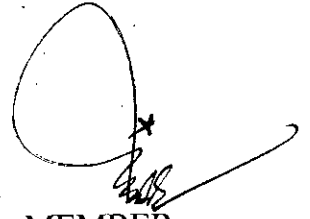


02.07.2020

Counsel for the petitioner and Addl. AG for official respondents and counsel for private respondents No. 3 present. Learned counsel for the petitioner seeks adjournment. Adjourned.

Adjourned to 11.08.2020 before S.B.



MEMBER

11.08.2020

Counsel for the petitioner, Addl. AG alongwith Fakhre Alam, Law Officer and Counsel for the respondent present:

Learned counsel for the respondent has produced copies of certain orders/judgments of the Apex Court passed from time to time in connection with litigation between the parties. Copies of certain notifications have also been provided. The entire record is made part of the brief.

Learned counsel for the petitioner states that the petitioner is aggrieved of the contents of minutes of Departmental Promotion/Recruitment Committee No. 1 dated 02.09.2019, wherein, it has been noted that Mr. Nasrullah (respondent No. 3 in service appeal No. 1324/17) had experience of 657 days as acting Secretary of the Assembly.


The part of minutes regarding qualification/experience of Mr. Nasrullah Khan, forming part of the consideration by DPC in his appointment as Secretary on 03.09.2019, can be conveniently questioned through appropriate legal proceedings by the petitioner. The grievance regarding afore-noted experience of Mr. Nasrullah, may not be an issue in the execution of judgment of this Tribunal dated 10.12.2018 any further. The proceedings in hand are, therefore, consigned to the record. The petitioner may, however, apply for restoration of the proceedings in case any of his grievance regarding non-implementation of the judgment is considered to have been unaddressed, but only in accordance with law.



Chairman

26.02.2020

Nemo for petitioner. Mr. Kabirullah Khattak; Addl. AG for the respondents present. Fresh notice be issued to petitioner. To come up for further proceedings on 07.04.2020 before S.B.


(Hussain Shah)
Member

07.04.2020

Due to public holiday on account of COVID-19, the case is adjourned to 30.06.2020 for the same. To come up for the same as before S.B.



Reader

30.06.2020

Counsel for petitioner present.

Mr. Kabir Ullah Khattak learned Additional Advocate General present. Learned counsel for private respondent Nasrullah Khan present.

Both the counsel and learned AAG advanced arguments in respect of the present execution proceedings. During arguments, it was brought into the knowledge of court that another fresh appeal has been filed by the petitioner, which is fixed before S.B on 02.07.2020, therefore, the present execution proceedings stand adjourned to the same date for arguments and further proceedings on the date already fixed before S.B.


Member (J)

EP 22/19

25.09.2019

Counsel for the petitioner and Addl. AG alongwith Alamzaib, Junior Clerk for the respondents present.

Learned AAG states that the matter by way of C.P No. 120-P/2019 is fixed for hearing before the Apex Court on 26.09.2019. Learned counsel for the petitioner confirmed the stated fact and contends that in violation of the judgment of this Tribunal as well as directions by the Apex Court a notification dated 03.09.2019 has been issued by the respondent whereby Mr. Nasrullah has been promoted as Secretary, Provincial Assembly Secretariat of Khyber Pakhtunkhwa. He, therefore, requests for an order for production of minutes of the DPC meeting held on 21.08.2019.

As the matter is posted for hearing before the Apex Court on 26.09.2019, it is considered appropriate to adjourn the proceedings in order to avail the outcome.

Adjourned to 02.10.2019 before S.B.


Chairman

02.10.2019

Counsel for the petitioner present. Addl: AG alongwith Mr. Alamzeb, Junior Clerk for respondents present.

The representative of the respondents states that an application for issuance of certified copy pertaining to order/judgment dated 26.09.2019 by the apex court has been moved, however, the requisite copy is yet to be issued. Learned counsel for the petitioner is also not in possession of copy of order. Instant proceedings are therefore, adjourned to 30.10.2019 before S.B.


Chairman

30.10.2019

Counsel for the petitioner and Addl. AG alongwith Fakhr-e-Alam, Law Officer for the respondents present.

Learned AAG has provided a copy of order dated 26.09.2019 passed by the Apex Court and states that the DPC has been held on 02.09.2019. In pursuance to the decision of DPC the respondent No. 3 in Appeal No. 1324/2017 (Nasrullah Khan) has been appointed as Secretary Provincial Assembly Khyber Pakhtunkhwa on 03.09.2019. In view of the development the execution in hand does not warrant any further proceedings.

Learned counsel for petitioner on the other hand, contends that the directions of August Supreme Court of Pakistan, as contained in the order dated 31.07.2019, have not been complied with in respect of promotion of Secretary Provincial Assembly Khyber Pakhtunkhwa, therefore, instant proceedings require to be continued. Further contended that in view of para-3 of the order dated 26.09.2019, an application for initiation of contempt of court proceedings has already been submitted before the Apex Court.

In the circumstances of the case, it is considered appropriate at this stage to avail the outcome of proceedings pending before the Apex Court before making any order regarding consigning of instant proceedings or otherwise.

The matter in hand is, therefore, adjourned to 15.01.2020 before S.B.


Chairman

15.01.2020

Nemo for petitioner. Addl. AG alongwith Alamzaib, Junior Clerk for the respondents present.

Adjourned for further proceedings to 26.02.2020 due to general strike of the Bar.


Chairman

01.08.2019

Counsel for the petitioner and Mr. Usman Ghani, District Attorney for official respondents and counsel for private respondent no.3 present. Learned counsel for the petitioner apprised that yesterday the august Supreme Court of Pakistan during the course of hearing gave some fresh directions though order, which is yet to be reduced in writing by the learned bench. He committed to provide the same in due course of time.

Adjourned to 21.08.2019 before S.B.


(Ahmad Hassan)
Member


21.08.2019

Counsel for the petitioner and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Alamzeb, Junior Clerk for the respondents present. Learned counsel for the petitioner furnished order dated 31.07.2019 passed by the august Supreme Court of Pakistan, which is placed on record. Learned Additional AG requested for adjournment. Adjourned to 29.08.2019 for implementation report before S.B.


(Muhammad Amin Khan Kundi)
Member

29.08.2019

Counsel for the petitioner present. Addl: AG alongwith M. Arif, Supdt for respondents present. Due to paucity of time the case is adjourned to 25.09.2019 for further proceedings before S.B.


(Ahmad Hassan)
Member

EP 22/19

25.07.2019

Counsel for the petitioner, Mr. Usman Ghani District Attorney alongwith Fakhre Alam, Lawa Officer for the official respondents and counsel for private respondent No. 3 present.

Learned counsel for respondent No. 3 has produced copy of order dated 02.07.2019 passed in C.P No. 354 of 2019 and C.P No. 120-P/2019 by the Apex Court. The same is placed on record. To come up for further proceedings on 01.08.2019 before S.B.


Chairman

01.08.2019

Counsel for the petitioner and Mr. Usman Ghani, District Attorney for official respondents and counsel for private respondent no.3 present. Learned counsel for the petitioner apprised that yesterday the august Supreme Court of Pakistan gave some fresh directions ^{through} order which is yet to be reduced in writing by the learned bench. He committed to provide the ^{same} date in due course of time.

*during the course
of hearing*

Adjourned to 21.08.2019 before S.B.

(Ahmad Hassan)
Member

19.06.2019

Counsel for the petitioner, Mr. Kabirullah Khattak, Additional AG alongwith Mr. Muhammad Arshed Khan, Public Information Officer on behalf of official respondents and Mr. Ansarullah Khan, learned counsel for private respondent No. 3 present.


The case was fixed for implementation of the judgment of this Tribunal. However, learned counsel for private respondent No. 3 stated at the bar that departmental proceeding has been initiated against the petitioner on the charge mentioned in the charge sheet, statement of allegation dated 16.05.2019. It was further contended that the petitioner has also been suspended by the competent authority vide order dated 17.05.2019. It was further contended that the inquiry proceeding is pending against the petitioner, however, learned counsel for private respondent No. 3 admitted that the petitioner has filed Writ Petition against the impugned notification/charge sheet, statement of allegation dated 16.05.2019 and the worthy High Court vide order dated 21.05.2019 has suspended said notification/charge sheet, statement of allegation dated 16.05.2019. It was further contended that since the inquiry proceeding is pending against the petitioner therefore, the respondent-department is handicap under the law to constitute DPC for promotion of the petitioner.

The learned Additional Advocate General present on behalf of official respondents also endorsed the arguments of learned counsel for private respondent No. 3.

On the other hand, learned counsel for the petitioner Mr. Ali Azim Khan Afridi stated that since the inquiry proceeding has been initiated on the basis of charge sheet, statement of allegation dated 16.05.2019 and the said charge sheet, statement of allegation/notification dated 16.05.2019 has been suspended by the worthy High Court therefore, when the charge sheet, statement of allegation has been suspended then the inquiry proceeding cannot be deemed pending against the petitioner. It was further stated that as the charge sheet has ceased to have effect due to suspension order passed by the worthy High Court therefore, the respondent-department is bound to implement the judgment of this Tribunal.

Record reveals that the departmental proceeding has been initiated against the petitioner and the petitioner was suspended vide order dated 17.05.2019 on the basis of said charge sheet, statement of allegation dated 16.05.2019. Though it is stated on behalf of the respondent that inquiry is pending

against the petitioner but admittedly, the charge sheet, statement of allegation dated 16.05.2019 has been suspended by the worthy High Court vide order dated 21.05.2019 therefore, the charge sheet, statement of allegation dated 16.05.2019 is no more in field for the time being. As such the inquiry proceeding on the basis of said charge sheet cannot be deemed pending against the petitioner at this stage. Therefore, in my view, the respondent-department is bound to implement the judgment of this Tribunal. As such, respondent-department is directed to furnish implementation report on 25.07.2019 positively before S.B.


(Muhammad Amin Khan Kundi)
Member

EP 22/19

02.05.2019

Counsel for the petitioner and Mr. Usman Ghani, District Attorney alongwith Arshad Khan, Public Information Officer for the official respondents and counsel for private respondent No. 3 present.

A reply under heading "implementation report" has been submitted by respondent No. 1/Speaker Provincial Assembly wherein it is noted that the appointment of petitioner has been assailed through a Writ Petition before the Honourable Peshawar High Court and comments have been called from the Speaker and Secretary Provincial Assembly. It is further noted that the initial appointment and validity of academic qualification of the petitioner has been questioned in the Writ Petition. For the aforesaid reason, further DPC was not constituted for promotion of petitioner to BPS-21. A request for dismissal of implementation/execution petition has been made in the reply.

A copy of Writ Petition No. 1847-P/2019, as well as order of the court dated 16.04.2019, is attached with the reply/implementation report. The order of the court nowhere requires any restraint in respect of judgment of this Tribunal under implementation. Learned counsel for the respondents also stated at the bar the CPLA has been preferred before the Apex Court against the judgment under implementation, however, he is not in possession of any order of restraint passed in the said proceedings.

In view of the above facts it appears that the respondent has not made any attempt to undertake the execution of judgment of the Tribunal so far while the same has been passed on 10.12.2018. The directions contained in order dated 01.04.2019 are, therefore, repeated by disallowing the request made in the implementation report submitted today. The requisite implementation report shall positively be submitted on next date of hearing failing which the law will take its course.




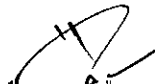
Adjourned to 19.06.2019 before S.B.



Chairman

Form- A
FORM OF ORDER SHEET

Court of _____
Execution Petition No. 22/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	17.1.2019	<p>The execution petition of Mr. Kifayat Ullah Afridi submitted by Ali Azim Afridi Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	18-01-2019	<p>This execution petition be put up before S. Bench on <u>31-01-2019</u></p> <p style="text-align: right;"> CHAIRMAN</p>
31.01.2019		<p>Counsel for the petitioner present. Notice be issued to the respondent for implementation report for 15.02.2019 before S.B.</p> <p style="text-align: right;"> (MUHAMMAD AMIN KHAN KUNDI) MEMBER</p>
	15.02.2019	<p>Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Learned counsel for the appellant submitted application ^{for} necessary-cum-coercive measures for the implementation. Notice of the present said application be issued to the respondent for 08.03.2019 before S.B. Adjourn. To come up for reply/arguments on the said application and implementation report on the date fixed before S.B.</p> <p style="text-align: right;"> Member</p>

3.2019

Counsel for the petitioner present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Alamzeb, Junior Clerk for the respondents present and submitted reply. Learned Additional AG stated that the Speaker of Khyber Pakhtunkhwa Provincial Assembly is outside the country and as per replication the Speaker of Khyber Pakhtunkhwa Provincial Assembly will come soon therefore, requested for adjournment.

Learned counsel for the petitioner stated that the ground taken by the respondent is just for delaying tactic.

To come up for implementation report on 01.04.2019 before S.B.


(Muhammad Amin Khan Kundi)
Member

01.04.2019

Counsel for the petitioner present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Arshad, PIO and Alamzeb, Junior Clerk for respondents present.

Learned Addl: AG argued that as the Provincial Assembly was in session and Speaker had proceeded abroad on official visit, therefore, implementation report could not be submitted. His attention was invited to order sheet dated 15.02.2019 and 08.03.2019 with direction to submit implementation report on the next date of hearing, positively. Adjourned to 02.05.2019 for further proceedings before S.B.


(AHMAD HASSAN)
MEMBER

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL**

Execution Petition No. 22 /2019

In Re:

Service Appeal No. 1324/2017

**Khyber Pakhtukhwa
Service Tribunal**

Diary No. 93

Dated 17-1-2019

Kifayatullah Khan Afridi Presently Serving as Senior
Additional Secretary, Provincial Assembly Khyber
Pakhtunkhwa, Peshawar

....Petitioner

VERSUS

The Speaker Provincial Assembly Khyber Pakhtunkhwa,
Peshawar

....Respondent

**APPLICATION FOR EXECUTION OF THE JUDGMENT DATED
10.12.2018**

Respectfully Sheweth,

1. That the above-titled service appeal No. 1324 of 2017 was preferred before the Hon'ble Tribunal which after passing through the course of hearing was ultimately decided on 10.12.2018 in favour of the present petitioner. (**Copy of the Judgment dated 10.12.2018 is annexed as Annexure "A"**).
2. That the Hon'ble Tribunal vide its judgment had issued certain directions, in the similar terms, *"As a sequel to above the appeal is accepted, the impugned order along-*

with successive order of promotion of respondent No. 3 to the post of Secretary Provincial Assembly, Khyber Pakhtunkhwa passed during the pendency of the present service appeal is set aside; consequently, notification No. PA/KP/Admin/2018/2242 dated 30.08.2018 assigning acting charge of the post of Secretary Provincial Assembly to the appellant is restored"¹.

3. In **Zahooruddin Sheikh's Case**², "it was held that "Once a judgment is issued in favour of a civil servant, his terms and conditions as infringed by an order of the authority in question stands addressed to the extent as ordained in the judgment concerned. There is, therefore, no denying the fact that if the judgment is not implemented and leave to appeal is either not filed or declined, there is no escape route for the Department but to implement the judgment in letter and spirit", which appears to be otherwise in the case at hand.
4. That the respondent No. 1 being the competent authority is duty bound to implement the judgment of the Hon'ble Tribunal in its letter and spirit but the same is done away with; leaving the present petitioner nowhere but high and dry and that too aloof.
5. That the Hon'ble Tribunal is empowered by virtue of Sub-Section 2(d) of Section 7 of the KP Services Tribunal Act 1974 read with rule 27 of the KP Services Tribunal Rules, 1974; so as to execute its judgment dated 10.12.2018 passed in favour of the present petitioner and as such against the respondents.

¹ Para No. 15 of the Judgment dated 10.12.2018

² 2007 PLC (C.S) 959

6. In **Ahmed Nawaz Khan's Case**³. It was held that, "The proceedings on application for execution or implementation of the Tribunal's orders are undoubtedly one of the steps in the proceedings of the main appeal. Therefore what follows is that the Tribunal has got the same powers as are vested in the Civil Court under the Code of Civil Procedure, not only for the purpose of deciding an appeal but also for consequential purpose of deciding the petition for implementation of its order; which exercise is of essence and that too in a jiffy.

It is therefore humbly prayed that the respondent may graciously be proceeded against for non-compliance of the judgment dated 10.12.2018.

Any such order be passed which the Hon'ble Tribunal deems fit and appropriate during the course of proceedings; for securing the ends of justice.


Petitioner

Through


Ali Azim Afridi
Advocate, Peshawar

Contact # 0333-9555000

³ 1989 PLC (C.S) 398; 2017 PLC (C.S) 1102

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL**

Execution Petition No. /2019

In Re:

Service Appeal No. 1324/2017

Kifayatullah Khan Afridi Presently Serving as Senior Additional Secretary, Provincial Assembly Khyber Pakhtunkhwa, Peshawar

....Petitioner

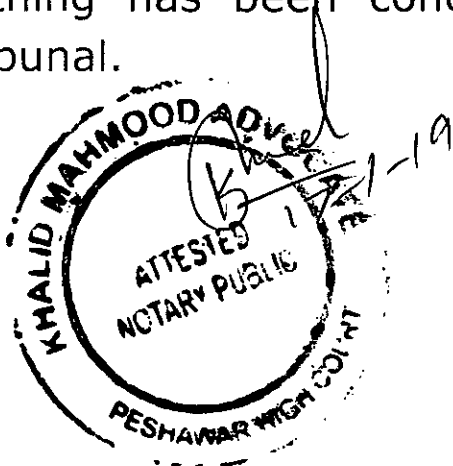
VERSUS

The Speaker Provincial Assembly Khyber Pakhtunkhwa, Peshawar

....Respondent

AFFIDAVIT

I **Kifayatullah Khan Afridi Senior Additional Secretary Provincial Assembly Khyber Pakhtunkhwa, Peshawar** do hereby solemnly affirm that the contents of the execution petition are true and correct to the best of my knowledge, belief, ability and nothing has been concealed therein from the Hon'ble Tribunal.




DEPONENT

2



(5)

Amir AM

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 1324/2017

Date of Institution ... 28.11.2017
Date of Decision ... 10.12.2018



Kifayatullah Khan, Afridi presently serving as Senior Additional Secretary,
Provincial Assembly Khyber Pakhtunkhwa, Peshawar. ... (Appellant)

VERSUS

1. The Speaker Provincial Assembly of Khyber Pakhtunkhwa Peshawar.
2. The Departmental Promotion Committee through its Secretary Provincial Assembly of Khyber Pakhtunkhwa, Peshawar.
3. Mr. Nasrullah Khan, presently serving as Secretary Provincial Assembly Khyber Pakhtunkhwa, Peshawar. ... (Respondents)

MR. ALI AZIM AFRIDI,
Advocate

--- For appellant.

MR. ZIA ULLAH,
Deputy District Attorney

--- For official respondents.

MR. MUHAMMAD ASIF YOUSAFZAI,
Advocate

--- For respondent no.3

MR. AHMAD HASSAN,

--- MEMBER(Executive)

MR. MUHAMMAD HAMID MUGHAL

--- MEMBER(Judicial)

MR. MUHAMMAD AMIN KHAN KUNDI

--- MEMBER(Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER.- Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The appellant has impugned the decision of DPC dated 11.08.2017 and the notification dated 15.08.2017, whereby respondent no.3 despite being junior to the appellant was promoted as Secretary Provincial Assembly Khyber, Pakhtunkhwa.

ATTESTED

Khyber Pakhtunkhwa Service Tribunal
Peshawar

Feeling aggrieved, he filed departmental appeal on 30.08.2017 which remained unanswered, hence, the instant service appeal on 28.11.2017.

ARGUMENTS.

3. Learned counsel for the appellant argued that he was serving as Senior Additional Secretary (BPS-20) and on the directions of the respondents also shouldered responsibilities of Secretary Provincial Assembly from time to time. Upon retirement of Mr. Amanullah Khan the then Secretary Provincial Assembly on 14.08.2017, a slot became available for promotion. Working paper was prepared and placed before the DPC to consider one of the officer out of the panel for promotion to the post of Secretary Provincial Assembly. He further argued that he was the senior most officer in the panel and was fully eligible for promotion. According to notification dated 25.9.2007 the post of Secretary (BPS-21) was required filled in by promotion on the basis of seniority-cum-fitness from amongst the Sr. Addl: Secretary and Addl: Secretary with three years service or 22 years service in 17 and above. Mr. Nasurllah (respondent no.3) though junior to him was promoted to the post of Secretary in the meeting of the DPC held on 11.08.2017 and notified on 15.08.2017. Justification given for supersession of the appellant vividly exhibited malafide, favoritism, nepotism and undue favour extended to the handpicked officer by the respondents. Moreover, in service appeal no. 952/2014 titled "*Ghulam Sarwar Additional Secretary Provincial Assembly-vs- The Speaker Provincial Assembly Khyber Pakhtunkhwa and others*" decided on 14.09.2017, notification dated 15.08.2017 through which promotion of respondent no.3 as Secretary Provincial Assembly during the pendency of the above appeal was also set aside.

ATTESTED


EXAMINER

Resultantly, in order to implement the aforementioned judgment notification dated 15.08.2017 was withdrawn by the respondents on 07.09.2018.

4. Learned counsel for the appellant further contended that the respondents had audacity/temerity to trample court orders under their feet by again convening meeting of the DPC on 25.09.2018 and promoting Mr. Nasrullah Khan to the post of Secretary (BPS-21) bypassing the appellant without any solid justification/reasoning and notified promotion vide notification dated 25.09.2018. Reasons recorded by the DPC for supersession of the appellant were against the invogue rules and deliberate attempt on the in part to deprive him of right of promotion to next higher scale. Findings were also in line with the criteria laid down in the service rules for promotion. It may not be out of place to mention that the case of promotion of respondent no.3 was still subjudice in this Tribunal and respondents without waiting for the outcome/decision of the said appeal notified his promotion. Reliance was placed on case law reported as 2010 SCMR 1886, 1996 SCMR 218, 1999 SCMR 1605, 2005 SCMR 695, PLD 2004 (S.C)65, 2007 PLC(C.S) 1246, 2002 SCMR 1056 and 1996 SCMR 1185.

5. On the other hand learned counsel for private respondent no.3, while controverting the arguments of learned counsel for the appellant raised some preliminary objections on the maintainability of the present service appeal. He urged that no order for constitution of the present bench passed by the Chairman to hear this service appeal was available on case file. That in pursuance of judgment of this Tribunal dated 14.09.2017 promotion order of respondent no.3 was withdrawn vide notification dated 07.09.2018. Subsequently, on the recommendations of DPC, he was again promoted to the post of Secretary (BPS-21) vide notification dated 25.09.2018 against which departmental appeal filed by the appellant was pending

REGISTERED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

before the competent authority for decision. In these circumstances the present appeal had become infructuous and was also hit by Rule-23 of the Khyber Pakhtunkhwa Service Tribunal Rules 1974. In the light of proviso (b)(1) of Section-4 of Khyber Pakhtunkhwa Service Tribunal Act 1974, this Tribunal lacks jurisdiction to adjudicate on issues of fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher post or grade. He further contended that the appelland and private respondent no.3 were considered by the DPC in its meeting held on 25.09.2018 in which the former was not found fit for promotion to the post of Secretary (BPS-21). Reliance was placed on case law reported as PLD 2008 (SC)769, PLD 2008 (SC)395, 2014 PLC (C.S) 982 and 2015 PLC (C.S)215.

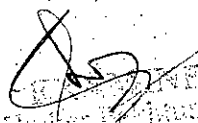
6. Learned Deputy District Attorney for official respondents concurred with the arguments advanced by the learned counsel for private respondent no.3.

CONCLUSION

7. The bone of contention in the present appeal is promotion of private respondent no.3 (Mr. Nasrullah Khan) to the post of Secretary Provincial Assembly (BPS-21), who was otherwise junior to the appelland but cleared/ recommended by the DPC in its meeting held on 11.08.2017 and notified on 15.08.2017. On perusal of minutes of the said meeting, it transpired that the appelland was ignored on flimsy, whimsical and nonsensical grounds and in utter disregard to the criteria for promotion laid down in Service Rules of the Provincial Assembly notified on 25.09.2007 and for ready reference is reproduced below:-

"By promotion on the basis of seniority cum fitness amongst the Senior Additional Secretary and Additional Secretaries with three years service as such or 22 years service in BPS-17 and above"

ATTESTED


CHIEF CLERK
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

8. A plain reading of the said rule depicts that seniority cum fitness was the sole criteria/ principle for promotion to the post of Secretary Provincial Assembly (BPS-21). The appellant was senior most Additional Secretary fully eligible for promotion. Perusal of the minutes of the DPC revealed that during the course of consideration nothing adverse was found against the appellant. Reasons given by the DPC for supersession of the appellant were figment of imagination of the members and contrary to law and rules. Though promotion was not a vested right of the appellant, but meaningful consideration in accordance with law/rules was his vested right. Subsequently, as per judgment of this Tribunal dated 14.09.2017 promotion order of respondent no.3 to the post of Secretary made during the pendency of the said appeal was also set aside. In pursuance of the said orders promotion order of respondent no.3 was withdrawn on 07.09.2018.

9. Subsequently, on the recommendations of Departmental Promotion Committee, Mr. Nasrullah Khan (respondent no.3) was again promoted to the post of Secretary (BPS-21) vide notification dated 25.09.2017 against which departmental appeal of the appellant before the competent authority was still pending. Again the appellant became a victim of favoritism, nepotism and unholy alliance of DPC to accommodate their blue eyed chap by hook or crook. It was a deliberate attempt on the part of the respondents to frustrate the efforts of the appellant for his due right of promotion.

10. As regards objection of the learned counsel for respondent no.3 regarding specific order for constitution of larger bench was concerned, as per laid down procedure different cases are assigned to the concerned bench by the Registrar of this Tribunal after getting approval from the Chairman Service Tribunal. Now turning to the issue of maintainability of the present appeal, it was exhaustively

APPROVED

K. Ghulam Nabi
Secretary
Service Tribunal
Peshawar

argued by both the parties and vide order dated 11.10.2018, this Tribunal held that the present appeal was maintainable for regular hearing. Crux of the order was that appeal of the appellant against impugned order dated 15.08.2017 and for promotion as Secretary Provincial Assembly, Khyber Pakhtunkhwa was still subjudice in this Tribunal and respondents without waiting for decision promoted respondent no.3 to the post of Secretary, hence, their action was against the law/rules. View/stance of this Tribunal is affirmed by the case law reported as 2005 CLC 689 (AJ&K) in which the court held that:-

"Rules of procedure were meant for advancement of justice and parties could not be non-suited on technicalities when their valuable rights were subjudice before the court"

11. Attention is also invited to Para-V of the Khyber Pakhtunkhwa Civil Servant Promotion Policy pertaining to deferment of promotion. Para(a)(iii) of above para is worth perusal. It says that:-

"The PER dossier is incomplete or any other documents/information required by the PSB/DPC for determining his suitability for promotion is not available for reasons beyond his control."

12. Deficiencies in A.C.R dossier pointed out above were on the one hand beyond the control of the appellant and on other hand spoke of malice, bias, prejudice and jaundiced eye view taken by the respondents. Strictly going by the rules as only one post was available and appellant was at sr. no.1 of the panel, so the saner course was defer the promotion case.

13. We are afraid that assertions of the learned counsel for private respondent no.3 that under Section-4(b)(i) of Khyber Pakhtunkhwa Service Tribunal Act, 1974 the question of fitness of a civil servant is outside the pale of jurisdiction of this Tribunal but directions of superior courts in PLD 2008 (SC) 769, PLD 2008 (SC) 395, 2014 PLC (C.S) 982 and 2015 PLC (C.S) 215 are not conclusive and against

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Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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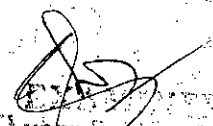
the consistent views expressed by the superior courts in numerous judgments relied upon by the learned counsel for the appellant. Similarly in PLC (C.S) 1161 (b) and 1999 SCMR 1605, issue of fitness and promotion has also been settled by the apex court in 2005 SCMR 695, PLD 2004 65, 2002 SCMR 1056, 1996 SCMR 1185. In 2002 SCMR (S.C) 1056, the august Supreme Court held that:-

"Where a right to consider the civil servant has been claimed on the ground that he has been bypassed in violation of the promotion policy, the Service Tribunal can examine the question of fitness of civil servant".

"Concept of absolute discretion does not exist in law as it was wholly incompatible with the guarantee provided by Article-4 of the Constitution of Pakistan, 1973. "Absolute discretion" was a ruthless master and unless it was structured, it was likely to be abused. Such a provision would be ex-facie discriminatory". (2007 PLC (C.S) 1246)

14. Before parting with the judgment, apprehensions are lurking in our mind that adverse findings of this Tribunal may pique the ego of respondents and inline with their tradition possibility of again violating the court/tribunal orders cannot be ruled out. Learned counsel for the appellant also brought to the notice of this Tribunal cases of illegal appointment of Special Secretary and Director (Automation & IT) Provincial Assembly were struck down by the Peshawar High Court, Peshawar vide judgment dated 13.11.2018 in writ petition no. 2512/2018 & 13.11.2018 in writ petition no. 3101-P/2018. By now it has been established beyond any shadow of doubt that the former and the present Speaker etc. have one point agenda to promote cronyism, nepotism and favoritism at the cost of merit, transparency, fairness, equality and justice. It amounts to misuse of official authority and is open to cognizance/ judicial scrutiny by the quarters concerned. In order to sensitize the concerned relevant excerpt of PLD 2014 SC 47 is reproduced below:-

ATTESTED



"It is now a well-settled principle of law that all public functionaries must exercise public authority, especially while dealing with the public property, public funds or assets in a fair, just, transparent and reasonable manner, untainted by malafide without discrimination and in accordance with law, keeping in view the constitutional rights of the Citizens"

15. As a sequel to above the appeal is accepted, the impugned order alongwith successive order of promotion of respondent no.3 to the post of Secretary Provincial Assembly, Khyber Pakhtunkhwa passed during the pendency of the present service appeal is set aside. Consequently, notification no. PA/KP/Admin/2018/2242 dated 30.08.2018 assigning acting charge of the post of Secretary Provincial Assembly to the appellant is restored. Parties are left to bear their own costs. File be consigned to the record room.

Normal

SD/-
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

SD/-
(MUHAMMAD HAMID MUGHAL)
MEMBER

SD/-
(AHMAD HASSAN)
MEMBER

ANNOUNCED
10.12.2018

Certified to be true copy
MEMBER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 31-12-18
Number of Words 3200
Copying Fee 18-00
Urgent 2-00
Total 20-00
Name of Copy [Signature]
Date of Completion of Copy 31-12-18
Date of Delivery of Copy 31-12-18

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL**

Execution Petition No. /2019

In Re:

Service Appeal No. 1324/2017

Kifayatullah Khan Afridi Presently Serving as Senior
Additional Secretary, Provincial Assembly Khyber
Pakhtunkhwa, Peshawar

....Petitioner

VERSUS

The Speaker Provincial Assembly Khyber Pakhtunkhwa,
Peshawar

....Respondent

**APPLICATION SEEKING NECESSARY-CUM-COERCIVE
MEASURES**

Respectfully Sheweth,

1. That the above-titled service appeal No. 1324 of 2017 was preferred before the Hon'ble Tribunal which after passing through the course of hearing was ultimately decided on 10.12.2018 in favour of the present petitioner.
2. That the Hon'ble Tribunal vide its judgment had issued certain directions, in the similar terms, "*As a sequel to above the appeal is accepted, the impugned order along-with successive order of promotion of respondent No. 3 to the post of Secretary Provincial Assembly, Khyber*

Pakhtunkhwa passed during the pendency of the present service appeal is set aside; consequently, notification No. PA/KP/Admin/2018/2242 dated 30.08.2018 assigning acting charge of the post of Secretary Provincial Assembly to the appellant is restored"¹.

3. That the respondent No. 1 being the competent authority is duty bound to implement the judgment of the Hon'ble Tribunal in its letter and spirit but the same is done away with for oblique reasons.
4. That the Hon'ble Tribunal is empowered by virtue of Sub-Section 2(d) of Section 7 of the KP Services Tribunal Act 1974 read with rule 27 of the KP Services Tribunal Rules, 1974; so as to execute its judgment dated 10.12.2018 passed in favour of the present petitioner and as such against the respondents.

It is therefore humbly prayed that warrant of arrest may please be issued against the respondent or in alternative his official vehicles may please be attached for securing the ends of justice.


Petitioner

Through

Ali Azim Afridi

Advocate, Peshawar

Contact # 0333-9555000



15.02.19

¹ Para No. 15 of the Judgment dated 10.12.2018

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 22/2019
In
S.A No. 1324-/2017

Kifayat Ullah Khan Afridi

VERSUS

Speaker Provincial Assembly KPK

=====

REPLY TO APPLICATION DATED 17-01-2019

RESPECTFULLY SHEWETH,

1. Needs no reply.
2. Pertains to record.
3. Denied.
4. In respect of para 4, it is humbly requested that the Hon'ble Speaker, Khyber Pakhtunkhwa Assembly has proceeded abroad and would return on 08-03-2019 only to proceed once again on 10-03-2019 to United Kingdom.

The Hon'ble Speaker is expected to return on 20th March 2019, and the matter would be placed before him.

5. Pertains to the law.
6. Denied, as replied in para 4 above.

In view of the above, it is humbly requested that the case may kindly be adjourned.

Respondent No. 1,

Through,

[Signature]
83
Assistant Secretary (A)
Khyber Pakhtunkhwa
Assembly

Traveler

Passenger Name:
GHANI, MUSHTAQAHMEDMR

e-Ticket Number:
1573627908752 - 753

Reservation Number:
9T4X9Q

Ticket Issue Date:
March 01, 2019

Agency Details

Agency Information:
MALIK GROUP OF TRAVELS
Tf-53.54, Deans Trade Center, Peshawa
Peshawar, 000000
Pakistan

Agency Phone:
MALIK GROUP OF TRAVELS ASGHAR

Flight - Qatar Airways (Q.C.S.C) (QR) - 633 - March 10, 2019

Confirmation Number:
JPXSY5

Status:
Confirmed

Fare Basis:
ILR4R1RW

Depart:
Islamabad International (ISB)
Islamabad
3:05 AM

Arrive:
Hamad International Airport (DOH)
Doha
5:20 AM

Class Of Service:
Business

Not Valid Before:
March 10, 2019

Not Valid After:
March 10, 2019

Baggage Allowance:

40 Kilograms

Bag 1 - CHGS MAY APPLY IF BAGS EXCEED TTL WT ALLOWANCE

Bag 2 - CHGS MAY APPLY IF BAGS EXCEED TTL WT ALLOWANCE

Applies to: ISB - BHX

Flight - Qatar Airways (Q.C.S.C) (QR) - 33 - March 10, 2019

Confirmation Number:
JPXSY5

Status:
Confirmed

Fare Basis:
ILR4R1RW

Depart:
Hamad International Airport (DOH)
Doha
7:40 AM

Arrive:
Birmingham Intl Arpt (BHX)
Birmingham
12:25 PM

Class Of Service:
Business

Not Valid Before:
March 10, 2019

Not Valid After:
March 10, 2019

Flight - Qatar Airways (Q.C.S.C) (QR) - 10 - March 18, 2019

Confirmation Number:
JPXSY5

Status:
Confirmed

Fare Basis:
RJR4PAZX

Depart:
Heathrow (LHR)
London
Terminal 4
9:00 AM

Arrive:
Hamad International Airport (DOH)
Doha
6:50 PM

Class Of Service:
Business

Not Valid Before:
March 18, 2019

Not Valid After:
March 18, 2019

Baggage Allowance:

40 Kilograms

Bag 1 - CHGS MAY APPLY IF BAGS EXCEED TTL WT ALLOWANCE

Bag 2 - CHGS MAY APPLY IF BAGS EXCEED TTL WT ALLOWANCE

Applies to: LON - ISB

Flight - Qatar Airways (Q.C.S.C) (QR) - 632 - March 18, 2019 - March 19, 2019

Confirmation Number:
JPXSY5

Status:
Confirmed

Fare Basis:
RJR4PAZX

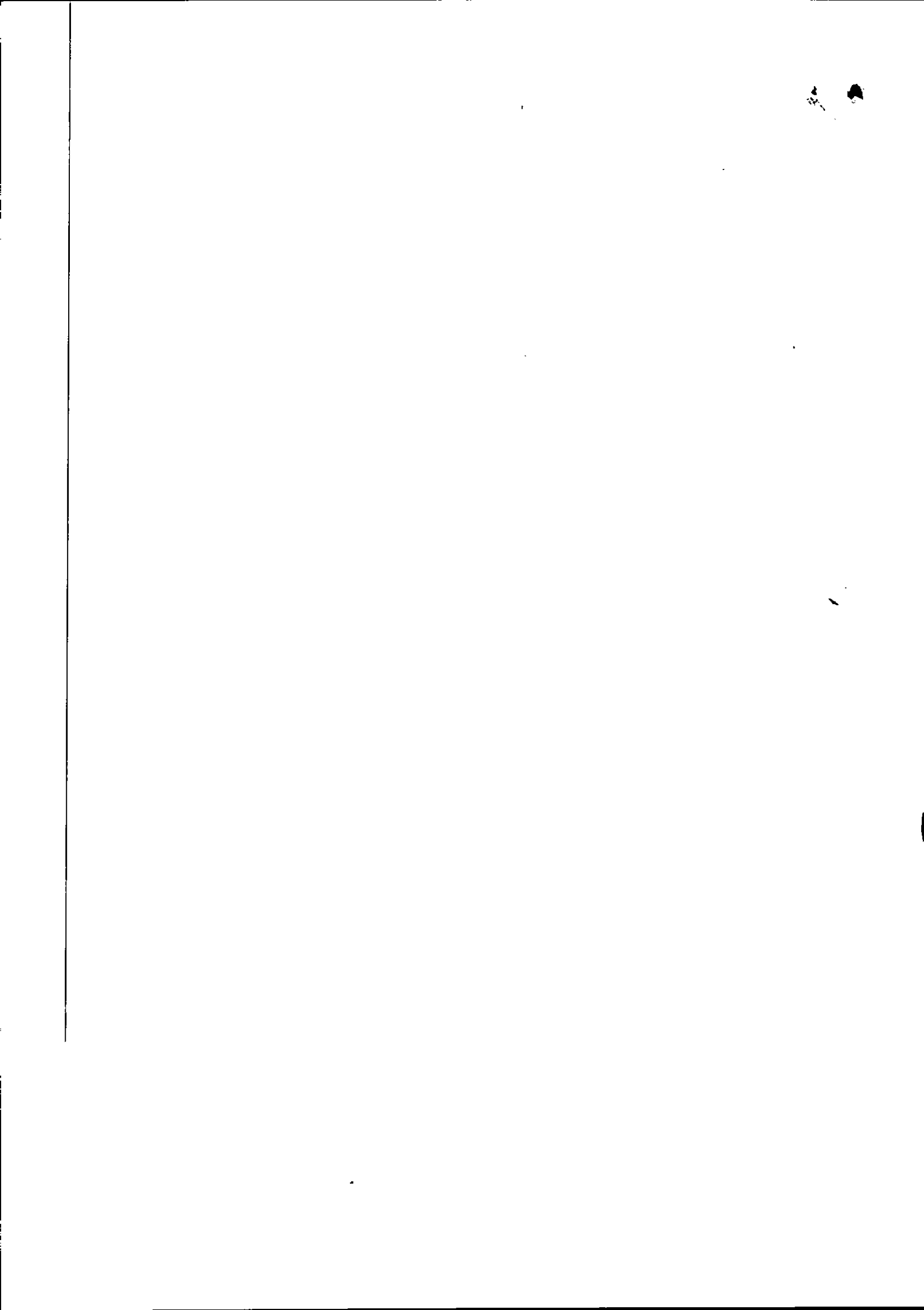
Depart:
Hamad International Airport (DOH)
Doha
8:10 PM

Arrive:
Islamabad International (ISB)
Islamabad
1:40 AM, March 19, 2019

Class Of Service:
Business

Not Valid Before:
March 18, 2019

Not Valid After:
March 18, 2019



علی عظیم آفریدی
ایڈووکیٹ

BC-16-6960

0333-9555000

بعدالت

کفایت اللہ
حاج آفریدی

ٹریبونل

سید

اسکریٹری
اسٹریٹ

کفایت اللہ بنام
اسکریٹری

مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی دکل کاروائی متعلقہ
آن مقام سید کیلئے علی عظیم آفریدی ایڈووکیٹ
مقررہ کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ بر حلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برادگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ
پر داختم منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانبہ التوائے مقدمہ کے سبب سے ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا اوکالت نامہ لکھ دیا کہ سندر ہے۔

المرقوم _____ ماہ _____ 20 _____

_____ واہ العبد

کے لئے منظور ہے۔

بمقام

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Execution Petition No. 22 /2019
In
S.A No. 1324-/2017

Kifayat Ullah Khan Afridi

VERSUS

Speaker Provincial Assembly KPK

=====
IMPLEMENTATION REPORT


RESPECTFULLY SHEWETH,

1. That the very appointment of the petitioner has been challenged in Writ Petition No. 1847-P of 2019 before august Peshawar High Court, wherein the comments of worthy Speaker and Secretary Provincial Assembly has been sought vide order dated 16-04-2019. **(Copy annexed)**
2. The initial appointment including the validity of his academic certificates has been challenged and is sub-judice before the august Peshawar High Court.
3. That in the given circumstances, since the new strong and reliable evidence regarding the illegality in his initial appointment, being overage at the relevant time, loan defaulter, promotion to BPS-18 before completion of 5 years of mandatory service, had surfaced, which needs thorough probe through an independent inquiry.

In view of the above, it is humbly requested that since the matter relating to the petitioner's initial appointment is sub-judice before the august Peshawar High Court, Peshawar, no further DPC can be constituted for his further promotion to the post of BPS-21.

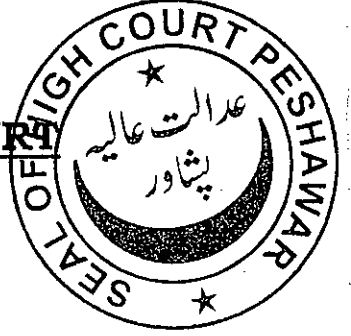
It is therefore, requested that the implementation/execution petition may kindly be disposed of till the final decision of the august Peshawar High Court Peshawar in Writ Petition No. 1847-P of 2019.

Respondent No. 1,


Speaker Provincial Assembly
Mushtaq Ahmad Ghani
Speaker
Khyber Pakhtunkhwa Assembly

BEFORE THE HON'BLE PESHAWAR HIGH COURT

PESHAWAR



W.P No. _____/2019

Shahid Mahmood Khan Advocate Peshawar High Court
Peshawar **Petitioner**

VERSUS

1. Kifayat Ullah Khan S/o Aman Ullah Khan
presently posted as Additional Secretary Provincial
Assembly of Khyber Pakhtunkhwa
2. Secretary Provincial Assembly of Khyber
Pakhtunkhwa
3. The Speaker Provincial Assembly of Khyber
Pakhtunkhwa

..... **Respondents**

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

Respectfully submitted:


ATTESTED
EXAMINER
Peshawar High Court

1. That the Petitioner is a law abiding citizen of
Pakistan and by profession is a practicing lawyer

at Peshawar High court Peshawar having good reputation.

2. That on dated 23.11.1992 the Respondent No 1 was appointed as Assistant Secretary Provincial Assembly by, by Passing and bulldozing all the rules, regulations and the merit on the recommendation of the then Speaker. **(Copy of Appointment letter along with Recruitment Rules is attached as annexure A)**
3. That it is interesting and astonishing to note that the Respondent No 1 on dated 22.11.1992 filed an Application to the Speaker Provincial Assembly of the then NWFP for appointment on vacant post of Assistant Secretary by stating that the Respondent No 1 has learnt from some reliable source that a post of Assistant Secretary in Provincial Assembly is lying vacant. **(Copy of Application is attached as annexure B)**
4. That it is also interesting to note that the then speaker provincial Assembly on dated 18.11.1992 wrote a letter to Secretary Provincial Assembly by stating that "Kindly Appoint Mr Kifayat Ullah Khan S/o Aman Ullah Khan (Respondent No 1 herein) as Assistant Secretary". **(Copy of Letter dated 18.11.1992 is attached as annexure C)**


ATTESTED
EXAMINER
Peshawar High Court

5. That it is also interesting to note that the Respondent No 1 files Application for appointment as Assistant Secretary on dated 22.11.1992 and on the next day i.e 23.11.1992 he was appointed as Assistant Secretary of the Provincial Assembly and again interestingly Respondent No 1 joined his office as Assistant Secretary on the same date i.e 23.11.1992 without fulfilling all the legal and codal formalities by bulldozing the E&D and even the Assembly Rules as well. -

6. That it is also interesting to note that at the time of appointment of Respondent No 1 as Assistant Secretary Assembly, he was ineligible for the said post because he was overage by two years but very interestingly he was appointed as Assistant Secretary Provincial Assembly on dated 23.11.1992 and relaxation of two years in upper age limit has been granted on 03.02.1993, which is also against sub Rule 6 of the E&D rules. **(Copy of Relaxation Certificate is attached as annexure D)**

7. That it is also interesting and worth mentioning here that Respondent No 1 has made a default in loan of Agriculture Development Bank of Pakistan Kohat Branch prior to his appointment which is also a violation of rules and law moreover the Respondent No 1 cleared the loan after a lapse of


ATTESTED
EXAMINER
Peshawar High Court

many years after joining and serving in Provincial Assembly. **(Copy of letter dated 08.05.2000 is attached as annexure E)**

8. That in the year 1997 Respondent No 1 was promoted to BPS-18 as Deputy Secretary inspite of the fact that he was ineligible and incompetent even for the post ^{of} Assistant Secretary. Moreover Respondent No 1 got his promotion in BPS-18 before his 5 years' service meaning thereby that Respondent No 1 was promoted to BPS-18 in 11 months of his Service, it is further averred that Respondent No 1 was promoted from BPS-19 to 20 a couple of month ago which is also the violation of rules and regulations. **(Copy of Notification dated 11.02.1997 is attached as annexure F)**

9. That the appointment, promotion and all the blessings and extraordinary favour in respect of the Respondent No 1 by the then Speaker and his staff has created a grave miscarriage of justice, which must be declared as null and void by ensuring justice, fair play and merit.

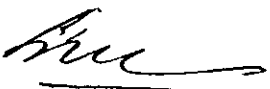
10. That the Respondent No 1 got his police clearance certificate and Medical Examination after joining his office as Assistant Secretary of the Assembly, which is also against the Rules and Regulations.


ATTESTED
EXAMINER
Peshawar High Court

11. That it is also pertinent to mention here that the Respondent No 1 passed his SSC Examination in the year 1984 in 3rd Division which is also disqualification for appointment in BPS-17. **(Copy of certificate along with other documents are attached as annexure G)**
12. That it is also pertinent to mention here that Respondent No 1 was promoted by crushing all the rules, regulations and before the stipulated tenure / time period for promotion which is also highly illegal and unlawful act.
13. That the Petitioner feeling aggrieved having no other remedy available in law is constrained to invoke the Quo Warranto Constitutional Jurisdiction of this Honorable Court inter alia on the following grounds:-

GROUND:

- A. That Respondent No 1 is holding the position for which he is ineligible, incompetent and his appointment against the post is coram-non-Judice which is to be declared as such.
- B. That the Respondent No 1 is holding the position without possessing the required qualification,


ATTESTED
EXAMINER
Peshawar High Court

criteria and the merit, hence his appointment be declared as illegal, unlawful and unconstitutional.

C. That the appointment of Respondent No 1 has created a grave miscarriage of justice and he is holding the position without any authority, force and the law, hence his appointment needs to be scrutinized and be declared as ultra vires and void ab initio.

D. That the appointment and promotion of Respondent No 1 is against the settled principles of justice and the norms, so his appointment, promotion and all the privileges attaining by Respondent No 1 is blatantly illegal, unlawful and unconstitutional and it has created doubts on the merit and fair play policy of the Government.

E. That the position and privileges of the Respondent No 1 is against the fundamental rights guaranteed under the constitution of Islamic republic of Pakistan 1973.

F. That the order, promotion and all the privileges of Respondent No 1 is void ab initio and it is a well settled principle enunciated by superior courts that void order has no limitation and it can be declared null and void at any time, so the


ATTESTED
EXAMINER
Peshawar High Court

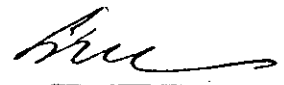
appointment order of Respondent No 1 be declared as such.

G. That there is no such post of Senior Additional Secretary in Pakistan, the said post was borrowed from Gilgit Baltistan Assembly in order to accommodate the Respondent No 1 which amounts to favoritism and nepotism which is also liable to be declared as illegal, unlawful and against the rules.

H. That it is also pertinent to mention here that Respondent No 1 was favoured due to the reasons that he was the brother of Ex-Minister Hidayat Ullah Khan as Respondent No 1 was a blue eyed and sweet child of the Authorities which is highly illegal and unlawful.

I. That the provincial Assembly is the legislative body of the province and it has a great esteem and responsibility if such like persons like Respondent No 1 are enjoying the benefits from a body which is the custodian of the rights of the people and the constitution then doubts may be created on the role of Assembly.

J. That the order dated 23.11.1992 is the result of corruption and corrupt practices by bulldozing all the norms, rules and the law, hence the order



ATTESTED

EXAMINER

Rawalpindi High Court

dated 23.11.1992 needs to be quashed immediately in the best interest of Justice.

K. That this hon'ble Court has got ample powers and jurisdiction to entertain the instant writ petitioner and redress the grievances of the petitioner leveled in the instant constitutional Petition.

L. That other points and grounds would be raised at the time of arguments with the prior permission of this Honourable Court.

M. That the Petitioner also seeks the permission of this Hon'ble Court to further documents the instant writ petition during the course of its pendency.

It is therefore prayed that On acceptance of this writ petition an appropriate writ may please may be issued by declaring order dated 23.11.1992 as null and void, moreover the concerned quarters / authorities may also be directed to probe the matter and prosecute the Respondent No 1 under the relevant provisions of law.

Any other relief, which deems fit and appropriate may also be granted in favour of the Petitioner.

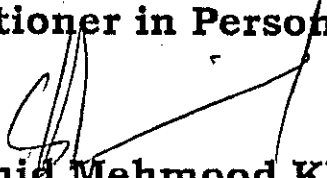

ATTESTED
EXAMINER
Peshawar High Court

INTERIM RELIEF:

By way of interim Relief, the appointment order dated 23.11.1992 of Respondent No 1 may kindly be suspended, till the final disposal of the instant writ petition.

Petitioner in Person

Dated: 24.01.2019


Shahid Mehmood Khan
Advocate, High Court
Peshawar

CERTIFICATE:

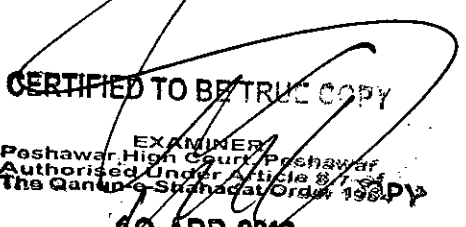
Certified that no such like writ petition has earlier been moved before this Honourable Court on the subject matter.


ADVOCATE

LIST OF BOOKS:

1. Constitution of Islamic Republic of Pakistan 1973.
2. Khyber Pakhtunkhwa Provincial Assembly Secretariat (Recruitment) Rules 1974
3. Any other book as per need.


ADVOCATE


CERTIFIED TO BE TRUE COPY

EXAMINER
Peshawar High Court Peshawar
Authorised Under Article 87 of
The Qanun-e-Shahadat Order 1988

19 APR 2019

19
APR
2019

BEFORE THE HON'BLE PESHAWAR HIGH COURT
PESHAWAR

W.P No. _____/2019

Shahid Mahmood Khan AdvocatePetitioner

VERSUS

Kifayat Ullah Khan & othersRespondents

AFFIDAVIT


I, **Shahid Mahmood Khan Advocate Peshawar High Court Peshawar**, do hereby solemnly affirm and declare on oath that the contents of the accompanying Writ Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.


DEPONENT

CNIC # 15501-5492522-5

Cell # 0333-9306491


ATTESTED
EXAMINER
Peshawar High Court

No: <u>18896</u>
Certified that the above was verified on solemnly affirmation before me on this <u>28th</u> day of <u>Jan</u> <u>2018</u> at <u>Shahid Mahmood Khan Advocate Peshawar Court</u> who was identified to me by <u>Souf</u> Who is personally known to me:
 Attested Examiner Peshawar High Court, Peshawar.

BEFORE THE HON'BLE PESHAWAR HIGH COURT
PESHAWAR

W.P No. _____/2019

Shahid Mahmood Khan AdvocatePetitioner

VERSUS

Kifayat Ullah Khan & othersRespondents

ADDRESSES OF PARTIES

PETITIONER

Shahid Mahmood Khan Advocate Peshawar High Court
Peshawar

RESPONDENT

1. Kifayat Ullah Khan S/o Aman Ullah Khan presently posted as Additional Secretary Provincial Assembly of Khyber Pakhtunkhwa
2. Secretary Provincial Assembly of Khyber Pakhtunkhwa
3. The Speaker Provincial Assembly of Khyber Pakhtunkhwa

Petitioner in Person

Dated: 24.01.2019

**Shahid Mehmood Khan
Advocate, High Court
Peshawar**

CERTIFIED TO BE TRUE COPY

**EXAMINER
Peshawar High Court, Peshawar
Authorised Under Article 37 of
The Qanun-e-Shahadat Order 1984**

19 APR 2019

16831

No.
Date of Presentation of Application 19/4/19
No of Pages 11
Copying Fee
Urgent Fee
Total 46
Date of Preparation of Copy 19/4/19
Date of Delivery of Copy 19/4/19
Received By [Signature]

BEFORE THE HON'BLE PESHAWAR HIGH COURT**PESHAWAR**

W.P No. _____/2019

Shahid Mahmood Khan Advocate Peshawar High Court
Peshawar **Petitioner**

VERSUS

1. Kifayat Ullah Khan S/o Aman Ullah Khan
presently posted as Additional Secretary Provincial
Assembly of Khyber Pakhtunkhwa
2. Secretary Provincial Assembly of Khyber
Pakhtunkhwa
3. The Speaker Provincial Assembly of Khyber
Pakhtunkhwa

..... **Respondents**



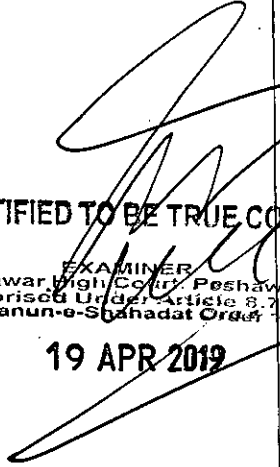
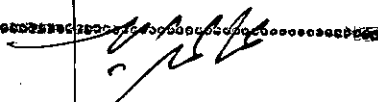

WRIT PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF ISLAMIC REPUBLIC OF
PAKISTAN 1973

Respectfully submitted:

[Signature]
ATTESTED
EXAMINER
Peshawar High Court

1. That the Petitioner is a law abiding citizen of
Pakistan and by profession is a practicing lawyer

PESHAWAR HIGH COURT, PESHAWAR
FORM OF ORDER SHEET

Date of Order of Proceedings	Order of other Proceedings with Signature of Judge.
1	2
16.04.2019	<p>WP No. 1847-P of 2019</p> <p>Present: <i>Petitioner in person.</i></p> <p>*****</p> <p>Syed Sikandar Hayat Shah, AAG, present in the court in other cases is directed to file comments on behalf of respondents No.2 and 3 within a fortnight. Adjourned to a date in office.</p> <p style="text-align: center;"> SENIOR PUISNE JUDGE</p> <p style="text-align: center;"></p> <p style="text-align: right;">CERTIFIED TO BE TRUE COPY</p> <p style="text-align: right;">EXAMINER Peshawar High Court, Peshawar Authorized Under Article 8.7 of The Qanun-e-Shahadat Order 1984</p> <p style="text-align: right;">19 APR 2019</p> <p style="text-align: right;"></p> <p>16831 Date of Presentation of Application 19/4/19 No of Pages 20 Copying Fee Urgent Fee Total Date of Preparation of Copy 19/4/19 Date of Delivery of Copy 19/4/19 Received By </p> <p style="text-align: center;"></p>



قیمت 50 روپے	6499			
ایڈوکیٹ: محمد ظفر غلام جیل، اندامان		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل ایسوسی ایشن نمبر: 7764-10-15				
رابطہ نمبر: 0300-9597670				

بعدالت جناب: Service Tribunal KPK, Peshawar

مخانب: سید خستونخواہ اسپیلی	Exe.P. No: 22/2019 IN: Appeal No 1324/19
نسایت اللہ بنام سید	علت نمبر:
ہا	مورخہ:
	جرم:
	تھانہ:

باعت تحریر آنگہ

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

المقام: 30-04-2019

**DESHAWAR BAR ASSOCIATION
KHYBER PAKHTUNKHWA**

Mushtaq Ahmad Ghani
Speaker
Khyber Pakhtunkhwa Assembly

مقام کے لیے منظور ہے۔

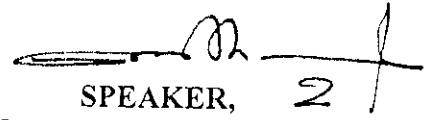
Accepted & Accepted

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔

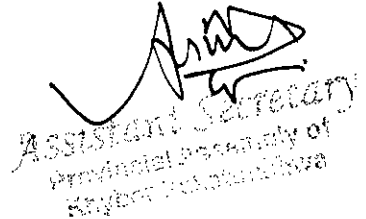
PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA

STATEMENT OF ALLEGATION

1. Whereas that he got himself appointed in violation of the rules, procedure and merit and no proper procedure mandated under the law was followed and the following irregularities were committed:-
- That he submitted application for appointment on 22-11-1992.
 - That he was appointed on 23-11-1992.
 - That he reported for duty on the same day i.e. 23-11-1992.
 - That he did not acquire Medical Certificate before or at the time of arrival.
 - That Medical Board for his fitness examination was constituted on 30-12-1992, after one month and seven days.
 - That his upper age limit was relaxed after two months and ten days of your appointment which means that he was over age at the time of appointment.
 - That he was loan defaulter of ADBP, Kohat Branch, at the time of his appointment.
 - That he acquired premature promotion as Deputy Secretary (BPS-18) which was illegal.
 - That he was not eligible for appointment in grade-17 due to your holding 3rd Division in F.A.
 - That he did not avail of study leave during his service as Assistant Secretary but acquired L.L.B Degree.


SPEAKER, 2

PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA



ASSISTANT SECRETARY
PROVINCIAL ASSEMBLY OF
KHYBER PAKHTUNKHWA

PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA

CHARGE SHEET

I, Mushtaq Ahmad Ghani, Speaker, Provincial Assembly, as competent authority, do hereby serve you Mr. Kifayatullah Khan Afridi, Senior Additional Secretary, Provincial Assembly Secretariat of Khyber Pakhtunkhwa, Peshawar, charge sheet as follows: -

1. **Whereas** that you got yourself appointed in violation of the rules, procedure and merit and no proper procedure mandated under the law was followed and the following irregularities were committed:-
 - a. That you submitted application for appointment on 22-11-1992.
 - b. That you were appointed on 23-11-1992.
 - c. That you reported for duty on the same day i.e. 23-11-1992.
 - d. That you did not acquire Medical Certificate before or at the time of arrival.
 - e. That Medical Board for your fitness examination was constituted on 30-12-1992, after one month and seven days.
 - f. That your upper age limit was relaxed after two months and ten days of your appointment which means that you were over age at the time of appointment.
 - g. That you were loan defaulter of ADBP, Kohat Branch, at the time of your appointment.
 - h. That you acquired premature promotion as Deputy Secretary (BPS-18) which was illegal.
 - i. That you were not eligible for appointment in grade-17 due to your holding 3rd Division in F.A.
 - j. That you did not avail of study leave during your service as Assistant Secretary but acquired L.L.B Degree.
2. By reasons of above, you appeared to be guilty of misconduct under E&D Rules, 2011 and have rendered yourself liable to all or any of the penalties specified therein.
3. You are, therefore, required to submit your written defence within 07-days of receipt of this charge sheet to the Inquiry Officer.
4. Your written defence, if any, should reach the Inquiry Officer within the specified period, failing which it shall be presumed that you have no defence to put in and in that case one sided / ex-parte action shall follow against you.
5. You should intimate in writing whether you desire to be heard in person.
6. Statement of allegation is enclosed.


MR. SPEAKER,
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

No.PA/K.P/Admn:/2019/ 19496 Dated Peshawar, the 16 /05/2019.

Copy of the above is forwarded to Mr. Kifayatullah Khan Afridi, Senior Additional Secretary, Provincial Assembly Secretariat of Khyber Pakhtunkhwa, for strict compliance.


ASSISTANT SECRETARY (ADMN:),
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA


Assistant Secretary
Provincial Assembly of
Khyber Pakhtunkhwa

PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 17 /05/2019.

NO.PA/K.P/Admn:/2019/ 19587 Mr. Kifayatullah Khan Afridi, Senior Additional Secretary (BPS-20), Provincial Assembly of Khyber Pakhtunkhwa, is place under suspension with immediate effect for a period of ninety days under Rule 6 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

BY ORDER OF THE SPEAKER

Sd/-
SECRETARY
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

Endt.NO.PA/KP/Admn:/2019/ 19588-89


Dated 17 /05/2019.

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

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Manager, Government Printing Press, Peshawar.
3. The officer concerned.
4. The Secretary to Mr. Speaker, Provincial Assembly of Khyber Pakhtunkhwa.
5. Pay Bill Clerk, Provincial Assembly of Khyber Pakhtunkhwa.
6. Personal file of the officer concerned.

Attested

Assistant Secretary
Provincial Assembly of
Khyber Pakhtunkhwa


ASSISTANT SECRETARY (ADMN)
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA

OFFICE ORDER

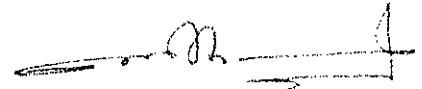
Dated Peshawar, the 17 /05/2019.

NO.PA/KP/Admn:/2019/ 19583 In pursuance of rule 10 read with all other enabling rules under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, an Inquiry Committee comprising the following officers is constituted to conduct inquiry proceedings against Mr. Kifayatullah Khan Afridi, Senior Additional Secretary (BPS-20), Provincial Assembly of Khyber Pakhtunkhwa:-

1. Mr. Zafar Iqbal, Secretary to Government of Khyber Pakhtunkhwa, (Convener)
Science & Technology and Information Technology Department.
2. Mr. Manzoor Ahmad, Secretary to Govt: of Khyber Pakhtunkhwa, (Member)
Higher Education, Achieves and Library Department.

2. The Inquiry Committee is required to conduct proceedings strictly in accordance with the relevant provisions of Rules and submit its report to the undersigned upon conclusion of the proceedings.

3. Copies of Charge Sheet and Statements of Allegations served upon the accused Officer are enclosed herewith.



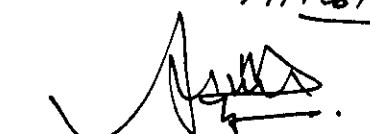
(MUSHTAQ AHMAD GHANI)
SPEAKER/COMPETENT AUTHORITY
Provincial Assembly of Khyber Pakhtunkhwa

Endt.No.PA/KP/Admn:/2019/ 19584-86 Dated 17 /05/2019.

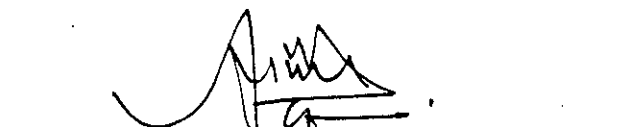
Copy of the above is forwarded for information and necessary action to: -

1. Mr. Zafar Iqbal, Secretary to Government of Khyber Pakhtunkhwa, Science & Technology and Information Technology/Convener Inquiry Committee.
2. Mr. Manzoor Ahmad, Secretary to Govt: of Khyber Pakhtunkhwa, Higher Education, Achieves and Library Department/Member Inquiry Committee.
3. Mr. Attaullah Khan, Special Secretary-IT/Secretary to Mr. Speaker, Provincial Assembly of Khyber Pakhtunkhwa/Departmental Representative (with the direction to assist the Inquiry Committee under rule 13 of the Rules).

Attested



Assistant Secretary
Provincial Assembly of
Khyber Pakhtunkhwa



ASSISTANT SECRETARY (ADMN)
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR
WRIT PETITION NO.

Kifayatullah Khan Afridi Presently
Additional Secretary Provincial
Pakhtunkhwa, Peshawar



....Petitioner

Versus

The Speaker Provincial Assembly Khyber Pakhtunkhwa,
Peshawar

....Respondent(s)

**WRIT PETITION UNDER ARTICLE 199; SEEKING
DECLARATION TO THE EFFECT THAT THE
IMPUGNED NOTIFICATION DATED 16.05.2019
MAY PLEASE BE DECLARED VOID AB INITIO,
CORAM NON JUDICE AND WITHOUT ANY
LAWFUL AUTHORITY**

Respectfully Sheweth,

1. That the Constitution of Islamic Republic of Pakistan, provides for the Provincial Assembly; as a state institution within the meaning of Article 7 of the Constitution.
2. That the Constitution of Islamic Republic of Pakistan equally provides for constitution of Provincial Assemblies in line with Article 106 of the Constitution.
3. That the Constitution of Islamic Republic of Pakistan allows election of respondent in lieu of Article 108 of the Constitution.
4. That the Constitution of Islamic Republic of Pakistan equally allows the Provincial Assembly by law so as to regulate the recruitment and conditions of service of persons appointed to the secretarial staff within the meaning of Article 87 read with Article 127 of the Constitution.

ATTESTED

EXAMINER

5. That the law provides for strength and composition of the Secretariat; including therein methods of recruitment, promotion, transfer; qualification for appointment; appointing authority etcetera.
6. That it is important to note that; the respondent before entering upon office as Speaker, make before the Provincial Assembly oath in the form set out in the Third Schedule.
7. That the respondent as a Speaker of Provincial Assembly, maintains to discharge his duties and perform his functions, honestly, to the best of his ability, faithfully in accordance with the Constitution of Islamic Republic of Pakistan, the law and the rules of the Assembly and always in the interest of the Sovereignty, integrity, solidarity, well-being and prosperity of Pakistan.

ON FACTS

8. That the petitioner being citizen of the state of Islamic Republic of Pakistan and as such presently serving as Senior Additional in the Provincial Assembly Secretariat, Khyber Pakhtunkhwa since the Judgment rendered by Service Tribunal Khyber Pakhtunkhwa is yet to be implemented; as such expects exercise of powers aimed at having impact upon the lives of people; to be within the limits ordained by the Constitution and law.
9. That the grievance of the petitioner revolves around over issuance of charge sheet dated 16.05.2019 by the respondent; aimed at forgoing his seniority-cum-promotion as Secretary Promotion Assembly Khyber Pakhtunkhwa. **(Copy of the show-cause dated 16.05.2019 is annexed as Annexure "A")**
10. That for the sake of brevity and information; the inter-se promotion of Mr. Nasrullah Khan Khattak the than occupant of the position of Secretary Provincial Assembly; was disputed before the Service Tribunal Khyber Pakhtunkhwa by the present petitioner; wherein not only his promotion was declared otherwise rather the respondent too was reprimanded regarding his inactions and omissions

ATTESTED

EXAMINER

committed during the said process termed to have taken place with a jaundiced eye.

11. That the opaque and oblique reasons advanced by the respondent for warding off the present petitioner from seeking his right of promotion was declared to have taken place against law/rules and an attempt to introduce a blue eyed at the cost of merit, transparency, fairness, equality and justice.

12. That the Service's Tribunal; in Kifayatullah Khan Afridi's Case¹ held that, *"Again the appellant became a victim of favouritism, nepotism and unholy alliance of DPC to accomodate their blue eyed chap by hook or by crook; it was a deliberate attempt on the part of respondents to frustrate the efforts of the appellant for his due right of promotion"*.

It was further held that, *"the respondents without waiting for the decision promoted respondent No. 3 to the post of Secretary; hence their action was against law/rules"*.

13. That what is important to note, is para No. 14 of the Judgment, wherein it was held that, *"Before parting with the judgment, apprehensions are lurking in our mind that adverse findings of this Tribunal may pique the ego of respondents and inline with their tradition possibility of again violating the court/tribunal orders cannot be ruled out; Learned Counsel for the appellant also brought to the notice of this Tribunal cases of illegal appointment of Special Secretary and Director (Automation & IT) Provincial Assembly were struck down by Peshawar High Court, Peshawar vide Judgment dated 13.11.2018 in Writ Petition No. 2512/2018 & in Writ Petition No. 3101-P/2018"*, wherein the court observed that, respondent No. 4 having showed scant regard for the laws and rules of the Assembly.

14. That it was also held that, *"By now it has been established beyond any shadow of doubt that the former i.e. respondent No. 4 and present Speaker respondent No. 1 etc. respondent 2, 3 and 5; have one point agenda to promote cronyism, nepotism and favouritism at the cost of merit, transparency,*

¹ Service Appeal 1324/2017 vide Judgment dated 10.12.2018

ATTESTED

 EXAMINER

fairness, equality and justice; it amounts to misuse of official authority and is open to cognizance/judicial scrutiny by the quarters concerned". (Copy of the Judgment dated 10.12.2018 is annexed as Annexure "B")

15. That the present respondent; being competent authority was duty bound to implement the Judgment rendered by the Hon'ble Court; but he instead of doing the needful, opted for circumventing and bypassing the command of the Constitution and laws of the state of Islamic Republic of Pakistan.

In Mumtaz Qadri's Case²; It was held that, "Law did not permit an individual to arrogate unto himself the roles of a complainant, prosecutor, Judge and executioner".

16. That regardless of the stated position; the present respondent is bent upon exercising powers; without taking into consideration its legal ramifications.

17. That the present petitioner have already approached this Hon'ble Court against the inactions/omissions taking place within the Provincial Assembly Secretariat at the behest of respondent; which is yet to be determined.

18. That having left with no other option but to bring information before the Hon'ble Court; regarding the illegal, unconstitutional activities of the present respondent aimed at damaging/distorting the Constitutional ethos of the state of Islamic Republic of Pakistan; allowing bad governance and that too within the legislative body of the province.

In Tanveer Ahmad's Case³, it was held that, "Discretion without a uniform yardstick or a formula was a loose jumble of haphazard human subjectivity, which was inescapably susceptible to error and indubitably arbitrary, ex facie discriminatory, highly irrational and illogical; administrative compulsion and wisdom to structure discretion was to remove human subjectivity from exercise of discretion; constitutional and jurisprudential importance of structured

² PLD 2016 SC 17

³ PLD 2013 Lhr 386

ATTESTED

EXAMINER

discretion was that it nursed the requirements of due process, fairness and fair trial and safeguarded the discretion against the vice of discrimination and arbitrariness".

19. That the present respondent is leaving no stone unturned; allowing his personal interest so as to influence his official conduct and decisions, without having any regard to the law/rules governing the Provincial Assembly Khyber Pakhtunkhwa.

In Suo Moto Case No. 19 of 2016⁴, it was held that, *"Good governance was not a favour to be bestowed on the people; it was their right".*

20. That the respondent instead of implementing the Judgment rendered by the Hon'ble Service Tribunal; having issued the charge sheet so as to make sure that the law governing the state of Islamic Republic of Pakistan is transgressed and trampled; allowing civil servant(s) to bow before the political bigwigs which nonetheless amounts to abuse of powers and authority; taking place within the top legislative body of the province and as such is brought under question before the Hon'ble Court inter-alia on the following grounds:-

GROUND

- A.** That the charge sheet dated 16.05.2019 is illegal and without any lawful authority and as such is uncalled for, against the law governing the state of Islamic Republic of Pakistan.

In Mughal-E-Azam's Case⁵, it was held that, *"If the show cause notice is ultra vires, without jurisdiction or with mala fide intent, such action is to be nipped in the bud".*

- B.** That the charge sheet issued is actuated by malice and in disregard of the Judgment rendered by the Hon'ble Tribunal.

⁴ 2017 SCMR 683

⁵ 2011 PTD 2260; 2015 LHC 3623

ATTESTED


EXAMINER

C. That the law/rules, nowhere provides for alike instances taking place in the Khyber Pakthunkhwa Provincial Assembly.

In Qaiser Iqbal's Case⁶, it was held that, "Rule of Law meant supremacy of law as opposed to arbitrary authority of the Government; said supremacy guaranteed three concepts; first, the absence of arbitrary power; second, equality before law and third the rights of a citizen".

D. That the purported omission(s) on the part of respondent; itself speaks volumes engraving danger to the notion of good governance, hence requires interference of the Hon'ble Court.

E. That it is the tradition of respondent of violating order(s) of the Court.

F. That the palpable omission(s) taking place within the top legislative body of the province and that too on the part of respondent stands in violation of the Judgment(s) of Supreme Court of Pakistan.

G. That the inactions/omissions on the part of respondent violates the Constitution of Islamic Republic of Pakistan.

H. That public functionaries had to reinforce good governance, observe rules strictly and adhere to rule of law in public service; public functionaries were not obliged to follow illegal orders of higher authorities⁷.

I. That law did not permit an individual to arrogate unto himself the roles of a complainant, prosecutor, Judge and executioner; as is obvious in the case at hand.

J. That "Expressio Unis Est Exclusio Alterius", commanding that when law requires a thing to be done in particular manner then, it should be done in that manner as anything done in conflict of the command of law shall be unlawful being prohibited.

⁶ 2018 PLD Lahore 34

⁷ 2015 SCMR 456; PLD 2013 SC 195

ATTESTED

EXAMINER

- K. That "*Ignorantia juris non excusat*", commanding that ignorance of the law excuses not.
- L. That it is cardinal principle of law and justice that what cannot be done directly cannot be done indirectly.⁸
- M. That the respondent has time and again flouted the law; allowing personal interest influencing his official conduct and official decisions, in violation of oath of the office/duties prescribed and that too to the discredit of people of Pakistan.
- N. That the petitioner have no other adequate, efficacious and alternate remedy against misuse; abuse of powers and authority on the part of respondent; taking place within the top legislative body of the province.
- O. That law did not permit an individual to arrogate unto himself the roles of a complainant, prosecutor, Judge and executioner.
- P. That further necessary grounds will be raised during the course of arguments.

PRAYER

It is therefore humbly prayed and submitted that on acceptance of this Constitutional Petition:-

1. That the impugned notification dated 16.05.2019 may please be declared illegal, coram-non-judice; without any lawful authority and as such is uncalled for, against the law governing the state of Islamic Republic of Pakistan.

In Muhammad Azam Davi's Case⁹, it was held that, "Article 87 read with Article 127 of the Constitution expressly enables the Parliament and the Provincial Assemblies, as the case may be, to make laws for regulation of the terms and conditions of service of the

⁸ PLD 1993 SC 473 at Page 687

⁹ 2010 SCMR 1886

ATTESTED

EXAMINER

employees of the respective establishments; the employees of such bodies are, therefore, civil servants".

- 2. That the respondent may please be directed to adhere to the command of the Constitution instead of allowing personal interest; bypassing the dictates of law and Judgment(s) rendered by the Hon'ble Court.
- 3. Any such order be passed which the Hon'ble Court deems fit and appropriate in determination of the Constitutional Petition for securing the ends of justice.

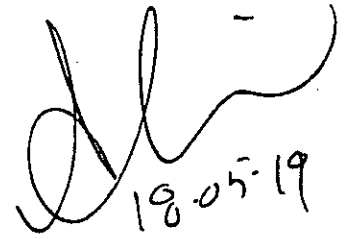
Petitioner

Through

Ali Azim Afridi

Advocate High Court

Contact # 0333-9555000



18.05.19

CERTIFIED TO BE TRUE COPY

Secretary
 Punjab High Court, Faisalabad
 Punjab, Pakistan
 The Official Seal of the High Court of the Punjab
 Faisalabad

23 MAY 2019

BEFORE THE PESHAWAR HIGH COURT PESHAWAR
WRIT PETITION NO. /2019

Kifayatullah Khan Afridi.....**Petitioner**

Versus

The Speaker Provincial Assembly Khyber Pakhtunkhwa and
 another.....**Respondent(s)**

INTERIM RELIEF

As the petitioner has a prima facie case; balance of convenience also leans in his favor; the impugned notification dated 16.05.2019 may please be suspended and the present respondent may please be directed not to take any adverse action till the disposal of the instant matter.

CERTIFICATE

It is hereby certified that no writ petition has been filed on the subject matter besides nothing has been concealed therefrom the Hon'ble Court.

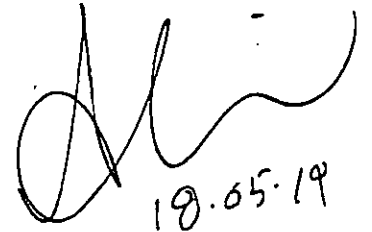
Petitioner

Through

Ali Azim Afridi

Advocate High Court

Contact # 0333-9555000


19.05.19

LIST OF BOOKS

1. Constitution of Islamic Republic of Pakistan, 1973.
2. The Khyber Pakhtunkhwa Province Provincial Assembly Secretariat (Recruitment) Rules, 1974.
3. Any other book required accordingly.

ATTESTED


EXAMINER

BEFORE THE PESHAWAR HIGH COURT PESHAWAR
WRIT PETITION NO. /2019

Kifayatullah Khan Afridi.....**Petitioner**

.....

Versus

.....

The Speaker Provincial Assembly Khyber
Pakhtunkhwa.....**Respondent**

AFFIDAVIT

I **Kifayatullah Khan Afridi Presently Serving as Senior Additional Secretary Provincial Assembly Khyber Pakhtunkhwa, Peshawar**, do hereby solemnly affirm that the contents of the writ petition are true and correct to the best of my knowledge, belief, ability and nothing has been concealed therein from this Hon'ble Court.

Kifayatullah Khan Afridi
Deponent

CNIC # 17301-1534586-9

Contact # 0333-9120562

Identified By

Ali Azim Afridi

Advocate High Court

Ali Azim Afridi

No. <i>28152</i>
Certified that the above was verified on solemnly affirmation before me in office, this <i>18th</i> day of <i>May</i> <i>2019</i> by <i>Kifayatullah Khan Afridi</i> who was identified by <i>Ali Azim Afridi</i> Who is personally known to me:
<i>Ali Azim Afridi</i> Oath Commissioner Peshawar High Court, Peshawar.

ATTESTED

[Signature]
EXAMINER

BEFORE THE PESHAWAR HIGH COURT PESHAWAR
WRIT PETITION NO. /2019

Kifayatullah Khan Afridi.....**Petitioner**

.....
Versus
.....

The Speaker Provincial Assembly Khyber
Pakhtunkhwa.....**Respondent**

MEMO OF ADDRESS OF PARTIES

PETITIONER

Kifayatullah Khan Afridi Presently Serving as Senior
Additional Secretary Provincial Assembly Khyber
Pakhtunkhwa, Peshawar

VERSUS

RESPONDENT

The Speaker Provincial Assembly Khyber Pakhtunkhwa,
Peshawar

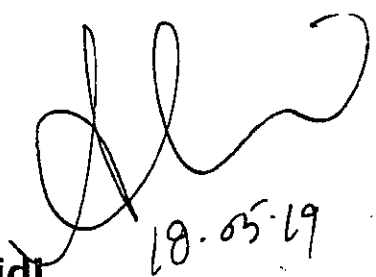
Petitioner

Through

Ali Azim Afridi

Advocate High Court

Contact # 0333-9555000



18.05.19

CERTIFIED TO BE TRUE COPY
Examiner, Peshawar
Peshawar High Court, Peshawar
Authorised Under Article 27 of
the Constitution of 1973
23 MAY 2019



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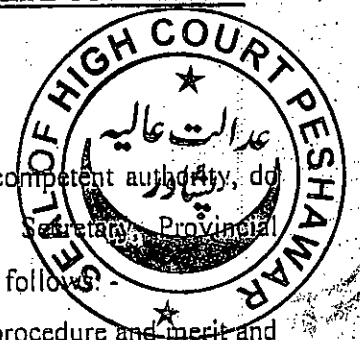
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PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA

CHARGE SHEET



I, Mushtaq Ahmad Ghani, Speaker, Provincial Assembly, as competent authority, do hereby serve you Mr. Kifayatullah Khan Afridi, Senior Additional Secretary, Provincial Assembly Secretariat of Khyber Pakhtunkhwa, Peshawar, charge sheet as follows:-

1. Whereas that you got yourself appointed in violation of the rules, procedure and merit and no proper procedure mandated under the law was followed and the following irregularities were committed:-
 - a. That you submitted application for appointment on 22-11-1992.
 - b. That you were appointed on 23-11-1992.
 - c. That you reported for duty on the same day i.e. 23-11-1992.
 - d. That you did not acquire Medical Certificate before or at the time of arrival.
 - e. That Medical Board for your fitness examination was constituted on 30-12-1992, after one month and seven days.
 - f. That your upper age limit was relaxed after two months and ten days of your appointment which means that you were over age at the time of appointment.
 - g. That you were loan defaulter of ADBP, Kohat Branch, at the time of your appointment.
 - h. That you acquired premature promotion as Deputy Secretary (BPS-18) which was illegal.
 - i. That you were not eligible for appointment in grade-17 due to your holding 3rd Division in F.A.
 - j. That you did not avail of study leave during your service as Assistant Secretary but acquired L.L.B Degree.
2. By reasons of above, you appeared to be guilty of misconduct under E&D Rules, 2011 and have rendered yourself liable to all or any of the penalties specified therein.
3. You are, therefore, required to submit your written defence within 07-days of receipt of this charge sheet to the Inquiry Officer.
4. Your written defence, if any, should reach the Inquiry Officer within the specified period, failing which it shall be presumed that you have no defence to put in and in that case one sided / ex-parte action shall follow against you.
5. You should intimate in writing whether you desire to be heard in person.
6. Statement of allegation is enclosed.

MR. SPEAKER,
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

No.PA/K.P/Admn:/2019/ 19496 Dated Peshawar, the 16/05/2019.

Copy of the above is forwarded to Mr. Kifayatullah Khan Afridi, Senior Additional Secretary, Provincial Assembly Secretariat of Khyber Pakhtunkhwa, for strict compliance.

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Examiner
Peshawar High Court, Peshawar
Authorized Under Article 87 of
the Qanun-e-shahadat Order 1988

23 MAY 2019

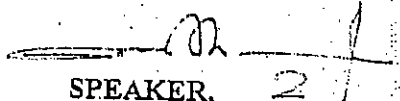
ASSISTANT SECRETARY (ADMN:),
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

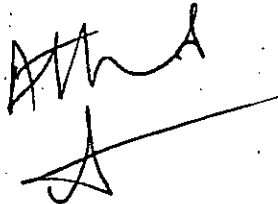
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PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA

STATEMENT OF ALLEGATION

1. Whereas that he got himself appointed in violation of the rules, procedure and merit and no proper procedure mandated under the law was followed and the following irregularities were committed:-
 - a. That he submitted application for appointment on 22-11-1992.
 - b. That he was appointed on 23-11-1992.
 - c. That he reported for duty on the same day i.e. 23-11-1992.
 - d. That he did not acquire Medical Certificate before or at the time of arrival.
 - e. That Medical Board for his fitness examination was constituted on 30-12-1992, after one month and seven days.
 - f. That his upper age limit was relaxed after two months and ten days of your appointment which means that he was over age at the time of appointment.
 - g. That he was loan defaulter of ADBP, Kohat Branch, at the time of his appointment.
 - h. That he acquired premature promotion as Deputy Secretary (BPS-18) which was illegal.
 - i. That he was not eligible for appointment in grade-17 due to your holding 3rd Division in F.A.
 - j. That he did not avail of study leave during his service as Assistant Secretary but acquired L.L.B Degree.


SPEAKER, 21
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA



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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 1324/2017

Date of Institution ... 28.11.2017
Date of Decision ... 10.12.2018



Kifayatullah Khan, Afridi presently serving as Senior Additional Secretary, Provincial Assembly Khyber Pakhtunkhwa, Peshawar. ... (Appellant)

VERSUS

1. The Speaker Provincial Assembly of Khyber Pakhtunkhwa Peshawar.
2. The Departmental Promotion Committee through its Secretary Provincial Assembly of Khyber Pakhtunkhwa, Peshawar.
3. Mr. Nasrullah Khan, presently serving as Secretary Provincial Assembly Khyber Pakhtunkhwa, Peshawar. ... (Respondents)

MR. ALI AZIM AFRIDI, Advocate --- For appellant.

MR. ZIA ULLAH, Deputy District Attorney --- For official respondents.

MR. MUHAMMAD ASIF YOUSAFZAI, Advocate --- For respondent no.3

MR. AHMAD HASSAN, --- MEMBER(Executive)

MR. MUHAMMAD HAMID MUGHAL --- MEMBER(Judicial)

MR. MUHAMMAD AMIN KHAN KUNDI --- MEMBER(Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER.- Arguments of the learned counsel for the parties heard and record perused.

FACTS

The appellant has impugned the decision of DPC dated 11.08.2017 and the notification dated 15.08.2017, whereby respondent no.3 despite being junior to the appellant was promoted as Secretary Provincial Assembly Khyber, Pakhtunkhwa.

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Resultantly, in order to implement the aforementioned judgment notification dated 15.08.2017 was withdrawn by the respondents on 07.09.2018.

4. Learned counsel for the appellant further contended that the respondents had audacity/temerity to trample court orders under their feet by again convening meeting of the DPC on 25.09.2018 and promoting Mr. Nasrullah Khan to the post of Secretary (BPS-21) bypassing the appellant without any solid justification/reasoning and notified promotion vide notification dated 25.09.2018. Reasons recorded by the DPC for supersession of the appellant were against the invogue rules and deliberate attempt on the in part to deprive him of right of promotion to next higher scale. Findings were also in line with the criteria laid down in the service rules for promotion. It may not be out of place to mention that the case of promotion of respondent no.3 was still subjudice in this Tribunal and respondents without waiting for the outcome/decision of the said appeal notified his promotion. Reliance was placed on case law reported as 2010 SCMR 1886, 1996 SCMR 218, 1999 SCMR 1605, 2005 SCMR 695, PLD 2004 (S.C)65, 2007 PLC(C.S) 1246, 2002 SCMR 1056 and 1996 SCMR 1185.

5. On the other hand learned counsel for private respondent no.3, while controverting the arguments of learned counsel for the appellant raised some preliminary objections on the maintainability of the present service appeal. He urged that no order for constitution of the present bench passed by the Chairman to hear this service appeal was available on case file. That in pursuance of judgment of this Tribunal dated 14.09.2017 promotion order of respondent no.3 was withdrawn vide notification dated 07.09.2018. Subsequently, on the recommendations of DPC, he was again promoted to the post of Secretary (BPS-21) vide notification dated 25.09.2018 against which departmental appeal filed by the appellant was pending

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Service Tribunal
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before the competent authority for decision. In these circumstances the present appeal had become infructuous and was also hit by Rule-23 of the Khyber Pakhtunkhwa Service Tribunal Rules 1974. In the light of proviso (b)(1) of Section-4 of Khyber Pakhtunkhwa Service Tribunal Act 1974, this Tribunal lacks jurisdiction to adjudicate on issues of fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher post or grade. He further contended that the appellant and private respondent no.3 were considered by the DPC in its meeting held on 25.09.2018 in which the former was not found fit for promotion to the post of Secretary (BPS-21). Reliance was placed on case law reported as PLD 2008 (SC)769, PLD 2008 (SC)395, 2014 PLC (C.S) 982 and 2015 PLC (C.S)215.

6. Learned Deputy District Attorney for official respondents concurred with the arguments advanced by the learned counsel for private respondent no.3.

CONCLUSION

7. The bone of contention in the present appeal is promotion of private respondent no.3 (Mr. Nasrullah Khan) to the post of Secretary Provincial Assembly (BPS-21), who was otherwise junior to the appellant but cleared/ recommended by the DPC in its meeting held on 11.08.2017 and notified on 15.08.2017. On perusal of minutes of the said meeting, it transpired that the appellant was ignored on flimsy, whimsical and nonsensical grounds and in utter disregard to the criteria for promotion laid down in Service Rules of the Provincial Assembly notified on 25.09.2007 and for ready reference is reproduced below:-

"By promotion on the basis of seniority cum fitness amongst the senior Additional Secretary and Additional Secretaries with three years service as such or 22 years service in BPS-17 and above"

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SECRETARY
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL

8. A plain reading of the said rule depicts that seniority cum fitness was the sole criteria/ principle for promotion to the post of Secretary Provincial Assembly (BPS-21). The appellant was senior most Additional Secretary fully eligible for promotion. Perusal of the minutes of the DPC revealed that during the course of consideration nothing adverse was found against the appellant. Reasons given by the DPC for supersession of the appellant were figment of imagination of the members and contrary to law and rules. Though promotion was not a vested right of the appellant, but meaningful consideration in accordance with law/rules was his vested right. Subsequently, as per judgment of this Tribunal dated 14.09.2017 promotion order of respondent no.3 to the post of Secretary made during the pendency of the said appeal was also set aside. In pursuance of the said orders promotion order of respondent no.3 was withdrawn on 07.09.2018.

9. Subsequently, on the recommendations of Departmental Promotion Committee, Mr. Nasrullah Khan (respondent no.3) was again promoted to the post of Secretary (BPS-21) vide notification dated 25.09.2017 against which departmental appeal of the appellant before the competent authority was still pending. Again the appellant became a victim of favoritism, nepotism and unholy alliance of DPC to accommodate their blue eyed chap by hook or crook. It was a deliberate attempt on the part of the respondents to frustrate the efforts of the appellant for his due right of promotion.

10. As regards objection of the learned counsel for respondent no.3 regarding specific order for constitution of larger bench was concerned, as per laid down procedure different cases are assigned to the concerned bench by the Registrar of this Tribunal after getting approval from the Chairman Service Tribunal. Now turning to the issue of maintainability of the present appeal, it was exhaustively

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Khalid Mahmood
 Senior Counsel
 Peshawar

argued by both the parties and vide order dated 11.10.2018, this Tribunal held that the present appeal was maintainable for regular hearing. Crux of the order was that appeal of the appellant against impugned order dated 15.08.2017 and for promotion as Secretary Provincial Assembly, Khyber Pakhtunkhwa was still subjudice in this Tribunal and respondents without waiting for decision promoted respondent no.3 to the post of Secretary, hence, their action was against the law/rules. View/stance of this Tribunal is affirmed by the case law reported as 2005 CLC 689 (AJ&K) in which the court held that:-

"Rules of procedure were meant for advancement of justice and parties could not be non-suited on technicalities when their valuable rights were subjudice before the court".

11. Attention is also invited to Para-V of the Khyber Pakhtunkhwa Civil Servant Promotion Policy pertaining to deferment of promotion. Para(a)(iii) of above para is worth perusal. It says that:-

"The PER dossier is incomplete or any other documents/information required by the PSB/DPC for determining his suitability for promotion is not available for reasons beyond his control."

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Service Tribunal,
Peshawar

12. Deficiencies in A.C.R dossier pointed out above were on the one hand beyond the control of the appellant and on other hand spoke of malice, bias, prejudice and jaundiced eye view taken by the respondents. Strictly going by the rules as only one post was available and appellant was at sr. no.1 of the panel, so the saner course was defer the promotion case.

13. We are afraid that assertions of the learned counsel for private respondent no.3 that under Section-4(b)(i) of Khyber Pakhtunkhwa Service Tribunal Act, 1974 the question of fitness of a civil servant is outside the pale of jurisdiction of this Tribunal but directions of superior courts in PLD 2008 (SC) 769, PLD 2008 (SC) 395, 2014 PLC (C.S) 982 and 2015 PLC (C.S) 215 are not conclusive and against

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the consistent views expressed by the superior courts in numerous judgments relied upon by the learned counsel for the appellant. Similarly in PLC (C.S) 1161 (b) and 1999 SCMR 1605, issue of fitness and promotion has also been settled by the apex court in 2005 SCMR 695, PLD 2004 65, 2002 SCMR 1056, 1996 SCMR 1185. In 2002 SCMR (S.C) 1056, the august Supreme Court held that:-

"Where a right to consider the civil servant has been claimed on the ground that he has been bypassed in violation of the promotion policy, the Service Tribunal can examine the question of fitness of civil servant".

"Concept of absolute discretion does not exist in law as it was wholly incompatible with the guarantee provided by Article-4 of the Constitution of Pakistan, 1973. "Absolute discretion" was a ruthless master and unless it was structured, it was likely to be abused. Such a provision would be ex-facie discriminatory". (2007 PLC (C.S) 1246)

14. Before parting with the judgment, apprehensions are lurking in our mind that adverse findings of this Tribunal may pique the ego of respondents and inline with their tradition possibility of again violating the court/tribunal orders cannot be ruled out. Learned counsel for the appellant also brought to the notice of this Tribunal cases of illegal appointment of Special Secretary and Director (Automation & IT) Provincial Assembly were struck down by the Peshawar High Court, Peshawar vide judgment dated 13.11.2018 in writ petition no. 2512/2018 & 13.11.2018 in writ petition no. 3101-P/2018. By now it has been established beyond any shadow of doubt that the former and the present Speaker etc. have one point agenda to promote cronyism, nepotism and favoritism at the cost of merit, transparency, fairness, equality and justice. It amounts to misuse of official authority and is open to cognizance/ judicial scrutiny by the quarters concerned. In order to sensitize the concerned relevant excerpt of PLD 2014 SC 47 is reproduced below:-

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"It is now a well-settled principle of law that all public functionaries must exercise public authority, especially while dealing with the public property, public funds or assets in a fair, just, transparent and reasonable manner, untainted by malafide without discrimination and in accordance with law, keeping in view the constitutional rights of the Citizens".

16. As a sequel to above the appeal is accepted, the impugned order alongwith successive order of promotion of respondent no.3 to the post of Secretary Provincial Assembly, Khyber Pakhtunkhwa passed during the pendency of the present service appeal is set aside. Consequently, notification no. PA/KP/Admin/2018/2242 dated 30.08.2018 assigning acting charge of the post of Secretary Provincial Assembly to the appellant is restored. Parties are left to bear their own costs. File be consigned to the record room.

SD/-

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

SD/-

(MUHAMMAD HAMID MUGHAL)
MEMBER

SD/-

(AHMAD HASSAN)
MEMBER

ANNOUNCED
10.12.2018

Certified to be true copy

MEMBER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Attended

Date of Presentation of Application 31-12-18

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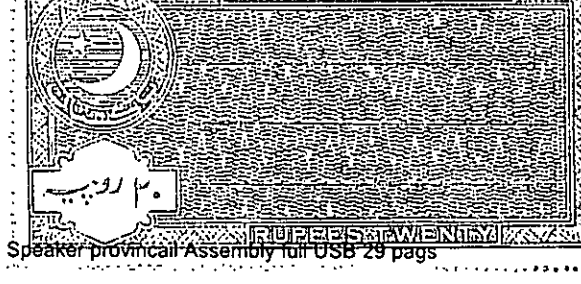
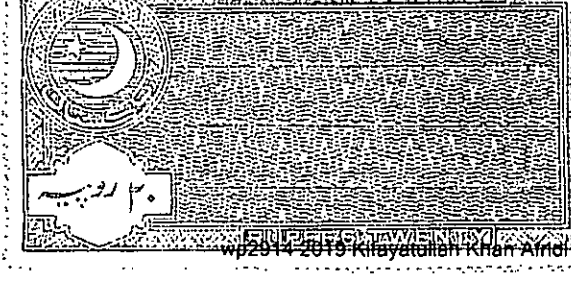
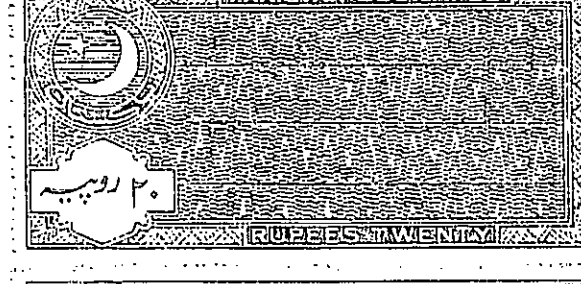
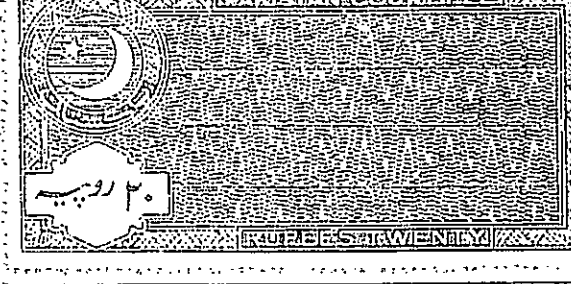
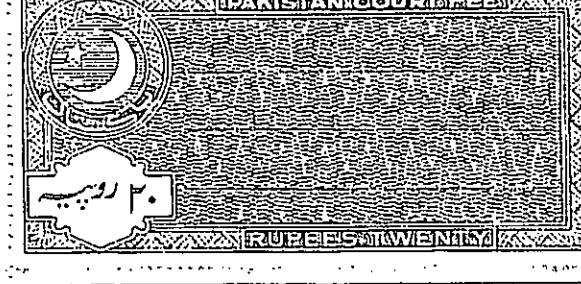
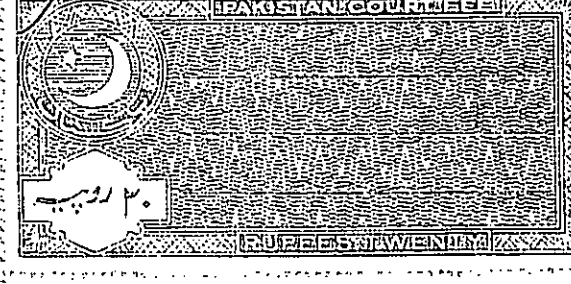
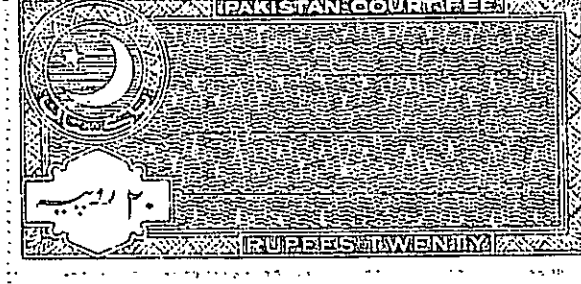
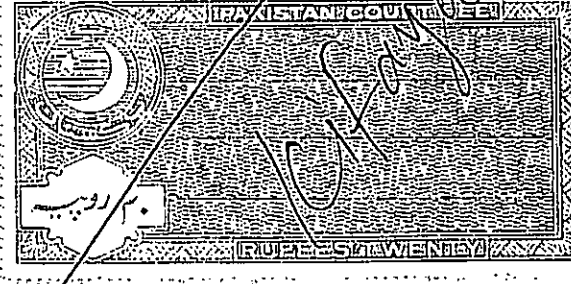
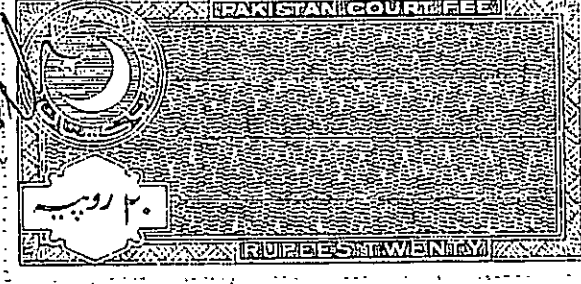
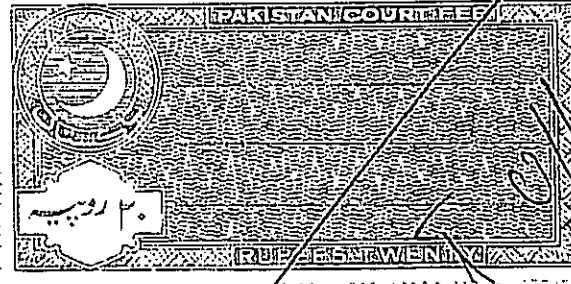
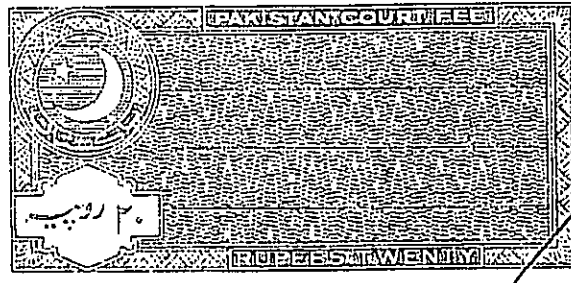
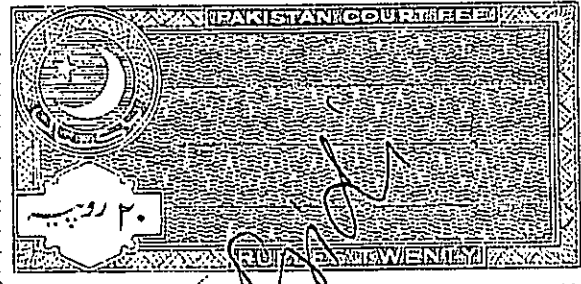
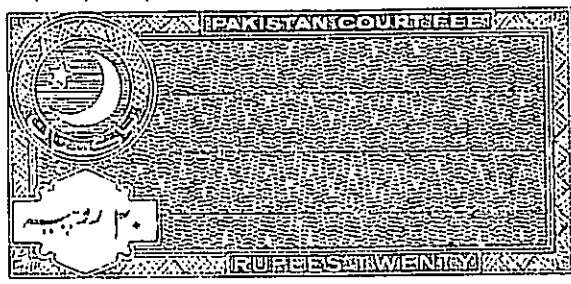
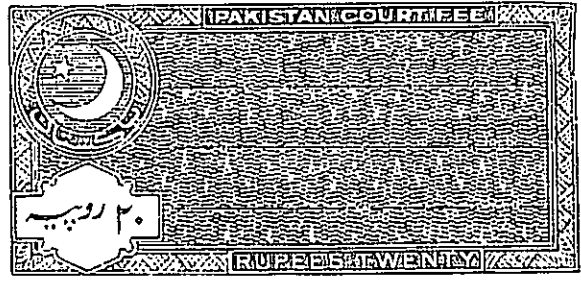
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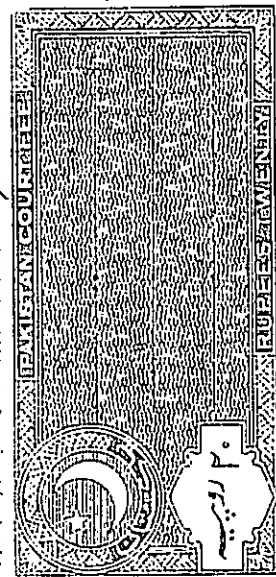
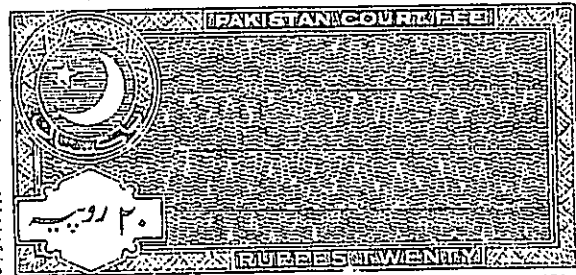
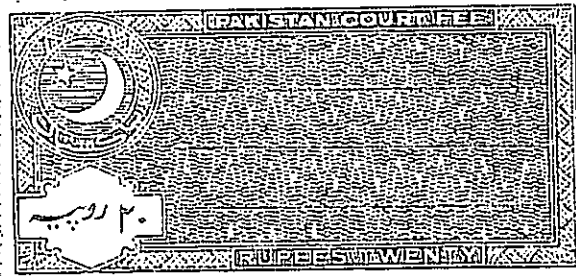
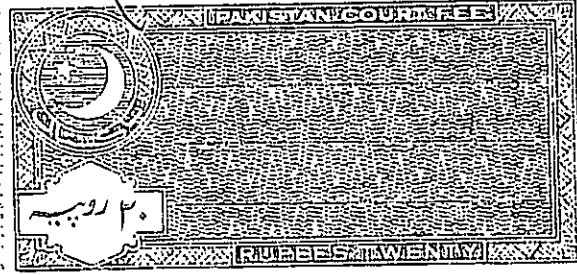
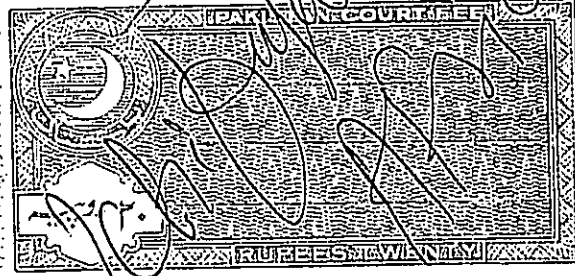
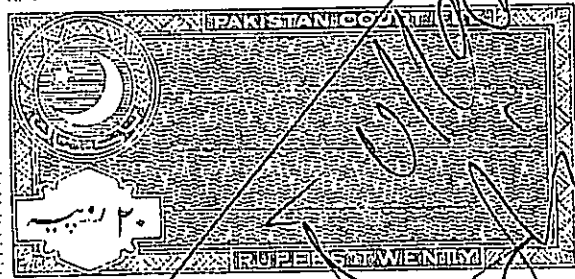
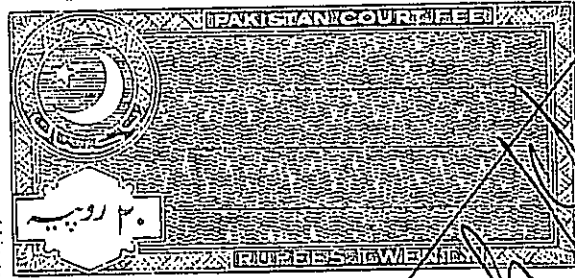
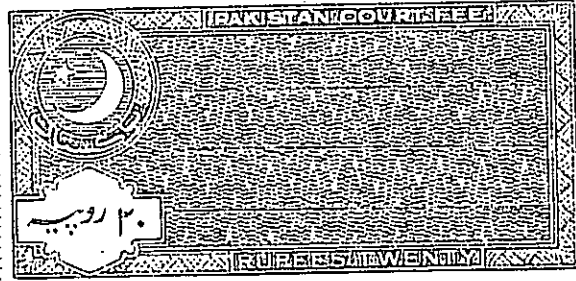
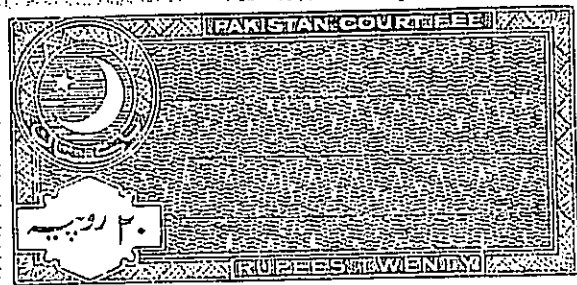
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(Pehnan) منجانب *Abdul M. Speaker*
 Kifayatullah بنامہ *Speaker*
 باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطہ پیروی و جواب وہی وکل کاروائی، متعلقہ
 آن مقام *پشاور ہائی کورٹ* کیلئے علی غلظت *آفریدی* کے لئے
 مقرر کر کے اقرار کیا جاتا ہے۔ کہ وکیل موصوف کو مقدمہ کی کل کاروائی کا مکمل اختیار حاصل ہوگا
 نیز وکیل صاحب کو عرضی دعویٰ داخل کرنے، جواب دعویٰ، اپیل، نظر ثانی کا بھی اختیار حاصل ہو
 گانیز وکیل صاحب بصورت ڈگری برخلاف من اختیار دہندہ اپیل، نگرانی، نظر ثانی از عدالت ابتداء
 تا عدالت انتہا یعنی سپریم کورٹ آف پاکستان دائر کر سکتا ہے وکیل موصوف بصورت عدم پیروی
 کاروائی یکطرفہ یا ڈگری یکطرفہ کیخلاف درخواست دائر کر سکتا ہے اور وکیل موصوف میری جانب
 سے مقدمہ میں بصورت ڈگری چیک یا نقد روپیہ کی شکل میں وصولی کر سکے گا اور مزید یہ کہ وکیل
 موصوف مقدمہ متذکرہ کی کل یا جزوی کاروائی کیلئے اپنی بجائے دیگر وکیل بھی اپنے ساتھ مقرر کر سکتا
 ہے جس کو بھی وہ جملہ اختیار حاصل ہونگے جو کہ وکیل موصوف کو حاصل ہیں مجھے اس صورت میں
 تمام ساختہ پر داختم منظور و قبول ہوگا لہذا میں نے وکالت نامہ بذات تحریر کر کے اس پر دستخط نشان
 انگشت ثبت کر دیا ہے تاکہ سند رہے۔

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Examiner
 Peshawar High Court, Peshawar
 Authorized Under Article 87 of
 the Constitution of Pakistan 1973

23 MAY 2019

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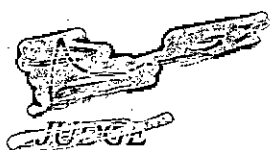
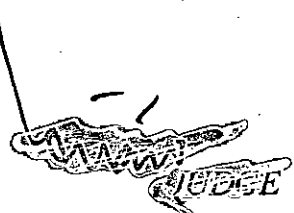


بمقام *پشاور ہائی کورٹ* کے لئے منظور ہے۔

IN THE PESHAWAR HIGH COURT, PESHAWAR

FORM OF ORDER SHEET



Date of order or proceedings.	Order or other proceedings with signature (s) of Judge(s)
(1)	(2)
21.05.2019	<p><u>W.P.No.2914-P/2019</u></p> <p><u>Present:</u> Mr. Ali Azim Afridi, Advocate for the petitioner.</p> <p align="center">***</p> <p>Comments of respondent be called for, so as to reach this court positively within possible shortest time.</p> <p><u>Interim Relief</u></p> <p>Notice for 11.6.2019. In the meanwhile, the impugned Notification dated 16.5.2019 stands suspended.</p> <div style="text-align: right; margin-top: 20px;">  JUDGE </div> <div style="text-align: right; margin-top: 20px;">  JUDGE </div> <div style="text-align: right; margin-top: 20px;"> <p>CERTIFIED TO BE TRUE COPY</p> <p>Registrar, Peshawar High Court, Peshawar</p> <p>Witnessed Under Article 87 of the Constitution of Pakistan Order 1999</p> <p>23 MAY 2019</p> </div>

No. 21040

Date of Presentation 23/5/19 Application 23/5/19

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Date of Delivery of Copy 23/5/19

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31A/19

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Sh. Azmat Saeed
Mr. Justice Umar Ata Bandial

CIVIL PETITION NO.354 OF 2019 &
CIVIL PETITION NO.120-P OF 2019

(On appeal from the judgment/order dated 10.12.2018
passed by KP Service Tribunal in Appeal No.1324 of 2017)

Nasrullah Khan

... ***Petitioner(s)***
(in CP.354 of 2019)

Speaker Provincial Assembly, KP
Peshawar & another

... ***Petitioner(s)***
(in CP.120-P of 2019)

VERSUS

Kifayatullah Khan Afridi & others

... ***Respondent(s)***
(in both cases)

For the petitioner(s) : Hafiz Arfat Ahmad Ch., ASC.
(in CP.354 of 2019)

For the petitioner(s) : Mr. M. Munir Piracha, ASC.
(in CP.120-P of 2019)

Respondent No.1 : In-person
(in both cases)

On Court's call : Barrister Qasim Wadood,
Addl. AG KPK.

Date of hearing : 02.07.2019.

ORDER

SH. AZMAT SAEED, J. CP.120-P OF 2019. It is
contended by the learned counsel for the petitioner that
the observations made and the comments passed by the
learned Service Tribunal in the impugned judgment with
regard to the petitioner i.e. the Speaker of the Provincial
Assembly of KPK, were uncalled for, unnecessary and
unsubstantiated by the record.

TESTED

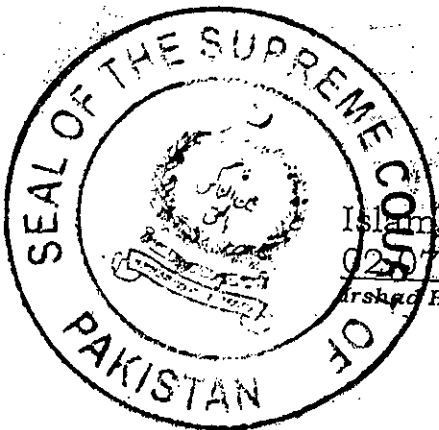
Court Associate
Supreme Court of Pakistan

2. Notice to the respondents.
3. C.M.A. NO.256-P OF 2019 in CP.120-P of 2019. Notice. Until the next date of hearing, observations made in the impugned judgment against the petitioner shall remain suspended.
4. CP.354 OF 2019. We have heard the counsel for the petitioner as well as the respondent in-person so also the learned Additional Advocate General KPK, who appeared on Court call. A consensus has emerged that the learned counsel for the petitioner does not press this petition, however, states that the matter of promotion of respondent No.1 may be placed before the DPC for consideration in due course, which may decide the matter in accordance with law uninfluenced by any extraneous observations made in the impugned judgment by the learned Service Tribunal.
5. This petition stands disposed of in the above terms.

Sd/-J

Sd/-J

Certified to be True Copy



Islamabad,
02/07/2019
Irshad Hussain /

Court Associate
Supreme Court of Pakistan
Islamabad

NOT APPROVED FOR R

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Umar Ata Bandial
Mr. Justice Mazhar Alam Khan Miankhel

**Civil Petition No.120-P/2019 and CMA.No.256-P/2019 in
C.P.120-P/2019**

(On appeal from the judgment dated 10.12.2018 passed by the KP, Service Tribunal,
Peshawar in Appeal No.1324/17)

Speaker Provincial Assembly, K.P. Peshawar & another

.....Petitioner/Applicant

Versus

Kifayatullah Khan Afridi & another

....Respondents
(In both cases)

For the Petitioner/Applicant: Mr. Muhammad Munir Peracha, ASC

Govt. Of KPK: Barrister Qasim Wadood, Addl.AG-KP

Respondent No.1: In person

Date of Hearing: 31.7.2019

ORDER

Umar Ata Bandial, J.- Learned counsel for the petitioner has addressed arguments on behalf of the learned Speaker, Khyber Pakhtunkhwa Provincial Assembly, ("**Speaker PA**"). He has referred to uncomplimentary remarks made by the Khyber Pakhtunkhwa Service Tribunal ("**Tribunal**") in its impugned judgment dated 10.12.2018 attributing collateral purpose to the orders passed in the present controversy by two previous Speakers-PA. This is done without grant of hearing to the Speaker-PA; and seeks their expunction. He has also apprised that the Speaker-PA has highest respect for orders passed by the Judiciary, that he does not hold any personal view on the merits of the service controversy raised between the private respondents in this petition. We consider that

ATTESTED

Court Associate
Supreme Court of Pakistan
Islamabad

the contents of paragraph No.14 of the impugned judgment by the Tribunal are judgmental and predisposed. However, we would like to read the minutes of the respective Departmental Promotional Committee (DPC) meetings that are relevant to the Tribunal's judgments dated 14.9.2017 and 10.12.2018.

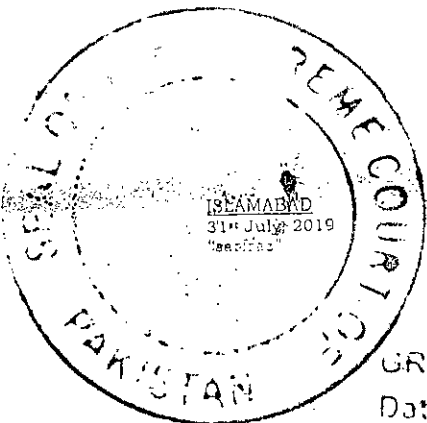
2. On account of the withdrawal of the petition filed by Mr. Nasrullah Khan (C.P.354/2019) as noted in our order dated 2.7.2019, the decision on the merits of the controversy between the private respondents by the impugned judgment dated 10.12.2018 by the Tribunal remains intact. Accordingly, the learned counsel for the Speaker-PA assures that the directions given in the said judgment regarding the notification dated 30.8.2018 shall be implemented forthwith. He also assures that as envisaged in our order dated 2.7.2019, a fresh Departmental Promotional Committee (DPC) is being constituted to consider the matter of promotion to the post of Secretary, Provincial Assembly of KP strictly in accordance with law and on the basis of relevant criteria.

3. In view of the foregoing, let this matter be fixed for hearing in the last week of September, 2019. Adjourned.

Sd/-J
Sd/-J

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Court Associate
Supreme Court of Pakistan
Islamabad



GR No: _____
Date of Presentation: _____
No of Words: _____
No of Folios: _____
Requisition Fee Rs: _____
Copy Fee in: _____
Court Fee Stamp: _____
Date of Completion of Copy: _____
Date of delivery of Copy: _____
Compared by: _____

PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 03/09/2019.

NO.PA./KP/Admn:/2019/ 6027 On the recommendation of Departmental Promotion/Recruitment Committee No.I and in exercise of the powers conferred on him by Rule-10 read with Rule-6 of the Khyber Pakhtunkhwa Provincial Assembly Secretariat (Recruitment) Rules, 1974, Mr. Speaker has been pleased to promote Mr. Nasrullah Khan, Additional Secretary BPS-20 of the Provincial Assembly Secretariat of Khyber Pakhtunkhwa, against the vacant post of Secretary (BPS-21) with immediate effect.

BY ORDER OF MR. SPEAKER

Sd/-

**ADDITIONAL SECRETARY (ADMN)
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA**

E.NO.PA/K.P/Admn:/2019/ 6028-37 Dated 03/09/2019.

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

- 1 All the Administrative Secretaries to Govt of Khyber Pakhtunkhwa, Peshawar.
- 2 The officer concerned.
- 3 The Secretary to Mr. Speaker, Provincial Assembly of Khyber Pakhtunkhwa.
- 4 All Heads of Attached Departments, Khyber Pakhtunkhwa.
- 5 The Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 6 The Director (Finance & Accounts), Provincial Assembly of Khyber Pakhtunkhwa.
- 7 The Manager, Government Printing Press, Peshawar, for publication in the next issue of Government Gazette.
- 8 The PS to Deputy Speaker, Provincial Assembly of Khyber Pakhtunkhwa.
- 9 Pay Bill Clerk, Provincial Assembly of Khyber Pakhtunkhwa.
- 10 Personal file of the officer concerned.


**DEPUTY SECRETARY (ADMN)
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA**

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Umar Ata Bandial
Mr. Justice Mazhar Alam Khan Miankhel

**Civil Petition No.120-P/2019 and CMA.No.256-P/2019 in
C.P.120-P/2019**

(On appeal from the judgment dated 10.12.2018 passed by the KP, Service Tribunal,
Peshawar in Appeal No.1324/17)

Speaker Provincial Assembly, K.P. Peshawar & another

.....Petitioner/Applicant

Versus

Kifayatullah Khan Afridi & another

....Respondents
(In both cases)

For the Petitioner/Applicant: Mr. Muhammad Munir Peracha, ASC

Govt. Of KPK: Barrister Qasim Wadood, Addl.AG-KP

Respondent No.1: In person

Date of Hearing: 31.7.2019

ORDER

Umar Ata Bandial, J.- Learned counsel for the petitioner has addressed arguments on behalf of the learned Speaker, Khyber Pakhtunkhwa Provincial Assembly, ("**Speaker PA**"). He has referred to uncomplimentary remarks made by the Khyber Pakhtunkhwa-Service Tribunal ("**Tribunal**") in its impugned judgment dated 10.12.2018 attributing collateral purpose to the orders passed in the present controversy by two previous Speakers-PA. This is done without grant of hearing to the Speaker-PA; and seeks their expunction. He has also apprised that the Speaker-PA has highest respect for orders passed by the Judiciary, that he does not hold any personal view on the merits of the service controversy raised between the private respondents in this petition. We consider that

ATTESTED

Court Associate
Supreme Court of Pakistan
Islamabad

the contents of paragraph No.14 of the impugned judgment by the Tribunal are judgmental and predisposed. However, we would like to read the minutes of the respective Departmental Promotional Committee (DPC) meetings that are relevant to the Tribunal's judgments dated 14.9.2017 and 10.12.2018.

2. On account of the withdrawal of the petition filed by Mr. Nasrullah Khan (C.P.354/2019) as noted in our order dated 2.7.2019, the decision on the merits of the controversy between the private respondents by the impugned judgment dated 10.12.2018 by the Tribunal remains intact. Accordingly, the learned counsel for the Speaker-PA assures that the directions given in the said judgment regarding the notification dated 30.8.2018 shall be implemented forthwith. He also assures that as envisaged in our order dated 2.7.2019, a fresh Departmental Promotional Committee (DPC) is being constituted to consider the matter of promotion to the post of Secretary, Provincial Assembly of KP strictly in accordance with law and on the basis of relevant criteria.

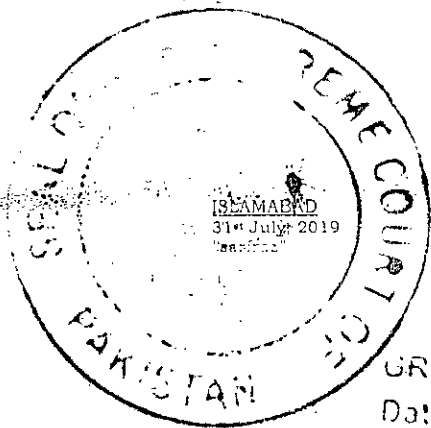
3. In view of the foregoing, let this matter be fixed for hearing in the last week of September, 2019. Adjourned.

Sd/-J

Sd/-J

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Court Associate
Supreme Court of Pakistan
Islamabad



GR-No: _____
Date of Presentation: 1-8-19
No of Volumes: 1
No of Folios: 1
Requisition Fee Rs: 500
Cop, Fee in: 300
Court Fee Stamp: 800
Date of Completion of Copy: 7/8/19
Date of delivery of Copy: 8/8/19
Compared by: _____

31A/19

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Sh. Azmat Saeed
Mr. Justice Umar Ata Bandial

CIVIL PETITION NO.354 OF 2019 &
CIVIL PETITION NO.120-P OF 2019

(On appeal from the judgment/order dated 10.12.2018
passed by KP Service Tribunal in Appeal No.1324 of 2017)

Nasrullah Khan

... Petitioner(s)
(in CP.354 of 2019)

Speaker Provincial Assembly, KP
Peshawar & another

... Petitioner(s)
(in CP.120-P of 2019)

VERSUS

Kifayatullah Khan Afridi & others

... Respondent(s)
(in both cases)

For the petitioner(s) : Hafiz Arfat Ahmad Ch., ASC.
(in CP.354 of 2019)

For the petitioner(s) : Mr. M. Munir Piracha, ASC.
(in CP.120-P of 2019)

Respondent No.1 : In-person
(in both cases)

On Court's call : Barrister Qasim Wadood,
Addl. AG KPK.

Date of hearing : 02.07.2019.

ORDER

SH. AZMAT SAEED, J. CP.120-P OF 2019. It is
contended by the learned counsel for the petitioner that
the observations made and the comments passed by the
learned Service Tribunal in the impugned judgment with
regard to the petitioner i.e. the Speaker of the Provincial
Assembly of KPK, were uncalled for, unnecessary and
unsubstantiated by the record.

ATTESTED


4/7/19
Court Associate
Supreme Court of Pakistan

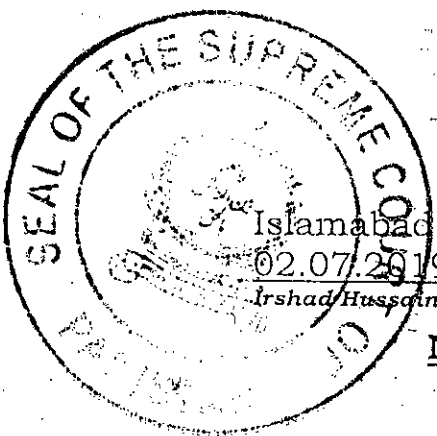
2. Notice to the respondents.
3. **C.M.A. NO.256-P OF 2019 in CP.120-P of 2019.** Notice. Until the next date of hearing, observations made in the impugned judgment against the petitioner shall remain suspended.
4. **CP.354 OF 2019.** We have heard the counsel for the petitioner as well as the respondent in-person so also the learned Additional Advocate General KPK, who appeared on Court call. A consensus has emerged that the learned counsel for the petitioner does not press this petition, however, states that the matter of promotion of respondent No.1 may be placed before the DPC for consideration in due course, which may decide the matter in accordance with law uninfluenced by any extraneous observations made in the impugned judgment by the learned Service Tribunal.
5. This petition stands disposed of in the above terms.

Sd/-J

Sd/-J

Certified to be True Copy

4/7/19
Court Associate
Supreme Court of Pakistan
Islamabad



NOT APPROVED FOR REPORTING.

MOST URGENT
SUPREME COURT MATTER



OFFICE OF THE ADVOCATE GENERAL, KHYBER PAKHTUNKHWA, PESHAWAR

No. 18738 /A.G. Dated 23/9/2019

Address: High Court Building, Peshawar. Tel: No. 091-9210119, 9210312,
Fax No. 091-9210270, Exchange No. 091-9213833

To

The Secretary Provincial Assembly, Govt of Khyber Pakhtunkhwa,
Peshawar.

Subject: CP.120-P/19-SPEAKER PROVINCIAL ASSEMBLY KPK -VS-KIFYAT ULLAH KHAN

Sir,

The above noted case is fixed for hearing before the Supreme Court of Pakistan at Islamabad/
Peshawar on 26-09-2019.

An officer not below the rank of Grade-17 and fully conversant with the facts of the subject case, may kindly
be deputed along with complete record to discuss with the Additional Advocate General, Khyber Pakhtunkhwa at
Islamabad / Peshawar on 25-09-2019 and attend the Supreme Court of Pakistan
at Islamabad / Peshawar on 26-09-2019

[Handwritten signature]
23/9/19

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ADVOCATE ON RECORD,
KHYBER PAKHTUNKHWA,
PESHAWAR.

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Umar Ata Bandial
Mr. Justice Mazhar Alam Khan Miankhel

Civil Petition No.120-P/2019 and CMA.No.256-P/2019 in
C.P.120-P/2019

(On appeal from the judgment dated 10.12.2018 passed by the KP, Service Tribunal,
Peshawar in Appeal No.1324/17)

Speaker Provincial Assembly, K.P. Peshawar & another

.....Petitioner/Applicant

Versus

Kifayatullah Khan Afridi & another

....Respondents
(In both cases)

For the Petitioner/Applicant: Mr. Muhammad Munir Peracha, ASC

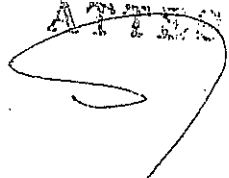
Govt. Of KPK; Barrister Qasim Wadood, Addl.AG-KP

Respondent No.1: In person

Date of Hearing: 31.7.2019

ORDER

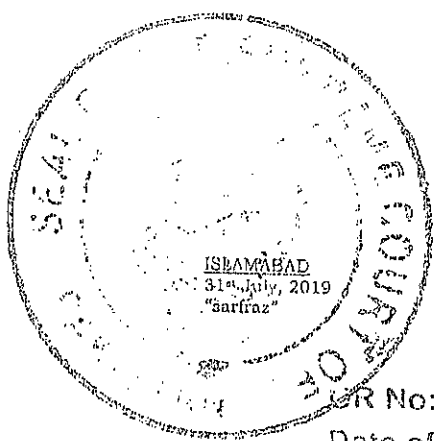
Umar Ata Bandial, J.- Learned counsel for the petitioner has addressed arguments on behalf of the learned Speaker, Khyber Pakhtunkhwa Provincial Assembly, ("Speaker PA"). He has referred to uncomplimentary remarks made by the Khyber Pakhtunkhwa Service Tribunal ("Tribunal") in its impugned judgment dated 10.12.2018 attributing collateral purpose to the orders passed in the present controversy by two previous Speakers-PA. This is done without grant of hearing to the Speaker-PA; and seeks their expunction. He has also apprised that the Speaker-PA has highest respect for orders passed by the Judiciary, that he does not hold any personal view on the merits of the service controversy raised between the private respondents in this petition. We consider that


Court Associate
Supreme Court of Pakistan
Islamabad

the contents of paragraph No.14 of the impugned judgment by the Tribunal are judgmental and predisposed. However, we would like to read the minutes of the respective Departmental Promotional Committee (DPC) meetings that are relevant to the Tribunal's judgments dated 14.9.2017 and 10.12.2018.

2. On account of the withdrawal of the petition filed by Mr. Nasrullah Khan (C.P.354/2019) as noted in our order dated 2.7.2019, the decision on the merits of the controversy between the private respondents by the impugned judgment dated 10.12.2018 by the Tribunal remains intact. Accordingly, the learned counsel for the Speaker-PA assures that the directions given in the said judgment regarding the notification dated 30.8.2018 shall be implemented forthwith. He also assures that as envisaged in our order dated 2.7.2019, a fresh Departmental Promotional Committee (DPC) is being constituted to consider the matter of promotion to the post of Secretary, Provincial Assembly of KP strictly in accordance with law and on the basis of relevant criteria.

3. In view of the foregoing, let this matter be fixed for hearing in the last week of September, 2019. Adjourned.



Sd/-J
Sd/-J

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Court Associate
Supreme Court of Pakistan
Islamabad

513-P/19

Case No: _____

Date of Presentation: 8.8.19

No of Words: _____

No of Folia: _____

Requisition Fee Rs: _____

Copy Fee in: _____

Court Fee Stamps: 8.2

Date of Completion of Copy: 15/8/19

Date of delivery of Copy: 17/8/19

Compared by/Prepared by: _____

31A/19

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Sh. Azmat Saeed
Mr. Justice Umar Ata Bandial

CIVIL PETITION NO.354 OF 2019 &
CIVIL PETITION NO.120-P OF 2019

(On appeal from the judgment/order dated 10.12.2018
passed by KP Service Tribunal in Appeal No.1324 of 2017)

Nasrullah Khan *... Petitioner(s)*
(in CP.354 of 2019)

Speaker Provincial Assembly, KP *... Petitioner(s)*
Peshawar & another (in CP.120-P of 2019)

VERSUS

Kifayatullah Khan Afridi & others *... Respondent(s)*
(in both cases)

For the petitioner(s) : Hafiz Arfat Ahmad Ch., ASC.
(in CP.354 of 2019)

For the petitioner(s) : Mr. M. Munir Piracha, ASC.
(in CP.120-P of 2019)

Respondent No.1 : In-person
(in both cases)

On Court's call : Barrister Qasim Wadood,
Addl. AG KPK.

Date of hearing : 02.07.2019.

ORDER

SH. AZMAT SAEED, J. CP.120-P OF 2019. It is
contended by the learned counsel for the petitioner that
the observations made and the comments passed by the
learned Service Tribunal in the impugned judgment with
regard to the petitioner i.e. the Speaker of the Provincial
Assembly of KPK, were uncalled for, unnecessary and
unsubstantiated by the record.

ATTESTED

Court Associate
Supreme Court of Pakistan

2. Notice to the respondents.

3. C.M.A. NO.256-P OF 2019 in CP.120-P of 2019. Notice. Until the next date of hearing, observations made in the impugned judgment against the petitioner shall remain suspended.

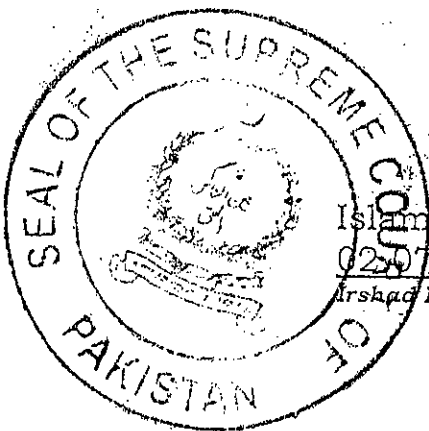
4. CP.354 OF 2019. We have heard the counsel for the petitioner as well as the respondent in-person so also the learned Additional Advocate General KPK, who appeared on Court call. A consensus has emerged that the learned counsel for the petitioner does not press this petition, however, states that the matter of promotion of respondent No.1 may be placed before the DPC for consideration in due course, which may decide the matter in accordance with law uninfluenced by any extraneous observations made in the impugned judgment by the learned Service Tribunal.

5. This petition stands disposed of in the above terms.

Sd/-J

Sd/-J

Certified to be True Copy



Islamabad,
02/07/2019
Irshad Hussain /*

Court Associate
Supreme Court of Pakistan
Islamabad

NOT APPROVED FOR R

PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 21/08/2019

No.PA/K.P/Admn:/2019/ 4733 Pursuant to the order of Hon'ble Supreme Court of Pakistan dated 31-07-2019 passed during consideration of Civil Petition No.120-P/2019 & CMA No.256-P/2019 in CP No.120-P/2019, this Secretariat Notification issued vide No.PA/KP/Admn:/2018/2242 dated 30-08-2018 assigning acting charge of Secretary, Provincial Assembly to Mr. Kifayatullah Khan Afridi, Senior Additional Secretary (BPS-20), is hereby restored with immediate effect.

BY ORDER OF MR. SPEAKER

Sd/-

ADDITIONAL SECRETARY (ADMN:)
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

E.No.PA/K.P/Admn:/2019/ 4734-47 Dated Peshawar, the 21/08/2019

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

1. All Administrative Secretaries to Government of Khyber Pakhtunkhwa.
2. The Secretary, National Assembly of Pakistan, Islamabad.
3. The Secretaries, Provincial Assemblies, Punjab, Sindh, Baluchistan, Lahore, Karachi & Quetta.
4. The Secretary, Legislative Assembly of Azad Jamu & Kashmir, Muzaffarabad.
5. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
6. The Officer concerned.
7. The Secretary to Mr. Speaker, Provincial Assembly Secretariat of Khyber Pakhtunkhwa.
8. All Additional Secretaries, Provincial Assembly Secretariat of Khyber Pakhtunkhwa.
9. The Director (F&A), Provincial Assembly Secretariat of Khyber Pakhtunkhwa.
10. All Deputy Secretaries, Provincial Assembly Secretariat of Khyber Pakhtunkhwa.
11. The PS to Deputy Speaker, Provincial Assembly Secretariat of Khyber Pakhtunkhwa.
12. The Manager, Government Printing Press, Peshawar.
13. The PA to Senior Additional Secretary, Provincial Assembly Secretariat of Khyber Pakhtunkhwa.
14. The Pay bill Clerk, Provincial Assembly Secretariat of Khyber Pakhtunkhwa.
15. Personal file of the officer concerned.


DEPUTY SECRETARY (ADMN:)
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

(296)

PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 9/07/2019

No.PA/K.P/Admn:/2019/ 542 Pursuant to the Order of Hon'ble Supreme Court of Pakistan dated 02-07-2019, in Civil Petition No.354 of 2019, this Secretariat Notifications No.PA/KP/Admn:/2017/4935 dated 15-08-2017 & No.PA/KP/Admn:/2018/3798 dated 25-09-2018 promoting Mr. Nasrullah Khan Khattak, as Secretary (BPS-21), Provincial Assembly Secretariat of Khyber Pakhtunkhwa, are hereby withdrawn with effect from 02-07-2019.

BY ORDER OF MR. SPEAKER

Sd/-

DEPUTY SECRETARY (ADMN):
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

E.No.PA/K.P/Admn:/2019/ 543-47 Dated Peshawar, the 9/07/2019

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

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Officer concerned.
3. The Manager, Government Printing Press, Peshawar.
4. Pay Bill Clerk, Provincial Assembly of Khyber Pakhtunkhwa.
5. Personal file of the officer concerned.

ASSISTANT SECRETARY (ADMN):
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 21/08/2019

No.PA/K.P/Admn:/2019/ 4748 In supersession of this Secretariat Notification No.PA/KP/Admn:/2018/1901 dated 17-08-2018 and in pursuance of rule-6 (2) and 8 (1) of the Khyber Pakhtunkhwa, Provincial Assembly Secretariat (Recruitment) Rules, 1974, Mr. Speaker is pleased to reconstitute with immediate effect, the Departmental Promotion/Recruitment Committee No.1 consisting of the following, to advise the Appointing Authority of the Provincial Assembly of Khyber Pakhtunkhwa with regard to promotion and appointments to the posts in BPS-17 and above in the Provincial Assembly Secretariat of Khyber Pakhtunkhwa:-

1. Mr. Babar Saleem Swati, Chairman
Member, Provincial Assembly of Khyber Pakhtunkhwa.
2. Mr. Muhammad Zahoor, Member
Member, Provincial Assembly of Khyber Pakhtunkhwa.
3. Mr. Laiq Muhammad Khan, Member
Member, Provincial Assembly of Khyber Pakhtunkhwa.
4. Mr. Wakil Khan, Member-cum-Secretary
Deputy Secretary (Admn.),
Provincial Assembly of Khyber Pakhtunkhwa.

BY ORDER OF MR. SPEAKER,


Sd/-

ADDITIONAL SECRETARY (ADMN:).
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

E.No.PA/K.P/Admn:/2019/ 4749-54 Dated Peshawar, the 21/08/2019

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

1. The Chairman / Members of Departmental Promotion/Recruitment Committee No.1, Provincial Assembly of Khyber Pakhtunkhwa.
2. All the Administrative Secretaries to Government of Khyber Pakhtunkhwa, Peshawar.
3. All the Heads of Attached Departments, Khyber Pakhtunkhwa.
4. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
5. The Manager, Government Printing Press Peshawar for publication in the next issue of Government Gazette.
6. The Secretary to Mr. Speaker for information of the Hon'ble Speaker, Provincial Assembly of Khyber Pakhtunkhwa.


DEPUTY SECRETARY (ADMN:)

PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 03/09/2019.

NO.PA./KP/Admn:/2019/ 6027 On the recommendation of Departmental Promotion/Recruitment Committee No.I and in exercise of the powers conferred on him by Rule-10 read with Rule-6 of the Khyber Pakhtunkhwa Provincial Assembly Secretariat (Recruitment) Rules, 1974, Mr. Speaker has been pleased to promote Mr. Nasrullah Khan, Additional Secretary BPS-20 of the Provincial Assembly Secretariat of Khyber Pakhtunkhwa, against the vacant post of Secretary (BPS-21) with immediate effect.

BY ORDER OF MR. SPEAKER

Sd/-

ADDITIONAL SECRETARY (ADMN)
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

E.NO.PA/K.P/Admn:/2019/ 6028-37 Dated 03/09/2019.

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

- 1 All the Administrative Secretaries to Govt of Khyber Pakhtunkhwa, Peshawar.
- 2 The officer concerned.
- 3 The Secretary to Mr. Speaker, Provincial Assembly of Khyber Pakhtunkhwa.
- 4 All Heads of Attached Departments, Khyber Pakhtunkhwa.
- 5 The Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 6 The Director (Finance & Accounts), Provincial Assembly of Khyber Pakhtunkhwa.
- 7 The Manager, Government Printing Press, Peshawar, for publication in the next issue of Government Gazette.
- 8 The PS to Deputy Speaker, Provincial Assembly of Khyber Pakhtunkhwa.
- 9 Pay Bill Clerk, Provincial Assembly of Khyber Pakhtunkhwa.
- 10 Personal file of the officer concerned.


DEPUTY SECRETARY (ADMN)
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 13 /09/2019.

NO.PA/KP/Admn:/2019/6940 The competent authority has been pleased to nominate Mr. Amjad Ali, Additional Secretary, Provincial Assembly of Khyber Pakhtunkhwa to work as Acting Secretary, Provincial Assembly of Khyber Pakhtunkhwa w.e.f.13-09-2019 afternoon till the return of Mr. Nasrullah Khan Khattak, Secretary, Provincial Assembly of Khyber Pakhtunkhwa, from abroad.

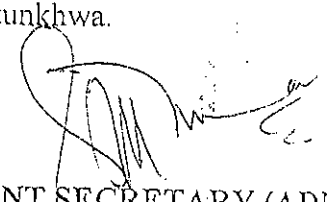
BY ORDER OF MR. SPEAKER

Sd/-
SECRETARY
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

Endt.NO.PA/KP/Admn:/2019/6941-55 Dated 13 /09/2019.

Copy of the above is forwarded for information & necessary action to: -

1. All Administrative Secretaries to Government of Khyber Pakhtunkhwa.
2. The Secretary, National Assembly of Pakistan, Islamabad.
3. The Secretaries, Provincial Assemblies, Punjab, Sindh and Baluchistan, Lahore/Karachi/Quetta.
4. The Secretary, Legislative Assembly of Azad Jammu & Kashmir, Muzaffarabad.
5. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
6. The officer concerned.
7. The Manager, Government Printing Press, Peshawar.
8. The Secretary to Mr. Speaker, Provincial Assembly of Khyber Pakhtunkhwa.
9. The Director (Finance & Accounts), Provincial Assembly of Khyber Pakhtunkhwa.
10. All Additional Secretaries, Provincial Assembly of Khyber Pakhtunkhwa.
11. All Deputy Secretaries, Provincial Assembly of Khyber Pakhtunkhwa.
12. The PS to Deputy Speaker, Provincial Assembly of Khyber Pakhtunkhwa.
13. The PS to Secretary, Provincial Assembly of Khyber Pakhtunkhwa.
14. Pay Bill Clerk, Provincial Assembly of Khyber Pakhtunkhwa.
15. Personal file of the officer concerned.


ASSISTANT SECRETARY (ADMN)
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

83/16

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT

Mr. Justice Umar Ata Bandial
Mr. Justice Maqbool Baqar
Mr. Justice Faisal Arab

CP No. 120-P/2019 & CMA 809/2019

Speaker Provincial Assembly, KP Peshawar *Petitioner(s)*

Versus

Kifayatullah Khan Afridi & another *Respondent(s)*

For the Petitioner(s) : Mr. Muhammad Munir Paracha,
ASC
Mian Saadullah Jandoli, AOR

For the Respondent(s) : In person (R-1)

For KPK : Mr. Qasim Wadood, Addl. AG

Date of Hearing : 26.09.2019

ORDER

Umar Ata Bandial, J. Learned counsel for the applicant has read from paragraph No. 14 of the impugned judgment dated 10.12.2018 passed by the learned KPST wherein very strong views have been expressed about the serving Speaker of the KPK Assembly as well as his predecessor. It is noted therein that both "the former and the present Speaker etc. have one point agenda to promote cronyism, nepotism and favouritism at the cost of merit, transparency, fairness, equality and justice. It amounts to misuse of official authority and is open to cognizance/judicial scrutiny by the quarters concerned." These remarks have been made because statedly an officer junior to the respondent was promoted and appointed Secretary of the Provincial Assembly. The remarks have derogatory contents and have been recorded without confronting the previous or the present Speakers of the KPK

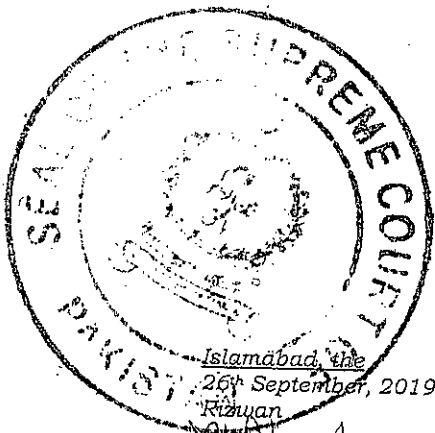
ATTESTED

[Signature]
Court Associate
Supreme Court of Pakistan
Islamabad

Assembly with the allegations sustaining the same. This ought to have been done by serving notice in accordance with the rule laid down in the case of Aman Ullah and others vs. The Federal Government of Pakistan thr. Secretary, Ministry of Finance, Islamabad and others (PLD 1990 SC 1092). As a result neither of the said gentlemen was heard before the adverse remarks were recorded against him. Accordingly, the aforesaid remarks are expunged from the impugned judgment. The CMA No. 809/2019 is accordingly disposed of.

2. Learned counsel for the petitioner submits that the petitioner has no interest in the outcome of the service dispute between the civil servants litigating for the post of Secretary of the KPK Assembly. Consequently, he seeks no further relief.

3. Respondent No. 1 present in Court submits that Secretariat of the KPK Assembly has not complied with the direction of the Court issued on 31.07.2019 for a fresh DPC to consider the candidates for promotion in accordance with law. If the respondent has any grievance regarding the non-compliance of the directions issued by this Court he may file appropriate proceedings before the Court. The present petition stands disposed of accordingly.



Islamabad, the
26 September, 2019
Rizwan

Muhammad 10/10/19

Sd/-J

Sd/-J

Sd/-J

Certified to be True Copy

**Court Associate
Supreme Court of Pakistan
Islamabad**