# BEFORE THE HON'BLE SERVICES TRIBUNAL, KHYBER PAKHTUNKHWA PESHAWAR Khyber Pakhtunkhwa

Service Appeal No. 1378/2022

Izhar Ahmad

°Versus

Govt. of Khyber Pakhtunkhwa etc

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David <u>9/3/20</u>23 Appellant

Respondents

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

Service Appeal No.1378/2022

Izhar Ahmad

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.....Appellant

Verses

Government of Khyber Pakhtunkhwa Through Chief Secretary & others

- .....Respondents-

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# PARAWISE COMMENTS ON BAHALF OF RESPONDENTS NO. 01 TO 03

# RESPECTFULLY SHEWETH:-

# PRELIMINARY OBJECTIONS:-

- 1. That the Appellant has got no cause of action/locus standi to file the instant Appeal.
- II. That Appellant has not come to this Hon'ble Tribunal with clean hands.
- III. That this Honorable Tribunal has got no jurisdiction to adjudicate upon the matter.
- IV. That the seniority alone is not the sole criteria for promotion. Fitness of the CivilServant is also required to be taken into consideration.
- V. That the Judgment dated 20/09/2019 rendered in Service Appeal No.1316/2018 has already been implemented by promoting the Appellant from post of Junior Clerk to Senior Clerk (BPS-14) and he is enjoying the perks and privileges attached to the post of Senior Clerk.
- VI. That the Appellant has deliberately concealed material facts from this Honorable Tribunal.
- VII. That the instant Appeal is barred by law and time.
- VIII. That the instant Appeal is bad in its present form. Hence not maintainable and liable to be dismissed with special cost throughout.

## ON FACTS:-

1. Correct to the extent that the Appellant is a Civil Servant and presently serving as Senior Clerk in office of the Additional Advocate General, Khyber Pakhtunkhwa

Services Tribunal, Peshawar.

Correct to the extent that the Appellant joined service in the year 2011 while rest of the para is incorrect and against facts and law, hence, denied. On the charges of misconduct the Appellant was removed from service vide Order No.12357-61/AG dated 01/06/2015 against which Departmental Appeal was filed to Secretary Law and the penalty was converted into stoppage of three increments for three years and on Appeal before the Khyber Pakhtunkhwa Service Tribunal, the order was further modified to stoppage of one year increment (copy of the judgment of the Service Tribunal is annexed). He neither rendered unblemished services nor were high-ups satisfied from his duties.

- 3. Denied as drafted. There were charges of misconduct and in this regard proper inquiry was conducted and ultimately the Appellant was removed on 01/06/2015, therefore, excluding the Appellant, other Junior Clerks were promoted.
- 4. Correct to the extent that Appellant filed a time barred Departmental Appeal since the said Appeal was meritless and badly time barred, therefore, remained unreplied. Later on the Appellant filed a baseless and frivolous Service Appeal in the Khyber Pakhtunkhwa Service Tribunal.
- 5. Incorrect against facts and law, hence, denied. The word accepted/allowed is nowhere mentioned in the entire judgment dated 20/09/2019 rendered in Service Appeal No.1316 of 2018 rather the case of the Appellant and other candidates for promotion was referred to answering Respondents for reconsideration.
- 6. Correct to the extent that in compliance to the Judgment dated 20/09/2019 meeting was held on 25/09/2020. It is pertinent to mention here that no specific date regarding the promotion of the Appellant has been given in the minutes dated 25/09/2020. The Participants only recommended Junior Clerks to be promoted to the post of Senior Clerk.
- Correct to the extent that only recommendations were given in the meeting dated 25/09/2020 and no specific time period was fixed for promotion of Junior Clerks to the post of Senior Clerks.
- 8. That the Appellant has already been promoted to the post of Senior Clerk on 10/02/2022 and he is supposed to have no concern with the administrative officers of the answering respondents.
- 9. As per Law & rules, the Appellant was required to perform his duty as Junior Clerk.

10. Correct to the extent that in compliance to the Judgment/Order dated 20/09/2019 the Appellant was promoted to the post of Senior Clerk (BPS-14). Appellant concealed material facts from this Hon'ble Tribunal. The Appellant has never been declared to be promoted on 25/09/2020 rather only recommendations were given in the meeting held on 25/09/2022. Seniority alone is not the sole criteria for promotion, fitness of the Civil Servant is also required to be taken into consideration. The office order dated 10/02/2022 has been issued in accordance with law and rules and it has no retrospective effect.

- 12. Correct to the extent that the Appellant filed a time barred and baseless departmental\_appeal after lapsing of stipulated time period. He was required underthe law ibid to have agitated his grievance, if any, at the relevant time at proper forum, however, the case of Appellant is hopelessly time barred and meritless, furthermore, unlawful demands of the Appellant cannot be fulfilled and he is not legally competent to invoke the jurisdiction of this Hon'ble Tribunal.
- 13. The Appellant has no d cause of action/locus standi to file a baseless and frivolous Service Appeal against the Answering Respondents.

#### ON GROUNDS:-

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- A. Incorrect, against facts & law, hence, denied. The Order dated 10/02/2022 has been passed by the Competent Authority in accordance with law rules and cannot be modified by giving effect from 25/09/2020. Appellant tried to mislead this Hon'ble Tribunal. In fact in the meeting held on 25/09/2020 no specific date was fixed for the promotion of Appellant to the post of Senior Clerk (BPS-14) rather only recommendations were made which were later on implemented by promoting the Appellant vide Order dated 10/02/2022.
- Correct to the extent that the Judgment dated 20/09/2019 has been implemented in letter & spirit. In the said Judgment the answering Respondents were only directed to reconsider the case of Appellant for promotion and no specific date for promotion was fixed by the Hon'ble Tribunal.
- C. Incorrect, against facts & law, hence, denied. The Appellant is neither deprived of promotion nor from the perks & privileges attached to the post of Senior Clerk. Although the Appellant was not entitled for promotion even then he was promoted and fully enjoyed the perks and privileges attached to the post.
- D. Incorrect against facts & law, hence denied. Detailed reply has been given in the above Paras. It is settled principles of law that he who seeks equity must do equity. The Appellant has not come to this Hon'ble Tribunal with clean hands and he concealed material facts.

- Incorrect against facts & law, hence, denied. Appellant never performed his duties to the entire satisfaction of his superior officers. The Hon'ble Tribunal directed the answering Respondents for reconsideration of the cases and in compliance to the judgment dated 20/09/2019, the Appellant has been reconsidered and promoted accordingly. It is important to mention that no directions with respect to antedation of promotion was given in the Judgment, dated 20/09/2019.
- F. Incorrect against facts & law, hence, denied. No decision was taken in the meeting held on 25/09/2020 only recommendations were given by the participants. As per law & rules, the order dated 10/02/2022 could not be given retrospective effect.
- G. Incorrect against facts & law, hence, denied. There is no express or implied bar which could prevent the Government functionary from convening a meeting rather the answering Respondents are legally authorized to convene a subsequent meeting for consideration of the cases for promotion.
- H. Incorrect against facts & law, hence, denied. This Hon'ble Tribunal has got no jurisdiction to adjudicate upon the matter.
- Answering Respondents will also raise more grounds at the time of arguments with 1 the permission of this Hon'ble Tribunal.

It is, therefore, most humbly prayed that the Appeal filed by the Appellant being incorrect, time barred, baseless, frivolous, illegal, without any substance and against the record, may graciously be dismissed with heavy cost.

Any other remedy which this Hon'ble Court deem proper in the circumstances may also graciously be awarded in favour of the Answering **Respondents.** 

Respondent No.1

**Chief Secretary** Govt: of Khyber Pakhtunkhwa, Peshawar.

øndent No.2

Secretary to Govt: of Khyber-Pakhtunkh Law, Parliamentary Affairs & Human Hights Department, Peshawaryuer Pakhtun.......

Respondent No.3 Advocate General hyber Pakhtunkhwa, Peshawar.

# OFFICE OF THE ADVOCATE-GENERAL, KHYBER PAKHTUNKHWA,

<u>PESHAWAR</u>

#### <u>ORDER</u>

Whereas vide Order No. 22218-22/AG, dated 20/12/2014, an Inquiry Officer was appointed to inquire into the allegations made in the charge sheet served upon Mr. Izhar Ahmad, Junior Clerk (B-09) of this office.

And whereas, the Inquiry Officer in his report has found the charges, leveled against the accused official as proved.

And whereas Show Cause Notice was issued to him vide letter No. 8006-09/AG, dated 08/04/2015.

And whereas, opportunity of personal hearing was given to him on 25/04/2015.

Now, therefore, the Competent Authority, after having considered the charges, evidence on record the explanation of the accused official and defence offered by the accused official during personal hearing and exercising his power under Rule-14 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, has been pleased to impose major penalty of "Removal from Service" on Mr. Izhar Ahmad, Junior Clerk (B-9) with immediate effect.

#### ADVOCATE GENERAL KHYBER PAKHTUNKHWA, PESHAWAR

Endst: No.12357-61/AG

dated Peshawar, the  $O \int - O \int /2015$ 

Copy forwarded for information and necessary action to:

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.

2. The Superintendent (Budget and Accounts) of this office.

. Mr. Izhar Ahmad, Junior Clerk of this office.

4. Relevant File.

5.<sup>L.</sup> Personal File.

ADVOCATE GENERAL KHYBER PAKHTUNKHWA, PESHAWAR



Government of Khyber Pakhtunkhwa Law, Parliamentary Affairs and Human Rights Department.

ORDER:

Peshawar dated the 15.09.2015

**No: E & A/LD/2-12/2014:** WHEREAS, Mr Izhar Ahmad, Junior Clerk office of Advocate General Khyber Pakhtunkhwa was proceeded against under Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary) Rules 2011 and was awarded major penalty of removal from service on 01-6-2015. Against the penalty, the accused official preferred a departmental Appeal to the appellate authority. The appellate authority gave opportunity of personal hearing to the accused official on 17-8-2015. **NOW THEREFORE**, the appellate authority, after having considered the charges, evidence on record, hearing the accused official, in exercise of powers conferred under Rule 17 (2) (c) of Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary) Rules 2011, modify the major penalty of removal from service into minor penalty of three (U3) increments for three (03) years on the accused official.

### Secretary to Govt: of Khyber Pakhtunkhwa Law, Parliamentary Affairs & Human Rights Department

# Endst. No.& Date Even. / 2/752 - 55

- Copy is forwarded to the:- (
  - 1. Accountant General Khyber Pakhtunkhwa Peshawar.
  - 2. Advocate General Khyber Pakhtunkhwa, Peshawar for information & necessary action.
  - 3. PS to Secretary Law.
  - 4. Official concerned.

(AKBA Section Officer (General)

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# BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

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# Appeal No. 1311/2015

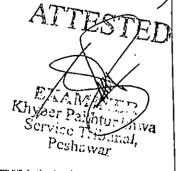
Izhar Ahmad Versus Secretary to Govt. Law, Preliminary Affairs and Human Right Department, Peshawar and one other.

# JUDGMENT

10.04.2017

AHMAD HASSAN, MEMBER:- Appellant with counsel and Mr. Kabirullah Khattak, Assistant Advocate General alongwith Mr. Muhammad Arshad, Admin Officer for respondents present.

2. Mr. Izhar Ahmad, hereinafter referred to as the appellant has preferred the instant service appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against order dated 15.09.2015 vide which departmental appeal of the appellant has been partially accepted and the major penalty of removal from service modified into minor penalty of stoppage of three increments for three years, hence the instant service appeal on 25.11.2015.



3. Brief facts of the case giving rise to the instant appeal are that the appellant was initially appointed as Junior Clerk (BPS-09) on 11.04.2011. That on 17.12.2014, while the appellant was busy in assigned duty, Mr. Khurshid Khan Kundi, Superintendent came to appellant office and snatched the daily cases list from him, which resulted in exchange of hot words between them but very soon the appellant apologized for his behavior. That subsequently disciplinary proceedings were initiated order/ proceedings

10.04.2017

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# BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

Order or other proceedings with signature of Judge or Mag

# Appeal No. 1311/2015

Izhar Ahmad Versus Secretary to Govt. Law, Preliminary Affairs and Human Right Department, Peshawar and one other.

# JUDGMENT

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3. Brief facts of the case giving rise to the instant appeal are that the appellant was initially appointed as Junior Clerk (BPS-09) on 11.04.2011. That on 17.12.2014, while the appellant was busy in assigned duty, Mr. Khurshid Khan Kundi, Superintendent came to appellant office and snatched the daily cases list from him, which resulted in exchange of hot words between them but very soon the appellant apologized for his behavior. That subsequently disciplinary proceedings were initiated

were initiated against the appellant<sub>9</sub> which culminated in imposition of major penalty of removal from service vide order dated 01.06.2015, where-against the appellant preferred departmental appeal which was partially allowed and major penalty of removal from service was converted into minor penalty of stoppage of three increments for three years vide order dated 15.09.2015, hence the instant service appeal on 25.11.2015.

4. Learned counsel for the appellant argued that modified penalty of stoppage of three annual increments for three years was against the law and rules. He further contended that behavior of the appellant did not fall in the ambit of misconduct. The appellant had spotless service record and penalty imposed was quite harsh. It will have adverse effects on his career. He prayed that on acceptance of this appeal the penalty mentioned above may be set aside. Reliance was laid on 2002 PLC(C.S) 1190, Punjab Service Tribunal, 2004, PLC (C.S) 409, Federal Service Tribunal and 2007 PLC 13, Karachi High Court.

5. Learned Assistant Advocate General while opposing the appeal stated that appellant had accepted his guilt at the time of recording statement before the inquiry officer and even apologized for his rude behavior, which amounted to misconduct and unbecoming of an employee and a gentleman. Even the appellant refused in writing to avail the opportunity of cross examining Mr. Khurshid Khan Kundi, superintendent. Taking lenient view minimum punishment was awarded to the appellant, and it was in accordance with the law and rules. Appeal being devoid of any merits be dismissed with cost.

6. Arguments heard and record perused.

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Having gone through the record it transpired that, conduct enhibited 7. · by the appellant was unbecoming of an employee and a gentleman and also falls in the ambit of willful insubordination and breach of service discipline. It also amounts to misconduct, as explained/highlighted in sub Rule (1)(i) and (iii) of Rule-2 of Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) Rules 2011. Admission of guilt in his written statement and tendering apology was quite sufficient to substantiate that charges stood proved against the appellant. He willingly refused to avail the opportunity of cross examining Mr. Khurshid Khan Kundi, Superintendent. However, behavior shown by the Superintendent was also provocative, all happened at the spur of the moment. The Inquiry Officer in his report mentioned that due to hurry the Superintendent pulled the list from the appellant,) as such he cannot be absolved of his behavior and shifting entire responsibility on the appellant. Had Superintendent shown some restraint this incident would have been avoided? Appellant being a new entrant in service and taking lenient view of the situation, we partially accept the appeal and order dated 15.09.2015 is modified from stoppage of three annual increments for three years to that of stoppage of one annual increment for one year alongwith consequential back benefits, if any for which the appellant is otherwise entitled under the rules. Appeal is disposed of in the above terms. Parties are however, left to bear their own cost. File be consigned to the record

Announced. Solf-Almad Hassan 17 Naucher All Amin Khan Kundi

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAT

#### Appeal No. 1316/2018

Date of Institution ... 05.10.2018

Date of Decision ... 20.09.2019

Izhar Ahmad, Junior clerk, S/O Javed Ahmad, presently posted as Junior/Clerk in Additional Advocate General Office, Khyber Pakhtunkhwa Service Tribunal, Peshawar. (Appellant)

## <u>VERSUS</u>

Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and four others. ... (Respondents)

MALIK HAROON IQBAL, Advocate

MR. M. RIAZ KHAN PAINDAKHEL, Assistant Advocate General

MR. M. MAAZ MADNI Advocate

AMIR KHAN CHAMKANI, Barrister

MR. AHMAD HASSAN, MR. MUHAMMAD HAMID MUGHAL

 For respondents no. 1 to 3.
 For respondent no.4
 For respondent no.5
 MEMBER(Executive)

For appellant.

- MEMBER(Judicial)

#### JUDGMENT

<u>AHMAD HASSAN, MEMBER:-</u> Arguments of the learned counsel for the parties heard and record perused.

#### **ARGUMENTS:**

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ervice Tribunal, Peshawar

02. Learned counsel for the appellant argued that he joined the office of respondent no.3 as Junior Clerk on 11.04.2011 and performed duty devotedly. That through letter dated 26.07.2014 option/willingness was sought from the appellant

The spectrum of the post of Senior Clerk. The appellant conveyed

his willingness vide application dated 05.08.2014. In the meanwhile disciplinary proceedings were initiated against him and finally major penalty of removed from service was awarded vide order dated 01.06.2015. Subsequently, upon acceptance of his departmental appeal, the major penalty of removal from service was modified/reduce into stoppage of three annual increments for three years vide order dated 15.09.2015. He submitted arrival report on 19.09.2015. Feeling aggrieved, he filed service appeal no. 1311/15 in this Tribunal which was accepted vide judgment dated 10.04.2017. The penalty was further reduced to stoppage of one increment for one year.

03. That vide order dated 13.07.2015 and 5.05.2017 private respondent no.4 and 5 were promoted as Senior Clerk despite being junior to the appellant in the seniority list of junior clerks, issued by the respondents from time to time. As impugned promotion order was passed without observance all codal formalities thus the same was illegal and unlawful.

04. Learned Assistant Advocate General argued that on the charges of misconduct, the appellant removed from service vide order dated 01.06.2015 but on acceptance of departmental appeal, the penalty was converted into stoppage of three annual increments for three years vide order dated 15.09.2015. He submitted arrival report on 19.09.2015. He also invoked the jurisdiction of this Tribunal by way of filing service appeal, whereby the penalty was further reduced to stoppage of one increment for one year. Moreover, seniority alone was not the sole criteria for promotion, fitness of the civil servant was also required to be taken into

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consideration. He filed departmental appeal on 05.07.2018, which was badly time barred. Promotions were strictly made in accordance with law and rules.

05. Learned counsels for private respondent no. 4 and 5 relied on the arguments advanced by the learned Assistant Advocate General.

# CONCLUSION

06. The appellant was serving as Junior Clerk in the office of respondent no.3 since 11.04.2011. Some posts of Senior Clerks were lying vacant and willingness/option was sought from the eligible employees including the appellant. He tendered option for promotion to the post of Senior Clerk. Thereafter, on the allegations of misconduct departmental enquiry was conducted and major penalty of removal from service was imposed on him vide order dated 01.06.2015. On preferring departmental appeal, the penalty was reduced/ modified into stoppage of three annual increments for three years vide order dated 15.09.2015. He submitted arrival report on 19.09.2015. He also invoked the jurisdiction of this Tribunal by filing service appeal no. 1311/15, which was accepted vide judgment dated 10.04.2017, whereby penalty of three increments was further reduced to stoppage of one annual increment for one year.

07. While the appellant was out of service promotion of private respondent no.4 as Senior Clerk was notified vide order dated 13.07.2015, whereas promotion of private respondent no.5 was made on 05.05.2017. During that period the appellant was in service. The appellant submitted departmental appeal on 05.07.2018. Learned Asst: AG was asked to produce copy of working paper and minutes of the

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DPC meeting in which cases of the aforementioned private respondents were cleared for promotion against the post of Senior Clerk. *However, he expressed his* inability to arrange the said document. On the other hand, learned counsel for the appellant alleged that promotions were made without holding meeting of the DPC and just to extend undue favor to blue eyed employees working in the office of respondent no.3. Again Asst: AG was unable to rebut the plea of learned counsel for the appellant. Perusal of parawise comments submitted by the respondents were also silent, whether the said promotion cases were placed before the DPC or otherwise. Had it been cleared by the above forum, the respondents *could easily use* it in their defense. Attention is drawn to Section-5 of Khyber Pakhtunkhwa Civil Servants Act, 1973 and is reproduced below for ready reference:

# "Appointment.--- Appointment to a civil service of the Province or to a civil post in connection with the affairs of the Province shall be made in the prescribed manner by the Governor or by a person authorized by the Governor in that behalf.

08. It transpired that promotions referred to above were not made in accordance with the procedure laid down Rule-7 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules 1989. Therefore, question of limitation hardly carries any weight. It cannot be used as a shield to cover misdeeds of the respondents. Orders of promotion referred to above issued in violation of rules/laid down criteria were patently illegal and unlawful. In order to ensure substantial justice there is ample justification that the respondents should reconsider the promotions against the posts of Senior Clerk of all the candidates including the appellant by placing it before the DPC for decision.

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09. As a sequel to the above, the appeal is remitted to the respondents to again place the case of promotion of Junior Clerks against the post of Senior Clerks before the DPC including the private respondents and the appellant for consideration. Parties are left to bear their own costs. File be consigned to the record room.

(AHMAD HASSAN) MEMBER

(MUHAMMAD HAMID MUGHAL) MEMBER

<u>ANNOUNCED</u> 20.09.2019 Certified to: re cony ` 'a vice i domui. Peshawar

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# OFFICE OF THE ADVOCATE-GENERAL, KHYBER PAKHTUNKHWA, PESHAWAR No. No. Address: High Court Building, Peshawar. Exchange No 9213833 (202) Fax No. OFFICE OF THE ADVOCATE-GENERAL, KHYBER PAKHTUNKHWA, PESHAWAR No. Address: High Court Building, Peshawar. Exchange No 9213833 (202) Fax No. OFFICE OF THE ADVOCATE-GENERAL, KHYBER PAKHTUNKHWA, PESHAWAR No. Address: High Court Building, Peshawar. Exchange No 9213833 (202) Fax No. OPI-9210270

# OFFICE ORDER

As recommended by the Departmental Promotion Committee (DPC), held on 04/02/2022, the Advocate General, Khyber Pakhtunkhwa is pleased to promote the following <u>Junior Clerks (BPS-11) to the posts of Senior Clerks</u> (<u>BPS-14</u>) on regular basis with immediate effect against the vacant posts in the offices as mentioned against each.

S.No.	Name	Place of Posting	
1	Mr. Izhar Ahmad	Khyber Pakhtunkhwa Services Tribunal, Peshawar	
2	Mr. Muhammad Tufail	Main Office, Peshawar	
3	Mr. Muhammad Hamed	Main Office, Peshawar	
4	Mian Muhammad Shoaib	Main Office, Peshawar	
5	Mr. Hafeez-ur-Rehman	Additional AG Office, Abbottabad	
6	Mr. Abdul Bais	Additional AG Office, D.I.Khan	

The above promotes shall remain under probation for a period of one (01) year in terms of Section 6(2) of the Khyber Pakhtunkhwa Civil Servants Act, 1973, read with Rule 15(1) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989.

#### Sd/-ADVOCATE GENERAL, KHYBER PAKHTUNKHWA, PESHAWAR.

# Endst. No. & date even

Copy to the:

- 1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 2. District Accounts Officer, Abbottabad and D.I.Khan.
- 3. Budget & Accounts Officer of this office.
- 4. PS to the Ld. Advocate General, Khyber Pakhtunkhwa.
- 5. Officials concerned.
- 6. Personal Files.
- 7. Office Order file.

(AYAZ KHAN) ADMINISTRATIVE OFFICER