability. Adjourn. To come up for arguments on maintainability of the present review petition on 06.05.2019 before S.B.


Member
Camp Court, Swat.

FORM OF ORDER SHEET

Court of _____

Review Petition No. 355/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1.	02/10/2018 th	<p style="text-align: center;">The joint Review Petition submitted by Mr. Muhammad Nazir and 2 others through Syed Abdul Haq Advocate may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR 2/10/18</p>
2-	8-10-2018	<p style="text-align: center;">This Review Petition be put up before Touring S. Bench at Swat on <u>08-11-2018</u></p> <p style="text-align: right;"> CHAIRMAN</p>
08.11.2018		<p style="text-align: center;">Due to retirement of the Hon'ble Chairman Service Tribunal is incomplete. Tour to Camp Court Swat has been cancelled. To come up for the same on 07.01.2019 at camp court Swat.</p> <p style="text-align: right;"> Reader</p>

**BEFORE THE KHYBER PAKHTUNKIWA SERVICE TRIBUNAL
AT PESHAWAR**

Review Petition in service appeal bearing No: 546/2017

CHECK LIST

1.	Case Title:	Muhammad Nazir and others Versus Secretary Education Gov of KP and	Yes	No
2.	<i>Petition is duly signed.</i>		✓	
3.	<i>The law under which the Petition preferred has been mentioned.</i>		✓	
4.	<i>Approved file cover is used.</i>		✓	
5.	<i>Affidavit is duly attested and appended.</i>			✓
6.	<i>Case and Annexures are properly paged and numbered according to index.</i>		✓	
7.	<i>Copies of Annexures are legible and attested. (if not, then better copies duly attested have been annexed).</i>		✓	
8.	<i>Certified copies of all the requisite documents have been filed.</i>		✓	
9.	<i>Certificate specifying that no case on similar grounds was earlier submitted in this court, filed.</i>		✓	
10.	<i>Case within time.</i>		✓	
11.	<i>The value for the purpose of Court fee and jurisdiction has been mentioned in the relevant column.</i>			N.A
12.	<i>Court fee in shape of Stamp Paper is affixed, (For Writ Rs.500/-. For other required).</i>		✓	
13.	<i>Power of Attorney is in proper form.</i>			N.A
14.	<i>Memo of addressed filed.</i>		✓	
15.	<i>List of Book mentioned in the Petition.</i>			✓
16.	<i>The requisite number of spare copies attached. (Writ Petition-3, Nos Civil Appeal (SB-1, SB-2) Civil Revision (SB-1, SD-2).</i>		✓	
17.	<i>Case (Revision/Appeal/Petition etc) is filed on the prescribed form</i>			N.A
18.	<i>Power of Attorney is attached by Jail Authority (for Jail Prisoners only).</i>			N.A

It is certified that formalities/documentation as required in column 2 to 18 above, have been fulfilled.

Name: _____
Signature: _____
Dated: ___/09-2018

FOR OFFICE USE ONLY

Case No. _____

Case received _____

Complete in all respect: Yes/No (if No the grounds)

Dated in Court _____

Signature _____

(Reader)

Dated _____

Countersigned: _____

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
AT PESHAWAR

Review Petition No. 355/2018

Review Petition in service appeal bearing No: 546/2017

Muhammad Nazir and others **Versus** Secretary Education Gov of KP and

INDEX OF DOCUMENTS

S.NO	DESCRIPTION OF DOCUMENT	ANNEXURE	PAGE(S)
1	Copy of review petition		
2	Affidavit		1-5
3	Copy of service appeal		6
4	Copy of comments		7-9
5	Copy of judgment of this Hon'able tribunal dated:06-09-2018	"A"	10-11
6	Copy of notification dated:02-08-2017	"B"	12-13
7	Copy of service appeal NO :82/2015 with promotion order dated:10-03-2017	"C"	14
8	wakalatnaama		15-19
			20

Petitioner

Through counsel,

Syed Abdul Haq And Abid

Hayat Advocates High court.

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
AT PESHAWAR

Review petition No. 355/2018

Review Petition in service appeal bearing No: 546/2017.

Khyber Pakhtunkhwa
Service Tribunal
1139
2-10-18

1. Muhammad Nazir (Junior Clerk) presently posted at Govt Girls High school Bakh Kandai, Dir lower.
2. Fazal Mula (Junior Clerk) presently posted at Govt Girls High school Badwan, Dir lower.
3. Fazlullah (Junior Clerk) Presently posted at Govt Girls High school Biarai, Dir lower.....(Petitioners)

Versus

1. Secretary education Gov of KP at Peshawar
2. Director elementary and secondary education KP at Peshawar
3. Fazal Malik (Naib Qasid) Presently posted at District Education office Female Dir lower.....(Respondents)

Review Petition under section 114 of CPC for reviewing the judgment of this Hon'able court to the extent that, Fresh seniority list may kindly be prepared with the consonance of the notification dated: 02-08-2017 issued by the Govt of KP elementary and secondary education at Peshawar.

Respectfully sheweth:

1. That the respondent No.4 filed a service appeal 546/2017 in this Hon'able tribunal wherein comments were submitted by the official respondents although the petitioners were proceeded ex-parte.
2. That after hearing this Hon'able tribunal accepted the appeal with the direction to consider the promotion case afresh strictly in accordance with law and rules (copy of the judgment is attached as annexure "A").
3. That the Petitioner were rightly promoted according to their entitlement by the District promotion committee vide office order dated: 05-12-2016.
4. That during the pendency of the service appeal the Govt of KP has pleased to issue a notification vide date: 02-08-2016 wherein it was hold that 33 percent by the promotion on the basis of seniority cum fitness from amongst

The class iv having two year service with SSC Qualification.(copy of the notification is attached as Annxure "B"). But during the arguments the petitioners were not before this Hon'able tribunal and the said notification was not brought in the knowledge of this Hon'able tribunal.

5. That the applicants have strong prima facie case and were promoted rightly by the competent Authority so under the anology of the legitimate expectancy the applicants are entitled to be treated in the light of notification dated: 02-08-2017.
6. That after promotion rights has been accrued in favour of applicants so all of sudden placing back the applicants instead of promulgation of new rules/policy is required to be reviewed.
7. That the same question of law has been decided by this Hon'able tribunal vide service appeal No: 82/2015 so the applicants may kindly be treated at par. (Copy of appeal is annexed as annexure "C").
8. That any other ground may be argued by the permission of this Hon'able tribunal which are not specifically asked.

It is therefore humbly prayed that, on acceptance of this review petition the judgment of this Hon'able court may kindly be reviewed as prayed far.

Dated:

Applicants,

Through counsel,

Syed Abdul Haq And Abid

Hayat Advocates High court.

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

Review Petition in service appeal bearing No: 546/2017

Muhammad Nazir and others **Versus** Secretary Education Gov of KP and

**APPLICATION U/S 5 OF LIMITATION ACT FOR THE CONDONATION
OF DELAY**

Respectfully Sheweth,

1. That the review petition being filed today as this Hon'able tribunal passed the order under review dated: 06-09-2018 wherein certified copies are been received on dated: 25-09-2018.
2. That the applicants have strong and arguable case and if this Hon'ble tribunal deems the instant review to be barred by time then according to the spirit of law that may be condone for the safe administration of justice.
3. That during the arguments the applicants were not present before the court as they were not served and when the applicants got knowledge of the judgment above they get the copies on dated: 25-09-2018 so the review petition is well within time.

It is therefore humbly prayed the time consumed is not intentional may be condone according to the law.

Dated:

Applicants,

Through counsel,

Syed Abdul Haq And Abid

Hayat Advocates High court.

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

Review Petition in service appeal bearing No: 546/2017

Muhammad Nazir and others **Versus** Secretary Education Govt of KP and others

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

Respectfully sheweth:

1. That the applicants submitting the instant review petition where no date has been fixed so far.
2. That after the introducing of the policy dated:02-08-2017 the applicants are entitled to be consider their promotion on the strength of policy mention above.
3. That the respondent No.3 is at serial No:51 and he has no expectancy to be consider so if the official respondents adopt the promotion process on the strength of policy 2013 in existence of the policy 2017 the applicants would suffer.

It is therefore humbly prayed that on acceptance of this application the official may kindly be restrained to prepare the promotion process on the strength of policy 2013 till the final disposal of the instant review petition.

Dated:

Applicants,

Through counsel,

Syed Abdul Haq And Abid

Hayat Advocates High court.

5

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

Review Petition in service appeal bearing No: 546/2017

Muhammad Nazir and others **Versus** Secretary Education Gov of KP and

MEMO OF ADDRESSES

Addresses of Petitioners:

1. Muhammad Nazir Junior Clerk Presently posted at Gov Girls High school Bakh Kandai, Dir lower.
2. Fazal Mula Junior Clerk Presently posted at Gov Girls High school Badwan, Dir lower.
3. Fazlullah Junior Clerk Presently posted at Gov Girls High school Biarai, Dir lower.

Addresses of Respondents:

1. Secretary education Gov of KP at Peshawar
2. Director elementary and secondary education KP at Peshawar
3. Fazal Malik (Naib Qasid) Presently posted at District Education office Female Dir lower.

Dated:

Petitioners through council


Syed Abdul Haq And Abid

Hayat Advocates High court.

6

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

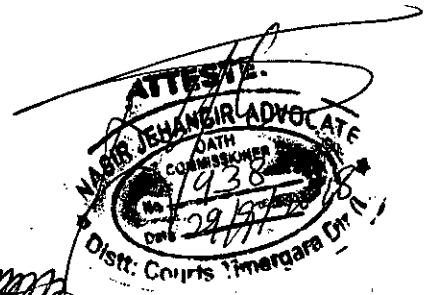
Review Petition in service appeal bearing No: 546/2017

Muhammad Nazir and others **Versus** Secretary Education Gov of KP and others

AFFIDAVIT

We Muhammad Nazir S/O Ahmad Khan R/O Chakdara Tehsil Adenzai District Dir lower, Fazal Mula S/O Shashul Rehman R/O Badwan Tehsil Adenzai District Dir lower, Fazlullah S/O Shazullah Khan R/O Timergara District Dir lower District Lower Dir, do hereby solemnly affirm and declare on oath that the contents of the accompanying revision petition are true and correct to the best of our knowledge and belief and that nothing has been concealed from this Hon'able Court.

Dated:



Deponents,

Muhammad Nazir

Fazlullah

Fazal Mula

BEFORE THE KHYBER PAKHTOON KHWA SERVICES TRIBUNAL, PESHAWAR

Service Appeal No. 546 /2017.



Khyber Pakhtunkhwa Services Tribunal

Diary No. 528

Dated 19-5-2017

Fazal Malik (Naib Qasid)

Presently Posted at District Education Office (Female)

Dir Lower.....Appellant

V E R S U S

1. District Education Officer (Female) Dir (Lower).
2. Director Elementary & Secondary Education, Khyber Pakhtunkwa, Peshawar.
3. Muhammad Nazir (Junior Clerk)
Presently posted at GGHS Bakh Kandai, Dir Lower.
4. Fazal Mula (Junior Clerk)
Presently posted at GGHS Badwan Dir Lower.
5. Muhammad Zamin (Junior Clerk)
Presently posted at GGHS Kotigram Dir Lower.
6. Muhammiad Sadiq (Junior Clerk)
Presently posted at GGHS Khanabad (Dukrai) Dir Lower.
7. Aurang Zeb (Junior Clerk)
Presently posted at SDEO (F) Office Samar Bagh Dir Lower.
8. Fazlullah (Junior Clerk)
Presently posted at GGHS Beyarai Dir Lower.
9. Asil Muhammad (Junior Clerk)
Presently posted GGHS Osakai Dir Lower.....Respondents

ATTESTED
[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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

Filed to-day
[Signature]
Registrar
19/5/17.

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

Re-submitted to-day
[Signature]
Registrar
26/5/17.


PRAYER IN APPEAL:

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

Respectfully Sheweth:

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

ATTESTED

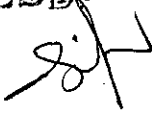

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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

GROUNDS:

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

ATTESTED




EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

That any other ground may be adduced during the course of argument, with the kind permission of this Hon'ble Court.

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

Appellant



Fazal Malik

Through

Shams ul Hadi

Advocate, Peshawar.

Dated: 16/05/2017

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR/CAMP
COURT SWAT**

SERVICE APPEAL NO. 84X /2017.

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

VERSUS

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



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

Respectfully Sheweth:-

Preliminary Objections:-

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

ON FACTS.

Respectfully Sheweth.

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

ATTESTED

**EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar**

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

ON GROUNDS:-

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

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

**DIRECTOR ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA PESHAWAR**

(Respondent No.02)

Certified to be true copy
E. S. J. J.
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

**DISTRICT EDUCATION OFFICER (F)
DIR LOWER AT TIMERGARA
(Respondent No.01)**

*verified subject to
attachment of all annexure
and approval of
A.E. Director
15/3/2018*

Date of Presentation of Application 25-9-2018
 Number of Words 2000
 Copying Fee 12
 Urgent 2
 Total 14
 Name of Copyist —
 Date of Completion of Copy 25-9-2018
 Date of Delivery of Copy 25-9-2018

12

Annexure A

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
CAMP COURT SWAT.

Service Appeal No.546/2017

Date of Institution ... 19.05.2017

Date of Decision ... 06.09.2018

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

(Appellant)



VERSUS

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

Mr.Shams Ul Hadi,
Advocate

For appellant.

Mr.Usman Ghani,
District Attorney

For respondents

MR. AHMAD HASSAN,
MR. SUBHAN SHER

MEMBER(Executive)
CHAIRMAN

JUDGMENT

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

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

FACTS

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

ARGUMENTS

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

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

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

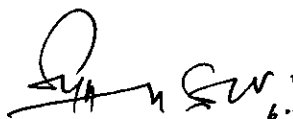
CONCLUSION.


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

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

Certified to be true copy

MEMBER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar


(SUBHAN SHER)
Chairman
6.9.2018


(AHMAD HASSAN)
Member
Camp court Swat

ANNOUNCED
06.09.2018

Date of Presentation of Application 25-9-2018
Number of Words 800
Copying Fee 4.00
Urgent 2.00
Total 6.00
Name of Copyist [Signature]
Date of Completion of Copy 25-9-2018
Date of Delivery of Copy 25-9-2018



(14) *Annexure B*

**GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT**

NOTIFICATION

Peshawar, dated the August 2, 2017.

No. SO(PE)4-10/SSRC/Ministerial staff/2013:- In pursuance of the provisions contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Elementary and Secondary Education Department, in consultation with the Establishment Department and the Finance Department, hereby directs that in this Department's Notification No. SO(PE)4-10/SSRC/Ministerial Staff/2013 dated: 28.01.2013, the following amendments shall be made, namely:

AMENDMENTS

In the Appendix,-

- (i) Against Sr. No. 9, in column No. 5(a), for the existing entry, the following entry in column 5 (a) shall be substituted:
 - a) Thirty three per cent by promotion on the basis of Seniority-Cum-Fitness from amongst the Daftaries, G/Operators, Qasids and Naib Qasids including other equivalent posts in the attached department/offices/institutions with two year service as such having SSC qualification.

SECRETARY

Endst. No. & Date as above.

Copy forwarded to:-

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

ark
(NAIK MUHAMMAD)
SECTION OFFICER

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 82 /2015

N.W.F. Province
Khyber Pakhtunkhwa
Way No. 38
Date: 19-1-2015

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

VERSUS

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

Respondent No 2
Reached on 22-1-15
vide order dated
06-7-15.
Ravi

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

Filed to the
19/1/15

Submitted to the
19/1/15

19/1/15

APPEARED

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

ATTEST

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

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

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

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

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

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

Announced *Sh. M. Arif Khan Afridi*
Chairman
Impugned Petition

Sh. Ahmad Hassan
Member

17-02-2017

1502

[Signature]
 17-02-2017
 17-02-2017

Certified true copy
[Signature]

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

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

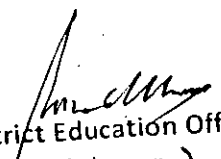
Note;-Charge report should be submitted to all concerned.

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

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

Copy of the above is forwarded to:-

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


District Education Officer
(Male) Dir lower.

ڈسٹرکٹ بار ایسوسی ایشن

تیمرگرہ ڈیرہ لونیہ



8232

ایڈوکیٹ بار کونسل نمبر:

BC-_____

بعدالت جناب خیبرختونخوا سروس ٹریبونل شمار

محمد نظیر بیام ڈسٹرکٹ ایجوکیشن آفیسر صاحب (ضیل)

دعویٰ/اپیل/نگرانی/درخواست: نظریاتی منجانب: سائلان/رہبانڈنٹان

مقدمہ علت نمبر: مورخہ: جرم: تھانہ:

مباحث تحریرانہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ

آن مقام عدالت عالیہ مینگورہ پنچ/تیمرگرہ/چکدرہ/العل قلعہ/ثمرباغ کیلئے
مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا نیز وکیل صاحب کو راضی نامہ کرنے و تقریرات و
فیصلہ برحلف دینے، جواب دعویٰ، اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا
ڈگری کی طرف سے یا اپیل کی برآمدگی اور منسوخی، نیز وائیر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے
کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ
اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانبہ التوائے مقدمہ کے سبب سے ہوگا وہ وکیل
موصوف وصول کرنے کا حقدار ہوگا کوئی اتاریخ پیشی مقام دور یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں لہذا
وکالت نامہ لکھ دیا تاکہ سند ہے۔

المرقوم: 29-09-2018

فعل اللہ

العبد

فضل اللہ

فعل اللہ

العبد

فضل اللہ

العبد

محمد خذیر

مقام: عدالت عالیہ مینگورہ پنچ/تیمرگرہ/چکدرہ/العل قلعہ/ثمرباغ کیلئے منظور ہے۔

ایڈوکیٹ/دستخط:

DBA

Syed Abdul-Haq
Adv.

رابطہ نمبر:

نوٹ: فوٹوکاپی ناقابل قبول ہوگی