

**BEFORE THE KHYBER PAKTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 1889/2022

Muhammad Afzal S/O Amir Salam Khan R/O Mohallah Bunnr, Mingora, Tehsil Babuzai, District Swat.

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 4027.....Appellant

Versus

Dated 2/3/2023

1. Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Peshawar.
2. Director Elementary and secondary education Khyber Pakhtunkhwa at Peshawar.
3. District Education officer (Male) Swat.

..... Respondents.

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DISTRICT EDUCATION OFFICER (M)  
SWAT AT GULKADA

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- 3. District Education officer (Male) Swat.

..... Respondents.

**Parawise Comments on Behalf of the Respondents**

**Respectfully shewith**

**Preliminary objections**

- 1. That the Appellant is not an aggrieved person within the meaning of Section 4 of the Service Tribunal Act, 1974.
- 2. That the Appellant has no cause of action / locus standi.
- 3. That the Appellant has not come to this Honorable Tribunal with clean hands.
- 4. That the Appellant has filed this instant Service Appeal just to pressurize the respondents.
- 5. The present Service Appeal is liable to be dismissed for non-joinder/misjoinder of necessary parties.
- 6. That the instant Service Appeal is against the prevailing law and rules.
- 7. That the Appellant has filed this instant Service Appeal on malafide motives.
- 8. That the instant Appeal is **time barred**.
- 9. That the instant Service Appeal is not maintainable in the present form, and above in the present circumstances of the issue.
- 10. That the Appellant has been estopped by his own conduct.
- 11. That the Appellant has concealed the material facts from this honorable tribunal.

**FACTS**

- 1. That the Para No.1 is correct.
- 2. That the Para No.2 is correct.
- 3. That the Para No.3 pertains to record, hence, needs no comments.
- 4. That the Para No.4 is correct to the extent of seniority number of the Appellant. However, promotions are made subject to the recommendation of the Departmental Promotion Committee on the basis of seniority-cum-fitness basis.
- 5. That the Para No. 5 is incorrect and denied. Departmental Promotion committee meeting cannot not be held on the whims and wishes of the Appellant.
- 6. That the para No. 6 is correct to the extent of retirement and DPC meeting dates, the rest of the para is incorrect and denied. Admittedly, the Appellant got retired on 04-04-2019 and DPC meeting was held on 27-

11-2019. Thus, the Appellant was no more in service at the time of DPC meeting and was already got retired more than seven months earlier than the DPC meeting. Therefore, he was not considered for promotion.

7. That the Para No. 7 is correct to the extent of Notification/Promotion order dated 10-12-2019, the rest of the para is incorrect and denied. As the Appellant was no more in service at the time of DPC and Notification order, therefore, he cannot claim promotion and as far as the other colleagues of the Appellant is concerned, they were not retired and were working in the department and have ultimate right of promotion, were promoted as per their entitlement.
8. That the Para No. 8 pertains to record, hence, no comments.
9. That the Para No. 9 is correct to the extent of filing Writ Petition by the Appellant before the Honorable PHC Mingora Bench/Darul Qaza Swat, the rest of the para is the repetition of the above para, hence, no comments.
10. That the Para No. 10 is correct.
11. That the Para No. 11 is correct.
12. That the Para No. 12 is irrelevant to the present issue. However, as stated in the foregoing paras, the Appellant was not entitled for promotion as he was already got retired before the DPC meeting.
13. That the Para No. 13 is correct. And the said COC of the Appellant is still pending adjudication before the Honorable PHC Mingora Bench/Darul Qaza Swat, therefore, the instant Service Appeal of the Appellant is liable to be dismissed on this score alone.
14. That the Para No. 14 is incorrect and denied. The Appellant wants to mislead this Honorable Tribunal. In fact the Appellant got retired on 04-04-2019 more than seven months before the departmental promotion committee (DPC) meeting, therefore, he was not considered for promotion. According to Rule 3 of the KP Civil Servants (Appointment, Promotion and Transfer) Rules 1989, "appointment to posts shall be made by any of the following methods, namely:-
  - a) By promotion or transfer in accordance with the provisions content in part-ii of these rules; and
  - b) By initial recruitment in accordance with the provisions content in part-ii of these rules"

According to Rule 5 of these rules, in each department of office of the Government there shall be one or more departmental promotion committee and selection committee or departmental selection board. While according to Rule 7 of these rules, "promotion and transfer to posts other than those falling within (in) the purview of the provincial selection board shall ordinarily be made on the recommendation of appropriate departmental promotion committee."

Therefore without the recommendations of the departmental promotion committee's recommendations, one cannot be promoted.


Hence, the order dated 25-10-2022 is in accordance with the rules and policy. **(DPC minutes and APT rules relevant pages already annexed with the instant Service Appeal)**
15. Thus, the instant Service Appeal of the Appellant is bereft of any merit, hence, liable to be dismissed inter-alia following grounds.


**GROUNDS**

- i. That the Para No. i is incorrect and denied. The notification dated 25-10-2022 is legal, and in accordance with the relevant rules and policy.
  - ii. That the Para No. ii is incorrect and denied. The detail reply has already been given in the foregoing paras.
  - iii. That the Para No. iii is incorrect and denied. The Appellant was herd in person according to the notification dated 25-10-2022.
  - iv. That the Para No. iv is again the repetition of above paras, hence, no comments.
  - v. That Para No. v pertains to the Honorable Courts and this Honorable tribunal judgments. However, the case of the Appellant is different in all nature from the cases mentioned in the judgments.
  - vi. That Para No. vi is incorrect and denied. The detail reply has already been given in the foregoing paras.
  - vii. That Para No. vii incorrect and denied. When the Appellant was no more in service and was got retired more than seven months before the DPC meeting then how can he be granted promotion on the vacant posts.
  - viii. That the respondents also seeks permission of this Honorable Tribunal to raise further grounds on the time of arguments.
16. That the para 16 is incorrect and denied. The instant Service Appeal of the Appellant is badly time barred as the original promotion order was issued in the year 2019.

It is, therefore, very humbly prayed that the instant Service Appeal of the Appellant may be dismissed with cost in favor of the respondents.

  
**DISTRICT EDUCATION OFFICER (M)**  
**SWAT AT GULKADA**

  
**DIRECTOR,**  
**ELEMENTARY AND SECONDARY**  
**EDUCATION KHYBER PAKHTUNKHWA**

  
**SECRETARY,**  
**ELEMENTARY AND SECONDARY**  
**EDUCATION PESHAWAR**

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Muhammad Afzal S/O Amir Salam Khan R/O Mohallah Bunr, Mingora, Tehsil Babuzai, District Swat.

.....Appellant

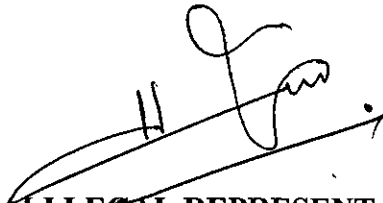
**Versus**

Provincial Govt. of Khyber Pakhtunkhwa & others

..... Respondents

**AFFIDAVIT**

I, Hussain Ali Legal Representative, do hereby solemnly affirm and declare on oath on the directions and on the behalf of the Respondents that the contents of the comments are true and correct to the best of my knowledge and belief and nothing has been kept secret from this Honorable Tribunal.



**HUSSAIN ALI LEGAL REPRESENTATIVE  
O/O DEO (M) SWAT**

(5)




GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Block "A" Civil Secretariat, Peshawar

Phone No. 091-9211128

**AUTHORITY LETTER**

It is certified that Hussain Ali, Legal Representative Office of District Education Officer (Male) Swat, Elementary & Secondary Education Department is hereby authorized to submit para-wise comments and attend the Service Tribunal, Camp Court Swat on behalf of Respondent Nos. 01, 02 & 03 in Service Appeal No. 1889/2022 Title Muhammad Afzal Vs Government of Khyber Pakhtunkhwa & Others on the eve of each hearing till the disposal of the instant case and shall also be responsible to obtain certified copy of the final judgment/order and submit the same to the department within limitation period.

  
Secretary  
Elementary & Secondary Education,  
Department.  
SECRETARY  
Elementary & Secondary Edu: Deptt:  
Govt: of Khyber Pakhtunkhwa