



ORDER
11.10.2021

Nemo for the petitioner nor for respondent.

Case was called time and again but non appeared on behalf of the petitioner. Consequently the present review petition is dismissed in default for non prosecution. No order as to costs. File be consigned to record room.

ANNOUNCED
11.10.2021


(ATIQ UR REHMAN WAZIR)
MEMBER (EXECUTIVE)


(ROZINA REHMAN)
MEMBER (JUDICIAL)

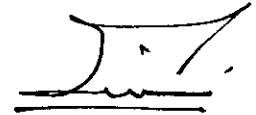
28.06.2021

Nemo for the petitioner.

Previous date was changed on Note Reader, therefore, notice for prosecution of the petition be issued to the petitioner for 11.10.2021. Respondents also be summoned for the date fixed.



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



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

03.11.2020

Junior to counsel for the petitioner and Addl. AG for the respondents present.

The Bar is observing general strike, therefore, the matter is adjourned to 11.1.2021 for hearing before the D.B.

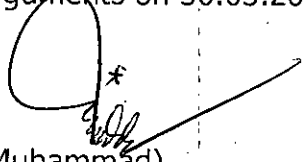

(Mian Muhammad)
Member

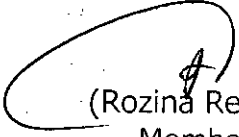

Chairman

11.01.2021

Kabir Ullah Khattak learned Additional Advocate General present on behalf of petitioner.

He made a request for adjournment. Adjourned. To come up for arguments on 30.03.2021 before D.B.


(Mian Muhammad)
Member (E)


(Rozina Rehman)
Member (J)

30.03.2021


Due to non availability of the concerned D.B, the case is adjourned to 28.06.2021 for the same.


Reader

18.02.2020

Petitioner absent. He be put to notice for the date fixed.
Adjourned. To come up for further proceedings on 02.04.2020
before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

2.4.2020

*Due to public holiday on account of
(COVID-19) the petition is adjourned. To
come up for same on 29.6.2020 before.*

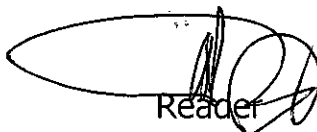
29.06.2020

Due to COVID-19, the case is adjourned to 24.08.2020
for the same.


Reader

24.08.2020


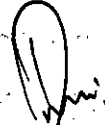


Due to summer vacation case to come up for the
same on 03.11.2020 before D.B.


Reader

FORM OF ORDER SHEET

Court of _____

Review Petition No. 357/2019

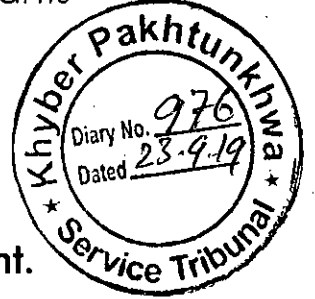
S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	23/09/2019	<p style="text-align: center;">The Review Petition submitted by Director of Elementary and Secondary Education Khyber Pakhtunkhwa in appeal No. 532/2019 may be entered in the relevant Register and put up to the Court for proper order please.</p> <div style="text-align: right; margin-right: 50px;">  REGISTRAR </div> <p style="text-align: center;">This Review Petition be put up before D. Bench on <u>12-12-2019</u></p> <div style="text-align: right; margin-right: 50px;">  CHAIRMAN </div>
2-	12.12.2019	<p style="text-align: center;">Petitioner absent. He be put to notice for the date fixed. Adjourn. To come up for further proceedings on 18.02.2020 before D.B.</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="text-align: center;">  Member </div> <div style="text-align: center;">  Member </div> </div>

**BEFORE THE HONORABLE KHYBER PAKHATUNKHWA
SERVICE TRIBUNAL PESHAWAR.**

Review petition no. 357/2019
Review Petition NO...../2019 IN SERVICE APPEAL NO: 532/2019
Secretary (E&SE) Department, Khyber Pakhtunkhwa & others.
.....Applicants

VERSUS

Muhammad Tariq Shah ADEO District Karak. Respondent.



**REVIEW PETITION FOR EXPUNGING/DELETING PARA-6 FROM THE JUDGMENT
DATED 9/8/2019 OF THE HONORABLE TRIBUNAL IN THE TITLED APPEAL ON
FAVOUR OF APPLICANTS/RESPONDENT NO.2**

Respectfully Sheweth :-

The Petitioner submits as under:-

ON FACTS:-

- 1 That the tilted appeal was pending for adjudication before this honorable Tribunal for setting aside the impugned orders and notification 8/2/19 and 23/4/19 and has been dismissed against the appellant and private respondent No.5 vide judgment dated 9/8/19.(Copy of the Judgment dated 09/08/2019 is annexure-A).
- 2 That from the perusal of para-6 of the said judgment, it has been observed that adverse remarks & observations have been passed by the learned member of this Hon;able Tribunal against the Respondent No.2/Director (E&SE) KPK Peshawar without perusal and observing the prevailing policy Notified vide Notification No. SO(SM) E&SED/2-3/2016/SSRC of MC dated 27.03.2019. S.No. 5, which is reproduced as under:-

S.No	Nomenclature of the post	Minimum qualification for appointment the initial recruitment or by Transfer.	Age Limit	Method of recruitment
	Assistant Sub Divisional Education Officer/Asstt; District Education Officer (BPS-16) (Male & Female)	I. At least second class Bachelor Degree or BS (4 years) from a recognized University. II. At least 2 nd class Bachelor Degree of Education from a recognized University & III. Five years teaching or administrative experience in Government recognized institutions or offices	25-35 years	"By initial recruitment provided that if no suitable officer is available then by transfer of SST (B-16) of Teaching cadre. Note: that on induction, all such officers shall undergo 6 weeks post induction training on the following modules; I- Financial Management. II- HR Management. iii- Information Technology

3. That the learned member didn't consider the above cited crystal clear policy and passed the negative remarks against the Respondent No. 2 in the above mentioned judgment which is illegal on the part of this Hon'able Tribunal & needs to be set-aside to the extent of para 6 of the said judgment in favour of Respondent No.2.
4. That the respondent No.02 has acted as per law, Rules & cited criteria vide Notification dated 27/3/2019 in the interest of public Service for running the affairs of the office concerned smoothly.
5. That the adverse remarks passed by the honorable member against the respondent No. 2 is beyond the jurisdiction and mandate as the respondent No.2 acted as per law rules and policy.

In view of the above made submissions, it is most humbly prayed that on the acceptance of this review petition, the remarks mentioned in para 6 vide judgment dated 9/8/2019 in service Appeal No.532/2019 case titled Muhammad Tariq Shah versus Government of Khyber

Pakhtunkhwa & others may very graciously be expunged/deleted in the interest of equity & justice in favour of the respondent No.2/Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.

Dated:- ____/____/2019.

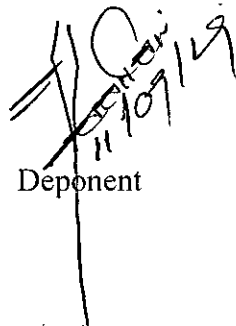
Petitioner

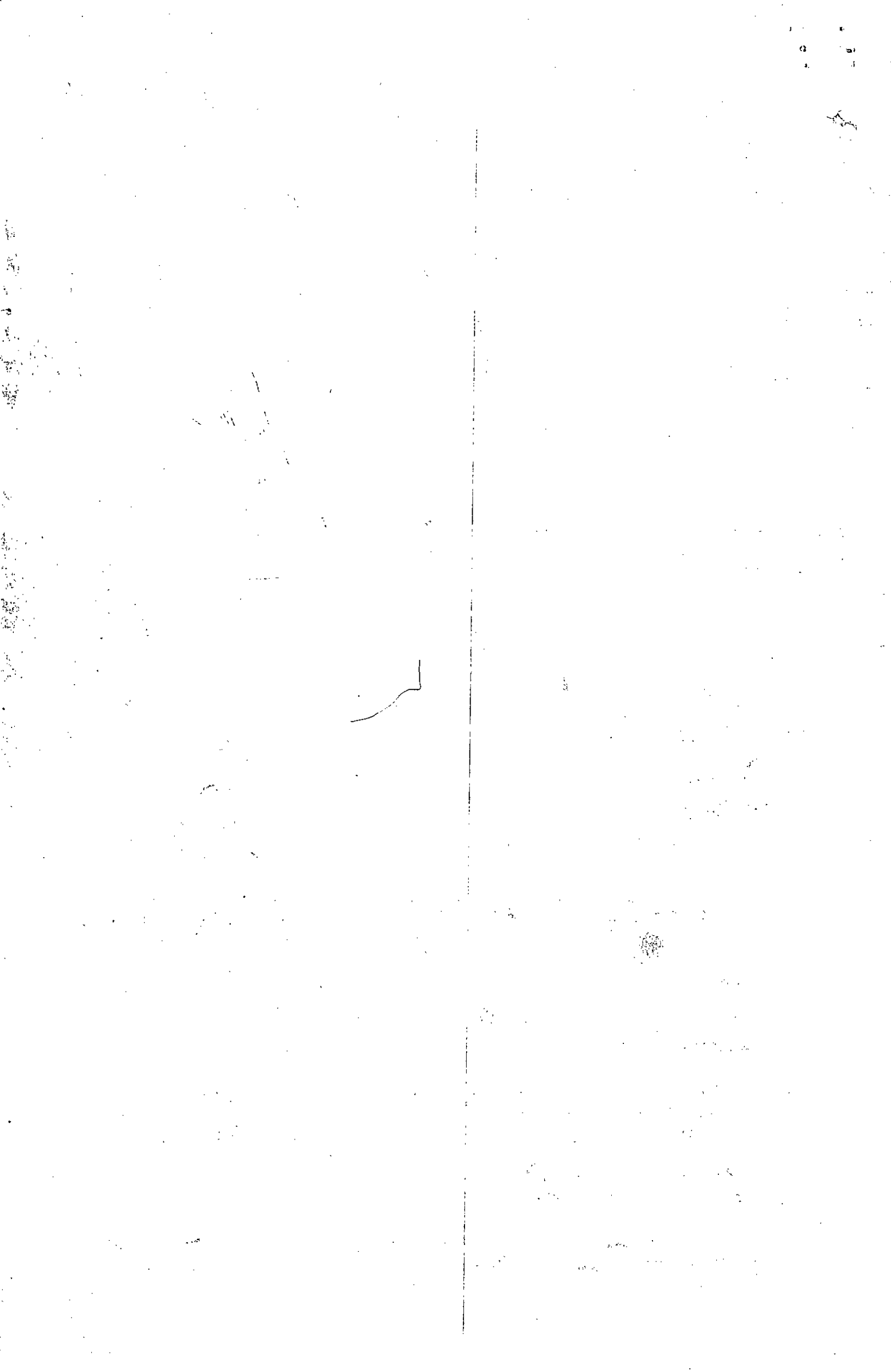

Director

Elementary & Secondary
Khyber Pakhtunkhwa
Peshawar.
(Respondents No: 2.

AFFIDAVIT

I Hayat Khan Asstt: Director (Litigation-II) E&SE Department Khyber Pakhtunkhwa, Peshawar, do hereby solemnly affirm and declared on oath that the contents of the instant Review Petition are true & correct to the best of my knowledge & belief.


Deponent





(1)
GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

NOTIFICATION

Peshawar, dated the March 27, 2019

NO.SO(SM)E&SED/3-2/2016/SSRC of M.C: In pursuance of the provision contained in sub-rule (2) of rule-3 of the Khyber Pakhtunkhwa Province Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 and in supersession of this Department's Notification No. SO(SM)E&SED/3-2/2016/SSRC of MC dated 03-07-2018, the Elementary & Secondary Education Department, in consultation with the Establishment Department and the Finance Department, hereby lays down the method of recruitment, qualification and other conditions specified in Column No. 3 to 5 of the Appendix to the Notification which shall be applicable to the posts of Schools Management Cadre under the Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar and Directorate of Curriculum & Teachers Education Khyber Pakhtunkhwa Abbottabad as specified in Column No. 2 of the said Appendix.

APPENDIX

S#	Nomenclature of the Post	Minimum Qualification for Appointment by Initial Recruitment or by Transfer	Age Limit	Method of Recruitment
1	Director (BPS-20)		4	5 By promotion, on the basis of seniority-cum-fitness, from amongst the District Education Officers and Additional Directors (Male and Female) with at least five year service in BPS-19 as such and having successful completion of Senior Management Course. Provided that if no suitable officer is available for promotion then by transfer of BPS-20-officer. Note: For the purpose of promotion, a joint seniority list of District Education Officers and Additional Directors (Male and Female) shall be maintained.

DISTRICT EDUCATION OFFICER PESHAWAR
 Copy No. 357
 Date
 Signature: 30/03/19

ADD-1

2	District Education Officer/ Additional Director (BPS-19) (Male and Female)			<p>“By promotion, on the basis of seniority-cum-fitness, from amongst the Deputy District Education Officers and Deputy Directors(Male and Female) with at least seven year service in BPS-18 or twelve year service in BPS-17 and above and such officer shall undergo six weeks post promotion training on the following modules, namely:</p> <ul style="list-style-type: none"> i. Financial Management; ii. HR Management; and iii. Information Technology: <p>Provided that if no suitable officer is available for promotion then by transfer of BPS-19 officer”.</p>
3	Deputy District Education Officer/Deputy Director (BPS-18) (Male and Female)	<ul style="list-style-type: none"> i. M.Phil in Education from recognized University with three years teaching or administrative experience in Government recognized educational institutions or offices; or ii. at least Second Class Master’s Degree or BS (four years) and Bachelor’s Degree of Education from recognized University with five years teaching or administrative experience in BPS-17 and above in Government recognized educational institutions or offices; or iii. at least Second Class M.A/M.Sc with Second Class M.Ed/M.A (Education Planning and Management) or equivalent qualification from a recognized University with at least five years teaching or administrative experience in Government recognized educational institutions or offices. 	25 to 45 years	<p>(a) Eighty Percent by promotion, on the basis of seniority-cum-fitness, from amongst the Sub-Divisional Education Officers and Assistant Directors (Male/Female) with at least five year service as such and such officers shall undergo six weeks post promotion training on following modules, namely:</p> <ul style="list-style-type: none"> i. Financial Management; ii. HR Management; and iii. Information Technology: <p>Provided that if no suitable officer is available for promotion then by transfer of BPS-18 officer”; and</p> <p>(b) twenty percent by initial recruitment.</p>
4	Sub-Divisional Education Officer/Assistant Director (BPS-17) (Male and Female)	<ul style="list-style-type: none"> i. At least Second Class M.A/M.Sc or BS (four years) from recognized University; ii. at least Second Class Bachelor’s of Education from a recognized University ; and iii. three years teaching or administrative experience in Government recognized institutions or offices. 	21 to 40 years	<p>(a) Eighty percent by promotion, on the basis of seniority-cum-fitness, from amongst the Assistant Sub-Divisional Education Officers and Assistant District Education Officers (Male & Female) with at least five years’ service;</p> <p>Provided that if no suitable officer is available for promotion then by transfer of BPS-17 officer; and</p> <p>(b) Twenty percent by initial recruitment.</p>

5 Assistant Sub-Divisional Education Officer/ Assistant District Education Officer (BPS-16) (Male and Female)	i. At least Second Class Bachelor's Degree or BS (four years) from a recognized University; ii. at least Second Class Bachelor's Degree of Education from a recognized University; and iii. five years teaching or administrative experience in Government recognized institutions or offices.	25 to 35 years	"By initial recruitment: Provided that if no suitable officer is available then by transfer of Secondary School Teacher (BPS-16) of Teaching Cadre. Note: On induction, all such officers shall undergo six weeks post induction training on the following modules, namely: i. Financial Management; ii. HR Management; and iii. Information Technology"
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SECRETARY TO
GOVERNMENT OF THE KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT

Dist: of even No. & Date:-

ny forwarded to the:

- All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
- Secretary to Governor, Khyber Pakhtunkhwa.
- Secretary to Chief Minister, Khyber Pakhtunkhwa.
- Chairman Khyber Pakhtunkhwa Public Service Commission, Peshawar.
- Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
- Directorate of Curriculum and Teachers Education Khyber Pakhtunkhwa Abbottabad.
- All District Education Officers (Male/Female) in Elementary & Secondary Education Khyber Pakhtunkhwa. (Peshawar)
- Director Information Khyber Pakhtunkhwa Peshawar with the request to give vide publicity.
- Manager Government Printing Press Peshawar for publication in the next issue of Govt. Gazette.
- PS to Advisor to Chief Minister for E&SE Department Khyber Pakhtunkhwa Peshawar.
- PS to Secretary E&SE Department, Khyber Pakhtunkhwa, Peshawar.
- PS to Special Secretary E&SE Department, Khyber Pakhtunkhwa, Peshawar.
- PA to Additional Secretary (Estab) E&SE Department, Khyber Pakhtunkhwa, Peshawar.
- PA to Deputy Secretary (Admn) E&SE Department, Khyber Pakhtunkhwa, Peshawar.
- All Section Officers E&SE Department Khyber Pakhtunkhwa, Peshawar.
- Director EMIS E&SE Department with the request to upload the same on the web site of the Department.


27-03-19
for SECTION OFFICER (SCHOOLS MALE)

BEFORE THE HON'ABLE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL
PESHAWAR.

Application No. _____ / 2019 in service Appeal No.532/2019

Secretary E&SE Department, Khyber Pakhtunkhwa & others.Petitioners.

VERSUS

Muhammad Tariq ADEO District Karak.....Respondent.

APPLICATION FOR CONDONATION OF DELAY FOR & ON BEHALF OF PETITIONERS.

Respectfully Sheweth:-

The Petitioner submits as under:-

ON FACTS.

- 1 That a Service Appeal No.532//2019 case Titled Muhammad Tariq Shah Versus Government has been filed by the appellant before this Tribunal & was decided vide judgment dated 9/8/2019 wherein, in para-6 adverse remarks about Respondent No.2 has been passed against the policy notified by the competent authority on 27/3/2019 ..(Copy of the judgment is annexed as Annexure-A).
- 2 That being aggrieved from the above mentioned judgment dated 09/8/2019 to the extent of para-6 the petitioner is filing a review petition with this application for condonation of delay caused due to late transmission of the very judgment to the respondent No.02 on the following grounds.

ON GROUNDS:-


- A. That the factor of cause of action in the instant matter is continues cause of action & the impugned judgment of the Honorable KPK Service Tribunal dated 09/08/2019, in the titled case against the Petitioners/ Respondents come in the purview of the definition of continues wrong therefore, the cause of action starts on the First date & ends of on the last date of every day, month & year. Hence no question of delay arises in the instant matter.
- B. That law requires that matters/cases must be decided on merits rather than on technical grounds including the limitation of time.
- C. That the Petitioners/Respondents have got a very good case in their favour. Therefore, technicalities including the point of limitation are liable to be ignored as the Petitioners are mainly serving the public at large in education sector on non-trading concerned.
- D. That the case of the Petitioners is well within time & strictly in accordance with the relevant provisions of law, rules & policy.
- E. That if the delay caused unintentionally on the part of the Petitioner is not condoned, then the Petitioners will be suffered in irreparable loss of both financial & administrative nature.

- F That there are so many judgment passed by the Superior Courts of Law, wherein the point of limitation has been ignored & the matter has been decided on the merits of the case.
- G That balance of conveyance is also lies in favour of the Petitioners/Respondents & if delayed is not condoned in favour of the Petitioners then it will become a precedent in future.

In view of the above made submissions, it is most humbly prayed that this Hon'able Tribunal may very graciously be pleased to accept the instant application for condonation of delay in favour of the Petitioner/Respondent No.2 in the interest of justice.

Dated ___/___/2019

Applicant/Respondent No.2


Director
E&SE Department, Khyber
Pakhtunkhwa, Peshawar.
(Petitioner/Respondent No:2)

AFFIDAVIT

I, Hayat Khan Assistant Director (Litigation-II) E&SE Department do hereby solemnly affirm and declare on oath that the contents of the instant application for condonation of delay for filing of Review Petition CPLA against judgment dated 09/08/2019 to the extent of para-6 are true & correct to the best of my knowledge & belief.

Deponent



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 532/2019

Date of Institution ... 25.04.2019

Date of Decision ... 09.08.2019

Muhammad Tariq Shah, ADEO (BPS-16), ADEO Establishment DEO (Male),
Karak. ... (Appellant)

VERSUS

The Secretary (E&SE) Education, Government of Khyber Pakhtunkhwa, Civil
Secretariat, Peshawar and four others. ... (Respondents)

MR. TAIMUR ALI KHAN,
Advocate

--- For appellant.

MR. MUHAMMAD JAN,
Deputy District Attorney

--- For respondents.

MR. SHAHID QAYUM KHATTAK,
Advocate

--- For respondent no.5.

MR. AHMAD HASSAN,
MR. MUHAMMAD HAMID MUGHAL

--- MEMBER(Executive)
--- MEMBER(Judicial)

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

JUDGMENT

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

ARGUMENTS

02. Learned counsel for the appellant argued that he was appointed as PST in 1999 and promoted to the post of SST on 28.10.2014. That after promotion; he was posted at GHS Turki Khel and contained performing duty satisfactory. That after completion of tenure at the above school, he was posted/transferred against the vacant post of ADO Establishment Primary at DEO(M) Office Karak vide order dated 20.11.2018. After lapse of one month his services were placed at the disposal of DEO(M) Karak for further posting, whereas respondent no.5 was posted at his

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

place vide order dated 15.01.2019 but was withdrawn on 08.02.2019. He further argued that respondent no.5 exerted political pressure through MNA concerned for cancellation of order dated 08.02.2019 and also produced relevant documentary evidence and in nut shell transfer of the appellant was withdrawn due to political interference which was against the posting/transfer policy notified by the provincial government and instructions dated 27.02.2013 issued as a sequel to famous Anita Turab case.

03. Learned counsel for private respondent no.5 in rebuttal stated that initially the appellant challenged the original transfer order through Civil Suit filed in the court of Senior Civil Judge, Karak but this fact was concealed by him. He failed to file departmental appeal against original order dated 15.01.2019. Moreover, it was the appellant who exerted political pressure for withdrawal of transfer order dated 15.01.2019. Moreover, respondent no.5 was SST (General), whereas the appellant belonged to SST (Science Group) thus was not eligible to hold the post referred to above.

04. Learned Deputy District Attorney argued that the appellant was transferred from GHS Turki Khel to GHS Paloosa Kamari due to poor law and order situation by the competent authority and thereafter adjusted against the post of ADO in BPS-16 in the office of DEO(M) Karak. That he had personal differences with the Headmaster Incharge, which was also a contributing factor in his transfer to the above office. That post of ADO (BPS-17) are earmarked for the officers of Management Cadre, therefore, official belonging to the teaching were not eligible to hold these posts. The can only be adjusted as stopgap arrangement in the exigency of service, thus the appellant cannot claim posting against the said post. He also highlighted Section-10 of Khyber Pakhtunkhwa Civil Servants Act, 1973 and

failure on the part of the appellant who assailed initial order dated 15.01.2019 before the appellate authority.

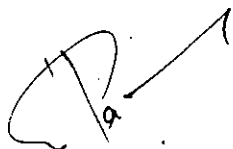
CONCLUSION

05. The appellant is aggrieved of withdrawal of initial posting/transfer order dated 15.01.2019 through order dated 08.02.2019. It has been proved through the available record that this order was not assailed by the appellant before the competent departmental authority by way of filing departmental appeal. He knocked the door of Senior Civil Judge, Karak by way of filing civil suit. After having succeeded in withdrawal of order dated 15.01.2019, he withdrew the civil suit. This fact was concealed by the appellant from this Tribunal and an ample proof to exhibit his conduct/behavior.


06. Instead of dilating on other aspects of the case, it would be in the interest of justice and fair play to highlight that the appellant and private respondent no.5 belonged to the Teaching Cadre, whereas this post was required to be filled from amongst the officials of Management Cadre. In these circumstances posting of both the officials against the Management Cadre was illegal and not sustainable in the eyes of law. It is regretted that respondent no.2 failed to discharge his duty in accordance with the law and rules. Silence on his part and by not agitating this important aspect of the case tantamount to culpable negligence. It also fell in the ambit of misuse of authority which constitutes misconduct thus he rendered himself liable to disciplinary proceedings under E&D Rules 2011. In order to sensitize the respondents about their duties/responsibilities attention is invited to judgment of Peshawar High Court, Peshawar dated 18.11.2009 passed in writ petition no.2937-P/2009 which was implemented vide notification dated 08.02.2019 issued by the Establishment Department. If the respondents have no regard of judgments of

superior courts and continue flouts their own instructions, then tall claims good governance would be nothing more than a cry in the wilderness.

07. As a sequel to the above, the appeal is accepted and impugned order dated 08.02.2019 and 23.04.2019 are set aside. The respondents are directed to recall transfer orders of the appellant and private respondent no.5 within a period of one month and post suitable officers of the Management Cadre against the said posts. Parties are left to bear their own costs. File be consigned to the record room.



(MUHAMMAD HAMID MUGHAL)
MEMBER



(AHMAD HASSAN)
MEMBER

ANNOUNCED
09.08.2019

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application	03-09-2019
Number of Words	2000
Copying Fee	200
Urgent	4
Total	24
Name of Applicant	
Date of Completion of Copy	03-9-2019
Date of Delivery of Copy	03-9-2019