

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

**S.A No. 540 /2022**

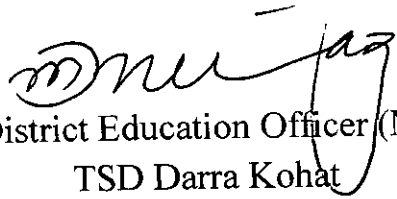
Muhammad Saood, Qari, Government High School Shpalkiwal SD, Darra Adam  
Khel, District Kohat .....**Appellant**

***VERSUS***

1. The Director, (Elementary & Secondary Education) KPK, Merged District,  
Education Directorate, Peshawar.
2. Assistant Director (Estab), Merged Area, Education Directorate, Peshawar
3. The District Education Officer (male), Sub Division Darra Adam Khel,  
Kohat.....**Respondent**

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District Education Officer (M)  
TSD Darra Kohat

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**PARA WISE COMMENTS ON THE BEHALF OF RESPONDENT NO. 1 to 3.**

**Respectfully Sheweth**

- i. That the Appellant has got no cause of action, locus standi to file the instant appeal.
- ii. That the Appellant has concealed material facts from honorable Tribunal.
- iii. That the Appellant has not come to this honorable Tribunal with clean hands.
- iv. That the Appellant case is not maintainable.
- v. That the Appellant is based upon malicious/vexatious and frivolous ground.
- vi. That the Appellant is estopped by his own conduct.
- vii. That the Appeal of the appellant is badly time bared.
- viii. That the Appeal is bad for misjoinder and non-joinder of necessary parties.

**FACTS:**

1. Para No. 1 pertains to record.
2. Para No. 2 pertains to record.
3. Para No. 3 pertains to record.
4. Para No. 4 incorrect that there was no eligible candidate in SST group (Phy/Math) except one candidate Mr. Muhammad Asghar who was promoted to SST group (Phy/Math).
5. Para No. 5 is incorrect the appellant is working as a Qari BPS-12. According the promotion policy the share of different categories for promotion of SST is as under: -

S No.	Name of Categories	Share/quota
1	Initial Recruitment	25%
2	Promotion Quota	75%
3	CT	40%
4	PSHT	20%
5	AT/ TT/ DM	4% each
6	Qari/ S Qari	3%

Furthermore, there were total 12 number of vacant posts of SST (Phy/Math) in the year 2020. According the promotion policy the Share of Qari/ S Qari is  $12 \times 3 / 100 = 0.36$ . So, the 0.36 is not maintainable share for the promotion of Qari/ S Qari for SST (Phy/Math). Hence the appellant was rejected due to less share of Qari/ S Qari quota. Copy of the Promotion policy is attached as **Annexure A**.

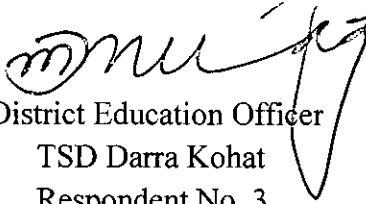
6. Para No. 6 is incorrect that there were only 12 vacant posts of SST (Phy/Math) in TSD Darra Kohat, which has been mentioned/ admitted himself by the appellant in his appeal Para No. 3.
7. The appellant has got no cause of action to file the instant appeal.

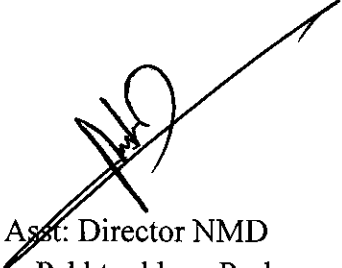
## **Grounds**

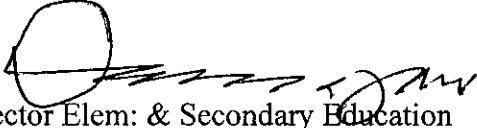
- A. Ground Para No. A is incorrect that there were 12 vacant posts of SST (Phy/Math) in TSD Darra Kohat.
- B. Ground Para No. B is incorrect as stated in above Para No. 6.
- C. Ground Para No. C is incorrect, no violation was made.
- D. Ground Para No. D is incorrect the act of respondent is according with existing promotion policy.
- E. Ground Para No. E is incorrect the act of the respondent is according with the existing promotion policy.

## **PRAY.**

In the light of above legal and factual position, it is humbly requested that the instant appeal is baseless and may please be dismissed with cost.

  
District Education Officer  
TSD Darra Kohat  
Respondent No. 3

  
Asst. Director NMD  
Khyber Pakhtunkhwa Peshawar  
Respondent No.2

  
Director Elem: & Secondary Education  
Khyber Pakhtunkhwa Peshawar  
Respondent No. 1

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**S.A No. 540 /2022**

Muhammad Saood, Qari, Government High School Shpalkiwal SD, Darra Adam Khel, District Kohat .....**Appellant**

***VERSUS***

- 1. The Director, (Elementary & Secondary Education) KPK, Merged District, Education Directorate, Peshawar.
- 2. Assistant Director (Estab), Merged Area, Education Directorate, Peshawar
- 3. The District Education Officer (male), Sub Division Darra Adam Khel, Kohat.....**Respondent**

**AFFIDAVIT**

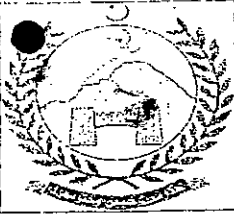
I Mr. Muhammad Sheraz DEO TSD Dara Kohat, do here by affirm and declared that the contents of para wise comments regarding the service appeal No. 540 are true, correct and nothing has been concealed from this Honorable Service Tribunal Khyber Pakhtunkhwa, Peshawar.

*Mr. Muhammad Sheraz*  
**DEPONENT**  
Mr. Muhammad Sheraz

District Education Officer (M)  
TSD Darra Kohat

*CNIC #14203-2057044-7*  
*Mobile # 0300-5325377*





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Annex A

GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Peshawar, dated the 24<sup>th</sup> July, 2014.

**NOTIFICATION**

**No.SO(PE)4-5/SSRC/Meeting/2013/Teaching Cadre**:- In pursuance of the provisions contained in sub rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Elementary and Secondary Education Department in consultation with the Establishment Department and the Finance Department hereby directs that in this Department's Notifications No.SO(G)S&LD/1-28/2003/Vol-II dated, 09-04-2004, Notification No.SO(G)S&L/1-69/06/Vol-1/DPE/LIB dated, 13-11-2007, and Notification No.SO(PE)4-5/SSRC/Meeting/2012/Teaching Cadre, dated, 13.11.2012, the following further amendments shall be made, namely:

**AMENDMENTS**

**In the Appendix,-**

(i) Serial No. 1 shall be renumbered as 1B and before Serial No. 1B, as so renumbered, the following new entries shall be inserted in respective columns, namely:

1	2	3	4	5
1.	Subject Specialist (BPS-17)	<p>i. At least second class Master's Degree or four years BS Degree in the relevant subject; and</p> <p>ii. Bachelor of Education or Master of Education (Industrial Art or Business Education) or M.A Education or equivalent qualification from a recognized University.</p>	23 to 35 years	<p>(a) Fifty per cent by promotion, on the basis of seniority-cum-fitness, for the relevant subject from amongst the Secondary School Teachers (BPS-16), with at least five years service as such and having qualification mentioned in column No. 3:</p> <p><i>Note:</i> If no suitable candidate is available in the relevant subject the post failing in their promotion quota shall be filled by initial.</p>

				recruitment; and (b) fifty percent by initial recruitment.
1A	Director Physical Education (BPS-17)	At least second class Master's Degree in Physical Education from a recognized University.	22-35 years	<p>(a) Fifty percent by promotion, on the basis of seniority-cum-fitness, from amongst Senior Physical Education Teachers (BPS-16), with at least five years service as Senior Physical Education Teacher and Physical Education Teacher and having qualification mentioned in column No. 3:</p> <p>Provided that if no suitable person is available from amongst Senior Physical Education Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst the Physical Education Teachers, with at least five years service as such and having qualification mentioned in column No. 3;</p> <p>Note:- If no suitable candidate is available in the relevant cadres of the above teachers, the post falling in their promotion quota shall be filled by initial recruitment; and</p> <p>(b) fifty percent by initial recruitment"; and</p>

(ii) against Serial No. 1B, as so renumbered, for the existing entries, the following shall be substituted, in respective columns, namely:

1	2	3	4	5
"1B.	Secondary School Teacher (BPS-16)	<p>I. At least second class Bachelor Degree's from a recognized University on need basis from the following groups with two subject</p> <p>(a) (Chemistry, Botany or Zoology),</p> <p style="text-align: center;">Or</p> <p>(b) (Physics, Maths "A" or "B" or Statistics)</p> <p style="text-align: center;">Or</p> <p>(c) (Humanities and other equivalent groups at degree level with English as compulsory subject;</p> <p style="text-align: center;">and</p> <p>II. Bachelor of Education or Master of Education (Industrial Art or Business Education) or M.A Education or equivalent qualifications from a recognized University.</p>	21 to 35 years.	<p>1. Seventy Five per cent by promotion, on the basis of seniority-cum-fitness, from the district concerned in the following manner:</p> <p>(a) forty per cent from amongst the Senior Certified Teachers (BPS-16), with at least five years service as Senior Certified Teacher and Certified Teacher and having qualification mentioned in column No.3:</p> <p style="padding-left: 40px;">Provided that if no suitable candidate is available from amongst Senior Certified Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst Certified Teachers, with at least five years service as such and having qualification mentioned in column No. 3;</p> <p>(b) four per cent from amongst the Senior Drawing Masters(BPS-16), with at least five years service as Senior Drawing Masters and Drawing Masters and having qualification mentioned in column No.3:</p>

Provided that if no suitable candidate is available from amongst Senior Drawing Masters for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst Drawing Masters with at least five years service as such and having qualification mentioned in column No. 3;

- (c) four per cent from amongst the Senior Arabic Teachers(BPS-16), with at least five years service as Senior Arabic Teachers and Arabic Teachers, and having qualification mentioned in column No.3:

Provided that if no suitable candidate is available from amongst Senior Arabic Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from Arabic Teachers with at least five years service as such and having qualification mentioned in column No. 3;

- (d) four per cent from amongst the Senior Theology Teachers(BPS-16), with at least five years service as Senior Theology Teachers and Theology Teachers and having qualification mentioned in column No.3:



Provided that if no suitable candidate is available from amongst Senior Theology Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst Theology Teachers with at least five years service as such and having qualification mentioned in column No. 3;

- (e) three per cent from amongst the Senior Qaris (BPS-16), with at least five years service as Senior Qari and Qari and having qualification mentioned in column No. 3;

Provided that if no suitable candidate is available from amongst the Senior Qaris then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from Qaris with at least five years service as such and having qualification mentioned in column No. 3;

- (f) twenty per cent from amongst the Primary School Head Teachers (BPS-16), with at least seven years service as Primary School Head Teachers and Senior Primary School Teachers and Primary School Teachers and having qualification mentioned in column No. 3;

Provided that if no suitable candidate is available from amongst

Primary School Head Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst Senior Primary School Teachers with at least seven years service as Senior Primary School Teachers and Primary School Teachers and having qualification mentioned in column No.3:

Provided further that if no suitable candidate is available from amongst Senior Primary School Teachers for promotion then the post shall be filled from amongst Primary School Teachers with at least seven years service as such and having qualification mentioned in column No. 3; and

(ii) twenty Five percent by initial recruitment.

**Note:**

- I. If no suitable candidate is available in the relevant cadre of the above teachers, the post falling in their promotion quota shall be filled by initial recruitment:
- II. Posts of General SST and SSTs-1 Science and SST-2 Science shall be filled by promotion or initial recruitment, each on need basis separately.

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SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

**Endst : of even No & date:**

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

(ZAMIN KHAN MOMAND)  
SECTION OFFICER (PRIMARY)

**BEFORE KHYBER PAKHTUNWA SERVICE TRIBUNAL,  
PESHAWAR**

Appeal No. \_\_\_\_\_/2022

Muhammad Saood, Qari, Government High School Shpalkiwal SD, Dara Adamkhel, District Kohat

..... APPELLANT  
Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 346

Dated 23/2/2022

**V**ERSUS

1. Director (Elementary & Secondary Education) KPK, Merged Districts, Peshawar
2. Assistant Director (Estab), Merged Areas, Education Directorate, Peshawar.
3. District Education Officer (Male), Sub-Division Dara Adam Khel, Kohat.

..... RESPONDENTS

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 FOR DIRECTING THE RESPONDENTS TO CONSIDER APPELLANT FOR PROMOTION AGAINST THE VACANT POST OF SST (PHYSICS/MATHS) AND OBSERVE 3% QUOTA RESERVED FOR PROMOTION OF SR. QARI'S/QARI'S TO SST (PHYSICS/MATHS) IN ITS TRUE LETTER AND SPIRIT AND AGAINST THE REJECTION ORDER DATED 26<sup>TH</sup> JANUARY, 2022 WHEREBY DEPARTMENTAL APPEAL IS REJECTED IN VIOLATION OF LAW AND PROMOTION RULES.

Filed to-day

Registrar

**PRAYER:**

ON ACCEPTANCE OF THIS APPEAL, THE REJECTION ORDER DATED 26<sup>TH</sup> JANUARY, 2022 MAY KINDLY BE SET ASIDE AND RESPONDENTS MAY KINDLY BE DIRECTED TO CONSIDER APPELLANT FOR PROMOTION AGAINST THE VACANT POST OF SST (PHYSICS/MATHS) BY OBSERVING 3% SHARE FOR PROMOTION FROM THE TOTAL SANCTIONED POSTS OF SST (PHYSICS/MATHS) AND APPLY THE SERVICE RULES IN ITS

*Respectfully Sheweth,*

1. The appellant was initially appointed as Qari (BPS-07) on 27.08.2015 (Annexure-A) and has more than 06 years of commendable and unblemished service record at his credit.
2. Appellant is the only teacher acquiring qualification of M.Sc (Maths) in addition to his professional qualification of Bachelors of Education (B.Ed).
3. Twelve (12) posts of SST (Physics/Maths) are lying vacant since long (Annexure-B) wherein 25% is to be filled through initial appointment and 75 % is to be filled through promotion. (Copy of Rules as Annexure-C).
4. Departmental Promotion Committee (DPC) was conducted on 24<sup>th</sup> August, 2020 and some vacant posts of SST (Physics/Maths) were filled through promotion on 8<sup>th</sup> December, 2020. Despite being eligible and availability of vacant posts of SST (Physics/Maths), appellant was deferred and denied a promotion to the subject posts for having service less than five years. (Copy of DEO letter dated 11.08.2021 as Annexure-D).
5. Now after the lapse of more than six years of service, appellant having more than required length of service and he is the only eligible teacher, having qualification of M.Sc (Physics and Maths) in the seniority list (Annexure-E) of Qari/Senior Qari (Male), entitled to be promoted to the post of SST(Physics/Maths) rather than to be filled through initial appointment.
6. Respondents wrongly observed 3% share/quota for promotion from available vacant posts of SST (Physics/Maths) instead of **One Hundred and Ten (110) total sanctioned posts of SST (Physics/Maths)** (Annexure-F) and based on erroneous consideration of having 0.48% share in the promotion quota; refusing promotion to the appellant is without any lawful justification.
7. Appellant feeling aggrieved; filed departmental appeal (Annexure-G) against the impugned order which was rejected vide order dated 26<sup>th</sup> January, 2022. Hence, in the instant service appeal on the grounds inter alia: (Annex- H)

**LEGAL GROUNDS:**

- A. Respondents erred in observing 3% share, for promotion from Sr. Qari's/Qari's to SST(Physics/Maths), **from the 12 VACANT POSTS instead of 110 TOTAL SANCTIONED POSTS**; tantamount to denial of promotion by putting aside section 9(1) of KP Civil Servant Act 1974.
- B. As per 3% share from the 110 total sanctioned posts of SST(Phy/Maths), 3 posts are required to be filled by promotion amongst the Sr. Qari's/Qari's.

- C. Deviation from the basic principles of promotion, i.e. on the basis of seniority cum fitness amongst the eligible teachers is illegal, illogical and violation of promotion rules.
- D. The act of denying promotion to appellant and not observing quota in its true letter and spirit, despite his eligibility and availability of vacant posts, tantamount to violation of Article 25 & 38(e) of Constitution of Pakistan 1973 at respondent's end.
- E. Appellant possessing requisite qualification of M.Sc (Physics/Maths) with professional degree of B.Ed is otherwise entitled for promotion to subject post BUT denied due to non-application of service rules in its true letter and spirit and observing 3% share for promotion of Sr. Qari's/ Qari's to SST (Physics/Maths) from the available vacant posts instead of 110 total sanctioned posts.

*E. Gaud*  
Appellant

Through

*Asad Mahmood*

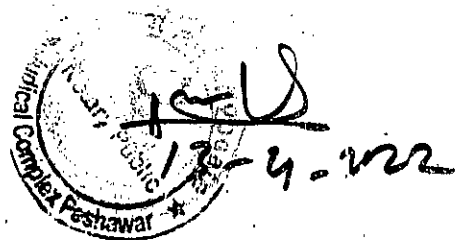
Asad Mahmood  
Advocate High Court

### AFFIDAVIT

It is solemnly affirm on oath that contents of this appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

**ATTESTED**

*E. Gaud*  
Deponent



**BEFORE THE KHAYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**S.A No. 540 /2022**

Muhammad Saood, Q, Government High School Shpalkiwal SD, Darra Adam Khel, District Kohat ..... **Appellant**

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3. The District Education Officer (male), Sub Division Darra Adam Khel, Kohat..... **Respondent**

**PARA WISE COMMENTS ON THE BEHALF OF RESPONDENT NO. 1 to 3.**

*Respectfully Shewell*  
**Preliminary Objection**  
*appellant*

- i. That the ~~Petitioner~~ *appellant* has got no cause of action, locus standi to file the instant petition. *appeal*.
- ii. That the ~~Petitioner~~ *appellant* has concealed material facts from honorable Tribunal.
- iii. That the ~~Petitioner~~ *appellant* has not come to this honorable Tribunal with clean hands.
- iv. That the ~~Petitioner~~ *appellant* case is not maintainable.
- v. That the ~~Petitioner~~ *appellant* is based upon malicious/vexatious and frivolous ground.
- vi. That the ~~Petitioner~~ *appellant* is estopped by his own conduct.
- vii. That the appeal of the appellant is badly time barred.
- viii. That the appeal is bad for misjoinder and non-joinder of necessary parties.

**FACTS:**

1. Para No. 1 is pertained to record.
2. Para No. 2 is pertained to record.
3. Para No. 3 is pertained to record.
4. Para No. 4 is incorrect that there ~~will be~~ *was* no eligible candidate in SST group (Phy/Math) except one candidate Mr. Muhammad Asghar who was promoted to SST group (Phy/Math).
5. Para No. 5 is incorrect that the appellant ~~has~~ *was* working as a Qari BPS-12. According the promotion policy the share of different categories for promotion of SST is as under: -

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Furthermore, there were total 12 number of vacant posts of SST (Phy/Math) in the year 2020. According the promotion policy the Share of Qari/ S Qari is  $12 \times 3 / 100 = 0.36$ . So, the 0.36 is not maintainable share for the promotion of Qari/ S Qari for SST (Phy/Math). Hence the appellant was rejected due to less share of Qari/ S Qari quota. Copy of the Promotion policy is attached as **Annexure A**.

6. Para No. 6 is incorrect that there were only 12 vacant posts of SST (Phy/Math) in TSD Darra Kohat, which has been mentioned/ admitted himself by the appellant in his appeal Para No. 3.

7. ~~No Comments.~~ *The appellant has got no cause of action to file instant appeal.*

**Grounds**

- A. Ground Para No. A is incorrect that there were 12 vacant posts of SST (Phy/Math) in TSD Darra Kohat.
- B. Ground Para No. B is incorrect as stated in above Para No. 6.
- C. Ground Para No. C is incorrect, no violation was made.
- D. Ground Para No. D is incorrect that ~~the~~ <sup>the</sup> act of respondent is according with existing promotion policy.
- E. Ground Para No. E is incorrect that ~~the~~ <sup>the</sup> act of the respondent is according with the existing promotion policy.

**PRAY.**

In the light of above legal and factual position, it is humbly requested that the instant petition is baseless and may please be dismissed please with cost.

District Education Officer  
TSD Darra Kohat  
Respondent No. 3

Asst: Director NMD  
Khyber Pakhtunkhwa Peshawar  
Respondent No.2

Director Elem: & Secondary Education  
Khyber Pakhtunkhwa Peshawar  
Respondent No. 1

*Submitted for vetted  
Please*

*[Signature]*

*Vetted subject to come again  
Attachment of all annexures including  
Minutes of DPE, affidavit  
approval of AAG*

*14-12-2022*

*AAG/Asst AAG*

*[Signature]*  
ASSISTANT GENERAL  
SERVICES DIV  
14/12/2022