


Form-A
FORM OF ORDERSHEET

Court of _____

Case No. _____ 422/2023 _____

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	6.03.2023	<p>As per direction of the Worthy Chairman the present appeal is fixed before the Single Bench for preliminary hearing and decision on office objection on dated _____ .Counsel for the appellant be informed accordingly.</p> <p style="text-align: right;"> REGISTRAR</p>

Respected Sir,

It is submitted that the present appeal was received on 20.01.2023 after thoroughly scrutinizing the same many deficiencies were found in it which was returned to the counsel for the appellant for completion and resubmission within 15 days which was to be resubmitted on 08-02-2023 but counsel for the appellant re-filed the same today on 02.03.2023 late by 21 days.

The appeal is submitted to your Honour under rule-7(c) of Khyber Pakhtunkhwa Service Tribunal rules 1974 for appropriate order please.

REGISTRAR 21/3/2023

Worthy Chairman


Handwritten notes:
A/c Re
the Court - 2/w 0/0
before
06/03/23

The appeal of Mr. Abid Ali son of Mukamil Khan r/o village & P/O Sheikh Jana Tehsil Razzar Swabi received today i.e. on 20.01.2023 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

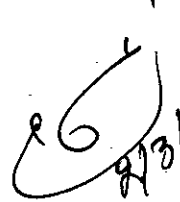
- 1- ✓ Check list is not attached with the appeal.
- 2- ✓ Appeal has not been flagged/marked with annexures marks.
- 3- ✓ Annexures of the appeal may be attested.
- 4- Memorandum of appeal may be got signed by the appellant.
- 5- Four more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 312 /S.T,

Dt. 24/1 /2023


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Fazal Ilahi Adv.
High Court at Peshawar.

*Resubmitted after doing
the needful.*

27/3/2023

1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

In Ref; to the Service Appeal No. 422 of 2023.

Abid Ali Khan (SCT).....VERSUS.....DEO Swabi & other.

INDEX

S.No.	DESCRIPTION OF DOCUMENTS	ANNEX	P.NO.
1.	Main Service Appeal.	-	01-6
2.	Affidavit.		07
3.	Application for condonation of delay.		08
4.	Affidavit.		09
5.	Copy of the judgment dated 11-04-2022.	"A"	10-17
6.	Copy of the impugned order dated 22-08-2022.	"B"	18
7.	Copy of the departmental appeal dated 25-09-2022.	"C"	19-20
8.	Vokatnama in original.		21

Appellant

{Abid Ali Khan (Appellant)}

Dated; 20/01/2023.

Through;

Fazal Ilahi

Advocate Peshawar High Court.

(2)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR.

Khyber Pakhtunkhwa
Service Tribunal

In Ref; to the Service Appeal No. 422 of 2023.

Case No. 3090
Dated 20/01/2023

Abid Ali S/O Mukamil khan R/O Village & P/O Sheikh-Jana, Tehsil
Razzar District Swabi.....**APPELLANT.**

VERSUS

- 1) The Director, Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar.
- 2) The District Education Officer (Male), Swabi.....**RESPONDENTS.**

**APPEAL U/S 4 OF THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT. 1974 AGAINST THE
IMPUGNED ORDER BEARING NO.7172-26 PASSED BY
THE RESPONDENT NO. 2 DATED 22-08-2022,
COMMUNICATED TO THE APPELLANT DATED 08-09-
2022 WHEREBY THE DEPARTMENTAL APPEAL OF
THE APPELLANT FOR DETERMINATION OF HIS
DUE/LEGITIMATE SENIORITY WAS FILED EVEN
AFTER RESOLVING THE MATTER OF HIS SENIORITY
IN SERVICE BY THIS AUGUST TRIBUNAL IN SERVICE**

Filed by
Registrar
20/01/23
APPEAL NO. 858/2011 DATED 11-04-2022.

P R A Y E R S :-

On acceptance of this appeal the impugned order, passed by the respondent No. 2 dated 22-08-2022, whereby the departmental appeal of the appellant for determination of his due/legitimate seniority was filed, may be set-aside and in light of the judgment passed by this august Tribunal in Service Appeal No. 858/2011 dated 11-04-2022, the respondents may be directed and be bound down to determine/fix

②

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

In Ref; to the Service Appeal No. _____ /of 2023.

Abid Ali, working and posted as SCT at GHS Mansabdar, District Swabi.....**APPELLANT.**

VERSUS

- 1) The Director, Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar.
- 2) The District Education Officer (Male), Swabi.....**RESPONDENTS.**

APPEAL U/S 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT. 1974 AGAINST THE ORIGINAL IMPUGNED ORDER BEARING NO.7172-26 PASSED BY THE RESPONDENT NO. 2 DATED 22-08-2022, COMMUNICATED TO THE APPELLANT DATED 08-09-2022 WHEREBY THE PREVIOUS SERVICE APPEAL NO. 859/2011 DATED 11-04-2022, REMANDED BACK TO THE DEPARTMENTAL AUTHORITY FOR DETERMINATION OF HIS DUE/LEGITIMATE SENIORITY WAS FILED AND WHEREBY THE DEPARTMENTAL APPEAL DATED 25-09-2022 HAS NOT BEEN RESPONDED YET DESPITE STIPULATED IS LAPSED.

P R A Y E R S :-

On acceptance of this appeal the impugned order, passed by the respondent No. 2 dated 22-08-2022, Communicated to the appellant dated 08-09-2022 whereby the previous service appeal No. 859/2011 dated 11-04-2022, remanded back to the departmental authority for determination of his due/legitimate seniority was filed, may be set-aside and in light of the judgment passed by this august Tribunal in previous S. Appeal supra, the respondents may be directed and be bound down to determine/fix the respondents may be directed and be bound down to determine/fix

the due Seniority from the initial appointment of the Appellant as CT dated 04-03-2009 with all back benefits in service as such.

RESPECTFULLY SHEWETH:-

- 1) That the appellant is the peaceful and law abiding citizen of the Islamic Republic of Pakistan, domiciled in Khyber Pakhtunkhwa and belongs to a respectable family of Village & P/O Sheikh-Jana, Tehsil Razzar, District Swabi and having to enjoy all the valuable fundamental legitimate rights duly protected by the command of the Constitution.
- 2) That the appellant while being equipped with the requisite skill and qualification, legally entitled as such and after observing all codal formalities, was properly appointed in accordance with law as CT vide orders passed by the then DEO (Male) Swabi dated 04-03-2009 but subsequently, after laps of just a month, the very appointment Order was cancelled on the plea of Over-age Policy. Hence the appellant was unnecessarily burdened down to approach the august Peshawar High Court Peshawar for the redressal of his grievances and whereas he was succeeded to get the desired response on the strength of the Notification No. SO (PE) 7/1/age relaxation dated 23-12-2009 and accordingly his very appointment order was restored. However the parent department, while giving a novel twist to the precious orders passed by the Constitutional higher judiciary, the appellant was appointed afresh with immediate effect as CT vide orders dated 31-12-2010 and as such his due seniority was illegally disturbed and was placed at Sr. No. 661.
- 3) That the appellant while aggrieved of the impugned action and inaction of the parent department, at the first instance, approached the honorable Service Tribunal in Service Appeal No. 858/2011 which was decided dated 11-04-2022 by highlighting the crucial point of Seniority under section 8 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 and Rules 17 of the Khyber Pakhtunkhwa *Civil Servant* (appointment, Promotion & Transfer) Rules 1980 and the case was

(4)

remanded back to the parent department and held that the appellant would be rightful to request for determination of his seniority in accordance with law and rules as deemed appropriate. (Copy of the judgment dated 11-04-2022 passed by the honorable Service Tribunal in Service Appeal No. 858/2011 is annexure "A").

- 4) That on the arrival of the Judgment supra, once again as usual, the impugned order depriving the appellant of his due and legitimate right of his seniority was passed by the worthy DEO (Male) Swabi dated 22-08-2022, communicated to the appellant dated 08-09-2022. (Copy of the impugned order dated 22-08-2022 passed by the respondent No. 2, communicated to the appellant dated 08-09-2022 is annexure "B").
- 5) That the appellant is highly aggrieved of his fate and exercising of colorful power and jurisdiction by the local authority, preferred the departmental appeal and tabled before the respondent No. 1 for fixation/ determination of his proper/due seniority in accordance with law and in the light of well elaborative directives passed by this honorable KP- Service Tribunal Peshawar dated 11-04-2022 but the reply in either way is still awaited despite laps of the prescribed provided period of limitation. (Copy of the departmental appeal dated 25-09-2022 is annexure "C").
- 6) That in the given circumstances the appellant while aggrieved of the action and inaction and exercising of colorful authority beyond their domain and while having no other efficacious remedy available in the circumstances of the case, is constrained to approach this august Tribunal for the redresser of his grievances inter-alia on the following grounds.

GROUND S.

- a. **Because** the impugned order passed by respondent No. 2 is a mockery of law and is colorful exercise of power which is not sustainable in the eyes of law.


(5)

- b. **Because** the appellant has never misused his official duty and as for as the action and inaction played by the respondents are concerned it speaks about personal grudges and is exaggerated on malafide intention and ulterior motive.
- c. **Because** the impugned order is totally contrary to the facts and circumstances available on file and on the other hand is also against the law on the subject which is not sustainable in the eyes of law governing the fate of civil servants.
- d. **Because** the appellant was given no chance of personal hearing and it is the demand of natural justice that no one should be condemned unheard.
- e. **Because** there is no other adequate remedy available to the Appellant and this august Tribunal has the jurisdiction to adjudicate upon the matter.
- f. **Because** the Appellant being duly fresh recruited as CT has wrongly been treated to get his seniority/promotion and discharge higher responsibility as a result of which he was deprived of the legitimate right of seniority/promotion.
- g. **Because** it is clear discrimination which is strictly forbidden under Article 25 and 27 of the Constitution and is a fundamental right of every citizen.
- h. **Because** the Appellant being duly recruited as CT in pursuance to the recommendations made by the DP&SC who has been discriminated by the respondents and thus misprized and neglected by not giving him his due right of due seniority, as the Appellant was entitled to be given the same status and accorded with the same treatment as was accorded to his other colleagues/appointees.
- i. **Because** the act of respondents in neglecting and refusing the right of seniority to the Appellant and to accommodate him at his due place with his colleagues as such would also against the Devine ordain of Allah Almighty as under the principles of natural justice and fundamental human rights of the Appellant, the respondents has usurped the right of a human being and have thus bypassed the divine rule to give everyone his due right.

6

- j. **Because** the act of the respondents if seen with serious note, the same are also in clear disregard of Article 9 and 4 of the Constitution of the Islamic republic of Pakistan 1973 as the same are meant to deprive the Appellant from his right to life as the life is mainly dependent on bread and butter which is earned by a person through rendering service.
- k. **Because** the respondents are bound to provide the Appellant equal protection of law and must not to discriminate the Appellant in service as it is inviolable and jealously guarded right of the Appellant under the Constitution of the Islamic republic of Pakistan 1973 to be granted his due seniority whereas the appellant has never called upon at least to participate in the so-called enquiry proceedings.
- l. **Because** the act of the respondents are also violated of Articles 03, 04, 08, 09, 25 and 27 of the Constitution of the Islamic republic of Pakistan 1973.
- m. **Because** Article 4 of the Constitution of Pakistan and Islamic principles of equity and equal treatment with citizen are downtrodden deliberately for ulterior motive, which needs the interference of this august court.
- n. **Because** the appellant has rendered a spotless qualified service of more than twelve years in the respondent department.
- o. Any other grounds will be raised at the time of regular hearing the petitioner at the bar in the interest of justice.

It is, therefore, humbly prayed that on acceptance of this appeal the concerned quarter may be directed to fix the proper and due seniority of the appellant under section 8 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 and Rules 17 of the Khyber Pakhtunkhwa *Civil Servant* (appointment, Promotion & Transfer) Rules 1980 from his initial recruitment in service enabling him to be placed with his batch-mates in accordance with law.

Appellant

{Abid Ali Khan (Appellant)}

Dated; 20/01/2023.

Through;

Fazal Ilahi
Advocate Peshawar High Court.

7

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

In Ref; to the Service Appeal No. _____ of 2023.

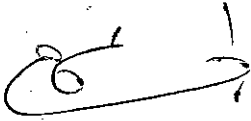
Abid Ali Khan (CT).....VERSUS.....DEO Swabi & other..

AFFIDAVIT

I, Abid Ali Khan S/O Mukamil Khan R/O village & P/O Sheikh-Jana, Tehsil Razzar, District Swabi & presently working and posted as SCTGHS Mansabdar (Swabi), the appellant do hereby solemnly affirm and declare on oath that the contents of the accompanying service appeal are true and correct to the best of my Knowledge and nothing has been concealed therein from this august Tribunal.

IDENTIFIED BY

Fazal Ilahi
Khan) Advocate Peshawar.

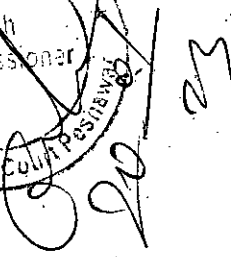


DEPONANT

(Abid Ali Khan S/O Mukamil
R/O village & P/O Sheikh-Jana
Tehsil Razzar, District Swabi.



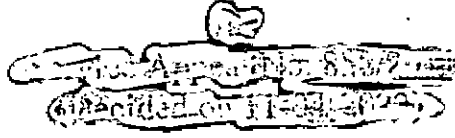
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8

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

In Ref; to the Service Appeal No. _____ of 2023.



Abid Ali (SCT).....VERSUS.....DEO Swabi & other.

Subject:- **Application for condonation of delay if any.**

Respectfully Sheweth;

- 1) That the subject Service Appeal is being filed today dated 25-09-2023 before this august Tribunal against the impugned order, passed by the respondent No. 2 dated 22-08-2022, Communicated to the appellant dated 08-09-2022 and whereas departmental appeal was filed dated 25-09-2022 (Well within time).
- 2) That there is no fault on part of the petitioner/applicant to file the accompanying Service Appeal well within the stipulated period however if there is any delay, the same may be condoned in the best interest of justice as the higher and superior judiciary has appreciated that the matters should be decided on merit and not on mere technicalities.
- 3) That the applicant is sanguine about his success in the case in hand and balance of convenience is also lies on shoulder of the applicant.

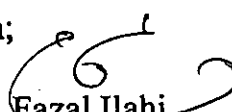
It is, therefore, humbly prayed that the delay if any, may very graciously be condoned in the best interest of justice just to meet the ends of justice please.

Appellant


{Abid Ali (Applicant)}

Dated; 20/01/2023.

Through;


Fazal Ilahi
Advocate Peshawar High Court.

(9)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

In Ref; to the Service Appeal No. _____ of 2023.

(In
Service Appeal No. 858/2023
(Decided on 11-04-2023)


Abid Ali (SCT).....VERSUS.....DEO Swabi & other.

AFFIDAVIT

I, Abid Ali Khan S/O Mukamil Khan R/O village & P/O Sheikh-Jana, Tehsil Razzar, District Swabi & presently working and posted as SCT at GHS Mansabdar (Swabi), the applicant do hereby solemnly affirm and declare on oath that the contents of the accompanying application for condonation of delay in filing of service appeal are true and correct to the best of my Knowledge and nothing has been concealed therein from this august Tribunal.

IDENTIFIED BY

DEPONANT


Fazal Ilahi
Advocate High Court Swabi.


{Abid Ali SCT (Appellant)}.

9-A

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

S.A.No. _____

Abid Ali Khan (SCT).....Appellant

Versus

Director Education and another Respondents

APPLICATION FOR CONDONING THE DELAY,
CAUSED IN REMOVING THE DEFICIENCIES.

Respectfully Sheweth;

- 1) That the above-titled case/ appeal was submitted by the appellant, which was returned to him for removing deficiencies, mentioned in the note sheet on 24.01.2023.
- 2) That the case was to be returned within fifteen days according to the direction:
- 3) That since the appellant could not come in time because of the death of his one of close relative, therefore, the deficiencies could not be removed in time.
- 4) That now the deficiencies have been removed and the applicant wants to re-submit the same.

It is, therefore, requested that the delay caused may please be condoned and the appeal may kindly be fixed before the tribunal, to be decided on merit, in the interest of justice.

Applicant/ Appellant
Abid Ali

Through


Fazal Ilahi

Advocate High Court

9-8

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

S.A.No. _____ /2023

Abid Ali Khan (SCT).....Appellant

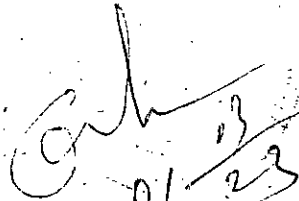
Versus

Director Education and another Respondents

AFFIDAVIT

I, Fazal Ilahi Advocate, on the instructions of my client do hereby
state that the contents of this **Application** are true and correct

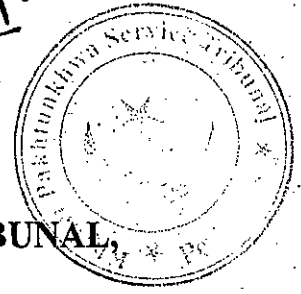

Deponent


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**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

BEFORE: MR. KALIM ARSHAD KHAN, ... CHAIRMAN
MR. MIAN MUHAMMAD, ... MEMBER(E)

Service Appeal No.858/2011

Abid Ali CT, Government High School Tand Kohi, District Swabi.
..... (*Appellant*)

Versus

1. **The Secretary to Government of Khyber Pakhtunkhwa, Elementary & Secondary Education, Department, Peshawar.**
2. **The Director of Education, Elementary & Secondary Education, Department, Peshawar.**
3. **District Coordination Officer, Swabi.**
4. **The Executive District Officer, Elementary & Secondary Education, Department, Swabi.....** (*Respondents*)

Present:

Mr. Noor Muhammad Khattak, Advocate ... For appellant.
Mr. Muhammad Adeel Butt, Addl. Advocate General... For respondents.

Date of Institution.....11.05.2011
Date of Hearing.....08.04.2022
Date of Decision.....11.04.2022

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

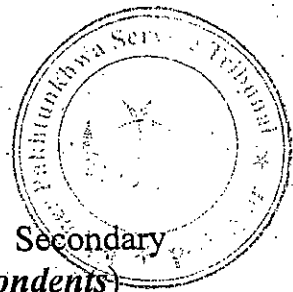
Service Appeal No.859/2011

Faiz Muhammad CT, Government High School Gar Munara, District Swabi..... (*Appellant*)

Versus

1. **The Secretary to Government of Khyber Pakhtunkhwa, Elementary & Secondary Education, Department, Peshawar.**
2. **The Director of Education, Elementary & Secondary Education, Department, Peshawar.**
3. **District Coordination Officer, Swabi.**

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4. The Executive District Officer, Elementary & Secondary Education, Department, Swabi.....(Respondents)

Present:

Mr. Noor Muhammad Khattak, Advocate ... For appellant.
Mr. Muhammad Adeel Butt, Addl. Advocate General... For respondents.

Date of Institution.....11.05.2011
Date of Hearing.....08.04.2022
Date of Decision..... 11.04.2022

11/4/22

CONSOLIDATED JUDGEMENT

KALIM ARSHAD KHAN CHAIRMAN. This single judgment will decide this appeal and the connected service appeal No.859 of 2011 titled "*Faiz Muhammad versus the Secretary & others*" as both are similar in nature.

2. The appellants are aggrieved of the order dated 30.12.2010, whereby they had been restored on the post of CT with immediate effect rather than with retrospective effect and against not taking action on their departmental appeals within the statutory period of ninety days.

3. According to the facts as narrated in the appeals, both the appellants were appointed as CT in the respondent department vide order dated 04.03.2009 but just after one month their appointment order was cancelled by the authorities vide order dated 30.04.2009 on the ground that the appellants were overage; that aggrieved of the same the appellants filed writ petition against the order dated 30.04.2009 in the honourable Peshawar High Court and the honourable Peshawar High Court was pleased to direct the authorities to restore the appellant on the CT post by allowing age relaxation in the upper age limit; that the respondent department held a meeting of Departmental Selection Committee and then issued appointment order afresh

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11/4/22
KALIM ARSHAD KHAN
CHIEF JUSTICE
PESHAWAR HIGH COURT
PESHAWAR

(9) (12)

on 30.12.2010 but with immediate effect and without back benefits; that the appellants filed departmental appeals on 12.01.2011 and awaiting 90 days when they received no response, they filed the appeal.

4. On receipt of appeals and admission after preliminary hearing, the respondents were put on notice, who put appearance and submitted replies. They contended that the DSC was conducted on the order of the honourable Peshawar High Court and the appellants were re-appointed with immediate effect. This is only ground of defence taken by the respondents.

5. We have heard the learned counsel for the appellants and learned Additional Advocate General for the respondents and have gone through the file with their assistance.

6. Learned counsel for the appellants submitted that in the light of the decision of the honourable Peshawar High Court, the DSC held on 27.11.2010 had decided restoration of the appointment of the appellants by allowing them relaxation in the upper age limit, therefore, the inaction of the respondents was not warranted and the appellants were rightful in seeking the desired relief.

7. The learned Additional Advocate General for the respondents negated the stance taken by the learned counsel for the appellant and prayed for dismissal of the appeal.

8. The point involved in these appeals is quite simple. It is the case of the appellants that they were appointed but their such appointment was cancelled compelling them to file a writ petition, which according to them, was decided in their favour and in a contempt petition the respondents undertook before the honourable Peshawar High Court that the departmental appeals of the

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1/1/22

TESTED

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J. H. NER
Vice-Chief Justice
Peshawar

appellants would be considered in the light of notification No.SO(PE)7-1/Age Relaxation Policy/09 dated 23.12.2009 (as mentioned in the minutes of the meeting of DSC copy annexed with the appeal), as because of the said notification they were then eligible to be considered for appointment and in case if they were found entitled they would be appointed. Meeting of DSC was accordingly convened on 27.11.2010 and the matter of appointment of the appellants was agenda item No.2 before the DSC. Following decision was taken by the DSC in the case of the appellants:

"The appointment of Mr. Abid Ali son of Mukamil Khan and Faiz Muhammad son of Mir Ahmad were discussed in the light of decision of the honourable Peshawar High Court, Peshawar.

Mr. Abid Ali son of Mukamil Khan and Faiz Muhammad son of Mir Ahmad were appointed against CT (Male) posts at GHS Zarobi and GHS Gar Munara (Swabi) vide EDO (E&SE) Swabi Endrst; No.1151-G dated 04.03.2009. at the time of recruitment their date of birth were 02.02.1974 and 03.11.1973 and were over-aged by 01 year, 8 months and 28 days and 1 year, 11 months and 27 days respectively. Due to over aged policy their appointment order was withdrawn vide Endst; No.1362-G dated 30.04.2009

The Provincial Government Khyber Pakhtunkhwa Peshawar issued one time age relaxation upto 31.12.2010 vide SO(PE)7-1/Age Relaxation Policy/09 dated 23.12.2009 to all those candidates who have applied for the post of CT etc under the year-wise/batch wise quota and who were over aged.

In the light of fresh Age Relaxation Policy the candidates who were suffered and their appointment orders were withdrawn approached the august Peshawar High Court Peshawar and filed COC No.195/09 in WP No.1301/09, in which the worthy Secretary (E&SE) Department KPK Mr. Arifeen gave his statement which is reproduced as below "that

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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the department would consider the departmental appeal of the petitioner in the light of notification referred above, as because of said notification they are now eligible to be considered for appointment and in case if they are found entitled they will be appointed"

In the light of directive of the Court/Secretary (E&SE) KPK Peshawar a fresh merit list was prepared and appointments against the available 14 vacant CT(Male) posts were considered on the recommendation of DSC on 11.10.2010 while Mr. Abid Ali son of Mukamil Khan and Faiz Muhammad son Mir Ahmad were not appointed due to no vacant CT(Male) posts.

The honourable Court expressed dissatisfaction on the said implementation in COC No.236/10 in WP No.578/2009, which is discussed above in detail in Item No.1.

In the light of the august Supreme Court decision that similarly placed and positioned candidates will be treated on equal footing. Therefore, the department are legally bound to consider the petitioners' case in the light of the decided case as mentioned herein above.

Hence this committee unanimously decided restoration of their appointment order and subsequently their cancellation order, by allowing him upper age limit, which were allowed as general policy till 31.12.2010 with immediate effect and they will not be entitled for back benefits."

9. It was then the appellants were appointed vide order bearing Endst. No.2945-67/App:CT dated 30.12.2010 but with immediate effect.

10. The prayer of the appellants is that they might be restored on the post of CT with retrospective effect with all back benefits and any other relief which this tribunal deemed fit that might also be awarded to them.

ESTED

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www.tribunal.gov.pk

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11. During the course of arguments, the learned counsel for the appellants very fairly submitted that the appellants restricted their claim only to seniority in accordance with law & rules and they did not claim any financial benefits.

12. The seniority of the civil servants is determined under Section 8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 & Rule 17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989.

13. Section 8 of the above Act is reproduced as under:

"8. (1) For proper administration of service, cadre or post the appointing authority shall cause a seniority list of the members for the time being of such service cadre or post to be prepared but nothing herein contained shall be construed to confer any vested right to a particular seniority in such service, cadre or post as the case may be.

(2) Subject to the provisions of sub-section (1), the seniority of a civil servant shall be reckoned in relation to other civil servants belonging to the same service or cadre whether serving in the same department or office or not, as may be prescribed.

(3) Seniority on initial appointment to a service, Cadre or post shall be determined as may be prescribed.

(4) Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post:

Provided that civil servants who are selected for promotion to a higher post in one batch shall, on their promotion to the higher post retain their inter se seniority as in the lower post."

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11/4/22

ATTESTED

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EXAMINER,
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(13) (16)

(5) *The seniority lists prepared under subsection (1) shall be revised and notified in the official Gazette at least once in a calendar year, preferably in the month of January.*"

14. Similarly relevant portion of Rule 17 of the above Rules is as under:

"17. Seniority :- (1) the seniority inter se of civil servants appointed to a service, cadre or post shall be determined:-

(a) in the case of persons appointed by initial recruitment, in accordance with the order of merit assigned by the Commission or as the case may be, the Departmental Selection Committee; provided that persons selected for appointment to post in an earlier selection shall rank senior to the persons selected in a later selection;"

W. S. S. S.
11/14/22

15. It appears that the authority is duty bound under Section 8 (3) of the above Act to (3) determine seniority on initial appointment to a service, Cadre or post as may be prescribed. Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules prescribed the method of determining seniority and in case of initial recruitment the requirement of Rule 17 of the Rules is that it is to be in accordance with the order of merit assigned by the Commission or as the case may be, the Departmental Selection Committee; provided that persons selected for appointment to post in an earlier selection shall rank senior to the persons selected in a later selection.

16. Therefore, the appellants would be rightful to request for determination of their seniority in accordance with the law and the rules as deemed appropriate, therefore, the Tribunal holds that the authority/department shall fix the seniority of the appellants in accordance with law and rules, if that has not already been done.

17. The appeals are decided in the above terms. Consign.

TESTED

CHIEF JUSTICE
KHYBER PAKHTUNKHWA
HIGH COURT
PESHAWAR

(15) (17)

18. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 11th day of April, 2022.

(Signature)
(KALIM ARSHAD KHAN)
Chairman



(Signature)
(MIAN MUHAMMAD)
Member (E)

Certified to be true copy

(Signature)
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 14/4/22
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Date of Delivery of Copy 14/4/22



District Education Officer (Male) Swabi

Email address: emis_swabi@yahoo.com Ph# 0938-280239

Regd

Annex ME

OFFICE ORDER

WHEREAS Mr. Faiz Muhammad and Abid Ali were appointed against CT post in E&SE Department by DEO Male Swabi Dated: 04-03-2009 but being overage, their appointment orders were cancelled at that time. There was no overage relaxation policy at that time. They filed Writ Petition against the cancellation of their appointment order in Peshawar High Court Peshawar to resolve the matter. Elementary & Secondary Education Department KP issued a notification NO.SO(PE) 7/1/age relaxation/Dated 23.12.2009, the age was one time relaxed, which will be applicable upto 31.12.2010. In the light of this Notification, they were appointed afresh dated 30.12.2010. Their seniority was determined according to law and rules. The Seniority of Faiz Muhammad was 660 and that of Abid Ali was 661. They were promoted from CT BS-15 to SCT BS-16 and their seniority in SCT is 263 and 264.

AND WHEREAS in service appeal No. 858/2011 and service appeal No. 859/2011 for determination of seniority on initial recruitment, the operative part of the Judgment dated 11.04.2022 "that the appellant would be rightful to request for determination of their seniority with the law and rules as deemed appropriate, therefore, the tribunal holds that the authority/department shall fix the seniority of the appellants in accordance with law and rules if that has not been already done".

AND WHEREAS an enquiry committee was constituted who conducted the enquiry and concluded that seniority of both the teachers has already been determined in accordance with law and rules. The seniority as determined has been admitted by them as both have availed the benefit of promotion from CT BS-15 to SCT BS-16. Both have never impugned or questioned any colleague teachers who affected their seniority. It is mandatory for every appellant to make respondents those persons from whom they are aggrieved, obviously, missing in this case.

AND WHEREAS the enquiry officers are of the opinion that executive order cannot be operated retrospectively. The appeal of the appellant may be filed being already redressed as prayed for according to law and rules.

NOW, THEREFORE, in exercise of the powers conferred under the Khyber Pakhtunkhwa (Efficiency & Disciplinary) Rules, 2011, I (Irfan Ali DEO Male Swabi) being the Competent Authority, am of the opinion to agree with the recommendations of the enquiry report and to file the request of the appellants in the best public interest.

(IRFAN ALI)
DISTRICT EDUCATION OFFICER
(MALE) SWABI

Endst. No 7122-26 /Dated 22/08 /2022

1. Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar.
2. Faiz Muhammad SCT GHS Yousafi Swabi.
3. Abid Ali SCT GHSS Mansabdar Swabi.
4. Principal/Head Master concerned school.
5. Office file.

DISTRICT EDUCATION OFFICER
(MALE) SWABI

To,

(18) (19)

Annex- C

THE WORTHY DIRECTOR,
ELEMENTARY AND SECONDARY EDUCATION,
KHYBER PAKHTUNKHWA PESHAWAR.

Departmental appeal against the impugned order passed by the worthy DEO (Male) Swabi dated 22-08-2022 and for fixation of his proper seniority in accordance with law and in the light of well elaborative directives passed by the honorable KP- Service Tribunal Peshawar, dated 11-04-2022.

Respected Sir,

- 1) That the appellant is the peaceful and law abiding citizen of the Islamic Republic of Pakistan, domiciled in Khyber Pakhtunkhwa and belongs to a respectable family of Village & P/O Sheikh-Jana, Tehsil Razzar, District Swabi and having to enjoy all the valuable fundamental legitimate rights duly protected by the command of the Constitution.
- 2) That the appellant while being equipped with the requisite skill and qualification, legally entitled as such and after observing all codal formalities, was properly appointed in accordance with law as CT vide orders passed by the then DEO (Male) Swabi dated 04-03-2009 (Annexure-"A") but subsequently, after laps of just a month, the very appointment Order was cancelled (Annexure-"B") on the plea of Over-age Policy. Hence the appellant was unnecessarily burdened down to approach the august Peshawar High Court Peshawar for the redressal of his grievances and whereas he succeeded to get the desired response on the strength of the Notification No. SO(PE)7/1/age relaxation dated 23-12-2009 and accordingly his very appointment order was restored. However the parent department, while giving a novel twist to the precious orders passed by the Constitutional higher judiciary, the appellant was appointed afresh with immediate effect as CT vide orders dated 31-12-2010 and as such his due seniority was illegally disturbed and was placed at Sr. No. 661. (Copy of the fresh appointment order dated 31-12-2010 is annexure "C").
- 3) That the appellant while aggrieved of the impugned action and inaction of the parent department, at the first instance, approached the honorable Service Tribunal in Service Appeal No. 858/2011 which was decided


ATTESTED

dated 11-04-2022 by highlighting the crucial point of Seniority under section 8 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 and Rules 17 of the Khyber Pakhtunkhwa Civil Servant (appointment, Promotion & Transfer) Rules 1980 and the case was remanded back to the parent department and held that the appellant would be rightful to request for determination of his seniority in accordance with law and rules as deemed appropriate. (Copy of the judgment dated 11-04-2022 passed by the honorable Service Tribunal in Service Appeal No. 858/2011 is annexure "D").

- 4) That on the arrival of the Judgment supra, once again as usual, the impugned order depriving the appellant of his due and legitimate right of his seniority was passed by the worthy DEO (Male) Swabi dated 22-08-2022 (Annexure-"E") and hence this appeal.
- 5) That the appellant is highly aggrieved of his fate and exercising of colorful power and jurisdiction by the local authority, prefers this departmental appeal for fixation of his proper seniority in accordance with law and in the light of well elaborative directives passed by the honorable KP- Service Tribunal Peshawar dated 11-04-2022.
- 6) That the appellant will be highly grateful if a chance of personnel hearing is bestowed upon.

It is therefore humbly prayed that on acceptance of this appeal the concerned quarter may be directed to fix the proper and due seniority of the appellant enabling him to be placed with his batch-mates in accordance with law and in the light of directives passed by the honorable KP- Service Tribunal Peshawar dated 11-04-2022.

Appellant

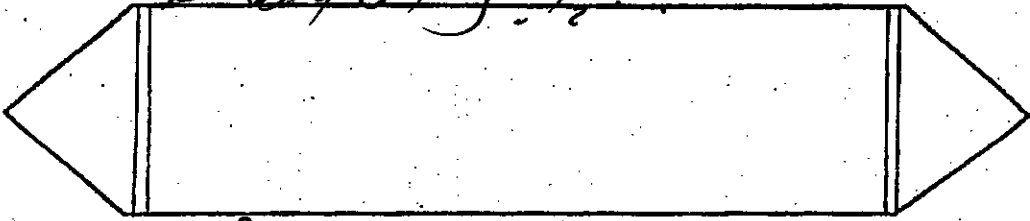


Abid Ali Khan S/O Mukamil Khan
R/O village & P/O Sheikh-Jana
Tehsil Razzar, District Swabi &
presently working and posted as SCT
GHS Mansabdar (Swabi).
Contact # 0332-5036013

Dated; 25/09/2022.

ATTESTED

بعدالت خصا۔ روٹیشنل سرورس ڈیپارٹمنٹ لیسٹ



2023ء منجانب

Petitioner عابد علی خان بنام DEO اور ای وٹھارہ

موزخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیردی و جواب دی وکل کاروائی متعلقہ
 آن مقام MPST کیلئے فصل الہندی کے تحت روٹیشنل سرورس ڈیپارٹمنٹ لیسٹ
 مقرر کر 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 برحلف دیئے جواب دی اور اقبال دعویٰ اور
 بصورت ڈگری کرنے اجراء اور صولی چیک روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
 زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیردی یا ڈگری یکطرفہ یا اپیل کی برادگی اور منسوخی
 نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیردی 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 با اختیار حاصل ہوں گے اور اس کا ساختہ
 پر واضحہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانشانہ مقدمہ کے سبب سے ہوگا۔
 کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیردی
 نہ کوڑ کریں۔ لہذا وکالت نامہ لکھ دیا کہ مندر ہے۔

المرقوم _____ ماہ _____ 20

العبد _____ واہ العبد _____

کے لئے منظور ہے
Accepted
6

بمقام

عابد علی خان
CNIC/6202-2470556-8