

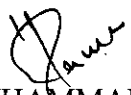
09.04.2018

Learned counsel for the appellant present. Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Jalal-ul-Din, Economist for the respondents also present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of three pages placed in connected Service Appeal No. 417/2015 "titled Dedar Muhammad Versus The Secretary to Government of KPK, Agriculture, Live Stock & Cooperative Department, Peshawar and two others, the present appeal is returned to the appellant for want of jurisdiction. The appellant may approach to the proper forum subject to all legal objections. Parties are left to bear their own costs: File be consigned to the record room.

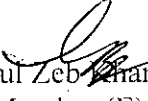
ANNOUNCED
09.04.2018



(MUHAMMAD AMIN KHAN KUNDI)
MEMBER


(MUHAMMAD HAMID MUGHAL)
MEMBER

16.01.2018

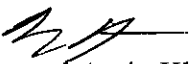
Junior to counsel for the appellant present. Mr. Zia Ullah, DDA for the respondents present. Junior to counsel for the appellant seeks adjournment as senior counsel is not in attendance today. Adjourn. To come up for arguments on 19.03.2018 before D.B.


(Gul Zeb Khan)
Member (E)


(Muhammad Hamid Mughal)
Member (J)

19.03.2018


Appellant with counsel and Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Jalal-ud-Din, Economist for the respondents present. Arguments heard. To come up for order on 28.03.2018.


(Muhammad Amin Khan Kundi)
Member


(Muhammad Hamid Mughal)
Member

27.03.2018

Clerk to counsel for the appellant and Additional Advocate General present. Some points need further consideration. Adjourn. To come up for order on 09.04.2018 before D.B


(Muhammad Amin Kundi)
Member


(Muhammad Hamid Mughal)
Member

24.04.2017


Counsel for the appellant and Mr. Muhammad Khan, Assistant Account Officer alongwith Assistant AG for the respondents present. Learned Assistant AG seeks adjournment. Adjourned for final hearing to 08.08.2017 before D.B.



Member


Chairman

08.08.2017

Clerk of the counsel for appellant present. Mr. Muhammad Khan, Assistant Accounts Officer alongwith Mr. Usman Ghani, District Attorney for the respondents present. Arguments could not be heard as lawyer community is on general strike. Adjourned. To come up for arguments on 02.11.2017 before D.B.



(Muhammad Amin Khan Kundi)
Member (J)


(Muhammad Hamid Mughal)
Member (J)

02.10.2017

Counsel for the appellant and Usman Ghani, District Attorney for the respondents present. Counsel for the appellant seeks adjournment. To come up for arguments on 17.01.2018 before the D.B.

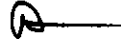

Member


Chairman



23.12.2015

Counsel for the appellant and Mr. Ziaullah, GP for respondents present. Rejoinder submitted. To come up for arguments on 23.5.2016 before D.B.



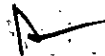
Member




Member

23.5.2016

Counsel for the appellant and Mr. Muhammad Khan, Assistant Account Officer alongwith AAG for respondents present. Counsel for the appellant requested for adjournment. Adjourned for arguments to 30.8.2016.



Member



Member

30.08.2016

Counsel for the appellant and Mr. Muhammad Khan, AO alongwith Mr. Ziaullah, GP for respondents present. Arguments could not be heard due to incomplete bench. To come up for arguments on 29.12.2016 before D.B.



Chairman

29.12.2016

Counsel for the appellant and Mr. Muhammad Khan, AO alongwith Addl. AG for respondent present. Arguments could not be heard due to incomplete bench. Case adjourned to 24.04.2017 for arguments before D.B.



Chairman

13.05.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was initially appointed as Junior Clerk and granted Selection Grade in the year 1987. The appellant was promoted on regular basis on 26.01.2014 and was entitled to one pre-mature increment which was not granted. That he preferred departmental which was rejected on 24.06.2014 and communicated to the appellant on 06.04.2015 where-after appellant preferred service appeal on 24.04.2015.

That the appellant is entitled to one pre-mature increment at the time of regular promotion.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 11.08.2015 before S.B.

Appellant Deposited
Security & Process Fee




Chairman

4

11.08.2015

Counsel for the appellant and Mr. Muhammad Khan, A.O alongwith Assistant A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 12.10.2015 before S.B.


Chairman

12.10.2015

Counsel for the appellant and Mr. Muhammad Khan, AAO alongwith Addl: A.G for respondents present. Para-wise comments submitted. The appeal is assigned to D.B for rejoinder and final hearing for 23.12.2015.


Chairman



Form- A

FORM OF ORDER SHEET

Court of

Case No

418/2015


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1		3
1	07.05.2015	<p>The appeal of Mr. Muhammad Ishaq resubmitted today by Mr. Muhammad Asif Yousfzai Advocate, may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p>
2	11-5-15	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>13-5-15</u></p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Muhammad Ishaq Office Assistant office of the DDA Peshawar received to-day i.e. on 24.04.2015 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

1- Annexures-A and D of the appeal are illegible which may be replaced by legible/better one.

No. 623 /S.T,

Dt. 24/4 /2015


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Muhammad Asif Yousafzai Adv. Pesh.

1. Ann-A & D are placed by better copies



BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 418 /2015

Muhammad Ishaq

V/S

Agriculture Deptt: etc

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of Appeal	-----	1-3
2.	Copy of order dated 11.11.1987	A	4-5
3.	copy of order dated 26.1.2004	B	6-7
4.	Copy of Supreme Court judgment	C	8-14
5.	Copy of memorandum dated 5.11.2012	D	15
6.	Copy of notification dated 21.2.2014	E	16
7.	Copy of departmental appeal	F	17
8.	Copy of rejection order	G	18-19
9.	Vakalat Nama	-----	20

APPELLANT

THROUGH:

M. Asif
M.ASIF YOUSAFZAI
& *Taimur Ali Khan*
TAIMUR ALI KHAN
(ADVOCATES, PESHAWAR)

①

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 418 /2015

Muhammad Ishaq, Office Assistant,
Office of the District Director,
Agriculture, Peshawar.

A.W.F. Province
Service Tribunal

Diary No. 422

Dated 24-4-2015

(Appellant)

VERSUS

1. The Secretary to Govt: of KPK, Agriculture, Live stock & Cooperative Department, Peshawar.
2. Director General, Agriculture (Extension) KPK, Peshawar.
3. The Secretary Finance, KPK, Peshawar.

(Respondents)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED. 24.6.2014 COMMUNICATED TO THE APPELLANT ON 06.04.2015, WHEREBY THE DEPARTMENTAL APPEAL FOR GRANT OF PREMATURE AND ADVANCE INCREMENTS HAS BEEN DENIED.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 24.6.2014 MAY BE SET-ASIDE AND THE RESPONDENTS MAY BE DIRECTED TO GRANT THE BENEFITS OF PREMATURE AND ADVANCE INCREMENTS FROM DUE DATE WITH ALL BACK AND CONSEQUENTIAL BENEFITS ADMISSIBLE UNDER THE RULES ON PROMOTION IN THE SAME PAY SCALE AND FOR ITS PROPER FIXATION IN PAY. ANY OTHER REMEDY WHICH THIS TRIBUNAL FIT AND PROPER MAY ALSO BE AWARDED IN THE FAVOUR OF APPELLANT.

Filed to-day
24/4/15

Re-submitted to-day
and filed.

10/5/2015
Registered
7/5/2015

R. SHEWETH:

1. That the appellant was appointed as Junior Clerk in the year 1981. That the appellant was granted Selection Grade in BPS-7 vide order dated 11.11.1987 and then was regular promoted as Senior Clerk (BPS-7) on regular basis vide order dated 26.1.2004. (Copy of orders dated 11.11.1987 and 26.1.2004 are attached as Annexure-A&B)
2. That as the appellant was kept deprived from the benefits of the one premature increment due to regular promotion in the same pay scale (7) being already in BPS-7 on the basis of having selection grade.
3. That previously similar situation was arisen which was challenged before the Federal Service Tribunal and then to the Supreme Court of Pakistan and the Supreme Court of Pakistan held that premature increments in similar situation is the right of civil servants. (Copy of judgment is attached as Annexure-C)
4. That on the basis of above judgment the Govt: of Pakistan, Finance Division Islamabad office issued a Memorandum vide order dated 5.11.2012, whereby premature increment on promotion in the same scale was granted to Govt: Servant. (Copy of Memorandum is attached as Annexure-D)
5. That similarly Govt: of KPK, Finance Department also issued a notification vide dated 21.2.2014 on the basis of Memorandum dated 5.11.2012, whereby one advance increment as next stage and a premature increment on promotion within scale was granted to civil servant. (Copy of notification is attached as Annexure-E)
6. That on the basis of above Memorandum and Notification based on the judgment of Supreme Court, the appellant filed departmental appeal for grant of one advance increment as next stage and premature increment on promotion within the same scale, which was forwarded to the Finance Deptt: but the F.D denied that on 24.6.2014 and the said denial was forwarded by the Secretary agriculture to D.G Office on 4.7.2014 and finally communicated to appellant by D.G Office on 6.4.2015. (Copy of departmental appeal and rejection order are attached as annexure-F&G)
7. That now the appellant comes to this august Tribunal on the following grounds amongst others.

GROUNDS:

- A) That rejection order dated. 6.4.2015 and not granting premature and advance increment on promotion within the same scale is against the law, facts, norms of justice and material on record:
- B) That the appellant has sustained great pecuniary loss in his salaries which will ultimately affect his pension. Thus the appellant has been kept deprived from the benefits of one premature and advance increments in an arbitrary manner.
- C) That the Apex Court has held that the beneficial law and notifications are to be effective from the retrospective effect, therefore the contention of respondents while rejecting the departmental appeal of appellant is the violation of Apex Court's judgments. Therefore not sustainable.
- D) That the appellant was discriminated as other civil servants enjoying the benefits of one advance increment as next stage and premature increment, while the appellant was deprived from the same benefits.
- E) That according to Supreme Court judgment that solid reason should give by the department for rejection of departmental appeal but in the case of appellant no reason was given by the department in the rejection of his departmental appeal which shows malafide on the part of department.
- F) That the appellant is legally entitled to the benefits of premature and advance increments and the denial of the respondents is totally unlawful and against the spirits of Article 2A, 4, 25 of the Constitution.
- G) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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



APPELLANT
Muhammad Ishaq

THROUGH:



M.ASIF YOUSAFZAI
&
TAIMUR ALIKHAN
(ADVOCATES, PESHAWAR)

P. R. P. L. L.

A

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203

In pursuance of Government of K. P. Finance Department
 Peshawar letter No. fd(3/1-1987-717 dated 22.7.1987, the following
 Senior most Senior Clerks and Junior Clerks of this Division are here-
 by granted selection in de Merit, of scale No. 5-9 and 3-7 (s. 530-36-1500
 & (s. 750-31-1270) respectively, on the basis of 5% quota viz: 12 Senior
 Clerks and 27 Junior Clerks, the total amount used, costs of Peshawar
 Division with effect from the date is noted against each:

S.No	Name of Official	Place of Posting	Scale	Date
<u>Senior Clerks.</u>				
1.	Mr. Mohammed Najib Khan / Clerk.	Distt's office Peshawar.	5-9	1.7.87 to 26.7.87.
2.	Mr. Abdul Kadir.	Distt's office Charoada.	5-9	1.7.87.
3.	Mr. Mohammed Ali:	Distt's office Mardan.	5-9	1.7.87.
4.	Mr. Hameed Ahmad.	Distt's office Peshawar.	5-9	1.7.87.
5.	Mr. Hameed Mohammad.	Distt's office Peshawar.	5-9	27.7.87 vice: 1 abo
<u>Junior Clerks.</u>				
1.	Mr. Mohammad Iqbal / Junior Clerk.	Distt's Office Peshawar.	3-7	1.7.87 to 13.7.87.
2.	Mr. Shahzad.	Distt's office Mardan.	3-7	1.7.87.
3.	Mr. Mohammad Shah.	Distt's office Peshawar.	3-7	1.7.87.
4.	Mr. Hameed Yousaf.	Distt's office Mardan.	3-7	1.7.87.
5.	Mr. Abdur Rehman.	Distt's office Charoada.	3-7	1.7.87.
6.	Mr. Najib Khan.	Distt's office Mardan.	3-7	1.7.87.
7.	Mr. Mohammed Ashiq.	Distt's office Peshawar.	3-7	1.7.87.
8.	Mr. Mohammed Ashiq.	Distt's office Peshawar.	3-7	1.7.87.
9.	Mr. Ahmad Shah.	Distt's office Peshawar.	3-7	1.7.87.
10.	Mr. Hameed Mohammad.	Distt's office Peshawar.	3-7	14.7.87. vice: 1 abo promoted Senior Cl

ATTACHED

sd/- (Mian Abdul Chaffar)
 Director of agriculture,
 Peshawar Division Peshawar.

ORDER

In pursuance of Government of NWFP, Finance Department Peshawar letter No.FD 1-1/87-2175; dated 22.7.1987, the following senior most senior clerks and junior clerk of this Davison are hereby granted selection grade Basic Pay Scale No.B-9 and B-7 (Rs.830-38-1590) and (Rs.730-31-1370) respectively, on the basis of 33% posts viz: 12 senior clerks and 27 junior clerks of the total sanctioned posts of Peshawar Division with effect from the date as noted against each:

S.No	Name of Officials	Place of Posting	BPS	Date
Senior Clerks				
1.	Mr. Muhammad Naqib, S/Clerks	DDA Office Peshawar	B-9	1.7.87 to 26.07.87
	Mr. Abdul Khaliq, S/Clerk	DDA Office Charsadda	B-9	01.07.87
	Mr. Muhammad Ali, S/Clerk	DDA Office Mardan	B-9	01.07.87
	Mr. Hidayatullah, S/Clerk	DDA Office Peshawar	B-9	01.07.87
	Mr. Hazrat Muhammad	DDA Office Peshawar	B-9	27.7.87 vice 1 above
Junior Clerk				
	Mr. Muhammad Israr	DDA Office Peshawar	B-7	1.7.87 to 13.7.87
	Mr. Shah Said	DDA Office Mardan	B-7	1.7.87
	Mr. Muhammad Shah	DDA Office Peshawar	B-7	1.7.87
	Mr. Hazarat Yousaf	DDA Office Mardan	B-7	1.7.87
	Mr. Tajbar Khan	DDA Office Mardan	B-7	1.7.87
	Mr. Muhammad Ishaq	DDA Office Peshawar	B-7	1.7.87
	Mr. Muhammad Ashiq	DDA Office Peshawar	B-7	1.7.87
	Mr. Shuaib Shah	DDA Office Peshawar	B-7	1.7.87
	Mr. Deedar Muhammad	DDA Office Peshawar	B-7	14.7.87 vice: 1 promoted as S/Clerk

Sd/- (Mian Abdul Ghaffar)
Dy: Director of Agriculture,
Peshawar Divisions, Peshawar.

ATTESTED
AS

(2/2)

5

204

No. 2/64/ 5512-34/D2A

Dated Pesh: the 11/11/1987

Copy forwarded to:

- 1-17. All concerned as above.
18. The Accountant General, H/P. Peshawar.
19. The Dy: Director of Agriculture, Extension Project Mard.
20. The Extra Assistant Director of Agriculture, Peshawar.
22. The Extra Assistant Director of Agriculture, Mardan.
23. The Extra Assistant Director of Agriculture, Charsadda.
24. The Extra Assistant Director of Agriculture, Sawabi.
25. The ~~Extra Assistant~~ District Accounts Officer, Mard.
26. The Superintendent Accounts H.Q.'s office.

for information and necessary action.

M. M. M. M. M.

BY: DIRECTOR OF AGRICULTURE
PESHAWAR DIVISION PESHAWAR

m
10/11

Deedar/-8.11.87.

Handwritten mark

**DIRECTORATE GENERAL AGRICULTURE (EXTENSION) NWFP,
PESHAWAR.**

OFFICE ORDER.

Consequent upon the recommendations of the Departmental Promotion Committee the following officials are hereby promoted, posted / transferred with immediate effect in interest of public service.

Sl.No	Name & designation	Promoted / posted
1	Faizuliah Khan Senior Clerk o/o DOA, Tank.	Promoted as Office Assistant (BPS-11) and posted in the o/o DOA, Tank against vacant post.
2	Nisar Ahmad Bhatti, Senior Clerk o/o DGA (E), Peshawar.	Promoted as Office Assistant, (BPS-11) and posted in the o/o Statistician, Agri. Statistics, Peshawar.
3	Syed Amin Shah, Senior Clerk (working against the post of Office Assistant) in the o/o Statistician, Agri. Statistics, Peshawar.	Posted as Senior Clerk o/o Project Director, BADP, Peshawar caused due to long leave of Mr. Muhammad Humayun, Senior Clerk.
4	Muhammad Shafi, Senior Clerk o/o DOA, Tank.	Transferred/ posted as Senior Clerk in the o/o DDA, FATA, DIKhan against the vacant post.
5.	Fazal Rehman, Senior Clerk o/o DOA, Swat.	Promoted as Senior Auditor (BPS-8) and posted in the o/o DOA, Swat against vacant post.
6.	Liaqat Ali, Junior Auditor o/o DDA (FATA), Peshawar.	Promoted as Senior Auditor (BPS-8) and posted in the o/o DA, (FATA), Peshawar.
7.	Ghulam Akbar, Senior Clerk (working against the post of Senior Auditor) o/o DA, FATA, Peshawar.	Posted as Junior Auditor o/o DDA (FATA) Peshawar vice No.6
8.	Abdul Latif Shah, Senior Clerk o/o DOA, Bannu.	Promoted as Senior Auditor (BPS-8) and posted in the o/o DDA, FATA, DIKhan.
9.	Maqbool Ahmad, Junior Clerk o/o DOA, DIKhan.	Promoted as Senior Clerk (BPS-7) and posted in the o/o DOA, Tank vice No.4.
10.	Said Hakim, Junior Clerk o/o DOA, Buner.	Promoted as Senior Clerk (BPS-7) and posted in the o/o DOA, Upper Dir against vacant post.
11.	Hazrat Yusuf, Junior Clerk o/o DOA, Mardan.	Promoted as Senior Clerk (BPS-7) and adjusted against the vacant post of Office Assistant (ops) in the o/o DOA, Mardan.
12.	Fida Ali Shah, Junior Clerk o/o DOA, Buner	Promoted as Senior Clerk (BPS-7) and posted in the o/o DOA, Malakand against the vacant post.
13.	Abdur Rehman, Junior Clerk o/o DOA, Charsadda.	Promoted as Senior Clerk (BPS-7) and posted in the o/o DOA, Mansehra against the vacant post.
14.	Murad Ali Shah, Junior Clerk o/o DOA, Mardan.	Promoted as Senior Clerk (BPS-7) and posted in the o/o DOA, Swabi against the vacant post.
15	All Jan, Junior Clerk o/o DOA, Swabi.	Promoted as Senior Clerk (BPS-7) and posted against the vacant post in PHLC, Swabi.
16	Salah-ud-Din Junior Clerk o/o DOA, Swat.	Promoted as Senior Clerk (BPS-7) and posted in the o/o DOA, Shangla against the vacant post.
17	Iibar Muhammad, Junior Clerk o/o DOA, Swat.	Promoted as Senior Clerk (BPS-7) and posted in the o/o DOA, Swat vice No.5.
18	Muhammad Ishag, Junior Clerk o/o DGA (E) Peshawar.	Promoted as Senior Clerk (BPS-7) and posted in the o/o DDA, FATA, Peshawar.

19	Muhammad Ashiq, Junior Clerk o/o DGA (E), Peshawar.	Promoted as Senior Clerk (BPS-7) and posted in the o/o DA, (FATA), Peshawar.
20.	Muhammad Ayaz-II, Junior Clerk o/o DA (FATA) Peshawar (working against the post of Senior Clerk).	Posted as Junior Clerk in the o/o DGA(E) Peshawar vice No.19.
21.	Syed Ahmad Shah, Junior Clerk o/o DOA, Charsadda.	Promoted as Senior Clerk (BPS-7) and posted in the o/o DA, (FATA), Peshawar.
22.	Aurangzeb, Junior Clerk (working as Senior Clerk) o/o DA (FATA), Peshawar.	Posted as Junior Clerk in the o/o DOA, Charsadda vice No.21.
23	Didar Muhammad, Junior Clerk o/o DGA (E), Peshawar.	Promoted as Senior Clerk (BPS-7) and posted in the o/o DGA (E), Peshawar vice No.2.
24.	Muhammad Saeed, Junior Clerk o/o DOA, Peshawar.	Promoted as Senior Clerk (BPS-7) and posted in the o/o DDA, (FATA) Peshawar.
25.	Muhammad Afzal, Junior Clerk (working against the post of Senior Clerk) o/o DDA (FATA), Peshawar.	Posted as Junior Clerk in the o/o DGA (E), Peshawar vice No.23.
26.	Faqir Hussain, Junior Clerk o/o DGA (E), Peshawar.	Promoted as Senior Clerk (BPS-7) and posted in the o/o DDA, FATA, Peshawar.
27.	Shah Hussain, Junior Clerk o/o DDA (FATA) Peshawar (working against the post of Senior Clerk).	Posted as Junior Clerk in the o/o DGA (E) Peshawar vice No.26.
28.	Rahman Ullah, Junior Clerk o/o DOA, Malakand.	Transferred/posted in the o/o DGA (E) Peshawar vice No.19.
29.	Abdul Amin, Junior Clerk (working against the post of Senior Clerk) o/o DOA Swabi.	Posted as Junior Clerk o/o DOA Swabi vice No.30.
30.	Muhammad Ishtiaq, Junior Clerk o/o DOA, Swabi.	Transferred/ posted as Junior Clerk o/o DOA Peshawar vice No.24.
31.	Jamshid Khan, Junior Clerk (working against the post of Senior Clerk) o/o DDA FATA Peshawar.	Transferred /posted as Junior Clerk o/o DOA. Mardan vice No.14.

Sd/ (MUZAMMIL KHAN)
DIRECTOR GENERAL
AGRICULTURE (EXTENSION)
NWFP, PESHAWAR.

No.15/21/Estt/ 1279 -423 /DG

Dated Peshawar, the 26th January, 2004.

Copy forwarded to:-

1. The Accountant General, NWFP, Peshawar.
2. The Director Agriculture (FATA) NWFP, Peshawar.
3. The Adl. Accountant General, PR Sub-office, Peshawar.
4. The Project Director Barani Agril.Dev.Project, Peshawar.
5. The Statistician, Agriculture Statistics, Peshawar.
6. The District Officers Agriculture, Peshawar, Bannu, D.I.Khan, Tank, Mardan, Swabi, Charsadda, Buner, Malakand, Swat, Shangla and Mansehra.
7. The District Accounts Officers, Peshawar, Bannu, D.I.Khan, Tank, Mardan, Swabi, Charsadda, Buner, Malakand, Swat, Shangle and Mansehra,
8. The Dy Director of Agriculture, (FATA) Peshawar and D.I.Khan.
9. The Asstt. Accounts Officer / Pay Clerk HQ office.
10. Officials concerned.
11. For information and necessary action.
11. Personal file of the official concerned.
12. File No.19/1/Estt for record

ATTESTED



DIRECTOR GENERAL

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Irshad Hasan Khan, C.J.
Mr. Justice Muhammad Arif
Mr. Justice Qazi Muhammad Farooq

CIVIL APPEALS NO.1371 TO 1392 OF 1997.

(On appeal from the common judgment dated 15.5.1997 passed by the Federal Service Tribunal, Lahore in Appeals No.28(L) to 49(L) of 1997)

CA 1371/97.	Saeed Ahmed.
CA 1372/97.	Izhar ul Hassan
CA 1373/97.	Hafiz Najeeb ud Din.
CA 1374/97.	Muhammad Kabir.
CA 1375/97.	Mrs. Nasreen Zaidi.
CA 1376/97.	Mumtaz Hussain.
CA 1377/97.	Muhammad Tariq.
CA 1378/97.	Sajid Hussain.
CA 1379/97.	Syed Muhammad Wasiq.
CA 1380/97.	Iqbal Ahmed.
CA 1381/97.	Mushtaq Ahmed.
CA 1382/97.	Kanwar Ishtiaq Ahmed.
CA 1383/97.	Muhammad Hussan Ghauri.
CA 1384/97.	Muhammad Hafizullah.
CA 1385/97.	Muhammad Iqbal Qamar.
CA 1386/97.	Muhammad Ghani.
CA 1387/97.	Ghulam Haider.
CA 1388/97.	Tariq Younis.
CA 1389/97.	Muhammad Shafique.
CA 1390/97.	Muhammad Hussain.
CA 1391/97.	Muhammad Anwar Siddhu.
CA 1392/97.	Saleem Akhtar.

... Appellants:

ATTESTED

Versus

ATTESTED

Supremtendent
Supreme Court of Pakistan
Islamabad

Secretary, Finance Division,
Government of Pakistan,
and others.

... Respondents.
(in all CAs)

For the appellants
(in all CAs)

Malik Abdul Wahid, ASC
Ch. Talib Hussain, AOR(Absent)

For the respondents
(in all CAs)

Mr. Mansur Ahmed, Dy. A. G.

Date of hearing :

22.1.2001.

JUDGMENT

IRSHAD HASAN KHAN, C.J.- Through this

common judgment, we intend to dispose of the above appeals with leave of the Court, which are directed against a common judgment dated 15.5.1997 of the Federal Service Tribunal, Camp at Lahore (hereinafter referred to as the Tribunal) passed in Appeals No. 28(L) to 49(L) of 1997, filed by the appellants against withholding of payment of one premature increment, dismissing the same.

2. The appellants are working in the office of the Auditor General of Pakistan, respondent No.2 herein. They are aggrieved by Circular dated 26.8.1996 issued by the Accounts Officer, Office of the Auditor General of Pakistan, whereby they were denied one premature increment in case of promotion. The case of the appellants is that the existing provisions regulating the fixation of pay in cases of promotion from a lower to higher post up to NPS-15, whereby one premature increment is allowed in the higher NPS, if the

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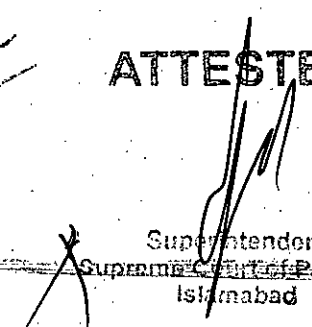
(10) 27

increase on promotion under normal rules was equal to or less than one full increment, shall also be applicable to the fixation of pay on promotion to the posts carrying NPS 16, 17, 18 & 19. It is pleaded that the above benefit of premature increment was also extended in cases where the Government servants had already moved over to the scale in which they were subsequently promoted, vide O.M. dated 3.4.1990 issued by the Finance Division, Government of Pakistan. This is not disputed by the learned Deputy Attorney General.

3. It is pleaded by the appellants that paragraph 4(III) of Finance Division O.M.No.F.1(2)Imp-II/91 dated 19.8.1991, while revising the Basic Pay Scales in 1991, provided that Government employees who are allowed selection grade may be granted one premature increment as is allowed in case of promotion. It is a common ground between both sides that Finance Division vide O.M.No.F.2(8)R.I(I)/80 dated 17.11.1991 decided to change the mode of fixation of pay and ordered to allow stage equal to one increment on promotion. However, the AGPR vide its U.O. No.AT-90/93/Reg-I/14/C-KW dated 26.5.1993 clarified the mode of fixation of pay in the following terms :

"The N.P.S. however, provide a uniform and simple formula for fixation of pay i.e. on promotion from lower to higher post, where the fixation under normal rules gives an increase of pay equal to or less than one full increment of pay scale of the higher post - pay will be


ATTESTED


Superintendent
Supreme Court of Pakistan
Islamabad



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fixed by allowing the benefit of one premature increment in the pay scale of the higher post."

4. It is pleaded that the clarification made by the AGPR on 26.5.1993 was made applicable to the case of the appellants. However, the Auditor General's office vide letter No.164/Reg-I/14/C/87/KW/267 dated 26.8.1996 withdrew the benefit of fixation of pay of the Government Servants by allowing pay next stage above plus one premature increment allowed earlier vide U.O.No.AT-90/93/Reg-I/14/C-KW dated 26.5.1993 issued by the AGPR with the clarification that the grant of premature increment was not governed under the orders dated 17.11.1991 issued by Finance Division.

5. In an identical case, one Zahid Iqbal Ghani, Audit Officer, approached the Tribunal vide Service Appeal No.180(L) of 1990. During the pendency of the appeal, the Tribunal sought advice from the Law and Justice Division, which opined that the right of premature increment allowed vide O.M. dated 28.4.1977 issued by the Finance Division as subsequently modified by O.M. dated 3.7.1977 could not be taken away.

6. The case of the appellants before the Tribunal was that all orders prior to 26.8.1998 on the subject-matter were taken by the Finance Division and, therefore, the Auditor General was not possessed of any power to withdraw the same. Their plea was that such action on the part of the Establishment Division suffers from the apparent defect that

ATTESTED

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once a right is created in favour of a person similarly placed it cannot be taken back. The Tribunal, however, vide the impugned judgment dated 8.4.1977 dismissed the appeals holding that the order dated 26.8.1996 passed by the Auditor General of Pakistan was not illegal and, at the same time, observed that any payment that has been made as fixation of pay on promotion prior to the impugned judgment, no recovery of over payment as a result of re-fixation of pay shall be made.

7. Leave was granted to consider whether Circular dated 26.8.1996 was issued in accordance with law stopping the payment of one premature increment to the appellants.

8. Malik Abdul Wahid, learned ASC for the appellants placed reliance on comments against para-4 filed before the Tribunal, which read as follows :

"Point No.4. Under Finance Division (Regulation Wing) O.M. No.F.2(8)/R-1(1)/80 dated 17.11.1991. (Annex.07), the mode of fixation of pay was revised that where a Government Servant already drawing pay in a pay scale by virtue of Selection Grade or otherwise holding a lower post in the pay scale, is promoted to a higher post falling in the same pay scale, will be allowed next stage equal to one increment in fixation of pay on promotion in such cases. These orders were issued without superseding or modifying previous orders issued by Finance Division from time to time as such no clear cut instructions were available for fixation of pay on promotion. These orders reduced the benefit to one increment instead of two whereas under Section 3(2) of CSA-1973 (LXXI of 1973) the terms and conditions cannot be revised to the disadvantage of the individual.

ATTESTED

Superintendent
Supreme Court of Pakistan
Islamabad

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As no clear cut instructions were available, the Auditor-General office issued guide lines for various mode of fixation of pay under U.O. No.AT.50/93/Reg.I/14/C/87-KW dated 26.5.1993 (Annex.03)".

It is next argued that grant of premature increment in favour of the appellants cannot be withdrawn on the principle of *locus poenitentiae* as enunciated by this Court in Pakistan, through the Secretary, Ministry of Finance v. Muhammad Himayatullah Farukhi (PLD 1969 SC 407), wherein it was held that the principle of *locus poenitentiae* (power of receding till a decisive step is taken) is available to Government or relevant authorities competent to make order. However, orders cannot be withdrawn or rescinded once they have taken legal effect and certain rights created in favour of individuals.

9. In the instant case, it is not disputed by the learned Deputy Attorney General that the orders granting premature increments to the appellants have already been acted upon. If that is so, the same cannot be withdrawn on the principle of *locus poenitentiae*. When faced with this Mr. Mansur Ahmed, learned Deputy Attorney General placed reliance on The Engineer-In-Chief Branch through Ministry of Defence, Rawalpindi and another v. Jalaludin (PLD 1992 SC 207) to contend that the principle of *locus poenitentiae* is not applicable to orders which have been incorrectly acted upon. In the precedent case when the Defence Ministry came to know that on the basis of incorrect letter the respondent therein was granted Grade-11, it withdrew the same. It was

ATTESTED

Superintendent

Supreme Court of Pakistan
Islamabad

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held that the principle of *locus poenitentiae* would not apply in that case. However, as the respondent in that case had received the amount on the bona fide belief, the appellant therein was not entitled to recover the amount drawn by the respondent.

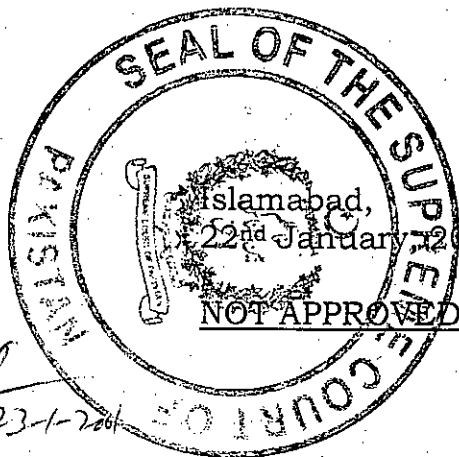
10. Here, after going through the material on record, we do not find that premature increment was granted to the appellants incorrectly. Thus visualised, the rule laid down in the case of *Jalaludin* (supra) is not attracted.

11. Resultantly, we allow the appeals by setting aside the impugned judgment dated 15.5.1997 holding that the case of the appellants is not affected by Circular dated 26.8.1996. No costs.

Per Justice Ghulam Hassan Khan, CJ
Per Justice Muhammad Asif
Per Justice Muhammad Anwar Khan

Certified to be true Copy

Superintendent
Supreme Court of Pakistan
Islamabad



NOT APPROVED FOR REPORTING

23-1-2001

936-P/04

GR No:	_____	Civil/Criminal
Date of Presentation:	27.10.13	_____
No. of Words:	_____	2100
No. of Follies:	00	_____
Requisition Fee Rs:	5.00	_____
Copy Fee in:	13.00	_____
Court Fee stamps:	18	_____
Date of Completion of Copy:	14/11/14	_____
Date of delivery of Copy:	18/11/14	_____
Compared by/Prepared by:	18/11/14	_____
Received by:	_____	_____

Government of Pakistan
Finance Division
(Regulations Wing)

Islamabad, 5th November, 2012.

No. F.11(30)R-2/2010 - 1183

OFFICE MEMORANDUM

Subject: GRANT OF PREMATURE INCREMENT ON PROMOTION WITHIN THE SAME SCALE.

The undersigned is directed to say that vide Finance Division's O.M. No. F.2(8)R-1(1)/80 dated 17-11-1991, it was, inter-alia, decided to allow next stage equal to one increment on fixation of pay in the cases where a Government Servant already drawing pay in a pay scale by virtue of selection grade, or, otherwise holding a lower post in the pay scale is promoted to a higher post falling in the same scale.

The pay fixation procedure contained in paras (iii) and (vii) of the Annexure to the Auditor General of Pakistan (Regulations) Islamabad u.o. No. AT.50/93/Reg.1/14/C/87-KW dated 26-05-1993 provides as under:-

(iii) "The National pay scales however, provide a uniform and simple formula for fixation of pay i.e. on promotion from a lower post to a higher post, where the fixation under normal rules gives an increase of pay equal to or less than one full increment of pay scale of the higher post, pay will be fixed by allowing the benefits of one premature increment in the pay scale of the higher post."

X	X	X	X	X	X	X	X	X	X	X
X	X	X	X	X	X	X	X	X	X	X

(vii) "As such, in the situations under discussion for the purpose of fixation of pay, the civil servants concerned would be treated as having been promoted to the post carrying the same pay scale and their pay fixed according to the formula discussed in (iii) above."

The above said benefit of premature increment within the same scale was withdrawn ab initio vide Auditor General of Pakistan letter No. 164/R-14C/87KW/267 dated 26-08-1996, which was challenged by the affectees in the Court of Law. The Supreme Court of Pakistan Islamabad passed a judgment dated 22-01-2001 in Civil appeals Nos. 1371 to 1392 of 1997 filed by Mr. Saeed Ahmad and others against a common judgment dated 15-05-1997 passed by the FST Lahore in Appeals No. 28(L) to 49(L) of 1997, as under:-

"We allow the appeals by setting aside the impugned judgment dated 15-05-1997 holding that the case of the appellants is not affected by circular dated 26-08-1996."

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(IRSHAD AHMED)
Section Officer (S-2)

4. The above orders of the honorable Supreme Court of Pakistan have already been implemented to the extent of the appellants.

5. In pursuance of the judgment of the Supreme Court of Pakistan in Mr. Hameed Akhtar Nizami case (1596 SCMR 1185), it has been decided that the benefit of judgment of the Supreme Court of Pakistan mentioned above may be extended in all other similar cases to the non-litigating employees accordingly, in partial modification of Finance Division's O.A. referred to at para-1 above, it has been decided to allow one premature increment in the pay scale of the higher post in fixation of pay on promotion within the same scales.

PS
Approved

(11)

(2)

BETTER COPY

Annexure-D (Page-15)

ORDER

Government of Pakistan
Finance Division (Regulation Wing)

No.S.11(30)R-2/2010;

Islamabad 5th November, 2012.

Subject: **Grant of Premature Increment on Promotion
within the same scale**

The undersigned is directed to say that vide Finance Division Finance Division's O.M. No.F.2(8)R-1(1)/80 dated 17.11.1991 was inter-alia, decided to allow, next stage equal to one increment on fixation of pay in the cases where a Government Servant already drawing pay in a pay scale by virtue of selection grade or otherwise holding lower post in the pay scale is promoted to a higher post falling in the same scale.

The pay fixation procedure contained in Paras (iii) and (vii) of the Annexure to the Auditor General of Pakistan (Regulation) Islamabad U.O, No.AT.SO/93/Reg-1/14/C/87-KW; dated 26.5.1993 provides as under:

(iii) "The National Pay Scale however, provide a uniform and simple formula for fixation of pay i.e. on promotion from a lower post to a higher post, where the fixation under normal rules gives an increase of pay equal for or less than one full increment of pay scale of the higher post, they will be fixed by allowing the benefits of one premature increment in the pay scale of the higher post.

(vii) As such, in the situation under discussion for the purpose of fixation of pay, the civil servants concerned would be treated as having been promoted in the post carrying the same pay scale and their pay fixed according to the formula discussed in (iii) above.

The above said benefit of premature increment within the same scale was withdrawn abinitio vide Auditor General of Pakistan letter No.164/R-1/14C//87 KW/267; dated 26.08.1996 which was challenged by the affectees in the Court of Law. The Supreme Court of Pakistan Islamabad passed a Judgment dated 22.01.2001 in Civil Appeal No.13/1 to 1392 of 1997 filed by Mr. Saeed Ahmad and others against a common Judgment dated 15.05.1987 passed by the FST Lahore in Appeal No.28(L) to 49(L) of 1997, as under:

"We allow the appeals by setting aside the impugned Judgment dated 15.05.1997 holding that the case of the appellants is not affected by circular dated 26.08.1996.

4. The above orders of the honorable Supreme Court of Pakistan have already been implemented to the extent of the appellants.

5. In pursuance of the Judgment of the Supreme Court of Pakistan in Mr. Hamed Akhtar Niazi's case (1996 SCMR 1185). It has been decided that the benefit

ATTESTED

of Judgment of the Supreme Court of Pakistan mentioned above may be extended in all other similar cases to the non litigating employees. Accordingly in partial modification of Finance Division's O.M. referred to at Para-1 above, it has been decided to allow one premature increment in the pay scale of the higher post in fixation of pay on promotion within the same scales.

Sd/- (Irshad Ahmad)
Section Officer (8-2)

All Ministers/Divisions / Departments.

ATTESTED




GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

E (16)

20/11

NO. FD (SOSR-1) 2-123/2014
Dated Peshawar the 21st February, 2014

To:

1. All Administrative Secretaries to Govt: of Khyber Pakhtunkhwa.
2. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
3. The Secretary to Governor, Khyber Pakhtunkhwa
4. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
6. The Secretary Finance FATA, FATA Secretariat, Peshawar.
7. All Heads of Attached Departments in Khyber Pakhtunkhwa.
8. All Divisional Commissioners in Khyber Pakhtunkhwa.
9. All Political Agents / District & Sessions Judges in Khyber Pakhtunkhwa
10. The Registrar, Peshawar High Court, Peshawar.
11. The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
12. The Chairman, Services Tribunal, Khyber Pakhtunkhwa.
13. The Accountant-General, Khyber Pakhtunkhwa, Peshawar.

Subject:

GRANT OF PREMATURE INCREMENT ON PROMOTION
WITHIN THE SAME SCALE.


Dear Sir,

I am directed to refer to the subject noted above and to say that under Rule 10 (2) of the Khyber Pakhtunkhwa Civil Services Pay Revision Rules – 1978, one advance increment is admissible to the Civil Servants, at the time of their promotion to higher posts, who are already drawing pay in the basic pay scales of the higher post.

2. Now, in pursuance to the Government of Pakistan, Finance Division, Islamabad Office Memorandum No.F.11(30)R-2/2010-1150 dated 5th November, 2012 (copy enclosed), the competent authority is pleased to allow one premature increment in the pay scales of the higher post in fixation of pay on promotion within the same pay scale in all cases of promotion to higher posts carrying the same basic pay scales, meaning thereby that one advance increment as next stage and another as a premature increment will be admissible in such cases of promotion.

3. These orders will be effective from the date of its issuance.

Yours faithfully,


(RAZAULLAH KHAN)
Addl: Secretary (Regulation)

Endst: No. FD (SOSR-1) 2-123 /2014

Dated 21st Feb, 2014

Copy for information & necessary action to the:-

1. The Director, Treasuries & Accounts, Khyber Pakhtunkhwa.
2. All the District Comptroller of Accounts in Khyber Pakhtunkhwa.
3. The Director, Local Fund Audit, Khyber Pakhtunkhwa, Peshawar.
4. The Director, FMIU, Finance Department.
5. The Treasury Officer, Peshawar.
6. The Secretary, Board of Revenue, Khyber Pakhtunkhwa.
7. All the District & Agency Accounts Officers in Khyber Pakhtunkhwa / FATA.
8. All the Section Officers / Budget Officers in Finance Department, Khyber Pakhtunkhwa, Peshawar.
9. The Private Secretary to Senior Minister for Finance, Khyber Pakhtunkhwa.
10. The Private Secretary to Secretary / P.As to Special Secretary, Additional Secretaries / Deputy Secretaries in Finance Department.

Secretary Agriculture

No. 1248

Dated 26/2/14


(MASOOD KHAN)
Deputy Secretary (Reg-II)

P.T.O

Endst: No. & Date Even

Copy for information is forwarded to:-

1. All the Section Officers / Budget Officers in Finance Department, Khyber Pakhtunkhwa, Peshawar.
2. The Private Secretary to Senior Minister for Finance, Khyber Pakhtunkhwa.
3. The Private Secretary to Secretary / P.As to Special Secretary / Additional Secretaries / Deputy Secretaries in Finance Deptt:

Section Officer (SR-1)

To,

The Director General,
Agriculture (Extension),
Khyber Pakhtunkhwa, Peshawar

Through: **Proper Channel**

Subject: - **GRANT OF PREMATURE INCREMENT ON PROMOTION
WITHIN THE SAME SCALE**

Sir: -

Kindly refer to Government of Khyber Pakhtunkhwa, Agriculture Live Stock & Cooperative Department Peshawar No. SOG (AD) 1-1/Rule/2013 dated 11/03/2014 in continuation of Finance Division, Islamabad Office Memo No. F.11 (30) R-2/2010-1150 dated 5th November 2012.

I was awarded selection grade BPS-7 from BPS-5 vide Dy: Director of Agriculture Peshawar Division Peshawar Order No. 2/64/5512-34/DDA dated 11/11/1987 in the above order on at S. No. 7 Annexure (A) later on in the same scale I was promoted as Senior Clerk (BPS -7) vide Director General Agriculture (Extension) NWFP, Peshawar order No. 15/21/ Estt:/79-423/DG dated 26/01/2004 in the above order and placed on S. No. 18 (Annexure B).

In the light of above orders I may be allowed one premature increment which was deprived at that time with effect from 26/01/2004. My pay may be refixed with provision of one premature increment on 26/01/2004 in light of above provision by Finance Division.

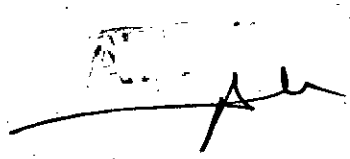
My due right may be provided and save me from financial hardship.

With Regards

Your Obediently


(MUHAMMAD ISHAQ)

Office Assistant
Office of the District Director,
Agriculture, Peshawar



715
G 18

~~COPY OF THE~~ THE OFFICE OF DIRECTORATE GENERAL
AGRICULTURE EXTENSION KHYBER PAKHTUNKHWA,
PESHAWAR LETTER NO.9/56/Acctt:/6430/DGA,dated 07/05/2014.TO
THE DISTRICT DIRECTOR AGRICULTURE, PESHAWAR.

SUBJECT; GRANT OF PREMATURE INCREMENT ON
PROMOTION WITH IN THE SAME SCALE

Memo;

Please refer to your memo No.2/14/Estt/1087/DDA,
dated 21.04.2014.

I am directed to inform that according to Govt: of
Khyber Pakhtunkhwa, Finance Department (Regulation wing)
Notification No FD (SOSR-I) 2-123/2014, para-3 is clear that these
orders will be effective from the date of its issuance.

In light of the above clarification, this office is unable
to forward the application of Mr. Muhammad Ishaq, Office Assistant of
your office and may be consider as file.

Sd/-
ASSISTANT ACCOUNTS
OFFICER

Endst: E-39/ 2008 /DDA,

Date - 6/4/2015 ✓

Copy forwarded to Mr. Muhammad Ishaq, Office
Assistant H/Q Office for information.

Y
DISTRICT DIRECTOR
AGRICULTURE, PESHAWAR

ATTACHED
Au



H-19

GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

NO. FD (SOSR-1) 2-123/ 2014
Dated Peshawar the: 24-06-2014

To: The Secretary to Govt. of Khyber Pakhtunkhwa,
Agriculture, Livestock & Cooperative Department,
Peshawar.

Subject: GRANT OF PREMATURE INCREMENT ON PROMOTION WITHIN THE
SAME SCALE.

Dear Sir,

I am directed to refer to your Deptt's letter No.SOG(AD)/1-1/Rules/2014 dated 19-05-2014 on the subject noted above and to state that Finance Department's circular letter of even number dated 21-02-2014 is not applicable to the employees promoted to higher post carrying pay scale in the same basic pay scale prior to 21-02-2014.

SECTION OFFICER (SR-1)

(Faint handwritten notes and scribbles)

(12) Letters in (Office Work Local D)

(Handwritten notes and signatures)
by 27/6
SOG
27/6/14

ATTESTED

VAKALAT NAMA

NO. _____/20

IN THE COURT OF Service Tribunal, Peshawar

Muhammad Ishaq (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

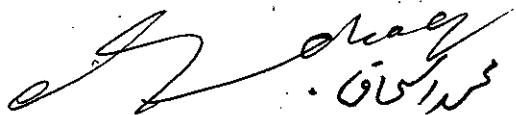
Agriculture Department (Respondent)
(Defendant)

I/We Muhammad Ishaq


Do hereby appoint and constitute M. Asif Yousafzai, Advocate, Peshawar,
to appear, plead, act, compromise, withdraw or refer to arbitration for me/us
as my/our Counsel/Advocate in the above noted matter, without any liability
for his default and with the authority to engage/appoint any other Advocate/
Counsel on my/our costs. Taimur Ali Khan
(Adv)

I/we authorize the said Advocate to deposit, withdraw and receive on my/our
behalf all sums and amounts payable or deposited on my/our account in the
above noted matter. The Advocate/Counsel is also at liberty to leave my/our
case at any stage of the proceedings, if his any fee left unpaid or is
outstanding against me/us.

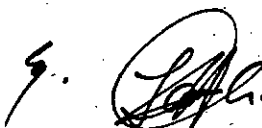
Dated _____/20


(CLIENT)

ACCEPTED


M. ASIF YOUSAFZAI
Advocate

M. ASIF YOUSAFZAI
Advocate High Court,
Peshawar.


TAIMUR ALI KHAN
Advocate

OFFICE:

Room No.1, Upper Floor,
Islamia Club Building,
Khyber Bazar Peshawar.
Ph.091-2211391-
0333-9103240

BEFORE THE KHYBER PAKHTUNHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No 418/2015

Mr. Muhammad Ishaq

VERSUS

Govt. of Khyber Pakhtunkhwa

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3	Office order dated 26-01-2004	"A"	4--5
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5	Letter dated 05-11-2012	"B"	7
6	Finance Department letter dated 21-02-2014	"C"	8
7	Finance Department Letter dated 24-06-2014	"D"	9


DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Appeal No.418/2015

Mr. Muhammad Ishaq Office Assistant o/o
District Director Agriculture Peshawar

Appellant

VERSUS

- 1- Secretary to Government of Khyber Pakhtunkhwa
Agriculture Livestock & Cooperative
Department Peshawar
- 2- Director General, Agriculture (Extension)
Khyber Pakhtunkhwa, Peshawar.
- 3- Secretary to Government of Khyber Pakhtunkhwa,
Finance Department Peshawar

Respondents

PARA-WISE COMMENTS ON BEHALF OF RESPONDENTS NO.1, 2 & 3

PRELIMINARY OBJECTIONS

- 1- That the appellant has got no locus standi to file the instant appeal.
- 2- That the appeal is not maintainable in its present form and liable to be dismissed.
- 3- That the appellant has no cause of action to file the instant appeal.
- 4- That the appellant has deliberately concealed the material facts from this Hon'ble Services Tribunal.
- 5- That the appellant has not come to this Hon'ble Service Tribunal with clean hand.
- 6- That the appeal is time barred.

ON FACTS

- Para-1 Pertains to record, needs no comments.
- Para-2 Correct to the extent, that the appellant was promoted from Junior Clerk to the post of Senior Clerk BPS-7 on regular basis vide office order No 15/21/Estt/1279-423/DG dated 26-01-2004, (Annexure-A).
- Para-3 Correct to the extent that Honorable Supreme Court of Pakistan decided the Civil Appeals No 1371 to 1392 of 1997 on the ground that grant of promotion increment can not be with drawn on the principal of locus poeni*entide vide Decision dated 22-01-2001.
- Para-4 Correct to the extent that according to Para-5 of Memorandum of Government of Pakistan Finance Division (Regulation Wing) No. F.11(30)R-2/2010 as 11500 dated 05-11-2012, allow one premature increment on the pay scale of the higher post in fixation of pay on promotion within the same scales, (Annexure-B).
- Para-5 Correct to the extent that the Government of Khyber Pakhtunkhwa Finance Department, allow one Premature increment on the pay scales of the higher post in fixation of pay on promotion within the same pay scales in all cases of promotion to higher posts carrying the same basic pay scales, with effect from 21-02-2014 vide Notification No, FD(SOSR-1)2-123/2014 dated 21-02-2014, (Annexure-C).

Para-6

Correct to the extent that the Government of Khyber Pakhtunkhwa, Finance Department (Regulation Wing) Circular letter of even number dated 21-02-2014 is not applicable to the Civil Servants promoted to higher post carrying pay scale in the same basis pay scale prior to 21-02-2014 vide letter No FD(SOSR-I)2-123/2014 dated 24-06-2014, (Annexure-D). The appellant was promoted from J/Clerk (selection grade BPS-7) to the post of Senior Clerk BPS-7 on 26-01-2004, prior to the Notification issued by the Government of Khyber Pakhtunkhwa Finance Department.

Para-7

Hence needs no comments.

GROUNDS

- Para-A Incorrect. As explained in Para-6 of the facts of the comments.
- Para-B Incorrect. No pecuniary loss will be sustained and it will not affect his pension.
- Para-C As explained in Para-3 & 6 of the facts of the comments.
- Para-D As explained in Para-6 of the facts of the comments hence needs no further comments.
- Para-E Incorrect. The reason was mentioned on the rejection of Departmental appeal of the appellant vide District Director Agriculture, Peshawar Endst No 2008/DDA dated 06-04-2015, Government of Khyber Pakhtunkhwa, Agriculture, Livestock & Cooperative Department letter No SOG (AD)/1-1/Rules/2014 dated 04-07-2014, (Annexure-E).
- Para-F As explained in Para-6 of the facts.
- Para-G No Comments hence denied.

It is therefore must humbly prayed that on acceptance on the instant comments, the appeal of the appellant may kindly be dismissed.

RESPONDENTS

SECRETARY TO GOVERNMENT
OF KHYBER PAKHTUNKHWA, AGRICULTURE,
LIVESTOCK & COOPERATIVE DEPARTMENT

PESHAWAR

DIRECTOR GENERAL

AGRICULTURE (EXTENSION)

KHYBER PAKHTUNKHWA PESHAWAR

SECRETARY TO

GOVERNMENT OF KHYBER PAKHTUNKHWA

FINANCE DEPARTMENT PESHAWAR

30/11/17

3

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Appeal No.418/2015

Mr. Muhammad Ishaq Office Assistant o/o
District Director Agriculture Peshawar

Appellant

VERSUS

- 1- Secretary to Government of Khyber Pakhtunkhwa
Agriculture Livestock & Cooperative
Department Peshawar
- 2- Director General, Agriculture (Extension)
Khyber Pakhtunkhwa, Peshawar.
- 3- Secretary to Government of Khyber Pakhtunkhwa,
Finance Department Peshawar

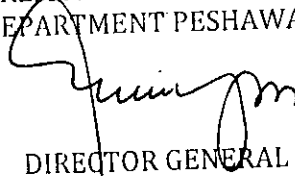
Respondents

COUNTER AFFIDAVIT

We the undersigned hereby solemnly declare / affirm that the contents of the
Para-wise reply / comments are true and correct to the best of our knowledge and belief
and nothing has been kept secret from this Honorable Tribunal.

RESPONDENTS

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
AGRICULTURE LIVESTOCK AND COOPERATION
DEPARTMENT PESHAWAR


DIRECTOR GENERAL
AGRICULTURE (EXTENSION)
KHYBER PAKHTUNKHWA PESHAWAR

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA,
FINANCE DEPARTMENT PESHAWAR

**DIRECTORATE GENERAL AGRICULTURE (EXTENSION) NWFP,
PESHAWAR.**

OFFICE ORDER.

Consequent upon the recommendations of the Departmental Promotion Committee, the following officials are hereby promoted, posted, / transferred with immediate effect in interest of public service.

Sl.No	Name & designation	Promoted / posted
1	Falzuliah Khan Senior Clerk o/o DOA, Tank.	Promoted as Office Assistant (BPS-11) and posted in the o/o DOA, Tank against vacant post.
2	Nisar Ahmad Bhatti, Senior Clerk o/o DGA (E), Peshawar.	Promoted as Office Assistant, (BPS-11) and posted in the o/o Statistician, Agri. Statistics, Peshawar.
3	Syed Amin Shah, Senior Clerk (working against the post of Office Assistant) in the o/o Statistician, Agri. Statistics, Peshawar.	Posted as Senior Clerk o/o Project Director, BAPD, Peshawar caused due to long leave of Mr. Muhammad Humayun, Senior Clerk.
4	Muhammad Shafi, Senior Clerk o/o DOA, Tank.	Transferred/ posted as Senior Clerk in the o/o DDA, FATA, DIKhan against the vacant post.
5	Fazal Rahman, Senior Clerk o/o DOA, Swat.	Promoted as Senior Auditor (BPS-8) and posted in the o/o DOA, Swat against vacant post.
6	Liaqat Ali, Junior Auditor o/o DDA (FATA), Peshawar.	Promoted as Senior Auditor (BPS-8) and posted in the o/o DA, (FATA), Peshawar.
7	Ghulam Akbar, Senior Clerk (working against the post of Senior Auditor) o/o DA, FATA, Peshawar.	Posted as Junior Auditor o/o DDA (FATA) Peshawar vice No.6
8	Abdul Latif Shah, Senior Clerk o/o DOA, Bannu.	Promoted as Senior Auditor (BPS-8) and posted in the o/o DDA, FATA, DIKhan.
9	Haroon Ahmadi, Junior Clerk o/o DOA, DIKhan.	Promoted as Senior Clerk (BPS-7) and posted in the o/o DOA, Tank vice No.4.
10	Said Hakim, Junior Clerk o/o DOA, Buner.	Promoted as Senior Clerk (BPS-7) and posted in the o/o DOA, Upper Dir against vacant post.
11	Hazrat Yusuf, Junior Clerk o/o DOA, Mardan.	Promoted as Senior Clerk (BPS-7) and adjusted against the vacant post of Office Assistant (ops) in the o/o DOA, Mardan.
12	Fida Ali Shah, Junior Clerk o/o DOA, Buner	Promoted as Senior Clerk (BPS-7) and posted in the o/o DOA, Malakand against the vacant post.
13	Abdur Rehman, Junior Clerk o/o DOA, Charsadda.	Promoted as Senior Clerk (BPS-7) and posted in the o/o DOA, Mansehra against the vacant post.
14	Murad Ali Shah, Junior Clerk o/o DOA, Mardan.	Promoted as Senior Clerk (BPS-7) and posted in the o/o DOA, Swabi against the vacant post.
15	Ali Jan, Junior Clerk o/o DOA, Swabi.	Promoted as Senior Clerk (BPS-7) and posted against the vacant post in PHLC, Swabi.
16	Satah-ud-Din Junior Clerk o/o DOA, Swat.	Promoted as Senior Clerk (BPS-7) and posted in the o/o DOA, Shangla against the vacant post.
17	Ibar Muhammad, Junior Clerk o/o DOA, Swat.	Promoted as Senior Clerk (BPS-7) and posted in the o/o DOA, Swat vice No.5.
18	Muhammad Ishaq, Junior Clerk o/o DGA (E) Peshawar.	Promoted as Senior Clerk (BPS-7) and posted in the o/o DDA, FATA, Peshawar.

Atiqul Haq
Assistant Accounts Officer
To Director of Agriculture
(Extension) K.P.K Province Peshawar

19.	Muhammad Ashiq, Junior Clerk o/o DGA (E), Peshawar.	Promoted as Senior Clerk (BPS-7) and posted in the o/o DA, (FATA), Peshawar.
20.	Muhammad Ayaz-II, Junior Clerk o/o DA (FATA) Peshawar (working against the post of Senior Clerk).	Posted as Junior Clerk in the o/o DGA(E) Peshawar vice No.19.
21.	Syed Ahmad Shah, Junior Clerk o/o DOA, Charsadda.	Promoted as Senior Clerk (BPS-7) and posted in the o/o DA, (FATA), Peshawar.
22.	Aurangzeb, Junior Clerk (working as Senior Clerk) o/o DA (FATA), Peshawar.	Posted as Junior Clerk in the o/o DOA, Charsadda vice No.21.
23.	Didar Muhammad, Junior Clerk o/o DGA (E), Peshawar.	Promoted as Senior Clerk (BPS-7) and posted in the o/o DGA (E), Peshawar vice No.2.
24.	Muhammad Saeed, Junior Clerk o/o DOA, Peshawar.	Promoted as Senior Clerk (BPS-7) and posted in the o/o DDA, (FATA) Peshawar.
25.	Muhammad Afzal, Junior Clerk (working against the post of Senior Clerk) o/o DDA (FATA), Peshawar.	Posted as Junior Clerk in the o/o DGA (E), Peshawar vice No.23.
26.	Faqir Hussain, Junior Clerk o/o DGA (E), Peshawar.	Promoted as Senior Clerk (BPS-7) and posted in the o/o DDA, FATA, Peshawar.
27.	Shah Hussain, Junior Clerk o/o DDA (FATA) Peshawar (working against the post of Senior Clerk).	Posted as Junior Clerk in the o/o DGA (E) Peshawar vice No.26.
28.	Rahman Ullah, Junior Clerk o/o DOA, Malakand.	Transferred/posted in the o/o DGA (E) Peshawar vice No.18
29.	Abdu' Amin, Junior Clerk (working against the post of Senior Clerk) o/o DOA Swabi.	Posted as Junior Clerk o/o DOA Swabi vice No.33.
30.	Muhammad Ishtiaq, Junior Clerk o/o DOA, Swabi.	Transferred/ posted as Junior Clerk o/o DOA Peshawar vice No.24.
31.	Jamshid Khan, Junior Clerk (working against the post of Senior Clerk) o/o DDA FATA Peshawar.	Transferred /posted as Junior Clerk o/o DOA, Mardan vice No.14.

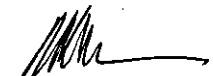
Sd/ (MUZAMMIL KHAN)
DIRECTOR GENERAL
AGRICULTURE (EXTENSION)
NWFP, PESHAWAR.

No.15/21/Est/ 1279 -423 /DG

Dated Peshawar, the 26th January, 2004.

Copy forwarded to:-

1. The Accountant General, NWFP, Peshawar.
2. The Director Agriculture (FATA) NWFP, Peshawar.
3. The Adl. Accountant General, PR Sub-office, Peshawar.
4. The Project Director Barani Agril. Dev. Project, Peshawar.
5. The Statistician, Agriculture Statistics, Peshawar.
6. The District Officers Agriculture, Peshawar, Bannu, D.I.Khan, Tank, Mardan, Swabi, Charsadda, Buner, Malakand, Swat, Shangla and Mansohra.
7. The District Accounts Officers, Peshawar, Bannu, D.I.Khan, Tank, Mardan, Swabi, Charsadda, Buner, Malakand, Swat, Shangla and Mansohra.
8. The Dy Director of Agriculture, (FATA) Peshawar and D.I.Khan.
9. The Asstt. Accounts Officer / Pay Clerk HQ office.
10. Officials concerned.
11. For information and necessary action.
12. Personal file of the official concerned.
13. File No.15/1/Est for record


Assistant Accounts Officer
To Director General Agriculture
(Extension) K.P.K Province Peshawar


DIRECTOR GENERAL

Annex - B 6

BETTER COPY

Government of Pakistan
Finance Division
(Regulation Wing)

Islamabad 5th November, 2012.

No F.11(30)R-2/2010

OFFICE MEMORANDUM

Subject GRANT OF PREMATURE INCREMENT ON PROMOTION WITHIN THE SAME SCALE

1- The undersigned is directed to say that vide Finance Division O.M No. F.2(8)R-1(1)/80 dated 17-11-1991, it was, inter-alia, decided to allow next stage equal to one increment on fixation of pay in the cases where a Government Servant already drawing pay in a scale by virtue of selection grade, or otherwise holding a lower post in the pay scale is promoted to a higher post falling to the same scale.

2- The pay fixation procedure contained in Para (iii) and (vii) of one Annexure to the Auditor General of Pakistan (Regulations) Islamabad u.o No. AT.50/93/Reg.1/14/C/87-KW dated 26-05-1993 provides as under:-

(iii) The national pay scales however provide a uniform and simple formula for fixation of pay i.e on promotion from a lower post to a higher post, where the fixation under normal rules gives an increase of pay equal to or less than one full increment of pay scale of the higher post, pay will be fixed by allowing the benefits of one premature increment in the pay scale of the higher post.

x	x	x	x	x	x	x	x	x	x	x
x	x	x	x	x	x	x	x	x	x	x

(vii) As such in the situation under discussion for the purpose of fixation of pay the civil servants concerned would be treated as having been promoted to the post carrying the same pay scale and their pay fixed according to the formula discussed in (iii) above.

3- The above said benefit of premature increment within the same scale was withdrawn abinitio vide Auditor General of Pakistan letter No 164/R-1/14c/87kw/267 dated 26-08-1996, which was challenged by the affecters in the Court of Law. The Supreme Court of Pakistan Islamabad passed Judgment dated 22-01-2001 in Civil appeals No 1371 to 1392 of 1997 filed by Mr. Saeed Ahmad and others against a common judgment dated 15-05-1997 passed by the FST Lahore in Appeals No. 28(L) to 49(L) of 1997, as under.

We allow the appeals by setting aside the impugned judgment dated 15-05-1997 holding that the case of the appellants is not affected by circular dated 26-08-1996.

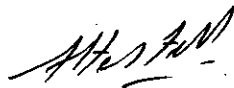
4- The above orders of the honorable Supreme Court of Pakistan have already been implemented to the extent of the appellants.

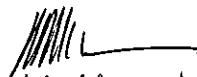
5- In pursuance of the Judgment of the Supreme Court of Pakistan in Mr. Hameed Akhtar Niazi case (1996 SCMR 1185), it has been decided that the benefit of judgment of the Supreme Court of Pakistan mentioned above may be extended in all other simater cases to the non-litigating employees Accordingly, in partial modification of Finance Divisions O.M referred to at Para-1 above, it has been decided to allow one premature increment in the pay of the higher post in fixation of pay on promotion within the same scales.

www.pmadit.com

(IRSHAD AHMAD)
Section Officer (R-2)

All Ministers/Division/Department




Assistant Accounts Officer
To Director - Agriculture
(Extension) K.P.K Province Peshawar

D (15) Annex B-7
V/O

Government of Pakistan
Finance Division
(Regulations Wing)

Islamabad, 5/11/12 November, 2012.

FD 5 (1130)R-2/2010 - 1/83

OFFICE MEMORANDUM

Subject: GRANT OF PREMATURE INCREMENT ON PROMOTION WITHIN THE SAME SCALE.

The undersigned is directed to say that vide Finance Division's O.M. No. F.2(S)R-1(1)/80 dated 17-11-1991, it was, inter-alia, decided to allow next stage equal to one increment on fixation of pay in the cases where a Government Servant already drawing pay in a pay scale by virtue of selection grade, or, otherwise holding a lower post in the pay scale is promoted to a higher post falling in the same scale.

The pay fixation procedure contained in paras (iii) and (vii) of the Annexure to the Auditor General of Pakistan (Regulations) Islamabad u.o. No. AT 50/93/Reg.1/14/C/87-KW dated 26-05-1993 provides as under:-

(ii) "The National pay scales however, provide a uniform and simple formula for fixation of pay i.e. on promotion from a lower post to a higher post, where the fixation under normal rules gives an increase of pay equal to or less than one full increment of pay scale of the higher post, pay will be fixed by allowing the benefits of one premature increment in the pay scale of the higher post."

(iii) "As such, in the situations under discussion for the purpose of fixation of pay, the civil servants concerned would be treated as having been promoted to the post carrying the same pay scale and their pay fixed according to the formula discussed in (ii) above."

The above said benefit of premature increment within the same scale was withdrawn ab initio vide Auditor General of Pakistan letter No. 104/R-1/14C/87KW/287 dated 26-08-1996, which was challenged by the affectees in the Court of Law. The Supreme Court of Pakistan Islamabad passed a judgment dated 22-01-2001 in Civil appeals No. 1371 to 1392 of 1997 filed by Mr. Saeed Ahmad and others against a common judgment dated 15-05-1997 passed by the FST Lahore in Appeals No. 28(L) to 49(L) of 1997, as under:-

"We allow the appeals by setting aside the impugned judgment dated 15-05-1997 holding that the case of the appellants is not affected by circular dated 26-08-1996."

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Handwritten signature
Assistant Accounts Officer
Agriculture
To Director
(Extension) P.P. Province Peshawar

P.T.O

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(2)
The above orders of the honorable Supreme Court of Pakistan have already been implemented to the extent of the appellants.

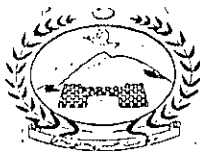
5. In pursuance of the judgment of the Supreme Court of Pakistan in Mr. Hamid Akhtar Niazi's case (1996 SCMR 1185), it has been decided that the benefit of judgment of the Supreme Court of Pakistan mentioned above may be extended in all other similar cases to the non-litigating employees. Accordingly, in partial modification of Finance Division's O.M. referred to at para-1 above, it has been decided to allow one premature increment in the pay scale of the higher post in fixation of pay on promotion within the same scales.

SP
Appellate

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All Ministries/Division/Departments.

(IHSAD AHMED)
Section Officer (S-2)



**GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)**

E (16) (8) Annex - 9
2014

NO. FD (SOSR-1) 2-123/2014
Dated Peshawar the 21st February, 2014

To:

1. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
3. The Secretary to Governor, Khyber Pakhtunkhwa
4. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
6. The Secretary Finance FATA; FATA Secretariat, Peshawar.
7. All Heads of Attached Departments in Khyber Pakhtunkhwa.
8. All Divisional Commissioners in Khyber Pakhtunkhwa.
9. All Political Agents / District & Sessions Judges in Khyber Pakhtunkhwa
10. The Registrar, Peshawar High Court, Peshawar.
11. The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
12. The Chairman, Services Tribunal, Khyber Pakhtunkhwa.
13. The Accountant-General, Khyber Pakhtunkhwa, Peshawar.

Subject: GRANT OF PREMATURE INCREMENT ON PROMOTION
WITHIN THE SAME SCALE.

Dear Sir,

I am directed to refer to the subject noted above and to say that under Rule 10 (2) of the Khyber Pakhtunkhwa Civil Services Pay Revision Rules – 1978, one advance increment is admissible to the Civil Servants, at the time of their promotion to higher posts, who are already drawing pay in the basic pay scales of the higher post.

2. Now, in pursuance to the Government of Pakistan, Finance Division, Islamabad Office Memorandum No.F.11(30)R-2/2010-1150 dated 5th November, 2012 (copy enclosed), the competent authority is pleased to allow one premature increment in the pay scales of the higher post in fixation of pay on promotion within the same pay scale in all cases of promotion to higher posts carrying the same basic pay scales, meaning thereby that one advance increment as next stage and another as a premature increment will be admissible in such cases of promotion.

3. These orders will be effective from the date of its issuance.

Yours faithfully,

(RAZAULLAH KHAN)
Addl: Secretary (Regulation)

Endst: No. FD (SOSR-1) 2-123 /2014

Dated 21st Feb, 2014

Copy for information & necessary action to the:-

1. The Director, Treasuries & Accounts, Khyber Pakhtunkhwa.
2. All the District Comptroller of Accounts in Khyber Pakhtunkhwa.
3. The Director, Local Fund Audit, Khyber Pakhtunkhwa, Peshawar.
4. The Director, FMIU, Finance Department.
5. The Treasury Officer, Peshawar.
6. The Secretary, Board of Revenue, Khyber Pakhtunkhwa.
7. All the District & Agency Accounts Officers in Khyber Pakhtunkhwa / FATA.
8. All the Section Officers / Budget Officers in Finance Department, Khyber Pakhtunkhwa, Peshawar.
9. The Private Secretary to Senior Minister for Finance, Khyber Pakhtunkhwa.
10. The Private Secretary to Secretary / P.As to Special Secretary, Additional Secretaries / Deputy Secretaries in Finance Department.

Secretary / Agriculture

1-2-4-8
Dated 21-2-2014

(MASOOD KHAN)
Deputy Secretary (Reg-II)

P.T.O

Assistant Accounts Officer
Agriculture
To Director
(Extension) K.P.K Province Peshawar

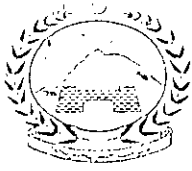
Endst: No. & Date Even

Copy for information is forwarded to:-

1. All the Section Officers / Budget Officers in Finance Department, Khyber Pakhtunkhwa, Peshawar.
2. The Private Secretary to Senior Minister for Finance, Khyber Pakhtunkhwa.
3. The Private Secretary to Secretary / P.As to Special Secretary / Additional Secretaries / Deputy Secretaries in Finance Deptt:



Section Officer (SR-1)



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

19
Annex D

NO. FD (SOSR-1) 2-123/ 2014
Dated Peshawar the: 24-06-2014

To: The Secretary to Govt. of Khyber Pakhtunkhwa,
Agriculture, Livestock & Cooperative Department,
Peshawar.

Subject: GRANT OF PREMATURE INCREMENT ON PROMOTION WITHIN THE
SAME SCALE.

Dear Sir,

I am directed to refer to your Deptt's letter No.SOG(AD)/1-1/Rules/2014 dated 19-05-2014 on the subject noted above and to state that Finance Department's circular letter of even number dated 21-02-2014 is not applicable to the employees promoted to higher post carrying pay scale in the same basic pay scale prior to 21-02-2014.

SECTION OFFICER (SR-1)

M. Khan
Assistant Accounts Officer
To Director
(Extension) Agriculture
Finance Peshawar

6087
27-6-14

27/6

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SOG

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