BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 16424/2020

Date of Institution ... 28.12.2020

Date of Decision ... 09.11.2021

Abdul Hamid Butt, Principal (BPS-19), GHS Zaryab Colony, District Peshawar.

... (Appellant)

VERSUS

The Chief Secretary Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa Civil Secretariat Peshawar and two others.

... (Respondents)

Present:

NOOR MUHAMMAD KHATTAK, Advocate --- For Appellants.

NOOR ZAMAN KHAN KHATTAK, District Attorney --- For official respondents.

ARBAB SAIFUL KAMAL & MUHAMMAD AMIN AYUB Advocates --- For private respondents

AHMAD SULTAN TAREEN --- **CHAIRMAN**
ROZINA REHMAN --- **MEMBER(Judicial)**

JUDGEMENT

AHMAD SULTAN TAREEN, CHAIRMAN:-Through the above titled appeal described in the heading and four other appeals as enclosed in brackets (Appeal No.16425/2020, 16426/2020, 16427/2020 and 16428/2020) the jurisdiction of this Tribunal has been invoked by the appellants with the prayer as copied below:-

"On acceptance of this appeal, impugned appellate order dated 01.12.2020 may very kindly be set aside ant respondents be directed to place the names of the appellants below the name of Mr. HanifUllah in the seniority list of 2017 circulated for BPS-19 officers of teaching cadre and the respondents may further please

be directed to consider the appellants for promotion to the post of BPS-20 with all back benefits including seniority. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellants."

2. This judgment shall stand for disposal of all appeals enumerated above in one place due to their being on one and the same subject against respondents common in all of them.

3. Usually rounding up of the facts for brevity is a useful exercise but the factual account given in the Service Appeal No. 16424/2020 and the copies of the supporting documents annexed therewith reveal about the checkered history of service litigation encompassing thedispute about regularization of appellants' service multipliedbythe termination of the appellants from their service followed by their reinstatement with added issues of seniority. Therefore, it is deemed appropriate to copy the factual part of the memorandum of appeal herein below for the purpose of this judgment.

1. **That appellant is the employee of respondent department and is presently serving the respondent department as Principal BPS-19 quiet efficiently and up to the entire satisfaction of his superiors.**

2. **That in 1986 some High Schools of Khyber Pakhtunkhwa were upgraded to higher secondary level by the Government, and the posts of Subject Specialists were created in BPS-17 with criteria that the candidate must be MA in relevant subject with B.Ed, and with five year experience in a Government High School. Till the end of 1987 due to the rigidity in terms and conditions the posts requisitioned by the Department for filling in by the Public Service Commission remained unfilled in the span of two years from 1986 to 1988, only four qualified personnel could be selected, to overcome the situation the Department constituted a committee to rationalize the qualification and experience for the post of Subject Specialist, the committee submitted its report in 1987 recommended that simple Master Degree holder in the relevant subject be appointed and he may be given 5/3 years to acquire the qualification of B.Ed, which was duly approved and notified by the competent authority vide Notification No.SO(S)-6-2/87/II dated 21.11.1991.**

3. That in the context of the above recommendation, the appellant was a Master Degree holder applied for the post of Subject Specialists, and after fulfilling all the formalities the appellant was selected vide order dated 05.03.1988 and took charge of the post, dated 08.03.1988 but the respondent Department gave the appellant BPS-15 instead of BPS-17, meanwhile due to the subsequent appointment of Mr. Muhammad Khaliq BPS-17, the appellant was recommended for adjustment against the post of Subject Specialist in Pakistan Studies in the same School vide order dated 19.04.1988. Accordingly, adjustment order dated 26.04.1988 was issued appointing the petitioner as Subject Specialist in Pakistan Studies. The petitioners thereafter remained serving continuously as Subject Specialist BPS-17 till his promotion to BPS-18.

4. That on the same terms and conditions some of the colleagues of the appellant were also appointed as SET/Subject Specialist, and adjusted against the post of Subject Specialist BPS-17. That the appellant alongwith his colleagues filed Writ Petition No.667/1992 for their regularization but the same was subsequently withdrawn with the condition to avail the remedy by way of Departmental appeal to Chief Secretary Government of NWFP vide judgment/order dated 02.03.1993. That after exhausted Departmental appeal the appellant filed Service appeal before the Tribunal i.e. Appeal No.169/1993 which was partially allowed in favor of appellant, as regards the prayer for regularization of service, it is for the department to process the case of selection of the appellants as Subject Specialist, vide judgment dated 31.05.1994.

5. That against the said judgment of Service Tribunal the appellant as well as the Department filed CPLA before theapex Court where the appeal of the Department No.1258/95, was dismissed and the case for the appellants was modified, the petitioners were held entitled for the pay of the post w.e.f the date of their initial appointment, but denied seniority from the said date. That in meanwhile consequent upon the decision of the august Service Tribunal one relevant case of Muhammad Riaz who was granted graded pay in BPS-17 and also allowed him seniority from the date of acquiring the degree of B.Ed vide Notification dated 15.02.1999.

6. That the appellants feeling aggrieved from the discriminatory treatment, filed service appeal before the Service Tribunal in Appeal No.2175/1997 for retrospective seniority but the same was remanded back to the Department to settle the issue of regularization and seniority of the appellants. That it is pertinent to mention that during the pendency of the said appeal move over was also granted to the appellants from BPS-17 to BPS-18.

7. That for implementation of the judgment of Service Tribunal, working paper were placed before the Departmental Promotion Committee regarding regularization and seniority and as such minutes of the Departmental Promotion Committee were held on 19.05.2005 in which it was discussed that the regularization of the Subject Specialist in pursuance of the Service Tribunal/Supreme Court of Pakistan does not fall within the purview of DPC thus deprived the appellant for regularization alongwith seniority.

8. That feeling aggrieved the appellant filed Departmental appeal to the Chief Minister for his regularization-cum-seniority on the post of Subject Specialist BPS-17 and with further prayer to stop the respondent department from termination of services of the appellants , summary was submitted to Chief Executive by the Department for regularization of the petitioners though approved by the Chief Executive but astonishingly the appellants had been terminated from service vide order dated 19.03.2008 without assigning any reason.

9. That the appellant feeling aggrieved from the abrupt termination order appealed to Chief Minister for reinstatement into service dated 09.0.2008, followed by Service Appeal No.970/2008 before the Service Tribunal which was allowed in favor of the appellant with the direction to the respondent Departmentto reinstate the appellants with all backbenefits. That respondent Department sent the proposal for CPLA against the said judgment to Advocate General who opined that it is not fit to go for CPLA and negated the proposal of the respondent Department dated 18.12.2008 and the respondent Department was reluctant to implement the said judgment vide letter dated 12.02.2009 and 25.02.2009. after getting opinion from Advocate General and Law Department: E&SED submitted a summary to Chief Secretary the competent authority for the reinstatement and regularization of the appellants which was approved.

10. That when the respondent Department was reluctant to implement the above mentioned judgment of the Service Tribunal the appellants filed Writ Petition No.381/2009 before the Peshawar High Court for implementation of the decision, resultantly the respondent Department issued reinstatement order of the appellants dated 18th April, 2009.

11. That after regularization and reinstatement into service the appellant filled departmental appeal to the appellate authority vide application dated 12.05.2009 for fixation of seniority in BPS-17 from the date of appointment and in response to appellate authority vide letter date d13.04.2010 directed the Director E&SE to recheck and prepare seniority strictly in accordance with rules, thus the respondents issued the final

seniority list placing the appellant at Serial No.4 in the seniority list.

12. That resultantly the department issued promotion order date d12th April 2011 whereby the appellants have been promotion from BPS-17 to BPS-18 with the condition that the appellants will be retained inter-se seniority from the date where their erstwhile juniors have been promotion to BPS-18 w.e.f 14.03.1998. That later on, again the matter of seniority arose against which the appellants preferred appeals to the appellate authority dated 11.05.2011 for regaining of his seniority from BPS-18 to BPS-19 to place the name of the appellants at correct position and the respondent department forwarded the letter dated 28th June, 2011 to Secretary Establishment in response of which, order dated 06.09.2011 has been issued whereby the appellants had regain the seniority w.e.f 14.03.1998.

13. That the appellants after that made correspondence with the respondent Department for placing their names at proper place in the seniority list of BPS-18 before issuing the final seniority list and finally placed the names of the appellants at correct positions by issuing final seniority list dated 01.01.2014 and as such placing the names of the appellants at Serial No4. Accordingly, working paper for promotion to BPS-19 was submitted by the Department to Provincial Selection Board in 2014, here it is important to note that the President School Officers Association Mr. Haji Nisar Muhammad BPS-19 alongwith representatives from the Cadre of BPS-18, 19 & 20 filed appeals against the appellants and their colleagues for quo-warranto which was dismissed in limine by the Peshawar High Court dated 5th March, 2014 and afterdismissal of the writ petition filed by Haji Muhammad Nisar in Peshawar High Court the petitioner was considered for promotion to BPS-19 vide order date d21.04.2019.

14. That once again, the matter of seniority raised against which the appellant preferred departmental appeal to the appellate authority for regaining the seniority under promotion police 2009 with their erstwhile juniors in BPS-19 for promotion to BPS-20 vide appeal dated 2nd May, 2014, similarly correspondence was made by E&SE Department with Establishment Department for seeking advice in the matter vide letter dated 07.08.2014 and 03.09.2014, 16.09.2014 issued letter dated 16th November, 2015 whereby ordered to place the names of the appellants at proper place in the seniority list of BPS-19 and seniority be finalized, order was followed by placing the appellants in the final seniority list dated 31.12.2.015.

15. That working paper for promotion to BPS-20 was submitted by the department to Provincial Selection Board. Meanwhile, the above mentioned notification was challenged by one Mr. HanifUllah and others in the august Service Tribunal and as

such his appeal has been accepted vide judgment dated 11.09.2017. That the appellants knocked the door of the apex court against the said decision of the Service Tribunal but didn't succeed. That the name of appellant was dropped from promotion panel, where-after, the respondents placed the name of Mr. HanifUllah at the top of the seniority list dated 27.11.2017 and appellants are thrown back to the bottom of the seniority list against the spirit of judgment.

16. That in result, the names of the appellants were ignored from promotion to BPS-20. That the respondents recently circulated seniority list for the year 2019 but again the appellants have been pushed to the bottom of the said seniority list on malafide basis. That the appellants feeling aggrieved, preferred departmental appeal to the appellate authority vide dated 28.09.2020 but the same has been rejected on no good grounds vide order dated 01.12.2020.

4. The appeals initially were preferred with impleadment of official respondents only, who on attending the proceedings, filed their written reply/commentson 07.06.2021 as evident from order sheet of the similar date. On the same day, an application was submitted on behalf of applicants subsequently impleaded as private respondents vide order dated 02.07.2021 in pursuance to no objection on behalf of the appellants. The private respondents also submitted their reply/comments raising several legal and factual objections. The pertinent objection among preliminary objections of the private respondents is that the matter has already been decided up to Hon'ble Apex Court as is evident from Para-16 and Page-165 of the Service Appeal; therefore, as per Section-11 of C.P.C read with Rule-23 of the Khyber Pakhtunkhwa Service Tribunal Rules, 1974, the appeal is liable to be dismissed.

5. We have heard the arguments and perused the record.

6. The learned counsel for the appellants though very impressively argued the case in line with the facts of the appeals as copied herein above from Appeal No.16424/2020. If visualized through prayer in appeal of Mr. HanifUllah, he succeeded to persuade us that notwithstanding the recasting

of the seniority list in pursuance to the judgment of this Tribunal in his case, the appellants were supposed to lose the seniority only against him i.e. Mr. HanifUllah. Learned counsel pointed out that if the said judgment is perceived with reference to prayer of the appellant Mr. HanifUllah, he prayed that the impugned final seniority list of (Male) Teaching Cadre (BPS-19) issued vide Notification dated 26.04.2016 may graciously be modified by placing the name of the appellant above the names of respondent No.4 to 14 (present appellants) in the seniority list. However, the appellants' seniority stood altered beyond the said scope bringing them even below the private respondents. Nevertheless our persuasion with the arguments of learned counsel for the appellants, we could not find a convincing response on his behalf in relation to the preliminary objection of private respondents on the point of *resjudicata* with particular reference to the judgment dated 11.09.2017 passed in Service Appeal No.803/2016 titled *HanifUllah Vs. The Government of Khyber Pakhtunkhwa & other.* Because, there is a peripheral discussion in the conclusion part of the said judgment relating to appointment of the appellants, their termination from service and then reinstatement and was culminated with an independent operative part vide Para-10 of the said judgment as copied below:

> **"The upshot of the above discussion is that impugned seniority list was firmed up is blatant violation of Section-8 of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule-17 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion& Transfer) Rules, 1989, hence, it is illegal, perverse, against the norms of justice and not sustainable in the eyes of law/rules."**

7. The appeal of Mr. HanifUllah was accepted without reference to his prayer and the impugned seniority list notified vide Notification dated 24.04.2016 was set aside.

8. The present appellants challenged the judgment dated 11.09.2017 in service appeal of Mr. HanifUllah through CPLA No.4591 to 4594 of 2017.

The august Supreme Court of Pakistan vide order dated 02.10.2019 dismissed the petitions and leave was refused with the observations that the Service Tribunal is the highest forum for the purpose of determination of facts and only a substantial question of law of public importance arising out of the case can be taken up by this court. It was further observed that no such question is involved in the instant petitions.

9. Needless to say that the present appeals are meant for the relief in the manner that the respondents may be directed to place the name of the appellants below the name of Mr. HanifUllah in the seniority list of 2017 circulated for BPS-19 officers of Teaching Cadre. Obviously, the success of further prayer for relief is dependent upon the correction of the seniority list as prayed for. The operative part of the judgment dated 11.09.2017 in Mr. HanifUllah's case, encapsulated in Para-10 of the said judgment copied above, left no scope for restoration of the position of the appellants in seniority list for the year 2017 when it was held to have been firmed up in blatant violation of Section-8 of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule-17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 and further held as illegal, perverse, against the norms of justice and not sustainable in the eyes of law/rules. So, recourse of the appellants through present appeals for determination in relation to the seniority list for the year 2017 is not workable in view of the effect of the judgment dated 11.09.2017 in Mr. HanifUllah's case. Rule-23 of the Khyber Pakhtunkhwa Service Tribunal Rules, 1974 provides that no Tribunal shall entertain any appeal in which the matter directly and substantially in issue has already been finally decided by a court or a Tribunal of competent jurisdiction. Obviously, the matter in issue in Mr. HanifUllah's appeal was the seniority list for the year 2017

between him and the appellants; and decision of the Tribunal dated 11.09.2017 in relation to said appeal has become final after dismissal of the civil petition by the august Supreme Court of Pakistan filed by the appellants against the said judgment. So, the appeals at hand are hit by the principle of res-judicata contained in Rule-23 of the Khyber Pakhtunkhwa Service Tribunal Rules, 1974. Therefore, all the appeals as preferred by the appellants and enumerated above are dismissed being not maintainable within meaning of Rule-23 ibid. Copy of this judgment be placed on all other files of the appeals. There is no order as to costs. File be consigned to the record room.

ANNOUNCED
09.11.2021

(AHMAD SULTAN TAREEN)
CHAIRMAN

(ROZINA REHMAN)
MEMBER(J)

Order

09.11.2021 Appellant present through counsel.

Noor Zaman Khan Khattak learned District Attorney alongwith Saleem Khan S.O (Litigation) for official respondents present. Counsel for private respondents present. Arguments heard and record perused.

Vide our judgment of today of this Tribunal placed on file, instant service appeal as preferred by the appellant, is dismissed being not maintainable within meaning of Rule-23 of Khyber Pakhtunkhwa Service Tribunal Rules, 1974. There is no order as to costs. File be consigned to the record room.

Announced.
09.11.2021

(Rozina Rehman)
Member (J)

(Ahmad Sultan Tareen)
Chairman

S.A No. 16424/2020

27.10.2021 Mr. Umer Farooq (junior of learned counsel for the appellant) present. Mr. Kabirullah Khattak, Additional Advocate General for official respondents No. 1 to 3 present. Private respondents No. 4, 14, 16 & 21 alongwith their counsel namely Muhammad Amin Ayub, Advocate, present.

File to come up alongwith connected Service Appeal bearing No. 16425/2020 titled "Muhammad Amin Versus Education Department", on 05.11.2021 before the D.B.

(Mian Muhammad)
Member (E)

(Salah-Ud-Din)
Member (J)

05.11.2021 Counsel for appellant present.

Noor Zaman Khan Khattak, learned District Attorney alongwith Salim Khan S.O for official respondents present. Counsel for private respondents present.

File to come up alongwith connected Service Appeal NO.16425/2020 on 09.11.2021 before D.B.

(Rozina Rehman)
Member (J)

Chairman

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 16424 /2020

Abdul Hamid Butt ..... Appellant

Versus

The Chief Secretary, KPK and others.....Respondents

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Impleaded Respondents

Through

Muhammad Amin Ayub
Advocate, High Court

&

Muhammad Ghazanfar Ali
Advocate, High Court

Dated: 06/07/2021

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 16424 /2020

Abdul Hamid Butt ..... Appellant

Versus

The Chief Secretary, KPK and others.....Respondents

REPLY ON BEHALF OF IMPLEADED RESPONDENTS.

Respectfully Sheweth,

Preliminary Objections

1. That the matter has already been decided upto Hon'ble Apex Court as is evident from Para-16 and Page-165 of the Service Appeal, therefore, as per Section-11 of C.P.C read with Rule-23 of the Khyber Pakhtunkhwa Service Tribunal Rules-1974 is liable to be dismissed.

2. That instant appeal is not maintainable on the ground that appellant has called in question jointly his promotion and seniority which under the law is not permissible. Moreover, as per Section-4(b)(i) and read with Section-7 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, the prayer sought by the appellant is defective because no direction can be issued by this Hon'ble Tribunal as has been held by the Apex Court.

3. That the Departmental Appeal has not been filed within the statutory period of 30 days. It is stated that appellant has accorded the seniority of the Impleaded Respondents by narrating that he was supposed to be placed at Serial No.39 in the Revised Seniority List of Principal (BPS-19) whereas all the Impleaded Respondents have been placed at Serial No.1 to 21, therefore, there is no comparison of the Impleaded Respondents with appellant.

4. That the instant appeal is also defective on the ground that no specific order has been called in question which is contrary to Rule-6(d)(e) of Khyber Pakhtunkhwa Service Tribunal Rules-1974 which stipulates that the prayer

must be specific.

5. That the appeal is also not maintainable on the ground that ***the promotion is always granted with immediate effect and not with retrospective effect*** under the policy of the Govt. whereas appellant has approached the Hon'ble Tribunal for his retrospective promotion/seniority. Moreover, as per law the question of seniority is to be resolved firstly, whereafter promotion can be sought because promotion always depends upon seniority-cum-fitness.

6. That it is elaborated that appellant was initially appointed against the post of SET (BPS-15) on fixed pay basis against the post of Subject Specialist (BPS-17) on stop-gap-arrangement as he lacked the prescribed qualification whereas Impleaded Respondents were initially inducted into the service of the Respondent Department against the post of Subject Specialist (BPS-17) on regular basis.

7. That the appeal in hand is liable to be dismissed on the ground that as per Section 8(4) of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule-17 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, seniority on initial appointment is reckoned from the date of regular appointment. It is important to adduce here that the Impleaded Respondents were promoted to BPS-18 on 04.02.2004 and to BPS-19 on 13.06.2012 while the appellant was promoted to BPS-18 on 21.04.2014 (The promotion order has never ever been challenged by the appellant).

8. That the instant appeal is also not maintainable on the ground that promotion against a particular post is not a vested right of a civil servant rather it is the Departmental Promotion Committee/Administrative Committee which has to determine the fitness and eligibility of an officer for promotion against a higher post.

9. That appeal is bad on account of non-joinder of necessary parties because during long span of time a large number of officers have been promoted to next higher grade but none of them have been arrayed as parties.

10. The appellant is also estopped to file the appeal in hand inas much as numerous Seniority Lists in the meantime have so far been issued from time to time but none of them have been called in question by the appellant.

REPLY TO FACTS

1-7. Not properly explained by the appellant which amounts to concealment of facts. It is submitted that impleaded Respondents are the senior-most Officers of the Education Department and belong to teaching cadre of the Elementary & Secondary Education Department and presently serving in BPS-19. They have been performing their duties at respective place of posting. It is submitted that on the basis of their satisfactory service Working Paper were prepared and submitted for promotion from the post of Principal (BPS-19) to BPS-20. The appellant was initially appointed in the year 1988 as SET in BPS-15 fixed against the vacant post of Subject Specialist in BPS-17 on stop gape arrangement as he lacked the prescribed qualification vide order dated 05.03.1988. The appellant alongwith others, later on approached this Hon'ble Tribunal for regularization of their services against the posts of Subject Specialists (BPS-17). The appeal was disposed of vide judgment dated 31.05.1994. The relevant part of the judgment is reproduced herein below:

> ***"There is no dispute with respect to the legal position that a person who is working against the post is entitled to the pay thereon and thus the impeaded Respondents is also entitled to the pay of the post of Subject Specialist from the date when he was adjusted as such. But the period for which he would be entitled to the pay of Subject Specialist would be reckoned upto three years back from the date when a writ petition was preferred in the High Court and the claim beyond that would be time barred. As regard the prayer for regularization of the service it is for the Department to process the case of the impeaded Respondents for appointment as Subject Specialist. The appeal is accepted in the above terms."***

The judgment of the Tribunal was then implemented vide Notification dated 17.01.1996 clearly specifying: ***These orders, however, will not entitle them to claim their regularization/appointment as Subject Specialist on regular basis***.

Subsequently the judgment ibid, was called in question before the Apex Court by the appellant alongwith others and the Government in various

CAs which were disposed of vide judgment dated 26.02.1997. They were held entitled for the pay of the post with effect from the date of appointment while the remaining judgment of this Hon'ble Tribunal was upheld. The Judgment of the Apex Court was then implemented vide Notification dated 28.05.1997 whereby the appellant and others were held: ***They will not be entitled to claim any seniority against the posts of Subject Specialists***. The order dated 28.05.1997 ibid, was then challenged by appellant etc. in Service Appeals before this Hon'ble Tribunal once again which were decided vide Judgment dated 17.08.2004. The operative part of the judgment is as under:-

> ***"In view of the above discussion, the Tribunal is not inclined to become a party and contribute to validate or to perpetuate any irregular and illegal appointment made in utter violation of rules and merit and to make any intervention with regard to regularization of service and the consequential benefits including seniority to such irregular/illegal appointees at the cost of other qualified Subject Specialists appointed on regular basis to the service on merits so far. The Tribunal as per its earlier judgments dated 31.05.1994 and 324.07.1994 upheld by the Hon'ble Supreme Court of Pakistan vide its judgment dated 26.02.1997 again directs the Respondent Department to settle the longstanding issue of regularization of services of the impeaded Respondentss as per rules in a reasonable span of time. The case is, therefore, remanded back to the Department for necessary action. This appeal along other 13 appeals mentioned in para-4 above are disposed of accordingly.***

8. Misconceived. The case for implementation was referred to the Departmental Promotion Committee vide Working Paper but then a Summary was moved for regularization of services of the appellant etc. which was approved partially by the competent authority on humanitarian grounds keeping in view the pasts services of the appellant etc. but on the explicit condition that ***they shall be placed at the bottom of the Seniority List so that the right of others in the seniority may not be affected.***

9-11. Regarding Para-9 to 11 of the appeal it is submitted that the appellant and others were terminated from service on the ground of non-observance of the codal formalities and lack of prescribed qualification at the time of appointment vide Notification dated 19.03.2008 which was challenged in departmental appeal with the following prayer:-

> *"It is, therefore, most humbly requested that on acceptance of this appeal, the order dated 19.03.2008 of the Secretary*

Education Department, NWFP may kindly be set aside and the impeaded Respondents be reinstated in service with all back benefits."

After statutory period of the departmental appeals, the appellant etc. then filed Service Appeals with the following prayer:-

"On acceptance of this appeal the Notification dated 19.03.2008 may please be set aside and the impeaded Respondents may please be declared as regular employee for all intents and purposes with effect from the date of his appointment and he may also be reinstated in service with full back wages and benefits of service."

The appeals ibid, were then accepted vide judgment dated 21.10.2008 with the following operative part:-

"The up short of the above discussion is that we accept the appeal as prayed for and set aside the impugned order of termination of the impeaded Respondents dated 19.03.2008. The Respondent Department is directed to reinstate the impeaded Respondents in service with all back benefits of service"

For implementation of the Judgment ibid, a summary for approval of the competent authority was then processed wherein Respondent No.2 proposed (i) reinstatement of the appellant etc. with back benefits from the date of their termination; (ii) their Regularization with effect from the date of their initial appointment/ officiation as Subject Specialist without any precedent on the subject matter and in deviation of the Rules with no such direction of the Tribunal to that effect. The summary was approved and notified vide Notification dated 18.04.2009. It is added that utter favoritism was displayed to the appellant and others at the cost of impeaded Respondents and others.

12-14. Not properly explained. vide Notification dated 10.11.2010 final Seniority List of Headmasters/Subject Specialists (Male) BPS-17 was notified wherein appellant and others were placed at the top but wrongly shown as directly recruited in the relevant column. They were then promoted to BPS-18 on regular basis vide Notification dated 12.04.2011 ***with immediate effect.*** Again vide Notification dated 06.11.2011, they were allowed seniority in BPS-18 w.e.f. 14.03.1998 quite illegally to the prejudice of all other stakeholders including the impeaded Respondents without any prior notice. The appellant etc. were then considered for promotion to BPS-19

and promoted on regular basis vide Notification dated 21.04.2014 ***with immediate effect***.

15-16. Active concealment of facts has been made by the appellant. When the Tentative Seniority List was circulated, the impeaded Respondents and other affected shockingly came to know that their seniority has been adversely affected without any prior Notice. Thus reservations were expressed by all the concerned thereon but the same were regretted vide letter dated 16.11.2015 on the wrong premise that they were granted seniority as their erstwhile juniors were promoted to BPS-18 on 04.03.1998 on regular basis in as much as the cases of the appellant etc. and those promoted on 04.03.1998 were altogether distinct and dissimilar as those erstwhile were appointed vide Notification dated 05.12.1988 and the same was no precedent for the appellant etc. because they were appointed against SET BPS -15 on fixed pay as the stop gape arrange having lack of the prescribed qualification at the relevant time and not in BPS-17 by Divisional Director who was the competent authority. The Seniority List was notified vide Notification dated 26.04.2016 against which the impeaded Respondents filed departmental Representations but the same was not disposed of within the statutory period of 90 days, hence approached this Hon'ble Tribunal in Service Appeals which were allowed on 11.09.2017 vide consolidated judgment. Appellant etc. feeling dissatisfied assailed the same before the Apex Court in C.Ps wherein the verdict of this Hon'ble Tribunal was upheld vide order dated 02.10.2019. The matter attained finality with Judgment of Apex Court but appellant once again approached this Hon'ble Tribunal by challenging Seniority List of the Officers B-19 (Male) (Teaching Cadre) as stood on 29.11.2017. Astonishingly, the Seniority List ibid, has been called in question by the appellant before the appellate authority on 29.09.2020 vide Page-193 of the main Service Appeal, while the case of the appellant squarely fall within the ambit of Section-11 of CPC 1908, being past and closed transaction, cannot be reopened.

17&18. Incorrect hence not admitted. As already advanced in preliminary objections that the Departmental Appeal is barred by time. Moreover, the matter has been adjudicated upto Supreme Court of Pakistan and now has become past and closed transcation.

13.08.2021 Appellant present through counsel.

Asif Masood Ali Shah learned Deputy District Attorney alongwith Saleem Section Officer for official respondents present. Counsel for private respondents also present.

File to come up alongwith connected Service Appeal No.16425/2020 titled Muhammad Amin Vs. Education Department, on 02.09.2021 before D.B.

(Rozina Rehman)
Member (J)

Chairman

2-9-21 Due to Summer vacations, the case is Adjourned to 30-9-21 For the same as Before.

Reader

30-9-21 DB is on Tour case to come up For the same on Dated. 27.10.21

Reader

02.07.2021 Appellant present through counsel.

Muhammad Adeel Butt learned Additional Advocate General for respondents present.

An application for impleadment in the panel of respondents has been submitted by 20 applicants enumerated at bottom of the application. They are represented by M/S Amin Ayub and Ghazanfar Ali Advocates. On last date, the appellant was directed to submit reply of the application before D.B. Learned counsel representing the appellant on instructions of his clients, states that the appellant has got no objection, if the applicants are impleaded in the panel of respondents. Accordingly, the application for impleadment is accepted. The office is directed to enter the names of the applicants in the panel of respondents. The impleaded respondents are directed to submit their written reply/comments within 10 days in office. File to come up for arguments on 15.07.2021 before D.B. Interim relief is extended till date fixed.

(Rozina Rehman)
Member(J)

Chairman

15.07.2021 Appellant present through counsel.

Muhammad Adeel Butt learned Additional Advocate General for official respondents present. Counsel for newly impleaded respondents present.

File to come up alongwith connected Service Appeal No.16425/2020, on 17.08.2021 before D.B.

(Rozina Rehman)
Member (J)

Chairman

22.06.2021 Appellant alongwith junior counsel present. Muhammad Riaz Khan Paindakheil learned Assistant Advocate General for the respondents present.

On the previous date the comments on behalf of the present respondents were filed. On the same date, an application was submitted on behalf of applicants namely Zaheer Ahmed & 19 others for impleadment in the panel of respondents, copy of the application was handed over to counsel for the appellant through his junior. The case was fixed for reply/arguments on impleadment application apart from rejoinder and arguments on main appeal, for today. Junior counsel for the appellant counsels seeks adjournment with the reason that the counsel of the appellant is busy in connection with cases before the Hon'ble Peshawar High Court Peshawar. Notwithstanding the said engagement of his counsel, the preparation of reply is an office matter of the lawyer, and the appellant was supposed to have brought and submitted the reply in compliance with order dated 07.06.2021, today. Anyhow, request for adjournment on behalf of the appellant is accorded but not without condition. This is because, the application submitted for impleadment enumerates so many grounds which attract to the point of maintainability of the present appeal, in which the interim relief was also granted. Let the appellant be put on notice as to why the interim relief granted to him should not be recalled. To come up for reply and arguments on impleadment application for short date as according to the applicants seeking impleadment, the normal course of the promotions has halted due to the present appeal. To come up for reply of application and arguments in the stated terms on 02.07.2021 before the D.B. The interim relief already granted till date is extended till the said date.

Chairman

(Atiq-Ur-Rehman Wazir)
Member (Executive)

07.06.2021 Junior to counsel for the appellant, Mr. Kabirullah Khattak, Addl. AG alongwith Muhammad Saleem, S.O for respondents.

Respondents have furnished joint parawise comments. Placed on file Junior to Mr. Muhammad Amin Ayub Advocate present and submitted an application for impleadment of applicants as respondents. Copy handed over to junior to counsel for the appellant. To come up for reply/arguments on impleadment application as well as rejoinder and arguments on main appeal on 22.06.2021. The restraint order dated 01.02.2021 shall remain operative till next date.

(Rozina Rehman)
Member(J)

12.04.2021 Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 28.04.2021 for the same as before.

Reader

28.04.2021 Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 24.05.2021 for the same as before.

Reader

24.05.2021 Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 07.06.2021 for the same as before.

Reader

10.03.2021 Junior to senior counsel for appellant is present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Neither written replies on behalf of respondents submitted nor their representatives are present, therefore, learned Additional Advocate General is directed to contact the respondents and furnish written reply/comments on the next date of hearing. Adjourned to 26.03.2021 on which date file to come up for written reply/comments before S.B. In the meanwhile, the respondents shall not finalize the promotion to BPS-20 to the detriment of appellant.

(MIAN MUHAMMAD)
MEMBER (E)

26.03.2021 Junior to counsel for the appellant and Mr. Kabirullah Khattak learned Addl. AG alongwith Syed Nasir-ud-din Assistant for respondents present.

Written reply/comments not submitted. Representative of respondents requested for time to submit written reply/comments. Last opportunity is granted. To come up for written reply/comments on 12.04.2021 before S.B. In the meanwhile, the respondents shall not finalize the promotion to BPs-20 to the detriment of appellant.

(Atiq Ur Rehman Wazir)
Member (E)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 16424 /2020

Abdul Hamid Butt ..... Appellant

Versus

The Chief Secretary, KPK and others.....Respondents

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Impleaded Respondents

Through

Muhammad Asim Ayub
Advocate, High Court

&

Muhammad Ghazanfar Ali
Advocate, High Court

Dated: 06/07/2021

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 16424 /2020

Abdul Hamid Butt ..... Appellant

Versus

The Chief Secretary, KPK and others.....Respondents

REPLY ON BEHALF OF IMPLEADED RESPONDENTS.

Respectfully Sheweth,

Preliminary Objections

1. That the matter has already been decided upto Hon'ble Apex Court as is evident from Para-16 and Page-165 of the Service Appeal, therefore, as per Section-11 of C.P.C read with Rule-23 of the Khyber Pakhtunkhwa Service Tribunal Rules-1974 is liable to be dismissed.

2. That instant appeal is not maintainable on the ground that appellant has called in question jointly his promotion and seniority which under the law is not permissible. Moreover, as per Section-4(b)(i) and read with Section-7 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, the prayer sought by the appellant is defective because no direction can be issued by this Hon'ble Tribunal as has been held by the Apex Court.

3. That the Departmental Appeal has not been filed within the statutory period of 30 days. It is stated that appellant has accorded the seniority of the Impleaded Respondents by narrating that he was supposed to be placed at Serial No.39 in the Revised Seniority List of Principal (BPS-19) whereas all the Impleaded Respondents have been placed at Serial No.1 to 21, therefore, there is no comparison of the Impleaded Respondents with appellant.

4. That the instant appeal is also defective on the ground that no specific order has been called in question which is contrary to Rule-6(d)(e) of Khyber Pakhtunkhwa Service Tribunal Rules-1974 which stipulates that the prayer

must be specific.

5. That the appeal is also not maintainable on the ground that ***the promotion is always granted with immediate effect and not with retrospective effect*** under the policy of the Govt. whereas appellant has approached the Hon'ble Tribunal for his retrospective promotion/seniority. Moreover, as per law the question of seniority is to be resolved firstly, whereafter promotion can be sought because promotion always depends upon seniority-cum-fitness.

6. That it is elaborated that appellant was initially appointed against the post of SET (BPS-15) on fixed pay basis against the post of Subject Specialist (BPS-17) on stop-gap-arrangement as he lacked the prescribed qualification whereas Impleaded Respondents were initially inducted into the service of the Respondent Department against the post of Subject Specialist (BPS-17) on regular basis.

7. That the appeal in hand is liable to be dismissed on the ground that as per Section 8(4) of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule-17 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, seniority on initial appointment is reckoned from the date of regular appointment. It is important to adduce here that the Impleaded Respondents were promoted to BPS-18 on 04.02.2004 and to BPS-19 on 13.06.2012 while the appellant was promoted to BPS-18 on 21.04.2014 (The promotion order has never ever been challenged by the appellant).

8. That the instant appeal is also not maintainable on the ground that promotion against a particular post is not a vested right of a civil servant rather it is the Departmental Promotion Committee/Administrative Committee which has to determine the fitness and eligibility of an officer for promotion against a higher post.

9. That appeal is bad on account of non-joinder of necessary parties because during long span of time a large number of officers have been promoted to next higher grade but none of them have been arrayed as parties.

10. The appellant is also estopped to file the appeal in hand inas much as numerous Seniority Lists in the meantime have so far been issued from time to time but none of them have been called in question by the appellant.

REPLY TO FACTS

1-7. Not properly explained by the appellant which amounts to concealment of facts. It is submitted that impleaded Respondents are the senior-most Officers of the Education Department and belong to teaching cadre of the Elementary & Secondary Education Department and presently serving in BPS-19. They have been performing their duties at respective place of posting. It is submitted that on the basis of their satisfactory service Working Paper were prepared and submitted for promotion from the post of Principal (BPS-19) to BPS-20. The appellant was initially appointed in the year 1988 as SET in BPS-15 fixed against the vacant post of Subject Specialist in BPS-17 on stop gape arrangement as he lacked the prescribed qualification vide order dated 05.03.1988. The appellant alongwith others, later on approached this Hon'ble Tribunal for regularization of their services against the posts of Subject Specialists (BPS-17). The appeal was disposed of vide judgment dated 31.05.1994. The relevant part of the judgment is reproduced herein below:

> ***"There is no dispute with respect to the legal position that a person who is working against the post is entitled to the pay thereon and thus the impeaded Respondents is also entitled to the pay of the post of Subject Specialist from the date when he was adjusted as such. But the period for which he would be entitled to the pay of Subject Specialist would be reckoned upto three years back from the date when a writ petition was preferred in the High Court and the claim beyond that would be time barred. As regard the prayer for regularization of the service it is for the Department to process the case of the impeaded Respondents for appointment as Subject Specialist. The appeal is accepted in the above terms."***

The judgment of the Tribunal was then implemented vide Notification dated 17.01.1996 clearly specifying: ***These orders, however, will not entitle them to claim their regularization/appointment as Subject Specialist on regular basis***.

Subsequently the judgment ibid, was called in question before the Apex Court by the appellant alongwith others and the Government in various

CAs which were disposed of vide judgment dated 26.02.1997. They were held entitled for the pay of the post with effect from the date of appointment while the remaining judgment of this Hon'ble Tribunal was upheld. The Judgment of the Apex Court was then implemented vide Notification dated 28.05.1997 whereby the appellant and others were held: ***They will not be entitled to claim any seniority against the posts of Subject Specialists***. The order dated 28.05.1997 ibid, was then challenged by appellant etc. in Service Appeals before this Hon'ble Tribunal once again which were decided vide Judgment dated 17.08.2004. The operative part of the judgment is as under:-

> ***"In view of the above discussion, the Tribunal is not inclined to become a party and contribute to validate or to perpetuate any irregular and illegal appointment made in utter violation of rules and merit and to make any intervention with regard to regularization of service and the consequential benefits including seniority to such irregular/illegal appointees at the cost of other qualified Subject Specialists appointed on regular basis to the service on merits so far. The Tribunal as per its earlier judgments dated 31.05.1994 and 324.07.1994 upheld by the Hon'ble Supreme Court of Pakistan vide its judgment dated 26.02.1997 again directs the Respondent Department to settle the longstanding issue of regularization of services of the impeaded Respondentss as per rules in a reasonable span of time. The case is, therefore, remanded back to the Department for necessary action. This appeal along other 13 appeals mentioned in para-4 above are disposed of accordingly.***

8. Misconceived. The case for implementation was referred to the Departmental Promotion Committee vide Working Paper but then a Summary was moved for regularization of services of the appellant etc. which was approved partially by the competent authority on humanitarian grounds keeping in view the pasts services of the appellant etc. but on the explicit condition that ***they shall be placed at the bottom of the Seniority List so that the right of others in the seniority may not be affected.***

9-11. Regarding Para-9 to 11 of the appeal it is submitted that the appellant and others were terminated from service on the ground of non-observance of the codal formalities and lack of prescribed qualification at the time of appointment vide Notification dated 19.03.2008 which was challenged in departmental appeal with the following prayer:-

> *"It is, therefore, most humbly requested that on acceptance of this appeal, the order dated 19.03.2008 of the Secretary*

Education Department, NWFP may kindly be set aside and the impeaded Respondents be reinstated in service with all back benefits."

After statutory period of the departmental appeals, the appellant etc. then filed Service Appeals with the following prayer:-

"On acceptance of this appeal the Notification dated 19.03.2008 may please be set aside and the impeaded Respondents may please be declared as regular employee for all intents and purposes with effect from the date of his appointment and he may also be reinstated in service with full back wages and benefits of service."

The appeals ibid, were then accepted vide judgment dated 21.10.2008 with the following operative part:-

"The up short of the above discussion is that we accept the appeal as prayed for and set aside the impugned order of termination of the impeaded Respondents dated 19.03.2008. The Respondent Department is directed to reinstate the impeaded Respondents in service with all back benefits of service"

For implementation of the Judgment ibid, a summary for approval of the competent authority was then processed wherein Respondent No.2 proposed (i) reinstatement of the appellant etc. with back benefits from the date of their termination; (ii) their Regularization with effect from the date of their initial appointment/ officiation as Subject Specialist without any precedent on the subject matter and in deviation of the Rules with no such direction of the Tribunal to that effect. The summary was approved and notified vide Notification dated 18.04.2009. It is added that utter favoritism was displayed to the appellant and others at the cost of impeaded Respondents and others.

12-14. Not properly explained. vide Notification dated 10.11.2010 final Seniority List of Headmasters/Subject Specialists (Male) BPS-17 was notified wherein appellant and others were placed at the top but wrongly shown as directly recruited in the relevant column. They were then promoted to BPS-18 on regular basis vide Notification dated 12.04.2011 ***with immediate effect.*** Again vide Notification dated 06.11.2011, they were allowed seniority in BPS-18 w.e.f. 14.03.1998 quite illegally to the prejudice of all other stakeholders including the impeaded Respondents without any prior notice. The appellant etc. were then considered for promotion to BPS-19

and promoted on regular basis vide Notification dated 21.04.2014 ***with immediate effect***.

15-16. Active concealment of facts has been made by the appellant. When the Tentative Seniority List was circulated, the impeaded Respondents and other affected shockingly came to know that their seniority has been adversely affected without any prior Notice. Thus reservations were expressed by all the concerned thereon but the same were regretted vide letter dated 16.11.2015 on the wrong premise that they were granted seniority as their erstwhile juniors were promoted to BPS-18 on 04.03.1998 on regular basis in as much as the cases of the appellant etc. and those promoted on 04.03.1998 were altogether distinct and dissimilar as those erstwhile were appointed vide Notification dated 05.12.1988 and the same was no precedent for the appellant etc. because they were appointed against SET BPS -15 on fixed pay as the stop gape arrange having lack of the prescribed qualification at the relevant time and not in BPS-17 by Divisional Director who was the competent authority. The Seniority List was notified vide Notification dated 26.04.2016 against which the impeaded Respondents filed departmental Representations but the same was not disposed of within the statutory period of 90 days, hence approached this Hon'ble Tribunal in Service Appeals which were allowed on 11.09.2017 vide consolidated judgment. Appellant etc. feeling dissatisfied assailed the same before the Apex Court in C.Ps wherein the verdict of this Hon'ble Tribunal was upheld vide order dated 02.10.2019. The matter attained finality with Judgment of Apex Court but appellant once again approached this Hon'ble Tribunal by challenging Seniority List of the Officers B-19 (Male) (Teaching Cadre) as stood on 29.11.2017. Astonishingly, the Seniority List ibid, has been called in question by the appellant before the appellate authority on 29.09.2020 vide Page-193 of the main Service Appeal, while the case of the appellant squarely fall within the ambit of Section-11 of CPC 1908, being past and closed transaction, cannot be reopened.

17&18. Incorrect hence not admitted. As already advanced in preliminary objections that the Departmental Appeal is barred by time. Moreover, the matter has been adjudicated upto Supreme Court of Pakistan and now has become past and closed transcation.

REPLY TO GROUNDS:

A-C. Incorrect hence not admitted. Appeal was dealt with in accordance with law and rules and his vested rights were respected by the Department but here appellant is misleading the Hon'ble Tribunal that too by agitating his grievance which has been decided and he strongly contested the Service Appeals filed by the Impleaded Respondents.

D&F. Incorrect. The Impleaded Respondents have been directly recruited against the post of Subject Specialist (BPS-17) while appellant was appointed against the post of BPS-15 on fixed pay as he was lacking the prescribed qualification. It is further narrated that duties were taken from him against the post of Subject Specialist (BPS-17) but all perks and privileges were granted to him by the Superior Courts.

G&H. Incorrect. The detailed reply has already been given in the preceding paras.

It is, therefore, humbly prayed that on acceptance of this reply, the appeal of appellant may graciously be dismissed with costs.

Impleaded Respondents

Through

Muhammad Amin Ayub
Advocate, High Court

&

Muhammad Ghazanfar Ali
Advocate, High Court

Dated: 06 **/07/2021**

Affidavit

I, Mr. Zaheer Ahmad Principal GHS Kotka Swabi do hereby affirm and declare on oath that the contents of this Reply are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Deponent

ATTESTED
Gul Daraz Khan
Oath Commissioner
Advocate High Court Peshawar
12/07/2021

01.02.2021 Counsel for the appellant present.

In view of chequered history of litigation, as well as departmental proceedings, pertaining to the seniority/promotion of appellant, instant appeal is admitted to regular hearing subject to all just exceptions. Appellant is required to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments on 17.02.2021 before S.B.

Appellant Deposited Security & Process Fee

Alongwith the appeal an application for restraining the respondents in making promotion to BPS-20 has also been submitted. Notice of the application be also given to the respondents for the date fixed. In the meanwhile, the respondents shall not finalize the promotion to BPS-20 to the detriment of appellant.

Chairman

17.02.2021 Counsel for appellant is present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents is also present.

Neither written reply on behalf of respondent submitted nor representative of the department is present, therefore, learned Additional Advocate General is directed to contact the respondents and furnish written reply/comments on the next date of hearing. Adjourned to 10.03.2021 on which date file to come up for written reply/comments before S.B. In the meanwhile, the respondents shall not finalize the promotion to BPS-20 to the detriment of appellant.

(Muhammad Jamal Khan)
Member

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 16424 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	28/12/2020	The appeal of Mr. Abdul Hameed But presented today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please. REGISTRAR
2-		This case is entrusted to S. Bench for preliminary hearing to be put up there on 01/02/2021 CHAIRMAN

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

APPEAL NO. _____/2020

ABDUL HAMID BUTT **VS** **EDUCATION DEPTT:**

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APPELLANT

THROUGH:

NOOR MUHAMMAD KHATTAK
ADVOCATE
Room No. 3 & 4, Upper Floor,
Islamia Club Building,
Khyber Bazar, Peshawar
0345-9383141

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO 16424 **/2020**

Mr. Abdul Hamid Butt, Principal (BPS-19),
GHS Zaryab Colony, District Peshawar..... **APPELLANT**

VERSUS

1- The Chief Secretary Government of Khyber Pakhtunkhwa, Peshawar.
2- The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
3- The Director Elementary & Secondary Education Department, Peshawar..... **RESPONDENTS**

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTIONS OF THE RESPONDENTS BY NOT PLACING THE NAME OF THE APPELLANT NEXT BELOW THE NAME OF Mr. HANIFULLAH IN THE SENIORITY LIST OF BPS-19 OFFICER OF THE TEACHING CADRE AND NOT CONSIDERING THE APPELLANT FOR PROMOTION TO THE POST OF BPS-20 AND AGAINST THE APPELLATE ORDER DATED 01.12.2020 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED ON GOOD GROUNDS.

PRAYER:

28/12/2020

That on acceptance of this appeal the impugned appellate order dated 01.12.2020 may very kindly be set aside and respondents be directed to place the name of the appellant below the name of Mr. Hanifullah in the seniority list of 2017 circulated for BPS-19 officers of teaching cadre and the respondents may further please be directed to consider the appellant for promotion to the post of BPS-20 with all back benefits including seniority. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.

R/SHEWETH:

FACTS:

Brief facts giving rise to the present appeal are under:-

1- That appellant is the employee of respondent department and is presently serving the respondent Department as Principal BPS-19 quiet efficiently and up to the entire satisfaction of his superiors.

Impleaded respondents vide order dated 02-07-2021.

4 Zaheer Ahmad,
Principal (BS-19),
GHS Chota Lahore Swabi.

5 Nek Nawaz Khan,
OSD, Directorate E&SE, Peshawar.

6 Mir Daud Khan,
GCHSS Bannu.

7 Sikandar Sher,
GHS Swabi.

8 Muhammad Salim,
GCMHS No.1, Tank

9 Mir Laiq,
GHS Mandav, Bannu.

10 Saifullah,
GHS Nar Muzafar, Lakki Marwat.

11 Taj Muhammad, GHS Swabi.

12 Sher Nawaz,
Principal, GHS Landiwah, Lakki Marwat

13 Moin-ud-Din
Principal, GHSS Shakar Dara, Kohat

14 Riaz Ahmad Bahar,
GHS Khyber.

15 Muhammad Bashir,
GHS Kaloo Khan, Swabi

16 Riasat Khan,
GHS Haripur.

17 Raj Muhammad Khan,
Secretary BISE, D.I. Khan.

18 Abdul Halim,
GHSS Jangiri Karak.

19 Muhammad Iqbal,
GHS Tal, District Hangu.

20 Nisar Muhammad,
DEO Khyber.

21 Munawar Gul,
Principal, GHSS Tarnab Farm, Peshawar

22 Nazim-ud-Din,
Principal, RITE (M), Darosh Chitral

23 Muhammad Ashraf,
Deputy Director, FITE, Jamrud.

Respondents

2- That in 1986 some High Schools of Khyber Pakhtunkhwa were upgraded to higher secondary level by the Government, and the posts of Subject Specialists were created in BPS-17 with criteria that the candidate must be MA in relevant subject with B.Ed, and with five year experience in a Government High School. Till the end of 1987 due to the rigidity in terms and conditions the posts requisitioned by the Deptt: for filling in by the Public service Commission remained unfilled in the span of two years from 1986 to 1988,only four qualified personnel could be selected, to overcome the situation the Deptt: constituted a committee to rationalize the qualification and experience for the post of Subject Specialist, the committee submitted its report in 1987 recommended that simple Master degree holder in relevant subject be appointed and he may be given 5/3 years to acquire the qualification of B.Ed, which was dully approved and notified by the competent authority vide notification No.SO(S)6-2/87/II dated 21/11/1991. Copies of the advertisement and rules are attached as annexure.....**A**

3- That in the context of the above recommendation the appellant was a Master Degree holder applied for the post of Subject Specialists, and after fulfilling all the formalities the appellant was selected vide order dated 05.03.1988 and took charge of the post, dated 08.03.1988 but the respondent department gave the appellant BPS-15 instead of BPS-17, meanwhile due the subsequent appointment of Mr. Muhammad Khaliq BPS-17, the appellant was recommended for adjustment against the post of Subject Specialist in Pakistan Studies in the same School vide order dated 19/04/1988. Accordingly adjustment order dated 26/04/1988 was issued appointing the petitioner as subject Specialist in Pakistan Studies. The petitioner thereafter remained serving continuously as Subject Specialist BPS-17 till his promotion to BPS-18. Copy of the Selection Order dated 05.03.1988, application dated 02.03.1988, recommendation letter dated 19.04.1988 adjustment order dated 26.04.1988, and charge report dated 28.04.1988 are attached as annexure.....**B,C&D.**

4. That on the same terms and conditions some of the colleagues of the appellant were also appointed as SET/Subject Specialist, and adjusted against the post of Subject Specialist BPS-17. That the appellant along with his colleagues filed Writ Petition No.667/1992 for their regularization but the same was subsequently withdrawn with the condition to avail the remedy by way of Departmental appeal to chief secretary government of NWFP vide judgment/order dated 2.3.1993. That after exhausted Departmental appeal the appellant filed Service

appeal before the Tribunal i.e. appeal No.169/1993 which was partially allowed in favor of the appellant, as regards the prayer for regularization of service, it is for the department to process the case of selection of the appellant as Subject Specialist, vide judgment dated 31/5/1994, Copies of the appointment order, high court judgment and service tribunal judgment are attached as annexure.....**E,F&G.**

5. That against the said judgment of the service Tribunal the appellant as well as the Deptt: filed CPLA's before the apex Court where the appeal of the Deptt: No. 128/95, was dismissed and the case for the appellants was modified, the petitioners were held entitled for the pay of the post w.e.f the date of their initial appointment while the remaining judgment of the Tribunal was upheld. Copy of the Apex Court Judgment dated 26.2.1997. Attached as annexure .....**H.**

6. That where after the respondent department issued notification dated 28' May, 1997 implementing the decision of the Apex Court by granting to the appellant pay fixation as Subject Specialist BPS-17 with areas of pay from the date of first appointment, but denied seniority from the said date. That in meanwhile consequent upon the decision of the August Service Tribunal one relevant case of Mr. Muhammad Riaz who was granted graded pay in BPS-17 and also allowed him seniority from the date of acquiring the degree of B.Ed vide Notification dated 15.02.1999. Copies of the orders are attached as annexure ..... **I.**

7. That the appellant feeling aggrieved from the discriminatory treatment, filed service appeal before the service tribunal in appeal No.2175/1997 for retrospective seniority but the same was remanded back to the department to settle the issue of regularization and seniority of the appellant. That it is pertinent to mention that during the pendency of the said appeal move over was also granted to the appellant from BPS-17 to BPS-18. Copies of the Service Tribunal Judgment dated 17.08.2004 and Move-Over Order dated 27.10.2001 are attached as annexure ..... **J & K.**

8. That for the implementation of the Service Tribunal Judgment working paper were placed before the Departmental Promotion Committee regarding regularization and seniority and as such minutes of the Departmental Promotion Committee were held Dated 19.05.2005 in which it was discussed that the regularization of the subject specialist in

pursuance of the Service Tribunal/ Supreme Court of Pakistan does not fall within the purview of DPC thus deprived the appellant for regularization along with seniority. Copies of the working Papers dated 20.04.2005 and minutes of the meeting date 19.05.2005 are attached as annexure..... **L & M.**

9. That feeling aggrieved the appellant filed Departmental appeal to the Chief Minister for his regularization-Cum-Seniority on the Post of Subject Specialist BPS-17 and with further prayer to stop the respondent department from termination of services of the appellant summery was submitted to Chief Executive by the Deptt: for regularization of the petitioners, though approved by the Chief executive but astonishingly the appellant had been terminated from service vide order dated 19.03.2008 without assigning any reason. Copy of the appeal to Chief Minister and termination order dated 19.03.2008 is attached as annexure.....**N&O.**

10. That the appellant feeling aggrieved from the abrupt termination order appealed to the Chief Minister for reinstatement into service dated 09.05.2008, followed by Service Appeal No.970/2008 before the service Tribunal which was allowed in favour of the appellant with the direction to the respondent department to reinstate the appellant with all back benefits. That respondent department send the proposal for CPLA against the said judgment to Advocate general who opined that it is not fit to go for CPLA and negated the proposal of the respondent department dated 18.12.2008 and the respondent department was reluctant to implement the said judgment vide letter dated 12.02.2009 and 25.02.2009, after getting opinion from Advocate general and law Deptt: E&SED submitted a summery to chief Secretary the competent authority for the re-instatement and regularization of the appellants which was approved. Copies of the Appeal to chief Minister dated 09.05.2008, Servce Appeal No.970/2008, legal Opinion order dated 18.12.2008, 12.02.2009, 25.02.2009 are attached as annexure.....**P.**

11. That when the respondent Deptt: was reluctant to implement the above mentioned judgment of the August Service Tribunal the appellant filed Writ Petition No.381/2009 before the Peshawar high court for implementation of the decision, resultantly the respondent department issued reinstatement order of the appellants dated 18th April 2009. Copy of the Writ Petition No.381/2009 and Reinstatement order dated 18 April 2009 are attached as annexure.....**Q.**

12. That after regularization and re-instatement into service the appellant filled Deptt: appeal to the applet authority vide application dated 12/05/2009 for fixation of seniority in BPS-17 from the date of appointment and in response applet authority vide letter dated 13/04/2010 directed the Director E&S Education to recheck and prepare seniority strictly in accordance with rules, thus the respondents issued the final seniority list placing the appellant at serial No 4 in the seniority list. Copy of the Departmental appeal dated 12/05/2009, letter dated 13th April, 2010 and seniority list dated 15/10/2010 are attached. Annexure.....**R.**

13. That resultantly the department issued promotion order dated 12th April 2011 whereby the appellant has been promoted from BPS-17 to BPS-18 with the condition that the appellant will be retain inter-se seniority from the date where their erstwhile junior have been promoted to BPS-18 w.e.f 14.03.1998. That later on again the matter of seniority arose against which the appellant preferred appeal to the appellate authority dated 11.05.2011 for regaining of his seniority from BPS-18 to BPS-19 to place the Name of the Appellant at correct position and the respondent department forwarded the letter dated 28 June 2011 to secretary Establishment in response of which order dated 06.9.2011 has been issued whereby the appellant had regain the seniority w.e.f 14.03.1998. Copy of the promotion order date 12.4.2011, Appeal dated 11.05.2011, forwarding letter dated 28.6.2011, seniority order dated 06th Sept 2011 are attached as annexure.....**S.**

14. That the appellant after that made correspondence with respondent department for placing his name at proper place in the seniority List of BPS-18 before issuing the final seniority list and finally placed the name of the appellant at correct position by issuing final seniority list dated 01/01/2014 and as such placing the name of the appellant at Serial No.4. Accordingly working paper for promotion to BPS-19 was submitted by the Deptt: to Provincial Selection Board in 2014, in which the appellant was on serial No.4 in the Panel, here it is important to note that the President School officers association Mr. Haji Nisar Muhammad BPS-19 along with representatives from the cadre BPS-18,BPS-19, and BPS-20, filled appeal against the appellant and his colleagues for Quo-warranto which was dismissed in limine by the Peshawar High Court dated 5th March 2014, and after dismissal of the writ petition filled by Haji Muhammad Nisar in Peshawar High Court the petitioner was considered for promotion to BPS-19 vide order dated 21/04/2019. Copy of the Correspondence, seniority list dated

01/01/2014, Quo-warranto dated 05/05/2014 and promotion order dated 21/04/2014 are attached as annexure.....**T&U.**

15. That once again the matter of seniority raised against which the appellant preferred Departmental appeal to the appellate authority for regaining the seniority under promotion policy 2009 with their erstwhile juniors in BPS-19 for promotion to the BPS-20 vide appeal dated 2 May 2014, similarly correspondence was made by E&SE department with Establishment Deptt: for seeking advice in the mater. vide letter dated 7.8.2014 and 03.9.2014, 16/09/2014, issued letter dated 16 Nov.2015 whereby ordered to place the name of the appellant at proper place in the seniority list of BPS-19 and seniority be finalized., order was followed by placing the appellant at serial No.5 in the final seniority list dated 31/12/2015 Copies of appeal date 2 May 2014, letter dated 7 august 2014, 3 sept 2014 and 16.09.2014 and order date 13 Nov 2014 Seniority list 31/12/2015 are attached as annexure..... **V,W&X.**

16. That working paper for promotion to BPS-20 was submitted by the Deptt: to Provincial Selection Board in Which the appellant was at S,No, 4 in panel, Meanwhile the above-mentioned notification was challenged by one Mr. Hanifullah and others in this august Service Tribunal and as such his appeal has been accepted vide judgment dated 11.9.2017. That the appellant knocked the door of the apex court against the said decision of the service tribunal but didn't succeed. That the name of the appellant was dropped from the promotion panel.where after the respondents place the name of Mr. Hanifullah at the top of the seniority list dated 29.11.2017 and appellant is thrown back to the bottom of the seniority against the spirit of the judgment i.e. at S.No.86. Copy of the minutes of PSB, Service tribunal judgment dated 11.09.2017 and Apex Court Judgment dated 14.10.2019, and seniority list dated 29.11.2017 are attached as annexure.....**Y.**

17. That in result the name of the appellant was ignored promotion to BPS-20. That the respondents recently circulated seniority list for the year 2019 but again the appellant has been pushed to the bottom of the said seniority list on malafide basis. That the appellant feeling aggrieved preferred departmental Appeal to the appellate authority vide dated 28.09.2020 but the same has been rejected on no good grounds vide order dated 01.12.2020. Copies of the seniority list dated 31.12.2019, letter dated 29.7.2020, departmental appeal dated 28.09.2020 and rejection order dated 01.12.2020 are attached as annexure.....**Z.**

18. That the appellant feeling aggrieved and having no other remedy but to file this instant service appeal on the following grounds amongst others.

GROUNDS:

A- That not placing the name of the appellant next below the name of Mr. Hanifullah and not considering the appellant for promotion to the post of BPS-20 by the respondent department is against law, facts, norms of natural justice and materials on the record.

B- That the appellant has not been treated by the respondent department in accordance with law and rules on the subject noted and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973.

C- That the respondent department acted in arbitrary and malafide manner by not placing the name of the appellant below the Mr. Hanifullah in the seniority list of 2017 circulated for BPS-19 and also not granting promotion to the appellant to the post of BPS-20.

D- That the respondent department acted in arbitrary manner by not placing the name of the appellant below the Mr.Hanifullah in the seniority list of 2017 circulated for BPS-19 and also not granting promotion to the appellant to the post of BPS-20, hence the same is violative of natural justice.

E- That the respondents violated section-8 of the Civil Servant Act, 1973 read with rule 17 of the APT rules, 1989 by not placing the name of the appellant below the Mr. Hanifullah in the seniority list of 2017 circulated for BPS-19 and also not granting promotion to the appellant to the post of BPS-20 inspite of eligibility, seniority and fitness.

F- That as per rule and law the appellant is entitled for the promotion to BPS-20 and placing of the appellant name below the name of Mr. Hanifullah in the seniority list of 2017 circulated for BPS-19.

G- That not placing the name of the appellant next below the name of Mr. Hanifullah and not considering the appellant for promotion to the post of BPS-20 by the respondents is violative of Article 38(e) of the Constitution of Pakistan, 1973.

H- That the appellant seek permission to advance any other ground and proof at the time of regular hearing.

It is therefore, most humbly prayed that the appeal of the appellant may very kindly be accepted as prayed for.

Dated: 18.12.2020

APPELLANT

ABDUL HAMID BUTT

THROUGH:

NOOR MUHAMMAD KHATTAK

&

MIR ZAMAN SAFI

ADVOCATES

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

C.M NO._____/2020

IN

Appeal No._____/2020

ABDUL HAMID BUTT VS EDUCATION DEPTT:

APPLICATION FOR RESTRAINING THE RESPONDENTS NOT TO MAKE PROMOTION TO THE BPS-20 TILL THE DISPOSAL OF THE ABOVE MENTIONED APPEAL

R/SHEWETH:

1- That the above mentioned appeal along with this application has been filed by the appellant before this august Service Tribunal in which no date is fixed so far.

2- That appellant filed the above mentioned appeal against inaction of the respondent by not placing the name of the appellant next below the name of the Mr.Hanifullah in the seniority list of BPS-19 officers of the Teaching cadre and not considering the appellant for promotion to the post of BPS-20.

3- That all the three ingredients necessary for the stay is in favor of the appellant.

4- That if the name of the appellant is not placed next below the name of Mr.Hanifullah in seniority list of 2017 circulated for BPS-19 and and ignored for promotion to BPS-20 the valuable right of the appellant will be violated causing irreparable to loss to the appellant.

It is therefore, most humbly prayed that on acceptance of this application the respondents may very kindly be restrained not to make promotion to BPS-20 till the final disposal of the above mentioned appeal.

APPLICANT

THROUGH:

NOOR MOHAMMAD KHATTAK
ADVOCATE

14-(10)

Better Copy of the Page No. 10

نظامت تعلیم (مدارس) صوبہ سرحد

درخواستیں مطلوب ہیں

زیر دستخطی کو درج ذیل آسامیوں پر عارضی (ایڈہاک) بنیاد پر تنخواہ کے بنیادی سکیل نمبر 17 میں تقرری کیلئے وبہ سرحد کے سکونتی مرد اور خواتین امیدواروں سے درخواستیں مطلوب ہیں، درخواستیں سادہ کاغذ پر مبنی ہوں، امیدوار کے پورے کوائف (نام، ولدیت، سکول / کالج، کوالیفکیشن، مضمون، ڈویژن پتہ موجود ہوں، مورخہ 25/09/1977 تک بمعہ اسناد و سکونت کی مصدقہ نقول بذریعہ رجسٹری / دستی بنام ڈپٹی ڈائریکٹر (سکولز) صوبہ سرحد پہنچ جانی چاہیے۔

شرائط

(1) درخواست دہندہ متعلقہ مضمون میں کسی مسلم یونیورسٹی سے ایم اے سیکنڈ ڈویژن ہو اور MA/B.Ed/M.Ed کی ڈگری بھی رکھتا ہو، ایم اے (انگریزی) تھرڈ ڈویژن کے امیدوار بھی درخواستیں دے سکتے ہیں۔

(2) امیدوار سکول یا کالج میں 5 سالہ تدریسی تجربہ کے حامل ہوں۔

(3) یونیورسٹی / بورڈ سے حاصل کردہ نمبرات کے تفصیلی سرٹیفکیٹ کی تصدیق شدہ نقول اسناد کے ہمراہ شامل ہونی چاہئیں۔

مضامین کی تفصیل

(1) انگریزی (2) اکنامکس (3) ہسٹری یا سوکس (4) اسلامک ایجوکیشن کم اسلامک سٹڈیز (5) شماریات (6) پاکستان سٹڈیز (7) ہسٹری کم سوکس کیلئے امیدواران ایم اے ہسٹری اور ایم اے پولیٹیکل سائنس یا ایم اے ہسٹری اور بی اے میں پولیٹیکل سائنس یا ایم اے پولیٹیکل سائنس اور بی اے میں ہسٹری کی ڈگری رکھتے ہوں میرٹ کی بنیاد پر منتخب امیدواران کی تقرری ہائر سیکنڈری سکولوں میں بطور سبجیکٹ سپیشلسٹ کی جائیگی۔

سید سرور شاہ

ڈپٹی ڈائریکٹر (سکولز)

برائے ڈائریکٹوریٹ تعلیم (سکولز) پشاور

INF(P) 28489

مشرق

[illegible]

نظامت تعلیم (مدارس) صوبہ سرحد

درخواستیں مطلوب ہیں

[illegible]

شرائط:

(۱) درخواست دہندہ متعلقہ مضمون میں کسی تسلیم شدہ یونیورسٹی سے ایم اے / M.A / B.Ed [illegible]

[illegible]

مضامین کی تفصیل:

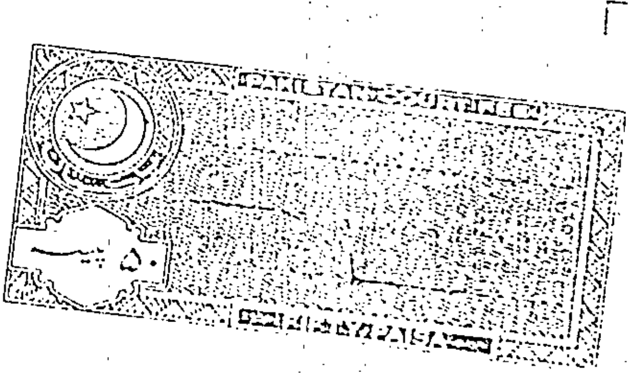
[illegible]

سید سرور شاہ

ڈپٹی ڈائریکٹر (سکولز)

برائے ڈائریکٹر محکمہ تعلیم (سکولز) پشاور

INF (P) 2545



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GOVERNMENT OF NORTH-WEST FRONTIER PROVINCE

EDUCATION DEPARTMENT

Annex A-10.

NOTIFICATION.

Peshawar dated the; 21/11/1991

No.SO(S)6-2/87/II/ In pursuance of the provisions contained in Sub-Rule (2) of Rule-3 of the North-West Frontier Province, Civil Servants (appointment, Promotion and Transfer) Rules, 1975 the Education Department, in consultation with the Services and General Administration Department and the Finance Department, hereby directs that in this Department Notification No. SO(S) Service Rules/85/III dated;21.1.1987, the following further, amendments shall be made, namely:-

AMENDMENTS.

In the appendix to the aforesaid Notification:-

(i) for the existing entries in column 2 and 6 against serial No.1, the following shall respectively be substituted, namely:-

2.	6.
Director Secondary Education/ Director /Primary Education/ Director Bureau of Curriculum Development Education Services.	By promotion, on the basis of selection on merit, from amongst holders of the posts of Divil: Director, additional Directress and other equivalent posts with at least 17 years service in BPS-17 and above; provided that in case of persons initially appointed in BPS-18 the length of service for promotion in their cases shall be 12 years in BPS-18 and above. and

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(ii) for the existing entries in column 2 and 6 against serial No.2(i) the following shall respectively be substituted namely:-

2.	6.
"(i) Divisional Director /additional Director /Director Primary Education and other equivalent Posts.	By promotion, on the basis of selection on merit, from amongst holders of the posts of deputy Director of Education, Principals of Govt: Elementary Colleges and Comprehensive high schools, District edtication officers and

(12)

other equivalent posts with at least 12 years service in BPS-17 and above; provided that in case of persons initially appointed in BPS-18, the length of service for promotion in their cases shall be 7 years."

(iii) for the existing entry in column 2 against serial No.2(ii) the following shall be substituted namely:-

"(ii) Additional directress of Secondary Education/ Additional directress of Primary Education"

(iv) for the existing qualifications at clause (iii) in column 3 against serial No.4(i) the following shall be substituted, namely;

(iii). Second Class Master Degree in the relevant subject, or in the case of English subject, Third Class Master Degree in English, with B.Ed/M.Ed/M.A.Education in second Division respectively from a recognized University and institute:

Provided that candidates not possessing B.Ed:, M.Ed: or M.A.Education Degree shall also be eligible for appointment subject to the condition that they shall acquire the profess-ional qualification as aforesaid with in three years from the date of taking over as subject Specialists, failing which their services are liable to termination.

Provided further that selectees possessing qualification under this clause shall work as subject Specialists in Government Higher Secondary Schools and shall not be eligible for appointments or transfer to any other Post till their promotion to higher post.

ATTESTED

SECRETARY TO GOVERNMENT OF
NORH-WEST FROTIER PROVINCE
EDUCATION DEPARTMENT

(18) (15)

Endst No.SO(S)6-2/87/II/ Dated Peshawar The 21.11.91

Copy forwarded for information an necessary action to:-

1. All administrative secretaries to Govt. of NWFP
2. Secretary NWFP Public Service Commission, Peshawar.
3. Accountant General NWFP, Peshawar.
4. All Directors of Education, NWFP.
5. Manager Government Press Peshawar for publication in to the next issue of govt. Gazette.
6. All Divisional Directors of Education (Schools), NWFP.

(MOHAMMAD ILYAS)
Section officer (Schools)

ATTESTED

original copy

(11)

GOVERNMENT OF NORTH-WEST FRONTIER PROVINCE
EDUCATION DEPARTMENT.

Relaxation Notification

NOTIFICATION. Annexure

Peshawar dated the: 21/11/1991.

No.SO(S)6-2/85/III/ In pursuance of the provisions contained in Sub-Rule(2) of Rule-3 of the North-West Frontier Province, Civil Servants (appointment, Promotion and Transfer) Rules, 1975 the Education Department, in consultation with the Services and General Administration department and the Finance Department, hereby directs that in this Department Notification No.SO(S) Service Rules/85/III dated, 21.1.1987, the following further, amendments shall be made, namely :-

AMENDMENTS.

In the Appendix to the aforesaid Notification:-

(i) for the existing entries in columns 2 and 6 against serial No.1, the following shall respectively be substituted, namely :-

2.	6
Director Secondary Education/Director Primary Education/ Director Bureau of Curriculum Development Education Services.	By promotion, on the basis of selection on merit, from amongst holders of the posts of Divil: Director, Additional Directress and other equivalent posts with at least 12 years service in BPS-17 and above; provided that in case of persons initially appointed in BPS-18 the length of service for promotion in their cases shall be 12 years in BPS-17 and above, and

(ii) for the existing entries in columns 2 and 6 against serial No.2(i) the following shall respectively be substituted namely.

2.	6
"(i) Divisional Director/Additional Director of Primary Education and other equivalent posts.	By promotion on the basis of selection on merit, from amongst holders of the posts of Deputy Directors of Education Principal Government Colleges and Commensurate High Schools, District Education Officers and

ATTESTED

Cont: Page.2.

(12) (13)

other equivalent posts with at least twelve years service in BPS-17 and above provided that in case of persons initially appointed in BPS-16, the length of service for promotion in their cases shall be 7 years."

(iii) for the existing entry in column 2 against serial No.2(ii) the following shall be substituted namely:-

"(ii) Additional Directress of Secondary Education/
Additional Directress of Primary Education"

and

(iv) for the existing qualifications at clause(iii) in column 3 against serial No.4(i) the following shall be substituted, namely;

(iii). Second Class Master Degree in the relev subject, or in the case of English subject, Third Class Master Degree in English, with B.Ed/M.Ed:/M.A.Education in second Division respectively from a recognised University and institute:

Provided that candidates not possessing B.Ed:,M.Ed: or M.A. Education Degree shall also be eligible for appointment subject to the condition that they shall acquire the professional qualification as aforesaid within three years from the date of taking over as subject Specialists, failing which their services are liable to termination.

Provided further that selectees possessing qualfication under this clause shall work as subject Specialists in Government Higher Secondary Schools and shall not be eligible for appointment or transfer to any other post till their promotion to higher post.

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SECRETARY TO GOVERNMENT OF
NORTH-WEST FRONTIER PROVINCE
Education Department.

Cont:Page.3.

(13) 28 409

Endst No. SO(S)6-?/8?/11. Dated Peshawar the ?1.11.?1.

Copy forwarded for information and necessary action to:-

1. All Administrative Secretaries to Govt: of [illegible]
2. Secretary, [illegible] Public Service Commission, Peshawar.
3. [illegible] NWFP, Peshawar. [illegible]
4. All Directors of Education in NWFP.
5. Manager, Govt: Printing Press [illegible] for publication in the next issue of Govt: Gazette.
6. All Division[al] Directors of Education(Schools) in NWFP.

[signature]

([illegible])
[illegible] Officer(Schools).

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To,

The Divisional Director
Education Malakand Division
Swat.

Sub: Request for the Post of Subject Specialist.

Sir, Most humbly and respectfully it is stated that It has come to my knowledge that a post of Sub. Specialist is lying vacant under your kind control. I offer my services for the same post with the following particulars

(1)	Name :	Abdul Hamid Bhat
(2)	Fathers Name :-	Mohd Asidullah Bhat
(3)	Qualification	M.A. Political Science
(4)	Date of Birth	12-7-1962
	Adress	R/o and P/o Bahrain Distt Swat N.W.F.P

In the light of above facts. I hope that your kind majesty will definitly appoint me on the post mentioned above.

Dated 2-3-1988

Yours obediently
Ab. Hamid Bhat

BETTER COPY OF THE PAGE NO. 15

OFFICE OF THE DIRECTORATE OF EDUCATION (F) MALAKND DIVISION

APPOINTMENT

The following candidates are hereby appointed as SST in BPS-15 plus usual allowances as admissible under the rules and adjusted against the vacant post of Subject Specialist at the higher secondary schools noted against each in the interest of public service from the date of their taking over charge.

S.No.	Name & Address	School where posted/adjusted	Remarks
1	Shamsul Hai S/o Obaidullah. M.A pak Stud Matwanai Tehsil Daggar Swat	GHSS Lal Qila Dir	Vacant post
2	Abdul Hamid S/o M. Asadullah M.A Polt: Sci: Village &P.O Behrain Swat	GHSS Mingora, Swat	-do-

TERMS AND CONDITIONS

1. Charge reports should be submitted to all concerned.
2. No T.A/DA is allowed.
3. Their services are purely on temporary basis and are liable to termination at any time without any notice or assigning any reason.
4. They will work in BPS-15 fixed plus usual allowances as admissible under the rules against the posts via BPS-17 on their own pay.
5. In case the candidates fails to take over charge within 15 days from the date of issue of this order their appointment will be terminated /cancelled.
6. The candidate should produce their health and age certificates from the civil surgeon concerned.
7. They shall have no right of permanent/temporary absorption against the posts held by them as SST in BPS-15.
8. They shall have to give undertaking before taking over charge that the above conditions are acceptable to them.
9. They shall have to vacate their posts as soon as per selectees of the public service commission are made available against these posts.

(H. Abdul Rashid Khan)
Director of Educaiton
Malakand Division
Saidu Sharif Swat.

Endst No. 4298-303/ST/V/87-88 Dated 05/03/1999.

Copy for information to the:

1. Director of Education (F) H.S.F.P Peshawar
2. 3. DEO (M) Dir & Swat.
4. 5. Principal concerned
6. 7. Candidate concerned.

Director of Educaiton
Malakand Division
Saidu Sharif Swat.

(15)

OFFICE OF THE DIRECTOR OF EDUCATION (S) MALAKAND DIVISION SAIDU SHARIF, SWAT.

ADJUSTMENT/APPOINTMENT.

The following candidates/are hereby appointed as S.E.T's in BPS.15 plus usual allowances as admissible under the rules and adjusted against the vacant post of subject specialist at the higher secondary Schools noted against each in the interest of public service from the date of their taking over charge.

S.No.	Name & Address.	School where posted/ adjusted.	Remarks.
1-	Shamsul Hadi, S/O Obaidullah, M.A./Pak: Stud: Matwanai Tehi Dagger Swat.	GHSS. Lal Qila, Pir.	Vacant post.
2-	Abdul Hamid, S/O M. Asadullah, M.A. Polit: Sc: Village & P.O. Bahrain Swat.	GHSS. Mingora, Swat.	-do-

TERMS & CONDITIONS:-

1- Charge reports should be submitted to all concerned.

2- No T.A./D.A. is allowed.

3- Their services are purely on temporary basis and are liable to termination at any time without any notice or assigning any reason.

4- They will work in BPS-15 fixed plus usual allowances as admissible under the rules against the posts win BPS.17 on their own pay.

5- In case the candidates xxx fails to take over charge within 15 days from the date of issue of this order their apptt: will be automitically as cancelled.

6- The candidates should produce their health & age certificates from the Civil surgeon concerned.

7- They shall have no right of permanant/temporary absorption against the posts held by them as S.E.T. in BPS-15.

8- They shall have to give undertaking before taking over charge that the above ~~xxxxxxxx~~ ex conditions are acceptable to them.

9- They shall have to vacate their posts as soon as the selectees of the public service commission are made available against these posts.

(H. Abdur Rashid Khan)
DIRECTOR OF EDUCATION,
MALAKAND DIVISION
SAIDU SHARIF, SWAT.

Endst:No. 4258-303/ST/V/87-88 Dated 5/5/1988.

Copy for information to the :-
1- Director of Education (S) N.W.F.P. Peshawer.
2-3. D.E.O.(M) Dir & Swat.
4-5. Principal concerned.
6-7- Candidates concerned.

D.M.A.

for/ DIRECTOR OF EDUCATION,
MALAKAND DIVISION
SAIDU SHARIF, SWAT.

Taj Mohammad/

ATTESTED

BETTER COPY OF THE PAGE NO. 16

GOVERNMENT OF NORTH-WEST FRONTIER PROVINCE

CERTIFICATE OF TRANSFER OF CHARGE

Certified that I, **Mr. Abdul Hamid, Subject Specialists in Political Science** have this day **06/03/1988** noon **(Fore Noon)** taken over charge of the office of **GHSS: Mingora Distt: Swat vide D.E.(S)MKD:Endst: No. 4293-303/AT/V/87-88** with reference to the Order of the N.W.F.P Government No. **Endst No. 4298-303/AT/V/87-88** Dated **05/03/1988** transferring Mr. _____ to _____.

2. Particulars of Cash and Important/Secret/Confidential documents handed over/taken over are noted on the reverse.

Station:

Dated .....19.

Signature of relived **Vacant Post**
Government Servant.....
Designation.....
Signature of Government
Servant receiving **Abdul Hamid**
Charge .....
Designation: **Subject Specialist in Political Science**

Endst No. **125-26** Dated **05/03/1988**

From

The Principal,
Govt. Higher Secondary School Mingora Distt: Swat.

To.

1. **The Accountant General,**
   N.W.F.P, Peshawar.
2. **D.E (E) MKD: Division Saidu Sharif.**
3. **D.E.O Swat Saidu Shairf**
4. **D.A.O Swat Saidu Shairf**
5. .....

The Charge of the Office of .....
was transferred from Mr. .....
to Mr. .....
on the fore noon of the .....19.

Signature.....
Designation.....

(16)

N.W.F.P., A/Try. 42-A

GS&PD, NWFP.—1317 F. S.—2,000 Pads o' 100—31-1 87—(49)

GOVERNMENT OF NORTH-WEST FRONTIER PROVINCE.

CERTIFICATE OF TRANSFER OF CHARGE.

Certified that I, Mr. Abdul Hamid, Subject Specialist in Political Science

have this day ~~before~~ taken over (fore Noon) charge of the office of GHS: MINGORA DISTT: SWAT

after relinquished

Vide D.E.(M)MED: Endst: NO: 4298-303/ AE/V/87-88 with reference to the Order of the N. W. F. P. Government

No. Endst: NO: 4298-303/AE/V/87-88 dated 5-3-88 19

transferring Mr.

to

2. Particulars of Cash and Important/Secret/Confidential documents handed over/taken over are noted on the reverse.

Signature of relieved Government servant VACANT POST

Station :

Designation

Sigature of Government servant receiving charge ABDUL HAMID.

Dated 19

Designation Subject Specialist in Political Science,

Endst. No. 125-88 dated 8/3/ 19 88

From

The Principal,
Govt: Higher Secondary School Mingora Distt: Swat.

To

1. The Accountant-General, N. W. F. P., Peshawar. D.E(M)
2. D.E(M)MED: Division Saidu Sharif.
3. D.E.O. Swat Saidu Sharif.
4. D.A.O. Swat Saidu Sharif.
5.

ATTESTED

Principal,
Govt: Secondary School
Mingora, Distt. Swat.

The charge of the Office of

was transferred from Mr.

to Mr.

fore
on the —noon of the 19 .
after

Signature

Designation

C-17

No. 220/ Dated Mingora, the 19/4/1988.

From

The Principal,
Govt Higher Secondary School, Mingora.

To

The Director of Education(S)
Malakand Division, Saidu Sharif.

Subject:- ADJUSTMENT OF MR.ABDUL HAMEED, SUB:SPECIALIST IN HIST-CUM-CIVICS AGAINST THE POST OF SUB:SPECIAL-IST PAK: STUDIES.

Memo:-

Since Mr.Mohammad Khaliq, SET B-17 GHS, Manglawar, has been transferred as Subject Specialist in History-cum-Civics Vide Director of Education(S)NWFP, Notification issued under Endst: No.2579-824/A-14/Headmasters, dated 14-4-88 at S.No.52, the services of Mr.Abdul Hamid adhoc appointee against the same post are placed at your disposal from the Fore Noon of 19-4-88.

It is, however, suggested that since the post of Pak:Studies is still vacant, he may please be adjusted against the same post at this School.

Principal,
S/c Govt Higher Secondary School,
Mingora (SWAT).

Endst:No. 221/ Copy forwarded to the Director of Education(Schools) N.W.F.P, Peshawar.

Principal, 19/4
S/c Govt Higher Secondary School,
Mingora (Swat)

Mr Abdul Hameed

Ann-(D-2)

→ Hanging post
→ After permanent replace

ATTESTED

Reller copy - D-C-(17)

(18)

OFFICE OF THE DIRECTOR OF EDUCATION (S) MALAKAND DIVISION SAIDU SHARIF

ADJUSTMENT.

Mr. Abdul Hamid, Subject Specialist in History cum Civics G.H.S.S No. 2 Mingora Swat is hereby adjusted on his own pay & Scale against the post of Subject Specialist in Pakistan Studies in the XX same School in the interest of public service with effect from 19-04-1988

Note:-

1. Charge report should be submitted to all concerned

(S. ABU SAEED)
DIRECTOR OF EDUCATION,
MALAKAND DIVISION
SAIDU SHARIF SWAT.

Endst: No. 8281-83 Dated 26/04/1988

Copy forwarded to:-

1. Director of Education (S) N.W.F.P. Peshawar.
2. Principal, GHSS Mingora Swat w/r to his No. 220 dated 19-04-88
3. Official concerned.

D.D.E
For/ DIRECTOR OF EDUCATION,
MALAKAND DIVISION
SAIDU SHARIF SWAT.

ATTESTED

D — (19)

OFFICE OF THE DIRECTOR OF EDUCATION (S) MALAKAND DIVISION SAIDU SHARIF.

ADJUSTMENT:

Mr. Abdul Hamid, Subject Specialist in History cum Civics G.H.S.S. No. 2 Mingora Swat is hereby adjusted on his own pay & Scale against the post of Subject specialist in Pak; Studies in the ~~Sahnai~~ same School in the interest of public service with effect from ~~x~~ 19-4-1988.

Note:-

1- Charge report should be submitted to all concerned.

(S.ABU SAEED)
DIRECTOR OF EDUCATION,
MALAKAND DIVISION
SAIDU SHARIF, SWAT.

Endst:No. 8281-87 Dated 9/5/1988.

Copy forwarded to :-

1- Director of Education (S) N.W.F.P.Peshawar.
2- Principal, GHSS. Mingora Swat w/r to his No. 220 dated 19-4-88.
3- Official concerned.

for/ DIRECTOR OF EDUCATION,
MALAKAND DIVISION
SAIDU SHARIF, SWAT.

Taj Mohammad/

ATTESTED

BETTER COPY OF THE PAGE NO. 20

GOVERNMENT OF NORTH-WEST FRONTIER PROVINCE

CERTIFICATE OF TRANSFER OF CHARGE

Certified that I, **Mr. Abdul Hamid, Subject Specialists in Political Science** have this day **19/04/1988** noon **(Fore Noon)** taken over charge of the office of **GHSS: Mingora Distt: Swat** with reference to the Order of the N.W.F.P Government No. **8281-83** Dated **26/04/1988** transferring Mr. _____ to _____.

2. Particulars of Cash and Important/Secret/Confidential documents handed over/taken over are noted on the reverse.

Station:

Dated .....19.

Signature of relived **Vacant Post**
Government Servant.....
Designation.....
Signature of Government
Servant receiving **Abdul Hamid**
Charge.....
Designation: **Subject Specialist in Political Science**

Endst No. **237** Dated **28/04/1988**

From

The Principal,
G.H.S.S, Mingora.

To.

1. **The Director Education**
   N.W.F.P, Peshawar.
2. **D.E (E) MKD: Division Saidu Sharif.**
3. **D.E.O Swat Saidu Shairf**
4. **D.A.O Swat Saidu Shairf**
5. .....

The Charge of the Office of .....
was transferred from Mr. .....
to Mr. .....
on the fore noon of the .....19.

Signature.....
Designation.....

(20)

GS&PD. NWFP.—1317 F. S.—2,000 Pads o' 100—31-1 87—(49)

GOVERNMENT OF NORTH-WEST FRONTIER PROVINCE.

CERTIFICATE OF TRANSFER OF CHARGE.

Certified that I, Abdul Hamid, Subject Specialist in Pak Studies G.H.S, Mingora
on 19-4-88 (Fore Noon)
have this day before ~~—~~noon ~~taken~~ over charge of the office of G.H.S.S, Mingora Distt: Swat,
after relinquished

.....with reference to the Order of the D.E(C)Malakand Div:
N.W.F.P. Government

No. 5231-33 dated 26-4-88. 19

transferring Mr .....

to .....

2. Particulars of Cash and Important/Secret/Confidential documents banded over/taken over are noted on the reverse.

Station :

Signature of relieved Government servant .....(Vacant Post)

Designation .....

Dated 19

Sigature of Government servant receiving charge ..... (Abdul Hamid)

Designation. Subject Specialist in Pak Studie

Endst. No 237 dated 28-4-88 89

From

The Principal,
G.H.S.S, Mingora.

To

1. The Director Education(S), N.W.F.P, Peshawar.
2. The Director of Education(C)Malakand Div: Saidu Sharif.
3. The District Education Officer(M)Swat.
4. The District Accounts Officer, Swat at Saidu Sharif.
5. .....

The charge of the Office of .....

was transferred from Mr .....

to Mr .....

fore
on the ~~—~~noon of the .....
after

Head master,
Govt: Higher Secondary School,
MINGORA, Dists: Swat.

PRINCIPAL,
Govt: Higher Secondary School,
MINGORA, Distt: Swat.

Signature .....

Designation .....

BETTER COPY OF THE PAGE NO. 21

OFFICE OF THE DIRECTORATE OF EDUCATION MALAKND DIVISION, AT GULK DA SWAT

APPOINTMENT

Mr. Mohammad Amin M.A (English) S/o Mohammad Akram village Gudira Distt Swat is hereby appointed temporarily against Subject Specialist post at GHSS Samarbh Distt: Dir in BPS-15 Ors 1165/- PM fixed plus usual allowances as due as and admissible to him under the rules with effect from the date of his taking over charge in the interest of public service subject to the following terms and conditions:-

TERMS AND CONDITIONS

1. No T.A/DA is allowed.
2. Charge reports should be submitted to all concerned.
3. The appointment is made on purely temporary basis and liable to termination at any time without any notice or assigning any reason. In case of resignation he will have to submit one month prior notice to the Department or forfeit one month pay in lieu thereof to the Government.
4. The candidate should produce their health and age certificates from the civil surgeon concerned.
5. The Head of Institution is required to check the original academic/ professional certification of the candidate before handing over charge to him.
6. In case the candidate fail to take over charge within 15 days of the issue of this order, his appointment shall stand automatically cancelled.
7. The candidate shall not be handed over charge if his age aced 33 years or below 18 years.

(Ghulam Mohmammad)
Director of Education
Malakand Division
At Gul Kada Swat.

Endst No. 1325-28/A-14/S.S/90 Dated 25/07/1990

Copy for information to the:

1. District Education Officer (M) Timergara.
2. Principal GHSS Samar Bagh Dist Dir
3. Candidate concerned
4. Personal File

Director of Educaiton
Malakand Division
At Gul Kada Swat.

original

E-(21)

E-134

OFFICE OF THE DIRECTOR OF EDUCATION, MALAKAND DIVISION, AT GULKADA, SWAT.

APPOINTMENT.

Mr. Mohammad Amin M.A(English) S/O Mohammad Akram village Gokdara Distt:Swat is hereby appointed temporarily against Subject Specialist post at GHSS:Sammrbagh, Distt:Dir in BPS:No.15 ORs:1165/-PM fixed plus usual allowances as due and admissible to him under the rules with effect from the date of his taking over charge in the interest of public service subject to the following terms and conditions:-

TERMS AND CONDITIONS.

1. No TA/DA is allowed.
2. Charge reports should be submitted to all concerned.
3. The appointment is made on purely temporary basis and liable to termination at any time without notice and assigning any reason. In case of resignation he will have to submit one month, s prior notice to the Department or forfeit one month, s pay in lieu thereof to the Government.
4. The candidate shall produce his health and age certificate from the civil surgeon concerned.
5. The Head of the institution is required to check the original academic/ professional certificates of the candidate before handing over charge to him.
6. In case the candidate fail to take over charge within 15 days of the issue of this order, his appointment shall stand automatically cancelled.
7. The candidate shallnot be handed over charge if his age exceed 33 years or below 18 years.

(GHULAM MOHAMMAD)
DIRECTOR OF EDUCATION
MALAKAND DIVISION
AT GUL KADA, SWAT.

Endst:No. 1325-28 /A-14/3.S/90 Dated 25/2/1990.

Copy to the:-

1. District Education Officer (M) Timargara.
2. Principal, GHSS:Saman Bagh, Distt:Dir.
3. Candidate concerned.
4. Personal File.

25/2

A.D.E.O,
For/DIRECTOR OF EDUCATION
MALAKAND DIVISION
AT GUL KADA, SWAT.

ATTESTED

Rahim Khan/*

—11—

F—22

G

IN PESHAWAR HIGH COURT PESHAWAR

W.P. 667/92

1. Shamsul Wadi S/o Abdullah, Resident of Matwali, PO Daggar, Tehsil Daggar, District Swat.

2. Abdul Hamid Butt S/o Mohammad Asadullah Butt, Resident of Behrain, District Swat.

3. Humayun Khan S/o Khan Bahader, Resident of Noor Mohammad Khel, PO Khar, Malakand Agency.

4. Shahid Zafar S/o Zafar Ali Khan Resident of Village Dokri, PO Kumber, Tehsil Lal Qila, District Dir.

5. Janidar S/o Jehandar Resident of Chakaser, Alpuri, Swat.

6. Ali Haider S/o Sani Gul Resident of

7. Sardar Ali S/o Bakht Akhtar, Resident of Mangior Tehsil Ebozi, District Swat. . . . . Petitioners.

2893
Filed today
Addl Registrar.
26-4-92

Versus

1. Government of NWFP through Secretary Education, Peshawar.

2. Director of Education (Schools) NWFP, Peshawar.

3. Divisional Director (Schools) Malakand Division, Saidu Sharif, Swat. . . . . Respondents.

3106
Filed today
Addl Registrar,
4-5-92

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973

Respectfully sheweth,

1. That the petitioners are post graduates having qualified M.A/M.Sc examination in various subject are now serving in the Education Deptt. as subject Specialist. The appoints were made as a result of applications submitted by the petitioners in consequence of advertisement published in the Newspaper requiring therein the appointments in certain vacancies in GRade-17. Though the persons having the requisite qualification i.e., M.A/M.Ed/B.Ed were not available so the petitioners were considered for appointments and they were appointed as such through various appointments orders. The copies of the appointment orders are annexed as annexures A to F

ATTESTED

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GSGPD-NWFP-1340-F.S.-1000 P. of 100 L.-8.12.91(46)

FORM 'A'

FORM OF ORDER SHEET

Court of.....

Case No..... of.....

Serial No. of Order or Proceedings	Date of Order or Proceeding	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3
	2.3.93.	W.P. No.667/92. Present: Mr.Tallat Qayum Qureshi, Advocate for the petitioner. He wants to withdraw from his writ petition since he wants first to avail his remedy by way of appeal to the Chief Secretary Government of N.W.F.P. provided under the first proviso to sub-section (1) of section 4 of N.W.F.P. Employees on Contract Basis (Regulation of Services) (Amendment) Act, 1990, Act II of 1990 and further requests for permission to file a fresh writ petition if need be in case he does not get a suitable redress from the said forum or otherwise. This writ petition along C.M. is hereby dismissed in limine as withdrawn and permission sought for is granted. JUDGE.

Pl. issued

4/3

28/4/93

JUDGE.

ATTESTED

(24)

N.W.F.P. J (Criminal) 209

GS&PD-NWFP-1340-F.S.-1000 P. of 100 L.-9.12.91(46)

FORM 'A'

FORM OF ORDER SHEET

Court of.....

Case No..... of.....

Serial No. of Order or Proceedings	Date of Order or Proceeding	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3
	26.1.1993.	W.P.No.782 of 1992(M). Present: Mr.Shah Jehan Khan, Advocate for the petitioner. Learned counsel for the petitioner concedes that he has not availed of the right of appeal as provided under section 4(1) of the N.W.F.P. Employees on contract basis (Regulation of Services)(Amendment) Act,1990, therefore, he wants to withdraw the writ petition to avail the available remedy with permission to file a fresh one if deemed necessary. Allowed. Dismissed as withdrawn. C.M.No.900 of 1992. Present: Mr.Shah Jehan Khan, Advocate for the petitioner. Mr.M.Sardar Khan, Advocate-General for the respondents. Status quo order dated 11.10.92 is withdrawn. Fiaz Cat CHIEF JUSTICE. JUDGE. 27/1/93

B.O. 27/1/93

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6-8 27/1/93

27/1/93

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31-5-94

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BEFORE THE N.W.F.P. SERVICE TRIBUNAL PESHAWAR.

Appeal No.169/1993

Date of institution ...27.5.1993

Date of decision ...31.5.1994

Abdul Hamid,M.A.(Pol.Sc.),Subject Specialist Pakistan Studies,Govt; Higher Secondary School,Mingora Swat.....(APPELLANT)

VERSUS

1. Chief Secretary,Govt.of NWFP Peshawar.
2. NWFP,through the Secretary,Government of NWFP,Education Department, Peshawar.
3. Director of Education (Schools) NWFP, Peshawar.
4. Divisional Director Education(Schools) Malakand Division,Saidu Sharif, Swat.
5. Secretary Finance,Govt.of NWFP Peshawar...(RESPONDENTS)

MR.ATIQUR REHMAN QAZI, Advocate. .. For appellant.

MR.MUHAMMAD SHAFI, Government Pleader. .. For respondents.

JUSTICE QAZI HAMID-UD-DIN .. CHAIRMAN.
MR. TAJ MUHAMMAD KHAN .. MEMBER.

17.7.1993

JUDGMENT.

JUSTICE QAZI HAMID-UD-DIN,CHAIRMAN:-This appeal has been filed by Abdul Hamid against the reluctance of respondent No.1 to allow pay of the post of Subject Specialist (BPS-17) and to regularize the service of the appellant against the said post w.e.f. 5.3.1988. His prayers is that the respondents be directed to regularize the appellant's service as a Subject Specialist (BPS-17) w.e.f. 7.3.1988, the date of his assumption of the charge of his duties in accordance with the appointment order dated 5.3.1988.

ATTESTED

The facts leading to the present appeal are that the appellant is qualified and is eligible for the post of Subject Specialist, having obtained M.A.(Pol.Science)Degree from the University of Peshawar in 1987.The appellant contends that the Provincial Government had upgraded the Govt; High School Mingora to the status of Government Higher Secondary School on 19.11.1987 vide Annexure-A on the file, and thereafter applications were invited for the posts of Subject Specialists and the appellant had also applied for one of the said post on 2.3.1988 through Annexure-C.He was appointed as SET (BPS-15) against the vacant post of Subject Specialist in Government Higher Secondary School, Mingora Swat vide order dated 5.3.1988 (Annexure-D). According to the appellant, he was recommended for adjustment against the post of Subject Specialist and accordingly his adjustment order was issued on 26.4.1988, appointing the appellant as Subject Specialist in Pak Studies w.e.f. 19.4.1988, (Annexure-F) and since then he has been working continuously against the said post till date and is therefore, entitled to the pay of the post.The appellant contends that his appointment was on adhoc basis and by virtue of Act VIII of 1989, as amended by Act II of 1990, he stood regularized w.e.f. 5.3.1988.The appellant alongwith several others had filed a writ petition claiming regular status which was ultimately allowed to be withdrawn for availing the departmental remedy by way of appeal to the Chief Secretary NWFP as provided in the Act. The appellant, then filed a departmental appeal (Annexure-H) which has not been decided so far, hence the present appeal before this Tribunal for the redress of his grievance and respectfully maintains that the impugned omission on the part of the respondents to grant regular status to the appellant against the post of Subject Specialist (BPS-17), is ultra-vires of the law, arbitrary, discriminatory, malafide, and without lawful authority.

The respondents No.1 to 5 have filed their reply and contested the appeal. In their reply the preliminary

objections of jurisdiction of the Tribunal, limitation, competency, of the appeal and cause of action have been raised. On factual side it has been stated that the appellant was appointed in BPS-15 on 5.3.88 against the post of Subject Specialist and he had accepted the appointment alongwith the pay scale and had never represented/appealed against his appointment in BPS-15. Moreover, his appointment alongwith others in BPS-15 against the post of Subject Specialist was temporary arrangement. Besides the post of S.Ss were to be filled through the Public Service Commission and the provision of Act VIII of 1989 and those of Act II of 1990 did not apply in the case of the appellant because he was not appointed on contract or adhoc basis in BPS-17. Since he was appointed on temporary basis in B-15 and as such his case was not covered under the aforesaid Acts.

Arguments heard and record perused. -

The appellant has been working as Subject Specialist in Grade-17 w.e.f. 5.3.1988 when he was posted against the vacant post of Subject Specialist in Government Higher Secondary School, Mingora Swat vide order dated 5.3.88(Annexure-D) on the file and subsequently he was recommended for adjustment against the post of Subject Specialist in Pakistan Studies vide order dated 19.4.88 (Annexure-E). Accordingly respondent No.4 issued the adjustment order dated 26.4.88, appointing the appellant as Subject Specialist in Pak.Studies w.e.f. 19.4.88 and thus he has been working continuously against the post of Subject Specialist in Grade-17 eversince the date of his appointment upto-date and therefore, he is entitled to the pay of the post. There is no dispute with respect to the legal position that a person who is working against the post is entitled to the pay thereon and thus the appellant is also entitled to the pay of the post as

ATTESTED

(26) (28)

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Subject Specialist from the date when he was adjusted as such. But the period for which he would be entitled to the pay of Subject Specialist would be reckoned upto 3 years back from the date when a writ petition was preferred in the High Court and the claim beyond that would be time barred. As regards the prayer for regularization of service it is for the department to process the case of selection of the appellant as Subject Specialist. The appeal is accepted in the above terms. Parties are left to bear their own costs and file be consigned to the record.

ANNCUNCED.
31.5.1994.

(JUSTICE QAZI HAMID-UD-DIN)
CHAIRMAN.

(TAJ MUHAMMAD KHAN)
MEMBER.

14.6.94
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ATTESTED

H-2(29)

26-2-97

ANNEXURE-

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr.Justice Saiduzzaman Siddiqui
Mr.Justice Fazal Ilahi Khan
Mr.Justice Muhammad Bashir Jehangiri

Civil Appeals Nos. 18, 128 and 539 to 551 of 1995

On appeal from the judgments of NWFP Service Tribunal dated 31.5.1994 (CA.128/95)& (CA 18/95) and 24.7.1994(in all other cases) passed in appeals Nos.169 & 156 to 168/93 respectively.

CA 18/95
Abdul Hamid — Vs. Chief Secretary, NWFP & others

CA 128/95
Chief Secretary, NWFP & others — Vs. Abdul Hamid

CA 539/95
Sardar Ali — Vs. Chief Secretary, NWFP & others

(in all cases CA 539 to 551/95)

CA 540/95
Jehan Didar

CA 541/95
Muhammad Amin

CA 542/95
Ali Haider

CA 543/95
Hamidul Haq

CA 544/95
Mujtaba Khan

CA 545/95
Biradur Khan

Attested to be True Copy

ATTESTED

Superintendent
Supreme Court of Pakistan
Islamabad

ATTESTED

CA 546/95
Hassan Ali

CA 547/95
Derwash Khan

CA 548/95
Shahid Zafar

CA 549/95
Humayun Khan

CA 550/95
Fazal Iqbal

CA 551/95
Hamayun Khan son of
Jam Mian

.-.-.-.-.-.

For the appellant, in CA 18/95	Mr.Muhammad Munir Peracha, ASC Mr.Ejaz Muhammad Khan, AOR
For Chief Secretary and Secretary Finance.	Mr. Fateh Muhammad, ASC
For appellant, in CA 128/95	Mr.Fateh Muhammad, ASC A.G. NWFP
Respondent.	in person
For appellants in CAs 539 to 551/95.	Syed Safdar Hussain, AOR
For respondents:	Mr. Fateh Muhammad, ASC
Date of hearing:	26.2.1997

.-.-.-.-.-.

ATTESTED

Supdt.
Supreme Court of Pakistan
ISLAMABAD

ATTESTED

(31)

CA 18/95 etc.

JUDGMENT

SAIDUZZAMAN SIDDIQUI, J.:- The above-mentioned 15 civil appeals with the leave of this Court are directed against the two separate judgments of learned N.W.F.P. Service Tribunal, Peshawar, dated 31.5.1994 and 24.7.1994 respectively. As the questions of law arising in these appeals are identical, we propose to dispose of these appeals by a common judgment.

2. Civil Appeal No. 18 of 1995 and 128 of 1995 are directed against the judgment of learned Service Tribunal dated 31.5.1994. Civil Appeal No. 18 of 1995 is filed by a civil servant, Abdul Hamid, while Civil Appeal No.128 of 1995 is filed by Chief Secretary, Government of N.W.F.P. A p p e a l s Nos. 539 to 551/95 are filed against the judgment of learned Service Tribunal dated 24/7.1994, by aggrieved civil servants.

3. The relevant facts for decision of these appeals are that appellants in Civil Appeal No.18/95 and 539 to 551/95 were adjusted/appointed on temporary basis on different dates against the post of Subject Specialist

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Superintendent
Supreme Court of Pakistan
ISLAMABAD

which was a post in BPS.17. Prior to their appointments as Subject Specialists, the appellants were serving as teachers against the posts which were in BPS.15. The appellants were not regularized against the post of Subject Specialist and were also not paid the salary in BPS.17 by the department on the ground that they were not qualified to hold the post of Subject Specialist which was a post in BPS.17. After exhausting departmental remedies, the appellants approached the learned NWFP Service Tribunal through service appeals wherein they prayed for a direction to the department to regularize their services as Subject Specialist in BPS.17 and that they may be paid the minimum salary payable against the post of BPS.17 from the date of their respective appointments. The learned Service Tribunal through the two separate judgments mentioned above though held that the appellants were entitled to minimum pay of BPS.17 for the period the appellants actually worked against the post of Subject Specialist but allowed the claim for arrears of pay only for a period of

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Supreme Court of Pakistan
ISLAMABAD

Certified True Copy

three years from the date the respective appeals were filed before the Service Tribunal by the appellants. The claim for arrears of pay beyond the period of three years was disallowed by the learned Tribunal. In so far the claim for regularization was concerned, the learned Tribunal left the question to be decided by the department in accordance with the law. Leave was granted in Civil Appeal No.18 of 1995 and 539 to 551 of 1995 to consider, whether the observation of learned Tribunal that the appellants were only entitled to three years arrears of pay from the date they filed their respective appeals before the Tribunal, was justified and whether the claim of the appellants beyond the period of three years as mentioned above could not be recovered as it had become time barred. Leave was also granted in Civil Appeal No.128 of 1995 filed by the Government of NWFP to consider the contention of the department whether the appellants could not claim the salary against the post of Subject Specialist (B.17) as they were not qualified to be

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True Copy

Supreme Court
Supreme Court of Pakistan
ISLAMABAD

appointed as Subject Specialist as they had not obtained the decree of B.Ed and M.Ed, which was the required qualification for the said post. We have heard the learned counsel for the appellants as well as learned counsel for the Government of N.W.F.P. in the above appeals.

4. We will first of all take Civil Appeal No. 128 of 1995 filed by the Government of N.W.F.P. against the judgment of Service Tribunal dated 31.5.1994. We may mention here that in so far the judgment of Service Tribunal dated 24.7.1994 in the remaining appeals is concerned, that has not been impugned by the Government of N.W.F.P. The respondent in Civil Appeal No.128 of 1995 was appointed as S.E.T. in B.15 and adjusted against the post of Subject Specialist vide order dated 26.4.1988 w.e.f.19.4.1988. The respondent was denied regularization against the post of Subject Specialist B.17 as well as pay in B.17 on the ground that his appointment as S.E.T. in B.15 was temporary appointment

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Superintendent
Supreme Court of Pakistan
ISLAMABAD

and therefore, he was not entitled to draw salary against the post of Subject Specialist which was a post in B.17. The learned Tribunal upheld the claim of the respondent in Civil Appeal No.128/95 with regard to payment of minimum pay of B.17 as he was holding the post of Subject Specialist continuously from the date of his appointment. However, the learned Tribunal did not allow the claim of the respondent beyond the period of three years from the date he filed writ petition in the High Court on the ground that the pay for the period beyond that period was time barred. The learned counsel for the appellants in Civil Appeal No.128 of 1995 contended that the respondent was not entitled to draw the salary against the post of Subject Specialist which was a post in B.17 as he did not possess the required qualification namely B.Ed or M.Ed. This contention of the appellants in Civil Appeal No.128 of 1995 was rejected by the Tribunal and rightly so in view of the decision in

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Superintendent
Supreme Court of Pakistan
ISLAMABAD

the case of Islamic Republic of Pakistan Vs. Abdul Karim (1978 SCMR 289) and Federation of Pakistan Vs. Shahzada Shahpur Jan (1986 SCMR 991). We, accordingly, find no substance in the contention of the appeallants in Civil Appeal No.128 of 1995 which is, accordingly, dismissed.

(5.) We now take up Civil Appeals Nos. 18/95 and 539 to 551/95. In all these appeals, the appellants had claimed arrears of pay from the date they were appointed as Subject Specialists in B.17. The learned Tribunal though accepted their contention that having worked in the higher post in B.17, they were entitled to get minimum pay of B.17 from the date of their respective appointments but their claim for arrears of salary was allowed only for a period of three years in the civil appeal No.18/95 from the date of filing of writ petition in High Court and in all other cases from the date of institution of appeals before the learned Tribunal by the appellants in each case. The learned Counsel for the Government has not been able to point out

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Superintendent
Supreme Court of Pakistan
ISLAMABAD

any law under which the claim for arrears of salary of the appellants could be denied on the ground that it had become time barred. The learned Tribunal having held that the appellants were entitled to draw the minimum salary in Pay Scale No.17 from the date of their appointment as Subject Specialist, could not reject the part of the claim of their salary on the ground that they were only entitle to recover salary for three years from the date they filed appeals before the Service Tribunal. It may be mentioned here that the question regarding payment of salary of BPS.17 post was being agitated by the appellants from the dates of their appointments, first before the departemntal authority and thereafter before the Service Tribunal. In these circumstances, it was hardly open to argument that their claim for salary for the pariod they worked against the post of Subject Specialist B.17 had become time barred. The controversy with regard to entitlement of pay against the post of B.17 having been agitated and finally decided by the Service Tribunal through the impugned judgments

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Supreme Court of Pakistan
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the appellants were entitled to the arrears of salary for the entire period they have worked against the post of Subject Specialist in B.17 on the basis of minimum pay payable against B.17. We, accordingly, partly allow a p p eals Nos.18 of 1995 and 539 to 551/95 and modify the order of the learned Service Tribunal to the extent that the appellants in these appeals were entitled to the payment of minimum salary against the post of Subject Specilaist B.17 from the dates of their respective appointments.

6. In so far the claim of appellants in the above appeals with regard to their regularization against the post of Subject Specialist B.17 is concerned, the learned Tribunal rightly declined to grant the same as in the first instance the question of regularization of appellants against the post of Subject Specialist is, to be considered by the department. Therefore, no exception can be taken to the judgment of the Tribunal in so far it left the question of regularization of appellants against the post of Subject Specialist B.17

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Superintendent
Supreme Court of Pakistan
ISLAMABAD

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(39)

CA 18/95 etc.

to be decided by the department. The appeals stands disposed of, accordingly, with no order as to costs.

Sd/- Saiduzzaman Siddiqui
Sd/- Fazal Elahi Khan, J.
Sd/- Muhammad Bashir Jehangiri

ISLAMABAD
26.2.1997
NOT APPROVED FOR REPORTING.

Certified to be true copy
Superintendent
Supreme Court of Pakistan
ISLAMABAD

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I-(40)

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GOVERNMENT OF N.W.F.P
EDUCATION DEPARTMENT

NOTIFICATION

No. SO(S)/7-15/93/S.S. Consequent upon the decision of the Supreme Court of Pakistan dated 25.02.1997 the following Subject Specialists are hereby allowed the Minimum pay in BPS-17 ----------against the post of subject specialist ----------on their appointment noted against each.

1.	Mr. Abdul Hamid SS GHSS Mingora Swat	5.3.1988
2.	Mr. Safdar Ai SS GHSS Samar Bah Dir	11.12.1989
3.	Mr. Ahsan Din SS GHSS Samar Bagh Dir	14.12.1989
4.	Mr. Muhammad Amin SS GHSS Samar Bagh Dir	25.7.1990
5.	Mr. Ali Haider SS GHS Khwaza Khela Swat	21.3.1990
6.	Mr. Hamidul Haq SS GHSS Ziarat Talash Dir	13.2.1990
7.	Mr. Mujtaba Khan SS GHS Ouch Dir	24.3.1990
8.	Mr. Haider Khan SS GHSS Wari Dir	29.3.1990
9.	Mr. Hassan Ali SS GHS Charbagh Swat	7.12.1989
10.	Mr. Dervesh Khan SS GHSS Ziarat Talash Dir	3.3.1988
11.	Mr. Sahid Zafar SS GHSS No. 2 Mingora	9.3.1988
12.	Mr. Hamaun Khan SS GHSS Samar Bagh Dir	25.5.1988
13.	Mr. Zafar Iqbal SS GHSS Samar Bagh Dir	17.8.1988
14.		

This order is issued only for the purpose of fixation of their pay subject to the condition that they will not be obtained any seniority against the post of Subject Specialists.

Secretary to Govt. of NWFP
Education Department

Endst No. SO(S)7-15/93/S.S Dated Peshawar the 28th May 1997
Copy forwarded to the

1. Director of Secondary Education NWFP Peshawar.
2. District Accounts Officers Swat and Dir.
3. Officers concerned.

(Muhammad Ilyas)
Section Officer (Schools)

I-(40)

Annexure Q

GOVERNMENT OF N.W.F.P.
EDUCATION DEPARTMENT.

(39)

NOTIFICATION:

NO.SO(S)7-15/95/S.S. Consequent upon the decision of the Supreme Court of Pakistan dated 25.2.1997, the following Subject Specialists are hereby allowed the minimum pay in [illegible] against the Post of Subject Specialist [illegible] noted against [illegible]

1.	[illegible] S.S GHSS Mingora Swat.	
2.	Mr.Sardar Ali SS GHSS Samar Bagh Dir.	5.3.1988.
3.	Mr.Ahsan Didar S.S GHSS Samar Bagh Dir	11.12.1989.
4.	Mr.Muhammad Amin S.S GHSS Samar Bagh Dir	14.12.1989.
5.	Mr.Ali Haidar SS GHSS Khawaza Khela Swat	25.7.1990.
6.	Mr.Hamidul Haq SS GHSS Ziarat Talash Dir	21.3.1990.
7.	Mr.Mujtaba Khan SS GHSS Ouch Dir	13.2.1990.
8.	Mr.Sikandar Khan SS GHSS Wari Dir	24.3.1990.
9.	Mr.Hasan Ali SS GHSS Charbagh Swat	29.3.1990.
10.	Mr.Darvesh Khan SS GHSS Ziarat Talash Dir	7.12.1989.
11.	Mr.Sahid Zafar SS GHSS No.2 Mingora	3.3.1988
12.	Mr.Humayun Khan SS GHSS Samar Bagh Dir	9.3.1988
13.	Mr.[illegible] Iqbal SS GHSS Samar Bagh Dir	25.5.1988
14.	[illegible] Khan SS [illegible] Dir	17.8.1988
		5.5.1988.

This order is issued only for the purpose of fixation of their pay subject to the condition that they will not be entitled to claim any seniority against the post of Subject Specialists.

SECRETARY TO GOVT: OF NWFP
EDUCATION DEPARTMENT.

Endst No.SO(S)7-15/95/S.S. Dated Peshawar, the 28th May, 1997.

Copy forwarded to the:-

1. Director of Secondary Education NWFP Peshawar.
2. District Accounts Officers Swat and Dir.
3. Officers concerned.

(MUHAMMAD ILYAS)
Section Officer(Schools)

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GOVERNMENT OF N.W.F.P
EDUCATION DEPARTMENT
Dated Peshawar the 15.2.1999

NOTIFICATION

No. SO(S)/7-15/95/Muhammad Riaz. Consequent upon the decision of the Service Tribunal Peshawar dated 16.7.1996 Mr. Muhammad Riaz Subject Specialist (Pak Study) GHSS New Darband Mansehra presently GHSS Baffa mansehra is hereby allowed granted pay in BPS-17 alongwith increment against the post of subject specialist w.e.f 23.5.1988.

2. This order is issued only for the purpose of fixation of his pay subject to the condition that he will claim his seniority against the post of subject specialist after acquiring the prescribed qualification.

Secretary to Govt. NWFP
Education Department, Peshawar

Endst: No. SO(S)7-15 Muhammad Riaz Dated Peshawar the 15.8.1999.
Copy forwarded to the:

1. Director of Secondary Education with reference to his letter No. 754 dated 4.12.19998.
2. District Education Officer (M) Secondary Mansehra.
3. District Accounts Officer, Mansehra
4. Principal, GHSS New Darband Mansehra
5. Principal, GHSS, Baffa Mansehra
6. Officer concerned.

(Muhammad Ilyas)
Section Officer (COORD)

(41)

GOVERNMENT OF N.W.F.P.
[illegible]

NOTIFICATION

Dated Peshawar the 15.2.1999.

No.30(S)7-15/95 Muhammad Riaz. Consequent upon the decision of the Service Tribunal [illegible] Peshawar dated 10.7.1996, Mr. Muhammad Riaz, Subject Specialist(Pak Study) GHSS New Darband Mansehra, presently GHSS Baffa Mansehra is hereby allowed graded pay in BPS-17 alongwith increment against the post of subject specialist w.e.f. 23.5.1988.

2. This order is issued only for the purpose of fixation of his pay subject to the condition that he will claim his seniority against the post of Subject Specialist after acquiring the prescrib qualification.

SECRETARY TO GOVT.OF N.W.F.P.
EDUCATION DEPTT: PESHAWAR.

Endst: No.30(S)7-15 Muhammad Riaz Dated Peshawar the 15.2.1999.

Forwarded to the:-

1. Director of Secondary Education with reference to his letter No.754 dated 4.12.1998.
2. District Education Officer(M)Secondary Mansehra.
3. District Accounts Officer, Mansehra.
4. Principal,GHSS New Darband Mansehra.
5. Principal,GHSS, Baffa, Mansehra.
6. Officer concerned.

(MUHAMMAD ILYAS)
SECTION OFFICER(COORD)

ATTESTED

BEFORE THE NWFP SERVICE TRIBUNAL PESHAWAR

J-(42)

APPEAL NO. 2175/1997

Date of institution – 21.10.1997
Date of decision - 17.08.2004

Abdul Hamid, Subject Specialist,
GHSS Fatehpur District Swat.....(APPELLANT)

Versus

1.Secretary Education Department, NWFP Peshawar.
2.Chief Secretary NWFP Peshawar.
3.Accountant General NWFP Peshawar.
4.Director (Seedry) Education NWFP Peshawar.....(RESPONDENTS)

Mr.Atiqur Rehman Qazi Advocate..... .....For appellants.
Mr.Zulfiqar Ali Govt. Pleader..... .....For respondents.

MIAN SAHIB JAN ... .MEMBER.
MR.MUHAMMAD SHAUKAT... ....MEMBER.

JUDGMENT

MIAN SAHIB JAN, MEMBER:-This appeal has been filed by the appellant against the order dated 28.5.1997 whereby while allowing the minimum pay in BPS-17 alongwith increments against the post of Subject Specialist from the date of his appointment , respondent No. 1 denied the appellant's right to claim seniority of Subject Specialist with the prayer that the respondents be directed to delete the last five lines of the impugned order, allowing him seniority from the date of his appointment as Subject Specialist and all the consequential benefits.

2. Brief facts of the case as narrated in the memo of appeal are that the appellant was initially appointed as Subject Specialist on 05.03.1988 and was allowed fixed pay in BPS-15 instead of minimum of BPS-17. The appellant initially held the master Degree at the time of his appointment and he obtained his B.Ed Degree subsequently in 1993. Having thus become fully qualified for the post of Subject Specialist (BPS-17) the respondents were required to regularize his service as a Subject Specialist

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from the date of his initial appointment. As the respondents declined to allow the benefits of service due to the appellant, he was obliged to approach this Tribunal, where his appeal was allowed entitling him to the pay of the post in BPS-17 from the date of his appointment but he was not allowed full arrears due. The question of regularization of his service was left to be dealt with by the department. Therefore, the appellant approached the Hon'ble Supreme court of Pakistan for the grant of the claim and the respondent department also challenged the decision of the Service Tribunal which were disposed vide judgment dated 26.2.1997 granting inter-alia, the relief of arrears of pay of BPS-17 from the date of appointment. The question of regularization of his service as Subject Specialist was however left to be decided by the department but they have failed to regularize the service of the appellant so far. The appellant made a departmental appeal on 03.07.1997 but with no response.

3. The appellant has assailed the impugned order on the grounds that the qualification prescribed for the post of Subject Specialist was Master Degree in the subject with B.Ed. The appellant possessed the Master Degree in the subject at the time of his initial appointment and he secured the B.Ed Degree in the year 1993 subsequently. The requirement of B.Ed degree as a pre-requisite qualification was relaxed, so this additional qualification is no more required. Any way the appellant possessed both the qualifications and was eligible for regular appointment. The Hon'ble Supreme Court of Pakistan having allowed the pay of the post, the respondents are bound to comply and they have no other option.

4. The following 13 other subject Specialists appointed in a similar way and working so far as irregular appointees have also submitted appeals

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EXAMINER
NWFP Service Tribunal
Peshawar.

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before the Tribunal having the same grievance and seeking appointment on regular basis from the date of their appointment as subject specialists:

S.No.	Name of Subject Specialist	Appeal No. and Date.	
1.	Fazal Iqbal	2176/1997	21.10.1997
2.	Hamayun Khan	2177/1997	21.10.1997
3.	Darwesh Khan	2178/1997	21.10.1997
4.	Shahid Zaffar	2179/1997	21.10.1997
5.	Jehan Didar	2180/1997	21.10.1997
6.	SardarAli	2181/1997	21.10.1997
7.	Muhammad Amin	2182/1997	21.10.1997
8.	Mujtaba khan	2183/1997	21.10.1997
9.	Beradar Khan	2184/1997	21.10.1997
10.	Ali Haidar	2185/1997	21.10.1997
11.	Hamidul Haq	2186/1997	21.10.1997
12.	Hussain Ali	2187/1997	21.10.1997
13.	Humayun Khan	2188/1997	21.10.1997

5. The arguments of the learned counsel for the appellant and learned Government Pleader for the respondents have been heard and record perused.

6. The learned counsel for the appellant contended that the appellants were appointed against the posts of Subject Specialist in the years 1988 to 1990 when no qualified persons were available for the job. The appointments are neither on contract basis nor on adhoc basis but their appointments orders show that the appellant were appointed on regular basis. They have been allowed the pay scale of their posts i.e. BPS-17 by this Tribunal as well as the Hon'ble Supreme Court of Pakistan but their services are yet to be regularized. They have been working against the posts of Subject Specialists satisfactorily for the last over 15 years and have gained sufficient experience

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NWFP Service Tribunal
Peshawar.

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of the job and hence their services need to be regularized from the date of their appointment. (45)

7. The learned Government Pleader argued that the posts of Subject Specialists fall within the purview of the Public Service Commission and no regular appointment to the post can be made except on the recommendation of the Public Service Commission. The Service Tribunal and Hon'ble Supreme Court of Pakistan have allowed the pay scale of the post i.e. BPS-17 for the reason that the appellants are actually working against the post of Subject Specialist whereas their regularization of service was left by the courts to be decided by the department in the light of the relevant rules on the subject.

8. Under the rules, initial appointment to the posts of Subject Specialists (BPS-17) are required be filled by the Public Service Commission after advertising the posts minimum qualification for the post is M.A/M.Sc in the subject plus B.Ed. The post against which the appellants were appointed were neither advertised nor the appointments were made through the Public Service Commission nor any criterion was followed so as to ensure some level of merit while making these appointments. The order of appointments of the appellants have been carefully examined which reveal that the following irregularities were committed in these appointments;

a. Initial appointment to the post of subject specialist (B-17) under the rules , is made through the Public Service Commission but the Commission was by-passed while making these appointments.

b. The posts were required to be advertised by the Public Service Commission or by the departmental authority, as the case may be, as provided in sub rule (2) of rule 10 of the NWFP Civil

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NWFP Service Tribunal
Peshawar.

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Servants(Appointment, Promotion and Transfer) Rules. However, the posts against which the appellants were appointed were not advertised and hence eligible candidates were deprived of the opportunity to apply for these posts.

c. The appointments were made on pick and chose basis without following any criterion in disregard of merit. They were appointed through single orders or order of groups of 2 or 3 persons. Neither applications were invited nor any Committee formed to scrutinize the applications nor any criterion was followed to maintain some level of merit.

d. Minimum qualification prescribed for the post of subject specialist (B-17) is M.A/M.Sc. B.Ed. However, 9 of the above noted appellants did not possess B.Ed degree and hence were not qualified for the post at the time of their appointments. 8 of the appellants were appointed as SETs in BPS-15 and adjusted against the vacant posts of subject specialist as there were no vacant posts of SETs against which appointments were made. The posts of subject specialists are placed in BPS-17 but the appellants were appointed in BPS-15. The appellants having not obtained B.Ed Degree were also not qualified for the post of SET then in BPS-15.

e. The vacant posts required to be filled by initial recruitment are distributed among merit and five zones declared on the basis of population so as to ensure due representation of all the regions in the provincial services. While making these appointments, the zonal allocation formula has been disregarded thus

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depriving deserving candidates of other Zones from their due rights.

9. The appellant subsequently agitated that they were performing the duties of the post of subject specialist (BPS-17) but they were appointed in BPS-15 fixed, therefore, they deserved to be granted BPS-17 with increments and their services regularized. The NWFP Service Tribunal vide judgments on Appeal No. 169/1993 and 156 to 168/1993 and the Hon'ble Supreme Court of Pakistan vide judgment dated 27.02.1997 allowed the pay scale of the post i.e. BPS-17 with increments from the date of their appointments with arrears. However, with regard to the request of the appellants for regularization of their services, the Hon'ble Supreme Court upheld the judgment of the Service Tribunal that the question of regularization of services of the appellants against the posts of subject specialists (B-17) would be decided by the department.

10. The learned counsel for the appellants also submitted an application dated 12.12.2003 alongwith a copy of the judgment of this Tribunal dated 16.07.1996 and Notification dated 15.2.1999 issued by the respondent department allowing graded pay in BPS-17 to one Muhammad Riaz , Subject Specialist w.e.f. 23.05.1988 and seniority from the date after acquiring qualification prescribed for the post. The learned counsel for the appellant argued that the appellants be also given regularization and seniority from the date they acquired the qualification prescribed for the post. Interestingly the Service Tribunal in its judgment dated 16.7.1996 on Appeal No.92 of 1995 had directed the department either to absorb the appellant in BPS-15 or to grant him BPS-17 as subject specialist from the date of his appointment. There was no mention of regularization of his service or seniority in the judgment but the respondent department, on its own accord, had added para 2 to its notification dated 15.2.1999 that the appellant "will claim seniority against the

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Tribunal

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post of subject specialist after acquiring the prescribed qualification." and resultantly the appellant's services were regularized w.e.f. 17.10.1992. The appellant again came to the Tribunal in Appeal No. 649 of 2000 against the aforesaid notification seeking regularization from the date of his appointment to service i.e. 24.5.1988. The Tribunal in its short order dated 01.07.2002 declared that since the appellant has already been given seniority by the respondent department w.e.f. 17.10.1992, therefore, the Tribunal needed not to discuss the same issue again in detail and the appeal was decided accordingly. It is was for the respondent department to investigate as to how a judgment of the Service Tribunal was implemented 2 years and 6 months after its announcement and the appellant was also given seniority from the date of acquiring prescribed qualification vide notification dated 15.02.1999 beyond the scope of judgment of the Tribunal. However, the judgment of the Tribunal passed in case of Muhammad Riaz is not applicable to the case of appellants because of the fact that the Tribunal had decided the case of appellants vide two judgments dated 31.05.1994 and 24.07.1994 in Appeals No. 156 to 168 of 1993and Appeal No. 169 of 1993 which had been challenged in the Hon'ble Supreme Court of Pakistan by the Government as well as the appellants and decision of the Hon'ble Supreme Court on those civil appeals was announced on 26.2.1997 upholding the view of the Tribunal that regularization of service of subject specialists would be decided by the department.

11. The present appeals have been filed by the appellants for regularization of their services from the date of their appointment with all back benefits thereby meaning the grant of seniority, selection grade and promotion on the basis of their seniority from the date of their appointments to service. The Tribunal in its earlier decision upheld by the Hon'ble Supreme Court of Pakistan had observed that regularization of services of the appellants would

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be decided by the Department. The Tribunal still holds the same view on regularization of services of the appellants on the following grounds;

a. As stated earlier, the appointments of the appellants were made on pick and chose, political and other consideration in violation of rules with regard to advertising of the posts, selection through the Public Service Commission, zonal allocation formula in total disregard of merit. The appointments are therefore, irregular and illegal ab-initio which cannot be validated with the justification only of long time passed since after their appointments. The respondent department knowingly that the appellant's appointments were irregular, is sitting on the case for the last over 15 years perpetuating its wrongful action. The appellants on the other hand are trying to get their irregular services regularized at the cost of others, which would be a proposition far from justice.

b. The Tribunal as well as the Hon'ble supreme Court of Pakistan have allowed BPS-17 with increments to the appellants being the pay scale of the post against which they had been performing duties since the date of their appointments which was their right but the regularization of their services was left to the Department to consider the same in the light of the rules. BPS-17 with increments to the appellants working against the posts of subject specialist (B-17) does not necessarily mean that their services should be regularized from the date of their appointment to the said posts to the detriment of damaging the vested rights of subject specialists already appointed as such on regular basis and on merit.

12. In view of the above discussion, the Tribunal is not inclined to be come a party and contribute to validate or to perpetuate any irregular and illegal appointment made in utter violation of rules and merit and to make any intervention with regard to regularization of service and the consequential benefits including seniority to such irregular/illegal appointees at the cost of other qualified subject specialists appointed on regular basis to the service on merit so far. The Tribunal as per its earlier judgments dated 31.5.1994 and 24.07.1994 upheld by the Hon'ble Supreme Court of Pakistan vide its judgment dated 26.2.1997 again directs the respondent department to settle the long standing issue of regularization of services of the appellants as per rules in a reasonable span of time. The case is, therefore, remanded back to the

ATTESTED
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NWFP Service Tribunal
Peshawar.

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department for necessary action. This appeal alongwith all the other 13 appeals mentioned in para-4 above are disposed of accordingly.

13. No order as to costs. File be consigned to the record.

ANNOUNCED.

17.8.2004.

(MIAN SAHIB JAN)
MEMBER

(MUHAMMAD SHAUKAT)
MEMBER

Certified to be true copy.
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 26.8.2004
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ANNEXURE "K"

GOVERNMENT OF N.W.F.P
SECONDARY & HIGHER – EDUCATION DEPTT:
DATE PESHAWAR THE – 27-10-2001

K-51

NOTIFICATION

No. so (s) /2-3/2001:

The Competent Authority In Consultation With The Departmental Promotion Committee Is Pleased To Allow Move – Over From Bps – 17 To Bps – 18 In Respect Of The Following Officers Of School Admn : Branch (Man Section) With Effect From The Date Noted Against Each : -

S.NO.	NAME OF THE OFFICER.	Date of entitlement Of move – over to B-18.
1.	Mr. ,MUZAMIL KHAN., librarian , GHSS No .4 , D.I khan	1-12-1999.
2.	Mr. Awal Khan, librarian, GHSS, Sherpao, Charsedda.	1-12-1999.
3.	Mr. Muhammad Basher, H.M, GHS, Datta, Mansehra.	1-12-1999.
4.	Mr. Muhammad Nasir , 4.M , GHS , Machi , Mardan	1-12-2000.
5.	Mr. Zahid khan, S.S, GHAA, ouch Dir.	1-12-2000.
6.	Mr. Shultan Mahmood , I/C S.S , GHSS , ouch dir	1-12-2000.
7	Mr. Hamayun, S.S, GHSS, Madayan, swat.	1-12-2000.
8	Mr. Abdul Hamid, S.S. GHSS, Madayan, swat.	1-12-2000.
9.	Mr. Hamayun khan, s.s GHSS, Totakan, Malakand.	1-12-2000.
10.	Mr. Muhammad Ibrahim, S.S. GHSS, Urmar Payan Peshawar.	1-12-2000.
11.	Mr. Muhammad Salim , I/C H.M GHS No.3, D.I. khan	1-12-2000.
12.	Mr. Sardar Hussain. Set, GHS, Puran Shangla.	1-12-2000.
13.	Mr. Sher Dad khan, I/C H.M GHS, Bannu.	1-12-2000.
14.	Mr. Shah zaman, I/C S.S. GHS, Mohar, Mansehra.	1-12-2000.
15.	Mr. Ismail, Set , GHS No. 2, Peshawar Cantt:	1-12-2000.
16.	Mr. Abdul Samad, I/C H.M GHS, Hund ,Swabi.	1-12-2000.
17.	Mr.Syed Muhammad Akbar shah , set GHSS ,S/Fort, Charsadda	1-12-2000.
18.	Mr. Umar khan , I/C S.S GHSS , Deraoand , Peshawar .	1-12-1999.
19.	Mr. Muhammad Sher khan ,SFT, GHS, Azan Killa, Bannu.	1-12-2000.
20.	Mr. Shasur Rehman, Set, GHS, Shamsha abad.	1-12-2000.
21.	Mr. Taj Muhammad khan, Set, MGS, Sangota, Swat.	1-12-2000.
22.	Mr. Jnayatullah , set , GHS. Giloti , D.i khan	1-12-2000.
23.	Mr. Kifayatullah Jan , set , GHS, Bannu	1-12-2000.
24.	Mr. Fazile Rabbani, Set, Ghss, Shabqadar fort Charsadda.	1-12-2000.

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K-51

GOVERNMENT OF N.W.F.P.
SECONDARY & HIGHER EDUCATION DEPTT:

Dated Peshawar the 27-10-2001.

NOTIFICATION.

NO.SO(S)/2-3/2001:- The Competent Authority in consultation with the Departmental Promotion Committee is pleased to allow move-over from BPS-17 to BPS-18 in respect of the following officers of School Admn: Branch(Men Section)with effect from the date noted against each:-

S.NO.	Name of the Officer.	Date of entitlement of move-over to B-18.
1.	Mr.Muzamil Khan,Librarian,GHSS No.4, D.I.Khan.	1-12-1999.
2.	Mr.Awal Khan, Librarian,GHSS,Sherpao, Charsadda.	1-12-1999.
3.	Mr.Muhammad Bashir,H.M.,GHS,Datta,Mansehra.	1-12-1999.
4.	Mr.Muhammad Nasim,H.M.,GHS,Machi,Mardan.	1-12-2000.
5.	Mr.Zahid Khan,S.S,GHSS,Ouch Dir.	1-12-2000.
6.	Mr.Sultan Mehmood,I/C S.S.,GHSS,Ouch Dir.	1-12-2000.
7.	Mr.Hamayun, S.S.GHSS,Madayan,Swat.	1-12-2000.
8.	Mr.Abdul Hamid, S.S. GHSS,Madayan,Swat.	1-12-2000.
9.	Mr.Hamayun Khan,S.S.,GHSS,Totakan,Malakand.	1-12-2000.
10.	Mr.Muhammad Ibrahim,S.S. GHSS,Urmar Payan, Peshawar.	1-12-2000.
11.	Mr.Muhammad Sabir,I/C H.M.,GHS NO.3,D.I.Khan.	1-12-[illegible]
12.	Mr.Sardar Hussain,SET,GHS,Puran Shangla.	1-12-2000.
13.	Mr.Sher Dad Khan,I/C S.S. GHSS,Bannu.	1-12-1999.
14.	Mr.Shah Zaman, I/C H.M.GHS,Mohar,Mansehra.	1-12-2000.
15.	Mr.Ismail, SET,GHS No.2,Peshawar Cantt:	1-12-2000.
16.	Mr.Abdus Samad,I/C H.M. GHS,Hund,Swabi.	1-12-2000.
17.	Syed Muhammad Akbar Shah,SET,GHSS,S/Fort, Charsadda.	1-12-2000.
18.	Mr.Samander Khan,I/C S.S. GHSS,Baraband, Mansehra.	1-12-1999.
19.	Mr. Muhammad Sher Khan,SET,GHS,Azim Killa, Bannu.	1-12-2000.
20.	Mr.Shamsur Rehman,SET,GHS,Charshad Abad, Mardan.	1-12-2000.
21.	Mr.Taj Muhammad Khan,SET,MGS,Sangota,Swat.	1-12-2000.
22.	Mr.Inayatullah,SET,GHS,Giloti,D.I.Khan.	1-12-2000.
23.	Mr.Kifayatullah Jan,SET,GHSS,Bannu.	1-12-2000.
24.	Mr.Fazle Rabbani,SET,GHSS,Shabqadar Fort, Charsadda.	1-12-2000.

Vice Principal
GHSS, Samarbagh (Dir)

Contd: Page- 2 -

S.NO.	Name of the Officer.	Date of entitlement of move-over to B-16.
25.	Mr.Habibullah, SET,GHSS,Shabqadara Fort, Charsadda.	1-12-2000.
26.	Mr.Naqibullah Khan,SET,GHS,Chorlwala,Bannu.	1-12-2000.
27.	Mr.Hakeem Khan, SET,GHS,Laban Bandi,Haripur.	1-12-1997.
28.	Mr.Muhammad Hanif,I/C H.M.,GHS,Kishowra,Swat.	1-12-1995.
29.	Mr.Abdullah Jan,SET, GMS,Kot Nawaz,Tank.	1-12-1995.
30.	Mr.Ashnagharay,I/C H.M.GHS,Kuz Kana,Shangla Swat.	1-12-2000.
31.	Mian Said Room,SET,GHSS,Madayn,Swat.	1-12-2000.
32.	Mian Gulzada,SET,GMS,Marghuzar,Swat.	1-12-2000.
33.	Mr.Faqir Gul, SET,GHSS,Madain,Swat.	1-12-2000.
34.	Mr.Gulzaman, I/C H.M.,GHS,Baboorate,Chitral.	1-12-2000.
35.	Mr.Imdad Ali,SET,ASDEO , O/O DEO(M/S), Dir(Upper).	1-12-2000.
36.	Mr.Kifayatullah,SET,GHSS,Utmanzai,Charsadda.	1-12-2000.
37.	Mr.Jan Pervez, ADEO(Insp:)O/O DEO(M/S)Charsadda.	1-12-2000.
38.	Mr.Sher Ali Khan,SET,GHS No.1,Charsadda.	1-12-2000.
39.	Mr. Munsif Gul, SET,GHS,Serai Nimmat Khan,H.Pur.	1-12-2000.
40.	Mr.Ali Jan, SET,GHSS,Khall, Dir(Upper).	1-12-2000.
41.	Mr.Shad Muhammad,SET,GHS No.1, Sarai,Mkd.Agency.	1-12-2000.
42.	Mr.Muhammad Imran,SET,GHS No.1 Havellian,A/Abad.	1-12-2000.
43.	Mr.Abdur Rashid,SET,GHS,Ghodial,Mansehra.	1-12-2000.
44.	Mr.Abidullah, S.S.,GHSS Wari Dir(Upper).	1-12-2000.
45.	Mr.Fazal Iqbal, S.S. GHSS,Samar Bagh,Dir(Lower).	1-12-2000.
46.	Mr.Muhammad Zaheer,Ex-Headmaster,GHS,Battagram.	1-12-1995.
47.	Mr.Taj Muhammad,Librarian,GEC(Male),D.I.Khan.	1-12-1999.
48.	Mr.Roshan Din, Instructor,GEC(Male),Haripur.	1-12-1996.
49.	Mr.Faizur Rehman, I/C H.M.,GHS,Kenai,Battagram.	1-12-2000.
50.	Mr.Iqbal Hussain, I/C S.S.,GHS,Totakan,Malakand.	1-12-2000.
51.	Mr.Abdul Haseeb, I/C H.M.GHS Batai, Buner.	1-12-2000.
52.	Malik Allah Wasaya,SET,GHS,Hassa,D.I.Khan.	1-12-2000.
53.	Mr.Muhammad Ibrahim Khan,SET,GHSS,Serai Maurang, Lakki.	1-12-2000.
54.	Mr.Ghulam Raziq, SET,GHS,Gagra,Buner.	1-12-2000.
55.	Mr.Ibadullah,ADEO(P&D) O/O DEO(M/S),Charsadda.	1-12-1999.
56.	Mr.Faizur Rehman, ADEO(M/S),Peshawar.	1-12-2000.
57.	Mr.Nishad Gul, SET,GHS,Battagram(Charsadda).	1-12-2000.
58.	Mr.Shabir Ahmad, GHS,Mangra,Charsadda.	1-12-2000.
59.	Mr.Muhammad Alqab,SET,GMS,Marchaki Banda,Bajjar.	1-12-2000.
60.	Mr.Muhammad Luqman, SET,GHS,Chitar,Swat.	1-12-2000.
61.	Mr.Saeed Gul, SET,GHS,Kot(T.Bhai),Mardan.	1-12-2000.
62.	Mr.Muhammad Ayub,SET,GHS,Madudia, Swat.	1-12-2000.
63.	Mr.Tasir Jan,I/C S.S GHSS,Mingora,Swat.	1-12-2000.

Vice Principal
GHSS, Samarbagh Dir(L)

Contd: Page- 3 -

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S.NO.	Name of the Officer.	Date of entitlement of move-over to B-18.
64.	Mr.Sabir Hussain,SET,GHS No.2,Mansehra.	1-12-2000.
65.	Mr.Inamullah Khan,Senior Instructor,Govt:Agro: Tech: Teacher Training Centre,Peshawar.	1-12-2000.
66.	Mr.Muhammad Farid,I/C H.M.,GHS,Inzari,Nowshera.	1-12-2000.
67.	Mr.Masood Gul,SET,GHS No.2,Peshawar City.	1-12-2000.
68.	Mr.Said Zarin,I/C S.S. GHSS,B/Khela,Swat.	1-12-2000.
69.	Mr.Rehman Shah, SET,GHS,Tarappi,Mansehra.	1-12-2000.
70.	Mr.Behram Khan, SET,GHS,Daerai, Swat.	1-12-2000.
71.	Mr.Arangzeb,SET,GHSS,Sherpao, Charsadda.	1-12-2000.
72.	Mr.Faqir Muhammad,SET,GHS No.2,Peshawar City.	1-12-2000.
73.	Mr.Muhammad Zamin,SET,GHS,B/Khela,Swat.	1-12-2000.
74.	Mr:Saifullah SET,GHS,Balakot Mansehra.	1-12-2000.
75.	Mr:Abdur Rahim ,SET GHS,Shinkiari,Mansehra	1-12-2000.
76.	Mr:Sher Daraz Khan , SET GHS.Kotka	1-12-2000.
77.	Mr:Muhammad Aslam,SET,GHS,Takia Sheikhan,A/Abad	1-12-2000.
78.	Mr:Muhammad Sarwar,SET,GHS,C.C.Thana,Malakand.	1-12-2000.
79.	Mr:Ismatullah Khan,ADEO(M/S)Lakki.	1-12-2000.
80.	Mr.Hamidullah Khan,SET, GHS No.2 Lakki.	1-12-2000.
81.	Mr.Fazli Nawab, SET, GHS,Bagai,Swabi.	1-12-2000.
82.	Mr.Abdul Ghafoor,SET, GHS,Balogram,Swat.	1-12-2000.
83.	Mr.Faridoon, SET,GMS,Haibatgram,Malakand.	1-12-2000.
84.	Mr.Shamsul Islam Anjum, Ex-Rtd:Principal,GHS, Khanpur, Haripur.	1-12-1996.
85.	Mr.Sardar Khan,Instructor,GTC(M),Mansehra.	1-12-1996.
86.	Mr.Gul Dad Khan,I/C S.S.,GHSS,Doaba,Hangu.	1-12-2000.
87.	Mr.Abdul Khaliq, SET,GMS,Kalo Lund Khawar,Mardan.	1-12-2000.
88.	Mr.Mumtaz Khan,SET,GHSS,Pir Paddi,Mardan.	1-12-2000.
89.	Mr.Bakht Ali, SET,GMS,Sara Buner.	1-12-2000.
90.	Mr.Shah Baz Khan, SET,GGSS,Ziarat Talash,Dir.	1-12-2000.
91.	Mr.Khush Noor Muhammad,SET,GMS,Takia Singan, Peshawar.	1-12-2000.

SECRETARY TO GOVT. OF NWFP
SECONDARY & HIGHER EDUCATION DEPTT:

ENDST: NO. & DATE EVEN.

Copy forwarded for information & n/action to:

1- The Director Secondary Education,NWFP,Peshawar.
2- The Accountant General,NWFP,Peshawar.
3- The Accounts Officers of the Distt:/Agency Concerned.
4- The Officers concerned.
5- The P.S. to Secretary Education,S&HE Deptt: NWFP.

ATTESTED

(S.ISLAM SHAH)
SECTION OFFICER(SCHO EE).

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ANNEXURE L

Directorate of Schools & Lit:-
N.W.F.P. Peshawar.

No 2721 /F.No.140/Estab:I/
Abdul Hamid Butt SS.

Dated Peshr: the 20/4 /2005.

To

The Section Officer(Schools)
Schools & Lit:Deptt:Govt:of,
N.W.F.P. Peshawar.

SUBJECT:- IMPLEMENTATION OF SERVICE TRIBUNAL NWFP PESHAWAR ORDER DATED 17-8-2004 PASSED IN SERVICE APPEAL NO.2175/1997.

Memo:-

I am directed to refer to your letter No.SO(S)1-4/2005/ Regularization SS/Seniority dated 26-3-2005 on the subject cited above and to return the complete 5 sets duly signed by Director Schools and Literacy, N.W.F.P. Peshawar as desired please.

Encls: As Above.

Deputy Director(Estab:)
Directorate of Schools & Lit:-
N.W.F.P. Peshawar.

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WORKING PAPER FOR DPC

Subject: *Regularization of services of subject specialists with benefit of seniority*

The following applicants were appointed as subject specialists in relevant subject on different dates noted against each in various higher secondary schools and were allowed BPS 15 fixed instead of BPS 17

S.No	Names of SS	Date of Appointment	Date of Passing Bed
1.	Abdul Hameed	Vide no.4298-403 /ST/V/87-88 dated 5/3/88 Annexure "A"	(8 May 1994)
2.	Fazal Iqbal	Vide no.2882-85.ST.V.dated 17/2/88 Annexure "B"	(8 May 1994)
3.	Hamayoon	Vide no.4235-40/S.T.V dated 3/3/88	(6 May 1993)
4.	Darwash Khan	Vide no.4235-40/S.T.V dated 3/3/88 Annexure "C"	(25 May 1996)
5.	Jehan Didar	Vide no.35407-10 dated 14/12/89 Annexure "D"	(27 April 1992)
6.	Sardar Ali	Vide no.35209-12 dated 11/12/89 Annexure "E"	(16 April 1998)
7.	Mohammad Amin	Vide no.1325-28A-14/S.S90 dated 25/7/90 Annexure "F"	(15 April 1993)
8.	Mujtaba Khan	Vide no.3209-12/Mujthaba dated 24/3/90 Annexure "G"	(6 May 1996)
9.	Beradar Khan	Vide no.3168-76A-14/S.S /90 dated 21/3/90 Annexure "H"	(19 November 1990)
10.	Ali haider	Vide no. .3168-76A-14/S.S ECO /90 dated 21/3/90 Annexure "H"	(26 November 1989)
11.	Hamid-ul-Haq	Vide no.222-26/ 14/SET/90 dated 13/2/90 Annexure "I"	(26 November 1989)
12.	Hussain Ali	Vide no.34812-18 dated 7/12/1989 Annexure "J"	(27 Oct 1992)
13.	Hamayoon Khan	Vide no.9699-704/5-12 dated 25/5/1988 Annexure "K"	(8 November 1990)

At the time of their appointment as subject specialists they were holding simple master degrees. They however obtained B.Ed degrees in due course of

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time . In the meanwhile the govt :passed two acts regularizing all govt: employees ,but as they were not regularized as they were not qualified then. The above mentioned officers made an appeal for their regularaization. They finally went in appeal before the NWFP Service Tribunal Peshawar. Annexure "L".

The NWFP Service Tribbunal in its judgement, dated 31-5-1994 Annexure "M"decided as under:-

> "There is no dispute with respect to the legal position that a person who is working against the post is entitled to the pay thereon and thus the appellant is also entitled to the pay of the post as subject specialist from the date when he was adjusted as such. But the period for which he would be entitled to the pay of the subject specialist would be reckoned up to three years back from the date when writ petition was preferred by him in high Court Peshawar and the claim beyond that would be time barred. As regards the prayer for regularization of his services it is for the Deptt to process the case of selection of the appellant as subject specialist."

The Govt filed civil appeal No-128/1995 against the judgement of Services Tribunal dated 31-5-1994, in honorable Supreme Court of Pakistan, which was accordingly, dismissed. (Annexure: "N")

The applicant also went in appeal before the Supreme Court of Pakistan against the decision of N.W.F.P Services Tribunal. During this period the applicants have also obtained B.Ed degrees dates mentioned on page 1.

The honorable Supreme Court of Pakistan modified the order of the N.W.F.P Services Tribunal granting pay/arrear to the applicants from the dates of their respective appointments (Annexure "O")

So for the regularization of the services of the applicants as subject specialist were concerned, it was left to be decided by the Deptt (Annexure "P")

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The applicants again came to the Deptt and they were allowed BPS-17 with increments and arrears from the dates of their respective appointments, vide notification No.SO(S)7-15-/93/S.S dated 28-5-1997 Annexure "Q". But they were not regularized. During this period an identical case of Mr. Mohammad Riaz Subject Specialist was allowed BPS-17 by NWFP Services Tribunal in appeal no 92/95 dated 16-07-1996 (Annexure "R").The Deptt was directed,

> " May either absorb the appellant in BPS-15 or to grant him BPS-17 as subject specialist from the date of his appointment"

Nothing was mentioned about the regularization of his services and seniority in the said judgment but the Deptt at its own accord had added Para 2 in its notification dated 15-2-1999 that the applicant will claim seniority against subject specialist post after acquiring the prescribed professional qualification and his services were regularized W.e.f 17-10-1992 vide notification attached (Annexure "S").

The applicant again went in appeal to N.W.F.P Services Tribunal Peshawar for their regularization and seniority against the post of subject specialist BPS-17 from the date of their appointment on the analogy of Mr. Muhammad Riaz Subject Specialist G.H.S.S Baffa Mansera

N.W.F.P Services Tribunal remanded back the case to Deptt directing that

> " The Tribunal as per its earlier judgement dated 31-05-1994 and 24-07-1994 upheld by honorable Supreme Court Of Pakistan Vide its judgment dated 26-02-1997 again directs the respondent Deptt to settle the long standing issue of regularization of services of the appellants as per rules in a reason able spanc of time and the case is therefore remanded back to the Deptt for necessary action."Annexure "T".

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Under the rules two kind of appointments are allowed.

1. Candidate being M.A in relevant subject with B.Ed are ellegible for the post of Subject Specialist BPS-17.

2. Candidates who are simple M.A but don't posses B.Ed degree are also being appointed conditionally, provided that they should acquire their professional qualification of B.Ed with in three years and their enterise seniority is given to them from their date of recommendation from the Public Services Commission.
Copy Attached (Annexure "U").

3. The matter is placed before the departmental promotion committee (DPC) for consideration and decision regarding regularization of the services of the above cited subject Specialist in BPS-17 with seniority from the date of their appointments.

Director
(Schools and literacy)
NWFP Peshawar

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Better Copy

GOVERNMENT OF N.W.F.P
SCHOOLS & LITERACY DEPARTMENT

NO.SOG/S&L/1-5 DPC /VOL:III
DATED PESHAWAR THE:19-05-2005

TO.

The Section officer (Schools),
Schools & Literacy Department.

Subject: MINUTES OF THE D.P.C MEETING HELD ON 11-05-2005

I am directed to refer to the subject noted above and to forward herewith a copy of the minutes of the meeting of D.P.C held on 11-05-2005 under the Chairmanship of Secretary, Schools & Literacy Department for further necessary action.

I am further directed to inform you, that summaries for the Competent authorities may be submitted within two days positively.

(NEK NAWAZ KHAN)
SECTION OFFICER (GENERAL)

Copy forwarded to :

1. Director, Schools & Literacy, N.W.F.P ,Peshawar along with a copy of the minutes of meeting for further necessary action .
2. PS to secretary Govt: of N.W.F.P, Schools & Literacy Deptt:
3. PA to Addl:/D.S(Admn),Govt:of NWFP,S&L Deptt:

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SECTION OFFICER (GENERAL)

09	Miss Shabnam Raza Malik	PET	BA/SDPE	Considered suitable for promotion as DPE with immediate effect
10	Miss Asma Qureshi	PET	BA/SDPE	Considered suitable for promotion as DPE with immediate effect
11	Munaza Jabeen	PET	BA/SDPE	Considered suitable for promotion as DPE with immediate effect
12	Miss Azra Naz	TT	BA/SDPE	Considered suitable for promotion as DPE with immediate effect
13	Miss Ghazala Naeem	PET	BA/SDPE	Considered suitable for promotion as DPE with immediate effect
14	Miss Shujaat Begum	PET	BA/SDPE	Considered suitable for promotion as DPE with immediate effect
15	Miss Adeeba Naheed	DM	BA/SDPE	Considered suitable for promotion as DPE with immediate effect

Item No.5:- **PROMOTION OF BPS - 16 OFFICERS TO BPS – 17 IN SCHOOLS & LITERACY DEPARTMENT (WORKING AS I/CSS).**

The committee discussed the cases in details and differed the promotion case due to incomplete working paper.

Item No.6:- **PROMOTION OF SETs OF SCHOOL S CADRE (MEN'S SECTION) AS HEAD MASTER FROM BPS -16 TO BPS -17(REGULAR).**

The committee after detail deliberation decided to recommend 193.SET's to the post of Head Master BPS-17 (Regular). The case was however differed due to non availability of final seniority List of SET's and according to the disparity between the penal and the seniority List.

Item No.7:- **REGULARIZATION OF SERVICES OF SUBJECT SPECIALIST WITH BENEFIT OF SENIORITY .**

The committee discussed the case and detail and decided that the regularization of the subject specialist in pursuance of the service tribunal/Supreme Court of Pakistan does not fall in the purview of DPC.The regularization may therefore, be considered by the department in light of provincial Govt Policy and the verdict of the courts

The meeting ended with a vote of thanks from into the chair.

(Hussain Shah)
Deputy Secretary (Regulation)
Establishment Department.

(S.Manzar Jan Sajjid)
Deputy Director (Establish)
Schools & Literacy N.W.F.P

(Nayyar Laiq Ahmad
Section Officer (R.II)
Finance Department

(Ahmad Khan)
Additional Secretary
Schools & Literacy Department

(AMJAD SHAHID AFRIDI)
SECRETARY TO GOVT:NWFP
SCHOOLS & LITERACY DEPTT

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original

Annexure M — (58)

GOVERNMENT OF N.W.F.P
SCHOOLS & LITERACY DEPARTMENT

NO.SOG/S&L/1-5/DPC/Vol:III
DATED PESHAWAR THE 19-05-2005

To,

The Section Officer (Schools),
Schools & Literacy Department.

Subject: **MINUTES OF THE D.P.C MEETING HELD ON 11-05-2005.**

I am directed to refer to the subject noted above and to forward herewith a copy of the minutes of the meeting of D.P.C held on 11-05-2005 under the Chairmanship of Secretary, Schools & Literacy Department for further necessary action.

I am further directed to inform you, that summaries for the competent authorities may be submitted with in two days positively.

(NEK NAWAZ KHAN)
SECTION OFFICER (GENERAL)

ADD(E) For further n/a. 19/5/05

Copy of forwarded to:

1. Director, Schools & Literacy, NWFP, Peshawar, along with a copy of the minutes of meeting for further necessary action.
2. PS to Secretary Govt: of NWFP, Schools & Literacy Deptt.
3. PA to Addl:/D.S(Admn), Govt: of NWFP, S&L Deptt.

Do the needful

E put up.

Raja Khan

23/05/05

SECTION OFFICER (GENERAL)

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PROMOTION OF S.IBADUR REHMAN TO DPE BPS-16 (Regular).

The committee discussed the promotion case in detail and differed the case with the remarks that S.Ibadur Rehman was under suspension w.e.f 18.9.2000 to 15.12.2001 and the reporting/countersigning officers are written his ACR for suspension period. The committee decided to inquire in the matter in a week as to how why ACRs of the suspension period written in one go.

II.

PROMOTION OF PET/CT AND PTC etc HAVING ADPE QUALIFICATION TO THE POST OF DPE/ADO SPORTS (MALE) BPS-16 REGULAR.

According to the Working Paper submitted by Schools & Literacy [illegible] Peshawar there are 191 sanctioned posts of DPE/ADO (Sports) BPS-16 (Male) out of which 76 posts fall to the share of Direct Recruitment and 115 posts to the share of promotion. The detail of promotion vis-à-vis Direct Recruitment are given below:

1.	Total No. of posts in BPS-16	191
2.	Share of Direct Recruitment @ 40%	76
3.	Share of Promotion @ 60%	115
4.	Total No. of existing promotes	115
5.	Balance posts	00
6.	Post reserved for S. Ibadur Rehman	01
7.	Net to be promoted	114

The committee considered the case of [illegible] for promotion as DPE/ADO (Sports) and recommended [illegible] on actual basis:

S.No	Name of Teachers	Designation	Qualification for DPE	Remarks
1.	Mr Lal Badshah	SET	BA/BSc/DPE	Considered suitable for promotion as DPE with immediate effect
2.	Mr Daud Khan	PET	BA/BSc/DPE	Considered suitable for promotion as DPE with immediate effect
3	Mr Anwer Saeed	PET	BA/BSc/DPE	Considered suitable for promotion as DPE with immediate effect
4	Mr Sajid Firdos	PET	BA/BSc/DPE	Considered suitable for promotion as DPE with immediate effect
5	Mr Muhammad Rasool	PET	BA/BSc/DPE	[illegible]
6	Mr Hamza Ali	PET	BA/BSc/DPE	[illegible]
7	Mr Aslam Khan	PET	BA/BSc/DPE	[illegible]
8	Mr Zard Ali Khan	PET	BA/BSc/DPE	[illegible]
9	Mr Israr Khan	DM	BA/BSc/DPE	Considered suitable for promotion as DPE with immediate effect
10	Mr O Ikramullah Khan	PET	BA/BSc/DPE	[illegible]

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BETTER COPY OF THE PAGE NO. 60

11	Mr. Saifur Rehman	PET	BA/SDPE	Considered suitable for promotion as DPE with immediate effect
12	Mr. Abdul Mateen Khan	PET	BA/SDPE	Considered suitable for promotion as DPE with immediate effect
13	Muhammad Khrsheed	PET	BA/SDPE	Considered suitable for promotion as DPE with immediate effect
14	Mr. Ejaz Ali	PET	BA/SDPE	Considered suitable for promotion as DPE with immediate effect
15	Mr. Abdul Hadi	PET	BA/SDPE	Considered suitable for promotion as DPE with immediate effect
16	Mr. Attaullah Khan	PET	BA/SDPE	Considered suitable for promotion as DPE with immediate effect
17	Mr. Sair Ajab Khan	PET	BA/SDPE	Considered suitable for promotion as DPE with immediate effect
18	Mr. Saddiqur Rehman	PET	BA/SDPE	Considered suitable for promotion as DPE with immediate effect
19	Mr. Wali Dad Khan	PET	BA/SDPE	Considered suitable for promotion as DPE with immediate effect
20	Mr. Shaheedur Rehman	PET	BA/SDPE	Considered suitable for promotion as DPE with immediate effect
21	Mr. Abdul Nazar	PET	BA/SDPE	Considered suitable for promotion as DPE with immediate effect
22	Mr. Hakim Said	PET	BA/SDPE	Considered suitable for promotion as DPE with immediate effect
23	Mr. Muhammad Bilal	PET	BA/SDPE	Considered suitable for promotion as DPE with immediate effect
24	Mr. Qaisar Khan	PET	BA/SDPE	Considered suitable for promotion as DPE with immediate effect
25	Mr. Qayyum Nawaz	PET	BA/SDPE	Considered suitable for promotion as DPE with immediate effect
26	Mr. Muhammad Aslam	PET	BA/SDPE	Considered suitable for promotion as DPE with immediate effect
27	Mr. Hukam Zad	PET	BA/SDPE	Considered suitable for promotion as DPE with immediate effect
28	Mr. Muhammad Alam	PET	BA/SDPE	Considered suitable for promotion as DPE with immediate effect
29	Mr. Abdur Rauf	PET	BA/SDPE	Considered suitable for promotion as DPE with immediate effect
30	Mr. Muhammad Shahid Ullah	PET	BA/SDPE	Considered suitable for promotion as DPE with immediate effect
31	Mr. Noorul Amin	PET	BA/SDPE	Considered suitable for promotion as DPE with immediate effect
32	Mr. Muhammad Khalid	PET	BA/SDPE	Considered suitable for promotion as DPE with immediate effect