

**Service Appeal No.4980/21 titled "Ghulam Sarwar Vs. Chief Secretary**

**Khyber Pakhtunkhwa, Peshawar and two others".**

**Kalim Arshad Khan, Chairman:**

27.02.2023

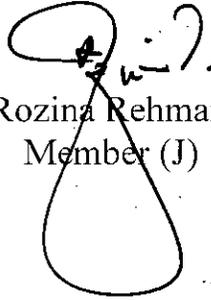
1. Learned counsel for the appellant Mr. Riaz Khan Paindakhel, learned Assistant Advocate General for respondents present.

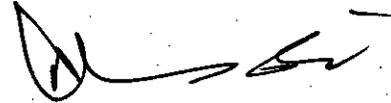
2. Brief facts of the case are that appellant was promoted as Budget and Accounts Officer. In the meanwhile, the post of Assistant Director (Admin) became vacant which was allegedly to be filled out of the Budget & Accounts Officers, but instead, the post of Assistant Director (Admin) was occupied by Junior Superintendents/Officers of the Department. Being aggrieved, the appellant filed departmental appeal which was not responded to, hence, he filed Service Appeal No.1067/2015 which was decided by directing the respondents to decide the departmental appeal with speaking orders. Consequently, the respondents rejected the departmental appeal of the appellant, hence, the present service appeal.

3. Not only the order dated 22.03.2021 of the Secretary to the Government of Khyber Pakhtunkhwa Elementary & Secondary Education Department but also the reply of the respondents are misconceived and not related to the prayer made in the departmental representation as well as in this appeal. This careless act on the irresponsible part of respondents has wasted a couple of years of the appellants. Therefore, while setting aside the order

dated 22.03.2021, we direct that the departmental representation of the appellant be properly decided within a period of 30 days but not later than 13<sup>th</sup> March, 2023 positively, failing which, a cost of Rs.100,000/- will be imposed upon the respondents to be recovered from their personal pay. Disposed of accordingly. Consign.

3. *Pronounced in open Court Peshawar under our hands and seal of the Tribunal on this 27<sup>th</sup> day of February, 2023.*

  
(Rozina Rehman)  
Member (J)

  
(Kalim Arshad Khan)  
Chairman

2<sup>nd</sup> Draft

27.02.2023

Kalim Asjad Khan Chaminan.

1. Learned counsel for the appellant Mr. Riaz Khan Paindakhel, learned Assistant Advocate General for respondents present.

2. Brief facts of the case are that appellant was promoted as Budget and Accounts Officer. In the meanwhile, the post of Assistant Director (Admin) became vacant which was, <sup>allegedly</sup> to be filled out of the Budget & Accounts Officers, but instead, the post of Assistant Director (Admin) was occupied by Junior Superintendents/Officers of the Department. Being aggrieved, the appellant filed departmental appeal which was not responded to, hence, he filed Service Appeal No.1067/2015 which was decided by directing the respondents to decide the departmental appeal with speaking orders. Consequently, the respondents rejected the departmental appeal of the appellant, hence, the present service appeal.

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2nd Draft (Correction made & facts added)

27.02.2023

1. Learned counsel for the appellant Mr. Riaz Khan Paindakhel, learned Assistant Advocate General for respondents present.

2. Brief facts of the case are that appellant was promoted as Budget and Accounts Officer. In the meanwhile, the post of Assistant Director (Admin) became vacant which was to be filled out of the Budget & Accounts Officers, but instead, the post of Assistant Director (Admin) was occupied by Junior Superintendents/Officers of the Department. Being aggrieved, the appellant filed departmental appeal which was not responded to, hence, he filed Service Appeal No.1067/2015 which was decided by directing the respondents to decide the departmental appeal with speaking orders. Consequently, the respondents rejected the departmental appeal of the appellant, hence, the present service appeal.

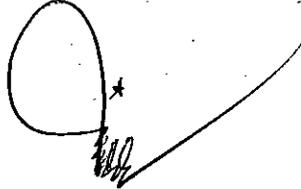
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26.10.2022

Appellant in person present. Mr. Naseer-ud-Din Shah,  
Assistant Advocate General for the respondents present.

Appellant requested for adjournment on the ground that his  
counsel is not available today due to strike of lawyers.  
Adjourned. To come up for arguments before the D.B on  
01.12.2022.

SCANNED  
KPSST  
KPSST  
KPSST



(Mian Muhammad)  
Member (E)

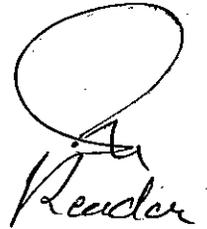


(Salah-ud-Din)  
Member (J)

01/12/22

Respondents were put  
on notice for early  
hearing

Deleted from the list to come  
up on the next date 27/12/23



Reader

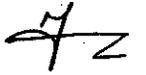
18.07.2022

Due to non-availability of Bench, case is adjourned to 04.08.2022 for the same as before.

4-8-2022

Proper DB not available the case is adjourned to 14-9-2022

  
Reader

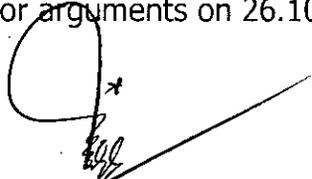


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14.09.2022

Learned counsel for the appellant present. Mr. Beharamand Khan, Assistant Director alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments. Adjourned. To come up for arguments on 26.10.2022 before the D.B.



(Mian Muhammad)  
Member (E)

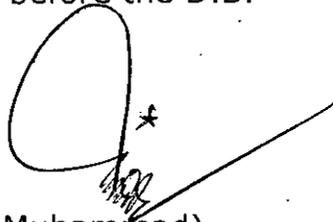


(Salah-Ud-Din)  
Member (J)

27.04.2022

Learned counsel for the appellant present. Mr. Faheem Ullah, Litigation Officer and Mr. Haseen Ullah, Assistant alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present and requested that time may be granted for submission of written reply/comments.

The case was though fixed for arguments, however respondents have not yet submitted reply/comments, therefore, last opportunity given, failing which their right for submission of reply/comments shall be deemed as struck off. To come up for submission of reply/comments as well as arguments on 12.05.2022 before the D.B.



(Mian Muhammad)  
Member (E)



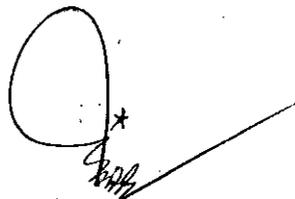
(Salah-ud-Din)  
Member (J)

12-5-22 Proper DB not available the case is  
adjourned on 30-5-22

30<sup>th</sup> May, 2022

Learned counsel for the appellant present. Mr. Asif Masood, DDA alongwith Arshad Ali, ADO for the respondents present.

Representative of the respondent submitted reply which is placed on file. To come up for arguments on 04.08.2022 before the D.B. The appellant may submit rejoinder within fortnight, if so advised.



(Mian Muhammad)  
Member(E)

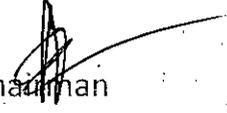


(Kalim Arshad Khan)  
Chairman

Stipulated period passed reply not submitted.

29.07.2021

Learned Addl, A.G be reminded about the omission and for submission of reply/comments within extended time of 10 days.

  
Chairman

08.11.2021

Clerk of learned counsel for the appellant present. Mr. Noor Zaman Khattak, District Attorney for respondents present.

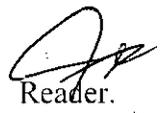
Arguments could not be heard due to general strike of the Bar. Adjourned. To come up for arguments on 01.03.2022 before D.B.

  
(Mian Muhammad)  
Member(E)

  
(Rozina Rehman)  
Member(J)

01.03.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 06.06.2022 for the same as before.

  
Reader.

D



21.06.2021

Counsel for the appellant present. Preliminary arguments heard.

Points raised need consideration. The appeal is admitted to regular hearing, subject to just and legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days of the receipt of notices positively. If the written reply/comments are not submitted within the stipulated time, the office is directed to submit the file with a report of non-compliance. File to come up for arguments on 08.11.2021 before the D.B.

Appellant Deposited  
Security & Process Fee

*[Handwritten signature]*  
21/6/21

*[Handwritten signature]*  
Chairman

Form- A

FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No.- 4980 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	28/04/2021  27/05/21	<p>The appeal of Mr. Ghulam Sarwar presented today by Mr. Mehboob Ali Dagai Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>21/06/21</u></p> <p style="text-align: right;"> CHAIRMAN</p>
2-		

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES  
TRIBUNAL PESHAWAR**

**In S.A \_\_\_\_\_ /2021**

**Ghulam Sarwar**

**VERSUS**

**The Chief Secretary, Khyber Pakhtunkhwa, Peshawar  
and others.**

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Dated: 28/04/2021



Appellant



Through  
**MEHBOOB ALI KHAN DAGAI,**  
Advocate High Court, Peshawar.

3

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES  
TRIBUNAL, PESHAWAR

Khyber Pakhtunkhwa  
Service Tribunal

In S.A. 4980 /2021

Diary No. 5050

Dated 28-4-2021

Ghulam Sarwar, Ex-Assistant Director (Admn), posted and worked as Deputy Director (Admin) DCTE, Khyber Pakhtunkhwa, Abbottabad.

-----Appellant

VERSUS

1. The Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Elementary & Secondary Education, Peshawar.
3. The Director, Elementary & Secondary Education, Peshawar.

-----Respondents

APPEAL U/S 4 OF THE KHYBER PAKHTUNKHWA  
SERVICES TRIBUNAL ACT -1974 AGAINST THE  
NOTIFICATION BEARING ENDST NO: SO (PE)2-6  
DPC MEETING/B&AO, FROM BPS-16 TO BPS-17/  
2014 DATED 29/08/2014, WHEREBY THE  
APPELLANT WAS PROMOTED FROM BPS-16 TO  
BPS-17 AS ASSISTANT DIRECTOR FROM  
IMMEDIATE EFFECT I.E. (29/08/2014) INSTEAD  
OF 08/01/1997, THE DATE OF AVAILABILITY OF  
VACANCY.

Filed to-day

Registrar

28/4/2021

24

Respectfully Sheweth,

FACTS.

1. That the appellant joined services as Senior Scale Stenographer on 1.2.1979 and got promotion as Superintendent on 22.6.1987. Copies of appointment and promotion orders are attached herewith as Annexure-"A & B".
2. That the appellant was further promoted as B&AO BPS-16 on 11.01.1988. Copy of notification is attached herewith as Annexure-"C".
3. That the appellant stood at Serial No.1 of the seniority list of B&AO corrected upto 31.8.2013 Copy of seniority list is attached herewith as Annexure-"D".
4. That one Mr. Fazle Khaliq Khan, Assistant Director (Admn) BPS-17 was retired on 07-01-1997 on superannuation vide notification SO(s)3-1/91(A) dated 17.7.1996 and the post of Assistant Director BPS-17 became vacant w.e.f. 8.1.1997. Copy of the said notification is attached herewith as Annexure-"E".
5. That the appellant was promoted to the post of Assistant Director (Admin) BPS-17, Vide Notification No.SO(PE)2-6/DPC-Meeting/B&AO dated 29-8-2014, instead of 8.1.1997. Copy of notification is at Annexure-"F".
6. That under the Provision of Govt: of Khyber Pakhtunkhwa Civil Servant (Appointment and Transfer Rules 1989, issued vide Notification No. SO (PE) 4-10/SSCR(Ministerial Staff/2013

dated 28/01/2013, the vacant posts of Assistant Director (F&A) BPS-17 must be filled up, out of budget and Accounts Officers through promotion on the basis of seniority cum-fitness. (Copy of Service Rules 2013 is Attached at Annex "G").

7. 1. That the post of Assistant Director (Admn) BPS-17 remained occupied by Junior most Superintendents / Officers of the Department and despite of repeated requests of the appellant for his promotion the respondents always turned deaf ears.
8. That feeling aggrieved the appellant while in service filed departmental appeal before the Secretary to Govt: of Khyber Pakhtunkhwa Peshawar on 1.7.2015, but no response whatsoever was received within the statutory period, so the appellant filed an Appeal (Appeal No.1067/2015) before this Hon'ble Tribunal, which was contested by the respondents by filing written reply etc. Copy of the reply and re-joinder etc are attached herewith as Annexure-"H & I".
9. That after hearing arguments of both the counsel for the parties, this Hon'ble Tribunal vide its judgment order dated 9.4.2019, the case was remanded to the appellate authority for decision of the departmental appeal of the appellant with speaking order. Copy of the previous appeal and judgment dated 9-4-2019

of this Hon'ble Tribunal are attached herewith as Annexure-"J & K".

10. That since the respondents were reluctant to decide the departmental appeal of the appellant as per directions of this Hon'ble Tribunal, therefore, the appellant filed an execution petition before this august Tribunal on 2.10.2020 and it was on 01.4.2021 when the respondent No.2 produced, before this Hon'ble Tribunal, the copy of the orders of rejection of departmental appeal of the appellant on 22.3.2021. Copy of departmental appeal of the appellant and its rejection order dated: 22/03/2021 passed by the respondent No.2 is attached herewith as Annexure-"L & M".
11. That feeling aggrieved the appellant re-filed the instant appeal.

GROUND.

- A. That the order of rejection of departmental appeal dated 22.3.2021 is in vogue, hasty in manner and not sustainable in the eye of law, in any manner whatsoever.
- B. That the concerned authority while deciding the departmental appeal of the appellant has not gone through the same by applying a prudent mind as to what the appellant asked from them, what are the directions of this Hon'ble Tribunal and what law on the subject matter is applicable?
- C. That the comments of the concerned authorities are also in favour of the appellant, the copies of which are attached herewith as Annexure-"N"



- D. That the vacancy for promotion of the appellant on the fateful date i.e. on 8.1.1997 was available when one Mr. Fazle Khaliq Khan Assistant Director was retired at the age of superannuation and the respondents kept this vacancy occupied by most junior superintendents because of favoritism and personal likes and dislikes.
- E. That under the law and rules and decisions of the Apex Courts on the subject, the Appellant was entitled for promotion to the post of BPS-17 Assistant Director from the date of vacation of post i.e. 8.1.1997 as per promotion criteria dated 9.5.1978, prior to the promotion criteria dated 28.1.2013. Copy of the notification dated 9.5.1978, referred to above is attached herewith as Annexure-“O”.
- F. That the act of respondents, ignoring the right of promotion of Appellant from actual date i.e. the date of vacation of post of Assistant Director BPS-17 is against law, perverse, arbitrary, in-operative and ineffective upon the rights of the appellant and based on malafide, surmises and conjectures.
- G. That similar cases on the same prayer titled “Ghulam Rasool V/s Director of Schools & Literacy NWFP Peshawar Etc”, were decided by this August Tribunal on 15/08/2006 which in appeals before the August Supreme Court of Pakistan, got its finality. (Copy of Judgment of this Hon’ble Tribunal is produced as Annexure “P” while that of the August Supreme Court of Pakistan is Annexure-“Q” and order of its implementation is Annexure-“R”).

A. That similar nature of cases are also produced as Annexure "S to T,U,V,W", detail of which is given below:-

(i) Appeal No: 1356/2012 Kurshid Ali Forestor V/s Govt of KPK (Decided by Service Tribunal KPK). "S"

(ii) Appeal No: 612/2008 Muhammad Iqbal Khattak V/s Govt of KPK (Decided by Service Tribunal KPK). "T" Writ Petition No: 2334-P/2014 Niaz Muhammad V/s C.E.L.R.H (Peshawar High Court). "U"

(iii) 2002 PLC (CS) 1388 Muhammad Hasnain Shah V/s IGP (Punjab Service Tribunal). "V"

(iv) 2010 PLC (CS) 760 Muhammad Amjad & Others V/s Dr. Israr Ahmad (Supreme Court of Pakistan). "W"

B. That similarly vide order bearing Endst No: 7174-85 dated 03/05/2000, Mr. Abdul Wajid and Muhammad Khan etc Junior Clerks were promoted to the post of Senior Clerks and retrospective effect was given to them from the date of availability of vacancy and not from immediate effect. Copy of which is Annexure "X".

C. That the Hon'ble Supreme Court has been pleased to direct vide CP 35-P/2007 "THAT

THE GOVT EMPLOYEES ARE ALWAYS ANXIOUS ABOUT THEIR PROMOTION OR TO GOT BENEFIT OF THE SERVICE AS EARLY AS COULD BE POSSIBLE AND THE DEPARTMENT CANNOT BE ALLOWED TO SLEEP FOR ANY INDEFINITE PERIOD”.

D. That the directions of this Hon'ble Tribunal in Appeal No: 612/2008, copy attached vide No. 4 (ii) above are very clear which are reproduced as “That Anti-dating of promotion, after consideration of the candidate aspiring for such promotion after he was found eligible and fit for such promotion and is promoted, is an established principle of law. Such candidate cannot be punished for any delay caused by the department in processing his case for promotion. The order of promotion, therefore has to be antedated to the date on which the vacancy for his turn became available”. Copy of which is attached herewith as Annexure-“Y”.

E. The respondents misinterpreted the words “with immediate effect” which actually means “as and when the vacancy arise” and “the candidate is fit for promotion shall be given promotion without loss of time”. But here in appellant's case, his promotion is actually delayed by more than 17 years by the respondents.

10  
F. That the appellant seeks leave of this Hon'ble Tribunal of claim further grounds at the time of final hearing.

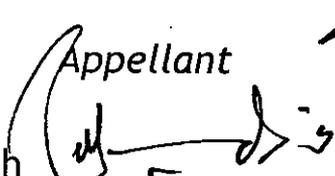
G. That this Hon'ble Tribunal has got the jurisdiction to entertain the instant appeal.

PRAYER:

*It is, therefore, very humbly prayed that the instant appeal may very graciously be accepted and the respondents may kindly be directed for antedating the promotion of the appellant w.e.f 08.1.1997 i.e from the date of availability of vacancy instead of 29/08/2014 (i.e the date of passing of impugned notification) with all back benefits.*

*Any other consequential relief which this Hon'ble Tribunal deems fit and proper under the circumstances of the case may also be granted.*

Dated: 28/04/2021

Appellant  
Through   
(Mehboob Ali Khan Dagai),  
Advocate High Court, Peshawar.

11

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES**  
**TRIBUNAL PESHAWAR**

In S.A \_\_\_\_\_/2021

Ghulam Sarwar

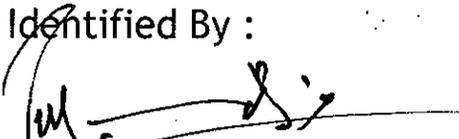
**VERSUS**

The Chief Secretary, Khyber Pakhtunkhwa,  
Peshawar and others.

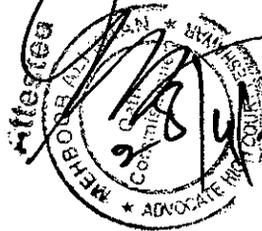
**AFFIDAVIT**

I, Ghulam Sarwar, Ex-Assistant Director (Admn), posted and worked as Deputy Director (Admin) DCTE, Khyber Pakhtunkhwa, Abbottabad, do hereby solemnly affirm and declare that all the contents of the accompanied appeal are true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this Hon'ble Tribunal.

Identified By :

  
MEHBOOB ALI KHAN DAGAI,

Advocate High Court, Peshawar.



  
DEPONENT

12

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES  
TRIBUNAL PESHAWAR**

In S.A \_\_\_\_\_/2021

Ghulam Sarwar

**VERSUS**

The Chief Secretary, Khyber Pakhtunkhwa,  
Peshawar and others.

**ADDRESSES OF PARTIES**

**APPELLANT.**

Ghulam Sarwar, Ex-Assistant Director (Admn), posted and worked as Deputy Director (Admin) DCTE, Khyber Pakhtunkhwa, Abbottabad.

**ADDRESSES OF RESPONDENTS.**

1. The Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Elementary & Secondary Education, Peshawar.
3. The Director, Elementary & Secondary Education, Peshawar.

Dated: 28/04/2021

Through

Appellant

MEHBOOB ALI KHAN DAGAI,  
Advocate High Court,  
Peshawar.

OFFICE OF THE DIRECTOR OF EDUCATION (S) H.W.P.E. PESHAWAR

FOR SCHOOLS (SCHOOLS) AND COLLEGE (SCHOOLS)

Director of Education (S) H.W.P.E. PESHAWAR

Attested: [Signature]

Copy is forwarded for information and necessary action on the part of the Director of Education (S) H.W.P.E. PESHAWAR.

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APPROVAL FOR APPOINTMENT

OFFICE OF THE DIRECTOR OF EDUCATION (S) H.W.P.E. PESHAWAR

Annex - A

13

14

Annex B

OFFICE OF THE DIRECTOR OF EDUCATION (SCHOOLS), NWFP, PESHAWAR.

NOTIFICATION.

The following Promotions/Transfers of Ministerial Staff of Education Department are hereby ordered in the interest of public service with effect from the dates of their taking-over charge.

S.No.	Name & Designation.	Adjusted at.	Remarks.
1.	Mohammad Nawaz, ADEO(A) at DEO(M), Chitral.	A.D.E.O(A), at DEO(F), <del>Chitral</del> D.I.Khan.	Against vacant post.
2.	Khan Afzal, Supdt: DDE(S), Hazara Divn:	A.D.E.O(A) at DEO(M), Chitral.	Vice Sr.No.1.
3.	Fazalur Rehman, Supdt: DDE(S), Malakand Divn:	A.S.D.E.O(A) at SDEO(M), Mastuj (Chitral). Supdt: DDE(S), Malakand Divn:	Against vacant post.
4.	Abdul Ghaffar, Supdt: DDE(S), D.I.Khan Divn:	Supdt: DDE(S), D.I.Khan.	Vice Sr.No. 3.
5.	Noor Mohammad, Supdt: DEO(M), Abbottabad.	Supdt: at Govt. College, Bannu.	Vice Sr. No.4.
6.	Mohammad Ramzan, Asstt: at DDE(S), D.I.Khan Divn:	Supdt: at DEO(M), Abbottabad.	Against vacant post.
7.	Ali Safdar, Stenographer DDE(S), Malakand Divn:	Supdt: at Govt. College, A.Abad.	Vice Sr. No. 5
8.	Qazi Abdul Malik, Asstt: Govt. College, Haripur (On return from Leave).	Supdt: at Govt. College, A.Abad.	Against vacant post.
9.	Ghulam Sarwar, Stenographer at DDE(S), Hazara Divn: A.Abad.	Supdt: at DDE(S), Hazara Divn:	Against vacant post.
10.	Ahmad Ali, Asstt: at R.D.E., Peshawar.	Supdt: at DDE(S), Hazara Divn:	Vice Sr. No.2.

- Note:- The promotion of S.No. 2,3,6,7,8,9 & 10 has been approved by the Departmental Promotion Committee.
- Charge reports should be sent to all concerned.
  - All of them should take over charge against their new assignments on or before 1.7.1987 positively.
  - The promotion of Sr. No.2,3,6,7,8,9 & 10 are purely on temporary basis and liable to reversion at any time without assigning any reasons.
  - No TA/DA is allowed to S.No. 1, 4 & 5.
  - The resultant vacancies of S. No.7,9 & 10 are being filled by this Directorate.

Handwritten signatures and initials, including 'A.A. Ad.', 'A.A.', and 'A.A.'.

(MOHAMMAD IDRIS KHAN  
DIRECTOR OF EDUCATION  
N.W.F. PROVINCE, PESHAWAR)

Endst. No. 18740-80 / A-23/II-AE. dated Peshawar, the 22/8  
Copy forwarded for information and necessary action  
to the:-  
1. Director of Education (Colleges), NWFP, Peshawar.  
2. Additional Directress of Education (Schools), NWFP., Peshawar.



15 Annex-C

OFFICE OF THE DIRECTOR OF EDUCATION (SCHOOLS), NWFP., PESHAWAR.

NOTIFICATION

The following adjustment/promotion of Ministerial staff of Education Department are hereby ordered in the interest of public service with effect from the dates of their taking over charge.

S.No.	Name & Designation.	Adjusted at.	Remarks.
1.	Mr. Amir Jalal, ASDEO(Acctt:) at SDEO(M), Saidu Sharif, Swat.	Asstt: Divl: Edu: Officer at Divl: Directorate of Edu: (S), D. I. Khan Division, D. I. Khan.	On his own pay and grade against the vacant post.
2.	Qazi Abdul Malik, Supdt: Govt. College, Abbottabad.	A.S.D.E.O(Acctt:) at SDEO(M), Banda-Daud Shah(Karak).	Against vacant post vice A.R. Bukhari Transferred.
3.	Mr. Ghulam Sarwar, Supdt: at DDE(S), Hazara Divn: A. Abad.	A.S.D.E.O(Acctt:) at SDEO(M), Saidu-Sharif, Swat.	Vice Sr.No.1.
4.	Mr. Ahmad Ali, Supdt: O/O the Inspector of Phy: Edu:& Sports(Colleges), NWFP., Peshawar.	Budget & Accounts Officer at DDE(S), Kohat Divn: Kohat.	Vice Nazir Hussain B&AO proceeded on L.P.R.
5.	Mr. Mohammad Afsar, Supdt: Govt. College, Mardan.	A.S.D.E.O(Acctt:) at SDEO(M), Wari (Dir).	Vice Mohammad-Akram, ASDEO(Acctt:) proceeded on LPR.
6.	Mr. Wazir Mohammad, Asstt: at DDE(S), Pesh: Divn: Peshawar.	Supdt: at O/O the Inspector of Phy: Edu:& Sports(Colleges), NWFP, Peshawar.	Vice Sr.No.4.
7.	Mr. Bakht Zada, Asstt: at DDE(S), Malakand Divn: Saidu Sharif, Swat.	Supdt: at DDE(S), Hazara Divn: Abbottabad.	Vice Sr.No.3.
8.	Mr. Sardar Mohammad, Asstt: at DEO(F), Mardan.	Supdt: at Govt. College, Abbottabad.	Vice Sr. No.2.
9.	Sardar Hussain, Asstt: Govt. College, Mardan.	Supdt: at Govt. College, Mardan.	Vice Sr.No.5.

Notes:-1. Charge reports should be sent to all concerned.

2. The promotion of officers at S.No.2 to 9 has been approved by the Departmental Promotion Committee of Education Department. Their promotion is purely on temporary basis and liable to reversion without assigning any reasons.

3. All of them should take over charge against their new assignments on or before 2.1.1988 positively.

(MOHAMMAD IDRIS KHAN)  
DIRECTOR OF EDUCATION(SCHOOLS),  
N.W.F. PROVINCE, PESHAWAR.

1825-61  
Endst. No. \_\_\_\_\_/A-23/II-AE, dated Peshawar, the 11/1/1988.

Copy forwarded for information and necessary action to the:-

1. Director of Education (Colleges), NWFP., Peshawar.
2. Additional Directress of Education (Schools), NWFP., Peshawar.
3. Inspector of Phy: Education & Sports (Colleges), NWFP., Peshawar.
- 4-8. All the Divl: Directors of Education (Schools) in N.W.F.P.
- 9-10. Principals, Govt. College, Abbottabad and Mardan.
- 11-12. Distt: Education Officer (Male) Dir and Swat and Karak.
13. Distt: Education Officer (Female), Mardan.
- 14-17. Distt: Accounts Officer, Swat, Dir, D.I. Khan, Kohat and Karak.
- 18-19. Sub: Divl: Edu: Officer (Male), Saida Sharif, Swat, Wari (Dir) and Banda Daud Shah (Karak).
- 20-27. Officers concerned.
- 28-35. Personal files.
36. P.A. to the Director of Education (Schools), NWFP., Peshawar.

*Handwritten signatures and initials, including 'A. H. Shah' and 'S. Khan'.*

*Amaz*  
Deputy Director (Schools),  
for/ Director of Education (S),  
NWFP., Peshawar.

*9/1/88*

For use in /

16 Annex-D 3

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER  
PAKHTUNKHWA PESHAWAR.

NOTIFICATION.

~~Final List of Budget & Accounts Officer (BBS-16) working in and under the Directorate Elementary & Secondary Education, DCTE, FATA & PITE, Khyber Pakhtunkhwa, as stood on 31-08-2013 is hereby approved.~~

~~The said seniority list was hereby notified for the information of all concerned to lodge appeal/objection (if any).~~

~~The above seniority list can be seen/checked on the website of E&SE Department Khyber Pakhtunkhwa given below.~~

~~<http://kpese.gov.pk>~~

DIRECTOR  
Elementary & Secondary Education  
Khyber Pakhtunkhwa, Peshawar.

Endst No 3638-59/F.No.A-23/S.List/B&AO/DD(F&A) Dated Pesh the 25/2/2014.

Copy of the above is forwarded for information

and n/action to the:-

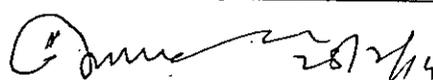
1. Director Curriculum & Teachers Education Khyber Pakhtunkhwa Abbottabad.
2. Director PITE Peshawar.
3. Director of Education (FATA) Peshawar.
4. All District Education Officers (M&F) in Khyber Pakhtunkhwa.
5. Cashier Local Directorate.
6. P/S to Secretary to Government of Khyber Pakhtunkhwa E&SE Department Peshawar.
7. Deputy Director EMIS Govt. of Khyber Pakhtunkhwa E&SE Department with the request to up-load the attached Seniority List of Assistants and Senior Scale Stenographer on webpage of E&SE Department.
8. PA to Director E&SE Khyber Pakhtunkhwa, Peshawar.

"Dona" 25/2  
Deputy Director (F&A)  
(E&SE) Khyber Pakhtunkhwa Peshawar

**DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER PAKHTUNKHWA, PESHAWAR.**  
**FINAL SENIORITY LIST OF BUDGET & ACCOUNT OFFICERS (B/16) IN AND UNDER THE DIRECTORATE OF ELEMENTARY & SECONDARY**  
**EDUCATION DEPARTMENT KHYBER PAKHTUNKHWA PREPARED UP TO 31/8/2013**

S#	Name of Officer	Father's Name	Place of present Posting	Academic Qualification	Date of Birth	Domicile	Date of 1st entry into Govt- Service	Regular Promotion to the Present Post	Remarks
1	Ghulam Sarwar	Muhammad Suleman	DEO (M) A/Abad	BA	06-03-1956	Abbottabad	01-02-1979	11-01-1988	By Promotion
2	Sherullah AN	Karim Ullah	DEO (F) Mardan	BA	13-11-1955	Mardan	20-04-1980	01-06-1992	By Promotion
3	Umar Nawaz	Muhammad Salim Khan	DEO (M) Bannu	M.com	01-01-1961	Bannu	13-10-1984	25-01-2001	By Promotion
4	Musharaf Ali	Murtaza Ali	DE & SE Khyber Pakhtunkhwa Peshawar	BA	22-07-1962	Peshawar	04-03-1985	25-01-2001	By Promotion
5	Nasir Khan	Aminullah	DEO (M) NSR	BA	10-05-1960	Swabi	19-02-1979	31-07-2013	By Promotion
6	Muhammad Azam	Khalil-ur-Rehman	D C TE A/Abad	MA	01-01-1961	Mansehra	08-08-1979	31-07-2013	By Promotion
7	Inamullah	Muhammad Bakhs	DEO (M) D/I/Khan	M/BA	01-01-1956	D/I/Khan	11-07-1974	31-07-2013	By Promotion
8	Muhammad Ayub	Munir Khan	DEO (M) Haripur	BA	04-03-1954	Haripur	12-08-1973	31-07-2013	By Promotion
9	Sadiqullah	Amanullah	DEO (M) Chitral	Matric	06-01-1960	Chitral	25-08-1987	31-07-2013	By Promotion
10	Karim Shah	Wadan Shah	DEO (M) Mardan	BA	20-02-1958	Mardan	01-09-1987	31-07-2013	By Promotion
11	Adalat Khan	Mehbaran Shah	DEO (F) Charsadda	BA	02-01-1964	Peshawar	01-09-1987	31-07-2013	By Promotion
12	Taza Khan	Sargand Khan	DEO (F) Dir Lower	BA	15-06-1955	Dir	20-10-1979	31-07-2013	By Promotion
13	Ghulam Sarwar	Misri Khan	DCTE Abbottabad	MA	16-11-1956	Abbottabad	04-11-1979	31-07-2013	By Promotion
14	Zakir Khan	Faqir Khan	DEO (F) Abbottabad	Matric	03-01-1957	Abbottabad	21-03-1979	31-07-2013	By Promotion
15	Fazal Shah	Fazali Karim	DEO (F) Hangu	Matric	20-05-1957	Peshawar	05-02-1981	31-07-2013	By Promotion
16	Munirullah Shah	Mian Dilbar	DEO (F) Peshawar	BA	06-01-1964	Peshawar	20-12-1989	31-07-2013	By Promotion
17	Muhammad Ali	Lal Sardar	DEO (M) Hangu	BA	02-12-1966	Karak	20-12-1989	31-07-2013	By Promotion
18	Waliullah	Abdul Qahar	DEO (M) Swabi	BA	01-04-1954	Swabi	31-05-1973	31-07-2013	By Promotion
19	Mr. Sultan Ahmad	Rab Nawaz	DEO (F) DIK	FA	04-05-1954	D.I.Khan	03-05-1973	31-07-2013	By Promotion
20	Amin Jan	Saadullah Jan	DEO (M) Peshawar	BA	03-01-1966	Peshawar	22-12-1990	31-07-2013	By Promotion
21	Shamsul Islam	Sher Aziz	DEO (F) D.I.Khan	Matric	19-04-1954	Chitral	20-01-1974	31-07-2013	By Promotion
22	Rehmatullah	Niamat Ullah	DEO (F) Tank	Matric	01-05-1954	D/I/Khan	01-06-1974	31-07-2013	By Promotion

23	Zarif Khan	Muhammad Usman	DE (FATA)	Matric	21-01-1955	Peshawar	01-06-1974	31-07-2013	By Promotion
24	Muhammad Zahoor	Abdul Ghaffar	DEO (F) Malakand	Matric	04-03-1955	Malakand	17-07-1974	31-07-2013	By Promotion
25	Latifur Rehman	Hamayun	DEO (F) Chitral	Matric	15-05-1954	Chitral	10-01-1974	31-07-2013	By Promotion
26	Shafqat Malik	Gulistan	DEO (F) Haripur	Matric	01-01-1956	Abbottabad	10-05-1974	31-07-2013	By Promotion
27	Liaqat Ali	Nousher Khan	DEO (M) Buner	Matric	09-05-1954	Mardan	15-10-1974	31-07-2013	By Promotion
28	Muhammad Ali	Fateh Muhammad	DEO (F) Battagram	Matric	04-09-1954	Mardan	11-01-1974	31-07-2013	By Promotion
29	Muhammad Amin	Rehmani Gul	DEO (M) Swat	Matric	25-11-1954	Swat	11-04-1974	31-07-2013	By Promotion
30	Abdul Majeed	Muhammad Khan	DEO (F) Kohat	Matric	12-04-1956	Kohat	12-04-1974	31-07-2013	By Promotion
31	Abdur Rashid	Mudasir Shah	DEO (F) NSR	Matric	12-01-1956	Mardan	01-02-1974	31-07-2013	By Promotion
32	Zahoor Ali	Habib Khan	DEO (M) Karak	Matric	06-01-1955	Peshawar	16-01-1975	31-07-2013	By Promotion
33	Khog Badshah	Abdul Mutalib	DEO (M) Shangla	Matric	16-02-1955	Malakand	03-01-1975	31-07-2013	By Promotion
34	Haroonar Rashid	Magbulur Rehman	DEO (M) Battagram	Matric	11-04-1957	Haripur	29-06-1975	31-07-2013	By Promotion
35	Fazali Rehman	Ainul Qazat	DEO (F) Lakki	Matric	05-10-1955	Chitral	07-01-1975	31-07-2013	By Promotion
36	Ubaidullah	Abdullah Jan	DEO (M) Kohat	Matric	07-01-1956	Kohat	07-12-1975	31-07-2013	By Promotion
37	Walayat Khan	Baz Muhammad	DEO (M) Mansehra	Matric	15-01-1956	Peshawar	09-11-1975	31-07-2013	By Promotion
38	Faridullah	Fatebullah	DE FATA Peshawar	Matric	06-12-1956	Peshawar	13-09-1975	31-07-2013	By Promotion
39	Ihsanullah	Hanimullah	DEO (F) Buner	Matric	03-03-1958	Mardan	18-09-1975	31-07-2013	By Promotion
40	Abdul Sattar	Abdul Rashid	DEO (F) Shangla	Matric	04-01-1957	Swat	15-10-1975	31-07-2013	By Promotion
41	Adam Sher	Juma Gul	DEO (M) Dir	Matric	02-12-1953	Dir	17-11-1975	31-07-2013	By Promotion
42	Jamilur Rehman	Khalilur Rehman	DEO (F) Mansehra	Matric	15-04-1956	Mansehra	17-11-1975	31-07-2013	By Promotion
43	Ghulam Muhammad	Muhammad Umer	DEO (M) Torghar	Matric	15-12-1955	Malakand	20-11-1975	31-07-2013	By Promotion
44	Jehan Zeb	Abdur Rehman	DEO (F) Swabi	BA	02-03-1961	Swabi	08-10-1981	31-07-2013	By Promotion
45	Mukhtiar Khan	Ghulam Sarwar	DEO (M) Charsadda	BA	16-10-1962	Peshawar	17-10-1981	31-07-2013	By Promotion

  
 Director Elementary & Secondary Education  
 Khyber Pakhtunkhwa Peshawar

19

Annex E

No. 80(S) 5-1/91(A) Govt. of NWFP is pleased to sanction encashment of Leave Salary in lumpsum in lieu of LOR in respect of Muhammad Khalique Khan Assistant Director in Directorate of Secondary Education NWFP Peshawar for the period of 180 days.

The officer is going to be retired from service w.e.f 7.1.1997 on the age of 60 years.

SECRETARY TO GOVT. OF NWFP  
EDUCATION DEPARTMENT

Encls: No. 80(S) 5-1/91(A) Dated Peshawar the 17.7.96.

- Copy forwarded to:-
1. Director Secondary Education NWFP Peshawar.
  2. Accountant General NWFP Peshawar.
  3. Officer concerned.

(M. ILYAS)  
Section Officer (Schools)

*M. Ilyas*  
*M. Ilyas*  
*M. Ilyas*

*Pa*



**NOTIFICATION**

20  
Annex F  
GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT  
Dated Peshawar the 29-08-2014

No. SO(PE)/2-6/DPC Meeting/ B&AO from BS-16 TO BS 17/2014: On the recommendation of the Departmental Promotion Committee meeting held on 02-07-2014, the competent authority is pleased to promote the following Budget & Accounts Officers (BS-16) to the posts of Assistant Director (BS-17) on regular basis with immediate effect:-

S.No.	Name of officer/ Designation	Promoted as:
1.	Ghulam Sarwar B&AO (BS-16) office of DEO (M) Abbottabad.	Assistant Director (BS-17).
2.	Sherullah B&AO(BS-16) office of DEO (F) Mardan.	Assistant Director (BS-17).

2 They will be on probation for a period of one year, extendable for another term of one year as specified in Rule-15 of Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion and Transfer) Rules, 1989.

3 Consequent upon their promotion to the post mentioned above they are posted / adjusted as under:

S.No.	Name of officer/ Designation	Place of posting.
1.	Ghulam Sarwar B&AO (BS-16) DEO (M) Abbottabad.	Assistant Director (Administration) (BS-17) in the Directorate of E&SE, Peshawar against the vacant post.
2.	Sherullah B&AO(BS-16) DEO (F) Mardan.	Assistant Director (Finance & Accounts) (BS-17) in the Directorate of E&SE, Peshawar against the vacant post.

Endst. No. & date as above.

SECRETARY

Copy forwarded to:

1. The Secretary to Govt. of Khyber Pakhtunkhwa, Establishment Department.
2. The Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department.
3. The Accountant General Khyber Pakhtunkhwa, Peshawar.
4. PSO to Chief Secretary to Govt. of Khyber Pakhtunkhwa.
5. The Director (E&SE) Khyber Pakhtunkhwa Peshawar.
6. District Accounts Officers Abbottabad/ Mardan.
7. PS to Secretary E&SE Department.
8. Officers concerned.
9. Office File.

(ZAMIN KHAN MOMAND)  
SECTION OFFICER (PRIMARY)



2/

Annex-G

GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT  
Peshawar, dated the 28<sup>th</sup> January, 2013

**NOTIFICATION**

No. SO(PE)/4-10/SSRC/Ministerial Staff/2013:- In pursuance of the provisions contained in sub rule (2.) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, and in supersession of all rules issued in this behalf to the extent of the Elementary and Secondary Education Department the (E&SE Department) in consultation with the Establishment Department and Finance Department hereby lays down the method of recruitment, qualifications and other conditions specified in Column 3 to 5. of the Appendix to this Notification which shall be applicable to the posts borne on the Ministerial establishment in the Elementary and Secondary Education Department specified in Column No.2 of the said Appendix.

**APPENDIX**

S. NO	NOMENCLATURE	MINIMUM QUALIFICATION AND EXPERIENCE FOR INITIAL APPOINTMENT OR BY TRANSFER	AGE LIMIT	METHOD OF RECRUITMENT (EXISTING)
1.	Deputy Director (Finance and Accounts) / Deputy Director (Administration) (BPS-18)		4	5 By promotion on the basis of seniority cum fitness from amongst the Assistant Directors (Finance and Accounts) & Assistant Directors (Administration) with at least five years service as such.
2.	Assistant Director (Finance and Accounts) / Assistant Director (Administration) (BPS-17)			By promotion on the basis of seniority cum fitness from amongst the Budget and Accounts Officers with at least two years service as such.*
3.	Budget and Accounts Officer. (BPS-16)			By promotion on the basis of seniority cum fitness from amongst the Superintendents with at least two years service as such.
4.	Superintendent (BPS-16)			By promotion on the basis of seniority cum fitness amongst the holders of the posts of Assistants and Senior Scale Stenographers with at least five years service as such.
5.	Senior Scale	(i) At least Second Class Bachelor's Degree or equivalent	20 to 30	By promotion on the basis of seniority cum

A. H. ...  
as per ...



	Stenographers (BPS-16)	<p>qualification from a recognized University;</p> <p>(ii) Speed of Seventy words per minute in shorthand in English and Forty Five words per minute in typing; and</p> <p>(iii) Knowledge of Computer in using MS words and MS Excel.</p>	Years	fitness from amongst the Junior Scale Stenographers (BPS-14) with at least five years service as such.
6.	Assistant (BPS-14)	At least Second Class Bachelor's Degree from a recognized University.	20 to 30 Years	<p>(a) Seventy five per cent by promotion, on the basis of seniority-cum-fitness from amongst the Senior Clerks with at least five years service as such; and</p> <p>(b) Twenty five per cent by initial recruitment</p>
7.	Junior Scale Stenographers (BPS-14)	<p>(i) Intermediate or equivalent qualifications from a recognized Board;</p> <p>(ii) Speed of Fifty words per minute in shorthand in English and Thirty Five words per minute in typing; and</p> <p>(iii) Knowledge of Computer in using MS words and MS Excel.</p>	18 to 30 Years	By Initial recruitment
8.	Senior Clerks (BPS-09)			By promotion on the basis of seniority cum fitness from amongst the Junior Clerks, Assistant Store Keepers and Laboratory Assistants with at least two years service as such.
9.	Junior Clerk/Assistant Store Keeper/ Laboratory Assistant (BPS-07)	<p>(i) For Junior Clerk / Assistant Store Keepers having at least Second Division in Secondary School Certificate or equivalent qualifications from a recognized Board and a speed of twenty five words per minute in typing ;</p> <p>(ii) For Laboratory Assistants having at least Second Division in Secondary School Certificate or equivalent qualifications from a recognized Board with Science.</p>	18 to 30 Years	<p>(a) Thirty Three per cent by promotion, on the basis of seniority-cum-fitness from amongst the Daftaries, G/Operators, Qasids and Naib Qasids including other equivalent posts in the attached department /offices/institutions with at least Two years service as such and having qualification mentioned in column No. 3.</p> <p>(b) Sixty Seven per cent by initial recruitment</p> <p>Note: - For the purpose of promotion, there shall be maintained a joint seniority list of Daftaries, Gestetner Operators, Qasids, Naib Qasids, etc including other equivalent posts in the attached department /offices/institutions with reference to the dates of their regular appointment or acquiring Secondary School Certificate whichever is later.</p>

*A. H. ...*  
*AM*

10.	Driver (EPS-04)	Having valid Driving License and preferably Literate.	18 to 32 Years	By Initial recruitment
11.	Naib Qasid / Chowkidar / Behishti / Cook / Bearer / Shop Attendant / Laboratory Attendant etc	Preferably Literate	18 to 30 Years	By Initial recruitment

SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Endst : of even No & date:

1. The Secretary to Government of Khyber Pakhtunkhwa, Establishment and Administration Department Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa, Finance Department Peshawar.
3. The Secretary to Government of Khyber Pakhtunkhwa, Law Department Peshawar.
4. The Secretary Khyber Pakhtunkhwa, Public Service Commission Peshawar.
5. The Accountant General Khyber Pakhtunkhwa Peshawar.
6. The Director, Elementary and Secondary Education Department Khyber Pakhtunkhwa Peshawar.
7. The Director of Education (FATA) Peshawar.
8. The Director, Curriculum and Teacher Education Khyber Pakhtunkhwa Abbottabad.
9. The Director, (PITE) Khyber Pakhtunkhwa Peshawar.
10. The Director, ESRU Elementary and Secondary Education Department Khyber Pakhtunkhwa Peshawar.
11. Manager Government Printing Press Khyber Pakhtunkhwa Peshawar.
12. The Deputy Director, EMIS (S&SE) Department Khyber Pakhtunkhwa Peshawar.
13. All District Education Officer (M&F) in Khyber Pakhtunkhwa.
14. All District Account Officer in Khyber Pakhtunkhwa.
15. All Agency Education Officer in FATA.
16. All Agency Account Officer in FATA.
17. PS to Governor Khyber Pakhtunkhwa Peshawar.
18. PS to Chief Minister Khyber Pakhtunkhwa Peshawar.
19. PS to Chief Secretary Khyber Pakhtunkhwa Peshawar.
20. PS to Minister E&SE Khyber Pakhtunkhwa Peshawar.
21. PS to Secretary E&SE Khyber Pakhtunkhwa Peshawar.
22. Master file

*Handwritten signatures and initials*

*Handwritten signature*  
7-2-2013  
SECTION OFFICER (Primary)

23

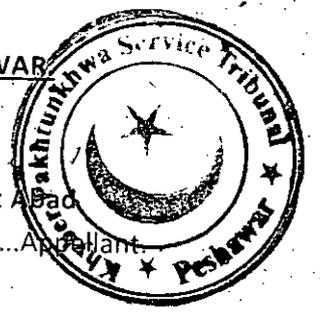
ANNEX-9

24

Anwar - H

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

**Service Appeal No: 1067/ 2015**



Ghulam Sarwar AD(Admn) Directorate of Curriculum Teachers Education, Abbottabad

Appellant

**VERSUS**

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

**JOINT PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENTS 1-3.**

**Respectfully Sheweth:-**

The Respondents submit as under:-

**PRELIMINARY OBJECTIONS.**

- 1 That the Appellant has got no cause of action / locus standi.
- 2 That the instant Service Appeal is badly time barred.
- 3 That the Appellant has concealed material facts from this Honorable Tribunal, hence liable to be dismissed on this score.
- 4 That the Appellant has filed the instant appeal on malafide motives.
- 5 That the Appellant has not come to this Honorable Tribunal with clean hands.
- 6 That the Appellant is not entitled for the relief he has sought from this Honorable Tribunal.
- 7 That the instant Service Appeal is against the prevailing law & rules.
- 8 That the instant Appeal is based on malafide intentions just to put extra pressure on the Respondents for gaining illegal service benefits.
- 9 That this Honorable Tribunal has got no jurisdiction to adjudicate upon the present service appeal.
- 10 That the appeal is not maintainable in its present form & circumstances of the case.
- 11 That the appeal is bad for mis-joinder & non-joinder of the necessary parties.
- 12 That the appellate order / Notification dated 29/08/2014 is legally competent & liable to be maintained in favour of the Respondents.

8-1

**ON FACTS**

- 1 That Para-I, needs no comments being pertains to the service record of the appellant.
- 2 That Para-2 is correct, hence needs no further comments.
- 3 That Para-3 is also correct, hence needs no further comments.

**ATTESTED**

**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

4 That Para-4 is incorrect & misleading on the grounds that the appellant was made entitled for the grant of Selection Grade wef 19-7-1999 vide Notification dated 29-9-004. However, the appellant preferred a Service Appeal before the Honorable Service Tribunal, which was accepted on 15-8-2006 & upheld by the August Supreme Court of Pakistan vide judgment dated 05-3-2010. Hence in pursuance of the said judgment, the appellant has been allowed Selection grade wef 30-10-1993 vide Corrigendum order dated 26-4-2010 issued by the Respondent No: 3 in the interest of justice. (Copy of the said is Annexure-A).

- 5 That Para-5 is correct, hence needs no comments.
- 6 That Para-6 is also correct. Hence needs no comments.
- 7 That Para-7 is incorrect & denied. The cited Notification dated 28-01-2013 with reference to S/No: 2 says that in pursuance of the provisions contained in Sub: Rule-2 of Rule-3 of the Khyber Pakhtunkhwa, Civil Servants APT Rules, 1989 & supersession of all Rules issued in this behalf to the extent of E&SE Department in consultation with the Establishment & Finance Departments hereby lays down the method of the recruitment, qualification & other conditions specified in column 3 to 5 of the Appended to this Notification shall be applicable to the posts born on Ministerial Establishment in the Respondent Department specified in column-2 with the conditions for the grant of promotion on the basis of seniority cum fitness for the Budget & Accounts Officer with at least 2-years regular service as such. Hence the appellant is not entitled for the grant of promotion as mentioned in the Notification & has thus been made entitled for the grant of promotion in BPS17 wef 29-8-2014 against the AD (Admn: ) post in the Respondent Department with immediate effect as and when the posts / vacancies were available to the Respondents for the purpose of adjustment of the appellant. ( Copy of the said Notification is as Annexure-B).
- 8 That Para-8 is also incorrect & denied. There were no vacant posts available in the Respondent Department, upon which the appellant could be adjusted against the Asst: Director (Admn:) post in BPS-17. However, as & when the vacancy was available, the competent authority has been pleased to promote the appellant vide Notification dated 29-8-2014 with immediate effect & in the interest of public service (Copy of the said Notification is Annexure-C).
- 9 That Para-9 is incorrect & denied. No Departmental Appeal has been filed by the appellant against the impugned Notification dated 29-8-2014 nor any such record is available in the Respondent Department till date. Hence the plea of the appellant is liable to be dismissed on the following grounds inter alia :-

#### GROUNDS.

- A Incorrect & denied. The statement of the appellant is against the facts & actual circumstances of the case on the grounds that the appellant has been promoted against BPS-17 post of AD (Admn: ) vide the impugned Notification dated 29-8-2014 on the availability of vacancy against the post in the Respondent Department.
- B Incorrect & denied. The appellant has been treated as per law, Rules & Promotion Policy in the instant case & has thus made entitled for the grant of promotion vide the impugned Notification dated 29-8-214 by the Respondent Department.
- C Incorrect & denied. The refer case is not fit & even applicable upon the case of the appellant as each & every case has its own nature & parameters. Hence the plea of the appellant is liable to be dismissed in favour of the Respondents.

**ATTESTED**  
 EXAMINER  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar

*Rd.*

26

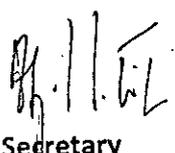
Anno-H

AK

- D) Incorrect & denied. The case & issue of the appellant is different from the cited case of the Junior & Senior Clerks. Hence not applicable upon the case of the appellant in the wake of the above made submissions in the foregoing paras.
- E) Incorrect & denied. The appellant has got no cause of action as the impugned Notification dated 29-8-2014 is in accordance with law, Rules & policy issued by the Respondent Department in the interest of equity & justice with immediate effect. Hence is liable to be maintained.
- F) The Respondents seek leave of this Honorable Tribunal to advance additional grounds & case law/ record at the time of arguments on the main appeal.
- G) Incorrect & denied on the grounds that this Honorable Tribunal has got no jurisdiction to entertain the instant appeal against the Respondents.

**Prayer**

In view of the above made submissions, it is humbly requested that this Honorable Tribunal may very graciously be pleased to dismiss the instant appeal with cost in favour of the respondent Department.

  
 Secretary  
 E&SE Department Khyber  
 Pakhtunkhwa, Peshawar.  
 (Respondents No: 1&2)

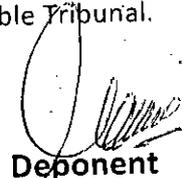
4/3/2016

  
 Director  
 E&SE Department Khyber  
 Pakhtunkhwa, Peshawar.  
 (Respondent-3)

**AFFIDAVIT**

I, Khaista Rehman Asstt: Director (Lit: II) E&SE Department Khyber Pakhtunkhwa, Peshawar do hereby solemnly affirm and declare on oath that the contents of the instant Parawise Comments in the titled Service appeal are true & correct to the best of my knowledge & belief & that nothing has been concealed from the ambit of this Honorable Tribunal.

**ATTESTED**  
  
 EXAMINER  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar

  
 Deponent

27

Annex-I

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR**

Appeal No. 1067/2015

**Ghulam Sarwar**

**VERSUS**

**Secretary E&SE Department, Khyber Pakhtunkhwa and  
others**

**REJOINDER ON BEHALF OF APPELLANT.**

**PRELIMINARY OBJECTIONS:-**

All the preliminary objections raised by the respondents are incorrect and baseless and not in accordance with law, and rules, rather the respondents are estopped to raise such objections due to their own conduct.

**ON FACTS:-**

1. Reply to Paras 1 to 3 needs no comments.
2. Reply of respondent to Para No. 4 of the appeal, is supportive to the version of the appellant and also prove illegality and irregularities committed by respondent department, for award of Selection Grade to the appellant and others by intentionally / malafidely depriving them from their fundamental right and sustaining heavy financial loss and mental torture and fruitless litigations.

**ATTESTED**

**EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar**

3. Reply of respondents to Para No. 5 and 6 of the appeal are correct and need no comments.
4. Reply of respondents to Para No. 7 of the appeal is totally baseless as the appellant was promoted to the post of B&AO/ADO (Account) vide (defunct) Director (School) NWFP notification issued under Endst No. 1225-61 dated 11/01/1988 at Serial No. 3, hence the appellant rendered 26 (Twenty Six) years, 07 month and 18 days service at his credit against requisite two years service specified in notification referred by respondent's department and that too the post of Assistant Director (Admn) was lying available with the respondent department. (Copy of retirement order of Assistant Director (Admn) is attached herewith).
5. Reply of respondents to Para No. 8 of the appeal is incorrect and denied as discussed earlier and further is against the ground realities as the post of Assistant Director (Admn) was lying vacant due to retirement of Mr. Fazali Khaliq Khan Assistant Director (Admn) on 07/01/1997 under Secretary to Govt. of NWFP Education Department notification No. SO (S) 3-1/91 (A) dated 17/07/1996. (Copy of retirement notification is attached as above).
6. Reply of respondents to Para No. 9 of the appeal of the respondents is incorrect and denied. Copy of letter from Director E&SE KPK Peshawar placed at Page 18 to

ATTESTED  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar



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Annex-I

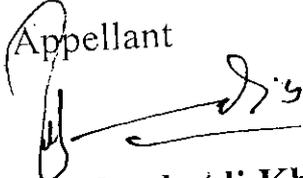
Secretary E&SE KPK Peshawar bearing No. 247/A-23/MS/DSC/DPC/V-I dated 01/07/2015 and Copy of departmental appeal of Page No. 19 clearly indicate that the appellant has filed his departmental appeal before the competent authority, which was not decided within the stipulated period, hence the instant appeal was filed by the appellant.

GROUNDS:-

- A. Para A is incorrect.
- B. Para B is also incorrect as discussed above.
- C. Para C is equally incorrect.
- D. Para D is incorrect and not admitted.
- E. Para E is incorrect. The appellant being an aggrieved person has the cause of action to file the instant appeal.
- F. Para F is incorrect.

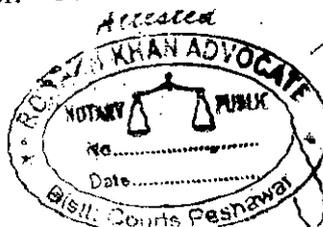
It is prayed that the appeal of the appellant may graciously be accepted as prayed for with back benefits with costs.

Through

Appellant  
  
 Mehboob Ali Khan  
 Advocate, High Court,  
 Peshawar.

AFFIDAVIT:-

I, do hereby solemnly affirm and declare on oath that all the contents of instant rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed or misstated from this Honourable Tribunal.



DEPONENT

11.8.16

Certified to be true copy

EXAMINER  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar

Date of Presentation of Application 23-4-2021  
 No. of Words 3600  
 Copying Fee 40/-  
 Urgent 44/-  
 Total 84/-  
 Name of Copyist [Signature]  
 Date of Completion of Copy 23-4-2021  
 Date of Delivery of Copy 23-4-2021

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Annex-J

BEFORE THE HONOURABLE KP SERVICE TRIBUNAL  
PESHAWAR.



E.P. NO. 143 /2020

IN

APPEAL NO. 1067/2015

Ghulam Sarwar Ex-Assistan Director (Admn) worked as Deputy Director (Admn). Khyber Pakhtunkhwa. Abbottabad.

Versus

Secretary, elementary & Secondary Education Department, Peshawar

INDEX.

S.No.	Description of documents.	Annex:	P.No.
1-	Execution Petition		1-2
2-	Judgment dated 12-3-2012	A	3-5
3-	Wakalatnama		6

IBADUR RAHMAN  
Advocate High Court  
127-Sarhad Mansion  
Hashtnagri, GT Road  
Peshawar.

Cell = 0300-5932939

Dated 02/10 2020

**ATTESTED**

**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal  
PESHAWAR

31

① Annex-J

BEFORE THE HONOURABLE KP SERVICE TRIBUNAL  
PESHAWAR.

E.P. NO. \_\_\_\_\_/2020

IN

APPEAL NO. 1067/2015



Ghulam Sarwar Ex-Assistan Director (Admn) worked as Deputy Director (Admn). Khyber Pakhtunkhwa. Abbottabad.

..... Petitioner

Versus

Secretary elementary & Secondary Education Peshawar.

..... Respondent

EXECUTION PETITION FOR IMPLEMENTATION  
OF JUDGMENT DATED 09-04-2019 PASSED BY  
THIS HONOURABLE TRIBUNAL.

Respectfully sheweth.

Petitioner submits as under :-

- 1- That the petitioner/ Appellant filed an Appeal against the notification bearing Endst No. SO (PE) /2-6 DPC meeting BA & O from BS-16 to BS 17 2014 dated 28/08/2014. whereby the appellant was promoted from BS-16 to BS-17 Assisstant Director Administration. WITH immediate effect instead of the date of availability of the vacancy.
- 2- That this honouable tribunal disposed-off the appeal with the following observations/directions :-

*Admittedly, there is no order of the appellate authority in relation to the grievance of the appellant. Consequently the present case if remanded to the appellate authority (Respondent No.2) for decision of the departmental appeal of the appellant with speaking order. The present service appeal is disposed off in the above terms. Copy of the departmental*

*[Handwritten signature]*  
Secretary  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

W appeal of the appellant available on file be also sent to the appellate authority alongwith copy of this judgment, vide judgment dated 09-04-2019. (Copy attached as Annex:-A)

- 3- That since then, the appellant/Petitioner time an again requested the respondents for implementation of the above judgment/order of this honourable tribunal but still no response what so ever from there side.
- 4- That almost one and a half year has passed but still the respondent is reluctant to implement the judgment of this honourable tribunal and the applicant has left with no other option but to approach this honourable tribunal, hence, the applicant in hand.

It is, therefore, humbly prayed that the respondents be directed to implement the judgment/order dated 09-04-2019.

Any other remedy deem proper in the matter and not specifically asked for may also please be given with Costs.

*[Signature]*  
Petitioner/Appellant

Through:- *[Signature]*  
IBADUR RAHMAN  
Advocate High Court  
Sarhad Mansion  
Hashtnagri, GT Road  
Peshawar.

DATED 04/10 2020

AFFIDAVIT

Stated on oath that above contents are true and correct to the best of my knowledge and belief.

*[Signature]*  
Deponent

**ATTESTED**  
*[Signature]*  
**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

**ATTESTED**  
Oath  
Commissioner  
District & Session Court, Peshawar  
*[Signature]*

02-10-2020

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Annex-J

BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL, PESHAWAR



Appeal No 1067/2015

29-8-15

Ghulam Sarwar Assistant Director (Admn) working as Deputy Director (Admn) DCTE, Khyber Pakhtunkhwa, Abbottabad.

..... Appellant

**VERSUS**

1. The Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Elementary and Secondary Education Peshawar.
3. The Director Elementary and Secondary Education, Peshawar.

..... Respondents

APPEAL UNDER SECTION 4 OF THE  
KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL ACT, 1974, AGAINST THE  
NOTIFICATION BEARING ENDST. NO. SO  
(PE)/2-6 DPC MEETING / BA & O, FROM  
BS-16 TO BS-17 2014 DATED 28/08/2014,  
WHEREBY THE APPELLANT WAS  
PROMOTED FROM BS-16 TO BS-17,  
ASSISTANT DIRECTOR  
ADMINISTRATION, FROM IMMEDIATE  
EFFECT FROM 28/08/2014 INSTEAD OF  
THE DATE OF AVAILABILITY OF  
VACANCY. COPY IS ANNEXURE "A."

Filed today  
29/8/15

Re-submitted  
to-day

ATTESTED  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

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

Appeal No 1067/2015

Khyber Pakhtunkhwa  
Service Tribunal  
Case No. 1117  
Date 29-8-15

Ghulam Sarwar Assistant Director (Admn) working, as Deputy  
Director (Admn) DCTE, Khyber Pakhtunkhwa, Abbottabad.

..... Appellant

**VERSUS**

1. The Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Elementary and Secondary Education  
Peshawar.
3. The Director Elementary and Secondary Education,  
Peshawar.

..... Respondents

**APPEAL UNDER SECTION 4 OF THE**  
**KHYBER PAKHTUNKHWA SERVICE**  
**TRIBUNAL ACT, 1974, AGAINST THE**  
**NOTIFICATION BEARING ENDST NO. SO**  
**(PE)/2-6 DPC MEETING / BA & O, FROM**  
**BS-16 TO BS-17 2014 DATED 28/08/2014,**  
**WHEREBY THE APPELLANT WAS**  
**PROMOTED FROM BS-16 TO BS-17,**  
**ASSISTANT DIRECTOR**  
**ADMINISTRATION, FROM IMMEDIATE**  
**EFFECT FROM 28/08/2014 INSTEAD OF**  
**THE DATE OF AVAILABILITY OF**  
**VACANCY. COPY IS ANNEXURE "A."**

ATTESTED

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Filed - today  
29/9/15

Not submitted  
to - day

Annex-J

RESPECTFULLY SHEWETH,

The appellant submits as under:-

1. That the appellant joined Govt. service in the office of the Protector of Emigrants, Govt. of Pakistan on 10/03/1976 as Steno Typist and further joined Education Department Govt. of Khyber Pakhtunkhwa on 01/02/1979 as Senior Scale Stenographer.
2. That the appellant was promoted as Superintendent vide Director Education Notification issued under Endst: No. 18740-80/A-23/Ae-II dated 22/06/1987. (Copy of notification is annexed as Annexure A-1).
3. That the appellant was further promoted to the post of Budget and Accounts Officer vide Director Education, Khyber Pakhtunkhwa notification issued Endst No. 1225-61/A-23/II-AE dated 11/01/1988. (Copy is annexed as Annexure B).
4. That the appellant was allowed selection grade from BPS-16 to 17 w.e.f. 30/10/1993 vide notification No. 3410-24 dated 26/04/2010. (Copy is attached herewith as Annexure C).
5. That the appellant stood at Serial No. 7 of the Seniority list corrected upto 31/12/2004 and at Serial No. 1 of the seniority list issued on 31/08/2013. (Copy of both the seniority lists are attached as Annexure C-1 & C-2).
6. That the appellant was allowed Mover Over from B-16 to 17 and further 17 to 18 w.e.f. 01/12/1993 and 01/12/1998

ATTESTED

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar





respectively. (Copy of notification is annexed as Annexure D).

7. That under the provision of Govt. of Khyber Pakhtunkhwa Civil Servants (Appointment promotion and Transfer) Rules 1989, issued vide No. SO (PE)/4-10/SSRC/Ministerial Staff / 2013 dated 28/01/2013, the vacant posts of Assistant Director (Admn) and Assistant Director (F&A) BPS-17 has to be filled up out of Budget and Accounts Officers through promotion on the basis of seniority cum fitness. (Copy of notification is attached as Annexure E).

8. That the post of Assistant Director BPS-17 remained vacant, the promotion of appellant under the law was due from the date of availability of vacancy of said post while the appellant was promoted to the post of Assistant Director BPS-17 on 29/08/2014 vide order No. SO (PE)/2-6/DPC Meeting / B&AO from BPS-16 to BPS-17 / 2014 dated 29/08/2014. (Notification of promotion order is Annexure "A" mentioned above).

9. That feeling aggrieved the appellant filed departmental appeal before the Secretary to Govt. Khyber Pakhtunkhwa Elementary and Secondary Education, Peshawar on 01/07/2015, but no response, whatsoever is received to appellant till the expiry of statutory period, hence the instant appeal before this August Tribunal. Copy is Annexure "D".

**ATTESTED**

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

- E. That the cause of action arose to the appellant to file the instant appeal on 29/09/2015 i.e. after the expiry of statutory period for departmental appeal on 28/09/2015.
- F. That the appellant seeks leave of this Honourable Tribunal to claim further grounds at the time of hearing.
- G. That this Honourable Tribunal has got the jurisdiction to entertain the instant appeal.

PRAYER:-

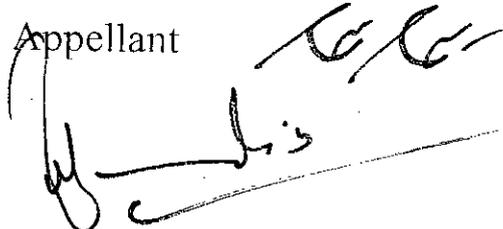
It is therefore, very humbly prayed that the instant appeal may very graciously be accepted and the respondents may kindly be directed to consider / modify the date of promotion of the appellant from the date of availability of vacancy instead of 29/08/2014 (i.e. the date of passing of the impugned notification) with all back benefits.

Any other consequential relief which this Honourable Court / Tribunal deems fit and proper under the circumstances of the case may also be granted.

Certified to be true copy

**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Application 23-4-2021  
 Page of Words 2800 Through  
 Page Fee 30 -  
 Urgent 4 -  
 Total 34 -  
 Name of Copyist \_\_\_\_\_  
 Date of Completion of Copy 23-4-2021  
 Date of Delivery of Copy 23-4-2021

Appellant  


**MEHBOOB ALI KHAN**  
 Advocate, High Court,  
 Peshawar.

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Annex-K



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

Appeal No 1067/2015

AS. W. J. Service Tribunal  
Registry No. 111/1  
Date 29-8-15

Ghulam Sarwar Assistant Director (Admn) working as Deputy Director (Admn) DCTE, Khyber Pakhtunkhwa, Abbottabad :

..... Appellant

**VERSUS**

1. The Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Elementary and Secondary Education Peshawar.
3. The Director Elementary and Secondary Education, Peshawar.

..... Respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST THE NOTIFICATION BEARING ENDST NO. SO (PE)/2-6 DPC MEETING / BA & O, FROM BS-16 TO BS-17 2014 DATED 28/08/2014, WHEREBY THE APPELLANT WAS PROMOTED FROM BS-16 TO BS-17, ASSISTANT DIRECTOR ADMINISTRATION, FROM IMMEDIATE EFFECT FROM 28/08/2014 INSTEAD OF THE DATE OF AVAILABILITY OF VACANCY. COPY IS ANNEXURE "A."

① & ✓  
Filed today  
29/8/15

Re-submitted today

2-11-15

**APPELLED**

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

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Annex - K

Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	09.04.2019	<p align="center"><b><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u></b>  <b>Service Appeal No. 1067/2015</b></p> <p>Date of Institution ..... 29.09.2015  Date of Decision ..... 09.04.2019</p> <p>Ghulam Sarwar Assistant Director (Admn) working as Deputy Director (Admn) DCTE, Khyber Pakhtunkhwa, Abbottabad.  <b>Appellant</b></p> <p align="center"><b>Versus</b></p> <p>1. The Chief Secretary Khyber Pakhtunkhwa Peshawar.  2. The Secretary Elementary &amp; Secondary Education, Peshawar.  3. The Director Elementary &amp; Secondary Education Peshawar.</p> <p align="right"><b>Respondents</b></p> <p>Mr. Muhammad Hamid Mughal-----Member(J)  Mr. Hussain Shah -----Member(J)</p> <p align="center"><b><u>JUDGMENT</u></b>  <b><u>MUHAMMAD HAMID MUGHAL, MEMBER:</u></b> - Learned counsel for appellant and Mr. Zia Ullah learned Deputy District Attorney present.</p> <p>2. The appellant has filed the present appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 being aggrieved against the promotion order dated 29.08.2014 whereby he was promoted from the post of Budget &amp; Account Officer (BS-16) to the post of Assistant Director (BS-17) with immediate effect. Prayer of the appellant is that the respondents may be directed to promote the appellant to the post of Assistant Director (BS-17) from the date of</p>

9.4.2019

**ATTESTED**

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

4

Annex-K

availability of vacancy instead of 29.08.2014.

3. Learned counsel for the appellant argued that under the promotion criteria dated 28.01.2013, the vacant posts of Assistant Director (Admn) & Assistant Director (F&A) BS-17 has to be filled up out of Budget & Account Officers through promotion on the basis of seniority cum fitness. Further argued that the posts of Assistant Director (Admn) & Assistant Director (F&A) remained occupied by the junior most superintendents and other officers of the department hence the appellant's promotion to the post of Assistant Director was due from the date of availability of vacancy but the appellant was promoted to the said post w.e.f 29.08.2014 instead of from the date of availability of vacancy which is against law and norms of justice; that the departmental appeal of the appellant went un-responded.

4. As against that learned Deputy District Attorney argued that the appellant has not filed any departmental appeal against the promotion order dated 29.08.2014; that the appellant was not entitled for the grant of antedated promotion; that as and when the vacancy was available, the competent authority promoted the appellant vide impugned promotion order dated 29.08.2014.

5. Arguments heard. File perused.

6. It is also to be seen that whether under the promotion criteria which was in field prior to the promotion criteria dated 28.01.2013, the appellant was also entitled to promotion to the post of Assistant Director (BS-17) or otherwise.

2.4.2019

**ATTESTED**

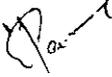
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

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Annex-K

7. Admittedly, there is no order of the appellate authority in relation to the grievance of the appellant. Consequently the present case is remanded to the appellate authority (Respondent No.2) for decision of the departmental appeal of the appellant with speaking order. The present service appeal is disposed of in the above terms. Copy of the departmental appeal of the appellant available on file be also sent to the appellate authority alongwith copy of this judgment. Parties are left to bear their own costs. File be consigned to the record room.

  
 (Hussain Shah)  
 Member

  
 (Muhammad Hamid Mughal)  
 Member

ANNOUNCED  
 09.04.2019

**Certified to be true copy**

  
**EXAMINER**  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar

Date of Presentation of Application 23-4-2021  
 Number of Words 2000  
 Copying fee 22-  
 Grant 4-  
 Total 26-  
 Name of Copyist   
 Date of Completion of Copy 23-4-2021  
 Date of Delivery of Copy 23-4-2021

413

Annex - L

Directorate of Elementary & Secondary Education,  
Khyber Pakhtunkhwa, Peshawar.  
No. ~~2347~~ /A-23/MS/DSC/DPC/V-1  
Dated Peshawar the ~~1/1/2015~~

To

The Secretary to  
Govt of Khyber Pakhtunkhwa  
Elementary & Secondary Edu: Department.  
Peshawar

Subject: DEPARTMENTAL REPRESENTATION / APPEAL FOR GRANT OF PROMOTION IN BPS-17 FROM THE DATE OF VACATION OF THE POSTS OF ASSISTANT DIRECTOR (ADMIN) ASSISTANT DIRECTOR (F&A) INSTEAD OF WITH IMMEDIATE EFFECT.

I am directed to refer to the subject cited above and to state that M/S:-

1. Mr. Ghulam Sarwar Budget & Accounts Officer
2. Mr. Sherullah Budget & Accounts Officer

Were promoted to the posts of Assistant Directors (Admin/F&A) in BPS No. 17 on regular basis, vide Notification No. SO(PE)/2-6/DPC Meeting / B&AO/2014 dated 29.08.2014.

The afore said newly promotes Assistant Directors have preferred a departmental appeal for grant of promotion to the posts of Assistant Directors BPS No. 17 from the date of vacation of the posts instead of with immediate effect, on the basis of judgment of Service Tribunal upheld by Hon: Supreme Court of Pakistan in an other similar nature case.

The requisite appeals alongwith relevant supporting documents / Court Judgments are enclosed herewith for your kind perusal and further necessary action please.

Encl: As above.

7/2/15

Deputy Director (F&A)  
Directorate of E&SE K.P, Peshawar

Endst; No. 2347 /

Copy forwarded to the:-

1. PA to Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.

Secy. D.No  
3387  
11/7/15

By Secy - P.S.O  
6/7/15

Deputy Director (F&A)  
Directorate of E&SE K.P, Peshawar

AIT Admin

44

14

Before

Honourable Secretary to  
Govt of Khyber Pakhtunkhwa  
Elementary & Secondary Edu: Department

Through: Proper Channel

Subject: DEPARTMENTAL REPRESENTATION/APPEAL FOR GANT OF PROMOTION IN BPS-17 FROM THE DATE OF VACATION OF THE POSTS OF ASSISTANT DIRECTOR (ADMN), ASSISTANT DIRECTOR F&A, BEING SENIOR MOST BUDGET & ACCOUNTS OFFICER OF THE PROVINCE.

It is submitted that the facts and grounds of this departmental representation/appeal for grant of promotion to the appellant in BPS-17 being the Senior Most Budget & Accounts Officer of the Province appended below:-

1. That the appellant joined Govt service in the office of the Protector of Emigrants, Govt of Pakistan on 10.03.1976 as Steno Typist & further joined Education Department Govt of Khyber Pakhtunkhwa on 1.02.1979 as Senior Scale Stenographer.
2. That the appellant was promoted as Superintendent vide Director Education notification issued under Endst: No. 1874080/A-23/Ae-II dated 22.06.1987. Copy of notification annexed at Annex-"A".
3. That the appellant was further promoted to the post of Budget & Accounts Officer vide Director Education, Khyber Pakhtunkhwa notification issued under Endst NO. 1225-61/A-23/II-AE dated 11.01.1988. Copy annexed at Annex-"B".
4. That the appellant was allowed Selection Grade from BPS 16 to 17 w.e.f 30/10/93 vide notification No. 3410 dated 26/9/2010 copy attached.
5. That the appellant stood at S.No.07 of the Seniority list corrected upto 31.12.2004 and at S.No.1 of Seniority list issued on 31.08.2013. Copy of both the seniority lists attached at Annex-"C".
6. That the appellant was allowed Mover Over from B-16 to 17 & further 17 to 18 w.e.f 01.12.1993 & 01.12.1998 respectively. Copy of notification annexed at Annex-"D".
7. That, under the provision of Govt of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules 1989, issued vide No.SO(PE)/4-10/SSRC/Ministerial Staff/2013 dated 28.01.2013, the vacant posts of Assistant Director(Admn) & Assistant Director(F&A) BPS-17 has to be filled up out of Budget & Accounts Officers through promotion on the basis of seniority cum fitness. Copy of notification attached at Annex-"E"
8. That the posts of Assistant Director (Admn) & Assistant Director (F&A) BPS-17 remained occupied by junior most Superintendents/Officers of the Department which is totally against the spirit of Govt policies notified from time to time.
9. That the post of Assistant Director BPS-17 remained vacant but the appellant promotion under the law was due from the date of vacation while the appellant was promoted to the post of Assistant Director BPS-17 on 29.08.2014 vide order No.SO(PE)/2-6/DPC Meeting / B&AO from BPS-16 to BPS-17/2014 dated 29.08.2014, which is against law, ineffective and imperative against the rights of appellant, as there is a clear cut Directive of Honorable Court in this regard in an other similar nature case which is attached for ready reference.

In the light of foregoing, it is humbly prayed that the appellant may please be considered for regular promotion to the post of Assistant Director BPS-17 from the date of vacation of post instead of 29.08.2014.

*Handwritten signatures and initials:*  
All over  
W.S.  
A.E.

*Signature:*  
Ghulam Sarwar  
Assistant Director (Admn)  
Working as Deputy Directorate (Admn).  
at DCTE KPK Abbottabad





45  
**GOVERNMENT OF KHYBER PAKHTUNKHWA**  
**ELEMENTARY & SECONDARY EDUCATION**  
**DEPARTMENT**

Anwar - M

No.SO (Lit)E&SED/1-3/SA#1263/2015.  
Dated Peshawar the, March 22, 2021

**Order**

WHEREAS Mr. Ghulam Sarwar, was promoted from the post of Budget & Accounts Officer (BS-16) to post of Assistant Director BS-17 on regular basis on the recommendations of the Departmental Promotion Committee vide notification dated 29.08.2014.

2. AND WHEREAS In terms of Rule 15 (2) of Khyber Pakhtunkhwa Government Servants Appointment, Promotion & Transfer (APT) Rules 1989(in-vogue by then), he was on probation for a period of one year extendable for another year. Hence he was on probation upto 28.08.2016.

3. AND WHEREAS final seniority list of Assistant Director was issued on 31.08.2015.

4. AND WHEREAS his date of birth being 06.03.1956, he proceeded on retirement on 05.03.2016 on the basis of superannuation. Hence he retired from service before completion of his probation period on i.e 28.08.2016.

4. AND WHEREAS promotion to next higher grade/post is not considered during probation period as contained in clause-IV (f) of promotion policy 2009 of provincial Government.

5. NOW THEREFORE this departmental appeal has been considered on the above grounds and dismissed, being devoid of merit.

(∞) ✓

**SECRETARY**

**Endst: Even No. & Date:**

Copy of the above is forwarded to:-

1. The Registrar, Khyber Pakhtunkhwa Service Tribunal Peshawar w/r to judgement dated 09.04.2019 in Service Appeal No 1263 of 2015 and appeal No. 1067/2015.
2. The Director, E & S E Department Khyber Pakhtunkhwa, Peshawar.
3. Director, Curriculum & Teachers Education Abbottabad.
4. Section Officer (Lit-II), E&SE Department.
5. Mr. Ghulam Sarwar, Ex-Assistant Director (Administration) (BS-17) Directorate of Curriculum & Teachers Education Abbottabad.
6. PS to Secretary, E & S E Department Khyber Pakhtunkhwa, Peshawar.
7. Office Order File.

**Certified to be true copy**  
**MUNEEB-UR-REHMAN**  
**Khyber Pakhtunkhwa**  
**Service Tribunal**  
**Peshawar**

(MUNEEB-UR-REHMAN)  
**SECTION OFFICER (SCHOOLS/MALE)**

**Date of Presentation of Application** 23-4-2021

**Number of Words** 2000

**Copying Fee** 22

**Urgent** 4

**Page** 26

**Name of Applicant** [Signature]

**Date of Completion of Copy** 23-4-2021

**Date of Delivery of Copy** 23-4-2021



46  
Annex-1  
BAP

To: The Section Officer (Litigations-II)  
Govt of Khyber Pakhtunkhwa  
Elementary & Secondary Edu. Department

Subject: APPEAL FOR CONSIDERATION OF COMPETENT AUTHORITY AS PER THE DECISIONS OF HON'S SERVICE TRIBUNAL KHYBER PAKHTUNKHWA IN SERVICE APPEAL NO 1067 AND 1068.

Memo:

I am directed to refer to your letter No SO(Lit-II)E&SED/1-3/SA#1067-68/15/Ghulam Sarwar and Sherullah dated 19/12/2019 on the subject cited above and to submit that the subject case was thoroughly examined and studied in depth impartially in the light of this office both letters reflected in your above quoted reference i.e 4393 dated 30/09/2019 and 4404 dated 10/12/2019 and the following factual position was found that:

1. The appellants were promoted to BPS-17 regular as Assistant Director (Admn) and Assistant Director (F&A) on the basis of seniority list cum fitness w.e.f 29/08/2014 with immediate effect and the appellants submitted their appeals during service requesting for Antidation of their promotion w.e.f the availability of vacancy as one Fazle Khaliq Assistant Director and Rahimullah Assistant Director were retired at the age of 60 years w.e.f 07/01/1997 and 09/03/2006 (copies attached).and the department did not made any promotion after these dates till 29/08/2014 and these posts were occupied through transfers on own pay scale by junior officials till 29/08/2014.

i. The reference of 2006 SCMR 1324 made at S.No.8 and PLD 2008 Supreme Court 395 at S.No. 9 of this office letter No 4404 dated 10/12/2019 is due to oversight shown against the appellants whereas the reference 2006 SCMR 1324 and PLD 2008 Supreme Court 395 actually is in favour of the appellants, on the following grounds:-

- ii. The appellant referred in SCMR 2006, 1324 was retired on 03/10/1995 and lodged appeal on 31/10/2000 after elapse of about six years thus the court rejected his appeal, as no promotion after retirement can be allowed.
- iii. Same is the case of PLD 2008 Supreme Court 395 with the direction at S.No.6

*"It may be noted that the question of antedating promotion would only arise in case if, the petitioner was already promoted,"*

(both judgments attached).

As such these both references quoted by this office falls in favour of the appellants and not against them as Ghulam Sarwar & Sherullah both were already promoted and applied for Antidation promotion while in service.

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Annex - No

Therefore, it is crystal clear that the current under references appeals are of Antidation and not back dated promotion.

2. The appellants have produced various references/judgments of Courts in favour of Antidation promotion (copies attached).
3. It is also clarified that the existing service rules through which the appellants were promoted as Assistant Director (Admn) and Assistant Director (F&A) BPS-17 regular comes into being on 28/01/2013 (copy attached) and the appellants were promoted w.e.f 29/08/2014 after the laps of one year and 8<sup>th</sup> months (copy of promotion order attached), and before these current service rules there were the service rules for promotion to BPS-17 regular but only there was the difference of nomenclature of posts i.e before 2013 these posts were called/nominated as Administrative Officer/Assistant Director Schools etc. (copy attached)
4. It is also clarified that the appellants have based their case on the service tribunal KPK Judgment in appeal 724/2002 dated 27/08/2002, upheld by Honorable Supreme Court of Pakistan in Civil Petitions No.35-P to 51-P and CP 301-P of 2007, wherein it has been directed that the Govt servants shall not suffer at the hands/lapses on the part of department as they are always anxious of their promotion or getting their benefits at the earliest.

The appellants further contend and quoted reference of Honorable Supreme Court of Pakistan the question of giving promotion with immediate effect means when the promotion vacancy is available and seniority cum fitness is ok, then promotion shall be given immediately but in their cases their promotions is not actually with immediate effect but actually it is delayed i.e after the laps of so many years.

This office submit the case after thorough/deep and quite impartial examination of their appeals as per remarks noted in last paragraph of this office letter No.4393 dated 30/09/2019.

Encls: AS above

O/C

*[Signature]* 25.2

Assistant Director (Lit)  
Directorate of E&SE KP, Peshawar.

Endst: No. 2896

Copy forwarded to the: -

1. PA to Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.

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Assistant Director (Lit)  
Directorate of E&SE KP, Peshawar.



The Section Officer (Litigations)  
Govt of Khyber Pakhtunkhwa  
Elementary & Secondary Edu: Department

Subject: APPEAL FOR CONSIDERATION OF COMPETENT AUTHORITY AS PER THE DECISIONS OF HON'S SERVICE TRIBUNAL KHYBER PAKHTUNKHWA IN SERVICE APPEAL NO 1067 AND 1068.

Memo:

I am directed to refer to your letter No SO(Lit-II)E&SED/1.3/S.A#1067-68/15/Ghulam Sarwar and Sherullah dated 23/08/2019 on the subject noted above and to state that:

1. As per Service Rules, the posts of Assistant Director (Admn) and Assistant Director (F&A) BS-17 are filled by promotion on the basis of seniority cum fitness from amongst the Budget & Accounts Officers having at least 2 year's services as B&AO.
2. Mr Fazle Khaliq Assistant Director BS-17 and Mr Rahimullah BS-17 retired from service on the age of 60 years on 07/01/1997 and 09/03/2006 respectively (Copies attached as Annex-A-I&II).
3. The posts of Assistant Director (Admin) and Assistant Director (F&A) remained occupied by junior officers on transfer as stopgap arrangements till 2014; therefore no promotion case was processed till 2014.
4. On vacation of the post of Assistant Director (Admin) and Assistant Director (F&A), promotion order of the appellant's M/S Ghulam Sarwar and Sherullah standing at S.No. 1 and 2 of seniority list of B&AO, having 26 years and 22 years services as B&AO at their credit were made on 29/08/2014. (Copy attached at Annex-B).
5. Both the above aggrieved officers preferred departmental appeal which was submitted to competent authority vide this office Memo No.247 dated 01/01/2015, but the same could not be decided within stipulated time limit, copies attached at Annex-C.
6. Presently, both the appellants have been retired from service on 05/03/2016 and 13/11/2015 respectively and there is no other aggrieved 3<sup>rd</sup> party to be effected if the appeals of the appellants are considered/accepted except revision of their pension papers.
7. The appellants presented precedent regarding Ante dated promotions of different categories considered by E&SE Department (copies attached at Annex-D-I&II).
8. Furthermore, there is also several court decisions in favor of Ante-dated promotion wherein it has been decided that delay on the part of Department shall not suffer the Govt: employees (copies attached at Annex-E).

As per decisions of Hon's Service Tribunal Khyber Pakhtunkhwa in Service Appeal No 1067 and 1068, report is submitted with the request that this Directorate have got no objection on the consideration of appeals of the above officers from the date of vacation of the posts on the retirement of the officers mentioned at serial No 2 above please.

o/c  
Deputy Director (F&A)  
Directorate of Elementary & Secy: Education  
Khyber Pakhtunkhwa, Peshawar.

Ends: No. \_\_\_\_\_

Copy forwarded to the:-  
1. PA to Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.

o/c  
Deputy Director (F&A)  
Directorate of Elementary & Secy: Education  
Khyber Pakhtunkhwa, Peshawar.

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49

Annex-0

North West Frontier Province - Education Department

Dated Peshawar the, 9-5-1978.

Notification

No.S.O © 5-2/70 (E). In exercise of the Power conferred by sub-rule (2) of Rule 3 of the North West Frontier Province Civil Servant (Appointment promotion and Transfer) Rules 1975, and in consultation with the Information, Services and General Administration Department and the Finance Department, the Education Department is pleased to lay down the method of Appointment, qualification and other conditions specified in column 3 and 6 of the Appendix to this notification, which shall be applicable to posts borne on the Ad ministerial establishment of the Education Department specified in column 2 of the Appendix.

Captain Aftab Ahmad Khan  
Secretary to Government of  
North West Frontier Province,  
Education Department.

Endst: No.S, O (Coll) 5-2/70 (E) . Dated Peshawar the, 9-5-1978.

1. The Secretary, Services and General Administration Department, Government of NWFP Peshawar.
2. The Secretary to Government of NWFP Finance Deptt: Peshawar.
3. The Secretary to Government of NWFP Law Department, Peshawar.
4. The Secretary to NWFP, Public Service Commission, Peshawar.
5. The Manager, Government Printing Press, Peshawar, with the request that the Notification alongwith the appendix, may please be published in the next issue of Provincial Gazette and one hundred spare copies of the same may also be supplied to the Director Education NWFP Peshawar, for further distribution. The printing Press may also arrange its publication for sale purpose according to the requirement.
6. The Director of Education, NWFP, Peshawar.
7. The Accountant General, NWFP, Peshawar.

( Syed Noor Badshah )  
Section Officer (Colleges)  
Government of NWFP. Edu: Deptt:

\$\$ Saleem Janbaz \$\$

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APPENDIX

METHOD OF APPOINTMENT, QUALIFICATION AND OTHER CONDITIONS APPLICABLE TO MINISTERIAL POSTS IN THE EDUCATION DEPARTMENT

Sr. No.	Womenculture of the post	Minimum Qualification Prescribed for Appointment by Initial Recruitment and Transfer	Minimum Qualifications for Appointment and Promotion	Age Limit for Appointment by Initial Recruitment	Method of Appointment
1	2	3	4	5	6
1.	Administrative Officer / Assistant Director (Colleges) / Assistant Lecturer (School)				By promotion on the basis of seniority - Cum - Fitness from amongst holder the post of Assistant Director establishment and Assistant Accounts Officer
2.	Assistant Director Establishment / Assistant Accounts Officer				By Promotion on the basis of seniority -cum-fitness from amongst the holders of the posts of Superintendents
3.	Superintendents				By promotion on the basis of seniority -cum-fitness from amongst the holders of the posts of Assistants / Head Clerks Stenographers.
4.	Assistants / Head Clerk	Degree from a recognized University		Not less than 19 years and not more than 25 years	(i) 25% by initial recruitment and (ii) 75% by promotion on the basis of seniority -cum-fitness from amongst the holders of the posts of Senior Clerks.

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1.	2.	3.	4.	5.	6.
5.1.	Senior Clerk				By promotion on the basis of seniority - Cum - Fitness from amongst holders the posts of Junior Clerks / Asstt. Store Keepers / Laboratory Asstt./Junior Libraries
6.	Junior Clerk / Assistant Store Keepers Library Assistant / Junior Librarian	a. Matriculation or equivalent qualification from a recognized University / Board with Science group from Laboratory Assistant b. Speed of 25 words per minute in English typing		Not less from 18 years and not more than 25 years	By initial recruitment
7.	Stenographers	a. Matriculation or equivalent qualification from a recognized University / Board. b. Speed of 100 words per minute in short hand in English and 45 words per minutes in typing	Not less than 16 years and not more than 25 years		i. 25% by initial recruitment and ii. 75 % by promotion on the basis of seniority -cum-fitness from amongst the holders of the posts of Steno Typist
8.	Steno - Typist	a. Matriculation or equivalent qualification from a recognized University / Board. b. Speed of 80 words per minute in short hand in English and 35 words per minute in typing. c.		Not less than 18 years and not more than 25 years	By initial recruitment.

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Answer 77

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(P)

Answer P

GOVERNMENT OF  
NWFP SERVICE TRIBUNAL,  
PESHAWAR.

To:

The Director of Education  
Schools & Literacy, NWFP Peshawar.

No. 1374 /ST, Dated 6/10 /2006.

Subject:-

1. APPEAL NO. 724/2002, GHULAM RASOOL,
2. APPEAL NO. 893/2002, KARIM BAKHSH,
3. APPEAL NO. 894/2002, MUKHTIAR ARMED,
4. APPEAL NO. 895/2002, FAZLUR REHMAN,
5. APPEAL NO. 896/2002, JAMSHED JAN,
6. APPEAL NO. 897/2002, MUHAMMAD KHAN,
7. APPEAL NO. 898/2002, GUL HABIB,
8. APPEAL NO. 899/2002, ABDUL WAHAB,
9. APPEAL NO. 918/2002, MUHAMMAD SULEMAN,
10. APPEAL NO. 919/2002, MUHAMMAD SAJID KHAN,
11. APPEAL NO. 920/2002, GHULAM NABI MALIK,
12. APPEAL NO. 1004/2002, GHULAM SARWAR,
13. APPEAL NO. 1005/2002, ALI ASGHAR,
14. APPEAL NO. 1006/2002, ILTAF HUSSAIN,
15. APPEAL NO. 1049/2002, ABDUL QAYUM,
16. APPEAL NO. 1050/2002, BUZAR JAMHER and
17. APPEAL NO. 388/2003, SUBAIDAR KHAN VS.  
DIRECTOR S&L NWFP PESHAWAR AND OTHERS.

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I am directed to forward herewith a certified copy of detailed judgment alongwith short orders dated 15.8.2006, passed by this Tribunal in the above mentioned appeals for information and necessary action.

Encl. As above.

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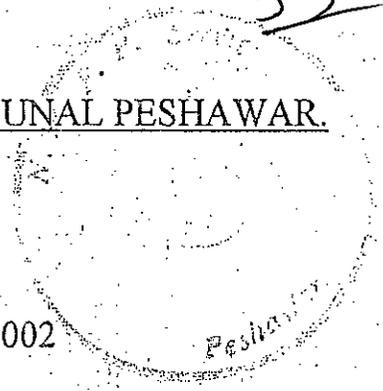
M. M. A  
REGISTRAR  
NWFP SERVICE TRIBUNAL,  
PESHAWAR.



53

Annex - P

BEFORE THE NWFP SERVICE TRIBUNAL PESHAWAR.



Appeal No. 724/2002

Date of institution - 27.08.2002

Date of decision - 15.08.2006

Ghulam Rasool, Ex-ASDEO (Accounts),  
Office of the E.D.O, (S&L) Buner.....(Appellant)

VERSUS

1. Director of Schools & Literacy NWFP Peshawar.
2. Secretary Schools & Literacy NWFP.
3. Secretary Finance NWFP Peshawar.
4. Chief Secretary NWFP Peshawar.....(Respondents)

M/S Anwarul Hassan & Shafiullah Advocates.....For appellants.  
Mr. Zaffar Abbas Mirza, Addl. Govt. Pleader.....For respondents.

MR. ABDUL KARIM QASURIA.....MEMBER.  
MR. FAIZULLAH KHAN KHATTAK.....MEMBER.

JUDGMENT.

ABDUL KARIM QASURIA, MEMBER :- This appeal has been filed by the Ghulam Rasool appellant against the orders dated 7.5.2002 and 31.7.2002 whereby he was not granted selection grade BS-17 w.e.f. 30.10.1993 with the prayer that the impugned orders

ATTESTED  
ADMINISTRATIVE OFFICER

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may be set aside and he be granted selection grade BS-17 w.e.f. 30.10.1993.

2. Brief facts of the case are that the appellant was employed under respondents No. 1 and 2 and retired from service on 1.8.2001 as Assistant Sub Divisional Education Officer (Accounts) from the office of EDO (S&L) Buner. During his service the appellant was promoted from the post of Superintendent to the post of ASDEO(Accounts) in BS-16 vide order dated 4.8.1987. Vide order dated 30.10.1993 the Finance Department allowed selection grade BS-17 to the Administrative Officer/Account Officer/Assistant Accounts officer at the ratio of 33% of their total strength alongwith Superintendents and also issued a clarification vide letter dated 31.1.1994 regarding awarding selection grade BS-17 to various officers. In order to extend the said benefits to various officers in BS-16, respondent No. 2 issued a Notification dated 29.8.1994 wherein various categories of officers in BS-16 were brought at par. In spite of clear cut orders of the Government and clarification, the selection grade was only allowed to the Superintendents BS-16 w.e.f. 30.10.1993 while other categories of officers BS-16 who were at par with the Superintendents were left. Respondent No. 2 issued a Notification dated 6.2.1997 bringing

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various categories of officers at par with one another by amending the Service Rules. Respondent No. 2 issued the impugned order dated 7.5.2002 under which the AEDO (A), Budget Officer, Audit Officer, Account Officer BS-16 of Education Department were granted selection grade BS-17 but the appellant was granted selection grade w.e.f. 19.7.1999 instead of 30.10.1993 under this Notification against which the appellant preferred a departmental appeal on 1.7.2002 but the same was rejected on 31.7.2002. Hence the instant appeal.

3. The respondents have filed the written reply in which the claim of the appellant has been opposed by raising legal objections. The appellant also filed the replication rebutting the objections raised by the respondents.

4. The learned counsel for the appellant argued that the appellant was promoted from the post of Superintendent to the post of Assistant Sub Divisional Education Officer (Accounts) in BS-16 vide order dated 4.8.1987. Respondent No. 3 vide Notification dated 30.10.1993 allowed selection grade BS-17 to the Administrative officer/Accounts Officer/Assistant Accounts Officer at the rate of 33% of their total strength alongwith Superintendents on the joint seniority list.

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ATTESTED  
 AMINER  
 Tribunal

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Annex P

Respondent No. 3 vide Notification dated 31.1.1994 issued a clarification regarding grant of selection grade to various categories of officers. It was stated that condition of amendment in the service rules as referred to in para-2 of respondent No. 2 letter dated 30.10.1993 will not be applicable on the department/offices where no post of Accounts officer/Assistant Accounts Officer or similar other post exists which requires to be filled in by promotion from amongst Superintendent BS-16. In that case the grant of selection grade was made effective from 30.10.1993 while in case of amendment in the rules it was to be effective from the date of amendment in the Service Rules. The counsel further argued that respondent No.2 vide Notification dated 28.8.1994 brought various categories of posts in BS-16 at par. But inspite of the above equality of the posts only the Superintendents were given selection grade w.e.f. 1993 while for the incumbents of other posts the condition of amendment in the Service Rules was made and resultantly deprived them from their due rights of grant of selection grade from 30.10.1993. The rules were amended by respondent No. 2 vide Notification dated 6.2.1997 by bringing various categories at par. Respondent No. 1 vide impugned Notification dated 7.5.2002 granted selection grade BS-17 w.e.f. 19.7.1999 as per joint seniority list of ADEO (A)/Budget Officer/Audit Officer/Accounts

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ATTESTED  
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 MANAGER  
 THE BANK

Annex-P

Officer (BS-16). Keeping in view the above facts the appellant has been discriminated against. The counsel stated that the impugned orders are against natural justice, unlawful, arbitrary and malafide. It was also argued that issuance of Notification dated 6.2.1997 is the repetition of Notification dated 29.8.1994 which only delayed the grant of selection grade which was allowed w.e.f. 30.10.1993.

5. The AGP opposed the contention of the appellant stating that the issue of grant of selection grade to the appellant has been disposed of as per policy and instructions contained in letter of respondent No. 3 dated 30.10.1993 and 31.1.1994. The amendment in the Service Rules was made on 6.2.1997 and the selection grade was allowed vide letter of respondent No. 3 dated 30.10.1993. He refuted the contention of the appellant that any discriminatory treatment was meted out against the appellant but the entire action of the respondent is covered under the prevailing rules/instructions. The instruction/policy contained in letter dated 30.10.1993 issued by respondent No. 3 is very much clear and no deviation has been made from that policy.

ATTESTED  
 EXAMINER  
 Service Tribunal  
 Islamabad

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6. After listening to the arguments and perusal of the record, it is evident that selection grade was allowed as per general principle w.e.f. 30.10.1993 but a condition in para-3 (last para) of letter dated 30.10.1993 issued by respondent No. 3 was placed turning up the grant of selection grade with effect from the date of amendment in the Service Rules which adversely affected the benefits accrued to the appellant in the grant of selection grade. The amendment in the service rules was completed in the year 1997 which is a very lengthy period while there is no plausible explanation with the respondent department for such a long delay. The Tribunal also feels that while there was no such bar in respect of the department in which only the post of Superintendent existed as per respondent No. 3 letter dated 31.1.1994 but delaying the same benefits to the other categories on the pretext of amendment in the Service Rules which was delayed for six years, is not justified. Reliance is also put on the NWFP Tribunal decision dated 17.4.2001 in Appeal No. 813/1999 in which the benefit of selection grade was allowed w.e.f. 30.10.1993 instead of 17.3.1997 the date on which Rules were reversed.

*Advt. of  
G.S.  
A.S.*

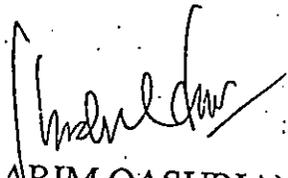
7. The Tribunal therefore, keeping in view the principle of consistency and being the present appeal of identical nature accept

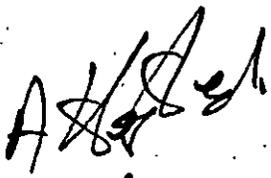
*Abdul Ghafoor*

ATTESTED  
MANAGER  
Tribunal

8. Our this single judgment will also dispose the other connected appeals bearing No. 893/2002 Karim Bakhsh, 894/2002 Mukhtiar Ahmad, 895/2002 Fazlur Rehman, 896/2002 Jamshed Jan, 897/2002 Muhammad Khan, 898/2002 Gul Habib, 899/2002 Abdul Wahab, 918/2002 Muhammad Suleman, 919/2002 Sajid Khan, 920/2002 Ghulam Nabi Malik, 1004/2002 Ghulam Sarwar, 1005/2002 Ali Asghar, 1006/2002 Iltaf Hussain Gohar, 1049/2002 Abdul Qayyum, 1050/2002 Buzur Jamheer and 388/2003 Subaidar Khan Versus Secretary Education NWFP etc, being identical nature and involves common questions of law and facts.

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

  
KARIM QASURIA)  
MEMBER.


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Q-I

Readable Copy

IN THE SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction)

Amended  
254  
Amended  
AI

Present

Mr. Justice Iftikhar Muhammad Chaudhry, CJ.  
Mr. Justice Ch. Ijaz Ahmed -  
Mr. Justice Khilji Arif Hussain

CIVIL PETITIONS NO.35-P TO 51-P & CP.301-P OF 2007

(On appeal from the judgments/order dated  
15.08.2006 & 08.12.2006 passed by NWFP  
Service Tribunal, Peshawar in Appeals No.  
724, 893-899, 918-920, 1004-1006, 1049,  
1050/2002, 388/2003 & 675/2006)

Director of Schools & Literacy, NWFP, Peshawar and others	.....	Petitioners. (in all cases)
	Versus	
Glulam Rasool	.....	Respondent. (in CP.35-P/2007)
Karim Bakhsh	.....	Respondent. (in CP.36-P/2007)
Mukhtiar Ahmed Nashad	.....	Respondent. (in CP.37-P/2007)
Fazal Rehman	.....	Respondent. (in CP.38-P/2007)
Jamshed Khan	.....	Respondent. (in CP.39-P/2007)
Muhammad Khan	.....	Respondent. (in CP.40-P/2007)
Gul Habib	.....	Respondent. (in CP.41-P/2007)
Abdul Walrab	.....	Respondent. (in CP.42-P/2007)
Muhammad Suleman	.....	Respondent. (in CP.43-P/2007)
Sajid Khan	.....	Respondent. (in CP.44-P/2007)
Glulam Nabi Malik	.....	Respondent. (in CP.45-P/2007)
Glulam Sarwar	.....	Respondent. (in CP.46-P/2007)

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Attested  
Admitted

**ATTESTED**  
*[Signature]*  
Officer in Charge  
Supreme Court of Pakistan  
Peshawar



ATTESTED  
 Director of Accounts  
 Ministry of Education  
 Government of Pakistan

Director Schools and Literacy, Education Department, NWFP, Peshawar  
 (petitioner No.2) issued a notification dated 29<sup>th</sup> August 1994, wherein various  
 categories of officers in BPS-16 were brought in par by amending the service

seniority list. In order to extend the said benefits to various officer in BPS-16,  
 ratio of 33% of their total strength along with the Superintendent on the joint  
 to Administrative Officer/Accounts Officer/Assistant Account Officer at the  
 No.3) vide notification dated 30<sup>th</sup> October 1993 allowed selection grade BPS-17

than the Secretary, Finance Department, Government of NWFP (petitioner  
 Brief facts of the case, relevant for disposal of instant petitions are

selection grade.  
 by the respondents have been allowed as a result whereof they have granted  
 08.12.2006 passed by NWFP Service Tribunal, Peshawar whereby appeals filed  
 leave to appeal, have been filed against the judgments dated 15.08.2006 and  
 IFTIKHAR MUHAMMAD CHAUDHRY, C.T. - These petitions, for

**ORDER**

Date of hearing	For the respondents (in all cases)	For the petitioners (in all cases)
05.03.2010	Mr. Imtiaz AH, ASC Mr. Taseem Hussain, AOR	Mr. Qaiser Rasheed, Addl. AG
	Asghar Ali Respondent (in CP-47-P/2007)	
	Hafiz Hussain Gohar Respondent (in CP-48-P/2007)	
	Abdul Qayyum Respondent (in CP-49-P/2007)	
	Buzur Jamheer Respondent (in CP-50-P/2007)	
	Subedar Khan Respondent (in CP-51-P/2007)	
	Muhammad Yousof Alqadri Respondent (in CP-301-P/2007)	

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273  
 27

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Annexure 2

272 (157) 9

CP-35-P/2007, etc.

Rules, however, selection grade was only allowed to Superintendents BS-16 w.e.f 30.10.1993 while other categories of officers in BS-16 were left. Petitioner No.2, subsequently issued order dated 7<sup>th</sup> May 2002, under which the AEDO (A), Budget Officer, Audit Officer, Account Officer in BS-16 of the Education Department were granted selection grade BS-17 but the respondents were granted such grade w.e.f 19<sup>th</sup> July 1999 instead of 30<sup>th</sup> October 1993. Feeling aggrieved, the respondents challenged the said order before the NWFP Service Tribunal, who by means of impugned judgments granted them selection grade BS-17 w.e.f. 30<sup>th</sup> October 1993. As such instant petitions for leave to appeal have been filed.

3. Learned Additional Advocate General NWFP stated that the respondents were entitled for selection grade BS-17, subject to certain conditions, laid down in the letter dated 30<sup>th</sup> October 1993, including the amendments in the respective Recruitment and Appointment Rules. As according to him these Rules were amended on 6<sup>th</sup> February 1997 and joint seniority list was also prepared in the meantime, therefore, they have been found entitled for selection grade w.e.f. 17<sup>th</sup> June 1999 but the Service Tribunal granted them selection grade w.e.f. 30<sup>th</sup> October 1993, therefore, according to him impugned judgments are not sustainable.

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 A. B. S. S.  
 G. S. S.  
 S. S.

4. Learned counsel appearing for the caveat, however, opposed the petitions and stated that Service Tribunal had done nothing except enforcing/implementing the policy of the Government mentioned in letter 30<sup>th</sup>

**TESTED** October 1993, on the basis of which respondents were entitled for selection grade. As far as question of amending the respective Recruitment and Appointments Rules and preparation of joint seniority list of officers in BS-17 is concerned, it is the job of the petitioners, therefore, the respondents should not be allowed to suffer at the hands of the department.

*Stamp:*  
 In Charge  
 Court of Pakistan  
 Peshawar

Annex - 9

271/4

C.P.35-P/2007, etc.

5. We have heard the learned counsel for the parties and have also carefully gone through the impugned judgment passed by the Service Tribunal. There is no doubt that on 30<sup>th</sup> October 1993, Government issued a policy letter laying down a criterion for granting selection grade BS-17 to grade BS-16 officers to the extent of 33% but the respondents were not allowed the benefit of the same for one or the reason and ultimately they have to approach Service Tribunal. A careful perusal of the impugned judgment indicates that the Tribunal has not passed an order beyond the scope of policy letter dated 30<sup>th</sup> October 1993. As far as the discretion of the Government to amend the Recruitment and Appointment Rules is concerned, it was the duty of the Government to prepare and issue the joint seniority list of the Administrative Officers and the Superintends and make the amendments, without any delay, after issuance of the letter. Service Tribunal in fact has enforced the policy letter dated 30<sup>th</sup> October 1993.

Impugned

AD/AD  
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6. It is pertinent to mention here that the department cannot be allowed to sleep for any indefinite period to amend the rules and to prepare seniority list at the cost of the respondents, who are government employees and they are always anxious about their promotion or to get benefit of the service as early as could be possible. Unfortunately, in instant case, after issuance of the policy letter dated 30<sup>th</sup> October 1993 rules were amended in 1997 but perhaps the seniority list was prepared later on and on account of such slackness, the respondents had suffered a lot and ultimately in 2001 they were given selection grade and in the meantime, some of them stood retired. We are, therefore, of the opinion that under these circumstances the Service Tribunal has rightly granted relief to the respondents and judgments passed by it, being unexceptionable, admit no interference by this Court.

TESTED  
 [Signature]  
 In Charge  
 Court of Pakistan  
 [Signature]

7. It is informed by the learned counsel appearing for the respondents that despite lapse of about more than 16/17 years, the judgments of

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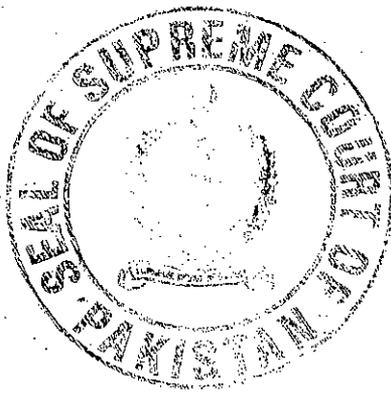
Amended

(270) (105) (11)

C.P. 35-P/2007, etc.

the Service Tribunal, passed in favour of the respondents, have not been implemented. In such state of affairs, we direct the concerned authority to implement the same within a period of four weeks and send a compliance report to the Registrar of this Court, for our perusal in Chambers. Learned Additional Advocate General is directed to communicate these directions to the concerned authorities to ensure its compliance in letter and spirit.

Thus for the foregoing reasons, petitions are dismissed and leave declined.



sd/- Jaztikhar Muhammad Chaudhary  
sd/- Ch. Ijaz Ahmed, J  
sd/- Khilji Arif Hussain, J

Peshawar,  
05.03.2010.

Ishtak  
11/9/10

Certified to be true  
Office of the  
Supreme Court  
Peshawar

NOT APPROVED FOR REPORTING.

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C.P. No.	757-P/2010
Date of presentation	25-3-2010
Application No.	1500
No. of Words	15
No. of Points	5
Requisition Fee	9.30
Copying Fee	14.30
Court Fee	30-3-2010
Date of Judgment	31/3/10
Compared by	Copy
Received by	Asad Kamel As
Total	14.30
Advocate	6/2
Balance	83

IN THE SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction)

Present

Mr. Justice Iftikhar Muhammad Chaudhry, C.J.  
Mr. Justice Ch. Ijaz Ahmed  
Mr. Justice Khilji Arif Hussain

CIVIL PETITIONS NO.35-P TO 51-P & CP.301-P OF 2007

(On appeal from the judgments/order dated  
15.08.2006 & 08.12.2006 passed by NWFP  
Service Tribunal, Peshawar in Appeals No.  
724, 893-899, 918-920, 1004-1006, 1049,  
1050/2002, 388/2003 & 675/2006)

Director of Schools & Literacy, NWFP, Peshawar and others	Petitioners. (in all cases)
Versus	
Ghulam Rasool	Respondent. (in CP.35-P/2007)
Karim Bakhsh	Respondent. (in CP.36-P/2007)
Mukhtiar Ahmed Nashad	Respondent. (in CP.37-P/2007)
Fazal Rehman	Respondent. (in CP.38-P/2007)
Jamshed Khan	Respondent. (in CP.39-P/2007)
Muhammad Khan	Respondent. (in CP.40-P/2007)
Gul Habib	Respondent. (in CP.41-P/2007)
Abdul Waqar	Respondent. (in CP.42-P/2007)
Muhammad Suleman	Respondent. (in CP.43-P/2007)
Sajid Khan	Respondent. (in CP.44-P/2007)
Ghulam Nabi Malik	Respondent. (in CP.45-P/2007)
Ghulam Sarwar	Respondent. (in CP.46-P/2007)

ATTESTED

*[Signature]*  
Deputy Registrar  
Supreme Court of Pakistan  
Peshawar

*[Handwritten Signature]*  
4/23/07  
Adm

65  
ANNEXURE  
H

Amir Ali

Respondent.  
(in CP.47-P/2007)

Amir Ali

Haf Hussain Gohar

Respondent.  
(in CP.48-P/2007)

Masud Qayyum

Respondent.  
(in CP.49-P/2007)

Muzir Jamheer

Respondent.  
(in CP.50-P/2007)

Mubadar Khan

Respondent.  
(in CP.51-P/2007)

Muhammad Yousaf Alqadri

Respondent.  
(in CP.501-P/2007)

For the petitioners  
(in all cases)

Mr. Qaiser Rasheed, Addl. AG.

For the respondents  
(in all cases)

Mr. Imtiaz Ali, ASC.  
Mr. Tasleem Hussain, AOR.

Date of hearing

05.03.2010.

ORDER

IFTIKHAR MUHAMMAD CHAUDHRY, C.J. - These petitions, for leave to appeal, have been filed against the judgments dated 15.08.2006 and 08.12.2006 passed by NWFP Service Tribunal, Peshawar whereby appeals filed by the respondents have been allowed as a result whereof they have granted selection grade.

Brief facts of the case; relevant for disposal of instant petitions are that the Secretary, Finance Department, Government of NWFP (petitioner No.3) vide notification dated 30<sup>th</sup> October 1993 allowed selection grade BPS-17 to Administrative Officer/Accounts Officer/Assistant Account Officer at the ratio of 33% of their total strength along with the Superintendent on the joint seniority list. In order to extend the said benefits to various officer in BPS-16.

ATTESTED

Signature of Court of Pakistan  
Peshawar

Director Schools and Literacy, Education Department, NWFP Peshawar (petitioner No.2) issued a notification dated 29<sup>th</sup> August 1994, wherein various categories of officers in BS-16 were brought at par by amending the Service

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Addl.

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Rules, however, selection grade was only allowed to Superintendents BS-16 w.e.f. 30.10.1993 while other categories of officers in BS-16 were left. Petitioner No.2, subsequently issued order dated 7<sup>th</sup> May 2002, under which the CDO (A), Budget Officer, Audit Officer, Account Officer in BS-16 of the Education Department were granted selection grade BS-17 but the respondents were granted such grade w.e.f. 19<sup>th</sup> July 1999 instead of 30<sup>th</sup> October 1993. Feeling aggrieved, the respondents challenged the said order before the NWFP Service Tribunal, who by means of impugned judgments granted them selection grade BS-17 w.e.f. 30<sup>th</sup> October 1993. As such instant petitions for leave to appeal have been filed.

3. Learned Additional Advocate General NWFP stated that the respondents were entitled for selection grade BS-17, subject to certain conditions, laid down in the letter dated 30<sup>th</sup> October 1993, including the amendments in the respective Recruitment and Appointment Rules. As according to him these Rules were amended on 6<sup>th</sup> February 1997 and joint seniority list was also prepared in the meantime, therefore, they have been found entitled for selection grade w.e.f. 17<sup>th</sup> June 1999 but the Service Tribunal granted them selection grade w.e.f. 30<sup>th</sup> October 1993, therefore, according to him impugned judgments are not sustainable.

4. Learned counsel appearing for the caveat, however, opposed the petitions and stated that Service Tribunal had done nothing except enforcing/implementing the policy of the Government mentioned in letter 30<sup>th</sup> October 1993, on the basis of which respondents were entitled for selection grade. As far as question of amending the respective Recruitment and Appointment Rules and preparation of joint seniority list of officers in BS-17 is concerned, it is the job of the petitioners, therefore, the respondents should not be allowed to suffer at the hands of the department.

*TESTED*  
*in charge*  
*Court of Appeal*  
*Prothonary*

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68. (106) (271) - 1

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Annex D

We have heard the learned counsel for the parties and have also carefully gone through the impugned judgment passed by the Service Tribunal. There is no doubt that on 30<sup>th</sup> October 1993, Government issued a policy letter, laying down a criterion for granting selection grade BS-17 to grade BS-16 respondents to the extent of 33% but the respondents were not allowed the benefit of the same for one or the reason and ultimately they have to approach Service Tribunal. A careful perusal of the impugned judgment indicates that the Tribunal has not passed an order beyond the scope of policy letter dated 30<sup>th</sup> October 1993. As far as the discretion of the Government to amend the Recruitment and Appointment Rules is concerned, it was the duty of the Government to prepare and issue the joint seniority list of the Administrative Officers and the Superintends and make the amendments, without any delay, after issuance of the letter. Service Tribunal in fact has enforced the policy letter dated 30<sup>th</sup> October 1993.

Import.

It is pertinent to mention here that the department cannot be allowed to sleep for any indefinite period to amend the rules and to prepare seniority list at the cost of the respondents, who are government employees and they are always anxious about their promotion or to get benefit of the service as early as could be possible. Unfortunately, in instant case, after issuance of the policy letter dated 30<sup>th</sup> October 1993 rules were amended in 1997 but perhaps the seniority list was prepared later on and on account of such slackness, the respondents had suffered a lot and ultimately in 2001 they were given selection grade and in the meantime, some of them stood retired. We are, therefore, of the opinion that under these circumstances the Service Tribunal has rightly granted relief to the respondents and judgments passed by it, being unexceptionable,

TESTED

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Advocate  
of Pakistan

It is informed by the learned counsel appearing for the respondents that despite lapse of about more than 16/17 years, the judgments...

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~~EP~~ (15) (17)



Amended

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Service Tribunal, passed in favour of the respondents, have not been implemented. In such state of affairs, we direct the concerned authority to implement the same within a period of four weeks and send a compliance report to the Registrar of this Court, for our perusal in Chambers. Learned Additional Advocate General is directed to communicate these directions to the concerned authorities to ensure its compliance in letter and spirit.

Thus, for the foregoing reasons, petitions are dismissed and leave declined.



sd/- Jylikhan Muhammad Chaudhry  
sd/- Ch. Ijaz Ahmed, J  
sd/- Khilji Arief Hussain, J

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Certificate  
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Supreme Court of Pakistan  
Peshawar

Peshawar.  
05.05.2010.  
[Signature]

NOT APPROVED FOR REPORTING.

Case No. 757-P/2010  
Date of application 25-3-2010  
No of words 1000  
No of pages 15  
Requisition Fee 5  
Copying Fee 9.30  
Court Fee 14.30  
Date of 30-3-2010  
Date of 31/3/10  
Comptroller [Signature]  
Receipt 65000 [Signature]  
Total 14.30  
Advocate 6/-  
Bills 8.30

AH [Signature]  
[Signature]  
A [Signature]

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ANNEXURE  
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Corrigendum

In pursuance of NWFP Services Tribunal Peshawar judgment dated 15.5.2006 up hold by the Hon.able Supreme Court of Pakistan vide its verdict dated 23.2.2010 and Write Petition No. 35-P To: 51-P and CP 301-P of 2007, and under the provision of Finance Department Notification No. FD/(PRC)4-1/91, dated 30.10.1993 and (E&SE) department circular No. 604-754 dated 7.5.2002, the date of award of S/Grade (B-17) of the ADEOs/ASDEOs /Accs/Admn. officers/B&AOs /Supdt(B-16) working in Directorate of (E&SE) K.P.K Peshawar and districts officers issued vide this office Notification No. 4420-4585/A-23/MS/S. Grade(B-17)/Supdt/AO, dated 29.9.2004 may read as "30.10.1993" instead of "19.7.1999" in column No.6 of the above order on the same terms and conditions already framed.

SYEDA SARWAT JELAN  
DIRECTRESS

3610-24  
Dist. No. \_\_\_\_\_ / DSR/ Lit. S. P. Litigation dated 26/9/2010

- Copy of the above is forwarded for information and necessary action to the:-
1. Registrar Supreme Court of Pakistan with reference to his decision/judgment dated refer to above for information please.
  2. Registrar NWFP Services Tribunal Peshawar with reference to his judgment referred to above for information please.
  3. Secretary to Govt. of E&SE K.P.K Peshawar
  4. Accountant General K.P.K Peshawar
  5. Director of Education (FATA) Peshawar
  6. Director Higher Education K.P.K Peshawar
  7. Director of Curriculum and Teachers Education K.P.K Abbott Abad
  8. Manager BIEP Arab Road University Town Peshawar
  9. Manager Girls Project ILK P.K Peshawar
  10. Section Officer (Litigation) E&SE Department K.P.K Peshawar
  11. All District Accounts Officers in K.P.K
  12. All Executive District Officers in K.P.K
  13. All officers concerned.
  14. P.A. to Director of E&SE K.P.K Peshawar

Handwritten initials and signature: A.H. Khan, 13, A.M.

26/9/2010  
DEPUTY DIRECTOR (E&SE)  
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ATTESTED  
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DIRECTOR  
Khyber Pukhtoon  
Service Tribunal  
Peshawar

2 Annex 5

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
CAMP COURTS SWAT



Service Appeal No. 1356/2012

Date of Institution: 13/12/2012

Date of decision: 06/12/2017

Khan Shid Afr Forester, Petrol Squad Division, Mingora, Swat (Appellant)

Versus

The Government of Khyber Pakhtunkhwa through Secretary Forest Department, Peshawar and 3 others (Respondents)

MR. Ibad Ur Rehman, Advocate For appellant

MR. Mian Amir Qadar District Attorney For respondents

MR. NIAZ MUHAMMAD KHAN  
MR. MUHAMMAD HAMID MUGHAL

CHAIRMAN  
MEMBER

JUDGMENT

MR. NIAZ MUHAMMAD KHAN, CHAIRMAN Arguments of the learned counsel for the parties heard and record perused.

FACTS

The appellant had challenged the promotion of one Badrudin forester in a service appeal No. 776/Neem/2006 decided on 12-03-2012. The cast of the appellant was that he was senior to said Badrudin and the promotion of Badrudin be set aside and instead the appellant be promoted. This Tribunal vide judgment dated 12-03-2012 accepted the appeal by declaring the order of promotion of said Badrudin illegal and directed the appellate authority to decide the departmental appeal of the appellant within reasonable time but not later than

ATTESTED

SECRETARY  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL

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impediment has been shown by the department not to promote the appellant. Judgments relied upon by the learned counsel for the appellant speak about such situation and in such cases the courts have granted antedated promotion to the aggrieved civil servant.

6. Coming to the notification referred to above by the learned District Attorney the same is not applicable to the case of the appellant. That notification is applicable only when promotions are being made as a routine under the promotion policy. This notification does not cover the case of those persons who are left out of the promotion despite their entitlement and when the courts restore their entitlements. Otherwise, too, the restoration of entitlement should be from the date when the aggrieved person was denied his entitlement.

7. As a consequent to the above discussion this appeal is accepted and the appellant is treated as promoted from 19.04.2006 along with back benefits. Parties are left to bear their own costs. File be consigned to the record room.

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*Signature*  
(Muhammad Hamid Mughal)  
Member

*Signature*  
(Niaz Muhammad Khan)  
Chairman  
Camp Court, Swat

ANNOUNCED  
06.12.2017

Certified true copy  
Khyber Pakhtunkhwa  
Services Tribunal,  
Peshawar

*Attested*  
*Signature*  
*Adm*

Date of Presentation 06-12-17  
Serial 1600  
Page No. 10  
Original 10  
Name of [Signature]  
Date of 13-12-17  
Date of 13-12-17

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~~Amlex~~ ~~T~~  
BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR.

Amlex T  
Appeal No. 612/2008

Date of Institution. .. 16.04.2008  
Date of Decision .. 13.03.2009

Muhammad Iqbal Khattak,  
Assistant Political Agent, Khar Bajaur Agency. ... (Appellant)

VERSUS

1. Government of NWFP through Secretary Establishment Department, Peshawar.
2. Govt. of NWFP through Chief Secretary, Peshawar. (Respondents)

F-1  
B ✓  
APPEAL U/S 4 OF THE NWFP SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION NO.SOE.II (E&D) 2 (192)2007 DATED 19.2.2008 WHEREBY THE APPELLANT WAS PROMOTED ON REGULAR BASIS W.E.F. 19.2.2008 INSTEAD OF 30.11.1999 AND ORDER NO.SOE-II (E&D) 2(192) WHEREBY HIS DEPARTMENTAL APPEAL WAS DISMISSED.

MR. SHAKEEL AHMAD,  
Advocate

For appellant.

MR. ZAHID KARIM KHALIL,  
Addl. Government Pleader,

For respondents.

MR. JUSTICE (R) SALIM KHAN, ..  
MR. BISMILLAH SHAH, ..

CHAIRMAN.  
MEMBER.

Amlex T  
BPS-17  
Amlex T

JUDGMENT

JUSTICE (R) SALIM KHAN, CHAIRMAN.-The present appeal No 612 of 2008 by Muhammad Iqbal Khattak and appeal No. 613 of 2009 by Ahmad Khan Involved similar questions of law, therefore, they are taken together for arguments and disposal.

2. Muhammad Iqbal Khattak was promoted as Tehsildar on regular basis vide order dated 28.12.1988. He was promoted to PCS(E.G) (BPS-17) on temporary basis vide notification dated 06.03.1996. He contended that many posts became vacant, but the appellant was promoted to (BPS-17) on regular basis on 19.2.2008 with immediate effect, instead of ante-dating his promotion to the date on which the vacancy fell to his turn in the

ATTENDED  
EXAMINER  
NWFP SERVICE TRIBUNAL  
Peshawar

attested

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Amurat

seniority lists of officers of PCS (E.G). His departmental appeal was rejected on 22.03.2008. The present appeal was filed on 16.4.2008 which is within time. The case of Ahmad Khan (Appellant) is similar to the case of Muhammad Iqbal Khattak on facts also. His appeal is also within time.

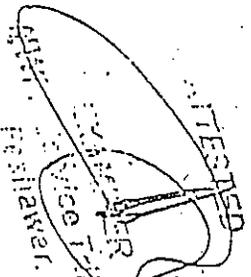
3. The respondents contested the appeal on many grounds, including the ground that no one could claim a vested right in promotion or in the terms and conditions for promotion to a higher post.

4. We heard the arguments and perused the record.

5. The learned counsel for the appellants contended that the appellants were temporarily posted to BPS-17 post on 06.3.1996, but they remained silent, because they did not have a vested right for promotion to a higher post. The appellants have already been considered for promotion and have been found eligible and fit for regular promotion to BPS-17 post, therefore, the principles embodied in the judgment of the August Supreme Court of Pakistan reported as 1990 SCMR 1321 are not applicable to their cases. In fact, the vacancies had become available for the appellants as early as on 30.11.1999, and it was the responsibility of the official respondents to expeditiously deal with the cases of the appellants for their regular promotion. The appellants could not be punished for no fault on their side, or for delay caused by the official respondents in processing the cases of the appellants. He relied on 1997 PLC (C.S) 77, wherein it has been held in para 3 as under:-

*"On behalf of the Government it is contended that no civil servant has a right to claim that he should be promoted from a back date even though a vacancy may be existing on the date from which the promotion is being claimed. This is no doubt true but there are no orders by the Government that the respondents/petitioners should be held up for some time. The delay in making the promotions occurred entirely due to the reason that the officials of the Education Department could not carry out a fairly simple exercise within a reasonable period. In the circumstances it will not be appropriate for this Civil Petition to interfere with the order of the Service Tribunal. Leave is refused."*

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This judgment was in the petition for leave to appeal against the judgment dated 19.02.1995 of the Punjab Service Tribunal. It is worth-mentioning that

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~~(S)~~ ~~(P)~~ ~~(K)~~ ~~(S)~~

PLC (C.S) 77 has become applicable after determination of fitness of the appellants. The question in these cases is not the determination of fitness but is the right of ante-dation of their promotion. The appellants had vested right for consideration of promotion on their turn, whenever it was, and, when found fit on determination of fitness, at any stage, they had a right to claim ante-dation of their promotion to the dates on which the vacancies were available for their respective turns or from the dates on which they actually took the charge of their respective posts, whichever were later in time.

9. The A.G.P also contended that according to sub-rule (6) of Rule 9 of the N.W.F.P Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 "acting charge appointment shall not confer any vested right for regular promotion to the post held on acting charge basis." The appellants have never claimed any vested right for regular promotion to the post which they held on acting charge basis, on the basis of acting charge appointment. In fact, they did not have such a right. They remained silent for a long time, knowing that they did not have such a right on the basis of acting charge appointment. They, however, had a vested right, as civil servants, for consideration for promotion, when the authority was to consider someone for promotion against the vacancy. No other person could be considered till the appellants were so considered. They, therefore, had a vested right for ante-dation of their promotion only when they were regularly promoted, but from the date when the vacancy became available for their turn.

10. The A.G.P further contended that, according to the North West Frontier Province, Provincial Management Service Rules, 2007, notified on 11.05.2007 vide No. SOE.II(ED)2(14)2007, The NWFP Provincial Civil Service (Secretariat/Executive Group) Rules, 1997 were repealed. He was of the view that the N.W.F.P Provincial Management Service Rules, 2007 had come into force at once w.e.f. 11.05.2007, while the orders of promotion of the appellants were issued on 19.02.2008. He submitted that the promotion orders were covered by the new rules, therefore, the appellants could not claim any benefit out of the already repealed rules of 1997. In order to clarify this controversy, it is necessary to reproduce the relevant Rule 8 of the N.W.F.P Provincial Management Service Rules, 2007 which is as under:-

A. K. ...  
P. S. ...

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8. Repeal:- The North-West Frontier Province Provincial Civil Service (Secretariat/Executive Group) Rules, 1997 shall stand repealed after the retirement of existing incumbents of both the cadres. Separate seniority list of both the cadres shall be maintained under the existing rules and they shall be promoted at the ratio of 50:50. The existing incumbents of PCS (E.G) and (S.G) in different pay scales, for the purpose of their promotion, shall continue to be governed under the said service rules till the retirement of the last such incumbent."

The above rule, by itself, clarifies that the rules of 1997 shall not stand repealed before the retirement of the existing incumbents of both the cadres of Secretariat/Executive Groups, and shall remain in force till the retirement of the last such incumbent. It further clarified that separate seniority list of both the cadres shall be maintained under the existing rules. The existing rules for such incumbents are the N.W.F.P Provincial Civil Service (Secretariat/Executive Group) Rules, 1997. It was also clarified that such incumbents shall be promoted at the ratio of 50:50. It means that out of each two vacancies, one vacancy shall be given to Secretariat Group, while another vacancy shall be given to the Executive Group. Further clarification is to the effect that the existing incumbents of PCS (E.G) and (S.G) in different pay scales shall continue to be governed under the rules of 1997 for the purpose of their promotion, and this process is to continue till the retirement of last such incumbent. Both the appellants belonged to the Executive Group of Civil Servants. They were to be governed under the N.W.F.P Provincial Civil Service (Secretariat/Executive Group) Rules, 1997 before 11.05.2007, and they have to be governed under the above mentioned rules of 1997 till the retirement of the last incumbent of a post in Secretariat Group/Executive Group.

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The cases of the appellants are, therefore, to be governed in accordance with the provisions of Section 8 (quoted above) of the new N.W.F.P Provincial Management Service Rules, 2007. The record shows that vacancies were available for the appellants but they were not promoted at the due time and their cases for promotion were delayed unnecessarily without any fault of the appellants. They, therefore, are entitled to ante-dation of their promotion against the first available vacancy falling to the turn of each of them or from the date of taking over the charge of that vacancy on officiating/acting charge basis, whichever is later.

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W.F.P. SECRETARY



*Impudent*

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12. In the light of the above, we accept both the appeals, and direct the official respondents to ante-date the promotion of each of the two appellants to the respective dates on which a vacancy became available for the respective turn of the appellants or from the respective dates of their taking charge of such vacancy on officiating/acting charge basis, whichever is later. The appellants are entitled to the costs of their respective litigation from the official respondents.

ANNOUNCED  
11.03.2009

*Sh. Justice C. J. Lalit*  
*Sh. Biswanath Chak*

*[Signature]*  
Sd/-  
Joint Secretary  
Patna

*Impudent*

No. of presentation of	13-4-09
No. of words	240
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*A. J. Singh*  
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*Sh. J. Singh*

81 Annex-U Amde Dated Annex-U  
P-6 Annex

**PESHAWAR HIGH COURT,**  
**PESHAWAR**

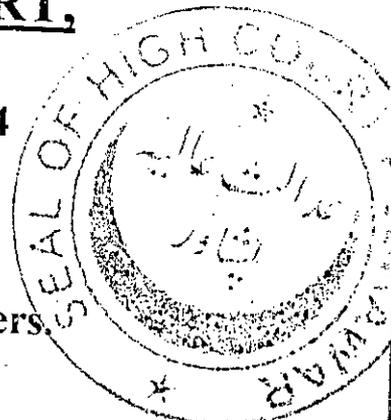
Writ Petition No.2334 -P of 2014

Niaz Muhammad

Vs.

Chief Executive LRH, and five others.

**JUDGMENT**



Date of hearing.....08.12.2015.....

Petitioner(s) by. Mr. Ibadur Rehman Advocate.

Respondent(s) by. Mr. Shakeel Ahmad Advocate.

\*\*\*\*\*

**MUHAMMAD YOUNIS THAHEEM, J.-** Niaz

Muhammad, the petitioner, seeks constitutional

jurisdiction of this Court praying:

“On acceptance of petition, respondents No.1 and 2 be directed to consider the petitioner for promotion to the post of Junior Clerk and promote the petitioner from the date when his juniors were promoted with all back benefits.

2. In essence grievance of petitioner is that he

is serving as Ward Orderly in Lady reading Hospital,

Peshawar since 1987; that for promotion of class-IV, a

seniority list was prepared wherein the petitioner was

reflected at S.No.4, but without observing seniority list.

**ATTESTED**  
**EXAMINER**  
Peshawar High Court  
04 JAN 2016

the respondents No.3 to 6 were promoted to the post of Junior Clerk, while the petitioner was ignored from promotion without any lawful reason. The petitioner approached the respondents personally and through written requests for his promotion, but in vain, hence, the instant writ petition.

3. The respondents 1 and 2 submitted their comments, wherein they admitted his service since 13.06.1987.

4. Arguments heard and available record perused.

5. The main contention of learned counsel for petitioner is that, petitioner is serving as ward orderly since 1987 and according to seniority list (Annexure-E), he was eligible and fit for promotion being at S.No.4, but despite the fact persons junior to him have been promoted, which act of the respondents is illegal, against the law, discriminatory, without lawful authority, so be set at naught.

*Attested by  
W. J. ?  
JA*

*S. V. ?*

ATTESTED  
BY  
EXAMINER  
04 JAN 2016

5. The respondents have neither disputed the seniority list in their comments nor during the course of arguments, rather relied upon the seniority list placed on file as Annexure-E, wherein the petitioner has been shown at S.No.4. The respondents No.1 and 2 have promoted Mr. Salahuddin, Muhammad Ali and Muhammad Shafiq from the post of Ward orderly to the post of Junior Clerk vide order No.1206-12 dated 17.05.2013, who as per seniority list are at S.No. 1, 2 and 5 respectively. The respondents have also promoted Mr. Johar Shah and Mr. Shamsheer Khan Ward Orderlies, to the posts of Store Keeper, vide order dated 29.05.2013, who are at S.No.6 and 7 respectively. The respondents No.1 and 2 have also promoted one Mst. Miraj Bibi Ward Aya to the post of Junior Clerk, vide order No.15535-39 dated 17.05.2013. It is very much astonishing to note that according to seniority list, the petitioner was at S.No.4 and despite being fit, has not been promoted, while the respondents No.3 to 6, junior to him in seniority had been promoted to higher scale. It is

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EXAMINER  
 11 JAN 2016

held that the Departmental Selection and Promotion Committee of Lady Reading Hospital, Peshawar has failed to adhere the seniority list and had promoted the class-IV, employees illegally, without observing law/policy and seniority order for promotion.

6. For the reasons discussed above, the instant Writ Petition is allowed, decisions taken by the Departmental Selection and Promotion Committee of Lady Reading Hospital, Peshawar in meetings held on 4<sup>th</sup> and 17<sup>th</sup> May of 2013, regarding promotion of Class-IV, employees and promotion orders made in consequence thereof are declared null and void and are set aside. The respondents No.1 and 2 and other over helms of affairs are directed to reconstitute the Selection and Promotion Committee afresh, who shall made approval for promotion strictly in accordance with the seniority list.

The promotion would be deemed w.e.f 17.05.2013 and petitioner will be entitled for back benefits also from the said date. It is further directed that the judgment of this

ATTESTED  
EXAMINER  
PESHAWAR COURT  
17.05.2013

Court be implemented within one month according to

law.

*Sd/- Nisab Hussain Khan*

*Sd/- M. Younis Thakeer*

Announced.  
Dt.08.12.2015

JUDGE

JUDGE

office  
May  
18/12

**CERTIFIED TO BE TRUE COPY**

Examiner  
Peshawar High Court, Peshawar  
Authorized Under Article 67 of  
The Qanun-e-Shahadaat Act 1984

04 JAN 2016

*Ali Sami*  
*2016*

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Date of Presentation of Application *14-12-15*

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Annex - V

2002 P L C (C.S.) 1388

[Punjab] Service Tribunal

Justice (Retd.) Riaz Kayani, Chairman

MUHAMMAD HASNAIN SHAH

versus

INSPECTOR-GENERAL OF POLICE, MULTAN RANGE,  
MULTAN and 27 others

Appeal No.3706 of 2000. decided on 4th December, 2001

(a) Civil Service----

-----Promotion, confirmation and seniority---Civil servant was promoted to the rank of Officiating Sub-Inspector of Police, but was not confirmed on that post and was also placed below the co-civil servants in seniority list despite they were juniors to him ---Co-civil servants were confirmed and placed above civil servant in seniority list on ground that they had undergone upper class course earlier to the civil servant---Validity---Civil servant was punished for no fault of his own for not being nominated for upper class course alongwith co-civil servants---Civil servant had no adverse entry to his A.C.R. standing against him at relevant time---Representation and appeal filed by the civil servant against his grievance though were late, but in matters of promotion, pay and other emoluments, limitation would not foreclose his right accrued to him. Orders passed against the civil servant were set aside with direction to the Authority to confirm civil servant from the date when his juniors were so confirmed and to grant ante-dated promotion to him.

(b) Limitation Act (IX of 1908)---

-----Preamble:---Limitation---Limitation Act, 1908 undoubtedly was penal in nature and rights accrued could not be taken away unless sufficient cause was shown. Technicalities of law, however should not stand in the way of a person who had been singled out rather prosecuted without knowledge as to crime or sin he had committed.

Masud Ahmad Riaz for Appellant.

Khadim Hussain Sindhu, District Attorney for Respondents.

Date of hearing: 27th November, 2001.

JUDGMENT

Muhammad Hasnain Shah, Inspector, was appointed as A.S.-I. on 6-3-1982 and was confirmed in the said post on 12-8-1986 on which date he was also admitted to list 'E'. On 8-10-1986, Deputy Inspector-General of Police, Faisalabad Range, Faisalabad, terminated the probation of the appellant as A.S.-I. and also removed him from list 'E'. Inspector-General of Police, Punjab, took suo motu notice of the steps taken by Deputy Inspector-General of Police, Faisalabad, and directed maintaining

status quo ante. with the result that appellant was confirmed as A.S.-I. w.e.f. 2-8-1986 as well as admitted to list 'E' and was also promoted the rank of officiating Sub-Inspector w.e.f. 8-8-1988. Simultaneously, appellant was transferred to Multan Range in the year 1988. A seniority list was issued in which appellant was shown at serial No. 143-A followed by another seniority list of Sub-Inspectors w.e.f. 1-1-1987 in which the name of the appellant did not figure, however, respondents Nos.4 to 9 were shown senior to the appellant having been admitted to list 'E' w.e.f. 9-9-1986, on a date after the admission of the appellant to the said list, as a result of which respondents Nos.4 to 9 were confirmed as Sub-Inspectors w.e.f. 7-2-1990 vide order dated 17-2-1990 passed by Deputy Inspector-General of Police, Multan Range, Multan. Appellant made representation to respondent No. 1 on 15-1-1998. In reply respondent No. 1 vide his letter dated 25-2-1998 informed the appellant that his case was examined for grant of ante-date confirmation as Sub-Inspector w.e.f. 7-2-1990 but the same could not be accorded as he was undergoing upper class course which was a pre-requisite qualification for confirmation as Sub-Inspector. Appellant mentioned in his appeal that respondents Nos.4 to 9 have been deputed for upper class course in March 1989 whereas appellant was sent to upper class course on 23-9-1989 and completed the course in March, 1990, while he was serving in Multan Range. Grievance of the appellant was that confirmation of respondents No.4 to 9 as Sub-Inspectors w.e.f. 7-2-1990, while he was left in lurch, the respondents were admitted to list 'F and promoted as officiating Inspectors from various dates occurring in the years 1991 and 1995. Appellant admitted that he was transferred to Sargodha Range at his own request vide order dated 27-1-1991, he was placed at the bottom of officiating Sub-Inspectors on the list of Sargodha Range. Being junior to all officiating Sub-Inspectors in Sargodha Range, he was confirmed as Sub-Inspector w.e.f. 12-8-1992 and in the seniority list of confirmed Sub-Inspectors of Sargodha Range, his name figured at Serial No.60, though he was entitled to be placed below Serial No.24 and above Serial No.25 as these persons were confirmed from various dates ranging between 9-10-1990 to 12-8-1992. Appellant was admitted to list 'F on 27-3-1999 and promoted as Inspector w.e.f. 19-4-1999 making him junior to respondents Nos.4 to 11 by 8 years. Appellant submitted his representation to respondent No.2 on 19-3-1998, which was rejected and communicated to him on 25-11-2000. Order of respondent No. 1 dated 25-2-1998 and that of respondent No.2 dated 25-11-2000 have been challenged in this appeal.

2. Learned counsel for the appellant contended that the injustice to the appellant commenced at the time when he was not considered alongwith his batchmates to undergo upper class course to which they were admitted in March, 1989 and this is the starting point of his miseries. Taking his arguments to their logical conclusion, learned counsel stated that the only ground for not sending the Police Officer for upper course is that when he has an adverse entry in his ACR, as mandated in the Police Rules, 1934. To the contrary, it was urged that appellant has in his whole career not earned even a single adverse entry, particularly, till March, 1989, when respondents Nos.4 to 11 were sent to undergo the upper class course and without any rhyme or reason, his entry in the institution to undergo upper class course was delayed till 23-8-1989, which he passed in March, 1990.

3. Learned counsel for the appellant referred to an unreported judgment of the Hon'ble Supreme Court in Civil Petitions Nos.766-L of 1995 and 790-L of 1995 which took into consideration identical question of law: Respondent and petitioner, in the referred to case, before the apex Court were Junior Instructors in Government College of Technology. Respondent being senior to the petitioner was not promoted to take the training course because the Principal was of the view that his class would be neglected without him. But on the other hand petitioner was allowed to proceed on training which made him qualified to be promoted in BS-17 on 18-6-1990. However, the case of the respondent was relegated on the ground that he did not complete the training which he did subsequently and obtained Diploma on 13-5-1991. Respondent claimed promotion and seniority asserting that if he

had not been ignored earlier, without any fault of his, he would have also been promoted alongwith the petitioner. Punjab Service Tribunal who allowed the petition, observed as under:--

"There was no denying the fact that the appellant was senior to respondent No.3. He should have been deputed for the course by virtue of his seniority. It was not the respondent's case that his record was otherwise unsatisfactory rendering him unfit for getting the training. Conversely, when his record was clean and he was senior as well; he should have been given preference to all others for getting the training. He was detained by the Principal as he had none also to look after the relevant duties but this could not be a reason to traverse seniority of the appellant. Someone should have been brought in by transfer or by initial recruitment to fill the post temporarily. The reason for rendering his seniority ineffective was not sound. Late, however, he got the training and came eligible to be promoted. By virtue of seniority which was a vested right he had a genuine claim to be preferred to respondent No.3.

Accordingly, the appeal is allowed. The appellant is held entitled to be promoted as Inspector (BS-17) in preference to respondent No.3 even though the latter might have to be demoted."

Hon'ble Judges of the Supreme Court held that the respondent was handicapped to undergo the course/training because of refusal of - the Principal to allow him to proceed on such training but since he was entitled to undergo the training alongwith others, the Principal should have exercised the discretion in his favour and alternate arrangement should have been made. The appeal of the petitioner was dismissed and judgment of the Tribunal was upheld.

4. Another hurdle which has been created in the way of the appellant is that he got himself transferred to Sargodha and according to the policy of the Government, transfer with consent brings his seniority in his rank to the bottom. However, the mischief to the appellant was done before he opted for transfer to Sargodha in January, 1991 and events culminating in ignoring him for promotion as confirmed Sub-Inspector from 7-2-1990 would not stand in his way for seeking relief by his voluntary transfer to Sargodha Range. Appellant also quoted the case of Muhammad Sarwar v. Director Administration, FIA reported in 1998 SCMR 2409 a case more or less on the similar grounds. Learned District Attorney, raised a single objection about limitation and submitted that wrong was done to the appellant on 7-2-1990 according to his own showing but the representation which he made was in January, 1998 and according to the dictum of Hon'ble Supreme Court reported in 1998 SCMR 882, question of limitation could be seen by the appellate Court at any stage of the proceedings. It was urged that although appellant may have a good case on merit but having kept mum for 7/8 years, he cannot be allowed condonation there being no sufficient ground in his favour.

5. I have attended to the arguments of the respective counsels and have also gone through the record.

6. Appellant admittedly was punished for no fault of his for not being nominated for upper class course in March, 1989 alongwith other respondents. He had no adverse entry in his ACR standing against him name at that period of time. Ruling of the Hon'ble apex Court upholding the judgment of this Tribunal in Appeal No. 634 of 1991 clinches the issue. Subsequent event of getting himself transferred to Sargodha and being placed at the bottom of officiating Sub-Inspectors list, would not stand in the way of the appellant as the mischief had completed itself in February, 1990 when juniors to the appellant were confirmed as Sub-Inspector.

7. ~~Coming to the question of limitation, canvassed by the appellant, I am more prone in the instant case to do substantial justice, as head of the appellant was placed on the chopping block for no fault of~~

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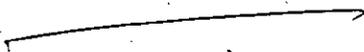
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his. Undoubtedly, Limitation Act is penal in nature and rights accrued cannot be taken away unless sufficient cause is shown. However, technicalities of law should not stand in the way of a person who has been singled out rather persecuted without knowing as to what crime or sin he has committed. Equities in his favour far out weight, his tardiness, to make representation against the injustice done to him. I am also fortified in my view by the judgment of the apex Court reported in PLD 1992 SC 825 that in matters of promotion, pay and other emoluments cause of action is recurring, limitation does not foreclose the right. Resultantly I accept the appeal, set aside the impugned orders and direct the respondents to confirm the appellant as Sub-inspector w.e.f. 7-2-1990 when respondents 14 to 11 his juniors were given the benefit of confirmation as Sub-Inspector. Respondent No.2 may consider granting ante-dated promotion to the appellant as officiating Inspector from the same dates as were allowed to the respondents alongwith consequential benefits flowing from the order to promotion.

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Appeal accepted



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2010 P L C (C.S.) 760

[Supreme Court of Pakistan]

Before Tassaduq Hussain Jilani and Asif Saeed Khan Khosa, JJ

MUHAMMAD AMJAD and others

Versus

Dr. ISRAR AHMED and others

Civil Appeals Nos. 384 and 385 of 2003, decided on 14th April, 2010.

(On appeal from the judgment of the Service Tribunal dated 15-10-2001 passed in Appeal No.775 of 1999).

Punjab Civil Servants Act (VIII of 1974)---

---S. 8---Promotion---Delay---Legitimate expectancy, principle of---Civil servant was not promoted despite availability of vacancy---Service Tribunal allowed the appeal filed by civil servant and directed the authorities to consider him for promotion from the date when he became eligible for the post as there was vacancy available then---Validity---State functionaries were mandated to act with certain amount of reasonableness---Such canon of due process of law was not observed in processing civil servant's promotion matter---Having acquired requisite experience and having authored number of articles required for post in question, the civil servant had legitimate expectancy for the post in question---Judgment passed by Service Tribunal was neither against the rules nor the law declared---Civil servant was eligible to be considered for promotion when substantive vacancy in promotion quota was available---Judgment passed by Service Tribunal directing the authorities to consider case of civil servant's promotion to post in question from the date when vacancy in his quota was available was unexceptionable---Supreme Court declined to interfere in the judgment passed by Service Tribunal---Appeal was dismissed.

Government of N.-W.F.P. v. Buner Khan 1985 SCMR 1158; Government of the Punjab v. Rana Ghulam Sarwar Khan 1997 SCMR 515; Muhammad Iqbal v. Executive District Officer (R) Lodhian 2007 SCMR 682; Sarwar Ali Khan v. Chief Secretary to Government of Sindh 1994 PLC (C.S.) 411; Luqman Zareen v. Secretary Education N.-W.F.P. 2006 SCMR 1938; Ch. Muhammad Siddique v. Director, Special Education 1998 SCMR 88 and Idrees Ahmed v. Hafiz Fida Khan PLD 1985 SC 376 ref.

Dr. A. Basit, Advocate Supreme Court (in C.A. 384) and Mr. Saeed Yousaf Khan, Additional Advocate-General for Appellants (in C.A. 385 of 2003).

Mr. Shoaib Shaheen, Advocate Supreme Court for Respondents.

Date of hearing: 14th April, 2010.

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## JUDGMENT

**TASSADUQ HUSSAIN JILLANI, J.**--- This judgment shall dispose of Civil Appeal No.384 of 2003 filed by Dr. Muhammad Amjad and another and Civil Appeal No. 385 of 2003 filed by Government of Punjab through Chief Secretary as they are directed against the same judgment passed by the Punjab Service Tribunal dated 15-10-2001 vide which the appeal of the respondents was allowed and it was directed as follows: --

"Appellant's promotion to the post of Associate Professor (ENT) having been kept in abeyance till 3-12-1998 has affected his vested right of seniority vis-a-vis respondents Nos.3 and 4. I, therefore, accept the appeal, direct the respondents to consider the case of the appellant for promotion to the post of Associate Professor (ENT) in BS-19 w.e.f. the date when the vacancy, in his quota, became available and thereafter a joint seniority list of the officers directly recruited and those promoted shall be issued according to the rules".

2. Facts briefly stated are that respondent Dr. Israr Ahmad was appointed as Assistant Professor (ENT) in the Health Department on 13-1-1992. Admittedly as per the relevant rules 33% of the posts of Associate Professor were to be filled through direct recruitment and 2/3 by way of promotion. Respondents became eligible for promotion to the post of Associate Professor in February, 1997 when four posts were available in the promotion quota. However, the department did not consider his case for promotion till 3-12-1998 when he was promoted. He filed a representation and even that was not considered whereafter he approached the Service Tribunal. In the meanwhile, in June, 1998, the Punjab Public Service Commission had conducted interviews for two posts of Associate Professor, in which both the appellants were selected whereas respondent could not qualify. The Punjab Service Tribunal allowed respondent's appeal mainly on the ground that since a substantive post against promotion quota was available in 1997 and respondent was eligible to be considered, his promotion as Associate Professor should reckon from the date, the substantive post in the said quota was available.

3. Dr. Abdul Basit, learned counsel for the appellants in Civil Appeal No.384 of 2003 made the following submissions:

(i) That it is admitted position that in terms of the Punjab Health Department (Medical and Dental Teaching Posts) Service Rules, 33% of the posts are to be filled in through direct recruitment and the remaining 2/3<sup>rd</sup> by promotion. The appellants along with respondents Dr. Israr Ahmad applied through Public Service Commission against the posts reserved for direct recruitment, the appellants qualified the test and interview in 1998 and on the recommendation of the Punjab Public Service Commission, they were selected against the posts of Associate Professor whereas the respondent could not qualify;

(ii) that there is no cavil with the proposition that the posts of Associate Professor in the promotion quota were available and the meetings of the Departmental Promotion Committee (D.P.C.) did take place on 11-5-1993, 17-8-1995, 1-10-1996 and on 3-9-1997 but since neither the appellants nor the respondent were qualified to be appointed as Associated Professors by the said date, they were not so appointed. Since respondent did not challenge the act of the department of not promoting him in time, he could not raise his claim for pro forma promotion at a belated stage particularly when he failed to qualify the examination conducted by the Punjab Public Service Commission for appointment of Associate Professors against the posts reserved for direct appointment; and

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 A.M.

(iii) that section 8 of the Punjab Civil Servants Act, 1974 was amended by Act III of 2005 and under the amended provision, no civil servant can claim pro forma promotion as of right.

4. Learned Additional Advocate-General adopted the arguments of learned counsel for the appellants (in Civil Appeal No.384 of 2003) and made following additional submissions:

(i) That the impugned judgment is violative of section 8 of the Punjab Civil Servants Act and cannot be sustained;

(ii) that respondent Dr. Israr Ahmad was duly promoted on 3-12-1998 and although the post fell vacant earlier but the delay occurred due to procedural and unavoidable causes because the department sent the case for respondent's promotion only on the receipt of requisite documents; and

(iii) that the respondent appeared along with appellants (in the connected appeal) before the Punjab Public Service Commission for appointment against the posts reserved for direct appointment wherein the former failed but appellants were declared selected. That being so, it was not open for the respondent to claim seniority over the appellants after having not being selected by the Commission.

5. Learned counsel for the respondent Mr. Shoab Shaheen who assisted the Court on behalf of respondent at the asking of the Court, submitted as under:

(i) That although the post for direct recruitment as Associate Professor fell vacant in February, 1997, and the case of respondent's promotion against the said post was pending decision in the department, yet, in the meanwhile the posts were filled through selectees of Punjab Public Service Commission on 27-7-1998 and respondent was promoted later on 3-12-1998 which was unfair, mala fide and discriminatory; and

(ii) that respondent had a right to be considered for promotion against the post reserved for promotion quota as soon as the substantive vacancy was available and respondent could not have been condemned for inaction of the State functionaries. In support of the submissions made, learned counsel relied on Government of N.-W.F.P. v. Buner Khan 1985 SCMR 1158, Government of the Punjab v. Rana Ghulam Sarwar Khan 1997 SCMR 515 and Muhammad Iqbal v. Executive District Officer (R) Lodhran 2007 SCMR 682.

6. We have heard learned counsel for the appellants, learned Additional Advocate-General as also Mr. Shoab Shaheen, Advocate Supreme Court who assisted the Court on behalf of respondent at the asking of the Court.

7. In accepting respondent's appeal, the learned Service Tribunal considered the availability of substantive posts in the promotion quota, the eligibility of respondent to be considered in February, 1997 and the unreasonable delay caused by the department in processing his case. The Court found as follows:--

"In the comments submitted by respondent No.2, it was submitted that the post of Associate Professor (ENT) to be filled through promotion, when became available, the department started moving for filling the post by gathering documents from the prospective candidates and it was only after clearance that the competent authority, appellant was promoted as

*Handwritten signatures and initials:*  
A. Shaheen  
S. S. S.  
A. M.

Associate Professor (ENT) on regular basis w.e.f. 3-12-1998. It is said that the delay which occurred, if any, was procedural and unavoidable because the case was prepared on receipt of documents from different quarters. Explanation given is hardly convincing. It means that spade work which commenced in February, 1997 ended in December, 1998 playing with the rights of civil servant in such an arbitrary manner is not only unpardonable but wholly unconscionable. Appellant suffered and felt aggrieved, undoubtedly when the post of Associate Professor (ENT) was not being filled but the last nail was driven in the coffin on 27-7-1998 when the recently arrayed respondents Nos.3 and 4 were inducted through direct recruitment as Associate Professors (ENT)."

8. We specifically asked the Additional Advocate-General as to whether the respondent was eligible to be considered for promotion against the promotion quota by 3-2-1997, to which his answer was in the affirmative. He could not give any explanation tenable in law for non-consideration of case by the Departmental Promotion Committee. The State functionaries are mandated to act with a certain amount of reasonableness which canon of due process of law was not observed in processing respondent's promotion matter. Having acquired the requisite experience and having authored the number of articles required for the post in question, respondent had legitimate expectancy for the post in question. The impugned judgment in these circumstances is neither against the rules nor the law declared.

9. In *Sarwar Ali Khan v. Chief Secretary to Government of Sindh 1994 PLC (C.S.) 411*, the appellant was working as a Superintendent (BS-16) in the Sindh Labour Appellate Tribunal when the said post was converted into that of Deputy Registrar in BS-17. However, the post was upgraded on the recommendation of the Departmental Promotion Committee. On 1-7-1988, the post of Registrar (BS-18) fell vacant and on 5-7-1988 he was appointed to the post in his own pay and status. Ultimately, he was promoted on regular basis to the post of Registrar (BS-18) on the recommendation of the Departmental Promotion Committee vide notification dated 30-6-1991. He applied for salary of BS-18 from the date when he was posted against the post of Registrar in his own pay and status i.e. 5-7-1988. His appeal was dismissed by the Service Tribunal merely on the ground that he did not challenge notification dated 5-7-1988 in time, that the Departmental Selection Board had not cleared his case for promotion and that he had been compensated by the grant of special pay. This Court allowed the appeal on the ground that his claim cannot be rejected merely on the ground of being time-barred; that there was no valid reason for the Selection Board to withhold clearance for regular promotion and in absence of any valid explanation, it was not fair and equitable to refuse the prayer.

10. In *Government of the Punjab through Secretary Education v. Rana Ghulam Sarwar Khan 1997 SCMR 515*, the brief facts are that there were 12092 posts in College Teachers Cadre. The Provincial Government decided to introduce a 4-tier structure for college teachers and with that object in view, it classified the posts in ratio of 1:15:34:50 in 4-tiers namely B.P.S 20, 19, 18 and 17. It was vide notification dated 1-9-1990. However, the department took two years to make the appointments in accordance with the above ratio. On account of this, the promotion of civil servants from BS-18 to 19 was held up till 1992. They represented before the Government that they should be promoted w.e.f. the date when the post was made available and in terms of notification dated 1-9-1990. The Service Tribunal allowed the relief. The Provincial Government challenged the judgment of the Tribunal. In upholding the said judgment, this Court was of the view that, "The delay in making the promotions occurred entirely due to the reason that the officials of the Education Department could not carry out a fairly simple exercise within a reasonable period."

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11. In *Government of N.-W.F.P. v. Buner Khan* 1985 SCMR 1158, the facts briefly stated are that 75% of the posts in Grade 18 in Provincial Education Department were to be filled in by promotion from among the Grade 17 officers of the said department and 25% by direct recruitment. However, no proper rotation of the vacancies for the purpose was maintained. The petitioners before this Court were directly recruited in BPS-18 on 30-12-1980 and 1-9-1982, whereas the respondents (who were promotees) were promoted to the said grade on 12-5-1984 and no joint seniority list in the said grade was notified with the result that some of the direct recruits were promoted to Grade 19 without the promotees being considered for the said promotion. The Tribunal allowed the appeal of the promotees and directed the Government to promote them in Grade 18 w.e.f. the date when the vacancies were available and a joint seniority list be issued accordingly. This judgment was challenged both by the Government and those who were directly recruited. This Court maintained the judgment of the Service Tribunal with a slight modification i.e. instead of direction by the Tribunal, "to promote", this Court directed that "the promotees shall be considered for promotion to Grade-18 post with effect from the dates when vacancies in their quota became available and that thereafter a joint seniority list of the officers directly recruited and those promoted shall be issued according to the rules."

12. In *Luqman Zareen v. Secretary Education N.-W.F.P.* 2006 SCMR 1938, several school teachers were allowed pro forma promotion w.e.f. the date when the substantive vacancies were available but they were not considered on account of, "the usual apathy, negligence and bureaucratic red-tapism which had deprived the petitioners of the fruits that they deserved. The petitioners could not be permitted to be punished for the faults and inaction of others."

13. In *Ch. Muhammad Siddique v. Director, Special Education* 1998 SCMR 88, the civil servant who was a lady teacher was granted pro forma promotion because her case was not considered when the substantive post was available for no fault of her own. The Court held as follows:-

"It has not been denied that the case of the respondent was placed before the D.P.C. on 23-7-1987 and was deferred due to certain deficiencies but she was later promoted on 15-5-1988. That being so, she was entitled to ask for promotion with effect from the date the post became available and/or the date when her case was deferred by D.P.C. The judgment of the Service Tribunal, in our view, is quite just and fair and does not suffer from any illegality."

14. Considering the case of the respondent in the light of the judgments of this Court, to which reference has been made above, we find that it is nobody's case that respondent was not eligible to be considered for promotion when substantive vacancy in the promotion quota was available. That being so, the impugned judgment directing the appellants to consider the case of respondent's promotion to the post of Associate Professor in BPS-19 w.e.f. the date when the vacancy in his quota was available is unexceptionable.

15. So far as the argument of learned Additional Advocate-General with reference to section 8 of the Punjab Civil Servants Act, 1974 (VIII of 1974) which was amended in terms of Act III of 2005 is considered, the same would be of no avail to the appellants because there is nothing in the amended provisions which makes it retrospective in effect. Reference to the amended provision would be in order which reads as under:-

"8. Promotion--- (1) A civil servant shall be eligible to be considered for appointment by promotion in the service or cadre to which he belongs in a manner as may be prescribed: provided that he possesses the prescribed qualifications.

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(2) Promotion including pro forma promotion shall not be claimed by any civil servant as of right.

(3) Promotion shall be granted with immediate effect and be actualized from the date of assumption of charge of the higher post, and shall in no case be granted from the date of availability of post reserved for promotion.

(4) A civil servant shall not be entitled to promotion from an earlier date except in the case of pro forma promotion.

(5) A retired civil servant shall not be eligible for grant of promotion or pro forma promotion.

(6) A post referred to in subsection (1) may either be a selection post or a non-selection post to which promotion shall be made as follows:

(a) In the case of a selection post, on the basis of selection on merit; and

(b) in the case of non-selection post, on the basis of seniority-cum-fitness."

16. Section 6 of the General Clauses Act provides that any repeal or amendment of a statute will not affect its previous operation unless the amended provision provides otherwise. The said section reads as under:-

"6. Effect of repeal.--Where this Act, or any (Central Act) or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not:

(a) revive anything not in force of existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed of anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

17. In *Idrees Ahmed v. Hafiz Fida Khan* PLD 1985 SC 376, the import of section 6 of the General Clauses Act came under consideration and the Court held as follows:--

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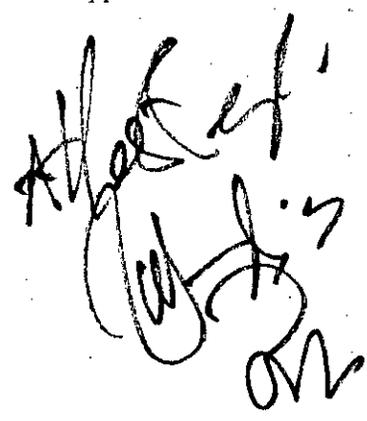
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"Unless different intention appears from repealing enactment, repeal ipso facto not to affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; nor to influence any investigation, legal proceedings of remedy in respect of any such right, privilege, obligation, liability, penalty, forfeitures or punishment to be imposed as if repealing enactment having not been passed."

18. For what has been discussed above, we do not find any merit in these appeals which are dismissed, with no order as to costs.

M.H./M-46/SC

Appeals dismissed.

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OFFICE OF THE DIRECTOR SECONDARY EDUCATION, N.W.F.P., PESHAWAR

ANNEXURE-X

PROMOTION.

Consequent upon their approval by the Departmental Promotion Committee of Education Department NW FP, in its meeting held on 11-5-2000, the following Junior Clerks already working on their own pay & EPS against the vacant post of Senior Clerks are hereby promoted on regular basis to the post of Senior Clerks in BPS-07 and posted against the post of Senior Clerks as noted against each in the interest of public service with effect from the date as noted against each:-

<u>S.No.</u>	<u>Name &amp; Designation.</u>	<u>Promoted &amp; posted as</u>	<u>Remarks</u>
1.	Mr. Abdul Wajid J/Clerk	Senior Clerk at G.D.C. No.2(M) D.I.Khan.	Post already occupied by him. He is allowed proforma promotion as S/Clerk with effect from 31-5-1994.
2.	Mr. Mahmood Khan J/Clerk	Senior Clerk at Director Bureau of Curr:Dev:& Edu:Extn: services Abbottabad.	Post already occupied by him. He is allowed proforma promotion as S/Clerk with effect from 25-5-1995.

- Notes:-
1. Charge report should be submitted to all concerned.
  2. Necessary entry to the effect should be made in his Service Book.

( MAJID KHAN )  
 DEPUTY DIRECTOR (SECONDARY)  
 DIRECTORATE OF SECONDARY EDUCATION  
 NWFP PESHAWAR

Encl: 7 174/85 /A-23/MS/Promotion from J/C to S/C. Dated 31/5/2000.

- Copy forwarded to the:-
1. Director of Education (Colleges) NWFP Peshawar.
  2. Director Bureau of Curr:Dev:& Edu:Extn: Services Abbottabad.
  - 3-4. Distt:Accounts Officers Abbottabad & D.I.Khan.
  5. Section Officer (Directives) Education Deptt: NWFP, Peshawar.
  6. Principal GDC No.2(M) D.I.Khan.
  - 7-8. Officials concerned.
  9. P.L. to Director Secy: Edu: NWFP, Peshawar.
  10. P/File.
  11. H/File.

*Abdullah*  
*Amor*

DEPUTY DIRECTOR SECONDARY  
 EDUCATION NWFP PESHAWAR

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Annex-4

BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 612/2008

Date of Institution. . . . . 16.04.2008  
Date of Decision . . . . . 13.03.2009

Muhammad Iqbal Khattak,  
Assistant Political Agent, Khar Bajaur Agency. . . . . (Appellant)

VERSUS

1. Government of NWFP through Secretary Establishment Department, Peshawar.
2. Govt. of NWFP through Chief Secretary, Peshawar. . . . . (Respondents)

APPEAL U/S 4 OF THE NWFP SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION NO.SOE.II (E&D) 2 (192)2007 DATED 19.2.2008 WHEREBY THE APPELLANT WAS PROMOTED ON REGULAR BASIS W.E.F. 19.2.2008 INSTEAD OF 30.11.1999 AND ORDER NO.SOE-II (E&D) 2(192) WHEREBY HIS DEPARTMENTAL APPEAL WAS DISMISSED.

MR. SHAKEEL AHMAD;  
Advocate . . . . . For appellant.

MR. ZAHID KARIM KHALIL, . . . . . For respondents.  
Addl. Government Pleader,

MR. JUSTICE (R) SALIM KHAN, . . . . . CHAIRMAN.  
MR. BISMILLAH SHAH . . . . . MEMBER.

JUDGMENT

JUSTICE (R) SALIM KHAN, CHAIRMAN.-The present appeal No 612 of 2008 by Muhammad Iqbal Khattak and appeal No. 613 of 2009 by Ahmad Khan Involved similar questions of law, therefore, these are taken together for arguments and disposal.

2. Muhammad Iqbal Khattak was promoted as Tehsildar on regular basis vide order dated 28.12.1938. He was promoted to PCS(E.G) (BPS-17) on temporary basis vide notification dated 06.03.1996. He contended that many posts became vacant, but the appellant was promoted to (BPS-17) on regular basis on 19.2.2008 with immediate effect, instead of ante-dating his promotion to the date on which the vacancy fell to his turn in the

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NWFP SERVICE TRIBUNAL  
PESHAWAR

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seniority lists of officers of PCS (E.G). His departmental appeal was rejected on 22.03.2008. The present appeal was filed on 16.4.2008 which is within time. The case of Ahmad Khan (Appellant) is similar to the case of Muhammad Iqbal Khattak on facts also. His appeal is also within time.

3. The respondents contested the appeal on many grounds, including the ground that no one could claim a vested right in promotion or in the terms and conditions for promotion to a higher post.

4. We heard the arguments and perused the record.

5. The learned counsel for the appellants contended that the appellants were temporarily posted to BPS-17 post on 06.3.1996, but they remained silent, because they did not have a vested right for promotion to a higher post. The appellants have already been considered for promotion and have been found eligible and fit for regular promotion to BPS-17 post, therefore, the principles embodied in the judgment of the August Supreme Court of Pakistan reported as 1990 SCMR 1321 are not applicable to their cases. In fact, the vacancies had become available for the appellants as early as on 30.11.1999, and it was the responsibility of the official respondents to expeditiously deal with the cases of the appellants for their regular promotion. The appellants could not be punished for no fault on their side, or for delay caused by the official respondents in processing the cases of the appellants. He relied on 1997 PLC (C.S) 77, wherein it has been held in para 3 as under:-

*"On behalf of the Government it is contended that no civil servant has a right to claim that he should be promoted from a back date even though a vacancy may be existing on the date from which the promotion is being claimed. This is no doubt true but there are no orders by the Government that the respondents/petitioners should be held up for some time. The delay in making the promotions occurred entirely due to the reason that the officials of the Education Department could not carry out a fairly simple exercise within a reasonable period. In the circumstances it will not be appropriate for this Civil Petition to interfere with the order of the Service Tribunal. Leave is refused."*

This judgment was in the petition for leave to appeal against the judgment dated 19.02.1995 of the Punjab Service Tribunal. It is worth-mentioning that

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the judgments cited as 1990 SCMR 1321 and cited as 1997 PLC (C.S) 77 are on two different aspects of the same subject.

*impugned*

Ante-dating of promotion, after consideration of the candidate aspiring for such promotion, after he was found eligible and fit for such promotion and is promoted, is an established principle of law. Such a candidate cannot be punished for any delay caused by the department in processing his case for promotion. The order of promotion, therefore, has to be ante-dated to the date on which the vacancy for his turn became available or to the date on which he actually took charge of the post on officiating/acting charge basis, whichever is later.

2. The A.G.P contended that the present appeals were miserably time-barred and both the appellants were stopped by their own conduct to file the present appeals. In fact, the principle embodied in the judgment reported as 1990 SCMR 1321 was applicable to the cases of the appellants from 06.3.1996 to 18.2.2008. They could not claim promotion as of right. The principle embodied in the judgment reported as 1997 PLC (C.S) 77 became applicable to their case on 19.2.2008. Cause of action arose to the appellants for claiming ante-dation of their promotion as prayed for only when their cases were considered for promotion, they were found eligible and fit for promotion, and their promotion orders were issued, though with immediate effect. They filed their departmental appeals within time from the date of the impugned order dated 19.2.2008, and their appeals were rejected on 22.3.2008. They filed Service Appeals on 16.04.2008. The departmental appeals as well as the Service Appeals were well within time.

*post*

3. The A.G.P further contended that, according to the proviso contained in sub-section (2) of Section 22 of the N.W.F.P Civil Servants Act 1973, "no representation shall lie on matters relating to the determination of fitness of a person to hold a particular post or to be promoted to a higher post or grade." Judgment cited as 1990 SCMR 1321 was, then, applicable and appellants could not file representation. This stage has already passed. The appellants have been considered for holding the higher post after their promotion to that higher post, and their fitness for such promotion and holding of post has already been determined. The judgment cited as 1997

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PLC (C.S) 77 has become applicable after determination of fitness of the appellants. The question in these cases is not the determination of fitness but is the right of ante-dation of their promotion. The appellants had vested right for consideration of promotion on their turn, whenever it was, and, when found fit on determination of fitness, at any stage, they had a right to claim ante-dation of their promotion to the dates on which the vacancies were available for their respective turns or from the dates on which they actually took the charge of their respective posts, whichever were later in time.

9. The A.G.P also contended that according to sub-rule (6) of Rule 9 of the N.W.F.P Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 "acting charge appointment shall not confer any vested right for regular promotion to the post held, on acting charge basis." The appellants have never claimed any vested right for regular promotion to the post which they held on acting charge basis, on the basis of acting charge appointment. In fact, they did not have such a right. They remained silent for a long time, knowing that they did not have such a right on the basis of acting charge appointment. They, however, had a vested right, as civil servants, for consideration for promotion, when the authority was to consider someone for promotion against the vacancy. No other person could be considered till the appellants were so considered. They, therefore, had a vested right for ante-dation of their promotion only when they were regularly promoted, but from the date when the vacancy became available to their turn.

10. The A.G.P further contended that, according to the North West Frontier Province, Provincial Management Service Rules, 2007, notified on 11.05.2007 vide No. SOE.II(ED)2(14)2007, The NWFP Provincial Civil Service (Secretariat/Executive Group) Rules, 1997 were repealed. He was of the view that the N.W.F.P Provincial Management Service Rules, 2007 had come into force at once w.e.f. 11.05.2007, while the orders of promotion of the appellants were issued on 19.02.2008. He submitted that the promotion orders were covered by the new rules, therefore, the appellants could not claim any benefit out of the already repealed rules of 1997. In order to clarify this controversy, it is necessary to reproduce the relevant Rule 8 of the N.W.F.P Provincial Management Service Rules, 2007 which is as under:-

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(43) (66) (67)

8. Repeal:- The North-West Frontier Province Provincial Civil Service (Secretariat/Executive Group) Rules, 1997 shall stand repealed after the retirement of existing incumbents of both the cadres. Separate seniority list of both the cadres shall be maintained under the existing rules and they shall be promoted at the ratio of 50:50. The existing incumbents of PCS (E.G) and (S.G) in different pay scales, for the purpose of their promotion, shall continue to be governed under the said service rules till the retirement of the last such incumbent."

The above rule, by itself, clarifies that the rules of 1997 shall not stand repealed before the retirement of the existing incumbents of both the cadres of Secretariat/Executive Groups, and shall remain in force till the retirement of the last such incumbent. It further clarified that separate seniority list of both the cadres shall be maintained under the existing rules. The existing rules for such incumbents are the N.W.F.P Provincial Civil Service (Secretariat/Executive Group) Rules, 1997. It was also clarified that such incumbents shall be promoted at the ratio of 50:50. It means that out of each two vacancies, one vacancy shall be given to Secretariat Group, while another vacancy shall be given to the Executive Group. Further clarification is to the effect that the existing incumbents of PCS (E.G) and (S.G) in different pay scales shall continue to be governed under the rules of 1997 for the purpose of their promotion, and this process is to continue till the retirement of last such incumbent. Both the appellants belonged to the Executive Group of Civil Servants. They were to be governed under the N.W.F.P Provincial Civil Service (Secretariat/Executive Group) Rules, 1997 before 11.05.2007, and they have to be governed under the above mentioned rules of 1997 till the retirement of the last incumbent of a post in Secretariat Group/Executive Group.

11. The cases of the appellants are, therefore, to be governed in accordance with the provisions of Section 8 (quoted above) of the new N.W.F.P Provincial Management Service Rules, 2007. The record shows that vacancies were available for the appellants but they were not promoted at the due time and their cases for promotion were delayed unnecessarily without any fault of the appellants. They, therefore, are entitled to ante-dation of their promotion against the first available vacancy falling to the turn of each of them or from the date of taking over the charge of that vacancy on officiating/acting charge basis, whichever is later.

W.F.P. SECRETARY  
W.F.P. SECRETARIAT  
W.F.P. EXECUTIVE GROUP

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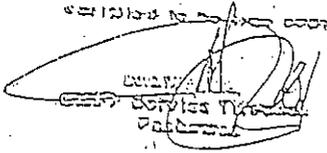
*Impudant*



12. In the light of the above, we accept both the appeals, and direct the official respondents to ante-date the promotion of each of the two appellants to the respective dates on which a vacancy became available for the respective turn of the appellants or from the respective dates of their taking charge of such vacancy on officiating/acting charge basis, whichever is later. The appellants are entitled to the costs of their respective litigation from the official respondents.

ANNOUNCED  
11.03.2009

*By Justice (S) Jatin Kumar Chawla*  
*Dr. Bisom Nath Shah*  
*Members*



*Impudant*

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*APPEALS*

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قیمت  
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ایڈوکیٹ: محمد سعید علی خان ڈالمر ایڈووکیٹ  
 بار کونسل/ایسوسی ایشن نمبر: bc-09-2623  
 رابطہ نمبر: 03119416118

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب: حضر و ہنر مسیونرل جی. پی. سی اور

منجانب: <u>غلام سرور اپیدہ نٹ</u>	دعویٰ: <u>Serviced Appeal</u>
	علت نمبر: _____
	مورخہ: _____
	جرم: _____
	تھانہ: _____
<b>باعث تحریر آنگہ</b>	

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دی کارروائی متعلقہ  
 آن مقام محمد سعید علی خان ڈالمر ایڈووکیٹ کے کوڈیکل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا، نیز ذمیل صاحب کو  
 راضی نامہ کرہے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق  
 زیریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز  
 دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی  
 کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب  
 مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داخستہ منظور و قبول ہوگا  
 دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے  
 باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم: 26/4/2023

العبد غلام سرور اپیدہ نٹ العبد

مقام پشاور کے لیے منظور ہے۔

محمد سعید علی خان ڈالمر

Advocate

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

Service Appeal No: 4980/ 2021

**Ghulam Sarwar. Ex-AD Admn DCTE Abbottabad.....Appellant.**

**VERSUS**

**Chief Secretary, Govt; of Khyber Pakhtunkhwa & others.....Respondents**

**JOINT PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENTS No: 1 to 3.**

Respectfully Sheweth :-

The Respondents submit as under:-

**PRELIMINARY OBJECTIONS.**

- 1 That the appellant has got no cause of action /locus standi.
- 2 That the appellant is not an aggrieved person within the meaning of Article 212 of the constitution of Islamic Republic of Pakistan 1973.
- 3 That the instant Service Appeal is badly time barred under Law of limitation Act 1908.
- 4 That the appellant has concealed material facts from this Honorable Tribunal.
- 5 That the instant service appeal is based on malafide intentions.
- 6 That the appellant has not come to this Honorable Tribunal with clean hands.
- 7 That the appellant is not entitled for the relief he has sought from this Honorable Tribunal.
- 8 That the instant Service Appeal is against the prevailing Law, Rules and policy.
- 9 That the appellant has been treated as per law & policy by the Department.
- 10 That the appeal is not maintainable in its present form.
- 11 That the appeal is bad for mis-joinder & non-joinder of the necessary parties.
- 12 That the appellant is not competent to file the instant appeal against the Department.
- 13 That the instant appeal is not maintainable in its present form.

14 That this Honorable Tribunal has got no jurisdictions to entertain the instant case.

15 That the Notification No.SO (PE)2-6/DPC meeting/B&AO, form BPS16 to BPS-17/2014 dated 29-08-2014 is legally competent & liable to be maintained as the appellant is not entitled for the grant of promotion w.e.f. 08-01-1997 in the Respondent Department.

### ON FACTS

- 1 That Para-1 needs no comments being pertains to the service record of the appellant against the senior scale stenographer post inducted vide order dated 01-02-1979 & later on promoted to the post of superintendent ~~post~~ on dated 22-06-1987 & copies of the orders under reference are attached as **Annexure-A & B.**
- 2 That Para-2 is correct that vide order dated 11-01-1988, the appellant was promoted to the post of B&AO in BPS-16 by the Department & copy of the order is attached as Annexure-C.
- 3 That Para-3 is correct to the extent of final seniority list as stood up to 31-03-2013 of B&AOs attached as **Annexure-D**, hence, needs no further comments.
- 4 That Para-4 is incorrect & misleading on the grounds that there was no vacant post of Deputy Director (BPS-18) ~~regular~~ available for the ministerial staff in the Respondent Department upon which the appellant could be adjusted against the above mentioned post. Hence the stand of the appellant is also liable to be dismissed.
- 5 That Para-5 is correct that vide Notification No.SO (PE)2-6/DPC meeting/B&AO, form BPS16 to BPS-17/2014 dated 29-08-2014, the appellant was promoted against the AD (Admn) Post in BPS-17 w.e.f. 29-08-2014 in view of his seniority & other service record in the Department, therefore, the plea of the appellant regarding grant of promotion w.e.f. 01-08-1997 against the AD in BPS-17 post is illegal & liable to be rejected copy of the Notification dated 29-08-2014 is **Annexure-E.**
- 6 That Pra-6 is also incorrect & denied on the grounds that the appellant has got retired from official service against the AD (Admn) post on completion of his 60 years of age /superannuation & the Notification No. SO(PE)4-10/SSRC/Ministerial Staff/2013 dated 28-01-2013 is not applicable upon the case of the appellant in the given circumstances of the case, hence the plea of the appellant regarding working against the Deputy Director post (Admn) as baseless & without any legal justification & a copy of the Notification dated 28-01-2013 is Annexure-F.
- 7 That para-7 is incorrect & denied on the grounds that the appellant has got retired from the official service on attaining of 60 years of age on superannuation & was not entitled for the grant of promotion against the Deputy Director (Admn) BPS-18 under the shadow of ministerial staff, nor he has submitted any application for the grant of promotion against the above mentioned post to the Respondent Department till date, hence, his plea is liable to be rejected.

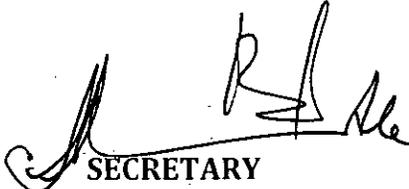
- 8 That para-8 is incorrect to the extent of filling of Departmental appeal against the Notification dated 29-08-2014, whereby, he has been promoted as AD in BPS-17 by the Department under the Rules. Therefore, the Notification dated 29-08-2014 has got final against the appellant under the Law, whereas, rest of the para regarding service appeal No.1067/2015 is relates to the record off this Honorable Tribunal.
- 9 That Para-9 is Correct that vide Judgment dated 09-04-2019 the case of the appellant was remitted to the Department for disposal the case of the appellant which was decided vide order dated 22-03-2021 competent authority in shape of dismissal on merits of the case & copies of the Judgment dated 09-04-2019 & order dated 22-03-2021 are **Annexure-G & H.**
- 10 That Para-10 is incorrect on the grounds that vide order dated 22-03-2021 the Departmental appeal of the appellant has been decided by the Respondent No.2 as per Judgment dated 09-04-2019 & was dully communicated to the appellant, hence, the plea of the appellant & misleading.
- 11 That Para-11 is legal, the statement of the appellant is baseless, hence the appeal of the appellant is liable to be dismissed on the following grounds inter alia :-

#### ON GRONDS

- A **Incorrect & not admitted.** The order dated 22-03-2021 is legal, hence, the statement of the appellant is against the law, rules & policy as submitted in the foregoing Paras in the instant reply, hence the case of the appellant is of no legal force & liable to be dismissed.
- B **Incorrect & not admitted.** The statement of the appellant is baseless & is liable to be dismissed.
- C **Incorrect & not admitted.** The statement of the appellant in this para is too baseless, hence liable to be rejected.
- D **Incorrect & not admitted.** No vacancy was available in the Department during the period dated 08-01-1997, hence, the stand of the appellant is illegal.
- E **Incorrect & not admitted.** The appellant has got no cause of action, nor he is an aggrieved person to file the instant Service Appeal before this Honorable Tribunal, hence is liable to be dismissed in favour of the Respondents.
- F **Incorrect & not admitted.** The appellant has been treated as per law rules & policy by the Department.
- G **Incorrect & not admitted.** The cited cases as mentioned in sub-grounds from A to G are not applicable upon the case of the appellant, hence, denied. However, the Respondents No: 1-3 seek leave of this Honorable Tribunal to submit additional grounds & case law / record at the time of arguments on main appeal on the date fixed before this Honorable Bench

In view of the above made submissions, it is most humbly prayed that this Honorable Tribunal may very graciously be pleased to dismiss the instant Appeal with cost in favor of the Respondent Department in the interest of justice.

Dated \_\_\_/ \_\_\_/2022.



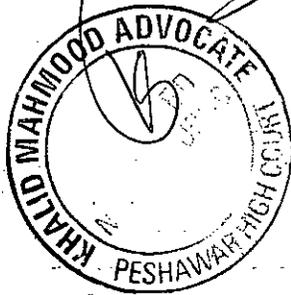
**SECRETARY**  
E&SE Department Khyber  
Pakhtunkhwa, Peshawar.  
(Respondents No: 1 & 2)

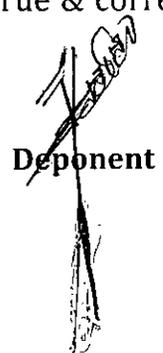


**DIRECTOR**  
E&SE Department Khyber  
Pakhtunkhwa, Peshawar.  
(Respondent No: 3)

**AFFIDAVIT**

I, Dr. Hayat Khan Assistant Director (Litigation-II) E&SE Department Khyber Pakhtunkhwa, do hereby solemnly affirm & declare on oath that the contents of the instant para wise Comments are true & correct to the best of my knowledge & belief.



  
**Deponent**

OFFICE OF THE DIRECTOR OF EDUCATION (S) N.W.F.P. PESHAWAR.

APPROVAL FOR APPOINTMENT.

The Departmental Selection Committee of the Education Department, has approved the appointment of Mr. Gulam Sarwar as Stenographer at the Office of the Divisional Director of Education (Schools) Hazara Division Abbottabad. Consequently he is placed in regular scale of Rs. 460-23-680/30-900 (NPS-12) with effect from 1/2/1979.

Necessary entry to this effect should be made in his Service Book etc.

Mr. Gulam Sarwar, Sd/- (MOHAMMAD MOHSIN) (SCHOOLS) For Director of Education (S) Hazara Division Abbottabad.

5. Endst: No. 2753-54/1-23/Steps Dated Peshawar the 16 Feb 1979. Govt. College Garden. Copy is forwarded for information and necessary action to the

6. Mr. [Name] Divisional Director of Education (Schools) Pesh. Hazara Division Abbottabad. With reference to Govt. College Garden letter No. 2189/73 dated 23/1/79.

7. Mr. [Name] at DDE (S) Hazara Division Abbottabad. Said P. to Director of Education (Schools) Peshawar.

8. Mr. Sarder Mohammad, Asstt. at DDC (P) Hazara Division Abbottabad. Village, Abbottabad. No. 23

9. Garden Hassan, Asstt. Govt. College Garden. For Director of Education (Schools) Peshawar.

Notes:- 1. Charge reports should be sent to all concerned. Attested:- 2. The promotion of Mr. Sarwar to S.No. 1234567890 is approved by the Departmental Promotion Committee. The promotion is purely on merit and basis of seniority. No objection is recorded on any ground.

Asstt. Div. Director of Education (S) For Schools Hazara Division Abbottabad. Director of Education (S) P. PROVINCE PESHAWAR



B

s/c J.P.

Annex - E

OFFICE OF THE DIRECTOR OF EDUCATION (SCHOOLS), NWFP, PESHAWAR.

NOTIFICATION.

The following Promotions/Transfers of Ministerial Staff of Education Department are hereby ordered in the interest of public service with effect from the dates of their taking-over charge.

S.No.	Name & Designation.	Adjusted at.	Remarks.
1.	Mohammad Nawaz, ADEO(A) at DEO(M), Chitral.	A.D.E.O(A), at DEO(F), <del>Chitral</del> D.I.Khan.	Against vacant post.
2.	Khan Afzal, Supdt: DDE(S), Hazara Divn:	A.D.E.O(A) at DEO(M), Chitral.	Vice Sr.No.1.
3.	Fazalur Rehman, Supdt: DDE(S), Malakand Divn:	A.S.D.E.O(A) at SDEO(M), Mastuj (Chitral).	Against vacant post.
4.	Abdul Ghaffar, Supdt: DDE(S), D.I.Khan Divn:	Supdt: DDE(S), Malakand Divn:	Vice Sr.No. 3.
5.	Noor Mohammad, Supdt: DEO(M), Abbottabad.	Supdt: DDE(S), D.I.Khan, Supdt: at Govt. College, Bannu.	Vice Sr. No.4
6.	Mohammad Ramzan, Asstt: at DDE(S), D.I.Khan Divn:	Supdt: at DEO(M), Abbottabad.	Against vacant post.
7.	Ali Safdar, Stenographer DDE(S), Malakand Divn:	Supdt: at Govt. College, A.Abad.	Vice Sr. No.
8.	Qazi Abdul Malik, Asstt: Govt. College, Haripur (On return from Leave).	Supdt: at DDE(S), Hazara Divn:	Against vacant post.
9.	Ghulam Sarwar, Stenographer at DDE(S), Hazara Divn: A.Abad.	Supdt: at DDE(S), Hazara Divn:	Vice Sr. No.
10.	Ahmad Ali, Asstt: at R.D.E., Peshawar.		

- Note:-
- The promotion of S.No. 2,3,6,7,8,9 & 10 has been approved by the Departmental Promotion Committee.
  - Charge reports should be sent to all concerned.
  - All of them should take over charge against their new assignments on or before 1.7.1987 positively.
  - The promotion of Sr. No.2,3,6,7,8,9 & 10 are purely on temporary basis and liable to reversion at any time without assigning any reasons.
  - No TA/DA is allowed to S.No. 1, 4 & 5.
  - The resultant vacancies of S. No.7,9 & 10 are being filled by this Directorate.

(MOHAMMAD IDRIS K  
DIRECTOR OF EDUCATION  
N.W.F. PROVINCE, PESHAWAR)

Endst. No. 18740-80 /A-23/II-AE. dated Peshawar, the 22  
Copy forwarded for information and necessary action

- to the:-
- Director of Education (Colleges), NWFP, Peshawar.
  - Additional Directress of Education (Schools), NWFP, Peshawar.

C

Annex-C

OFFICE OF THE DIRECTOR OF EDUCATION (SCHOOLS), NWFP., PESHAWAR.

NOTIFICATION.

The following adjustment/promotion of Ministerial staff of Education Department are hereby ordered in the interest of public service with effect from the dates of their taking over charge.

S.No.	Name & Designation.	Adjusted at.	Remarks.
1.	Mr. Amir Jalal, ASDEO(Acctt:) at SDEO(M), Saidu Sharif, Swat.	Asstt: Divl: Edu: Officer at Divl: Directorate of Edu: (S), D. I. Khan Division, D. I. Khan.	On his own pay and grade against the vacant post.
2.	Qazi Abdul Malik, Supdt: Govt. College, Abbottabad.	A.S.D.E.O(Acctt:) at SDEO(M), Banda-Daud: Shah(Karak).	Against vacant post vice M.R. Bukhari Transferred.
3.	Mr. Ghulam Sarwar, Supdt: at DDE(S), Hazara Divn: A. Abad.	A.S.D.E.O(Acctt:) at SDEO(M), Saidu-Sharif, Swat.	Vice Sr.No.1.
4.	Mr. Ahmad Ali, Supdt: O/O the Inspector of Phy: Edu: & Sports(Colleges), NWFP., Peshawar.	Budget & Accounts Officer at DDE(S), Kohat Divn: Kohat.	Vice Nazir Hussain B&AO proceeded on L.P.R.
5.	Mr. Mohammad Afsar, Supdt: Govt. College, Mardan.	A.S.D.E.O(Acctt:) at SDEO(M), Wari (Dir).	Vice Mohammad-Akram, ASDEO(Acctt) proceeded on LPR.
6.	Mr. Wazir Mohammad, Asstt: at DDE(S), Pesh: Divn: Peshawar.	Supdt: at O/O the Inspector of Phy: Edu: & Sports(Colleges), NWFP, Peshawar.	Vice Sr.No.4
7.	Mr. Bakht Zada, Asstt: at DDE(S), Malakand Divn: Saidu Sharif, Swat.	Supdt: at DDE(S), Hazara Divn: Abbottabad.	Vice Sr.No.3.
8.	Mr. Sardar Mohammad, Asstt: at DEO(F), Mardan.	Supdt: at Govt. College, Abbottabad.	Vice Sr. No.2.
9.	Sardar Hassain, Asstt: Govt. College, Mardan.	Supdt: at Govt. College, Mardan.	Vice Sr.No.5.

- Notes:-
1. Charge reports should be sent to all concerned.
  2. The promotion of officers at S.No.2 to 9 has been approved by the Departmental Promotion Committee of Education Department. Their promotion is purely on temporary basis and liable to reversion without assigning any reasons.
  3. All of them should take over charge against their new assignments on or before 22.1.1988 positively.

(MOHAMMAD IDRIS KHAN)  
DIRECTOR OF EDUCATION(SCHOOLS),  
N.W.F. PROVINCE, PESHAWAR.

29-08-200  
11-01-1988  
18-07-86

88  
14  
64

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER  
PAKHTUNKHWA PESHAWAR.

ANNEXURE-D

NOTIFICATION.

Final List of Budget & Accounts Officer (BPS-16) working in and under the Directorate Elementary & Secondary Education, DCTE, FATA & PITE, Khyber Pakhtunkhwa, as stood on 31-08-2013 is hereby approved.

The said seniority list was hereby notified for the information of all concerned to lodge appeal /objection (if any).

The above seniority list can be seen/checked on the website of E&SE Department Khyber Pakhtunkhwa given below: -

<http://kpsc.gov.pk>

DIRECTOR  
Elementary & Secondary Education  
Khyber Pakhtunkhwa, Peshawar.

Endst No. 3638-59/F.No.A-23/S.List/B#AO/DD(F&A) Dated Pesh the 28/2/2014.

Copy of the above is forwarded for information and u/action to the:-

1. Director Curriculum & Teachers Education Khyber Pakhtunkhwa Abbottabad.
2. Director PITE Peshawar.
3. Director of Education (FATA) Peshawar.
4. All District Education Officers (M&F) in Khyber Pakhtunkhwa.
5. Cashier Local Directorate.
6. P/S to Secretary to Government of Khyber Pakhtunkhwa E&SE Department Peshawar.
7. Deputy Director EMIS Govt of Khyber Pakhtunkhwa E&SE Department with the request to up-load the attached Seniority List of Assistants and Senior Scale Stenographer on web page of E&SE Department.
8. PA to Director E&SE Khyber Pakhtunkhwa, Peshawar.

Adm.

Deputy Director (F&A)  
(E&SE) Khyber Pakhtunkhwa Peshawar

For information  
and do the  
needful 1/3/0/14

**DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER PAKHTUNKHWA, PESHAWAR.**  
**FINAL SENIORITY LIST OF BUDGET & ACCOUNT OFFICERS (B/16) IN AND UNDER THE DIRECTORATE OF ELEMENTARY & SECONDARY**  
**EDUCATION DEPARTMENT KHYBER PAKHTUNKHWA PREPARED UPTO 31.3.2013**

Sl#	Name of Officer	Father's Name	Place of present Posting	Academic Qualification	Date of Birth	Domicile	Date of 1st entry into Govt- Service	Regular Promotion to the Present Post	Remarks
1	Ghulam Sarwar	Muhammad Suleman	DEO (M) A/Abad	BA	06-03-1956	Abbottabad	01-02-1979	11-01-1988	By Promotion
2	Sherullah	Karim Ullah	DEO (F) Mardan	BA	13-11-1955	Mardan	20-04-1980	01-06-1992	By Promotion
3	Umar Nawaz	Muhammad Salim Khan	DEO (M) Bannu	M.com	01-01-1961	Bannu	13-10-1984	25-01-2001	By Promotion
4	Musharaf Ali	Murtaza Ali	DE & SE Khyber Pakhtunkhwa Peshawar	BA	22-07-1962	Peshawar	04-03-1985	25-01-2001	By Promotion
5	Nasir Khan	Aminullah	DEO (M) NSR	BA	10-05-1960	Swabi	19-02-1979	31-07-2013	By Promotion
6	Muhammad Azam	Khalil-ur-Rehman	D C TE A/Abad	MA	01-01-1961	Mansehra	08-08-1979	31-07-2013	By Promotion
7	Inamullah	Muhammad Bakhsh	DEO (M) D/I/Khan	M/BA	01-01-1956	D/I/Khan	11-07-1974	31-07-2013	By Promotion
8	Muhammad Ayub	Munir Khan	DEO (M) Haripur	BA	04-03-1954	Haripur	12-08-1973	31-07-2013	By Promotion
9	Sadiqullah	Amanullah	DEO (M) Chitral	Matric	06-01-1960	Chitral	25-08-1987	31-07-2013	By Promotion
10	Karim Shah	Wadan Shah	DEO (M) Mardan	BA	20-02-1958	Mardan	01-09-1987	31-07-2013	By Promotion
11	Adalat Khan	Mehbaran Shah	DEO (F) Charsadda	BA	02-01-1964	Peshawar	01-09-1987	31-07-2013	By Promotion
12	Taza Khan	Sargand Khan	DEO (F) Dir Lower	BA	15-06-1955	Dir	20-10-1979	31-07-2013	By Promotion
13	Ghulam Sarwar	Misri Khan	DCTE Abbottabad	MA	16-11-1956	Abbottabad	04-11-1979	31-07-2013	By Promotion
14	Zakir Khan	Faqir Khan	DEO (F) Abbottabad	Matric	03-01-1957	Abbottabad	21-03-1979	31-07-2013	By Promotion
15	Fazal Shah	Fazali Karim	DEO (F) Hangu	Matric	20-05-1957	Peshawar	05-02-1981	31-07-2013	By Promotion
16	Munirullah Shah	Mian Dilbar	DEO (F) Peshawar	BA	06-01-1964	Peshawar	20-12-1989	31-07-2013	By Promotion
17	Muhammad Ali	Lal Sardar	DEO (M) Hangu	BA	02-12-1966	Karak	20-12-1989	31-07-2013	By Promotion
18	Waliullah	Abdul Qahar	DEO (M) Swabi	MA	01-04-1954	Swabi	31-05-1973	31-07-2013	By Promotion
19	Mr. Sultan Ahmad	Rab Nawaz	DEO (F) DIK	FA	04-05-1954	D.I.Khan	03-05-1973	31-07-2013	By Promotion
20	Amin Jan	Saadullah Jan	DEO (M) Peshawar	BA	03-01-1966	Peshawar	22-12-1990	31-07-2013	By Promotion
21	Shamsul Islam	Sher Aziz	DEO (F) Dir Upper	Matric	19-04-1954	Chitral	20-01-1974	31-07-2013	By Promotion
22	Rehmatullah	Niamat Ullah	DEO (F) Tank	Matric	01-05-1954	D/I/Khan	01-06-1974	31-07-2013	By Promotion

*Attested  
by his  
suo.*

23	Zarif Khan	Muhammad Usman	DE (FATA)	Matric	21-01-1955	Peshawar	01-06-1974	31-07-2013	By Promotion
24	Muhammad Zahoor	Abdul Ghaffar	DEO (F) Malakand	Matric	04-03-1955	Malakand	17-07-1974	31-07-2013	By Promotion
25	Latifur Rehman	Hamayun	DEO (F) Chitral	Matric	15-05-1954	Chitral	10-01-1974	31-07-2013	By Promotion
26	Shafiqat Malik	Gulistan	DEO (F) Haripur	Matric	01-01-1956	Abbottabad	10-06-1974	31-07-2013	By Promotion
27	Liaqat Ali	Nousher Khan	DEO (M) Suner	Matric	09-05-1954	Mardan	15-10-1974	31-07-2013	By Promotion
28	Muhammad Ali	Fateh Muhammad	DEO (F) Battagram	Matric	04-09-1954	Mardan	11-01-1974	31-07-2013	By Promotion
29	Muhammad Amin	Rehmani Gul	DEO (M) Swat	Matric	25-11-1954	Swat	11-04-1974	31-07-2013	By Promotion
30	Abdul Majeed	Muhammad Khan	DEO (F) Kohat	Matric	12-04-1956	Kohat	12-04-1974	31-07-2013	By Promotion
31	Abdur Rashid	Mudasir Shah	DEO (F) NSR	Matric	12-01-1956	Mardan	01-02-1974	31-07-2013	By Promotion
32	Zahoor Ali	Habib Khan	DEO (M) Karak	Matric	06-01-1955	Peshawar	15-01-1975	31-07-2013	By Promotion
33	Khog Badshah	Abdul Mutaib	DEO (M) Shangla	Matric	16-02-1955	Malakand	03-01-1975	31-07-2013	By Promotion
34	Haroonur Rashid	Maqbulur Rehman	DEO (M) Battagram	Matric	11-04-1957	Haripur	29-06-1975	31-07-2013	By Promotion
35	Fazali Rehman	Ainul Qazat	DEO (F) Lakki	Matric	05-10-1955	Chitral	07-01-1975	31-07-2013	By Promotion
36	Ubaidullah	Abdullah Jan	DEO (M) Kohat	Matric	07-01-1956	Kohat	07-12-1975	31-07-2013	By Promotion
37	Walayat Khan	Baz Muhammad	DEO (M) Mansehra	Matric	15-01-1956	Peshawar	09-11-1975	31-07-2013	By Promotion
38	Faridullah	Fatehullah	DE FATA Peshawar	Matric	06-12-1956	Peshawar	13-09-1975	31-07-2013	By Promotion
39	Ihsanullah	Hanimullah	DEO (F) Suner	Matric	03-03-1958	Mardan	18-09-1975	31-07-2013	By Promotion
40	Abdul Sattar	Abdu' Rashid	DEO (F) Shangla	Matric	04-01-1957	Swat	15-10-1975	31-07-2013	By Promotion
41	Adam Sher	Juma Gul	DEO (M) Dir	Matric	02-12-1953	Dir	17-11-1975	31-07-2013	By Promotion
42	Jamilur Rehman	Khalilur Rehman	DEO (F) Mansehra	Matric	15-04-1956	Mansehra	17-11-1975	31-07-2013	By Promotion
43	Ghulam Muhammad	Muhammad Umer	DEO (M) Torghar	Matric	15-12-1955	Malakand	10-11-1975	31-07-2013	By Promotion
44	Jehan Zeb	Abdur Rehman	DEO (F) Swabi	BA	02-03-1961	Swabi	08-10-1981	31-07-2013	By Promotion
45	Mukhtiar Khan	Ghulam Sarwar	DEO (M) Charsadda	BA	16-10-1962	Peshawar	17-10-1981	31-07-2013	By Promotion

Director Elementary & Secondary Education  
Khyber Pakhtunkhwa Peshawar



NOTIFICATION

GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT  
Dated Peshawar the 29-08-2014

Annex E

No. SO(PE)/2-6/DPC Meeting/ B&AO from BS-16 TO BS 17/2014: On the recommendation of the Departmental Promotion Committee meeting held on 02-07-2014, the competent authority is pleased to promote the following Budget & Accounts Officers (BS-16) to the posts of Assistant Director (BS-17) on regular basis with immediate effect:-

S.No.	Name of officer/ Designation	Promoted as:
1.	Ghulam Sarwar B&AO (BS-16) office of DEO (M) Abbottabad.	Assistant Director (BS-17).
2.	Sherullah B&AO(BS-16) office of DEO (F) Mardan.	Assistant Director (BS-17).

2 They will be on probation for a period of one year, extendable for another term of one year as specified in Rule-15 of Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion and Transfer) Rules, 1989.

3 Consequent upon their promotion to the post mentioned above they are posted / adjusted as under:

S.No.	Name of officer/ Designation	Place of posting.
1.	Ghulam Sarwar B&AO (BS-16) DEO (M) Abbottabad.	Assistant Director (Administration) (BS-17) in the Directorate of E&SE, Peshawar against the vacant post.
2.	Sherullah B&AO(BS-16) DEO (F) Mardan.	Assistant Director (Finance & Accounts) (BS-17) in the Directorate of E&SE, Peshawar against the vacant post.

Endst. No. & date as above.

SECRETARY

Copy forwarded to:

1. The Secretary to Govt. of Khyber Pakhtunkhwa; Establishment Department.
2. The Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department.
3. The Accountant General Khyber Pakhtunkhwa, Peshawar.
4. PSO to Chief Secretary to Govt. of Khyber Pakhtunkhwa.
5. The Director (E&SE) Khyber Pakhtunkhwa Peshawar.
6. District Accounts Officers Abbottabad/ Mardan.
7. PS to Secretary E&SE Department.
8. Officers concerned.
9. Office File.

(ZAMIN KHAN MOMAND)  
SECTION OFFICER (PRIMARY)



GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT  
Peshawar, dated the 28<sup>th</sup> January, 2013

Annex - 9-1

NOTIFICATION

No. SO(PE)/4-10/SSRC/Ministerial Staff/2013:- In pursuance of the provisions contained in sub rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, and in supersession of all rules issued in this behalf to the extent of the Elementary and Secondary Education Department (the (E&SE Department) in consultation with the Establishment Department and Finance Department hereby lays down the method of recruitment, qualifications and other conditions specified in Column 3 to 5. of the Appendix to this Notification which shall be applicable to the posts borne on the Ministerial establishment in the Elementary and Secondary Education Department specified in Column No.2 of the said Appendix.

APPENDIX

S. NO	NOMENCLATURE	MINIMUM QUALIFICATION AND EXPERIENCE FOR INITIAL APPOINTMENT OR BY TRANSFER	AGE LIMIT	METHOD OF RECRUITMENT (EXISTING)
1.	Deputy Director (Finance and Accounts) / Deputy Director (Administration) (BPS-18)		4	5 By promotion on the basis of seniority cum fitness from amongst the Assistant Directors (Finance and Accounts) & Assistant Directors (Administration) with at least five years service as such.
2.	Assistant Director (Finance and Accounts) / Assistant Director (Administration) (BPS-17)			By promotion on the basis of seniority cum fitness from amongst the Budget and Accounts Officers with at least two years service as such.
3.	Budget and Accounts Officer. (BPS-16)			By promotion on the basis of seniority cum fitness from amongst the Superintendents with at least two years service as such.
4.	Superintendent (BPS-16)			By promotion on the basis of seniority cum fitness amongst the holders of the posts of Assistants and Senior Scale Stenographers with at least five years service as such.
5.	Senior Scale	(i) At least Second Class Bachelor's Degree or equivalent	20 to 30	By promotion on the basis of seniority cum

	Stenographers (BPS-16)	<p>qualification from a recognized University;</p> <p>(ii) Speed of Seventy words per minute in shorthand in English and Forty Five words per minute in typing; and</p> <p>(iii) Knowledge of Computer in using MS words and MS Excel.</p>	Years	fitness from amongst the Junior Scale Stenographers (BPS-14) with at least five years service as such.
6.	Assistant (BPS-14)	At least Second Class Bachelor's Degree from a recognized University.	20 to 30 Years	<p>(a) Seventy five per cent by promotion, on the basis of seniority-cum-fitness from amongst the Senior Clerks with at least five years service as such; and</p> <p>(b) Twenty five per cent by initial recruitment</p>
7.	Junior Scale Stenographers (BPS-14)	<p>(i) Intermediate or equivalent qualifications from a recognized Board;</p> <p>(ii) Speed of Fifty words per minute in shorthand in English and Thirty Five words per minute in typing; and</p> <p>(iii) Knowledge of Computer in using MS words and MS Excel.</p>	18 to 30 Years	By Initial recruitment
8.	Senior Clerks (BPS-09)			By promotion on the basis of seniority cum fitness from amongst the Junior Clerks, Assistant Store Keepers and Laboratory Assistants with at least two years service as such.
9.	Junior Clerk/Assistant Store Keeper/ Laboratory Assistant (BPS-07)	<p>(i) For Junior Clerk / Assistant Store Keepers having at least Second Division in Secondary School Certificate or equivalent qualifications from a recognized Board and a speed of twenty five words per minute in typing;</p> <p>(ii) For Laboratory Assistants having at least Second Division in Secondary School Certificate or equivalent qualifications from a recognized Board with Science.</p>	18 to 30 Years	<p>(a) Thirty Three per cent by promotion, on the basis of seniority-cum-fitness from amongst the Daftaries, G/Operators, Qasids and Naib Qasids including other equivalent posts in the attached department/offices/institutions with at least Two years service as such and having qualification mentioned in column No. 3.</p> <p>(b) Sixty Seven per cent by initial recruitment</p> <p>Note: - For the purpose of promotion, there shall be maintained a joint seniority list of Daftaries, Gestatner Operators, Qasids, Naib Qasids, etc including other equivalent posts in the attached department/offices/institutions with reference to the dates of their regular appointment or acquiring Secondary School Certificate whichever is later.</p>

Annex G-H



10.	Driver (BPS-04)	Having valid Driving License and preferably Literate.	18 to 30 Years	By Initial recruitment
11.	Naib Qasid / Chowkidar / Behshti / Cook / Bearer / Shop Attendant / Laboratory Attendant etc	Preferably Literate	18 to 30 Years	By Initial recruitment

Anwar G-BIT

SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Endst : of even No & date:

1. The Secretary to Government of Khyber Pakhtunkhwa, Establishment and Administration Department Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa, Finance Department Peshawar.
3. The Secretary to Government of Khyber Pakhtunkhwa, Law Department Peshawar.
4. The Secretary Khyber Pakhtunkhwa, Public Service Commission Peshawar.
5. The Accountant General Khyber Pakhtunkhwa Peshawar.
6. The Director, Elementary and Secondary Education Department Khyber Pakhtunkhwa Peshawar.
7. The Director of Education (FATA) Peshawar.
8. The Director, Curriculum and Teacher Education Khyber Pakhtunkhwa Abbottabad.
9. The Director, (PITE) Khyber Pakhtunkhwa Peshawar.
10. The Director, ESRU Elementary and Secondary Education Department Khyber Pakhtunkhwa Peshawar.
11. Manager Government Printing Press Khyber Pakhtunkhwa Peshawar.
12. The Deputy Director, EMIS (S&SE) Department Khyber Pakhtunkhwa Peshawar.
13. All District Education Officer (M&F) in Khyber Pakhtunkhwa.
14. All District Account Officer in Khyber Pakhtunkhwa.
15. All Agency Education Officer in FATA.
16. All Agency Account Officer in FATA.
17. PS to Governor Khyber Pakhtunkhwa, Peshawar.
18. PS to Chief Minister Khyber Pakhtunkhwa, Peshawar.
19. PS to Chief Secretary Khyber Pakhtunkhwa, Peshawar.
20. PS to Minister E&SE Khyber Pakhtunkhwa, Peshawar.
21. PS to Secretary E&SE Khyber Pakhtunkhwa, Peshawar.
22. Master file

7-2-2013  
SECTION OFFICER (Primary)



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

*M. Sarwar* **G**

No.SO (Lit)E&SED/1-3/SA#1263/2015.  
Dated Peshawar the, March 22, 2021

Order

WHEREAS Mr. Ghulam Sarwar, was promoted from the post of Budget & Accounts Officer (BS-16) to post of Assistant Director BS-17 on regular basis on the recommendations of the Departmental Promotion Committee vide notification dated 29.08.2014.

2. AND WHEREAS In terms of Rule 15 (2) of Khyber Pakhtunkhwa Government Servants Appointment, Promotion & Transfer (APT) Rules 1989(in-vogue by then), he was on probation for a period of one year extendable for another year. Hence he was on probation upto 28.08.2016.

3. AND WHEREAS final seniority list of Assistant Director was issued on 31.08.2015.

4. AND WHEREAS his date of birth being 06.03.1956, he proceeded on retirement on 05.03.2016 on the basis of superannuation. Hence he retired from service before completion of his probation period on i.e 28.08.2016.

4. AND WHEREAS promotion to next higher grade/post is not considered during probation period as contained in clause-IV (f) of promotion policy 2009 of provincial Government.

5. NOW THEREFORE this departmental appeal has been considered on the above grounds and dismissed, being devoid of merit.

(00) ✓

**SECRETARY**

Endst: Even No. & Date:

Copy of the above is forwarded to:-

1. The Registrar, Khyber Pakhtunkhwa Service Tribunal Peshawar w/r to judgement dated 09.04.2019 in Service Appeal No 1263 of 2015 and appeal No. 1067/2015.
2. The Director, E & S E Department Khyber Pakhtunkhwa, Peshawar.
3. Director, Curriculum & Teachers Education Abbottabad.
4. Section Officer (Lit-II), E&SE Department.
5. Mr. Ghulam Sarwar, Ex-Assistant Director (Administration) (BS-17) Directorate of Curriculum & Teachers Education Abbottabad.
6. PS to Secretary, E & S E Department Khyber Pakhtunkhwa, Peshawar.
7. Office Order File.

**Certified to be true copy**  
*[Signature]*  
**L. J. ANWER**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

*[Signature]*  
**(MUJEEB-UR-REHMAN)**  
**SECTION OFFICER (SCHOOLS/MALE)**

**Date of Presentation of Application** 23-4-2021

**Number of Words** 2000

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**Date of Delivery of Copy** 23-4-2021

Annex - H

Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
		<p align="center"><b>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</b> <b>Service Appeal No. 1067/2015</b></p> <p>Date of Institution ..... 29.09.2015 Date of Decision ..... 09.04.2019</p> <p>Ghulam Sarwar Assistant Director (Admn) working as Deputy Director (Admn) DCTE, Khyber Pakhtunkhwa, Abbottabad. <b>Appellant</b></p> <p align="center"><b>Versus</b></p> <p>1. The Chief Secretary Khyber Pakhtunkhwa Peshawar. 2. The Secretary Elementary &amp; Secondary Education, Peshawar. 3. The Director Elementary &amp; Secondary Education Peshawar.</p> <p align="right"><b>Respondents</b></p> <p>Mr. Muhammad Hamid Mughal-----Member(J) Mr. Hussain Shah -----Member(J)</p> <p align="center"><b>JUDGMENT</b> <b>MUHAMMAD HAMID MUGHAL, MEMBER: - Learned</b></p> <p>counsel for appellant and Mr. Zia Ullah learned Deputy District Attorney present.</p> <p>2. The appellant has filed the present appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 being aggrieved against the promotion order dated 29.08.2014 whereby he was promoted from the post of Budget &amp; Account Officer (BS-16) to the post of Assistant Director (BS-17) with immediate effect. Prayer of the appellant is that the respondents may be directed to promote the appellant to the post of Assistant Director (BS-17) from the date of</p>

2.4.2019

**ATTESTED**

**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

availability of vacancy instead of 29.08.2014.

3. Learned counsel for the appellant argued that under the promotion criteria dated 28.01.2013, the vacant posts of Assistant Director (Admn) & Assistant Director (F&A) BS-17 has to be filled up out of Budget & Account Officers through promotion on the basis of seniority cum fitness. Further argued that the posts of Assistant Director (Admn) & Assistant Director (F&A) remained occupied by the junior most superintendents and other officers of the department hence the appellant's promotion to the post of Assistant Director was due from the date of availability of vacancy but the appellant was promoted to the said post w.e.f 29.08.2014 instead of from the date of availability of vacancy which is against law and norms of justice; that the departmental appeal of the appellant went un-responded.

4. As against that learned Deputy District Attorney argued that the appellant has not filed any departmental appeal against the promotion order dated 29.08.2014; that the appellant was not entitled for the grant of antedated promotion; that as and when the vacancy was available, the competent authority promoted the appellant vide impugned promotion order dated 29.08.2014.

5. Arguments heard. File perused.

6. It is also to be seen that whether under the promotion criteria which was in field prior to the promotion criteria dated 28.01.2013, the appellant was also entitled to promotion to the post of Assistant Director (BS-17) or otherwise.

ATTESTED

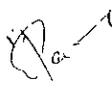
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

29.4.2019

Annex - K

7. Admittedly, there is no order of the appellate authority in relation to the grievance of the appellant. Consequently the present case is remanded to the appellate authority (Respondent No.2) for decision of the departmental appeal of the appellant with speaking order. The present service appeal is disposed of in the above terms. Copy of the departmental appeal of the appellant available on file be also sent to the appellate authority alongwith copy of this judgment. Parties are left to bear their own costs. File be consigned to the record room.

  
 (Hussain Shah)  
 Member

  
 (Muhammad Hamid Mughal)  
 Member

ANNOUNCED  
 09.04.2019

Certified to be true copy

  
 MEMBER  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar

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