

**Execution Petition 183/2017**

20<sup>th</sup> June, 2022

Learned counsel for the petitioner and learned Addl: AG have already been heard on the previous date.

02. Through this execution petition, the petitioner Mumtaz Ahmad a retired PMS Officer, has prayed for implementation of the judgment of the Tribunal dated 24.04.2017 passed in service appeal No. 342/2016.

03. It is appropriate to reproduce the order dated 24.04.2017 passed in service appeal No. 342/2016 which is as under:-

**“In view of the above we dispose of the instant appeal with the directions that the case of the appellant be considered with the reference to availability of vacancy and eligibility of the appellant for promotion on or before his date of retirement i.e 10.01.2016 and if a vacancy entitling the appellant to promotion is found available on or before his date of retirement then the appellant shall be considered against such vacancy for presumptive promotion. No order as to costs. File be consigned to the record room.”**

04. The respondents were directed to implement the judgment. Respondents No. 1 and 2 submitted a brief implementation report. According to para-4 of the report the order of Khyber Pakhtunkhwa Service Tribunal, issued on 24.04.2017, was complied with and case of the petitioner was placed before the Provincial Selection Board in the meeting held on 25.09.2017, which was considered as agenda item No. 6 and the Board (PSB) decided as under:-

**“The Board thoroughly considered his case and observed that there was no vacancy entitling the appellant for promotion to BS-18 till his retirement on 09.01.2016. the Board further observed that even if he had not been retired from service on 09.01.2016, he could not have been promoted in the subsequent PSB meeting held on 18.02.2016 as total vacancies till that point of time were limited to 08 members, while the appellants’ names was**



**falling at S. No. 15 at that time. Thus the Board did not find him eligible for proforma promotion to BS-18.”**

05. Therefore, the petitioner could not have been granted the desired promotion. From the above it is found that the order of the Tribunal, directing consideration of the petitioner for promotion, in view of his eligibility etc, was duly complied with and he was not found fit/eligible for promotion. As after consideration of the case of the petitioner for the desired promotion, he could not have been promoted as per decision of the PSB dated 25.09.2017, therefore, there remains nothing to be done/determined in this petition. It is thus file. The petition may avail the remedy from the decision of the PSB which may have given him fresh cause of action. Consign.

06. *Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal this 20<sup>th</sup> day of June, 2022.*



(Kalim Arshad Khan)  
Chairman

24.05.2022

Petitioner alongwith counsel present. Mr. Kabirullah Khattak, Addl. AG alongwith Muhammad Anwar Khan, D.S (Judicial) for respondents present.

Partial arguments heard. To come up for further arguments/consideration on 16.06.2022 before this S.B.



Chairman

16<sup>th</sup> June, 2022

Counsel for the petitioner present. Mr. Kabirullah Khattak, Addl: AG for respondents present.

Arguments heard. To come up for order on 20.06.2022 before S.B.



(Kalim Arshad Khan)  
Chairman

1-3-2022

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E.P. No. 183/2017  
Muntaz Ahmad vs Govt

13.01.2022

Petitioner with counsel present.

Muhammad Adeel Butt, learned Additional Advocate General alongwith Mukaram Khan S.O for respondents present.

Perusal of record would reveal that case was adjourned time and again on the request of learned Additional AG in order to produce relevant record pertaining to the execution petition at hand. Section Officer PSB was also summoned but to no avail. Today, learned A.A.G again requested for time, therefore, last chance is given to learned AAG (Muhammad Adeel Butt) with further direction to make sure the presence of Section Officer PSB on the next date alongwith complete record pertaining to the execution at hand. Adjourned to 01.03.2022 before S.B.

In view of the preceding order sheet of the learned Member (Executive) case in hand may not be fixed before him and it be fixed before other S.B in view of his request. Office is directed to do the needful.

(Rozina Rehman)  
Member (J)

1-3-2022

Due to retirement of the Hon,ble chairman the case is adjourned to come up for the same as before on 24-5-2022

Reader

E.P. No. 183/2017  
Mumtaz Ahmad vs Govt.

01.12.2021

Counsel for the petitioner present. Mr. Muhammad Adeel Butt, Addl: AG alongwith Mr. Mukarram Khan, SO, Abdul Hameed, SO (PSB) for respondents present.

Due to personal reason, the case be fixed before other S.B. Adjourned. To come up for further proceedings on 16.12.2021 before S.B.

  
(MIAN MUHAMMAD)  
MEMBER (E)

16.12.2021

Petitioner in person present. Mr. Kabirullah Khattak, Addl: AG for respondents present.

As per previous order sheet dated 01.12.2021, this case be fixed before other S.B. Adjourned. To come up for further proceedings on 13.01.2022 before S.B.

  
(MIAN MUHAMMAD)  
MEMBER (E)

EP 183/2017

25.10.2021 Counsel for the petitioner and Mr. Muhammad Adeel Butt, Addl. AG alongwith Sultan Shah, Superintendent for the respondents present.

Reply to implementation report submitted by learned counsel for the petitioner. Placed on file. Representative of the respondents as well as learned AAG are required to contact Section Officer-I, Establishment Department, Khyber Pakhtunkhwa Peshawar for his personal appearance alongwith relevant record pertaining to the Execution Petition in hands on 26.10.2021 before S.B.

  
Chairman

26.10.2021 None for the petitioner and Mr. Muhammad Adeel Butt, Additional Advocate General alongwith Mr. Mukarram Khan, SO and Mr. Sultan Shah, Supdt for respondents present.

Learned AAG requested for a short adjournment to submit relevant record pertaining to the execution petition in hands on ~~09.11~~ 2021 before S.B.


  
Chairman

09.11.2021 Petitioner with counsel and Mr. Kabirullah Khattak, Addl. AG alongwith Mukaram Khan, SO (Litigation-I) for the respondents present.

Learned AAG requested for time to produce relevant record pertaining to the execution petition at hands, Request is accorded. Section Officer P.S.B be also summoned for the next date. Case to come up on 01.12.2021 before S.B.

  
Chairman

paucity of time. The appellant/present petitioner became contended with the order dated 24.04.2017 of this Tribunal, whereby his service appeal was disposed of, is now seeking the implementation of that order. Unless the determination of the question is made that what happened to the posts left vacant by return of the working paper not considered by the PSB due to paucity of time, further proceedings would not be useful. The respondents are directed to come up with full information ~~of the events subsequent to meeting of PSB dated 18.02.2016 as far as the eight posts were kept vacant by not considering the working paper due to paucity of time.~~ The file of appeal has been retained with the file of present execution petition and will be sent back after proper disposal of the Execution Petition. Case to come up on 16.09.2021 before S.B.

  
Chairman

16.09.2021

Petitioner alongwith counsel and Mr. Muhammad Adeel Butt, Addl. AG alongwith Mukaram Khan, S.O for the respondents present.

Representative of the respondents has submitted implementation report with reference to order dated 12.08.2021 alongwith annexures. Placed on file. Counsel for the petitioner seeks time to submit rejoinder. Request allowed. Case to come up on 25.10.2021 before S.B.

  
Chairman

**EP 183/2017**

12.08.2021            Petitioner alongwith counsel and Mr. Kabirullah Khattak, Addl. AG alongwith Mukaram Khan S.O (Litigation-I) for the respondents present.

The main file of the appeal as directed vide order dated 11.08.2021 has been produced by the office. The appellant as per Ground H of the memorandum of appeal stated that there were twelve clear vacancies on 18.02.2016, and the name of the appellant was sent to PSB for consideration to the post of PMS BPS-18 but the said Working Papers were not considered by the PSB which shows malafide of the respondents. Copy of the relevant documents i.e. Working Paper was attached as annexure-C with the appeal. According to the panel of officers listed for consideration accompanying with the working paper, the name of the petitioner then appellant appears at S.No. 15 while the request for promotion was made against eight posts in light of the Working paper. It is nowhere clarified in memorandum of appeal that what happened to the said working paper. However, the petitioner in his rejoinder to the comments of the respondents has annexed copy of the letter dated 04.03.2016 of the Establishment Department wherefrom it appears that working paper was returned alongwith copy of the Agenda Item No. 4 with the information that the Board did not consider the working paper due to



01.07.2021

Petitioner in person and Mr. Muhammad Adeel Butt, Addl. AG alongwith Mukaram Khan, S.O for the respondents present.

Representative of the respondents has produced copy of brief report alongwith relevant documents in compliance of order dated 08.03.2021. Petitioner seeks adjournment in order to go through the documents submitted today. To come up for further proceedings on 11.08.2021 before S.B.

  
Chairman

11.08.2021

Petitioner alongwith counsel and Mr. Kabirullah Khattak, Addl. AG alongwith Zar Muhammad Assistant for the respondents present.

In particular nature of the order under implementation, obviously passed without determination of merits of the appeal, let the record of main appeal be requisitioned for enlightenment as to factual account and grounds taken by the petitioner for implementation of said order. Adjourned to 12.08.2021 before S.B. Office is directed to do the needful.

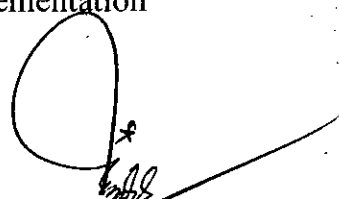
  
Chairman

08.03.2021

Petitioner with counsel present. Mr. Noor Zaman Khattak, District Attorney alongwith Mr. Mukarram Khan, SO (Litigation) for respondents present.

Arguments of learned counsel for the petitioner as well as District Attorney on the execution petition heard. The basic question before the Services Tribunal is that specific directions were given to the respondents vide judgement dated 24.04.2017. Pursuant to that, the court vide its order sheet dated 03.07.2018 reiterated the same point for convening PSB meeting as one vacancy had fallen vacant due to the retirement of Mr. Muhammad Iqbal on 02.01.2016. Subsequently, the respondents were required to have convened the meeting of PSB and to have considered case of the petitioner in light of the specific directions i.e availability of vacancy and eligibility of the petitioner on 10.01.2016. The item was not discussed by the PSB on 18.02.2016 despite the fact that a clear vacancy was available at that point of time. The specific directions have either been over sighted or ignored by the respondent departments.

In view of the observation recorded above, respondents are directed to submit final and conclusive implementation report on 10.05.2021 before S.B.

  
(Mian Muhammad)  
Member (E)

10.05.2021

Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 01.07.2021 for the same as before.

  
Reader

23.11.2020

Petitioner in person alongwith Mr. Khalid Rehman, Advocate, are present. Mr. Kabirullah Khattak, Additional Advocate General and Mr. Sultan Shah, Assistant, for the respondents are also present.

In view of the points involved and for their elaboration and consequent elucidation of assistance of the learned counsel representing petitioner as well as the learned Additional Advocate General is required as a number of documents/replies have been placed on the record. To come up for arguments/further proceedings 11.01.2021 before S.B.

(MUHAMMAD JAMAL KHAN)  
MEMBER (JUDICIAL)

11.01.2021

Petitioner is present in person. Mr. Kabirullah Khattak, Additional Advocate General and Mr. Sultan Shah, Assistant, for the respondents, are also present.

Petitioner requests that his respective counsel is pre-occupied in the Hon'ble Peshawar High Court, Peshawar, and cannot attend the Tribunal today and requested for adjournment. Adjourned to 08.03.2021 on which date file to come up for arguments/further proceedings before S.B.

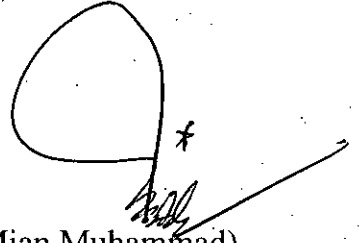
(MUHAMMAD JAMAL KHAN)  
MEMBER (JUDICIAL)

19.08.2020

Petitioner with counsel present. Addl: AG for respondents present.

Learned AAG requested for a short adjournment to submit implementation report.

Adjourned to 14.09.2020 before S.B.



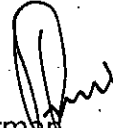
(Mian Muhammad)  
Member(E)

14.09.2020

Petitioner in person and Addl. AG alongwith Muhammad Anwar Khan Nanvi S.O (Litigation) for respondents present.

On 08.07.2019 instant matter was posted for arguments, however, the same <sup>did</sup> not take place. One again the petitioner seeks adjournment as his counsel is engaged before the Apex Court today.

To come up for arguments on 19.10.2020 before S.B.

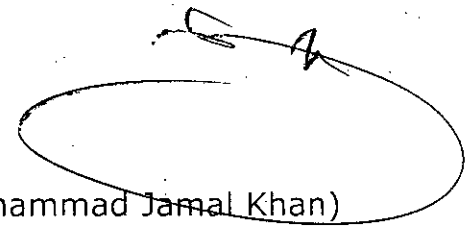


Chairman

19.10.2020

Petitioner is present in person. Mr. Kabirullah Khattak, Additional Advocate General for the respondents is also present.

The legal fraternity is observing strike today, therefore, the case is adjourned to 23.11.2020 on which to come up for arguments before S.B.



(Muhammad Jamal Khan)  
Member (Judicial)

09.03.2020

Petitioner in person and Mr. Kabirullah Khattak, Additional AG for the respondents present. Petitioner seeks adjournment. Adjourned to 09.04.2020 for further proceedings/arguments before S.B.

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

09.04.2020

Due to public holiday on account of COVID-19, the case is adjourned to 01.07.2020 for the same. To come up for the same as before S.B.


  
Reader

01.07.2020

Petitioner with counsel present.

Mr. Kabir Ullah Khattak learned Additional Advocate General for the respondents present.

Learned counsel invited the attention of this Tribunal to order sheet dated 03.07.2018. Learned AAG tried to bring into the knowledge of this Tribunal the order dated 14.10.2019, therefore, both the parties are directed to attend the court regarding implementation report keeping in view the above mentioned two orders on two different dates. To come up for arguments on point/implementation report on 19.08.2020 before S.B.

  
Member (J)

EP 183/17

12.11.2019

Petitioner alongwith counsel and Addl. AG alongwith Naqibullah, Stenographer for the respondents present.

To come up for further arguments on 16.12.2019 before S.B.

  
Chairman

16.12.2019

Petitioner in person and Addl. AG alongwith Sultan Shah, Assistant for the respondents present.

Petitioner requests for adjournment as his learned counsel is in appearance before the Apex Court today. Adjourned to 27.01.2020 before S.B.

  
Chairman

27.01.2020

Petitioner in person present. Due to general strike of the bar on the call of Khyber Pakhtunkhwa Bar Council, the case is adjourned. To come up for further proceedings/arguments on 09.03.2020 before S.B.

  
Member

18.09.2019 Petitioner in person and Addl. AG for the respondents present.

Petitioner requests for adjournment as his learned counsel is engaged before the Apex Court at Islamabad today. Adjourned to 14.10.2019 before S.B.

  
Chairman

14.10.2019 Petitioner with counsel present. Addl: AG along with Mr. Naqibulah, Stenographer for respondents present. Learned counsel for the petitioner invited attention to order sheet dated 03.07.2018 and 22.04.2019 and informed that directions of this Tribunal contained therein were not implemented by the respondents. Learned Addl: AG invited attention to order sheet dated 08.07.2019, whereby para-wise comments were submitted by the respondents. A copy of the same was handed over to the learned counsel for the petitioner. Case to come up for further proceedings on 12.11.2019 before S.B.

  
Member

E.P. No. 183/2017  
Mumtaz Khan vs Govt

10.06.2019

Petitioner with counsel and Addl: AG alongwith Mr. Naqibullah, Stenographer for respondents present. Learned counsel for the petitioner seeks adjournment. Adjourned. Case to come up further proceedings on 08.07.2019 before S.B.



(Ahmad Hassan)

Member

08.07.2019

Petitioner alongwith his counsel and Mr. Muhammad Riaz Khan Paindakhel, Asstt. AG alongwith Naqibullah, Senior Scale Stenographer for the respondents present.

The representative of respondents has submitted parawise comments in respect of the Execution Petition which are placed on record. To come up on 21.08.2019 for arguments. In the meanwhile the petitioner may submit rejoinder, if so advised.



Chairman

21.08.2019

Petitioner alongwith his counsel and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Naqeebullah, Stenographer for the respondents present. Learned Additional AG requested for adjournment. Adjourned to 18.09.2019 for further proceeding before S.B.



(Muhammad Amin Khan Kundi)

Member



25.02.2019

Petitioner with counsel present. Mr. Kabirullah Khattak, Addl: AG  
for respondents present.

Learned counsel for the petitioner argued that in pursuance of directions contained in order sheet dated 03.07.2018 and arguments on the previous dates of hearing, second reply to the implementation report was submitted on 25.11.2018. The same is available on the case file. However, it was observed that the respondents have not submitted reply to the comments referred to above. Respondents are directed to submit implementation report in connection with the aforementioned comments. To come up for further proceedings on 27.03.2019 S.B.

  
(AHMAD HASSAN)  
MEMBER

27.03.2019

Petitioner with counsel and Mr. Usman Ghani learned District Attorney present. Learned District Attorney seeks adjournment. Adjourn. To come up for further proceedings as per preceding order sheet on 22.04.2019 before S.B

  
Member

22.04.2019

Petitioner with counsel present. Mr. Usman Ghani, District Attorney alongwith Mr. Naqibullah, Stenographer for respondents present. Learned District Attorney sought time for submission of implementation report as per order sheet dated 25.02.2019. Granted. District Attorney is directed to ensure that implementation report is submitted well before the next date of hearing positively. Case to come up for further proceedings on 10.06.2019 before S.B.

  
(Ahmad Hassan)  
Member

12-11-2018

Due to Retirement of Honorable  
Chairman the Tribunal is non  
functional therefore the case is  
adjourned to come up for the  
same on 26-11-2018  
Reader

26.11.2018

Counsel for the appellant present. States that learned senior counsel for the appellant is busy before the Hon'ble High Court, therefore, requests for adjournment. Adjourned to 10.12.2018 for preliminary hearing before S.B.

  
Chairman

10.12.2018

Petitioner alongwith his counsel present. Mr. Naqeebullah, Stenographer alongwith Mr. Kabirullah Khattak, Additional AG for the respondents present. Implementation report not submitted. Learned Additional AG requested for further adjournment. Adjourned. To come up for implementation report on 23.01.2019 before S.B.

  
Muhammad Amin Khan Kundi  
Member

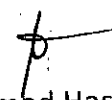
23.01.2019

Junior to counsel for the petitioner present and seeks adjournment as senior counsel for the petitioner is not in attendance. Adjourn. To come up for further proceedings on 27.02.2019 before S.B.

  
Member

28.08.2018

Counsel for the petitioner and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Sultan Shah, Assistant for the respondents present. Learned counsel for the petitioner sought adjournment. Request accepted. To come up for arguments on 18.09.2018 before S.B.

  
(Ahmad Hassan)  
Member


18.09.2018

Petitioner alongwith his counsel present. Mr. Kabirullah Khattak, Addl: AG for respondents present. Learned counsel for the petitioner seeks adjournment. Adjourned. Case to come up for further proceedings on 15.10.2018 before S.B.

  
Member


15.10.2018

Petitioner in person present. Mr. Kabirullah Khattak, Addl: AG for respondents present. Arguments could not be heard due to general strike of the Bar. Case to come up for further proceedings on 29.10.2018 before S.B.

  
(Ahmad Hassan)  
Member

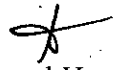
29.10.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 12.11.2018.

  
Reshma

03.07.2018

Counsel for the petitioner and Addl: AG for respondents present. Learned counsel for the petitioner invited attention to a working paper dated 20.01.2016 in which Eight clear vacancies were available for promotion of Officers of PCS (E.G) BPS-17 to BPS-18. He specifically referred to the officer at S.No.6 i.e Mr. Muhammad Iqbal who retired on 02.01.2016, while the appellant retired from service on 10.01.2016. It clearly indicated that a clear vacancy to consider the appellant was available but the item was not discussed in the meeting of PSB held on 18.02.2016. Respondents are directed to submit implementation report on or before the next date of hearing. To come up for further proceedings on 30.07.2018 before S.B.

  
(Ahmad Hassan)  
Member

30.07.2018

Petitioner, Mr. Mumtaz Ahmad in person alongwith his counsel Mr. Khalid Rehman, Advocate present. Mr. Sultan Shah, Supdt alongwith Mr. Kabirullah Khattak, Addl: AG for respondents present. The letter submitted para-wise comments/reply on behalf of respondent no.1 and 2 Case to come up for further proceedings on 28.08.2018 before S.B.

  
Chairman

13.04.2018

Counsel for the petitioner and Adll: AG for respondents present. Counsel for the petitioner seeks adjournment. Adjourned. To come up for further proceedings on 03.05.2018 before S.B.



(Ahmad Hassan)  
Member

~~03.05.2018~~

The Tribunal is non functional due to retirement of the Honorable Chairman. Therefore, the case is adjourned. To come up for the same on 25.07.2018 before S.B.



Reader

01.06.2018

Appellant Mumtaz Ahmad submitted an application for early hearing instead of 25.07.2018. Application is allowed. To come up for further proceedings on 02.07.2018. Notice be given to learned Adll. Advocate General for the date fixed.



Chairman

E.P No. 183/2017

15.02.2018

Petitioner with counsel present. Mr. Usman Ghani,  
District Attorney for the respondents also present. Learned  
District Attorney requested for further adjournment.  
Adjourned. To come up for implementation  
report/arguments on 14.03.2018 before S.B.

  
(Muhammad Amin Khan Kundi)  
Member (J)

14.03.2018

Junior to counsel for the appellant present and seeks  
adjournment as senior counsel for the appellant is not  
available. Adjourn. To come up for implementation  
report/arguments on 29.03.2018 before S.B

  
Member


29.03.2018

Petitioner in person and Addl. AG for the respondents  
present. Petitioner seeks for adjournment on the ground that his  
counsel is not in attendance. To come up for implementation  
report/arguments on 13.4.2018 before S.B.

  
Chairman

04.12.2017

Clerk of the counsel for petitioner present. Mr Riaz Pinda Khel, Assistant Advocate General alongwith Sultan Shah, Superintendent for the respondents present. Representative of the respondent department submitted order placed on file. Clerk of the counsel for petitioner seeks adjournment due to non availability of his senior counsel. Adjourned. To come up for implementation report on 20.12.2017 before S.B.

  
(Gul Zeb Khan)  
Member (E)

20.12.2017

Clerk to counsel for the appellant present. Mr. Muhammad Jan, Learned Deputy District Attorney for the respondents present and seeks adjournment. Adjourned. To come up for implementation report/arguments on 18.01.2018 before S.B.

  
(Muhammad Hamid Mughal)  
MEMBER

18.01.2018

Counsel for the petitioner present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Sultan Shah, Assistant for the respondents also present. Learned Additional AG requested for adjournment. Adjourned. To come up for implementation report/arguments on 15.02.2018 before S.B.

  
(Muhammad Amin Khan Kundi)  
Member

FORM OF ORDER SHEET

Execution Petition No. 183/2017

S.No.	Date of order Proceedings	Order or other proceedings with signature of Judge
1	2	3
1	11.10.2017	<p>The Execution Petition of Mr. Mumtaz Ahmad submitted to-day by post through Mr. Khaled Rehman Advocate, may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR 11/10/17</p>
2	13/10/2017	<p>This Execution Petition be put up before S. Bench on- <u>24/10/2017</u>.</p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>
3	24.10.2017	<p>The Execution Petition of Mr. Mumtaz Ahmad submitted to-day by Petitioner in person present. Notice be issued to the respondents for implementation report for 17.11.2017 before S.B.</p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>
4	17.11.2017	<p>Petitioner in person present. Mr. Kabir Ilyas Member Khattak, Adll: Advocate General for the respondents present. Learned Adll: AG seeks adjournment for Implementation report. Adjourned. To come up for implementation report on 04.12.2017 before S.B.</p> <p style="text-align: right;"><i>[Signature]</i> (Gul Zeb Khan) Member</p>



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 183 /2017

IN

Service Appeal No. 342 /2016

Khyber Pakhtunkhwa  
Service Tribunal

Discy No. 824

Dated: 11-10-17

**Mumtaz Ahmad,**

Retired PMS (BPS-17)

R/o House No.240, Din Bahar Colony,

Charsadda Road, Peshawar ..... **Petitioner**

Versus

1. **The Govt. of Khyber Pakhtunkhwa**

through Chief Secretary,  
Civil Secretariat, Peshawar.

2. **The Secretary**

Govt. of Khyber Pakhtunkhwa  
Establishment Department  
Civil Secretariat, Peshawar.....

**Respondents**

**Execution Petition for directing the Respondents to implement the judgment of this Hon'ble Tribunal dated 24.04.2017 passed in Service Appeal No.342/2016.**

Respectfully Sheweth,

1. That petitioner had filed Service Appeal No.342/2016 before the Hon'ble Tribunal which was disposed of vide Order dated 24.04.2017 (*Annex:-A*) in the following terms:-

*"In view of the above we disposed of the instant appeal with the directions that the case of the appellant be considered with the reference to availability of vacancy and eligibility of the appellant for promotion on or before his date of retirement i.e. 10.01.2016 and if a vacancy entitling the appellant to promotion is found available on or before his date of retirement then the appellant shall be considered against such vacancy for presumptive promotion. No order as to costs. File be consigned to the record room."*

2. That after obtaining the attested copy of the order, petitioner submitted the same alongwith application (*Annex:-B*) on 27.04.2017 to Respondent No.2 for his implementation of the order of this Hon'ble Tribunal but so far the same has not been implemented without any justification muchless lawful.
3. That inspite of the clear-cut direction of the Hon'ble Tribunal, the Respondents are not implementing the same, hence the instant Execution Petition.

It is, therefore, humbly prayed that Execution proceedings may kindly be initiated against the Respondents for implementation of the lawful order of the Hon'ble Tribunal.

Through

Petitioner

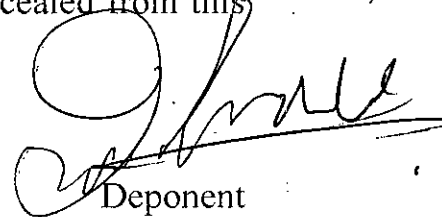
Khaled Rahman,  
Advocate,

Supreme Court of Pakistan

**Dated: 10/10/2017**

**Verification**

Verified that the contents of this Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

  
Deponent

Annex "A"

- 3

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 304

AMENDED SERVICE APPEAL NO: 342/2016 Dated 04/8/2016

MUMTAZ AHMAD  
Retired PMS, BPS-17,  
R/o House No. 240, Din Bahar Colony,  
Charsadda Road, Peshawar.



Appellan

VERSUS

1. GOVERNMENT OF KPK,  
Through Chief Secretary,  
Government of Khyber Pakhtunkhwa,  
Civil Secretariat, Peshawar.
2. SECRETARY ESTABLISHMENT,  
Government of Khyber Pakhtunkhwa,  
Establishment Department, Peshawar.

Respondents

AMENDED SERVICE APPEAL UNDER SECTION 4 OF KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974.

1. AGAINST NON CONSIDERATION OF APPELLANT IN  
PSB MEETING DATED 30.11.2015 & 18.02.2016  
DESPITE THE FACT THAT VARIOUS POSTS OF PMS BS  
1-8 WERE LYING VACANT / OCCURRED BEFORE AND  
AFTER 30.11.2015.

ATTESTED  
  
ATTESTED  
Khyber Pakhtunkhwa Service Tribunal  
Peshawar



24.04.2017

Appellant with counsel and Mr. Muhammad Saeed, Superintendent, along with Mr. Muhammad Adeel Butt, Additional Advocate General for respondents present. Arguments heard and record perused.

2. During the course of arguments the Tribunal was informed that the name of the appellant has already been sent to PSB for notional promotion and that result thereof is awaited.

3. In view of the above we dispose of the instant appeal with the directions that the case of the appellant be considered with reference to availability of vacancy and eligibility of the appellant for promotion on or before his date of retirement i.e. 10.01.2016 and if a vacancy entitling the appellant to promotion is found available on or before his date of retirement then the appellant shall be considered against such vacancy for presumptive promotion. No order as to costs. File be consigned to the record room.

ANNOUNCED  
24.04.2017

Member Chairman

Certified to be true copy  
Khyber Pakhtunkhwa  
Sindh  
Peshawar

10/04/2016

25-4-17

Date of Presentation of Appeal \_\_\_\_\_

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Date of Delivery \_\_\_\_\_ 25-4-17

ON CONSIDERATION OF APPELLANT'S PETITION DATED 30.11.2015 & 18.02.2016 AND THAT VARIOUS POINTS OF LAW BE  
**ATTESTED**

Annex B"

Pa / Secy (P) & AD

To

The Secretary to Government of Khyber Pakhtunkhwa,  
Establishment Department

2766 Wk  
27-11-2017

-5

Subject:-

IMPLEMENTATION OF JUDGMENT OF SERVICE TRIBUNAL  
DATED 24.04.2017 IN SERVICE APPEAL NO. 342/2016

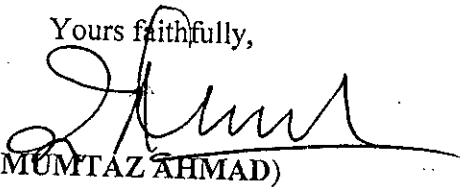
Dear Sir,

With due respect it is stated that the undersigned filed a service appeal No. 342/2016 in Service Tribunal whereby it was requested to consider promotion of undersigned to PMS BS-18 against the vacant post before and after 30.11.2015. The Service Tribunal vide its order dated 24.04.2017 accepted the appeal and ordered as under:-

*"In view of the above we dispose of the instant appeal with the directions that the case of the appellant be considered with reference to availability of vacancy and eligibility of the appellant for promotion on or before his date of retirement i.e. 10.01.2016 and if a vacancy entitling the appellant to promotion is found available on or before his date of retirement then the appellant shall be considered against such vacancy for presumptive promotion".*

Keeping in view the above, it is requested that judgment of the Service Tribunal dated 24.04.2017 may be implemented and undersigned may be promoted to PMS BS-18 against the vacant post available on or before my date of retirement i.e. 10.01.2016.

Yours faithfully,



(MUMTAZ AHMAD)

Retired PMS BS-17

R/O House No. 240, Din Bahar  
Colony, Charsadda Road, Peshawar.

Dated 24.04.2017

**ATTESTED**

WAKALAT NAMA

IN THE COURT OF KPK Service Tribunal Peshawar

Mumtaz Ahmad

Appellant(s)/Petitioner(s)

VERSUS

The Govt and others

Respondent(s)

I/We \_\_\_\_\_ do hereby appoint  
**Mr. Khaled Rehman**, Advocate, Supreme Court in the above mentioned  
case, to do all or any of the following acts, deeds and things.

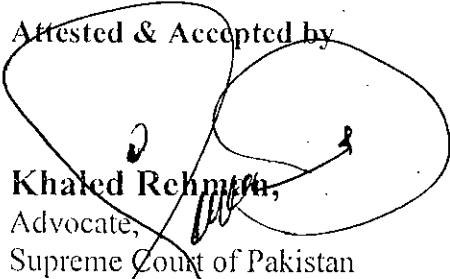
1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.
3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.

AND hereby agree:-

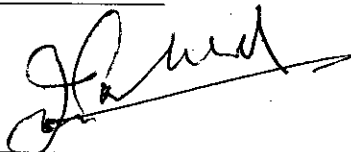
- a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this \_\_\_\_\_

Attested & Accepted by

  
**Khaled Rehman,**  
Advocate,  
Supreme Court of Pakistan

3-D, Haroon Mansion  
Khyber Bazar, Peshawar  
Off: Tel: 091-2592458

  
Signature of Executants

**MOST IMMEDIATE/COURT CASE.**



**GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT**

**NO. SO (E-I)/E&AD/1-1/2017**

**Dated Peshawar, the November 23, 2017**

To

✓  
The Section Officer (Litigation)  
E&A Department.

**SUBJECT:- EXECUTION PETITION NO. 183/2017 IN SERVICE APPEAL NO. 342/2016 MR. MUMTAZ AHMAD VERSUS GOVT OF KHYBER PAKHTUNKHWA THROUGH SECRETARY ESTABLISHMENT.**

I am directed to refer to your letter NO.SO(Lit)/E&AD/3-27/2016 dated 31.10.2017 on the subject noted above and to state that the promotion case of Mr. Mumtaz Ahmad (Rtd) PMS officer was placed before PSB on 25.09.2017. The PSB thoroughly examined/discussed his proforma promotion case and it was observed that he was at Sr. No. 15 of the seniority list of PMS BS-17 officers and the number of vacant positions at that time was only eight (8). So even if he had not retired from service, he could not have been promoted to BS-18. Therefore, the Board did not find him eligible for proforma promotion. (copy of the Minutes of the meeting are enclosed).

**Encl: as above.**

  
**(ISHTIAQ AHMAD)  
SECTION OFFICER (E-I)**

**ITEM NO (6)**

**ESTABLISHMENT DEPARTMENT**

(Meeting of PSB held on 25.09.2017)

**SUBJECT: - NOTIONAL PROMOTION OF MR. MUMTAZ AHMAD WITH REFERENCE TO AMENDED SERVICE APPEAL NO. 342 OF 2016 (MR. MUMTAZ AHMAD VS GOVT OF KPK THROUGH CHIEF SECRETARY ETC.**

Secretary Establishment apprised the Board that Mr. Mumtaz Ahmad was a PMS BS-17 Officer who retired from service on 09.01.2016 on attaining the age of superannuation. He filed an appeal in Service Tribunal on the grounds that posts in BS-18 were available during the meeting of PSB held on 30.11.2015 but he was not considered for promotion to BS-18. The Tribunal was erroneously informed that the name of the appellant has already been sent to PSB for notional promotion and result thereof is awaited. Thus the Tribunal vide its order dated 24.04.2017 directed that the case of the appellant be considered with reference to availability of the vacancy and eligibility of the appellant for promotion on or before his date of retirement i.e. 10.01.2016 and if a vacancy entitling the appellant to promotion is found available on or before his date of retirement then the appellant shall be considered against such vacancy for presumptive promotion. The case was referred to Law department for their advice for filing CPLA against the order of Service Tribunal. Law department advised that the Tribunal decided the case after receiving the information from the representative of Establishment department for placing the case of appellant before the PSB being a consenting order, hence no appeal lies against the consenting order before the upper forum.

The Secretary further apprised the Board that there were ten (10) vacant posts of BS-18 during the meeting of PSB held on 30.11.2015 which were filled. The name of the appellant was at S. No. 26 of the seniority list while the last Officer (Mrs. Farzana Afzal) recommended for promotion to BS-18 in PSB meeting held on 30.11.2015 was at S. No. 24 of the seniority list. Thus the vacant posts did not come to the name of the appellant. Before his retirement on 09.01.2016 the appellant submitted an application for consideration his promotion to BS-18. His application was considered and it was found that five (05) vacancies were available while the name of the appellant was at S. No. 15 of the seniority list of PMS BS-17 Officers, thus his promotion case was not presented before the PSB till his retirement on 09.01.2016.

The Board thoroughly considered his case and observed that there was no vacancy entitling the appellant for promotion to BS-18 till his retirement on 09.01.2016. The Board further observed that even if he had not been retired from service on 09.01.2016, he could not have been promoted in the subsequent PSB meeting held 18.02.2016 as total vacancies till that point of time were limited to 08 numbers, while the appellant's names was falling at S. No. 15 at that time. Thus the Board did not find him eligible for Proforma promotion to BS-18.





Execution Petition No.183/2017

IN

Service Appeal No. 342 /2016

Mumtaz Ahmad.....Petitioner

Versus

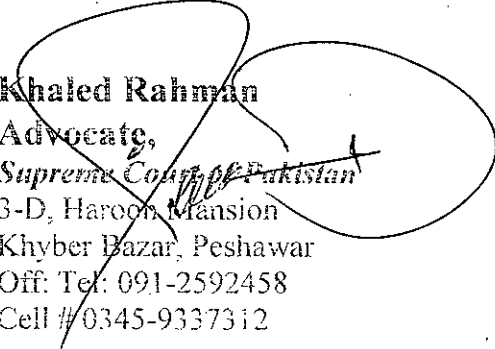
The Govt. and others ..... Respondents

INDEX

S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Reply along with Verification			1-2
2.	Minutes of PSB meeting	30.11.2015	R1	3-8
3.	Working Paper	20.01.2016	R2	9
4.	Panel of Officers for consideration		R3	10-14
5.	Minutes of PSB Meeting	18.02.2016	R4	15-16
6.	Minutes of PSB Meeting	25.09.2017	R5	17-18

  
Petitioner

Through

  
Khaled Rahman  
Advocate,  
Supreme Court of Pakistan  
3-D, Haroon Mansion  
Khyber Bazar, Peshawar  
Off: Tel: 091-2592458  
Cell #: 0345-9337312

Dated: 20 /12/2017

Execution Petition No.183/2017

IN

Service Appeal No. 342 /2016

Mumtaz Ahmad..... Petitioner

Versus

The Govt. and others ..... Respondents

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**REPLY TO THE IMPLEMENTATION REPORT SUBMITTED BY  
THE RESPONDENTS ON 04.12.2017.**

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Respectfully Sheweth,

1. That according to the Minutes of PSB Meeting held on 30.11.2015 (Annex:-R1) obtained through RTI Act, the Officers at Serial No.1,2,4,7,9 to 14,16 to 18, 22 and 23 were ineligible for promotion to the post of PMS BS-18 on multiple grounds/reasons and thus they were deferred, however, posts were not reserved for them as is evident from the recommendations of the PSB *ibid*.
2. That before the retirement of Petitioner on 09.01.2016, there arose 06 clear vacancies as is evident from the Working Paper (Annex:-R2) of the PSB for its meeting held on 18.02.2016. In the Panel (Annex:-R3) of Officers, the name of the Petitioner was at Serial No.15 whereas Officers at Serial No.1 to 11, 13 & 14 were again ineligible for promotion. These were the same Officers whose promotions were deferred in the PSB meeting held on 30.11.2015. The PSB, however, could not promote the Officers due to paucity of time vide Minutes (Annex:-R4) of PSB held on 18.02.2016 obtained through RTI. Had the PSB considered the Officers then the Petitioner would have definitely been promoted because he was the second eligible amongst

officers for promotion to the post of PMS BS-18.

- 3. That Para-3 of the Minutes of the Provincial Selection Board held on 25.09.2017 (*Annex:-R5*) is correct to the extent that there were 10 vacant posts during the meeting held on 30.11.2015 and last officer Mrs. Farzana Afzal at Serial No.24 of the Seniority List was recommended for promotion while the appellant was at Serial No.26 of the Seniority List. However, last five lines of Para-2 of PSB Meeting held on 25.09.2017 are incorrect as there were 06 clear vacancies before the retirement of appellant instead of 05 as claimed. The fact can be verified from the Working Paper *ibid*.
- 4. Thus it has been proved that there were 06 clear vacancies before the retirement of Petitioner and only one other Officer at Serial No.12 of PMS BS-17 was eligible besides the appellant at Serial No.15. However, the facts were concealed from the Hon'ble Tribunal to confuse the matter.

It is, therefore, humbly prayed that the Respondents may be directed to implement the Judgment of the Hon'ble Tribunal in letter and spirit and to allow the Petitioner/appellant presumptive Proforma promotion to PMS (BS-18) w.e.f. 09.01.2016 i.e. the date of retirement of the appellant with all consequential back benefits.

Through

Appellant

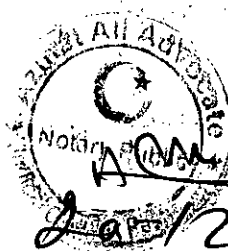
Khaleeqa Rehman  
Advocate, Peshawar.

Dated: 20 / 12 / 2017

Affidavit

Verified that the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

**ATTESTED**



*[Signature]*  
Petitioner

*[Handwritten Signature]*  
20/12-17

**ESTABLISHMENT DEPARTMENT**  
(Meeting of PSB held on 30.11.2015)

Reg/ -3-

**SUBJECT: - PROMOTION OF PCS (EG)/PMS BS-17 OFFICERS TO BS-18.**

Secretary Establishment apprised the Board that number of schedule posts in BS-18 falling to the share of PCS (EG)/PCS (SG) and PMS are one hundred and twenty seven (127) where one hundred and seventeen (117) officers are already working. Hence ten (10) posts of BS-18 are lying vacant.

2. According to Service Rules of PCS (EG)/PMS, post in BS-18 is required to be filled as under:-

"Promotion to the posts in BS-18 shall be made on the basis of seniority-cum-fitness from amongst the members of the service, holding posts in BS-17 who have successfully completed the prescribed training course at the Provincial Academy for Management and have passed the prescribed departmental examination (if any) and have completed the minimum length of service in BS-17 as notified by the Government from time to time".

**PMS Service Rules**

- i. By promotion, on seniority-cum-fitness basis, from amongst the officers of PMS in BS-17 having at least five years service and have passed the prescribed Departmental Training or Departmental Examination.
- ii. Under the policy of Provincial Government, six (6) months training is mandatory for promotion to BS-18. However the officers who attained the age of 50 years or above on 1st July of the year in which the training is scheduled or promotion is being considered shall be exempted from training.

3. The service record of the officers included in the panel were discussed one by one as under: -

S No	NAME OF OFFICER	RECOMMENDATIONS OF THE BOARD
<b><u>PCS (EG)</u></b>		
1.	Mr. Azizullah Khan Mehsud	His date of birth is 19.10.1956. He joined government service on 02.07.1981. He was promoted to BS-17 on 13.01.2002. He was awarded a penalty of with-holding of 3 annual increments and recovery of Rs. 11.1 million on 26.10.2010. The Board in its meeting held on 5.9.2012 recommended his supersession and directed that factual position regarding depositing the amount in government treasury be ascertained and did not recommend him for promotion on 04.10.2012. The Board in its

meeting held on 07.01.2014 and 13.02.2014 recommended to defer his promotion as the Secretary informed the Board that he deposited an amount of RS. 15, 75,000/= in the name of Chairman NAB Islamabad and his case is still pending with NAB. The Secretary had further informed the Board that advice of the Law department was sought as to whether disciplinary proceeding could be initiated against the officer. Law department had confirmed that availing the facility of volunteer return under Section 25 (a) of NAB Ordinance, action under Rules 8 (a) of Khyber Pakhtunkhwa, Govt Servant E&D Rules 2011 is also required. Necessary amendments in E&D Rules 2011 are being processed by Establishment department. Moreover the matter is still under process in NAB. The Board in its meeting held on 08.04.2015 recommended his supersession and asked for initiating disciplinary action against him. The Board observed that according to promotion policy if a civil servant is superseded he shall not be considered for promotion until he earns one PER for the ensuing one full year. Thus his promotion was not considered in PSB meeting held on 04.06.2015. The Board was intimated that a joint case regarding availing facility of voluntarily return by certain officers including him is under trial in Supreme Court of Pakistan. His PER for the year 2014 is also not available.

The Board recommended to defer his promotion.

**PMS**

2. Mr. Johar Ali Shah <i>Handwritten signature and checkmark</i>	His date of birth is 03.10.1965. He joined government service on 23.10.1985. He was promoted to BS-17 on 19.02.2008. The Board in its meeting held on 5.9.2012, 04.10.2012 and 07.01.2014 and 13. 02.2014 did not consider his promotion and on 08.04.2015 recommended to defer his promotion as he had not undergone six (6) months mandatory training. He is now exempted from 06 months mandatory training due to age factor. No enquiry is pending against him. His service record upto 2014 is generally good.  The Board recommended the officer for promotion to BS-18 on regular basis. He will be on probation for a period of one year.
3. Mr. Shah Nadir <i>Handwritten checkmark</i>	His date of birth is 02.01.1958. He joined government service on 23.05.1977. He was promoted to BS-17 on 27.05.2008. He is exempted from 06 months mandatory training due to age factor. The Board in its meeting held on 04.06.2015 recommended to defer his promotion as his PERs for the years 2010.2011, 2012 (P), 2013 and 2014 were not available. He has now produced the missing PERs. No enquiry is pending against

		<p>him. His service record upto 2014 is generally good.</p> <p>The Board recommended the officer for promotion to BS-18 on regular basis. He will be on probation for the period of one year.</p>
4.	Mr. Jehanzeb Khan	<p>His date of birth is 12.04.1967. He joined government service on 01.01.1992. He was promoted to BS-17 on 27.05.2008. The Board in its meeting held on 04.06.2015 recommended to defer his promotion as he had not undergone six months mandatory training. Position is still the same.</p> <p>The Board recommended to defer his promotion</p>
5.	Mr. Ijaz ur Rehman	<p>His date of birth is 09.02.1965. He joined government service on 01.01.1992. He was promoted to BS-17 on 27.05.2008. He is exempted from 06 months mandatory training due to age factor. The Board in its meeting held on 04.06.2015 recommended to defer his promotion as his PER for the years from 2008 to 2011 were not available. He has now produced the missing PERs. No enquiry is pending against him. His service record upto 2014 is generally good.</p> <p>The Board recommended the officer for promotion to BS-18 on regular basis. He will be on probation for the period of one year.</p>
6.	Mr. Samer Gul	<p>His date of birth is 01.03.1965. He joined government service on 01.01.1992. He was promoted to BS-17 on 27.05.2008. He is exempted from 06 months mandatory training due to age factor. The Board in its meeting held on 04.06.2015 recommended to defer his promotion as his PERs for the years 2013 &amp; 2014 were not available. He has now produced the missing PERs. No enquiry is pending against him. His service record upto 2014 is generally good.</p> <p>The Board recommended the officer for promotion to BS-18 on regular basis. He will be on probation for the period of one year.</p>
7.	Mr. Mansoor Qaiser	<p>His date of birth is 30.06.1966. He joined government service on 01.01.1992. He was promoted to BS-17 on 27.05.2008. The Board in its meeting held on 04.06.2015 recommended to defer his promotion as he had not undergone six months mandatory training. Position is still the same.</p> <p>The Board recommended to defer his promotion</p>
8.	Mr. Afsar Ali Shah	<p>His date of birth is 15.10.1963. He joined government service on 01.01.1992. He was promoted to BS-17 on 27.05.2008. He is exempted from 06 months mandatory training due to age factor. The Board in its meeting held on 04.06.2015</p>

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Samer Gul ✓  
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		<p>recommended to defer his promotion as his PERs for the period from 01.01.2009 to 31.03.2009, 08.09.2009 to 31.12.2009, 01.01.2010 to 06.09.2010, 01.01.2012 to 31.12.2012, 01.01.2013 to 31.07.2013 were not available. He has now produced the missing PERs. No enquiry is pending against him. His service record upto 2014 is generally good.</p> <p>The Board recommended the officer for promotion to BS-18 on regular basis. He will be on probation for the period of one year.</p>
9.	Mr. Maqsood Hassan	<p>His date of birth is 10.03.1967. He joined government service on 01.01.1992. He was promoted to BS-17 on 27.05.2008. The Board in its meeting held on 04.06.2015 recommended to defer his promotion as the Board was informed that he is under suspension. Position is still the same.</p> <p>The Board recommended to defer his promotion.</p>
10.	Mr. Sajid Ahmad	<p>His date of birth is 30.04.1965. He joined government service on 01.01.1992. He was promoted to BS-17 on 27.05.2008. He is exempted from 06 months mandatory training due to age factor. The Board in its meeting held on 04.06.2015 recommended to defer his promotion as his PERs for the period from, 01.01.2010 to 02.06.2010, 01.01.2011 to 31.12.2011, 01.01.2012 to 10.09.2012 and 01.01.2014 to 31.12.2014 were not available. He has now produced the missing PERs. However an enquiry has been initiated against him.</p> <p>The Board recommended to defer his promotion.</p>
11.	Mr. Abdul Ghafoor Shah	<p>His date of birth is 06.08.1967. He joined government service on 01.01.1992. He was promoted to BS-17 on 27.05.2008. The Board in its meeting held on 04.06.2015 recommended to defer his promotion as he has not undergone six months mandatory training. Position is still the same.</p> <p>The Board recommended to defer his promotion</p>
12.	Mr. Muhammad Asghar Khan	<p>His date of birth is 15.03.1966. He joined government service on 01.01.1992. He was promoted to BS-17 on 27.05.2008. The Board in its meeting held on 04.06.2015 recommended to defer his promotion as he has not undergone six months mandatory training. Position is still the same.</p> <p>The Board recommended to defer his promotion</p>
13.	Mr. Fazl-e-Qadir	<p>His date of birth is 01.01.1969. He joined government service on 01.07.1995. He was promoted to BS-17 on 27.05.2008. He has not undergone six months mandatory training.</p> <p>The Board recommended to defer his promotion.</p>

14.	Mr. Abdul Hadi	His date of birth is 02.02.1966. He joined government service on 01.07.1990. He was promoted to BS-17 on 27.05.2008. He has not undergone six months mandatory training.  The Board recommended to defer his promotion.
15.	Mr. Naseem Khan ✓	His date of birth is 12.03.1962. He joined government service on 01.03.1986. He was promoted to BS-17 on 27.05.2008. He is exempted from 06 months mandatory training due to age factor. No enquiry is pending against him. His service record upto 2014 is generally good.  The Board recommended the officer for promotion to BS-18 on regular basis. He will be on probation for a period of one year.
16.	Syed Muhammad Suhail	His date of birth is 29.10.1967. He joined government service on 19.11.1990. He was promoted to BS-17 on 27.05.2008. He has not undergone six months mandatory training.  The Board recommended to defer his promotion.
17.	Mr. Khalid Mehmood	His date of birth is 15.03.1967. He joined government service on 01.07.1995. He was promoted to BS-17 on 27.05.2008. He has not undergone six months mandatory training.  The Board recommended to defer his promotion.
18.	Mr. Hafizullah	His date of birth is 31.12.1970. He joined government service on 01.07.1995. He was promoted to BS-17 on 27.05.2008. He has not undergone six months mandatory training.  The Board recommended to defer his promotion.
19.	Mr. Faridoon Khan ✓	His date of birth is 11.08.1956. He joined government service on 03.06.1977. He was promoted to BS-17 on 21.12.2011. He is exempted from 06 months mandatory training due to age factor. No enquiry is pending against him. His service record upto 2014 is generally good.  The Board recommended the officer for promotion to BS-18 on regular basis. He will be on probation till retirement.
20.	Mr. Javed Akhtar ✓	His date of birth is 12.04.1958. He joined government service on 16.04.1977. He was promoted to BS-17 on 07.11.2008. He is exempted from 06 months mandatory training due to age factor. No enquiry is pending against him. His service record upto 2014 is generally good.  The Board recommended the officer for promotion to BS-18 on regular basis. He will be on probation for a period of one year.
21.	Mr. Muhammad Kibaz ✓	His date of birth is 02.02.1957. He joined government service on 05.07.1977. He was promoted to BS-17 on 07.11.2008. He is exempted from 06 months mandatory training due to age

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19/11/2015  
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		factor. No enquiry is pending against him. His service record upto 2014 is generally good.  The Board recommended the officer for promotion to BS-18 on regular basis. He will be on probation for a period of one year.
22.	Mr. Abdul Malik	His date of birth is 03.01.1959. He joined government service on 04.07.1977. He was promoted to BS-17 on 07.11.2008. He is exempted from 06 months mandatory training due to age factor. His PERs for the year 2008 to 2014 are not available.  The Board recommended to defer his promotion.
23.	Mr. Muhammad Saeed-I	His date of birth is 12.01.1956. He joined government service on 12.09.1975. He was promoted to BS-17 on 07.11.2008. He is exempted from 06 months mandatory training due to age factor. His PERs for the year 2008 to 2012 are not available.  The Board recommended to defer his promotion.
24.	Mr. Farzana Afzal ✓	Her date of birth is 27.03.1962. She joined government service on 30.04.1984. She was promoted to BS-17 on 07.11.2008. She is exempted from 06 months mandatory training due to age factor. No enquiry is pending against her. Her service record upto 2014 is generally good.  The Board recommended the officer for promotion to BS-18 on regular basis. She will be on probation for a period of one year. ✓

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Atose Res/2 P&B-I -9-

**WORKING PAPER FOR PROVINCIAL SELECTION BOARD**

Department	Establishment		
1.	Nomenclature of the post and Basic Scale.	BS-18 (Scheduled posts)	
2.	Service/Group/Cadre.	1) PCS EG BS-17 2) PMS BS-17	
3.	Sanctioned share of the cadre.	127 (according to revised schedule).	
		Direct	Promotion
4. (i)	Percentage of share.	Nil	100%
(ii)	No. of posts allocated to the cadre	Nil	127
(iii)	Present occupancy position	Nil	PCS SG BS-18 = 3 PCS EG BS-18 = 29 PMS BS-18 = 91-4=87 3+29+87=119 127-119=8
(iv)	No. of vacancies in the cadre.	Nil	8
(v)	No. of resultant vacancies	Nil	4-posts to be occurred due to promotion of PCS EG BS-18 officers to BS-19.
(vi)	Total No. of vacancies for promotion.	Nil	12
(vii)	How did the vacancy (ies) under promotion quota occur and since when?	8-post due to down-gradation/retirement or retiring of following officers:- i. ✓ Mr. Mushtaq Ahmad (PCS SG BS-18) Removal from service. ii. ✓ Mr. Iftikhar Ahmad (PMS BS-18) retired on 19.11.2015 iii. ✓ Mrs. Ayesha Saeed (PCS SG BS-18) Removal from service on 31.12.2015. iv. ✓ Mr. Anwar-ul-Haq (PMS BS-18) retired on 11.12.2015 v. ✓ Mr. Fazle Rahim (PMS BS-18) pre-mature retirement from 14.12.2015 vi. ✓ Mr. Muhammad Iqbal (PMS BS-18) retired on 2.1.2016 vii. ✓ Mr. Umer Farooq (PMS BS-18) retired on 13-1-2016 viii. ✓ Mr. Azam Khan (PMS BS-18) retiring on 3.2.2016	
(viii)	Relevant Rules	Promotion on the basis of Section-9(2)(a) of CSA 1973 (FIAB) read with Rule-9 of Khyber Pakhtunkhwa PCS (SG) Rules 1997 (FIAC) Rule-7 of APT Rules 1989 (FIAD), and promotion policy.	
(ix)	Required length of service.	5-Years	
(x)	Whether to be promoted on regular basis or appointed on acting charge basis?	Regular basis.	
(xi)	Mandatory training, if any.	On appointment to a post borne on the service in BS-17, whether by initial recruitment or by promotion, every officer so appointed shall successfully complete one and a half year's mandatory pre-service training course including twelve (12) months training as specified in Schedule-IV and six(06) months attachment as specified in Schedule-V. The training shall be followed by a passing out examination to be conducted by the selected Institution, Academy or Khyber Pakhtunkhwa Public Service Commission	
(xii)	Minimum required score on Efficiency Index.	50	

  
 (HASSAN MEHMOOD YOUSAFZAI)  
 SECRETARY ESTABLISHMENT

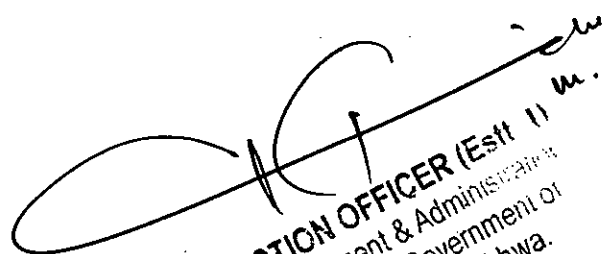
SECTION OFFICER (Est II)  
 Establishment & Admin.  
 Department Government of  
 Khyber Pakhtunkhwa.

-10-  
Res/13

PSB-II

**PANEL OF OFFICERS FOR CONSIDERATION**

S #	SENIORITY NO.	NAME OF OFFICER WITH QUALIFICATION	DATE OF BIRTH	DATE OF 1 <sup>ST</sup> ENTRY INTO GOVT. SERVICE	DATE OF APPOINTMENT/PROMOTION TO BS-16/17	DATE OF REGULAR APPOINTMENT/PROMOTION TO THE PRESENT SCALE (BS-17)	WHETHER FULFILL THE PRESCRIBED LENGTH SERVICE	QUANTIFIED SCORES	MISSING PERS (if any)	DISCIPLINARY PROCEEDINGS (IF ANY)	CASE (IF ANY) IN ANY COURT OF LAW INCLUDING NAB/PLEA BARGAINING WITH NAB	MANDATORY TRAINING FOR PROMOTION	RESEARCH PAPERS	PRESENT POSTING	REMARKS
1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.
<b>PCS EG BS-17</b>															
1.	1	Mr. Azizullah Khan Mahsud	19.10.56	2.7.81	2.12.92	13.1.02	Yes			Case with NAB	Availed VR with NAB.	Exempted		DO (F&P) DIK	Withholding of 3-increments and recovery of 11.1 million
<b>PMS BS-17</b>															
✓	1	Mr. Jehanzeb Khan	12.4.67	1.1.92	20.3.2008	27.5.2008	Yes	80	1.1.2010 to 31.5.2011	No	-	Not attended	No	LAC, SNGPL	
2.	2.	Mr. Mansoor Qaiser,	30.3.66	1.1.92	20.3.2008	27.5.2008	Yes	77.1		No	-	Not attended	No	Secretary to Comm: D.I.K	He will be exempted from training on 29.3.2016
3.	3.	Mr. Maqsood Hassan	10.3.67	1.1.92	6.9.2008	27.5.2008	Yes		1.1.2009 to 31.3.2009 2010 2012 2013- 2014	NAB	NAB case	Not attended	No	SO (L/R)	

  
**SECTION OFFICER (Estt II)**  
 Establishment & Administration  
 Department Government of  
 Khyber Pakhtunkhwa.

S. #	SENIORITY NO.	NAME OF OFFICER WITH QUALIFICATION	DATE OF BIRTH	DATE OF 1 <sup>ST</sup> ENTRY INTO GOVT. SERVICE	DATE OF APPOINTMENT / PROMOTION TO BS-16/17	DATE OF REGULAR APPOINTMENT / PROMOTION TO THE PRESENT SCALE (BS-17)	WHETHER FULFILL THE PRESCRIBED LENGTH SERVICE	QUANTIFIED SCORES	MISSING PERs. (if any)	DISCIPLINARY PROCEEDINGS (IF ANY)	CASE (IF ANY) IN ANY COURT OF LAW INCLUDING NAB/PLEA BARGAINING WITH NAB	MANDATORY TRAINING FOR PROMOTION	RESEARCH PAPERS	PRESENT POSTING	REMARKS
4.	4.	Mr. Sajid Ahmad,	30.4.65	1.1.92	20.3.2008	27.5.2008	Yes	80			He is involved in a case of missing SMG in FR Kohat initiated by FATA Sect: Charge sheet and statement of allegation are not issued yet.	Exempted	No	SO Health	Facing Enquiry
5.	5.	Mr. Abdul Ghafoor Shah,	6.8.67	1.1.92	20.3.2008	27.5.2008	Yes	80		No	No	Not attended	No	AC, Hangu	Not attended
6.	6.	Mr. Muhammad Asghar Khan,	15.3.66	1.1.92	20.3.2008	27.5.2008	Yes	76.40		No	No	Not attended	No	ACR Bannu	He will be exempted from training on 14.3.2016
7.	7.	Mr. Fazl-e-Qadir,	1.1.69	1.7.95	20.3.2008	27.5.2008	Yes	2008, 2009, 1.1.2011 to 30.6.2011, 2012, 2013, 2014		No	No	Not attended	No	ACP, Kohat	
8.	8.	Mr. Abdul Hadi,	2.2.66	1.7.90	20.3.2008	27.5.2008	Yes	78		No	No	Not attended	No	SO, Zakat, Ushr	He will be exempted from training on 1.2.2016
9.	9.	Syed Muhammad Suhail,	29.10.67	19.11.90	20.3.2008	27.5.2008	Yes	80		No	No	Not attended	No	SO Health	Not attended
10.	10.	Mr. Khalid Mehmood	15.3.67	1.7.95	20.3.2008	27.5.2008	Yes	2008, 1.1.2010 to 29.9.2010, 1.1.2011 to 11.5.2011, 2012, 2013, 2014		No	No	Not attended	No	DO(F&P) Karak	
11.	11.	Mr. Hafizullah,	31.12.70	1.7.95	20.3.2008	27.5.2008	Yes	2008, 1.6.2010 to 31.12.2010, 2011, 2012.		No	No	Not attended	No	LAC NHA DIK	PER missing/ Not attended
12.	12.	Mr. Abdul Malik,	3.1.59	4.7.77	29.5.2006	7.11.2008	Yes	82.50		No	No	Exempted	No	PRO-com-Protocol Officer, FDA	

  
**SECTION OFFICER (Estt. I)**  
 Establishment & Administration  
 Department Government of  
 Khyber Pakhtunkhwa.

S. #	SENIORITY NO.	NAME OF OFFICER WITH QUALIFICATION	DATE OF BIRTH	DATE OF 1 <sup>ST</sup> ENTRY INTO GOVT. SERVICE	DATE OF APPOINTMENT TO PRESENT SCALE
22.	22.	Mr. Manzoor Elahi	19.6.60	29.9.1979	5.4.2009
23.	23.	Mr. Sardar Ali	5.1.59	1.6.1979	5.4.2009
24.	24.	Mr. Mirzali	11.2.1966	5.8.1989	5.4.2009
25.	25.	Mr. Muhammad Saeed Ullah	1.3.1966	7.11.90	5.4.2009
26.	26.	Mr. Shams-ur-Rehman	8.6.1956	08.05.76	19.12.2009
27.	27.	Ms. Mussarrat Ismail Butt	1.1.1962	13.12.83	19.12.2009
28.	28.	Mr. Abdul Kabir Khan	25.4.1965	29.04.98	6.9.2009
29.	29.	Mr. Abdul Hameed Khan	9.2.1972	29.4.98	6.9.2009
30.	30.	Mr. Asadullah Khan	2.3.1969	14.7.98	6.9.2009
31.	31.	Mr. Javed Ali	15.8.1969	15.07.98	6.9.2009

S. #	SENIORITY NO.	NAME OF OFFICER WITH QUALIFICATION	DATE OF BIRTH	DATE OF 1 <sup>ST</sup> ENTRY INTO GOVT. SERVICE	DATE OF APPOINTMENT TO BS-16/17	DATE OF REGULAR APPOINTMENT/PROMOTION TO THE PRESENT SCALE (BS-17)	WHEN FULLY PROMOTED TO PRESENT SCALE
13.	13.	Mr. Muhammad Saeed-I,	12.1.56	12.9.75	5.4.2007	7.11.2008	
14.	14.	Mr. Qayyum Nawaz,	7.4.58	1.1.92	20.3.2008	7.11.2008	
15.	15.	Mr. Mumtaz Ahmad	10.01.56	20.04.76	20.03.2008	21.12.2011	
16.	16.	Mr. Rehan Gul Khattak	10.1.71,	17.1995	20.3.2008	7.11.2008	
17.	17.	Mr. Javedullah Mehsood	15.10.67	1.7.1995	20.3.2008	7.11.2008	
18.	18.	Mr. Niamatullah,	29.4.56	29.1.1976	5.4.2007	3.3.2009	
19.	19.	Syed Noor Ahmad Shah	25.10.58	9.7.1977	5.4.2007	3.3.2009	
20.	20.	Mr. Misal Khan	8.1.60	30.10.1979	5.4.2007	3.3.2009	
21.	21.	Mr. Habibullah-I	9.9.66	1.1.1985	5.4.2007	3.3.2009	

SECTION OFFICER  
Establishment & Administration  
Department Government of  
Khyber Pakhtunkhwa

SECTION OFFICER (Estt. I)  
Establishment & Administration  
Department Government of  
Khyber Pakhtunkhwa.

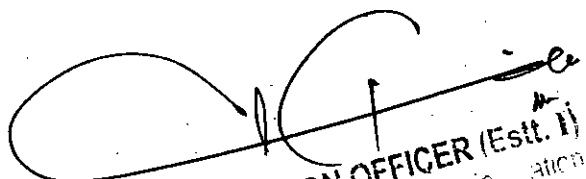
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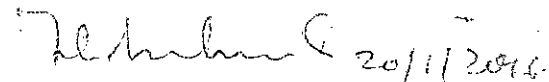
1) Certified that:-

PCS EG BS-17 The officer mentioned at No. 1 included in the panel possesses the requisite length of service for regular promotion to BS-18. On 5.9.2012 AND 7.1.2014 PSB superseded him with the direction that factual position regarding depositing the amount in govt. treasury be ascertained and did not recommend him for promotion on 4.10.2012.

On 7.1.2014 and 13.2.2014 board deferred his promotion. In the case regarding embezzlement/ misappropriation of funds allocated for Bomb Blast Victims at DIK, the officer was awarded a penalty of stoppage of three increments along with recovery of Rs. 11.1 million (jointly) from five accused. It has now confirmed by NAB Peshawar that out of five accused, four including the officer have returned their share of recoverable amount (Rs.15,75,000/-) in the aforementioned case availing the facility of "Voluntarily Return" which has been accepted by NAB.

PMS BS-17 Offices Sr. No. 1 to 31 are eligible for promotion except the officer at Sr. No. 3, 4, 14 and 16 who are either under suspension or facing enquiries (as the case may).

  
SECTION OFFICER (Estt. I)  
Establishment & Administration  
Department Government of  
Khyber Pakhtunkhwa.

  
(HASSAN MEHMOOD YOUSAFZAI)  
SECRETARY ESTABLISHMENT

**IMMEDIATE  
CONFIDENTIAL**



**GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT**

NO. SO(PSB)ED/I-1/2016/P-376  
Dated Peshawar, the 04.03.2016

To  
The Section Officer (E. I),  
Government of Khyber Pakhtunkhwa,  
Establishment Department

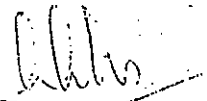
SUBJECT: **MINUTES OF THE MEETING OF PROVINCIAL SELECTION BOARD  
HELD ON 18.02.2016.**

**PROMOTION OF PCS (EG)/PMS BS-17 OFFICERS TO BS-18**

I am directed to refer to Section Officer (E-I) letter No. U. O. NO. SO (E-1)/E&AD/5-1/2016 dated 03.02.2016 on the subject and to forward herewith an extract of **Item No (4)** of the minutes/recommendations of the meeting of Provincial Selection Board held on **18.02.2016** for further necessary action.

2. Working papers along-with other documents received in the section are returned in original.

Encl. As Above.

  
(AMANAT ULLAH QURESHI)  
SECTION OFFICER (PSB)

ITEM NO (4)

ESTABLISHMENT DEPARTMENT  
(Meeting of PSB held on 18.02.2016)

- 16 -

SUBJECT: PROMOTION OF PCS (EG)/PMS BS-17 OFFICERS TO BS-18.

The Board did not consider the working paper due to paucity of time.



Res/5 - 17-

**GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT**

No. SO (PSB) ED/1-1/2017/KC-255  
Dated Peshawar, the 17.10.2017

To

The Section Officer (HRD-II)  
Government of Khyber Pakhtunkhwa,  
Establishment Department

Subject: - **PROVISION OF MINUTES OF THE MEETING OF PSB DATED 25.09.2017  
UNDER RTI ACT, 2013**

I am directed to refer to your office letter No. SO (HRD-II)/ED/1-10/2014 (RTI)/Mumtaz Ahmad Khan dated 10.10.2017 on the subject and to forward herewith attested copies of minutes of PSB meeting held on 25.09.2017 regarding Notional promotion of Mr. Mumtaz Ahmad, Ex- Deputy Secretary (Labour) BS-17 as desired please.

*Ausam*  
SECTION OFFICER (PSB)

**ESTABLISHMENT DEPARTMENT**  
(Meeting of PSB held on 25.09.2017)

✓ - 18 -

**SUBJECT: - NOTIONAL PROMOTION OF MR. MUMTAZ AHMAD WITH REFERENCE TO AMENDED SERVICE APPEAL NO. 342 OF 2016 (MR. MUMTAZ AHMAD VS GOVT OF KPK THROUGH CHIEF SECRETARY ETC.**

Secretary Establishment apprised the Board that Mr. Mumtaz Ahmad was a PMS BS-17 Officer who retired from service on 09.01.2016 on attaining the age of superannuation. He filed an appeal in Service Tribunal on the grounds that posts in BS-18 were available during the meeting of PSB held on 30.11.2015 but he was not considered for promotion to BS-18. The Tribunal was erroneously informed that the name of the appellant has already been sent to PSB for notional promotion and result thereof is awaited. Thus the Tribunal vide its order dated 24.04.2017 directed that the case of the appellant be considered with reference to availability of the vacancy and eligibility of the appellant for promotion on or before his date of retirement i.e. 10.01.2016 and if a vacancy entitling the appellant to promotion is found available on or before his date of retirement then the appellant shall be considered against such vacancy for presumptive promotion. The case was referred to Law department for their advice for filing CPLA against the order of Service Tribunal. Law department advised that the Tribunal decided the case after receiving the information from the representative of Establishment department for placing the case of appellant before the PSB being a consenting order, hence no appeal lies against the consenting order before the upper forum.

✓ The Secretary further apprised the Board that there were ten (10) vacant posts of BS-18 during the meeting of PSB held on 30.11.2015 which were filled. The name of the appellant was at S. No. 26 of the seniority list while the last Officer (Mrs. Farzana Afzal) recommended for promotion to BS-18 in PSB meeting held on 30.11.2015 was at S. No. 24 of the seniority list. Thus the vacant posts did not come to the name of the appellant. Before his retirement on 09.01.2016 the appellant submitted an application for consideration his promotion to BS-18. His application was considered and it was found that five (05) vacancies were available while the name of the appellant was at S. No. 15 of the seniority list of PMS BS-17 Officers, thus his promotion case was not presented before the PSB till his retirement on 09.01.2016.

✓ The Board thoroughly considered his case and observed that there was no vacancy entitling the appellant for promotion to BS-18 till his retirement on 09.01.2016. The Board further observed that even if he had not been retired from service on 09.01.2016, he could not have been promoted in the subsequent PSB meeting held 18.02.2016 as total vacancies till that point of time were limited to 08 numbers, while the appellant's names was falling at S. No. 15 at that time. Thus the Board did not find him eligible for Proforma promotion to BS-18.

Affected  
/ *Alisam*  
Section Officer (PSB)  
Govt. of Khyber Pakhtunkhwa  
Establishment Department

Before the Khyber Pakhtunkhwa Service Tribunal  
EP No. 183/17.

Khyber Pakhtunkhwa  
Service Tribunal  
Diary No. 612  
Dated 31/05/2018

Put up to the court with  
relevant appmt. Muntaz vs Gout

~~31/5/18~~  
31/5/18

Read

### Application for early hearing.

- ① That the Petitioner is appearing before this honorable tribunal for adjudication and next date of hearing is 25<sup>07</sup>/<sub>18</sub>.
- ② That despite clear directions of the honorable Petitioner is being deprived from his rights of promotion.
- ③ That the case was adjourned so many times due non functioning of the honorable tribunal.
- ④ That it is in interest of Justice to conclude the date in the next date.

It is therefore humbly prayed that the date may possibly be concluded as early as possible.

dated 31<sup>05</sup>/<sub>18</sub>  
[Signature]

Petitioner  
Muntaz

[Signature]

Verification  
that the contents  
of the affidavits is  
true and correct.

Attested by  
firm on 27/5/18  
[Signature]  
1.2.2018

Counsel  
Wahid Rahman

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

**EXECUTION PETITION No. 183/2017  
IN SERVICE APPEAL NO. 342/2016**

MR. MUMTAZ AHMAD  
Rtd. PMS BS-17  
r/O House No. 240 Din Bahar Colony, Charsadda Road,  
Peshawar.

Petitioner

*Place file  
30.7.2018.*

**VERSUS**

1. The Chief Secretary, Govt. of KPK Peshawar.
2. The Secretary, Establishment Department KPK

Respondents

**Reply / PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 1 & 2 - Re Joinder**

**ON FACTS**

1.	<p>A meeting of PSB was held on 30.11.2015, wherein a combined working paper for promotion of PCS EG BS-17 to BS-18 and PMS BS-17 to BS-18 was placed before the PSB. In this working paper, names of 1 PCS EG BS-17 and 23-PMS BS-17 (Total 24-officers) were placed before the PSB. The name of petitioner was not included in this working paper.</p> <p>10-post were available and the PSB considered the working paper and deferred the case of 14-officers mentioned at <b><u>Sr. No. 1, 4,7,9 to 14,16 to 18,22 &amp; 23 (14-officers were deferred) instead of 15-officers as described by the Petitioner in his Execution Petition 183/2017.</u></b></p> <p>No seats were reserved for these 14-officers.</p>
2.	<p>A combined working paper for promotion of PCS EG and PMS BS-17 to BS-18 was prepared in first week of January 2016 and Secretary Establishment Department signed the same on 20.1.2016 i.e. after the retirement of petitioner.</p> <p>At that time 6-posts were lying vacant for promotion of PCS EG/PMS BS-17 to BS-18. The following officers were in panel including the petitioner at Sr. No. 16:-</p> <ol style="list-style-type: none"><li>1. Mr. Azizullah Khan Mahsud.</li><li>2. Mr. Jehanzeb Khan</li><li>3. Mr. Mansoor Qaiser</li><li>4. Mr. Maqsood Hassan</li><li>5. Mr. Sajid Ahmad</li><li>6. Mr. Abdul Ghafoor Shah</li><li>7. Mr. Muhammad Asghar Khan</li><li>8. Mr. Fazl-e-Qadir</li><li>9. Mr. Abdul Hadi</li><li>10. Syed Muhammad Suhail</li><li>11. Mr. Khalid Mehmood</li><li>12. Mr. Hafizullah</li><li>13. Mr. Abdul Malik</li><li>14. Mr. Muhammad Saeed-I</li></ol>

	<p>15. Mr. Qayyum Nawaz 16. <b>Mr. Mumtaz Ahmad (Petitioner)</b></p> <p>Later on, this working paper was forwarded to PSB Section for placement before the PSB and on 18.2.2016, a meeting of the PSB was convened but due to paucity of time the working paper regarding promotion of PCS EG/PMS from BS-17 to BS-18 was not consider.</p> <p>The plea of the petitioner is wrong that the officer mentioned at <b>Sr. No. 1 to 11 and 13 &amp; 14</b> were in eligible as petitioner has no authority to decide eligibility of any officer.</p> <p>The above position describes that in case, the working paper would have been considered, the PSB would not promote the petitioner, being at Sr. No. 16.</p>
3.	<p>In correct, as a combined working paper (as mentioned in Para-2 above) was processed in the first week of January 2016, for grant of PCS EG-17 and PMS BS-17 to BS-18. This working paper was signed on 20.1.2016 after the retirement of petitioner i.e. 9.1.2016.</p> <p>On 18.2.2016, a meeting of the PSB was convened but due to <b>paucity of time the working paper regarding promotion of PCS EG/PMS from BS-17 to BS-18 was not consider</b>. The plea of the petitioner is wrong that the officer mentioned at <b>Sr. No. 1 to 11 and 13 &amp; 14</b> were in eligible as petitioner has no authority to decide eligibility of any officer.</p> <p>Since the petitioner was at Sr. No. 16 and there were 6- clear vacancies in BS-18, quota. In case, if the working paper would have been considered, the PSB would not promote the petitioner, being at <b>Sr. No. 16</b>.</p>
4.	<p>Incorrect to the effect that petitioner has no authority to decide eligibility of any officer at his own level.</p>

It is, therefore, most humbly prayed that the instant Execution petition being devoid of merit may very graciously be dismissed with costs.

  
**CHIEF SECRETARY  
KHYBER PAKHTUNKHWA  
(Respondent NO. 1)**

  
**SECRETARY ESTABLISHMENT  
KHYBER PAKHTUNKHWA  
(RESPONDENT NO. 2)**

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

**EXECUTION PETITION No. 183/2017**  
**IN SERVICE APPEAL NO. 342/2016**

MR. MUMTAZ AHMAD

Rtd. PMS BS-17

r/O House No. 240 Din Bahar Colony, Charsadda Road,  
Peshawar.

Petitioner

**VERSUS**

1. The Chief Secretary, Govt. of KPK Peshawar
2. The Secretary, Establishment Department KPK

Respondents

*Reply /* **PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 1 & 2 - Re Joinder**

**ON FACTS**

- |    |  |
|----|--|
| 1. | <p>A meeting of PSB was held on 30.11.2015, wherein a combined working paper for promotion of PCS EG BS-17 to BS-18 and PMS BS-17 to BS-18 was placed before the PSB. In this working paper, names of 1 PCS EG BS-17 and 23-PMS BS-17 (Total 24-officers) were placed before the PSB. The name of petitioner was not included in this working paper.</p> <p>10-post were available and the PSB considered the working paper and deferred the case of 14-officers mentioned at <b><u>Sr. No. 1, 4,7,9 to 14,16 to 18,22 &amp; 23 (14-officers were deferred) instead of 15-officers as described by the Petitioner in his Execution Petition 183/2017.</u></b></p> <p>No seats were reserved for these 14-officers.</p>   |
| 2. | <p>A combined working paper for promotion of PCS EG and PMS BS-17 to BS-18 was prepared in first week of January 2016 and Secretary Establishment Department signed the same on 20.1.2016 i.e. after the retirement of petitioner.</p> <p>At that time 6-posts were lying vacant for promotion of PCS EG/PMS BS-17 to BS-18. The following officers were in-panel including the petitioner at Sr. No. 16:-</p> <ol style="list-style-type: none"><li>1. Mr. Azizullah Khan Mahsud.</li><li>2. Mr. Jehanzeb Khan</li><li>3. Mr. Mansoor Qaiser</li><li>4. Mr. Maqsood Hassan</li><li>5. Mr. Sajid Ahmad</li><li>6. Mr. Abdul Ghafoor Shah</li><li>7. Mr. Muhammad Asghar Khan</li><li>8. Mr. Fazl-e-Qadir</li><li>9. Mr. Abdul Hadi</li><li>10. Syed Muhammad Suhail</li><li>11. Mr. Khalid Mehmood</li><li>12. Mr. Hafizullah</li><li>13. Mr. Abdul Malik</li><li>14. Mr. Muhammad Saeed-I</li></ol> |

15. Mr. Qayyum Nawaz  
16. Mr. Mumtaz Ahmad (Petitioner)

Later on, this working paper was forwarded to PSB Section for placement before the PSB and on 18.2.2016, a meeting of the PSB was convened but due to paucity of time the working paper regarding promotion of PCS EG/PMS from BS-17 to BS-18 was not consider.

The plea of the petitioner is wrong that the officer mentioned at **Sr. No. 1 to 11 and 13 & 14** were in eligible as petitioner has no authority to decide eligibility of any officer.

The above position describes that in case, the working paper would have been considered, the PSB would not promote the petitioner, being at Sr. No. 16

3. In correct, as a combined working paper (as mentioned in Para-2 above) was processed in the first week of January 2016, for grant of PCS EG-17 and PMS BS-17 to BS-18. This working paper was signed on 20.1.2016 after the retirement of petitioner i.e. 9.1.2016.

On 18.2.2016, a meeting of the PSB was convened but due to paucity of time the working paper regarding promotion of PCS EG/PMS from BS-17 to BS-18 was not consider. The plea of the petitioner is wrong that the officer mentioned at **Sr. No. 1 to 11 and 13 & 14** were in eligible as petitioner has no authority to decide eligibility of any officer.

Since the petitioner was at Sr. No. 16 and there were 6- clear vacancies in BS-18, quota. In case, if the working paper would have been considered, the PSB would not promote the petitioner, being at **Sr. No. 16**.

4. Incorrect to the effect that petitioner has no authority to decide eligibility of any officer at his own level.

It is, therefore, most humbly prayed that the instant Execution petition being devoid of merit may very graciously be dismissed with costs.

  
**CHIEF SECRETARY**  
**KHYBER PAKHTUNKHWA**  
**(Respondent NO. 1)**

  
**SECRETARY ESTABLISHMENT**  
**KHYBER PAKHTUNKHWA**  
**(RESPONDENT NO. 2)**

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

**EXECUTION PETITION NO. 183/2017  
IN SERVICE APPEAL NO. 342/2016**

MR. MUMTAZ AHMAD  
RTD. PMS BS-17  
R/O HOUSE NO. 240- DIN BAHAR COLONY,  
CHARSADDA  
ROAD, PESHAWAR.

(Appellant)

**VERSUS**

1. The Chief Secretary, Khyber Pakhtunkhwa.
2. The Secretary Establishment, Khyber Pakhtunkhwa.

Respondents

**REPLY PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 1 & 2**

**On facts.**

The response of the Execution Petition No. 183/2017 is as under:-

SR. NO.	POINT OF THE PETITIONER IN EXECUTION PETITIONER NO. 183/2017.	REPLY OF THE E&AD
1.	That according to the minutes of PSB meeting held on 30.11.2015, obtained through RTI Act, the officers at Sr. No. 1, 2, 4, 7, 9 to 14, 16 to 18, 22 & 23 (15-officers) were ineligible for promotion to the post of PMS BS-18 on multiple grounds/reasons and thus they were deferred, however, posts were not reserved for them as is evident from the recommendations of the PSB ibid.	<p>A meeting of PSB was held on 30.11.2015, wherein a combined working paper for promotion of PCS EG BS-17 to BS-18 and PMS BS-17 to BS-18 was placed before the PSB. In this working paper, names of 1 PCS EG BS-17 and 23-PMS BS-17 (Total 24-officers) were placed before the PSB. The name of petitioner was not included in this working paper. The name of officer at Sr. No. 26.</p> <p>10-post were available and the PSB considered the working paper and deferred the case of 14-officers mentioned at <b><u>Sr. No. 1, 4,7,9 to 14,16 to 18,22 &amp; 23 (14-officers were deferred) instead of 15-officers as described by the Petitioner in his Execution Petition 183/2017 (minutes of meeting are placed at Annex-I)</u></b></p> <p>No seats were reserved for these 14-officers.</p>
2.	That before the retirement of Petitioner on 9.1.2016, there were 06 clear vacancies as is evident from the working paper of the PSB for its meeting held on 18.2.2016. The officers at Sr. No. 1 to 11, 13 & 14 were not eligible for promotion due to multiple reasons. That due to paucity of time PSB could not promote the officers. Had the PSB considered the officers for promotion then the petitioner being at Sr. No. 15 would have been promoted.	<p>It is also submitted that a combined working paper for promotion of PCS EG and PMS BS-17 to BS-18 was prepared in first week of January 2016 and Secretary Establishment Department signed the same on 20.1.2016 i.e. after the retirement of petitioner.</p> <p>At that time 6-posts were lying vacant for promotion of PCS EG/PMS BS-17 to BS-18.</p> <p>The name of petitioner was also included in the working paper and his name was at Sr. No. 16 (<b>as in the working paper ibid was a combined</b>) (<b>Annex-II</b>).</p> <p>Later on, this working paper was forwarded to PSB Section for placement before the PSB.</p> <p>On 18.2.2016, a meeting of the PSB was convened but due to paucity of time the working paper regarding promotion of PCS EG/PMS from BS-17 to BS-18 was not consider.</p> <p><b>The plea of the petitioner is wrong that the officer mentioned at Sr. No. 1 to 11 and 13 &amp; 14 were in eligible</b></p>



		<p><b>as petitioner has no authority to decide eligibility of any officer.</b></p> <p>Since the petitioner was at Sr. No. 16 and there were 6-clear vacancies in BS-18, quota. In case, if the working paper would have been considered, the PSB would not promote the petitioner, being at Sr. No. 16.</p>
<p>3.</p>	<p>The Para-3 of the Minutes of the PSB held on 25.9.2017 is correct to the extent that there were 10 vacant posts during the meeting held on 30.11.2015 and last officer Mrs. Farzana Afzal at Sr. No. 24 of the seniority list was recommended for promotion while the appellant was at Sr. No. 26 of the seniority list. However, last five lines of the Para-2 of PSB meeting held on 25.9.2017 are incorrect as there were 6-clear vacancies before the retirement of appellant instead of 5-as claimed. The fact can be verified from the working paper <i>ibid</i>.</p>	<p>A combined working paper was processed in the first week of January 2016, for grant of PCS EG-17 and PMS BS-17 to BS-18, wherein 6-vacancies were available and the name of petitioner was at Sr. No. 16 as per details given blow:-</p> <ol style="list-style-type: none"> <li>1. Mr. Azizullah Khan Mahsud (PCS EG BS-17)</li> </ol> <p style="text-align: center;"><b>PANEL OF PMS BS-17</b></p> <ol style="list-style-type: none"> <li>1. Mr. Jehanzeb Khan</li> <li>2. Mr. Mansoor Qaiser</li> <li>3. Mr. Maqsood Hassan</li> <li>4. Mr. Sajid Ahmad</li> <li>5. Mr. Abdul Ghafoor Shah</li> <li>6. Mr. Muhammad Asghar Khan</li> <li>7. Mr. Fazl-e-Qadir</li> <li>8. Mr. Abdul Hadi</li> <li>9. Syed Muhammad Suhail</li> <li>10. Mr. Khalid Mehmood</li> <li>11. Mr. Hafizullah</li> <li>12. Mr. Abdul Malik</li> <li>13. Mr. Muhammad Saeed-I</li> <li>14. Mr. Qayyum Nawaz</li> <li>15. <b>Mr. Mumtaz Ahmad (Petitioner)</b></li> </ol> <p>This working paper was signed on 20.1.2016 after the retirement of petitioner i.e. 9.1.2016.</p> <p>On 18.2.2016, a meeting of the PSB was convened but due to paucity of time the working paper regarding promotion of PCS EG/PMS from BS-17 to BS-18 was not consider.</p> <p>The plea of the petitioner is wrong that the officer mentioned at <b>Sr. No. 1 to 11 and 13 &amp; 14</b> were in eligible as petitioner has no authority to decide eligibility of any officer.</p> <p>Since the petitioner was at Sr. No. 16 and there were 8 clear vacancies in BS-18, quota. In case, if the working paper would have been considered, the PSB would not promote the petitioner, being at <b>Sr. No. 16</b>.</p>
<p>4.</p>	<p>Thus it has been proved that there were 6-clear vacancies before the retirement of Petitioner and only one other officer at Sr. No. 12 of PMS BS-17 was eligible besides the appellant at Sr. No. 15. However, the facts were concealed from the Hon'ble tribunal to confuse the matter.</p>	<p>Incorrect to the effect that petitioner has no authority to decide eligibility of any officer at his own level.</p>

*[Signature]*  
 SECRETARY ESTABLISHMENT  
 KHYBER PAKHTUNKHWA  
 (RESPONDENT No. 2)

*[Signature]*  
 CHIEF SECRETARY  
 KHYBER PAKHTUNKHWA  
 (RESPONDENT NO. 1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No.183/2017

IN

Service Appeal No. 342 /2016

Mumtaz Ahmad..... Petitioner

VERSUS

① The Govt. of KPK through Chief Secy. KPK Peshawar  
The Govt. and others..... Respondents

② The Secy. Govt. of KPK Establishment Peshawar

THIRD REPLY TO THE IMPLEMENTATION REPORT  
SUBMITTED BY THE RESPONDENTS PURSUANT TO THE  
ORDER DATED 03.07.2018, 22.09.2019 & 14.10.2019.

Respectfully Sheweth,

Preliminary:

That on submission of the Implementation Report, the Petitioner submitted a comprehensive reply on 20.12.2017 wherein the entire issue was clarified. Subsequently, on 03.07.2018 detailed arguments were offered by both the parties and finally order dated 03.07.2018 was passed whereby it was directed that *a clear vacancy to consider the appellant was available but the item was not discussed in the meeting of the PSB held on 18.02.2016. Respondent are directed to submit Implementation Report on or before the next date of hearing. To come up for further proceedings on 30.07.2018 before SB.* It is to be noted that inspite of implementing the order *ibid*, of this Hon'ble Tribunal Respondents submitted another reply, therefore, Petitioner responded the same by way of submitting second reply which is placed on filed. Thereafter, arguments were heard on 22.04.2019 and after extensive arguments this Hon'ble Tribunal reached to the conclusion by directing the Respondents to implement the Order Sheet of this Hon'ble Tribunal dated 03.07.2018 but invain rather they submitted yet another reply.

Factual

1. Para No.1 of the Implementation Report is admitted.

2. Regarding Para No.2 of the Implementation Report it is submitted that the signing of the Working Paper on 20.01.2016 is immaterial because clear vacancies were available before the retirement of the appellant/Petitioner as clearly stated in the Working Paper. It is admitted that 06 vacancies were available for promotion and Petitioner was at Serial No.16 amongst the Officers but it is a fact that candidates at Serial No.1 to 11, 13, 14 are/were ineligible because in the Working Paper it is clearly mentioned against their names: *Missing PERS, Pending NAB cases and enquiries, non-attending of mandatory training, major and minor penalties*. On the basis of these objections, the same Officers were previously deferred and vacancies were not left for them. The Petitioner was the second available, eligible candidates for promotion to the next higher grade and had a clear chance of promotion had the PSB considered the candidates but due to paucity of time the PSB could not consider the candidates. The plea of Petitioner is according to the facts as on the basis of the same record, the same Officers were previously declared ineligible.
3. Para No.3 of the Implementation Report is incorrect. As replied in the para hereinabove.
4. Para No.1 of the Implementation Report is incorrect.

It is, therefore, humbly prayed that the Respondents may be directed to implement the Judgment of the Hon'ble Tribunal in letter and spirit and to allow the Petitioner/appellant presumptive Proforma promotion to PMS (BS-18) w.e.f. 09.01.2016 i.e. the date of retirement of the appellant with all consequential back benefits.

Through

Appellant/Petitioner  
 Khaled Rahman  
 Advocate,  
 Supreme Court of Pakistan

Dated: 29 /09/2018

Affidavit

Verified that the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

  
 Deponent/Petitioner

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

**EXECUTION PETITION NO. 183/2017  
IN SERVICE APPEAL NO. 342/2016**

MR. MUMTAZ AHMAD  
RTD. PMS BS-17  
R/O HOUSE NO. 240- DIN BAHAR COLONY,  
CHARSADDA  
ROAD, PESHAWAR.

(Appellant)

8-7-18

**VERSUS**

1. The Chief Secretary, Khyber Pakhtunkhwa.
2. The Secretary, Establishment, Khyber Pakhtunkhwa.

**Respondents**

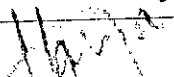
**REPLY PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 1 & 2**

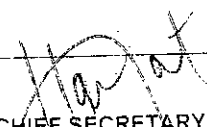
**On facts.**

The response of the Execution Petition No. 183/2017 is as under:-

SR. NO.	POINT OF THE PETITIONER IN EXECUTION PETITIONER NO. 183/2017.	REPLY OF THE E&AD
1.	<p>That according to the minutes of PSB meeting held on 30.11.2015, obtained through RTI Act, the officers at Sr. No 1, 2, 4, 7, 9 to 14, 16 to 18, 22 &amp; 23 (15-officers) were ineligible for promotion to the post of PMS BS-18 on multiple grounds/reasons and thus they were deferred, however, posts were not reserved for them as is evident from the recommendations of the PSB ibid.</p>	<p>A meeting of PSB was held on 30.11.2015, wherein a combined working paper for promotion of PCS EG BS-17 to BS-18 and PMS BS-17 to BS-18 was placed before the PSB. In this working paper, names of 1 PCS EG BS-17 and 23-PMS BS-17 (Total 24-officers) were placed before the PSB. The name of petitioner was not included in this working paper. The name of officer at Sr. No. 26.</p> <p>10-post were available and the PSB considered the working paper and deferred the case of 14-officers mentioned at <b>Sr. No. 1, 4, 7, 9 to 14, 16 to 18, 22 &amp; 23 (14-officers were deferred) instead of 15-officers as described by the Petitioner in his Execution Petition 183/2017 (minutes of meeting are placed at Annex-I)</b></p> <p>No seats were reserved for these 14-officers.</p>
2.	<p>That before the retirement of Petitioner on 9.1.2016, there were 06 clear vacancies as is evident from the working paper of the PSB for its meeting held on 18.2.2016. The officers at Sr. No. 1 to 11, 13 &amp; 14 were not eligible for promotion due to multiple reasons.</p> <p>That due to paucity of time PSB could not promote the officers. Had the PSB considered the officers for promotion then the petitioner being at Sr. No. 15 would have been promoted.</p>	<p>It is also submitted that a combined working paper for promotion of PCS EG and PMS BS-17 to BS-18 was prepared in first week of January 2016 and Secretary Establishment Department signed the same on 20.1.2016 i.e. after the retirement of petitioner.</p> <p>At that time 6-posts were lying vacant for promotion of PCS EG/PMS BS-17 to BS-18.</p> <p>The name of petitioner was also included in the working paper and his name was at Sr. No. 16 (<b>as in the working paper ibid was a combined) (Annex-II).</b></p> <p>Later on, this working paper was forwarded to PSB Section for placement before the PSB.</p> <p>On 18.2.2016, a meeting of the PSB was convened but due to paucity of time the working paper regarding promotion of PCS EG/PMS from BS-17 to BS-18 was not consider.</p> <p><b>The plea of the petitioner is wrong that the officer mentioned at Sr. No. 1 to 11 and 13 &amp; 14 were in eligible</b></p>

		<p><b>as petitioner has no authority to decide eligibility of any officer.</b></p> <p>Since the petitioner was at Sr. No. 16 and there were 6-clear vacancies in BS-18, quota. In case, if the working paper would have been considered, the PSB would not promote the petitioner, being at Sr. No. 16.</p>
3.	<p>The Para-3 of the Minutes of the PSB held on 25.9.2017 is correct to the extent that there were 10 vacant posts during the meeting held on 30.11.2015 and last officer Mrs. Farzana Afzal at Sr. No. 24 of the seniority list was recommended for promotion while the appellant was at Sr. No. 26 of the seniority list. However, last five lines of the Para-2 of PSB meeting held on 25.9.2017 are incorrect as there were 6-clear vacancies before the retirement of appellant instead of 5-as claimed. The fact can be verified from the working paper ibid.</p>	<p>A combined working paper was processed in the first week of January 2016, for grant of PCS EG-17 and PMS BS-17 to BS-18, wherein 6-vacancies were available and the name of petitioner was at Sr. No. 16 as per details given blow:-</p> <ol style="list-style-type: none"> <li>1. Mr. Azizullah Khan Mahsud (PCS EG BS-17)</li> </ol> <p style="text-align: center;"><b>PANEL OF PMS BS-17</b></p> <ol style="list-style-type: none"> <li>1. Mr. Jehanzeb Khan</li> <li>2. Mr. Mansoor Qaiser</li> <li>3. Mr. Maqsood Hassan</li> <li>4. Mr. Sajid Ahmad</li> <li>5. Mr. Abdul Ghafoor Shah</li> <li>6. Mr. Muhammad Asghar Khan</li> <li>7. Mr. Fazl-e-Qadir</li> <li>8. Mr. Abdul Hadi</li> <li>9. Syed Muhammad Suhail</li> <li>10. Mr. Khalid Mehmood</li> <li>11. Mr. Hafizullah</li> <li>12. Mr. Abdul Malik</li> <li>13. Mr. Muhammad Saeed-I</li> <li>14. Mr. Qayyum Nawaz</li> <li>15. <b>Mr. Mumtaz Ahmad (Petitioner)</b></li> </ol> <p>This working paper was signed on 20.1.2016 after the retirement of petitioner i.e. 9.1.2016.</p> <p>On 18.2.2016, a meeting of the PSB was convened but due to paucity of time the working paper regarding promotion of PCS EG/PMS from BS-17 to BS-18 was not consider.</p> <p>The plea of the petitioner is wrong that the officer mentioned at <b>Sr. No. 1 to 11 and 13 &amp; 14</b> were in eligible as petitioner has no authority to decide eligibility of any officer.</p> <p>Since the petitioner was at Sr. No. 16 and there were 8 clear vacancies in BS-18, quota. In case, if the working paper would have been considered, the PSB would not promote the petitioner, being at <b>Sr. No. 16</b>.</p>
4.	<p>Thus it has been proved that there were 6-clear vacancies before the retirement of Petitioner and only one other officer at Sr. No. 12 of PMS BS-17 was eligible besides the appellant at Sr. No. 15. However, the facts were concealed from the Hon'ble tribunal to confuse the matter.</p>	<p>Incorrect to the effect that petitioner has no authority to decide eligibility of any officer at his own level.</p>

  
 SECRETARY ESTABLISHMENT  
 KHYBER PAKHTUNKHWA  
 (RESPONDENT No. 2)

  
 CHIEF SECRETARY  
 KHYBER PAKHTUNKHWA  
 (RESPONDENT NO. 1)

ITEM NO (6)

**ESTABLISHMENT DEPARTMENT**

(Meeting of PSB held on 25.09.2017)

SUBJECT: - **NOTIONAL PROMOTION OF MR. MUMTAZ AHMAD WITH REFERENCE TO AMENDED SERVICE APPEAL NO. 342 OF 2016 (MR. MUMTAZ AHMAD VS GOVT OF KPK THROUGH CHIEF SECRETARY ETC.**

Secretary Establishment apprised the Board that Mr. Mumtaz Ahmad was a PMS BS-17 Officer who retired from service on 09.01.2016 on attaining the age of superannuation. He filed an appeal in Service Tribunal on the grounds that posts in BS-18 were available during the meeting of PSB held on 30.11.2015 but he was not considered for promotion to BS-18. The Tribunal was erroneously informed that the name of the appellant has already been sent to PSB for notional promotion and result thereof is awaited. Thus the Tribunal vide its order dated 24.04.2017 directed that the case of the appellant be considered with reference to availability of the vacancy and eligibility of the appellant for promotion on or before his date of retirement i.e. 10.01.2016 and if a vacancy entitling the appellant to promotion is found available on or before his date of retirement then the appellant shall be considered against such vacancy for presumptive promotion. The case was referred to Law department for their advice for filing CPLA against the order of Service Tribunal. Law department advised that the Tribunal decided the case after receiving the information from the representative of Establishment department for placing the case of appellant before the PSB being a consenting order, hence no appeal lies against the consenting order before the upper forum.

The Secretary further apprised the Board that there were ten (10) vacant posts of BS-18 during the meeting of PSB held on 30.11.2015 which were filled. The name of the appellant was at S. No. 26 of the seniority list while the last Officer (Mrs. Farzana Afzal) recommended for promotion to BS-18 in PSB meeting held on 30.11.2015 was at S. No. 24 of the seniority list. Thus the vacant posts did not come to the name of the appellant. Before his retirement on 09.01.2016 the appellant submitted an application for consideration his promotion to BS-18. His application was considered and it was found that five (05) vacancies were available while the name of the appellant was at S. No. 15 of the seniority list of PMS BS-17 Officers, thus his promotion case was not presented before the PSB till his retirement on 09.01.2016.

The Board thoroughly considered his case and observed that there was no vacancy entitling the appellant for promotion to BS-18 till his retirement on 09.01.2016. The Board further observed that even if he had not been retired from service on 09.01.2016, he could not have been promoted in the subsequent PSB meeting held 18.02.2016 as total vacancies till that point of time were limited to 08 numbers, while the appellant's names was falling at S. No. 15 at that time. Thus the Board did not find him eligible for Proforma promotion to BS-18.

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

**EXECUTION PETITION NO. 183/2017**

**IN**

**SERVICE APPEAL NO. 342/2016**

Mumtaz Ahmad.....Appellant

**Versus**

Govt. of Khyber Pakhtunkhwa & Others .....Respondents

**INDEX**

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2.	KP Service Tribunal Order dated 08.03.2021	<b>I</b>	4
3.	KP Service Tribunal Judgment dated 24.04.2017	<b>II</b>	5-6
4.	Provincial Selection Board, Minutes of Meeting dated 25.09.2017	<b>III</b>	7
5.	Implementation Report earlier submitted by Establishment Deptt:	<b>IV</b>	8

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**BRIEF REPORT ON IMPLEMENTATION REPORT OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ORDER DAED 08/03/2021**

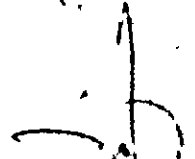
**EXECUTION PETITION NO. 183/2017  
IN SERVICE APPEAL NO. 342/2016**

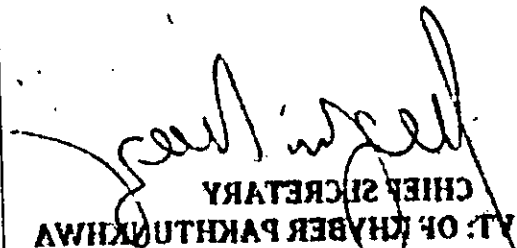
1. In the Execution Petition No. 183/2017 in Service Appeal No. 342/2016, the Khyber Pakhtunkhwa Service Tribunal passed an order on 08/03/2021 to submit final and conclusive implementation report **(ANNEX-I)**
2. The Appellant retired from service on 09/01/2016 and before his retirement a meeting of Provincial Selection Board was held on 30/11/2015. The PSB considered promotion of BS-17 to BS-18 against ten (10) available vacant posts while the Appellant was at that time at seniority No. 26.
3. On 24/04/2017, Khyber Pakhtunkhwa Service Tribunal passed judgment in Service Appeal No. 342/2016 on 24/04/2017 that the case of appellant be considered with reference to availability of vacancy and eligibility of the appellant for promotion on or before his date of retirement **(ANNEX-II)**.
4. The orders of the Khyber Pakhtunkhwa Services Tribunal issued on 14.04.2017 were complied with and case of the appellant was placed before the Provincial Selection Board in its meeting held on 25/09/2017 **(ANNEX-III)**, wherein it was decided that there was no vacancy entitling the appellant for promotion to BS-18 till his retirement on 09.01.2016. The Board further observed that even if he had not been retired from service on 09.01.2016, he could not have been promoted in the subsequent PSB meeting held 18.02.2016 as total vacancies till that point of time were limited to 08 numbers, while the appellant's name was falling at S. No. 15 at that time. Thus the Board did not find him eligible for Proforma promotion to BS-18.
5. Accordingly, Establishment Department, Khyber Pakhtunkhwa submitted implementation report before the Khyber Pakhtunkhwa Service Tribunal **(ANNEX-IV)**, however, Khyber Pakhtunkhwa Service Tribunal insists to award proforma promotion to the appellant who by no means was and is eligible for promotion, as promotion is



always with immediate effect subject to seniority-cum-fitness availability of post  
recommendation of PSB and none the less requires approval of competent authority.

It is humbly prayed that Establishment Department has already complied  
with the directions of the Hon'ble Service Tribunal but the appellant could not be  
promoted, being junior and non-availability of post as explained above. It is therefore  
requested that the instant Execution petition may be dismissed.

  
SECRETARY ESTABLISHMENT  
GOVT. OF KHYBER PAKHTUNKHWA  
(RESPONDENT NO.2)

  
CHIEF SECRETARY  
GOVT. OF KHYBER PAKHTUNKHWA  
(RESPONDENT NO.1)

Annex-I

Annex-I

Annex-IV

08.03.2021

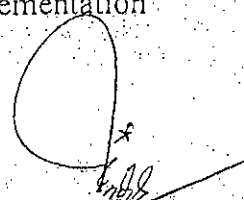
Petitioner with counsel present. Mr. Noor Zaman Khattak, District Attorney alongwith Mr. Mukarram Khan (Litigation) for respondents present.




RENCI  
IMTAZ

Arguments of learned counsel for the petitioner as well as District Attorney on the execution petition heard. The basic question before the Services Tribunal is that specific directions were given to the respondents vide judgement dated 24.04.2017. Pursuant to that, the court vide its order sheet dated 03.07.2018 reiterated the same point for convening PSB meeting as one vacancy had fallen vacant due to the retirement of Mr. Muhammad Iqbal on 02.01.2016. Subsequently, the respondents were required to have convened the meeting of PSB and to have considered case of the petitioner in light of the specific directions i.e availability of vacancy and eligibility of the petitioner on 10.01.2016. The item was not discussed by the PSB on 18.02.2016 despite the fact that a clear vacancy was available at that point of time. The specific directions have either been over sighted or ignored by the respondent departments.

In view of the observation recorded above, respondents are directed to submit final and conclusive implementation report on 10.05.2021 before S.B.

  
(Mian Muhammad)  
Member (E)

Certified to be true copy  
  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Date of Presentation of Application 18/3/21  
No. of Words 800  
Registration Fee 10.00  
Court Fee 4.00  
Total 14.00  
Name of Copyist \_\_\_\_\_  
Date of Completion of Copy 18/3/21  
Date of Delivery of Copy 18/3/21

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BEFORE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL, PESHAWAR.

Khyber Pakhtunkhwa  
Service Tribunal

Roll No. 204

AMENDED SERVICE APPEAL NO: 342 / 2016 Dated 04/07/2016

MUMTAZ AHMAD,  
Retired PMS, BPS-17,  
R/o House No. 240, Din Bahar Colony,  
Charsadda Road, Peshawar.

Appellant

VERSUS

1. GOVERNMENT OF KPK,  
Through Chief Secretary,  
Government of Khyber Pakhtunkhwa,  
Civil Secretariat, Peshawar.
2. SECRETARY ESTABLISHMENT,  
Government of Khyber Pakhtunkhwa;  
Establishment Department, Peshawar.

Respondents

AMENDED SERVICE APPEAL UNDER SECTION 4 OF KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974:

- I. AGAINST NON CONSIDERATION OF APPELLANT IN  
PSB MEETING DATED 30.11.2015 & 18.02.2016  
DESPITE THE FACT THAT VARIOUS POSTS OF PMS BE-  
15 WERE LYING VACANT / OCCURRED BEFORE AND  
AFTER 30.11.2015.

68

342/2016

24.04.2017

Appellant with counsel and Mr. Muhammad Saeed, Superintendent alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for respondents present. Arguments heard and record perused.

2. During the course of arguments the Tribunal was informed that the name of the appellant has already been sent to PSB for notional promotion and that result thereof is awaited.

3. In view of the above we dispose of the instant appeal with the directions that the case of the appellant be considered with reference to availability of vacancy and eligibility of the appellant for promotion on or before his date of retirement i.e 10.07.2016 and if a vacancy entitling the appellant to promotion is found available on or before his date of retirement then the appellant shall be considered against such vacancy for presumptive promotion. No order as to costs. File be consigned to the record room.

ANNOUNCED  
24.04.2017

Sd/-  
Member

15  
Sd/-  
Chairman

ITEM NO (6)

ESTABLISHMENT DEPARTMENT  
(Meeting of PSB held on 25.09.2017)

SUBJECT: NOTIONAL PROMOTION OF MR. MUMTAZ AHMAD WITH REFERENCE TO AMENDED SERVICE APPEAL NO. 342 OF 2016 (MR. MUMTAZ AHMAD VS GOVT OF KPK THROUGH CHIEF SECRETARY ETC.

Secretary Establishment apprised the Board that Mr. Mumtaz Ahmad was a PMS BS-17 Officer who retired from service on 09.01.2016 on attaining the age of superannuation. He filed an appeal in Service Tribunal on the grounds that posts in BS-18 were available during the meeting of PSB held on 30.11.2015 but he was not considered for promotion to BS-18. The Tribunal was erroneously informed that the name of the appellant has already been sent to PSB for notional promotion and result thereof is awaited. Thus the Tribunal vide its order dated 24.04.2017 directed that the case of the appellant be considered with reference to availability of the vacancy and eligibility of the appellant for promotion on or before his date of retirement i.e. 10.01.2016 and if a vacancy entitling the appellant to promotion is found available on or before his date of retirement then the appellant shall be considered against such vacancy for presumptive promotion. The case was referred to Law department for their advice for filing CPLA against the order of Service Tribunal. Law department advised that the Tribunal decided the case after receiving the information from the representative of Establishment department for placing the case of appellant before the PSB being a consenting order, hence no appeal lies against the consenting order before the upper forum.

The Secretary further apprised the Board that there were ten (10) vacant posts of BS-18 during the meeting of PSB held on 30.11.2015 which were filled. The name of the appellant was at S. No. 26 of the seniority list while the last Officer (Mrs. Farzana Afzal) recommended for promotion to BS-18 in PSB meeting held on 30.11.2015 was at S. No. 24 of the seniority list. Thus the vacant posts did not come to the name of the appellant. Before his retirement on 09.01.2016 the appellant submitted an application for consideration his promotion to BS-18. His application was considered and it was found that five (05) vacancies were available while the name of the appellant was at S. No. 15 of the seniority list of PMS BS-17 Officers, thus his promotion case was not presented before the PSB till his retirement on 09.01.2016.

The Board thoroughly considered his case and observed that there was no vacancy entitling the appellant for promotion to BS-18 till his retirement on 09.01.2016. The Board further observed that even if he had not been retired from service on 09.01.2016, he could not have been promoted in the subsequent PSB meeting held 18.02.2016 as total vacancies till that point of time were limited to 08 numbers, while the appellant's names was falling at S. No. 15 at that time. Thus the Board did not find him eligible for Proforma promotion to BS-18.

Annex IV      7      Annex III  
Annex V

**BRIEF REPORT ON IMPLEMENTATION REPORT OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL JUDGMENT DATED 24.04.2017**

- 1) Khyber Pakhtunkhwa Service Tribunal on 24.04.2017 has passed following judgment in the case of Mr. Mumtaz Ahmad (Appellant):-

*"the case of the appellant be considered with reference to availability of vacancy and eligibility of the appellant for promotion on or before his date of retirement i.e. 10.1.2016 and if a vacancy entitling the appellant to promotion is found available on or before his date of retirement then the appellant shall be considered against such vacancy for presumptive promotion.*

- 2) In pursuance of Khyber Pakhtunkhwa Service Tribunal Judgment dated 24.04.2017, Establishment Department placed the case regarding notional promotion of Mr. Mumtaz Ahmad (Appellant) before the Provincial Selection Board in its meeting held on 25.9.2017 and apprised the board that the appellant retired from service on 9.1.2016. Before his retirement a meeting of PSB was held on 30.11.2015 wherein E&AD placed a joint working paper of PCS EG BS-17/PMS BS-17 to BS-18 for consideration of promotion against 10 available vacancies against which 10 officers were promoted. The appellant was at Sr. No. 26 of the working paper, hence could not be promoted.
- 3) The PSB observed that even if he had not retired from service on 09.01.2016, he could not have been promoted even in the subsequent PSB meeting held on 18.02.2016 as total vacancies during that meeting was 08, while the appellant name was at Sr. No. 15 at that time. Thus, the Board did not find him eligible for proforma promotion to BS-18 (Annex-I).
- 4) In light of Order Sheet dated 03.07.2018, Establishment Department apprised the Hon'ble Khyber Pakhtunkhwa Service Tribunal about the whole situation through joint Para-Wise Comments (Annex-II).
- 5) However, In light of Order Sheet dated 22.04.2019 of Khyber Pakhtunkhwa Service Tribunal, this Department has once again forwarded joint Para-Wise Comments (Annex-III).

It is humbly prayed that the judgment of honorable Service Tribunal has been implemented in letter & spirit. Case regarding notional promotion of Mr. Mumtaz Ahmad (PMS BS-17) was placed before the Board as directed vide judgment dated 24.04.2017, but the Appellant could not be promoted due to non-availability of vacant post. It is, therefore, requested that the Execution Petition in hand may be dismissed with cost.

**BRIEF REPORT ON IMPLEMENTATION REPORT OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL JUDGMENT DATED 24.04.2017**

- 1) Khyber Pakhtunkhwa Service Tribunal on 24.04.2017 has passed following judgment in the case of Mr. Mumtaz Ahmad (Appellant):-

*“the case of the appellant be considered with reference to availability of vacancy and eligibility of the appellant for promotion on or before his date of retirement i.e. 10.1.2016 and if a vacancy entitling the appellant to promotion is found available on or before his date of retirement then the appellant shall be considered against such vacancy for presumptive promotion.*

- 2) In pursuance of Khyber Pakhtunkhwa Service Tribunal Judgment dated 24.04.2017, Establishment Department placed the case regarding notional promotion of Mr. Mumtaz Ahmad (Appellant) before the Provincial Selection Board in its meeting held on 25.9.2017 and apprised the board that the appellant retired from service on 9.1.2016. Before his retirement a meeting of PSB was held on 30.11.2015, wherein E&AD placed a joint working paper of PCS EG BS-17/PMS BS-17 to BS-18 for consideration of promotion against 10-available vacancies, against which 10 officers were promoted. The appellant was at Sr. No. 26 of the working paper, hence could not be promoted.
- 3) The PSB observed that even if he had not retired from service on 09.01.2016, he could not have been promoted even in the subsequent PSB meeting held on 18.02.2016 as total vacancies during that meeting was 08, while the appellant name was at Sr. No. 15 at that time. Thus, the Board did not find him eligible for proforma promotion to BS-18 (Annex-I).
- 4) In light of Order Sheet dated 03.07.2018, Establishment Department apprised the Hon'ble Khyber Pakhtunkhwa Service Tribunal about the whole situation through joint Para-Wise Comments (Annex-II).
- 5) However, In light of Order Sheet dated 22.04.2019 of Khyber Pakhtunkhwa Service Tribunal, this Department has once again forwarded joint Para-Wise Comments (Annex-III).

It is humbly prayed that the judgment of honorable Service Tribunal has been implemented in letter & spirit. Case regarding notional promotion of Mr. Mumtaz Ahmad (PMS BS-17) was placed before the Board as directed vide judgment dated 24.04.2017, but the Appellant could not be promoted due to non-availability of vacant post. It is, therefore, requested that the Execution Petition in hand may be dismissed with cost.

ITEM NO (6)

ESTABLISHMENT DEPARTMENT  
(Meeting of PSB held on 25.09.2017)

SUBJECT: - NOTIONAL PROMOTION OF MR. MUMTAZ AHMAD WITH REFERENCE TO AMENDED SERVICE APPEAL NO. 342 OF 2016 (MR. MUMTAZ AHMAD VS GOVT OF KPK THROUGH CHIEF SECRETARY ETC.

Secretary Establishment apprised the Board that Mr. Mumtaz Ahmad was a PMS BS-17 Officer who retired from service on 09.01.2016 on attaining the age of superannuation. He filed an appeal in Service Tribunal on the grounds that posts in BS-18 were available during the meeting of PSB held on 30.11.2015 but he was not considered for promotion to BS-18. The Tribunal was erroneously informed that the name of the appellant has already been sent to PSB for notional promotion and result thereof is awaited. Thus the Tribunal vide its order dated 24.04.2017 directed that the case of the appellant be considered with reference to availability of the vacancy and eligibility of the appellant for promotion on or before his date of retirement i.e. 10.01.2016 and if a vacancy entitling the appellant to promotion is found available on or before his date of retirement then the appellant shall be considered against such vacancy for presumptive promotion. The case was referred to Law department for their advice for filing CPLA against the order of Service Tribunal. Law department advised that the Tribunal decided the case after receiving the information from the representative of Establishment department for placing the case of appellant before the PSB being a consenting order, hence no appeal lies against the consenting order before the upper forum.

The Secretary further apprised the Board that there were ten (10) vacant posts of BS-18 during the meeting of PSB held on 30.11.2015 which were filled. The name of the appellant was at S. No. 26 of the seniority list while the last Officer (Mrs. Farzana Afzal) recommended for promotion to BS-18 in PSB meeting held on 30.11.2015 was at S. No. 24 of the seniority list. Thus the vacant posts did not come to the name of the appellant. Before his retirement on 09.01.2016 the appellant submitted an application for consideration his promotion to BS-18. His application was considered and it was found that five (05) vacancies were available while the name of the appellant was at S. No. 15 of the seniority list of PMS BS-17 Officers, thus his promotion case was not presented before the PSB till his retirement on 09.01.2016.

The Board thoroughly considered his case and observed that there was no vacancy entitling the appellant for promotion to BS-18 till his retirement on 09.01.2016. The Board further observed that even if he had not been retired from service on 09.01.2016, he could not have been promoted in the subsequent PSB meeting held 18.02.2016 as total vacancies till that point of time were limited to 08 numbers, while the appellant's names was falling at S. No. 15 at that time. Thus the Board did not find him eligible for Proforma promotion to BS-18.



M  
S  
II

BEFORE THE  
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

EXECUTION PETITION No. 183/2017  
IN SERVICE APPEAL NO. 342/2016

MR. MUMTAZ AHMAD

Rtd. PMS BS-17

r/O House No. 240 Din Bahar Colony, Charsadda Road,  
Peshawar.

Petitioner

VERSUS

1. The Chief Secretary, Govt. of KPK Peshawar.
2. The Secretary, Establishment Department KPK

Respondents

*Reply /* PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 1 & 2 - Re Joinder

ON FACTS

- |    |  |
|----|--|
| 1. | <p>A meeting of PSB was held on 30.11.2015, wherein a combined working paper for promotion of PCS EG BS-17 to BS-18 and PMS BS-17 to BS-18 was placed before the PSB. In this working paper, names of 1 PCS EG BS-17 and 23-PMS BS-17 (Total 24-officers) were placed before the PSB. The name of petitioner was not included in this working paper.</p> <p>10-post were available and the PSB considered the working paper and deferred the case of 14-officers mentioned at <u>Sr. No. 1, 4, 7, 9 to 14, 16 to 18, 22 &amp; 23 (14-officers were deferred) instead of 15-officers as described by the Petitioner in his Execution Petition 183/2017.</u></p> <p>No seats were reserved for these 14-officers.</p>  |
| 2. | <p>A combined working paper for promotion of PCS EG and PMS BS-17 to BS-18 was prepared in first week of January 2016 and Secretary Establishment Department signed the same on 20.1.2016 i.e. after the retirement of petitioner.</p> <p>At that time 6-posts were lying vacant for promotion of PCS/EG/PMS BS-17 to BS-18. The following officers were in panel including the petitioner at Sr. No. 16:-</p> <ol style="list-style-type: none"><li>1. Mr. Azizullah Khan Mahsud.</li><li>2. Mr. Jehanzeb Khan</li><li>3. Mr. Mansoor Qaiser</li><li>4. Mr. Maqsood Hassan</li><li>5. Mr. Sajid Ahmad</li><li>6. Mr. Abdul Ghafoor Shah</li><li>7. Mr. Muhammad Asghar Khan</li><li>8. Mr. Fazl-e-Qadir</li><li>9. Mr. Abdul Hadj</li><li>10. Syed Muhammad Suhail</li><li>11. Mr. Khalid Mehmood</li><li>12. Mr. Hafizullah</li><li>13. Mr. Abdul Malik</li><li>14. Mr. Muhammad Saeed-I</li></ol> |

15. Mr. Qayyum Nawaz  
16. Mr. Mumtaz Ahmad (Petitioner)

Later on, this working paper was forwarded to PSB Section for placement before the PSB and on 18.2.2016, a meeting of the PSB was convened but due to paucity of time the working paper regarding promotion of PCS EG/PMS from BS-17 to BS-18 was not consider.

The plea of the petitioner is wrong that the officer mentioned at Sr. No. 1 to 11 and 13 & 14 were in eligible as petitioner has no authority to decide eligibility of any officer.

The above position describes that in case, the working paper would have been considered, the PSB would not promote the petitioner, being at Sr. No. 16.


3. In correct, as a combined working paper (as mentioned in Para-2 above) was processed in the first week of January 2016, for grant of PCS EG-17 and PMS BS-17 to BS-18. This working paper was signed on 20.1.2016 after the retirement of petitioner i.e. 9.1.2016.

On 18.2.2016, a meeting of the PSB was convened but due to paucity of time the working paper regarding promotion of PCS EG/PMS from BS-17 to BS-18 was not consider. The plea of the petitioner is wrong that the officer mentioned at Sr. No. 1 to 11 and 13 & 14 were in eligible as petitioner has no authority to decide eligibility of any officer.

Since the petitioner was at Sr. No. 16 and there were 6- clear vacancies in BS-18, quota. In case, if the working paper would have been considered, the PSB would not promote the petitioner, being at Sr. No. 16.

4. Incorrect to the effect that petitioner has no authority to decide eligibility of any officer at his own level.

It is, therefore, most humbly prayed that the instant Execution petition being devoid of merit may very graciously be dismissed with costs.

  
CHIEF SECRETARY  
KHYBER PAKHTUNKHWA  
(Respondent NO. 1)

  
SECRETARY ESTABLISHMENT  
KHYBER PAKHTUNKHWA  
(RESPONDENT NO. 2)

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

**EXECUTION PETITION NO. 183/2017  
SERVICE APPEAL NO. 342/2016**

MR. MUMTAZ AHMAD  
RTD. PMS BS-17  
R/O HOUSE NO. 240- DIN BAHAR COLONY,  
CHARSADDA  
ROAD, PESHAWAR.

(Appellant)

**VERSUS**

1. The Chief Secretary, Khyber Pakhtunkhwa.
2. The Secretary Establishment, Khyber Pakhtunkhwa.

Respondents

**REPLY PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 1 & 2**

On facts.

The response of the Execution Petition No. 183/2017 is as under:-

SR. NO.	POINT OF THE PETITIONER IN EXECUTION PETITIONER NO. 183/2017.	REPLY OF THE E&AD
1.	That according to the minutes of PSB meeting held on 30.11.2015, obtained through RTI Act, the officers at Sr. No. 1, 2, 4, 7, 9 to 14, 16 to 18, 22 & 23 (15-officers) were ineligible for promotion to the post of PMS BS-18 on multiple grounds/reasons and thus they were deferred, however, posts were not reserved for them as is evident from the recommendations of the PSB ibid.	<p>A meeting of PSB was held on 30.11.2015, wherein a combined working paper for promotion of PCS EG-BS-17 to BS-18 and PMS BS-17 to BS-18 was placed before the PSB. In this working paper, names of 1 PCS EG BS-17 and 23 PMS BS-17 (Total 24-officers) were placed before the PSB. The name of petitioner was not included in this working paper. The name of officer at Sr. No. 26.</p> <p>10-post were available and the PSB considered the working paper and deferred the case of 14-officers mentioned at Sr. No. 1, 4, 7, 9 to 14, 16 to 18, 22 &amp; 23 (14-officers were deferred) instead of 15-officers as described by the Petitioner in his Execution Petition 183/2017 (minutes of meeting are placed at Annex-I)</p> <p>No seats were reserved for these 14-officers.</p>
2.	That before the retirement of Petitioner on 9.1.2016, there were 06 clear vacancies as is evident from the working paper of the PSB for its meeting held on 18.2.2016. The officers at Sr. No. 1 to 11, 13 & 14 were not eligible for promotion due to multiple reasons. That due to paucity of time PSB could not promote the officers. Had the PSB considered the officers for promotion then the petitioner being at Sr. No. 15 would have been promoted.	<p>It is also submitted that a combined working paper for promotion of PCS EG and PMS BS-17 to BS-18 was prepared in first week of January 2016 and Secretary Establishment Department signed the same on 20.1.2016 i.e. after the retirement of petitioner.</p> <p>At that time 6-posts were lying vacant for promotion of PCS EG/PMS BS-17 to BS-18.</p> <p>The name of petitioner was also included in the working paper and his name was at Sr. No. 16 (as in the working paper ibid was a combined) (Annex-II).</p> <p>Later on, this working paper was forwarded to PSB Section for placement before the PSB.</p> <p>On 18.2.2016, a meeting of the PSB was convened but due to paucity of time the working paper regarding promotion of PCS EG/PMS from BS-17 to BS-18 was not consider.</p> <p>The plea of the petitioner is wrong that the officer mentioned at Sr. No. 1 to 11 and 13 &amp; 14 were in-eligible</p>

	<p>as petitioner has no authority to decide eligibility of any officer.</p> <p>Since the petitioner was at Sr. No. 16 and there were 6-clear vacancies in BS-18, quota. In case, if the working paper would have been considered, the PSB would not promote the petitioner, being at Sr. No. 16.</p>
<p>3. The Para-3 of the Minutes of the PSB held on 25.9.2017 is correct to the extent that there were 10 vacant posts during the meeting held on 30.11.2015, and last officer Mrs. Farzana Afzal at Sr. No. 24 of the seniority list was recommended for promotion while the appellant was at Sr. No. 26 of the seniority list. However, last five lines of the Para-2 of PSB meeting held on 25.9.2017 are incorrect as there were 6-clear vacancies before the retirement of appellant instead of 5-as claimed. The fact can be verified from the working paper ibid.</p>	<p>A combined working paper was processed in the first week of January 2016, for grant of PCS EG-17 and PMS BS-17 to BS-18, wherein 6-vacancies were available and the name of petitioner was at Sr. No. 16 as per details given blow:-</p> <ol style="list-style-type: none"> <li>1. Mr. Azizullah Khan Mahsud (PCS EG BS-17)</li> </ol> <p style="text-align: center;"><b>PANEL OF PMS BS-17</b></p> <ol style="list-style-type: none"> <li>1. Mr. Jehanzeb Khan</li> <li>2. Mr. Mansoor Qaiser</li> <li>3. Mr. Maqsood Hassan</li> <li>4. Mr. Sajid Ahmad</li> <li>5. Mr. Abdul Ghafoor Shah</li> <li>6. Mr. Muhammad Asghar Khan</li> <li>7. Mr. Fazl-e-Qadir</li> <li>8. Mr. Abdul Hadi</li> <li>9. Syed Muhammad Suhail</li> <li>10. Mr. Khalid Mehmood</li> <li>11. Mr. Hafizullah</li> <li>12. Mr. Abdul Malik</li> <li>13. Mr. Muhammad Saeed-I</li> <li>14. Mr. Qayyum Nawaz</li> <li>15. Mr. Mumtaz Ahmad (Petitioner)</li> </ol> <p>This working paper was signed on 20.1.2016 after the retirement of petitioner i.e. 9.1.2016.</p> <p>On 18.2.2016, a meeting of the PSB was convened but due to paucity of time the working paper regarding promotion of PCS EG/PMS from BS-17 to BS-18 was not consider.</p> <p>The plea of the petitioner is wrong that the officer mentioned at Sr. No. 1 to 11 and 13 &amp; 14 were in eligible as petitioner has no authority to decide eligibility of any officer.</p> <p>Since the petitioner was at Sr. No. 16 and there were 8 clear vacancies in BS-18, quota. In case, if the working paper would have been considered, the PSB would not promote the petitioner, being at Sr. No. 16.</p>
<p>4. Thus it has been proved that there were 6-clear vacancies before the retirement of Petitioner and only one other officer at Sr. No. 12 of PMS BS-17 was eligible besides the appellant at Sr. No. 15. However, the facts were concealed from the Hon'ble tribunal to confuse the matter.</p>	<p>Incorrect to the effect that petitioner has no authority to decide eligibility of any officer at his own level.</p>

SECRETARY ESTABLISHMENT  
KHYBER PAKHTUNKHWA  
(RESPONDENT No. 2)

CHIEF SECRETARY  
KHYBER PAKHTUNKHWA  
(RESPONDENT NO. 1)

THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR

EXECUTION PETITION NO. 183/2017  
SERVICE APPEAL NO. 342/2016  
MR. MUMTAZ AHMAD  
PMS BS-17  
R/O HOUSE NO. 240-DIN BAHAR COLONY,  
ROAD, PESHAWAR.....(Appellant)

VERSUS

- 1. The Chief Secretary, Khyber Pakhtunkhwa
- 2. The Secretary Establishment, Khyber Pakhtunkhwa..... Respondents

IMPLEMENTATION REPORT OF THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL JUDGMENT DATED 24.04.2017

1) Khyber Pakhtunkhwa Service Tribunal on 24.04.2017 has passed following judgment in the case of Mr.Mumtaz Ahmad (Appellant):-

*“the case of the appellant be considered with reference to availability of vacancy and eligibility of the appellant for promotion on or before his date of retirement i.e. 10.1.2016 and if a vacancy entitling the appellant to promotion is found available on or before his date of retirement then the appellant shall be considered against such vacancy for presumptive promotion.*

- 2) In pursuance of Khyber Pakhtunkhwa Service Tribunal Judgment dated 24.04.2017, Establishment Department placed the case regarding notional promotion of Mr. Mumtaz Ahmad (Appellant) before the Provincial Selection Board in its meeting held on 25.9.2017 and apprised the board that the appellant retired from service on 9.1.2016. Before his retirement a meeting of PSB was held on 30.11.2015, wherein E&AD placed a joint working paper of PCS EG BS-17/PMS BS-17 to BS-18 for consideration of promotion against 10-available vacancies, against which 10 officers were promoted. The appellant was at Sr. No. 26 of the working paper, hence could not be promoted. (Annex-I)
- 3) The PSB observed that even if he had not retired form service on 09.01.2016, he could not have been promoted even in the subsequent PSB meeting held on 18.02.2016 as total vacancies during that meeting was 08, while the appellant name was at Sr. No.15 at that time. Thus, the Board did not find him eligible for proforma promotion to BS-18 (Annex-II).

In light of Order Sheet dated 03.07.2018, Establishment Department apprised the Hon'ble Khyber Pakhtunkhwa Service Tribunal about the whole situation through joint Para-Wise Comments (Annex-III).

- 5) However, In light of Order Sheet dated 22.04.2019 of Khyber Pakhtunkhwa Service Tribunal, this Department has once again forwarded joint Para-Wise Comments (Annex-IV).

It is humbly prayed that the judgment of honorable Service Tribunal has been implemented in letter & spirit. Case regarding notional promotion of Mr. Mumtaz Ahmad (PMS BS-17) was placed before the Board as directed vide judgment dated 24.04.2017, but the Appellant could not be promoted due to non-availability of vacant post. It is, therefore, requested that the Execution Petition in hand may be dismissed with cost.

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Secretary Establishment Department  
Khyber Pakhtunkhwa  
Respondent No. 2

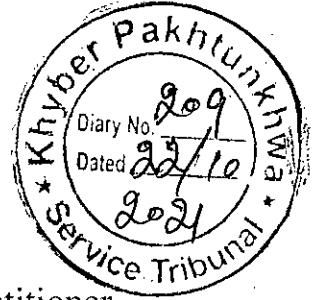
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Chief Secretary, Khyber Pakhtunkhwa  
Respondent No. 1

## BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No.183/2017

IN

Service Appeal No. 342 /2016

Mumtaz Ahmad..... Petitioner

Versus

The Govt. and others ..... Respondents

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**REPLY ON BEHALF OF PETITIONER.**


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Respectfully Sheweth,

**Preliminary:**

1. The Service Appeal No.342/2016 was disposed of by this Hon'ble Tribunal on 24.4.2017 *with the commitment of the Representative alongwith Mr. Muhammad Adeel Butt, AAG to the extent that the case of the petitioner has already been sent for notional promotion and that result thereof is awaited thus the appeal was decided with the directions to Respondents to consider the petitioner with reference to the availability of vacancy and eligibility of appellant for promotion on or before his date of retirement i.e. 10.01.2016.*
2. That Respondents are reluctant to comply with the direction of this Hon'ble Tribunal and series of Replies have been submitted by them. It is valuable to apprise here that after extensive arguments, this Hon'ble Tribunal vide order dated 03.07.2018 reached to the conclusion that *a clear vacancy to consider the appellant was available but the item was not discussed in the meeting of the PSB held on 18.02.2016. Respondent are directed to submit Implementation Report on or before the next date of hearing. To come up for further proceedings on 30.07.2018 before SB.* It is momentous to add here that they were suppose to comply with the order *ibid* but once again submitted yet another reply in order to

defeat the relief as sought out by the petitioner. Moreover, the same order was followed by Order Sheets dated 22.04.2019 and 08.03.2019 wherein it was categorically directed the Respondent to submit a Compliance Report in light of the orders *ibid*.

3. That it is important to narrate here that according to Minutes of the Meeting held on 30.11.2015, the Officer at Serial No.1,2,4,7, 9 to 14, 16 to 18, 22 & 23 were ineligible for promotion and seats were reserved for them as is evident from working paper for the Provincial Selection Board (*Annex:-F/A, Page-4 of the Reply of the Respondents*).

### **Factual**

1. That the Respondents have conceded in the Parawise reply that Minutes of the meeting held on 18.02.2016 wherein petitioner was placed at Serial No.15 although stood retired from service on 09.01.2016. It is important to contend here that at Serial No.1 to 11, 13 & 14 Officers were again declared ineligible. It is further apprised that the same were those Officers who were declared ineligible in the earlier Minutes of the Meeting dated 30.11.2015 thus petitioner was to be considered because he was entitled for the subject promotion but the same could not be held due to paucity of time. It is further mentioned that Respondents have also conceded to that at that time 08 vacancies were available in the promotion quota, next Meeting of the Board was held on 10.05.2016, in the meanwhile 13 more Officers in BPS-18 also got retired. Thus the number of posts in BPS-18 were enhanced from 8 to 21 but petitioner was not considered due to his retirement. In this backdrop of the matter, it is narrated that the very order of this Hon'ble Court and even as per consent of the Department, the case of the petitioner had already been sent to PSB for notional promotion but he was unlawfully not considered inspite of the fact that at that time 21 clear vacancies were available in promotion quota. Reliance is placed on **2021 SCMR 1266, 2017 PLC**



(CS) 1292, 2009 PLC (CS) 229, the relevant Paras are reproduced herein below for ready reference:-

### 2021 SCMR 1266

*“---Pro forma promotion---Respondent, who was otherwise eligible for promotion, was not promoted by the Departmental Promotion Committee (DPC), as it adjourned its meeting to a later date, by which time the respondent had retired---Held, that respondent had completed the requisite years of service provided by the promotion rules and the relevant official had also certified that there was no impediment in grant of promotion to him---Departmental Promotion Committee (DPC) for considering promotion was held on 19-06-2017 but was adjourned on the pretext that fresh option of officials forgoing their promotion be obtained---After adjourning of the meeting by DPC, the next meeting took place on 19-10-2017, but in the meantime, the respondent had retired from service on 21-06-2017---Due to the department's own non-vigilance and the DPC being insensitive to the employees who were on the verge of retirement, the department could not simply brush aside the case of an employee by merely saying that he had retired---Once the case of respondent had matured for promotion while in service and was placed before the DPC before his retirement, it was incumbent upon the DPC to fairly, justly and honestly consider his case and then pass an order of granting promotion and in case it did not grant promotion, to give reasons for the same---Impugned judgment of the Tribunal, directing the department to consider the case of promotion of respondent, did not suffer from any illegality---Appeal was dismissed.”*

### 2017 PLC (CS) 1292 (Supreme Court)

*“---Para. 242---Naib-tehsildar, appointment of---Respondent who was serving as Kanungo was not considered for promotion as Naib-tehsildar as the Departmental Promotion Committee had already reserved name of one of his senior colleagues for promotion as Naib-tehsildar---Legality---Seat of Naib-tehsildar had been illegally reserved by the Departmental Promotion Committee for a senior colleague of respondent, which clearly showed mala fide and favouritism on the part of the competent authority---Service Tribunal had rightly observed that the only reason for which the respondent could not be considered for promotion was that one of the five available posts of Naib-tehsildar had been reserved for his senior colleague; that said colleague was not recommended for promotion on account of pendency of an inquiry against him and so it was the respondent who could have been considered for promotion being the next in seniority---Besides senior colleague of respondent was working against an ex-cadre post out of district, as such was not working in his parent department, therefore, he being posted out of the district was ineligible for promotion---Service Tribunal had rightly given directions to consider respondent for antedated promotion of Naib-tehsildar with effect from the date when the vacancy of Naib-tehsildar had been reserved for his senior-colleague---Appeal was dismissed accordingly.”*

### 2009 PLC (CS) 229

*“---S. 9---Promotion---If service benefits had actually accrued to an employee, but for one reason or the other such benefits could not be awarded to him, then irrespective of the fact whether he had retired from service or not, the department*

*concerned would still have to consider his case for such promotion and to allow him/his benefits of such promotion, even after his retirement."*

2. That Respondents have further depicted in their Parawise Reply that petitioner was considered for promotion by the Board in its meeting held on 25.09.2017 but it was found that no vacancy entitling appellant for promotion till his retirement on 09.01.2016 was available which is outright false as averred in Preliminary Para-2 ibid that clear vacancy before the retirement of the petitioner was available that is why this Hon'ble Tribunal directed them to submit a Compliance Report.

It is, therefore, humbly prayed that the Respondents may be directed to implement the Judgment of the Hon'ble Tribunal in letter and spirit and to allow the Petitioner/appellant presumptive Proforma promotion to PMS (BS-18) w.e.f. 09.01.2016 i.e. the date of retirement of the appellant with all consequential back benefits.

**Appellant/Petitioner**

**Through**

**Muhammad Amin Ayub**

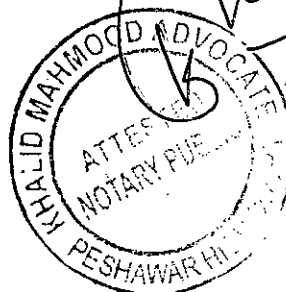
&

**Muhammad Ghazanfar Ali**  
Advocate, High Court

**Dated: 22/10/2021**

**Affidavit**

Verified that the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



**Deponent/Petitioner**



GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT

Dated Peshawar, the December 23, 2015

NOTIFICATION

NO.SO(E-I)E&AD/5-1/2015. Government of Khyber Pakhtunkhwa on the recommendations of the Provincial Selection Board is pleased to promote the following officers of Provincial Management Service (PMS) from BS-17 to BS-18, on regular basis with immediate effect:-

S.#.	NAMES OF OFFICERS
1.	Mr. Joliar Ali Shah
2.	Mr. Shah Nadir
3.	Mr. Ijaz-ur-Rehman
4.	Mr. Samer Gul
5.	Mr. Afsar Ali Shah
6.	Mr. Naseem Khan
7.	Mr. Faridoon Khan
8.	Mr. Javed Akhtar
9.	Mr. Kibaz Khan
10.	Mr. Farzana Afzal

- The officers on promotion will remain on probation for a period of one year in terms of Section 6(2) of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule-15(1) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, or till their retirement, whichever is earlier.
- Posting/transfer of the above officers will be issued separately.

CHIEF SECRETARY  
GOVERNMENT OF KHYBER PAKHTUNKHWA

ENDST. OF EVEN NO. & DATE

Copy forwarded to the:-

- Senior Member Board of Revenue, Khyber Pakhtunkhwa.
- Additional Chief Secretary, P&D Department.
- Additional Chief Secretary (FATA), FATA Secretariat.
- Principal Secretary to Governor, Khyber Pakhtunkhwa.
- Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
- All Administrative Secretaries in Khyber Pakhtunkhwa
- All Divisional Commissioners in Khyber Pakhtunkhwa
- Accountant General, Khyber Pakhtunkhwa.
- Deputy Commissioner, Chitral, Charsadda, Battagram, Bannu, Swabi, Swat, Hangu and Haripur.
- Settlement Officer, Chitral.
- District Accounts Officers, Chitral, Charsadda, Battagram, Bannu, Swabi, Swat, Hangu and Haripur..
- PS to Chief Secretary, Khyber Pakhtunkhwa.
- PS to Secretary to Govt. of Pakistan, Ministry of Interior, Islamabad.
- PS to Secretary Establishment/PS to SS(E)/SS (Reg)/PA, AS(HRD)/AS(E)/DS(E.)/D.S(HRD Wing) SO(E.II), SO(HRD.I) SO(HRD.II)-E&AD.
- PS to Secretary (Admn.)/D.S(A)/SO(Secret)/Estate Officer/ACSO Cypher/Dy Director (IT) and Director Protocol Administration Department.
- Officers concerned.
- Controller, Govt. Printing Press, Peshawar.

(KASHIF IQBAL JILANI)  
SECTION OFFICER (ESTT. I)  
PHONE & FAX # 091-9210529

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No.183/2017

IN

Service Appeal No. 342 /2016

Mumtaz Ahmad..... Petitioner

Versus

The Govt. and others ..... Respondents

---

REPLY ON BEHALF OF PETITIONER.

---

Respectfully Sheweth,

**Preliminary:**

1. The Service Appeal No.342/2016 was disposed of by this Hon'ble Tribunal on 24.4.2017 *with the commitment of the Representative alongwith Mr. Muhammad Adeel Butt, AAG to the extent that the case of the petitioner has already been sent for notional promotion and that result thereof is awaited thus the appeal was decided with the directions to Respondents to consider the petitioner with reference to the availability of vacancy and eligibility of appellant for promotion on or before his date of retirement i.e. 10.01.2016.*
2. That Respondents are reluctant to comply with the direction of this Hon'ble Tribunal and series of Replies have been submitted by them. It is valuable to apprise here that after extensive arguments, this Hon'ble Tribunal vide order dated 03.07.2018 reached to the conclusion that *a clear vacancy to consider the appellant was available but the item was not discussed in the meeting of the PSB held on 18.02.2016. Respondent are directed to submit Implementation Report on or before the next date of hearing. To come up for further proceedings on 30.07.2018 before SB.* It is momentous to add here that they were suppose to comply with the order *ibid* but once again submitted yet another reply in order to

defeat the relief as sought out by the petitioner. Moreover, the same order was followed by Order Sheets dated 22.04.2019 and 08.03.2019 wherein it was categorically directed the Respondent to submit a Compliance Report in light of the orders *ibid*.

3. That it is important to narrate here that according to Minutes of the Meeting held on 30.11.2015, the Officer at Serial No.1,2,4,7, 9 to 14, 16 to 18, 22 & 23 were ineligible for promotion and seats were reserved for them as is evident from working paper for the Provincial Selection Board (*Annex:-F/A, Page-4 of the Reply of the Respondents*).

### Factual

1. That the Respondents have conceded in the Parawise reply that Minutes of the meeting held on 18.02.2016 wherein petitioner was placed at Serial No.15 although stood retired from service on 09.01.2016. It is important to contend here that at Serial No.1 to 11, 13 & 14 Officers were again declared ineligible. It is further apprised that the same were those Officers who were declared ineligible in the earlier Minutes of the Meeting dated 30.11.2015 thus petitioner was to be considered because he was entitled for the subject promotion but the same could not be held due to paucity of time. It is further mentioned that Respondents have also conceded to that at that time 08 vacancies were available in the promotion quota, next Meeting of the Board was held on 10.05.2016, in the meanwhile 13 more Officers in BPS-18 also got retired. Thus the number of posts in BPS-18 were enhanced from 8 to 21 but petitioner was not considered due to his retirement. In this backdrop of the matter, it is narrated that the very order of this Hon'ble Court and even as per consent of the Department, the case of the petitioner had already been sent to PSB for notional promotion but he was unlawfully not considered inspite of the fact that at that time 21 clear vacancies were available in promotion quota. Reliance is placed on **2021 SCMR 1266, 2017 PLC**

(CS) 1292, 2009 PLC (CS) 229, the relevant Paras are reproduced herein below for ready reference:-

### 2021 SCMR 1266

*“---Pro forma promotion---Respondent, who was otherwise eligible for promotion, was not promoted by the Departmental Promotion Committee (DPC), as it adjourned its meeting to a later date, by which time the respondent had retired---Held, that respondent had completed the requisite years of service provided by the promotion rules and the relevant official had also certified that there was no impediment in grant of promotion to him---Departmental Promotion Committee (DPC) for considering promotion was held on 19-06-2017 but was adjourned on the pretext that fresh option of officials forgoing their promotion be obtained---After adjourning of the meeting by DPC, the next meeting took place on 19-10-2017, but in the meantime, the respondent had retired from service on 21-06-2017---Due to the department's own non-vigilance and the DPC being insensitive to the employees who were on the verge of retirement, the department could not simply brush aside the case of an employee by merely saying that he had retired---Once the case of respondent had matured for promotion while in service and was placed before the DPC before his retirement, it was incumbent upon the DPC to fairly, justly and honestly consider his case and then pass an order of granting promotion and in case it did not grant promotion, to give reasons for the same---Impugned judgment of the Tribunal, directing the department to consider the case of promotion of respondent, did not suffer from any illegality---Appeal was dismissed.”*

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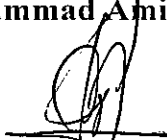
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**Appellant/Petitioner**

**Through**

  
**Muhammad Amin Ayub**

**&**

  
**Muhammad Ghazanfar Ali**  
Advocate, High Court

**Dated: 22/10/2021**

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**Appellant/Petitioner**

**Through**

  
**Muhammad Amin Ayub**

&

  
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Advocate, High Court

**Dated:** 22/10/2021

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