BEFORE THE SERVICE TRIBUNAL KHYBERPAKHTUNKHWA

Service Appeal No.7272/2021

Mr.Muhammad Tariq Tareen S/O Sakhi Sultan r/o Village Dingi Tehsil & District Haripur presently working as Deputy District Attorney (OPS), office of District Attorney Swabi

...... Petitioner

VERSUS

Knyber Pagusiskiwa Service Tribunal UUXX

Dated.

Government of Khyber Paktunkhwa through Chief Secretary and Others

Respondents

Subject:

WRITTEN REPLY/COMMENTS ON BEHALF OF THE

RESPONDENT NO.7

Respectfully Sheweth:

The respondent submits as under:

Preliminary Objections

- 1. That the appellant has no cause of action against the respondent no 7.
- 2. That the appeal of the appellant is badly time barred and not accordance with law. Reliance is placed upon 2020 PLC (CS) NO.10 Supreme Court Azad Kashmir titled Zafar Iqbal VS Inspector General Police, 2010 PLC page 1251 and PLC 2022 (C.S) 834 (S.C)
- 3. That the appellant has no right to file an appeal and the present appeal of the petitioner is ambiguous in nature and not maintainable.
- 4. That the Worthy Service Tribunal have no jurisdiction to decide the present appeal. Reliance is placed upon 2016 SCMR Page-859 and 2021 PLC (C.S) Page-1540.
- 5. That according to the Civil Servant Act 1973 under section 8. The petitioner has no vested right for promotion. Reliance is placed upon 2022 SCMR Page-797 and 2014 SCMR Page-358.
- 6. That according to Service Tribunal Act 1974 under section 4 (sub section i). That no appeal lie in such like matters. Reliance is placed upon PLD 1994 Supreme Court Page-219 and PLC 2014 (C.S) 933 (Sindh)

- 7. That the Worthy Service Tribunal has no authority to ante-date promotion of the petitioner. Reliance is placed upon PLD 1994 Supreme Court Page-230 and PLC 1994 (C.S) Page-331.
- 8. That Law favors the vigilant not the indolent. Reliance is placed upon YLR 2017 Peshawar Page-1448.
- 9. That the seniority list of BPS-17 has got finality on dated 31-12-2017 and the petitioner did not object nor give any observation against the said seniority list which gots finality and cannot be revised. Reliance is placed upon SCMR 2010 Page-450=PLC 2010 (C.S) 357 (S.C), SCMR 2012 Page-1700, SCMR 2002 Page-889 and PLC 2013 Page-214
- 10. That the question of fitness for promotion is not the mandate of Worthy Service Tribunal in the eye of law.
- 11. That seniority list has accordingly maintained according to the recommendations send by Khyber Pakhtunkhwa Public Service Commission in the year of 2014 which has never been objected by the appellant and would be reckoned, according to the place allotted in appointment order. Reliance is placed upon PLC 1999 (C.S) 349 (S.C AJ&K).
- 12. That the promotion of the respondent no 7 is an accordance with law and rules after fulfilling the requisite requirements for promotion through Provincial Selection Board, which also have never been objected by the appellant thus the promotion of the respondent no 7 is protected in the eye of law.
- 13. That the appellant is placed in the seniority list of BPS-17 then how he can claim placement in the list of BPS-18 without any promotion through competent authority. Reliance is placed upon SCMR 1985 Page-2099.
- 14. That the determination of the eligibility criteria for promotion is essential administrative matter of the concerned competent authority which could not be interfered by the courts. Reliance is placed upon SCMR 2016 Page-1021 and PLD 2003 Supreme Court Page-143.
- 15. That the matter of placement in the seniority list of the petitioner is amount to be the Principle of Acquiescence. Reliance is placed upon SCMR 2006 Page-832.
- 16. That the respondent no 7 comes under the required available vacant posts of BPS-18 at any cost and promotion of the respondent no 7 is

- protected in the eye of law. Reliance is placed upon SCMR 2017 Page-359 and PLC 2017 (C.S) Page-679 (S.C).
- 17. That once seniority list gets finality it could not be reopened by means of an appeal to Worthy Service Tribunal became a past and closed transaction. Reliance is placed upon SCMR 1999 page-185 and NLR 1982 TD 615.

Reply on Brief and Important Facts

- 1. That the Para NO 1 of the appeal pertains to record and no need of reply.
- 2. That the Para No 2 of the appeal is incorrect hence denied further stated that the petitioner is placed on serial no 9 of the Public Service Commission recommendation list which has been prepared as per law and the same has been maintained by the Worthy Law Department accordingly. The said seniority list of BPS-17 of the petitioner as well as the other respondents has been circulated several times tentatively from the year of 2014 to 2018 and got finality on dated 13-02-2018 and served personally the same on each official concerned which has never been objected by the petitioner as well as the other officials. The final seniority list is annexed as ANX-A).
- 3. That the Para No 3 of the appeal is also incorrect, self made and against the law hence denied further stated that on what base the appellant declares the seniority list is confidential document, which is a public document and easily access to each official. General principles of seniority and established departmental practice as evidenced by instructions in O & M Manual fully bear out the fact that seniority assigned by Public Service Commission was unalterable at the hands of department (PLD 1991 S.C Page-35). If the petitioner feels aggrieved from the recommendation list of Public Service Commission and then maintained by the Worthy Law Department which issued from time to time, could file observation against the said seniority list before competent authority. Tentative seniority list of the year of 2016 is annexed as ANX-B).
- 4. That the Para No 4 of the appeal is also incorrect hence denied further stated that the respondent no 7,8 and 10 are promoted with

due process of law through Provincial Selection Board after fulfilling the all codal formalities then how the appellant could alleged illegal. While the case of the appellant has also been sent for promotion along with the respondent No 7,8 and 10 where his case has been deferred.

- 5. That the Para No 5 of the appeal is also against the law and facts further stated that the departmental appeal of the appellant was baseless and ambiguous in nature because the appellant did not mention any order of the competent authority which he is going to challenge before the Worthy Service Tribunal Peshawar.
- 6. That the Para No 6 of the appeal of the appellant is not concerned with the respondent no 7, related to Respondent No 9 and due...to clerical mistake the Respondent No 7 is mentioned, for correction the appellant file an application which is annexed as ANX-C).
- 7. That the Para No 7 is not related with Respondent No 7.
- 8. That the Para No 8 of the appeal is totally wrong and incorrect the same has been circulated to all District Attorney Offices Khyber Pakhtunkhwa.
- 9. That the Para No 9 of the appeal is also incorrect hence denied the appeal of the appellant is badly time barred and in such like matters the Worthy Service Tribunal have no jurisdiction.
- 10. That the Para no 10 of the appeal is pertains of record.
- 11. That the Para No 11 of the appeal is incorrect and against the law and facts the appeal of the appellant is ambiguous in nature disclose no cause of action and also did not mention any order of the competent authority for which he is aggrieved.

Grounds:

a. That the Para (a) of the appeal is related to law and rule of the seniority list which has been maintained by the Worthy Law Department accordingly as per the merit order of the Public Service Commission and the same has been circulated to all official concerned in the year of 2014 to 2018 which has not been objected by any of the recommendies along with the petitioner and

objection/observations were sought several times by the Worthy Law Department.

- b. That the Para (b) of the appeal is incorrect and wrong hence denied further stated that the promotions of the respondent no 7,8 and 10 are an according to law and rules, having all codal formalities as per law for promotion, so for, as per the final seniority list of BPS-17 which has been duly circulated to all concerned officials and after that as per the seniority list the promotion cases has been sent to Provincial Selection Board subject to available vacancies of BPS-18 by the Worthy Law Department where the cases of respondent no 7,8 and 10 has been considered, while the case of the petitioner is deferred due to not eligible for promotion. Notification of promotion is annexed as ANX-D)
- c. That the Para (c) of the appeal is also incorrect detail reply is given in Para (b).
- d. That the Para (d) of the appeal is also incorrect hence denied.
- e. That the Para (e) of the appeal is against the law and facts.
- f. That the Para (f) of the appeal is not related with respondent no 7.
- g. That the Para (g) of the appeal is also not related with respondent no 7.
- h. That the Para (h) of the appeal is incorrect against the law, the petitioner has no Locus Standai and the appeal of the petitioner in ambiguous in nature not maintainable and time barred.
- i. That any other ground for rejection will be presented at the time of arguments.

It is therefore most humbly prayed that keeping in view of the facts of the case and grounds mentioned above the appeal may kindly be dismissed without any further proceedings with cost being devoid of force.

Dated:

Respondent No 7 (In Person)

Amjad Khan Deputy District Attorney

Mansehra

Verification:

It is verified that all the contents of the written reply of an appeal are true and correct and nothing has been concealed from the Honorable Service Tribunal.

Deponent

Respondent No 7 (In Person)

Amjad Khan Deputy District Attorney

Mansehra



GOVERNMENT OF KHYBER PAKHTUNKHWA LAW, PARLIAMENTARY AFFAIRS & HUMAN RIGHTS DEPARTMENT

Notification

Dated Peshawar, the 13-02-2018

NO.SO(G)/LD/15-14/2018: In pursuance of Section 8 of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule 17 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, the final seniority list of Assistant District Attorney (BPS-17) Law Department as stood on 31-12-2017 is hereby notified/circulated for general information.

FINAL SENIORITY LIST OF ASSISTANT DISTRICT ATTORNEY (BPS-17) LAW DEPARTMENT IN KHYBER PAKHTUNKHWA AS ON 31.12.2017.

S.No	Name of officer	Designation ·	Qualificati on	Date of birth	Date of entry into Govt: service	Date of regular appointment to the	Domicile	Remarks
1.	Ms. Zara Tajwar	Assistant District Attorney	MBA/LLB	04-10-1980	01-03-2013	01-03-2013	Peshawar	According to PSC
2	Mr. Amjad Khan	Assistant District Attorney	BA/LLB	07-08-1986	24-05-2014	24-05-2014	Bannu	Seniority List
3.	Syed Adnan Shah	Assistant District Attorney	MA/LLB	19-02-1980	26-05-2014	26-05-2014	Mansehra	-do-
4.	Mr. Sher Hassan Khan	Assistant District Attorney	BA/LLB	02-01-1987	28-05-2014	28-05-2014	S.W.	-do-
5. ·	Mr. Abdul Qayum Khan Mr. Muhammad Tariq	Assistant District Attorney Assistant District Attorney	BA/LLB MA/LLB	15-02-1984	23-05-2014	23-05-2014	Agency Swat	Appointed as Civil Judge-Cum Judicial Magistrate (BPS- 18) Lien retained for a period of 02 years
	Khan	7 Issued Attorney	IVIAVEED	12-10-1980	24-05-2014	24-05-2014	Peshawar	Appointed as Civil Judge-Cum Judicia Magistrate (BPS-18) Lien retained for a period of 02 years

7.	Ms. Hina Ghafoor	Assistant District Attorney	BA/LLB	01-12-1985	26-05-2014	26-05-2014	Malakand	According to PSC Seniority List
8.	Mr. Sajid Wali Khan	Assistant District Attorney	BA/LLB	18-04-1984	29-05-2014	29-05-2014	Bannu	-do-
9.	Mr. Abdul Waheed	Assistant District Attorney	BA/LLB	19-03-1982	26-05-2014	26-05-2014	Haripur	-do-
10.	Mr. Muhammad Tariq Khan Tareen	Assistant District Attorney	BA/LLB	01-04-1982	26-05-2014	26-05-2014	Haripur	-do-
11.	Mr. Inam Ullah	Assistant District Attorney	BA/LLB	05-05-1984	29-05-2014	29-05-2014	S.W. Agency	Appointed as Civil Judge-Cum Judicial Magistrate (BPS-18) Lien retained for a period of 02 years
12.	Mr. Muhammad Haris Nisar	Assistant District Attorney	BA/LLB	05-03-1985	24-05-2014	24-05-2014	Charsadda	Appointed as Civil Judge-Cum Judicial Magistrate (BPS- 18) Lien retained for a period of 02 years
13.	Mr. Muhammad Farooq Ahmad	Assistant District Attorney	BA/LLB	09-11-1985	24-05-2014	24-05-2014	Mardan	Appointed as Civil Judge-Cum Judicial Magistrate (BPS- 18) Lien retained for a period of 02 years

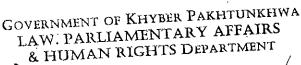
Secretary Law Khyber Pakhtunkhwa

Endst: No. SO(G)/LD/15-14/2018:

Copy forwarded to:-

- All District Attorneys in Khyber Pakhtunkhwa.
 PS to Secretary, Law Department.

Section Officer (General) Law Department



NO.SO(G)/LD/15-14/2016 / 5423-54 / Luce . Dated: Peshawar the 25/04/2016

All Senior Govt. Pleaders, in Khyber Pakhtunkhwa

Lacelli Masmat

Subject:

TENTATIVE SENIORITY LISTS OF OFFICERS/OFFICIALS OF SENIOR GOVT. PLEADER OFFICES IN KHYBER PAKHTUNKHWA AS STOOD ON 25-04-2016.

I am directed to refer to the subject noted above and to enclose herewith copies of Tentative Seniority Lists of the following cadres of Govt. Pleader Offices in Khyber Pakhtunkhwa with the request to circulate/bring into the notice of all officers/officials working in your respective offices. Reservations on the said lists, if any, may be conveyed to this Department on or before 25th May, 2016 for consideration/settlement before final declaration thereof. Besides, the offices concerned would be required to issue a certificate to the effect that the said lists have been formally brought in to the notice of all concerned.

	Senior Govt. Pleader (BPS-19)
	Govt. Pleader (BPS-18)
i	Addl. Govt. Pleader (BPS-17)
ii. 	Superintendents (BPS-17)
٧.	Senior Clerk (BPS-14)
V.	Computer Operator (BPS-12)
vi.	
vii.	Junior Clerk (BPS-11)
viii.	Class-IV employees

In case no objection is received by the target date, it would be presumed that no individual of your office has any objection to the seniority lists.

Section Officer (General)

SEUIOn

Endst: No & Date Even:

GOVERNMENT PLEA

5.5.206

Copy forwarded to PS to Secretary Law Department for information.

Section Officer (General)

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GOVERNMENT OF KHYBER PAKHYUNKHWA LAW, PARLIAMENTARY AFFAIRS & HUMAN RIGHTS DEPARTMENT

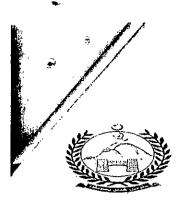
TENTATIVE SENIORITY LIST OF ADDITIONAL GOVERNMENT PLEADERS (BPS-17) IN KHYBER PAKHTUNKHWA AS ON 25/04/2016.

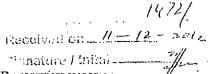
S.No	Name of officer	Cosignation	Qualificati on	Date of birth	Data of only into Govt: service	Oate of regular appointment to the present post.	Domicilo	Romarks
		Additional Govt Pleader	MBA/LL8	04-10-1980	01-03-2013	01-03-2013	Peshawar	According to PSC Senionty List
1,	Ms. Zara Tajwar	Additional Cost + lesses.				li	Bannu	-do-
2.	Mr. Amiad Khan	Additional Govl Pleader	BAYLLB	07-98-1986	24-05-2014	24-05-2014	Manselira	-00-
	Syed Adnan Shah	Additional Govt. Pleader	MAJLLB	19-02-1980	26-05-2014	26-05-2014	S.W.	-do-
.A.	Mr. Sher Hassen	Additional Govt. Pleader	9A/LL8	02-01-1987	28-05-2014	28-05-2014	Agency	·
5.	Khan Nr: Abdul Qayum	Additional Govt. Pleader	BAILE	15-02-1984	23-05-2014	23-05-2014	Swat	-da-
6.	Khan Mr. Mishammad Tariq	Additional Govt. Pleader	MAYLLB	12-10-1980	24-05-2014	24-05-2014	Peshewar	-do-
	Khan		04410	01-12-1985	26-05-2014	26-05-2014	. Malakand	-do-
7.	Ms. Hina Ghafoor	Additional Govt Pleader	BAILLS		29-05-2014	29-05-2014	Bannu	-do-
8.	Mr. Salid Wali Khan	Additional Govi. Pleader	BA/LLB	18-04-1984		26-05-2014	Haripur	-do-
9.	Mr. Abdul Waheed	Additional Govt. Pleader	LLB	19-03-1982	26-05-2014	26-05-2014	Haripur	-40-
10	Mr. Muhammad Tariq	Additional Govt. Pleader	8A/LLB	01-04-1982	26-05-2014	20-03-2014	(latipa	
11	Khen Tareen Mr. Inam Ullah	Additional Govt. Pleader	BAILE	05-05-1984	29-05-2014	29-05-2014	S.W. Agency	-do-



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GOVERNMENT OF KHYBER PAKHTUNKHWA LAW. PARLIAMENTARY AFFAIRS & HUMAN RIGHTS DEPARTMENT

NO.SO(G)/LD/15-14/2016/39-29-89.
Dated: Peshawar the 04.12.2017

То

All District Attorneys, Khyber Pakhtunkhwa. Lallei marnut

4

Subject:

TENTATIVE SENIORITY LISTS OF OFFICERS/OFFICIALS OF DISTRICT ATTORNEY OFFICES IN KHYBER PAKHTUNKHWA AS STOOD ON 24-10-2017.

I am directed to refer to the subject noted above and to enclose herewith copies of Tentative Seniority Lists of the following cadres of District Attorney Offices in Khyber Pakhtunkhwa with the request to circulate/bring into the notice of all officers/officials working in your respective offices. Reservations on the said lists, if any, may be conveyed to this Department on or before 26th December, 2017 for consideration/settlement before final declaration thereof. Besides, the offices concerned would be required to provide a certificate to the effect that the said lists have been formally brought in to the notice of all concerned.

i.	District Attorney (BPS-19)			
ii.	Deputy District Attorney (BPS-18)			
iii.	Assistant District Attorney (BPS-17)			
iv.	Superintendents (BPS-17)			
V.	Senior Clerk (BPS-14)			
vi.	Computer Operator (BPS-16)			
vii.	Junior Clerk (BPS-11)			
viji.	Class-IV employees			

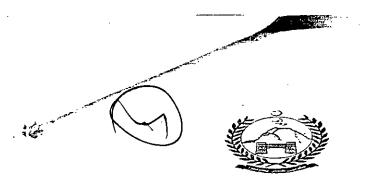
In case objection is not received by the target date, it would be presumed that no individual has any objection to the seniority lists.

Endst: No & Date Even:

Copy forwarded for information to the:-

- 1. PSO to Chief Secretary Khyber Pakhtunkhwa.
- 2. PS to Secretary Law Department for information.
- 3. Focal person of Law Department for PMRU.

Section Officer (Géneral)



GOVERNMENT OF KHYBER PAKHTUNKHWA LAW, PARLIAMENTARY AFFAIRS & HUMAN RIGHTS DEPARTMENT

TENTATIVE SENIORITY LIST OF ASSISTANT DISTRICT ATTORNEY (BPS-17) IN KHYBER PAKHTUNKHWA AS ON 04.12.2017.

S.No	Name of officer	Designation	Qualificati on	Date of birth	Date of entry into Govt:	Date of regular appointment.	Domicile	Remarks
•	.		1		service	to the present post.	•	
1.	Ms. Zara Tajwar	Assistant District Attorney	MBA/LLB	04-10-1980	01-03-2013	01-03-2013	Peshawar	According to PSC Seniority List
2.	Mr. Amjad Khan	Assistant District Attorney	BA/LLB	07-08-1986	24-05-2014	24-05-2014	Bannu	-do-
3.	Syed Adnan Shah	Assistant District Attorney	MA/LLB	19-02-1980	26-05-2014	26-05-2014	Mansehra	-do-
4.	Mr. Sher Hassan	Assistant District Attorney	BA/LLB	02-01-1987	28-05-2014	28-05-2014	S.W. Agency	-do-
5.	Mr. Abdul Qayum Khan	Assistant District Attorney	BA/LLB	15-02-1984	23-05-2014	23-05-2014	Swat	Appointed as AD&SJ in PHC, Peshawar, Lien retained for a period of 02 years
6.	Mr. Muhammad Tariq Khan	Assistant District Attorney	MA/LLB .	12-10-1980	24-05-2014	24-05-2014	Peshawar	Appointed as AD&SJ in PHC, Peshawar, Lien retained for a period of 02 years
7.	Ms. Hina Ghafoor	Assistant District Attorney	BA/LLB	01-12-1985	26-05-2014	26-05-2014	Malakand	According to PSC Seniority List
8.	Mr. Saiid Wali Khan	Assistant District Attorney	BA/LLB	18-04-1984	29-05-2014	29-05-2014	Bannu	-do-
9.	Mr. Abdul Waheed	Assistant District Attorney	BA/LLB	19-03-1982	26-05-2014	26-05-2014	Haripur	-do-
10.	Mr. Muhammad Tariq Khan Tareen	Assistant District Attorney	BA/LLB	01-04-1982	26-05-2014	26-05-2014	Haripur.	-do-
11.	Mr. Inam Ullah	Assistant District Attorney	BA/LLB	05-05-1984	29-05-2014	29-05-2014	S _. W. Agency	Appointed as AD&SJ in PHC, Peshawar, Lien retained for a period of 02 years

12	Mr. Muhammad Haris Nisar	Assistant District Attorney	BAVLLB .	05-03-1985	24-05-2014	24-05-2014	Charsadda	Appointed as AD&SJ in PHC. Peshawar. Lien retained for a period of 02 years
13.	Mr. Muhammad Farooq Ahmad	Assistant District Attorney	BA/LLB	09-11-1985	24-05-2014	24-05-2014	Mardan	Appointed as AD&SJ in PHC, Peshawar, Lien retained for a period of 02 years

Secretary Law Khyber Pakhtunkhwa

Endst: No. SO(G)/LD/15-14/2017:

Copy forwarded to:-

- All District Attorneys in Khyber Pakhtunkhwa.
 PS to Secretary, Law Department.
 Reference & Research Officer Law Department is requested to upload on Law Department Website.



rig Khan Tareen

Service Appeal No. 7273/11

he serial pumber from "Respond of of facis of captioned Appeal

Rospectfully Showoth;

The petitioner submits as under:

- 1. That the captioned appeal is perding for adjudication testers these august Tribunal and fixed for 11 - a 2024.
- 2. That inadvertently and by typographically mistake the respondent No. 7 has been shown in para No. 6 of the facts of distant 1, p.2.0 which was infact Respondent for 9 about whom the observation at Hon'ble Supreme Count has been steamoned in para No. 6
- 3. That ground "I" & "g" or employed appeal forthy dec i in instant application.
- 4. That the rectification will promote the larger interest of justice and precious rights of petitioner are involved.
- 5. That the appeal is in its initial stage and this rectification will not change the complexion of the captioned appeal

It is, therefore, most humbly prayed that the application may graciously be allowed in the best interest of administration of justice.

- Date: 2.7 // /2021

Verified on outh that the content of torpoing application are true and correct of a best or <u>Affidavit:</u> my knowledge and belief

Muhammad Tariq Khan Tarcen



GOVERNMENT OF KHYBER PAKHTUNKHWA LAW, PARLIAMENTARY AFFAIRS & HUMAN RIGHTS DEPARTMENT

Dated Peshawar the 14.10.2019

NOTIFICATION:

SO(G)LD/15-14/2015-Vol-1/1/067-83 The Competent recommendations of the Provincial Selection Board, in its meeting held on 23-09-2019, is the pleased to promote the following Assistant District Attorneys (BS-17), to the post of Deputy District Attorney (BS-18), on regular basis with immediate effect:-

S. #	Name of Officers	
1		Present Posting
	Mst. Zara Tajwar	Assistant District Attorney, Peshawar
	Mr. Amjad Khan	Deputy District Attorney Bannu (O.P.S)
3.	Mr. Sajjid Wali Khan	
4.	Mr. Abdul Waheed	Deputy District Attorney, Lakki Marwat (O.P.S)
		Assistant District Attorney, Kohistan

02. The Officers on promotion shall remain on probation for a period of one year extendable for another year, in terms of Section-6(2) of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule-15(1) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989.

03. Posting/ Transfer notification of the officers will be issued later on.

> Sd/-SECRETARY LAW KHYBER PAKHTUNKHWA

Endst: No. & Date Even:

Copy forwarded to the:-

- 1. Director General Law and Human Rights.
- 2. District Attorney Peshawar, Bannu, Lakki Marwat and Kohistan.
- 3. Section Officer (PSB), Establishment Department Khyber Pakhtunkhwa.
- 4. District Accounts Officers Peshawar, Bannu, Lakki Marwat and Kohistan.
- 5. Officers concerned.
- 6. PS to Minister Law, Parliamentary Affairs and Human Rights Khyber Pakhtunkhwa.
- 7. PS to Secretary Law, Parliamentary Affairs and Human Rights Department.