

BEFORE THE SERVICE TRIBUNAL ,KHYBER PAKHTUNKHWA

SERVICE APPEAL NO. 1900/2022

Khyber Pakhtunkhwa
Service Tribunal

Mir Azam Khan, Assistant Accountant (BPS-16)
Treasury Establishment, Finance Department, Peshawar.

Diary No. 3608

Dated 15/2/2023
(APPELLANT)

VERSUS

The Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat Peshawar and Others.

..... (RESPONDENTS)

JOINT PARA WISE COMMENTS ON BEHALF OF RESPONDENT NO. 1 TO 3.

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Deponent



Sultan Saeed
Deputy Director IT (BPS-18),
Directorate of Treasuries & Accounts,
Khyber Pakhtunkhwa.
CNIC No:17201-6239009-5

Dated:

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Appeal No 1900/2022

Mr. Mir Azam Khan, Assistant Accountant (BPS-16)
Treasury Establishment, Finance Department, Peshawar.

.....Appellant

VERSUS

1. The Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and Others.

.....Respondents

JOINT PARA WISE COMMENTS ON BEHALF OF RESPONDENT NO. 1 TO 3.

RESPECTFULLY SHEWETH:-

PRELIMINARY OBJECTIONS:

1. That without prejudice to the following, the appeal is bad, both in form as well as in substance.
2. That the appeal is not at all maintainable in its present form as it is against the fact and rules.
3. That the appellant neither has any locus standi nor a cause of action to approach this Honorable Tribunal.
4. That the appellant has tried to twist and bend the true picture of the matter from this honorable Tribunal for his own advantage/benefit.
5. That the appeal is badly time barred and not entertainable in its present form.

FACTS:

1. Correct to the extent that the appellant and the private respondents No.4,5,6,7,8,9 & 10 were appointed as Sub Accountant in the Treasury Establishment in the years mentioned in the appeal. Moreover, Service Rules of Treasury Establishment, Khyber Pakhtunkhwa as amended from time to time provides that post of Assistant Treasury Officer/Sub Treasury Officer will be filled in as under:

"60% by promotion on the basis of Seniority-cum-fitness, from amongst the Assistant Accountants who also have qualified PIPFA or SAS examination"

Consequently the private respondents are promoted earlier than the appellant to the post of Assistant Treasury Officer / Sub Treasury Officer in light of Judgment of the Honorable Khyber Pakhtunkhwa Service Tribunal dated 16.07.2009 which stipulates as under:

"The vacancies of SAS qualified Assistant Accountants shall be filled through them on the basis of their seniority fixed with respect to the dates of their passing of the SAS examination, and not on their simple seniority as Assistant Accountants". (Copy of judgment at Annex-I).


2. Incorrect. The respondent department i.e. Treasury Establishment, Khyber Pakhtunkhwa has its service rules since 1981 which has been amended from time to time which has not effected the laid down criteria of promotion for the appellant as well as private respondents. As far as passing of SAS exam of the appellant is concerned, his seniority on the basis of said qualification is intact and shall be promoted on his own turn in the 60% quota.
3. Incorrect. The private respondents have been promoted to the post of Assistant/Sub Treasury Officer on regular/acting charge basis in accordance with the service rules of Treasury Establishment in light of the decision of the honorable Khyber Pakhtunkhwa Service Tribunal as a guideline. Hence, the appellant is twisting the facts and misleading the honorable Tribunal to his own benefits.
4. Pertains to record.
5. Incorrect. The amendments made in the service rules, duly notified on 10.08.2018, has no concern with the instant appeal as the provision of promotion of Assistant Accountants as **60% by promotion on the basis of Seniority-cum-fitness, from amongst the Assistant Accountants who also have qualified PIPFA or SAS examination** already exists in the pre-amended service rules as twisted by the appellant. As far as advice of Law Department is concerned it clearly states that:

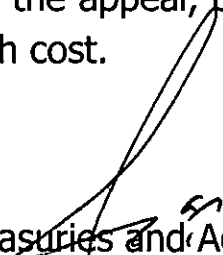
"a proviso which is the decision of the Service Tribunal, it may be a guide line for policy decision but can't be included in the service rules". (Copy of Government of Khyber Pakhtunkhwa Law Department letter dated 13.04.2010 at Annex-II)
6. Incorrect. To implement the decision of the Khyber Pakhtunkhwa Service Tribunal in service appeal No. 952/2019 announced on 17.10.2022 and delivered on 21.11.2022, departmental appeal of the appellant has been examined and regretted, being contrary to the decision of the Hon'ble Khyber Pakhtunkhwa Service Tribunal dated 16.07.2009 as the Establishment Department has also advised that the existing service rules are quite clear and there is no need of further amendments in the said Service Rules. (Annex-III)
7. The appellant has got no cause of action to file the instant appeal, being devoid of merit.


Grounds:

- A. Incorrect. The said order as well as rejection of appeal of the appellant is based on law, rules & policy in vogue and he is treated at par with others.
- B. Incorrect. As per Para-3 of the facts above.
- C. Incorrect. The appellant is twisting the true picture of the matter and this point is already clarified at Para-2, 3 & 5 of the facts above.
- D. As per Para- 2 & 3 of the facts above.
- E. Incorrect. No any discrimination is being done to the appellant and he is treated as per existing Service Rules in accordance with the law and decision of the honorable Tribunal.
- F. As per Para-E above.
- G. As per Para-E above.
- H. Incorrect. The appellant is treated equally with all at par as per rules/policy and in accordance with the law.
- I. The respondents seek leave to raise additional grounds at time of arguments.

It is, therefore, respectfully prayed for that the appeal, being devoid of merit and legal force, may kindly be dismissed with cost.

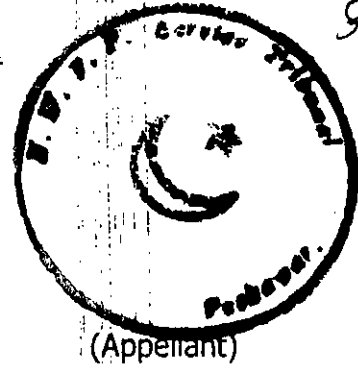

SECRETARY FINANCE
 Govt of Khyber Pakhtunkhwa
(RESPONDENT NO. 2)


 Director Treasuries and Accounts
 Khyber Pakhtunkhwa
(RESPONDENT NO. 3)


 The Chief Secretary
 Govt. of Khyber Pakhtunkhwa
(Respondent No.1)

BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 301/2009

Date of Institution. ... 21.2.2009
Date of Decision ... 16.7.2009Ikramullah, Sub-Accountant,
District Accounts Office, Swabi. ...

(Appellant)

VERSUS

1. The Government of NWFP, through Chief Secretary, NWFP Peshawar.
2. The Secretary Establishment & General Administration Department, NWFP Peshawar.
3. The Secretary, Finance Department, NWFP Peshawar. (Respondents)

APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNALS ACT 1974 AGAINST THE IMPUGNED NOTIFICATION DATED 24.5.1981 AND AMENDED NOTIFICATION DATED 03.11.2006 WHEREBY DISCRIMINATORY AND IRRATIONAL RULES NOTIFIED AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN STATUTORY PERIOD.

MR. MUHAMMAD ASIF YOUSAFZAI,
Advocate. ...

For appellant.

MR. JAMAL ABDUL NASIR,
Addl. Government Pleader, ...

For respondents.

MR. JUSTICE (R) SALIM KHAN,
S. MANZOOR ALI SHAH, ...CHAIRMAN.
MEMBER.JUDGMENT

JUSTICE (R) SALIM KHAN, CHAIRMAN.- This service Appeal No. 301 of 2009 by Ikramullah, and Service Appeals No. 302 of 2009 by Pervez Khan, No. 303 of 2009 by Muhammad Saeed, No. 304 of 2009 by Ashfaq-ur-Rahman, No. 305 of 2009 by Taj Muhammad, No. 306 of 2009 by Wahid Bakhsh, No. 307 of 2009 by Imtiaz Ali, No. 308 of 2009 by Khairullah, No. 309 of 2009 by Zahoor Khan, No. 310 of 2009 by Muhammad Naeem-II, No. 311 of 2009 by Sahibzada Khan, No. 312 of 2009 by Shafiq-ur-Rahman, No. 313 of 2009 by Muhihammad Shamrez, No. 314 of 2009 by Noor-ul-Amin, No. 316 of 2009 by M. Saifullah, and No. 317 of 2009 by Amjad Khan, are of the same nature, involving the same legal questions. These appeals are, therefore, taken together for discussion and decision.

2. The appellant of this appeal contended that he was appointed, alongwith other co-appellants, on different dates, in the Treasury Department.

ATTESTED
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(Signature)
Secretary
NWFP Service Tribunal
Peshawar

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Rules were framed and notified on 24.5.1981, through which 33% quota was prescribed for promotion on the basis of seniority-cum-fitness from amongst the holders of the posts of Assistant Accountants, and 67% quota was reserved for promotion of (a) Assistant Accountants who have qualified S.A.S Examination and (b) if no Assistant Accountants, who have qualified S.A.S examination, were available, then Sub Accountant, who have qualified S.A.S examination, on the basis of seniority-cum-fitness. The rules were modified on 3.11.2006. 20% quota was reserved for initial recruitment, further 20% quota was reserved for promotion on the basis of seniority-cum-fitness from amongst the holders of the posts of Assistant Accountants, while the remaining 60% vacancies were left for promotion on the basis of seniority-cum-fitness from amongst the holders of the posts of (a) S.A.S qualified Assistant Accountants and (b) if no such Assistant Accountants were available, then from Sub-Accountant, who have qualified S.A.S Examination. The appellant contended that the rules were irrational and discriminatory. The appellants submitted appeals severally and through their union. Writ Petition No. 1978 of 2006 was filed which was returned vide order dated 27.10.2008. Hence the present appeal.

3. The respondents contested the appeals. They contended that the new rules were neither discriminatory nor irrational nor contradictory, that the appeals are against the provisions of Section 22(2) of the NWFP Civil Servants Act, 1973, and that the appellants have not submitted departmental appeals.

4. We heard the arguments and perused the record.

5. The Writ Petition could be considered as departmental appeal also, as it served the purpose of informing the official respondents regularly regarding the grievances of the appellants, and providing them an opportunity of the prescribed period to consider their grievances. As the Writ Petition has been sent to this Tribunal, the period spent for pursuing the mentioned Writ Petition is condoned. The present appeals are a challenge to the rules themselves and are not regarding the fitness or otherwise of the appellants for holding or for promotion to a post on ascertaining their eligibility for holding a certain post.

6. The learned counsel for the appellants contended that the quota for S.A.S qualified Assistant Accountants has been decreased while 20% quota for initial recruitment and 20% quota for promotion of the Assistant Accountants, who have not qualified S.A.S qualification, has been carved out and prescribed. The

ATTENDED
EXAMINER

[Signature]
Deputy Minister
Revenue & Accounts
Khyber Pakhtunkhwa Peshawar

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comparative consideration of both the sets of the rules (Rules dated 24.5.1981 and Rules dated 3.11.2006) show that 20% quota has been reserved for initial recruitment, by deducting 13% quota from the Assistant Accountants who have not qualified S.A.S, and by reducing 7% from the quota of S.A.S qualified Assistant Accountants/Sub Accountants. The Government has the prerogative to prescribe the rules prospectively, and to create a place for direct recruitment. The quota of both classes of Assistant Accountants, and, consequently, of Sub Accountants, has been reduced, and no discrimination has been made to any of these classes.

7. It is expected that the system of Roster and Cycles shall be strictly adopted for the purposes of recruitment/appointment to the posts of Assistant Treasury Officer. A set of five vacancies available on, or after, 3.11.2006 shall be declared one cycle, and the first of these five vacancies will be allotted to the direct recruit while the second vacancy will be allotted to the Assistant Accountant, who has not-qualified S.A.S examination, on the basis of seniority-cum-fitness; The remaining three vacancies of each Cycle will be reserved for promotion of the S.A.S qualified Assistant Accountants or, if the Assistant Accountants are not available, for the Sub-Accountants, who have passed S.A.S examination. The first vacancy of direct recruits shall not be given to the other two groups, and vice-versa. An Assistant Accountant, on his passing S.A.S examination, shall be given the option to claim vacancy either in the second or in the third category. But once that option is exercised, his category shall not be changed in future. The vacancies of S.A.S qualified Assistant Accountants shall be filled through them on the basis of their seniority fixed with respect to the dates of their passing of the S.A.S examination, and not on their simple seniority as Assistant Accountants.

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8. With the above explanations and observations, we have come to the conclusion that the fresh rules could be framed by the Government, which are neither irrational nor discriminatory, nor prejudicial to the rights of the appellants.

9. We, therefore, dispose of the present appeals with the above explanation and observations. The parties are left to bear their own costs.

ANNOUNCED
16.7.2009

Stamp and signature of the court

*sd/- Justice (R) Salimullah
sd/- Jyoti Manjari Ali Shah
Member*





Annex - II

GOVERNMENT OF THE N.-W.F.P.,
LAW, PARLIAMENTARY AFFAIRS AND
HUMAN RIGHTS DEPARTMENT.

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No. REG: 1(4)80/ 7658
Peshawar, dated the 13 .04.2010.

To

The Secretary,
Government of the NWFP,
Finance Department.

**SUBJECT: AMENDMENT IN THE NWFP. TREASURIES
(RECRUITMENT AND APPOINTMENT)
RULES, 1981.**

Dear Sir,

I am directed to refer to your letter No. SO(ESTT)FD/1-16/2010/Amend-Rules, dated: 23.02.2010, on the subject noted above and to state that as discussed with your Departmental Representative Mr. Muhammad Amin, Section Officer (Est), the following queries needs to be solved for finalization of the case:

- (a) that the post of Director Treasury and Accounts is in BS-19 how it could be filled in by promotion from amongst District Comptroller of Accounts who are also in BS-19;
- (b) length of service is also not mentioned which would make them eligible for promotion to the post of Director Treasury. Same problem emerges as shown in above clause (a) with regard to filling of post of Deputy Director/ District Accounts Officer/ Treasury Officers;
- (c) the post of Assistant Treasury Officers are proposed to be filled in on the basis of promotion from amongst the Assistant Accountants but no length of service is mentioned, similarly Assistant Accountants and Sub-Accountants are also made eligible for promotion to the post of Assistant Sub-Treasury Officers, who have passed SAS examination, but no length of service is shown which can make them eligible for promotion on the basis of seniority-cum-fitness;

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Section Officer (Est)
Peshawar

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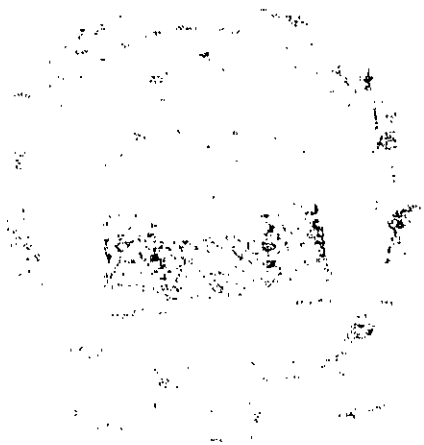
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(d) a proviso in column No. 5 against serial No. 5 is added which is the decision of the Service Tribunal, it may be a guide line for policy decision but can't be included in the service rules.

Yours faithfully,

ASSISTANT LEGAL DRAFTER-II



Section Officer (Estt.)
Govt. of Khyber Pakhtun
Finance Department

Section Officer (Estt.)
Govt. of Khyber Pakhtun
Finance Department



**GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT**

Finance Department Civil Secretariat Peshawar

<http://www.finance.gkp.pk>

[facebook.com/GoKFPD](https://www.facebook.com/GoKFPD)

twitter.com/GoKFPD

KC. No: SO(Estt-I) FD/1-5/2022

Dated Pesh: the 07-12-2022

To

Mir Azam Khan,
Assistant Accountant (BS-16)
Treasury Establishment,

Present posting: Pakistan Forest Institute, Peshawar.

Subject: **Appeal for promotion and against violation of Seniority & Service Rules.**

I am directed to refer to your appeal dated 27.02.2019 on the subject noted above and to state to implement decision of the Khyber Pakhtunkhwa Service Tribunal in Service Appeal No. 952/2019 announced on 17.10.2022 and delivered on 21.11.2022, your appeal has been examined in light of the Hon'ble Khyber Pakhtunkhwa Service Tribunal decision dated 16.07.2009 as well as Government of Khyber Pakhtunkhwa Establishment Department advice tendered vide letter No. SOR-VI/E&AD/7-44/2018 dated 16.01.2020.

2. In view of the above, Finance Department regrets its inability to accede to your request being contrary to the decision of the Hon'ble Khyber Pakhtunkhwa Service Tribunal dated 16.07.2009 and advice of Establishment Department in the matter.

SECTION OFFICER (E-I)

Endst: No & Date Even

Copy forwarded for information to the: -

1. Director, Treasuries & Accounts, Khyber Pakhtunkhwa w/r to letter No. 1-68/DT&A/22/1296 dated 22.11.2022.
2. Section Officer (Lit-II), Finance Department.
3. PA to Additional Secretary (Regulation), Finance Department.
4. PS to Special Secretary (A&R), Finance Department.

[Signature]
Director
Treasuries & Accounts
Khyber Pakhtunkhwa Peshawar

[Signature]
SECTION OFFICER (E-I) 07/12/2022

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GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGULATION WING)

No. SOR-VI/E&AD/7-44/2018
Dated Peshawar, the January 16, 2020

To

The Secretary to Govt. of Khyber Pakhtunkhwa,
Finance Department.

SUBJECT: PROMOTION /SENIORITY OF SAS QUALIFIED ASSISTANT IN THE
LIGHT OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
JUDGMENT DATED 16.07.2009

Dear Sir

I am directed to refer to your Department's letter No. SO(ESTT-I)FD/1-16/2018/SAS/S.List, dated 04.12.2019 on the subject noted above and to state that the case has been examined in light of Service Tribunal Judgment dated 16.07.2009 and the new Service Rules of Treasury Establishment of Finance Department notified on 10.08.2018 and to convey that the existing Service Rules are quite clear and there is no need of further amendments in the said Service Rules.

Yours faithfully,

(SAIFULLAH KHAN)
SECTION OFFICER (REG-VI)

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Khyber Pakhtunkhwa
Government of Khyber Pakhtunkhwa

SO (E-1)

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7/7/2020

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA
SERVICE APPEAL NO. 1900/2022

Mir Azam Khan, Assistant Accountant (BPS-16)
 Treasury Establishment, Finance Department, Peshawar.

..... (APPELLANT)

VERSUS

The Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat Peshawar and Others.

..... (RESPONDENTS)

JOINT PARA WISE COMMENTS ON BEHALF OF RESPONDENT NO. 1 TO 3.

AFFIDAVIT

I, Mr. Sultan Saeed, Deputy Director, IT (BPS-18), o/o the Director Treasuries & Accounts, Khyber Pakhtunkhwa do hereby solemnly affirm and declare that the contents of para wise comments / reply in light of order/directions of the Honorable Service Tribunal Khyber Pakhtunkhwa on behalf of the respondent No. 1 to 3 are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honorable Court.

Deponent



D. Sultan Saeed
 Deputy Director IT (BPS-18),
 Directorate of Treasuries & Accounts
 Khyber Pakhtunkhwa
 CNIC No:17201-6239009-5

Identified By:

