

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

SA# 924/2022

Mr. Naveed Ahmed Appellant

Versus

**Khyber Pakhtunkhwa
Service Tribunal**

Govt. of Khyber Pakhtunkhwa
Through Secretary, Higher Education,
Peshawar & others

Diary No. 4951
Dated 15/3/23
..... Respondents

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Deponent

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

Service Appeal # 924/2022

Mr. Naveed Ahmad..... Appellant

Versus

Govt. of Khyber Pakhtunkhwa
Through Secretary, Higher Education
& others.....

Respondents

SUBJECT: PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1 to 3

Respectfully Sheweth: -

Preliminary Objections: -

1. That the Appellant has got no locus standi/cause of action to file the instant Service Appeal.
2. That the Appellant has not come to this Honourable Tribunal with clean hands and he is trying to conceal material facts.
3. That the Appeal is barred by Law and limitation.
4. That the Appellant is estopped by his own conduct to file the instant Service Appeal.
5. That, this Service Tribunal has no jurisdiction to entertain the instant Service Appeal.
6. That the Appeal is bad for mis-joinder and non-joinder of necessary parties.

Facts: -

- 1- Pertains to record.
- 2- Pertains to record.
- 3- It is pertinent to mention here that disciplinary proceedings were initiated against the appellant (**Annex-A**) and due to the pendency of disciplinary proceedings, the appellant was deferred by Departmental Promotion Committee in its meeting held on 18-05-2022 (**Annex-B**)
- 4- Pertains to record.
- 5- As already explain in Para 03.
- 6- Pertains to record.
- 7- As already explain in Para 03.
- 8- Pertains to record.
- 9- Incorrect. As already explained in preceding paras. As per clause (V) sub clause (a)(i) of promotion policy.
"Promotion of a civil servant will be deferred, in addition to reasons given in Para-IV, if (i) Disciplinary or departmental proceedings are pending against him (**Annex-C**)"
- 10- Pertains to record.
- 11- Incorrect. As already explained in preceding paras.
- 12- Pertains to record.
- 13- Incorrect. As already explained in preceding paras.


- 14- Incorrect. As already explained in preceding paras.
15- Incorrect. As already explained in preceding paras.
16- Incorrect. As already explained in preceding paras.

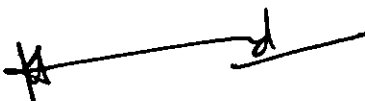
Grounds: -


- A. Incorrect. That the Notifications are in accordance with law/promotion policy.
B. Incorrect. That the appellant has been created within four corners of law.
C. Incorrect. As already explained in preceding paras.
D. Incorrect. As already explained in preceding paras.
E. Incorrect. As already explained in preceding paras.
F. That the respondents may be allowed to raise additional grounds at the time of arguments.
G. Pertains to record.
H. Needs no Comments.

Prayers: -

It is, therefore, humbly prayed that the subject case is devoid of merits, hence may graciously be dismissed with cost.


Secretary,
Higher Education,
Khyber Pakhtunkhwa
Respondent No.1


Director,
Higher Education,
Khyber Pakhtunkhwa
Respondent No. 2


Deputy Director,
Higher Education,
Khyber Pakhtunkhwa
Respondent No. 3

0333-0336 9056165

HFD.

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

SA# 924/2022

Mr. Naveed Ahmed Appellant

Versus

Govt. of Khyber Pakhtunkhwa
Through Secretary, Higher Education,
Peshawar & others Respondents

AFFIDAVIT

I, Ihsan Ullah, Litigation Officer (BPS-17), Higher Education Department do hereby declare and affirm on oath that the contents of parawise comments are correct to the best of my knowledge and belief and that nothing has been concealed from this Honourable Court.

Identified by:

Additional Advocate General
Khyber Pakhtunkhwa

hs
ullah
Deponent
21505-5042557-5
ATTESTED
Azmat Ali
Notary Public
Mirfak Complex Peshawar
15-03-2023

CHARGE SHEET

241 282
A

I, Muhammad Azam Khan, Chief Secretary, Khyber Pakhtunkhwa as Competent

Authority hereby charge you, under (Efficiency/Discipline) rules, do hereby serve you.

vi That you were appointed as Junior Clerk, Lab: Assistant (Male, Female) Hostel Warden (Female) and Pesh: Imam in 2012 and the following irregularities-illegalities were found during the process of your appointments.

vii That you were appointed in violation of the laid down policy of Provincial Government and no proper procedure what-so-ever was observed.

viii That gross irregularities were noticed during the process of appointment by tempering of marks, owing to which some eligible candidates were shown disfavor only to accommodate you through illegal and unlawful means.

ix That fact finding inquiry was conducted where in the whole process was found dubious and the penalty of Removal from Service was imposed upon you.


2. By reason of the above, you appear to be guilty of misconduct under rule 03 of the Khyber Pakhtunkhwa, Govt; Servants (Efficiency and Discipline) Rules, 2011 and have rendered yourself liable to all or any penalties specified in rule 04 of the Rule ibid.

3. You are, therefore, required to submit your written defence within seven days of the receipt of this charge sheet to the inquiry officer, as the case may be.

4. Your written defence, if any, should reach the inquiry officer/committee within the specific period, failing which it shall be presumed that you have no defense to put in and you shall be proceeded exparte.

5. Intimate whether you desire to be heard in person.

6. A statement of allegations is enclosed.


(MUHAMMAD AZAM KHAN)
CHIEF SECRETARY
KHYBER PAKHTUNKHWA

DISCIPLINARY ACTION

I. Muhammad Azam Khan, Chief Secretary, Khyber Pakhtunkhwa as Competent Authority, am of the opinion that has rendered themselves liable to be proceeded against, as they committed the following acts/omissions, within the meaning/Specified in Section-03 of the Government Servant (Efficiency and Discipline) Rules, 2011.

STATEMENT OF ALLEGATIONS.

i. That he was appointed as Junior Clerk, Lab: Assistant (Male, Female) Hostel Warden (Female) and Pesh: Imam in 2012 and the following irregularities/illegality were found during the process of your appointments.

- ii. That he was appointed in violation of the laid down policy of Provincial Government and no proper procedure what-so-ever was observed.
- iii. That gross irregularities were noticed during the process of appointment by tempering of marks, owing to which some eligible candidates were shown disfavor only to accommodate him through illegal and unlawful means.
- iv. That fact finding inquiry was conducted where in the whole process was found dubious and the penalty of Removal from Service was imposed upon him.


2. For the purpose of Inquiry against the said accused with reference to the above allegations, an inquiry committee consisting of the following, is constituted under rule 10(1)(a) of the ibid rules.

a. Mr. Usman Gul PAS (BPS-20) OSD.

b. Mr. Prof. Muhammad Ishaq Principal EPSC Nowshera

3. The inquiry officer shall, in accordance with the provisions of the ibid rules, provide reasonable opportunity of hearing to the accused, record its findings and make, within thirty days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the department shall join the proceedings on the date, time and place fixed by the inquiry officer/inquiry committee.


(MUHAMMAD AZAM KHAN)
CHIEF SECRETARY
KHYBER PAKHTUNKHWA

SHOW CAUSE NOTICE

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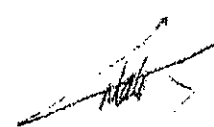
I, Mr. Mahmood Khan, Chief Minister, Khyber Pakhtunkhwa, as Competent Authority, under the Khyber Pakhtunkhwa, Government Servants (Efficiency and Discipline) Rules, 2011, do hereby serve you, Mr. Naveed S/O M. Rafiq, Junior Clerk (BPS-11), GPGC, Haripur as follows:-

- i. That consequent upon the completion of inquiry conducted against you by the inquiry Officer for which you were given opportunity of hearing.
- ii. On going through the findings and recommendations of the inquiry Officer, the material on record and other connected papers including your defense before the said inquiry Committee:-

I am satisfied that you have committed the following acts/omissions specified in rule 3 of the said rules:

- a. Mis-conduct.
- b. In-Efficiency.

2. As a result thereof, I, as Competent Authority, have tentatively decided to impose upon you the penalty of Removal from Service under rule 4 of the said rules.
3. You are, therefore, required to Show Cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.
4. If no reply to this notice is received within seven days or not more than fifteen days of its delivery, it shall be presumed that you have no defense to put in and in that case an ex-parte action shall be taken against you.
5. A copy of the findings of the inquiry Officer is enclosed.


(MR. MAHMOOD KHAN)
CHIEF MINISTER,
KHYBER PAKHTUNKHWA

HISTORY OF THE CASE

Higher Education Department recruited 151 officials against same number of posts advertised on 14-04-2012, including Junior Clerks (BPS-07) (57), Hostel Wardens (BPS-09) (03), Pesh Imams (BPS-09) (03) and Laboratory Assistants (BPS-07) (88). The Honorable Peshawar, High Court vide order in a Suo-Moto case, directed worthy Chief Secretary, Khyber Pakhtunkhwa to appoint a committee to inquire in to the legality of the appointments made in various Government colleges and office of the Directorate of Higher Education Department. Pursuant to the orders of the honorable Peshawar High Court a preliminary inquiry was conducted by Anti-Corruption Department in to the matter and on the recommendations of the said inquiry the honorable Peshawar High Court vide its judgment, dated 25-10-2013 ordered for cancellation of the said appointments and thereafter the 151 officials, recruited were also terminated from their services.

Subsequently, an appeal was filed in the August Supreme Court of Pakistan against the impugned judgment. The August Supreme Court, vide its order, dated 03-02-2014 set aside the earlier judgment of the Peshawar High Court and directed the Chief Secretary Khyber Pakhtunkhwa to appoint a committee to inquire the legality of the appointments made in Government colleges and office of the Directorate of Higher Education Department. The August Supreme Court of Pakistan directed the competent authority to conduct a De-Novo inquiry for a decision, strictly in accordance with Law and relevant rules, within six months.

FINDINGS OF PREVIOUS INQUIRIES

The Government of Khyber Pakhtunkhwa in pursuance to the Judgment, dated 03.02.2014 of the August Supreme Court of Pakistan appointed inquiry committee comprising Dr. Hamaad Awais Agha (Additional Chief Secretary P&D Department) and Professor Niaz Muhammad (Principal Naguman Degree College) to conduct a De-Novo Inquiry pertaining to the Illegal appointments of 151 persons, including Laboratory Assistants (BPS-07), Junior Clerks (BPS-07), Hostel Wardens (BPS-09) & Pesh Imams (BPS-09) in 2012.

The inquiry committee suggested to impose major penalties upon Mr. Kala Khan (Additional Director HED) and Mr. Ghulam Ali (Deputy Director HED), whereas Ms. Zubia Qamar (Deputy Director Female) was recommended for a minor penalty. Apart from the mentioned members of the DSC (Departmental Selection Committee) minor penalty was also recommended for non-member, Professor Ghulam Qasim Marwat (Director, HED). The appointment of 151 officials was termed unlawful and it was suggested to terminate them from service.

IMPLEMENTATION OF THE INQUIRY COMMITTEE'S RECOMMENDATIONS

Show Cause notices were served to 151 employees under E&D Rules, 2011 mentioning major penalty, "REMOVAL FROM SERVICE". Replies of 125 employees were submitted to Director, HED, whereas the remaining 26 employees had already left the service (Resigned) (Annex "A"). Their replies were further submitted to Establishment Department with the proposal to grant them opportunity of personal hearing before passing an order.

Establishment department found the observations of HED convincing and hence requested the honorable Chief Minister, Khyber Pakhtunkhwa being competent authority to confirm the major penalty of "REMOVAL FROM SERVICE". The honorable Chief Minister authorized the Secretary Law Department, Mr. Mukhtiar Ahmed to hear all 125 officials in person, on his behalf. Subsequently all the accused were given opportunity of personal hearing. They objected to the proceedings of the inquiry.

The Secretary, Law Department proposed that a fresh inquiry may be conducted for scrutiny/checking of the papers, marks sheets, and giving them hearing opportunity and also ascertain the eligibility of candidates for the said posts. The honorable Chief Minister agreed to the proposal.

INQUIRY PROCEEDINGS

PCIM ERROR - [PCLM] Decoding Fail

PROPOSITION : Pursuant to the directions communicated vide letter No. SO(C-1) HE/1-2/2015, dated 11-11-2018 of the Higher Education Department (Annex "B") and in pursuance to the judgment of the August Supreme Court of Pakistan, dated 03-02-2014, the undersigned were nominated as Inquiry Officers to conduct a De-Novo Inquiry against the 151 employees. The mandate of this inquiry is to check the papers/marks sheets and also to award opportunity to the 151 employees including Junior Clerks (BPS-07), Laboratory Assistants (BPS-07), Hostel Wardens (BPS-09) & Pesh Imams (BPS-09) and also to figure out genuinely selected employees purely upon merit and according to the eligibility criteria of the posts and subsequent selection after interview (Annex "C")

The Higher Education, Department deputed a competent and well conversant officer Mr. Bashir (Deputy Director HED) as Departmental Representative to facilitate inquiry committee's proceeding (Annex "D"). It is to be mentioned that the HED letter regarding the subject inquiry was received by the inquiry committee on 7th February, 2018.

Soon after receipt of Higher Education Department's letter, the inquiry committee held its very first meeting on next day i.e. 8th February, 2018. The Director HED was requested to depute a departmental representative for the Inquiry proceedings and communicate charge sheets to all the 125 officials recruited (Annex "E").

The Inquiry committee held another meeting in the Higher Education Directorate, wherein, the departmental representative handed over the relevant record to the Inquiry Committee. Charge sheets to all the 125 employees along with statement of allegations were once again communicated with the direction to submit replies by 23/02/2018 (Annex "F"). The departmental representative was tasked to ensure that the charge sheets and statement of allegations are received by each employee. A questionnaire was sent to the then DSC members i.e. Ms. Zubia Qamar, Mr. Ghulam Ali and Mr. Ghulam Qasim Marwat and they were directed to attend the inquiry proceedings on 20-02-2018 and also submit their written replies (Annex "G").

The committee held another meeting in the office of the Director General, PSA on 20-02-2018, however the officials could not attend, as well replies not submitted. Thereafter, again they were directed to attend the proceedings on 23/02/2018 and ensure submission of written replies.

On 23/02/2018 the Inquiry Committee, Departmental representative and the DSC members i.e. Ms. Zubia Qamar (DSC member/Deputy Director female HED) and Mr. Ghulam Ali (DSC member Ex- Deputy Director HED) were present, however Mr. Ghulam Qasim Marwat could not attend the proceedings due to some official engagements. The DSC members submitted their written replies (Annexed "H" & "I") and were also heard in detailed in person, by the Inquiry Committee.

Dr. Ghulam Qasim Marwat (Ex-Director HED) later attended the inquiry proceedings on 26-02-2018 and submitted his written reply as well (Annex "J"). He was also heard and cross questioned by the Inquiry Committee during inquiry proceedings.

ANALYSIS OF THE RECORD, FACTS & OBSERVATIONS OF THE COMMITTEE

The available record relevant to the inquiry, including Answer sheets, comparative statements, Final merit list, Esta Code Provisions, selection criterion, composition and functioning of the DSC, written replies and cross examination of the then DSC members was thoroughly perused and pondered by the Inquiry Committee.

Mr. Ghulam Qasim Marwat regarding role of DSC was of the view that the composition of DSC was in accordance with the Esta Code. The Provincial Government on 07.05.2012 nominated Section Officer Colleges Mr. Habib Ur Rehman as their nominee for the DSC along with Mr. Kala Khan, Chairman and Ms. Zubia nominee of the chairman was notified. He was further of the view that test and general ability and typing skill were included as per Esta Code provisions and therefore the test marks were encompassed in the overall merit. He also informed that the Provincial Government withdrew its nominee at a later stage on 06.09.2012 and DSC was re-notified on 28.09.2012. The Director HED stated that he has no direct role in the process of recruitment but performed overall supervision. He confirmed that Prof. Kala Khan Awan the then Additional Director HED was mainly responsible, as he was the main person behind recruitment and then the main dealing hand. He further clarified that Mr.

Khan Awan and his successors were responsible for the safe custody of answer sheets and relevant record. He denied the violation of the quota on the argument that Directorate is a Provincial setup and candidates from other districts can be appointed at Head Quarter. The committee however found this argument invalid here because then perhaps other sister districts were also entitled for the due share, which has not been done. He blamed the previous inquiry committee for creating false impression that divisional quota has been trampled and particularly in case of one Muhammad Shoaib s/o Gul Roz Khan was linked with Bannu District, who is actually of district Nowshera and was appointed in Peshawar Division rightly.

Mr. Ghulam Ali (Ex-Deputy Director HED) stated that he had been exonerated of the charges by the competent courts after proving innocence. While narrating his stance he informed the inquiry committee and quoted another similar recruitment proceeding of 04.09.2012 and 27.09.2012 in which one of the DSC members, namely Mr. Habib ur Rehman (Section Officer Colleges) unlawfully appointed twelve class-IV in GDS Landi-Jalandar, Bannu, Tank and D.I Khan, despite the fact that Provincial Government nominated Mr. Muhammad Zaman (Deputy CPO HED) for the purpose. The competent authority took cognizance promptly and Mr. Niaz Muhammad Principal GDC Nagoman, Peshawar was appointed as inquiry officer. The name of Mr. Habib ur Rehman withdrew from the DSC after the inquiry committee found him guilty. He was substituted by Mr. Ghulam Ali on 28.09.2012. Mr. Ghulam Ali further informed that his unwillingness to become part of the proceedings of recruitment was telephonically communicated to Secretary HED. The Supreme Court of Pakistan also took notice of this recruitment and on 15.12.2012 FIR No. 16 was registered against him on the presumption that a fake stay order was maneuvered by him to stop the process of appointment. He accused Mr. Kala Khan, Khalid Khan, Niaz Muhammad, Bukhari Shah and Taj Bahadar for the said case on the patronage of the then political leadership. He further informed that appointment letters were issued by Mr. Kala Khan from 05.12.2012 to 31.12.2012, who was mandated by the Provincial government to do so. He at length explained the intrigues and conspiracy of the mentioned officers/persons and denied the accusation of gratification. He however admitted that the fault of Mr. Ghulam Ali has not been established as he was not the appointing authority. According to him, as he was nominated for DSC at a belated stage, therefore he was exonerated. He blamed Mr. Niaz Muhammad for maneuvering inquiry against him. Referring to inquiry of Mr Hamad Awaiz Agha (ACS P&D), he stated that actually the inquiry was conducted by Farhad Khan, Deputy Secretary-II of Environment Department alongwith Niaz

Muhammad instead of the Additional Chief Secretary. He objected to the absence of the convener of the inquiry committee and therefore declared the conclusion of the said inquiry as unlawful. He also referred to the trial of the subject case in the court of Anti-Corruption Judge and subsequent order of the Peshawar High Court dated 10.04.2013. Mr. Ghulam Ali expressed ignorance about the question papers, award list and answer sheets marking. He also quoted some other instances of the mala-fide intentions of the previous inquiry committee, which according to him tried to implicate him through false accusations. According to him as he was not part of the recruitment process then on what ground he was made responsible. Mr. Kala Khan Awan compelled him to sign the merit lists after lodging of the FIR and proceedings in the PHC. He allegedly intimidated him and therefore signed the merit lists under duress. He further stated that the court has honorably acquitted him in the criminal case and the verdict should have been considered by the inquiry committee but it has been ignored totally instead.

Recording her statement and replying to the questionnaire of the inquiry committee, Ms. Zubia Qamar (Deputy Director HED, member DSC) stated that the initial appointment process was already completed when she was appointed as member of the DSC. She confirmed that establishment related matters are not routed through Deputy Director (Female). She had no information of the record of the recruitment. She was there to facilitate the chairman of the DSC in interview process and in preparation of merit lists.

Coming to the appointed persons, this enquiry committee devised a proforma for ascertaining eligibility of the appointed officials. The proforma was duly filled after interview of each individual from 19th to 30nd March 2018 by the Inquiry Committee. (Annex "L"). Notwithstanding individual issues of some of the candidates, majority of them acquired requisite qualification for their respective posts. Further many of them already possess the criteria and have served for more than five years.

Following are the findings of the inquiry committee in brief, strictly focusing on TORs in light of the above proceedings and facts in sight: -

ANALYSIS & FINDINGS

1. The Inquiry Committee focused on the record of recruitment and particularly the answer sheets etc. The allegations were found correct. The answer sheets were tampered many times and some of them were found unchecked/unmarked.

Attested

however the authenticity is full of doubts as the custody of these papers remained with many concerned. The record was lying with different inquiry committees from time to time and it cannot be established that who was responsible for this tampering. It is to be mentioned that the record was lying with Anti-Corruption Department for more than a year. Hence, answer sheets and record, all along, were no way, in safe custody.

2. 125 candidates under inquiry were analyzed in view of the selection criteria's i.e. Scrutiny of marks obtained vis-à-vis tempered marks, examining of answer sheets, education qualification, their physical appearance, general conduct and further categorizing them as RECOMMENDED and NON-RECOMMENDED. On the basis of proformas and keeping in view all the afore-mentioned criteria, 90 candidates have been found eligible and are thus recommended for retention; whereas the remaining 35 candidates are not recommended on the basis of the following reasons.
- a) 04 (Four) candidates were found extremely weak; moreover, they haven't improved over the years and are by no means fit to hold the post. One of these candidates (Mr. Hidayat Noor S/O Hameed Ullah Jan) found out to be medically unfit, which somehow DSC has unheeded during the selection process/interview.
 - b) 06 (Six) candidates neither submitted their written replies nor appeared in person, thus demonstrating irresponsible and non-serious attitude towards service.
 - c) 23 candidates submitted unsatisfactory replies (not found convincing) therefore, they were informed through letters and all possible means to appear in person but they deliberately missed the opportunity, thus displaying mala-fide' and a non-serious attitude towards service.
 - d) 03 candidates, who were holding domiciles of District Haripur were illegally appointed as Junior Clerks at Directorate of Higher Education against Peshawar District quota. As a matter of fact, there wasn't a single seat kept or advertised in case of Hazara division. 01 out of 03 officials could not join the office, whereas, remaining 02 officials assumed charge at Directorate of Higher Education. Though, these 02 officials have now been repatriated to Haripur District, however, quota provision has gravely been violated by the then DSC. Yet both these officials qualify and are suitable for the job but are illegally

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recruited. Their names are reflected at serial No. 80 and 81 respectively in the list (Annex "L")

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- Mr. Naveed S/ o M. Rafiq
- Mr. Shahid Anwar S/o M. Anwar
- Mr. Azeem Khan S/O Akhter Zaman Khan (Couldn't join)

However, a total of 29 candidates who did not appear in person, have left a wrong impression on the Inquiry Committee that their recruitment was made through unfair means or under some political pressure. Due to their unsuitability/incompetency they were deliberately avoiding the Inquiry proceedings.

3. Surprisingly, answer sheets of few candidates were not available in official record from day one but contrarily they were recommended by the DSC for appointment. Nevertheless, the inquiry committee during probe (test and interview) found these officials suitable and qualified for the jobs.
4. From academic point of view, most of the officials found out to be very weak as most of them have obtained Master and Bachelor degrees from Allama Iqbal Open University (AIOU). After having viewed standard of the recruited lot, the Inquiry Committee keeps serious reservation regarding the quality, standard and credibility of AIOU, which seemingly are more interested in quantity than quality of degrees and education.
5. The major penalties/punishment awarded to the DSC members, in first go, should not have been waived off/exonerated, as they were very much involved and responsible for the unfair conduct of the whole recruitment process.
6. DSC members and Ex-Director HED stated in their personal hearing that they were not given a chance by the previous Inquiry Committee to have been heard in person.
7. Written test was made the major criterion for selection of candidates, contrary to the very provision of Esta-code. However, marks on most of the answer sheets were tempered and at places the tempered answer sheet marks were not in consonance with the merit list marks.
8. Unnecessary and untimely changes in the composition of the DSC was made, which was not permissible under the Rules of Business.

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9. Most of the candidates were found out to be possessing the requisite qualification for the jobs.
10. 25 out of 151 persons have already left the service (resigned) whereas, remaining 126 are still working. (Annex "A")
11. Mr. Kala Khan Awan (Additional Director HED), chairman of the selection committee (now retired) malafidely maneuvered the recruitment process whereas the rest of the DSC members seemingly followed his footsteps.
12. The mala-fide and poor coordination at the DSC level needs further probe by the department to fix responsibility, as DSC members surprisingly being exonerated and waved off from major penalty by the competent authority (Removal from service).
13. 125 out of 151 recruited Junior Clerks, Laboratory Assistants, Hostel Wardens and Pesh Imams are still in service whereas remaining 26 officials are now out of service, have resigned. On the basis of the Inquiry committee's evaluation, 90 candidates have found out to be eligible and are therefore recommended whereas remaining 35 candidates are not recommended, keeping in view their unsuitability for the job. More so, candidates cannot be legally held responsible for tempering of their own answer sheets, as all these documents, including the answer sheets, were in custody of the DSC members who should have themselves taken care of the official record. The Inquiry Committee strongly feels that extra leniency has been extended to the DSC members. Major penalties awarded to DSC members, as outcome of previous Inquiry, should not have been waved off or exonerated, in first go. Keeping in view the forego, the Inquiry Committee while maintaining its impartiality, felt appropriate to have a lenient view towards appointees and must not recommend all 125 appointees (in bulk) for termination, which will end up into a plethora of litigation for the Provincial government, particularly in the scenario where the DSC members have been exonerated in first go. The inquiry committee has therefore evolved a comprehensive proforma (Annex "K") while clearly portraying pen picture of each official for consideration and approval of the competent authority who may decide the fate of these employees on case to case basis, keeping in view their attitude, competence level, qualification, suitability and the fact that they have already served the department for more than 5 years and most of them possess the requisite qualification and fulfill the eligibility criteria.

INQUIRY COMMITTEES' LIMITATIONS:

A little delay in submission of Inquiry Report is caused due to the mere fact that Inquiry Committee had to proceed against a large number of employees/witnesses and call them for personal hearing. The Inquiry Committee provided ample opportunity to all the employees to express their point of view, therefore stretched interview span a little longer (from a week to three weeks' time) enabling maximum employees to form part of proceeding and should not be left unheard. Later on, the Inquiry Committee squeezed remaining time to its bare minimum, to sift all available record and formulate a self-contained Inquiry Report for decision of the higher authorities.

RECOMMENDATIONS:

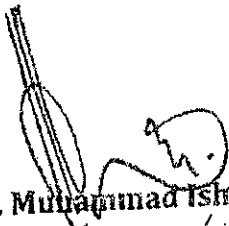
After threadbare investigation/probe by the Inquiry Committee into the subject matter, following recommendations are submitted for kind consideration of the Competent authority for approval

1. 90 out of 125 candidates are eligible (Recommended) whereas remaining 35 candidates are (Not Recommended) to continue their service in Higher Education Department, keeping in view their unsuitability for the job as envisaged in proformas at (Annex "I") while clearly depicting the pen picture of each official for consideration and approval of the competent authority, who may decide the fate of these employees on case to case basis on the recommendations of the Inquiry Committee, keeping in view their eligibility, attitude, competence level, qualification, suitability and the fact that they have already served the department for more than 5 years and most of them possess the requisite qualification and fulfill the eligibility criteria


Attested



2. The Departmental Selection Committee was solely responsible for the whole recruitment process in a transparent manner, strictly in conformity to rules and regulations. Keeping in view their failure, mala-fide' and illegal act, all DSC members are strongly recommended for a strict departmental and criminal proceedings (Lodging an FIR) in case of a DSC member Prof. Kala Khan Awan the then Additional Director HED, who is no more in service and has retired.



Prof. Muhammad Ishaq
Principal, Government Postgraduate
College, Nowshera
Member - Inquiry Committee



Mr. Usman Gul
Ex-Commissioner Malakand Division
Now - Director General Provincial
Services Academy, Government of Khyber
Pakhtunkhwa
Chairman - Inquiry Committee

DIRECTORATE OF HIGHER EDUCATION KHYBER

PAKHTUNKHWA, PESHAWAR.

Subject: MINUTES OF THE MEETING DEPARTMENTAL PROMOTION COMMITTEE (DPC) HELD ON 18-05-2022 TO CONSIDER PROMOTION OF JUNIOR CLERKS (BPS-11) MALE & FEMALE TO THE POST OF SENIOR CLERKS (BPS-14).

A meeting of the departmental committee (DPC) was held under the Chairmanship of Prof. Khurshid Ahmad Director, Higher Education, Khyber Pakhtunkhwa in his office at 11:00am on 18-05-2022. The following officers attended the subject meeting.

- i. Riaz, Section Officer (C-I), Higher Education Department, Khyber Pakhtunkhwa.
 - ii. Mr. Gohar Khan, Deputy Director (Establishment), Directorate of Higher Education, Khyber Pakhtunkhwa.
2. After recitation from the Holy Quran, the Chair welcomed all members of the Committee and asked Deputy Director (Establishment), to throw light on the proposed promotion of Junior Clerks. Consequently, the Deputy Director (Establishment) apprised the committee that 161 posts of Senior Clerks (BPS-14) are lying vacant.
 3. The DPC recommended the following Junior Clerks (BPS-11) for promotion to the post of Senior Clerks (BPS-14) on the basis of seniority cum fitness as per detail given below.

S#	Name Designation & Address	Recommendation of DPC
1.	Muhammad Iqbal, Junior Clerk, GDC, Hangu	Recommended for promotion to the post of Senior Clerk (BPS-14)
2.	Ashfaq Khan, Junior Clerk GDC, Ghari Kapoora Mardan	Recommended for promotion to the post of Senior Clerk (BPS-14)
3.	Raqeeb Ali, Junior Clerk GGDC, Kalaya	Recommended for promotion to the post of Senior Clerk (BPS-14)
4.	Mujahid Khan, Junior Clerk, GDC, Sadda Kurram	Deferred due to his missing ACR /disciplinary proceeding is under process against him
5.	Fazli Khaliq, Junior Clerk, GDC, Jamrud (Khyber District)	Recommended for promotion to the post of Senior Clerk (BPS-14)
6.	Muhammad Tahir Akbar, Junior Clerk GDC Jamrud (Khyber District)	Deferred due to his missing ACR /disciplinary proceeding is under process against him
7.	Qasim Ali Abbasi, Junior Clerk, GGDC, Mandian, Abbottabad	Recommended for promotion to the post of Senior Clerk (BPS-14)

	Amjid Ali, Junior Clerk, Directorate, Higher Education	Recommended for promotion to the post of Senior Clerk (BPS-14)
9.	Sahibzada Zia Ullah Jan, Junior Clerk, GDC, Badaber	Recommended for promotion to the post of Senior Clerk (BPS-14)
10.	Shahid Anwar, Junior Clerk, GGC, Haripur	Deferred due to disciplinary proceeding is under process against him
11.	Inam Ullah, Junior Clerk, GDC, Wadpagga (Peshawar)	Recommended for promotion to the post of Senior Clerk (BPS-14)
12.	Mushtaq Khan, Junior Clerk, GDC, Abdul Ali Khan (CHD)	Recommended for promotion to the post of Senior Clerk (BPS-14)
13.	Sahibzada Suliman, Junior Clerk, GGDC, Umarzai (Charsadda)	Recommended for promotion to the post of Senior Clerk (BPS-14)
14.	Naveed Ahmad, Junior Clerk, GPGC, Haripur	Deferred due to disciplinary proceeding is under process against him
15.	Asfandyar Khan, Junior Clerk, GGC, Mathra (Peshawar)	Recommended for promotion to the post of Senior Clerk (BPS-14)
16.	Muhammad Asif Khan, Junior Clerk, Directorate of Higher Education	Recommended for promotion to the post of Senior Clerk (BPS-14)
17.	Hameed Ullah, Junior Clerk, GC, Peshawar.	Recommended for promotion to the post of Senior Clerk (BPS-14)
18.	Saeed Ullah, Junior Clerk, Directorate Higher Education	Recommended for promotion to the post of Senior Clerk (BPS-14)
19.	Muhammad Shoaib, Junior Clerk, GGC, Pirpai Nowshera)	Recommended for promotion to the post of Senior Clerk (BPS-14)
20.	Usman Zeb, Junior Clerk, GSSC, Peshawar	Recommended for promotion to the post of Senior Clerk (BPS-14)
21.	Tanveer ul Haq, Junior Clerk, GGC, No. 2 Hayatabad, Peshawar	Recommended for promotion to the post of Senior Clerk (BPS-14)
22.	Asmat Ullah, Junior Clerk, GDC, Mathra (Peshawar)	Recommended for promotion to the post of Senior Clerk (BPS-14)
23.	Zeeshan Ahmad, Junior Clerk, GDC, Dagrai Charsadda	Recommended for promotion to the post of Senior Clerk (BPS-14)
24.	Naeem Taj, Junior Clerk, GPGC, Kohat.	Recommended for promotion to the post of Senior Clerk (BPS-14)
25.	Khan Mehmood, Junior Clerk, GPGC, Kohat	Recommended for promotion to the post of Senior Clerk (BPS-14)
26.	Fawad Rehman, Junior Clerk, GDC, Thall, Hangu	Recommended for promotion to the post of Senior Clerk (BPS-14)
27.	Fazal Rabi Qureshi, Junior Clerk, GDC, Ghumat, Kohat	Recommended for promotion to the post of Senior Clerk (BPS-14)
28.	Kaleemullah, Junior Clerk, GDC, GGDC, Banda Daud Shah, Karak	Deferred due to disciplinary proceeding is under process against him

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i) A civil servant who has resigned shall not be considered for promotion no matter the resignation has yet to be accepted.

ii) The mere fact that the seniority is sub-judiced will not debar the competent forum to make recommendation. However, in such cases following shall be applicable.

i. All promotion based on sub-judice seniority will be conditional i.e subject to final outcome of Court cases.

ii. An officer who gets his seniority restored and becomes senior to already promoted officers in the cadre will be considered for promotion by the relevant board from the date when his junior got promoted.

iii. In case, the officer expires or retires from service and subsequently, his seniority is restored his case will be considered for proforma promotion along with all financial benefits.

iv. Juniors promoted on sub-judice seniority list will be assigned seniority as per final court orders and will be reverted in case there is no vacancy.

Sub para (ii) inserted vide No. SO(Policy) E&Ad/1-16/2017 Dated 5/12/2017

*** (j) Promotion during LPR**

LPR is one the types of leave to which a Government servant is entitled. As he continues to be Government servant and can be called even for duty, he can, therefore, be considered for promotion against a higher post during LPR. These changes will take immediate effect and past cases under existing policy shall not be re-opened.

*No. SOR-VI/E&AD/1-16/2011 Dated 16-3-2014.

V. DEFERMENT OF PROMOTION:

(a) Promotion of a civil servant will be deferred, in addition to reasons given in para-IV, if

(i) Disciplinary or departmental proceedings are pending against him.

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

Clause (i) deleted vide No. SO(Policy) /E & AD/1-16/2017 dated 05-12-2017 & Paras (ii) & (iii) renumbered as (i) & (ii)

(b) The civil servant whose promotion has been deferred will be considered for promotion as soon as the reasons for deferment cease to exist. The cases falling under any of the above *[two] categories do not warrant proforma promotion but the civil servant will be considered for promotion after determining his correct seniority over the erstwhile juniors.* the word "three" substituted with "two" vide No. SO(Policy) /E & AD/1-16/2017 dated 05-12-2017

(c) If an officer is otherwise eligible for promotion but has been inadvertently omitted from consideration in the original reference due to clerical error or plain negligence and is superseded, he should be considered for promotion as soon as the mistake is noticed.

(d) If and when an officer, after his seniority has been correctly determined or after he has been exonerated of the charges or his PER dossier is complete, or his

inadvertent omission for promotion comes to notice, is considered by the Provincial Selection Board/ Departmental Promotion Committee and is declared fit for promotion to the next higher basic scale, he shall be deemed to have been cleared for promotion along with the officers junior to him who were considered in the earlier meeting of the Provincial Selection Board/Departmental Promotion Committee. Such an officer, on his promotion will be allowed seniority in accordance with the proviso of sub-section (4) of Section 8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, whereby officers selected for promotion to a higher post in one batch on their promotion to the higher post are allowed to retain their inter-se-seniority in the lower post. In case, however, the date of continuous appointment of two or more officers in the lower post/grade is the same and there is no specific rule whereby their inter-se-seniority in the lower grade can be determined, the officer older in age shall be treated senior.

- (e) If a civil servant is superseded he shall not be considered for promotion until he earns one PER for the ensuing one full year.
- (f) If a civil servant is recommended for promotion to the higher basic scale/post by the PSB/DPC and the recommendations are not approved by the competent authority within a period of six months from such recommendations, they would lapse. The case of such civil servant would require placement before the PSB/DPC afresh.

VI. DATE OF PROMOTION:

Promotion will always be notified with immediate effect.

VII. NOTIONAL PROMOTION:

In respect of civil servants who retire (or expire) after recommendation of their promotion by the PSB/DPC, but before its approval by the competent authority, their promotion shall be deemed to have taken effect from the date of recommendation of the PSB/DPC, as the case may be, and their pension shall be calculated as per pay which they would have received had they not retired/expired.

VIII. PROMOTION OF CIVIL SERVANTS WHO ARE AWARDED MINOR PENALTIES.

- (a) The question of promotion to BS-18 and above in case of civil servants who have been awarded minor penalties has been settled by the adoption of quantification of PERs and CEI which allows consideration of such cases for promotion subject to deduction of 5 marks for each major penalty, 3 marks for each minor penalty and 1 mark for each adverse PER from the quantified score and recommendation for promotion on attaining the relevant qualifying threshold.
- (b) However, the CEI policy is not applicable to civil servants in BS-16 and below. In this case, the concerned assessing authorities will take into consideration the entire service record with weightage to be given for recent reports and any minor penalty will not be a bar to promotion of such a civil servant.

IX. PROMOTION IN CASE OF PENDING INVESTIGATIONS BY NAB:

If there are any NAB investigations being conducted against an officer, the fact of such investigations needs to be placed before the relevant promotion forum which may take a considered decision on merits of the case.