

12/9/2017

Counsel for the appellant and Muhammad Adeel Butt, AAG alongwith Hameed-ur-Rehman, AD for the respondents present. The learned counsel for the appellant argued the case at some length, but when this Tribunal referred to a recent judgment of the august Supreme of Pakistan 2017 SCMR 890 the learned counsel sought some time. Granted. To come up for further arguments before this DB on 11/10/2017.

  
MEMBER


  
CHAIRMAN

11.10.2017

Counsel for the appellant and Mr. Kabeerullah Khattak, Addl. Advocate General for the respondents present. Arguments heard and record perused.

This appeal is dismissed as per our detailed judgment of today in connected service appeal No. 984/2015 entitled "Badshah Islam Vs. The Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar and others". Parties are left to bear their own costs. File be consigned to the record room.

  
Member

  
Chairman

ANNOUNCED  
11.10.2017

01.03.2017

Counsel for appellant and Mr. Hameed-ur-Rehman, AD (litigation) alongwith Mr. Muhammad Adeel Butt, Additional AG for respondents present. Rejoinder not submitted. Learned counsel for appellant requested for time for further time for submission of rejoinder. Request accepted. To come up for rejoinder and arguments on 18.05.2017 before D.B.



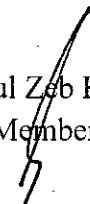
(AHMAD HASSAN)  
MEMBER




(ASHFAQUE TAJ)  
MEMBER

18.05.2017

Counsel for the appellant and Mr. Muhammad Adeel Butt Additional AG for the respondents present. Learned counsel for the appellant submitted rejoinder which is placed on file. To come up for arguments on 12.09.2017 before D.B.



(Gul Zeb Khan)  
Member



(Muhammad Amin Khan Kundi)  
Member


24.05.2016

Agent of counsel for the appellant, M/S. Khurshheed Khan, SO and Hameedur Rahman, AD alongwith Addl. AG for the respondents present. Requested for adjournment. Requested for adjournment. Last opportunity granted. To come up for written reply/comments on 26.07.2016 before;S.B.

  
Chairman

26.7.2016

Counsel for the appellant and M/S Khurshheed Khan, SO and Hameedur Rahman, AD alongwith Addl. AG for the respondents resent. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 24.11.2016.

  
Chairman

24.11.2016

Counsel for the appellant and Assistant AG for respondents present. Rejoinder not submitted. Counsel for the appellant requested for time to file rejoinder. Request accepted. To come up for rejoinder and arguments on 01.03.2017.

  
(ABDUL LATIF)  
MEMBER

  
(MUHAMMAD AAMIR NAZIR)  
MEMBER

11.09.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant is serving as DPE in BPS-17. That being M.Sc in Health and Physical Education appellant was entitled to BPS-17 with effect from 13.11.2007 on the basis of notification of the Provincial Government of the even date i.e 13.11.2007 but appellant promoted later on with immediate effect regarding which he preferred departmental appeal which was not responded and hence the instant service appeal on 7.9.2015.

That the appellant is entitled to up-gradation and financial benefits thereof with effect from 13.11.2007.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 26.11.2015 before S.B. Notice of application for condonation of delay be also issued for the date fixed.

  
Chairman

26.11.2015

Appellant Deposited  
Security & Process Fee →

Counsel for the appellant present. Security and process fee not deposited. The same be deposited within a week, where-after notices be issued to the respondents for written reply/comments for 24.3.2016 before S.B.

  
Chairman

24.03.2016

Counsel for the appellant, M/S Khurshid Khan, SO and Hameed-ur-Rehman, AD (lit.) alongwith Assistant AG for respondents present. Written reply not submitted. Requested for adjournment. Last opportunity granted. To come up for written reply/comments on 24.5.2016 before S.B.



  
Chairman

FORM-A

FORM OF ORDER SHEET

Court \_\_\_\_\_

Case No. 992/2015

	Date of order/ proceedings	Order or other proceedings with signature of Judge/ Magistrate
1	2	3
1.	07.09.2015  11-9-15	<p>The appeal of Mr. Fazal-e-Wahid presented to-day by Syed Younis Jan, Advocate may be entered in the institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;">                       REGISTRAR                 </p> <p>This case be put up before the S.Bench for preliminary hearing on <u>11-9-15</u></p> <p style="text-align: right;">                       CHAIRMAN                 </p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 392, 2015

Fazal-e-Wahid .....Appellant

VERSUS

The Chief Secretary, Government of KPK and others.....RESPONDENTS.

I N D E X

S.No.	Description of documents	Annexures	Pages
1.	Grounds of appeal with affidavit		1 - 4
2.	Addresses of parties		0 - 5
3.	Application for condonation of delay with affidavit		6 - 8
4.	Copy of departmental appeal	'A'	9
5.	Copy of impugned Notification dated 25 <sup>10</sup> / <sub>11</sub>	'B'	10- <del>11</del>
6.	Copy of Notification dated 13-11-07	'C'	12-12
7.	Copy of certificate	'D'	13
8.	Copy of appointment/promotion order	'E'	14-15
9.	Vakalat Nama		16

PESHAWAR

-09-2015

Appellant  
through

( Syed Younus Jan )  
Advocate, High Court, Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 992 / 2015

K.P.K. Service Tribunal  
Diary No. 1090  
Dated 7-9-15

Fazal-e-Wahid, Director Physical Education,  
Government Higher Secondary School, Chakdara,  
District Lower Dir ..... Appellant

VERSUS

1. The Chief Secretary, Government of K.P.K. Peshawar.
2. The Secretary, Elementary & Secondary Education, K.P.K. Civil Secretariat, Peshawar.
3. The Director, Elementary & Secondary Education, K.P.K. Peshawar.
4. The Secretary Establishment Department, K.P.K. Civil Secretariat, Peshawar.
5. The Secretary Finance Department, K.P.K. Civil Secretariat, Peshawar.

.....: RESPONDENTS.

APPEAL UNDER SECTION 4 OF K.P.K. SERVICE TRIBUNAL ACT, 1974.  
TO THE EFFECT THAT THE ORDER/NOTIFICATION DATED ~~25-10-2011~~  
MAY KINDLY BE VARIES/MODIFIED AND AS SUCH THE SAME MAY  
KINDLY BE MADE EFFECTIVE FROM 13-11-07 INSTEAD OF  
IMMEDIATE EFFECT. (COPY OF DEPARTMENTAL APPEAL IS ANNEX: 'A')

Prayer-in-appeal

That on acceptance of this appeal, the order/Notification  
dated ~~25-10-2011~~ may kindly be varied/modified<sup>to</sup> the extent  
that the same may kindly be made effective from 13-11-2007  
instead of immediate effect and as such the Department may  
kindly be directed to consider the promotion of the  
appellant to BS-17 (regular) from 13-11-2007 instead of  
immediate effect with all other service benefits.  
(Copy of the impugned order/Notification dated ~~25-10-2011~~  
is attached as Annexure 'B' and dated 13-11-07 is Annex: 'C').

Respectfully submitted:

Brief facts of the appeal are as under :-

1. That the qualification of the appellant is M.A/M.Sc. in Health and Physical Education whose ~~REPORT~~ was declared passed in 1991 exam. (Copy of certificate is attached as Annex: 'D').
2. That the appellant was regularly ~~appointed~~/promoted to the post of Director Physical Education (DPE) vide order dated 18-02-2003. (Copy of the same is Annexure 'E').
3. That the Government of K.P.K. on 13-11-2007 issued a letter/Notification vide which the posts of D.P.Es. and Librarians were upgraded from BS-16 to BS-17 (regular) for the existing incumbents who hold the Master Degrees in the relevant subjects i.e. M.A/M.Sc. in Health and Physical Education in case of the appellant. (Copy of the said Notification is Annexure 'C' above).
4. That the appellant is/was highly qualified, fit and thus was fully eligible for award of EPS-17 regular in light of the above referred Notification of the Government of K.P.K. but he was illegally/un-constitutionally, mala fide and intentionally was ignored for the same relief so he agitated the matter with the authority but of no use so he filed a departmental appeal before respondent No.1 which is still pending before him and after lapse of statutory period no order/communication has been made on the same so far, hence this appeal on the following amongst other grounds :-

G R O U N D S

- A) That the act and omissions of the respondents is illegal, un-constitutional against facts and material on record, therefore, is not tenable and need the interference of this Hon'ble Tribunal.



- B) That the act and omissions of the respondents is not only factually incorrect and legally untenable but also is based on their mala fide intention and is also against the well established principles of natural justice and is discriminatory in nature.
- C) That the act and omissions of the respondents is also against the laws/rules/policies and Notifications of the Provincial Government especially against the Notification dated 13-11-07.
- D) That the case of the appellant is very much similar and identical with those numerous cases in which the higher/superior courts and Tribunals as well as this Hon'ble Tribunal is given a similar relief to other colleagues of the appellant and the appellant is also entitled to the same relief/treatment.
- E) That the Department has also given a similar relief to other colleagues of the appellant including his junior so on this score also the appellant is entitled to the same relief.
- F) That the appellant was highly qualified, fit and thus was quite eligible for the award of BPS-17 (regular) at the time of and in light of the letter/Notification dated 13-11-07 so the impugned Notification dated 25-10-2011 vide which the promotion of the appellant to BS-17(regular) has been made with immediate effect is neither legal nor justified.
- G) That the appellant is/was a Government/Civil Servant and legal and constitutional guarantee is/was available to him to be treated equally and in accordance with law. He however, has not been treated as such.

It is, therefore, humbly prayed that on acceptance of this appeal, the impugned order/Notification dated 25-10-2011

— 4 —

may kindly be varied/modified to the extent that the same may kindly be made effective from 13-11-2007 instead of immediate effect and as such the Department may kindly be directed to consider the promotion of the appellant to BS-17 (regular) from 13-11-07 instead of immediate effect with all other service benefits. Any other remedy/relief available in the circumstances of the case may also kindly be granted to the appellant.

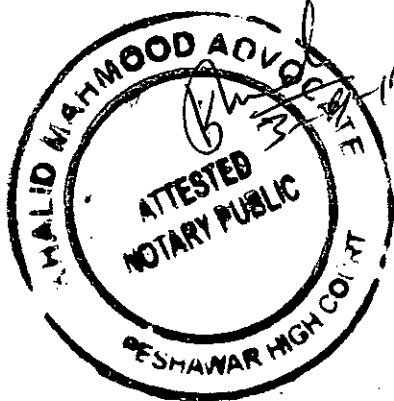
*Fazleemad*  
Appellant  
through *Jan*  
( Syed Younus Jan )  
Advocate, High Court, Peshawar

PESHAWAR

-09-2015

AFFIDAVIT

I, Fazal-e-Wahid, (the appellant) do hereby solemnly affirm and declare on oath that the contents of this appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



*Fazleemad*  
Deponent

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. \_\_\_\_\_ / 2015

Fazal-e-Wahid .....Appellant

Versus

The Chief Secretary, Govt. of K.P.K.  
and others .....Respondents.

ADDRESSES OF THE PARTIES

Appellant

Fazal-e-Wahid, Director Physical Education(D.P.E)  
Government Higher Secondary School, Chakdara  
District Dir Lower.

Respondents

1. The Chief Secretary, Govt. of K.P.K.  
Civil Secretariat, Peshawar
2. Secretary <sup>Education</sup> Elementary and Secondary Khyber Pakhtoonkhwa  
Civil Secretariate Peshawar.
3. The Director Elementary and Scondary Education Khyber  
Pakhtoonkhwa near Govt: Higher Secondary School Peshawar  
City GT Road Peshawar.
4. The Secretary Establishment Department Khyber Pakhtoonkhwa  
Civil Secretariate Peshawar.
5. The Secretary Finance Department Khyber Pakhtoonkhwa  
Civil Secretariate Peshawar.

Dated: 19/2015

Appellant \_\_\_\_\_

Through:

(SYED YOUNUS JAN )  
Advocate Peshawar High Court  
Peshawar.

(6)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. \_\_\_\_\_ / 2015

Fazal-e-Wahid ..... Applicant/Appellant

Versus

The Chief Secretary, Govt. of K.P.K.  
and others ..... Respondents

APPLICATION FOR CONDONATION OF DELAY (IF ANY).

Respectfully submitted:

The applicant/appellant submits as under:-

That firstly the act and omission of the respondents /department is illegal, unconstititutional and void and secondly as financial matter is involved in the matter and the cause of action is the running cause of action, therefore, no limitation runs against the appellant/applicant, but even if this Honourable Tribunal considers the departmental appeal time barred then this application for dondonation of delay if any on the following amongst other grounds:-

GROUNDS:

1. That in the matter in hand the cause of action is continuous cause of action and the impugned act and omission of the respondents come in the purview of the definition of continous wrong, therefore, in the matter the cause of action starts on first date and ends on the last date of every months/every year, therefore, no question of delay arises in the matter.
2. That the law requires that the matters should/must be decided on merits rather than on technical grounds including the limitation.

1

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□

Annex A  
(P)

The Ministry of Health  
Government of P.R. Peshawar.

LETTER OF APPOINTMENT

PROVIDENT FUND

That the appellant/ applicant is M.A.M.Sc. in Health and Physical Education who was declared ~~PP1~~ in 1991 and was regularly promoted/ promoted against the post of I.P.E. I.P.E. also order dated 18-1-2002. That on 1-1-07 the Government of P.R.P. issued a letter of promotion which the post of D.P.E. and Librarian were upgraded from IS-16 to BS-17 regular for the existing incumbents who hold Master Degree in relevant subjects i.e. M.A.M.Sc. in Health and Physical Education in case of the appellant.

That in light of the above referred letter the appellant is highly qualified, fit and thus was eligible for the award of regular I.P.E. but has illegally, unconstitutionally and unlawfully been ignored for the same relief. That vide order dated 25-8-07 the appellant has been promoted to regular I.P.E. but with immediate effect instead of 18-1-07 i.e. the date of the above referred letter. That the appellant/ applicant retained the letter with the authority time and again but of no use, hence this appeal. Your good self is, therefore, requested Sir, that the letter/ notification dated 25-8-07 may kindly be made effective from 18-1-07 and as such the promotion of the appellant/ applicant to regular I.P.E. may kindly be considered from 18-1-07 instead of immediate effect with all other service benefits.

Appellant/ Applicant

*[Handwritten signature and notes]*  
Date: 10/10/2007  
Signature: [illegible]

*[Handwritten signature]*  
M.A. LIAQAT  
Secretary  
Peshawar Provident Fund

Page No. 1/1  
2007-08-04

To

The Worthy Chief Secretary,  
Government of K.P.K. Peshawar.

Annex "A"  
9

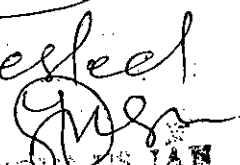
Subject: DEPARTMENTAL APPEAL/REPRESENTATION.

Through: PROPER CHANNEL.

Sir,

1. That the appellant/applicant is M.A/M.Sc. in Health and Physical Education whose ~~name~~ was declared ~~passed~~ in 1991 and was regularly appointed/promoted against the post of D.P.E. EPS-16 vide order dated 18-2-2003
2. That on 13-11-07 the Government of K.P.K. issued a letter / Notification vide which the posts of B.P.Es. and Librarians were upgraded from BS-16 to BS-17 regular for the existing incumbents who hold Master Degrees in relevant subjects i.e. M.A/M.Sc. in Health and Physical Education in case of the appellant.
3. That in light of the above referred letter the appellant is/was highly qualified, fit and thus was eligible for the award of regular EPS-17 but has illegally, un-constitutionally and malafidely been ignored for the same relief.
4. That vide order dated 25-10-11 the appellant has been promoted to regular EPS-17 but with immediate effect instead of 13-11-07 i.e. the date of the above referred letter.
5. That the appellant/applicant agitated the matter with the authority time and again but of no use. hence this appeal.

Your goodself is, therefore, requested Sir, that the letter/Notification dated 25-10-11 may kindly be made effective from 13-11-07 and as such the promotion of the appellant/applicant to regular EPS-17 may kindly be considered from 13-11-07 instead of immediate effect with all other service benefits.

Attested  


SYED YUNUS JAN  
 B.A.B.L.R. (Punjab) Law  
 Advocate High Court Peshawar  
 Federal Shariat Court.

Appellant/Applicant

For Applicant  
 Faris Ahmad  
 GHS- Chakdara  
 Dist: Dir (Payee)

PESHAWAR

21-05-2015

Annex "B"  
10



GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Dated Peshawar the 25-10-2011.

**NOTIFICATION**

NO.SO(PE)/2-6/DPC Meeting/2011. On the recommendations of the Departmental Promotion Committee, the competent authority is pleased to upgrade the following one Male DPE, one Female DPE, two Male Librarians and one Female Librarian (BS-16) to the next higher grade of DPEs/Librarians (BS-17) with immediate effect:-

**Male DPE**

S.#	Name & Designation	Upgraded to BPS-17	Adjusted / Posted
1	Mr. Fazli Wahid DPE GHSS Khanpur Dir Lower	-do-	The post already Occupied by him

**Female DPE.**

1	Mst. Sardar Bibi, DPE GGHSS Gumbat Kohat	-do-	The post already Occupied by her
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**Male Librarian.**

1	Mr. Zahid Hussain Librarian, RITE (M) Thana Malakand.	-do-	The post already occupied by him
2	Mr. Muhammad Aslam Librarian, GHSS Barikot Swat	-do-	The post already occupied by him

**Female Librarian.**

1	Mst. Nasreen Akhtar Librarian, GGHSS No.2 DIKhan	-do-	The post already Occupied by her
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2. On their up-gradation to their respective higher grades, <sup>the</sup> officers will be on probation for a period of one (01) year in terms of section 6(2) of NWFP Civil Servant Act 1973 read with Rule 15 (1) of the NWFP Civil Servant (Appointment, Promotion and Transfer) Rules, 1989.

**SECRETARY**

Endst. No. & Date as above.

Copy forwarded to:-

1. The Secretary to Govt. of Khyber Pakhtunkhwa, Establishment Department.
2. The Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department.
3. The Directress (E&SE) Khyber Pakhtunkhwa Peshawar.
4. The Director Education (FATA) Khyber Pakhtunkhwa, Peshawar.
5. The Director Curriculum & Teachers Education Abbottabad.
6. The Accountant General Khyber Pakhtunkhwa, Peshawar.
7. The Deputy Director Database(EMIS) E&SE Department.
8. The Executive District Officers Elementary & Secondary Education concerned.
9. The District Accounts Officers concerned.
10. PS to Minister E&SE Khyber Pakhtunkhwa Peshawar.
11. PS to Secretary E&SE Department.
12. Officers concerned.
13. Master File.

(MOHAMMAD AYUB KHAN)  
SECTION OFFICER (PRIMARY)

Attested

*[Signature]*

Annex "C"

11

GOVERNMENT OF N.W.F.P.  
SCHOOLS & LITERACY DEPARTMENT  
Dated, Peshawar the 13/11/2007.

NOTIFICATION.

No. SOG/S&L/1-69/06/Vol-1/DPE/LIB: Sanction of the competent authority is hereby accorded to the upgradation of the posts of Librarians and Directors Physical Education (D.P.Es) from BS-16 to BS-17 (Regular) for the existing incumbents who hold Master Degree in the relevant subject in the Schools & Literacy Department NWFP with immediate effect as per following details:-

- 1) Promotion against the upgraded posts (from BS-16 to BS-17) shall be made in the prescribed manner and in accordance with the service rules to be framed as per relevant provisions of the NWFP Civil Servants (Appointment, Promotion and Transfer) Rules 1989 read with the NWFP Civil Servants Act, 1973.
- 2) The Librarians and D.P.Es who hold the diploma in the relevant subject will stay in BS-16 till such time, they acquire Master degree in the respective subject. On acquiring Master Degree in the relevant subject, their posts will be upgraded on case to case basis from BS-16 to BS-17 (Regular) and promotion (from BS-16 to BS-17) would be given as per laid down procedure and in accordance with the service rules to be framed. However their existing seniority will remain intact.
- 3) All the vacant posts of Librarians and D.P.Es in Schools & literacy department in BS-16 are hereby upgraded to BS-17, appointments against which would be made from amongst the persons who hold Master degree in the relevant subject, in the prescribed manner.
- 4) In future Librarians and D.P.Es will initially be recruited on the basis of Master degree in the relevant subject in BS-17 (Regular).
- 5) Henceforth no appointment of Librarians and D.P.Es in BS-16 shall be made on the basis of diploma, being declared as "Dying Cadre".

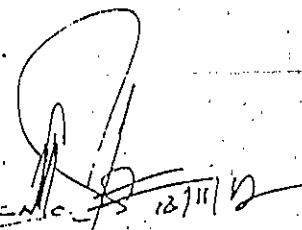
Sd/-

SECRETARY TO GOVERNMENT OF NWFP  
SCHOOLS & LITERACY DEPARTMENT.

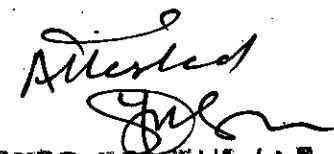
Endst: No. FD (SOSR-II) 10-7/03/VOL-III Dated, Peshawar the, 13/11/2007

Copy is forwarded for information and necessary action to :-

- 1) The Accountant General, NWFP, Peshawar.
- 2) All District Accounts Officers in NWFP.
- 3) All Agency Accounts Officers in NWFP.

  
(MUNAWAR KHAN)  
SECTION OFFICER (SR-11)  
FINANCE DEPARTMENT  
GOVERNMENT OF NWFP.

(P.T.O.)

  
SYED YOUNUS JAN  
B.A., B.L., B.Ed. Certificate No. 149  
Advocate High Court Peshawar  
Federal Shariat Court.



12

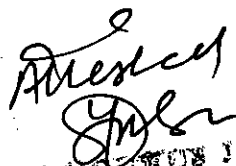
Endst: No. & Date Even.

Copy is forwarded to:-

- 1) Secretary to Government of NWFP, Establishment Department.
- 2) Secretary to Government of NWFP, Finance Department.
- 3) P.S to Chief Minister NWFP, Peshawar.
- 4) P.S to Chief Secretary NWFP, Peshawar.
- 5) Director Schools & Literacy, NWFP, Peshawar.
- 6) Director, Curr: & Teachers Edu; NWFP, Mandian Abbottabad.
- 7) Director of Education FATA NWFP, Peshawar.
- 8) P.S to Minister of Education, NWFP, Peshawar.
- 9) P.S to Secretary Schools & Literacy NWFP, Peshawar.
- 10) Office File.



(FARID AHMAD KHATTAK)  
SECTION OFFICER (GENERAL)  
SCHOOLS & LITERACY DEPARTMENT  
GOVERNMENT OF NWFP.



**ATIQUEL HAQ**  
B.A., B.Ed. Certificate Clerk and  
Advocate High Court Peshawar  
Federal Shariat Court.

Serial No GU 01694

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Amex D  
13

# GOMAL UNIVERSITY

DERA ISMAIL KHAN

(N.W.F.P) PAKISTAN



VERIFIED

Controller of Examinations  
Gomal University,  
Dera Ismail Khan

(Session 1989-90)

15/10/09

FAZLI WAHID SON of HABIB KHAN and

a student of the DEPTT: OF HEALTH & PHYSICAL EDUCATION, GOMAL UNIVERSITY

having passed the prescribed examination in AUGUST 1991

is this day admitted by the Gomal University to the DEGREE of

## MASTER OF SCIENCE

in the SECOND Class

The subject of examination being HEALTH & PHYSICAL EDUCATION

The Examination was taken as a whole in parts

Registered No. 311-PEDU-88

Roll No. 3637

15TH MARCH, 1992.

*Mesim*  
Subject Specialist  
G.H. S. Chakdara  
Dist. Dir (lower)

Countersigned

*[Signature]*  
Controller of Examinations

*[Signature]*  
Vice-Chancellor

*Amexed*  
*[Signature]*  
BYED TOHID JANI  
B.A.B. S Ed. Certificate class 100  
Advocate High Court Peshawar  
Federal Shariat Court.

# DIRECTORATE OF SCHOOLS AND LITERACY N.W.F.P. PESHAWAR.

## OFFICE ORDER.

Annex "E" 19

Consequent upon the approval by the Departmental Selection Committee Schools & Literacy NWFP in its meeting held on 26-12-2002. The following CT/PET/PTC, etc are hereby promoted to the posts of DPE/ADO (Physical) B-16 on regular basis in the interest of public service with immediate effect.

S.#	Name & Designation	Promoted as	Place of posting	Remarks
1	Mr. Sher Azam Khan PET	DPE	GEC Ghori Wala Bannu	Against the post already occupied by him
2	Mr. Siraj-ud-Din PET	DPE	GHSS. Khowaza Khela Swat	Against the post already occupied by him
3	Muht Ibrahim-ud- Din PET	DPE	GHSS. Lachi Kohat	Against the post already occupied by him
4	Mr. Bahadar Nawaz PET	DPE	GHSS No. 2 Pesh: Canntt:	Against the post already occupied by him
5	Mr. Falak Naz PET	DPE	GHSS Manga Dargai Charsadda	Against the post already occupied by him
6	Mr. Deedar Khan PET	DPE	GHSS Chankani Peshawar	Against the post already occupied by him
7	Mr. Muhammad Jalal PET	DPE	GHSS Kakki Bannu	Against the post already occupied by him
8	Mr. Abdus Sattar PET	DPE	GHSS Gul Imam Tank	Against the post already occupied by him
9	Mr. Jamal Abdul Nasir PET	DPE	GHSS Totakan Mkd Agy:	Against the post already occupied by him
10	Muht Faisal Phy: Supervisor	DPE	GHSS Daag Peshawar	Against the post already occupied by him
11	Mr. Muhammad Naeem PET	DPE	GHSS Ghauri Kapura MDN	Against the post already occupied by him
12	Mr. Saukat Hayat PET	DPE	GHSS Kot Malakand Agy:	Against the post already occupied by him
13	Mr. Bashir Ahmad PET	DPE	GHSS Dosehra Char: da	Against the post already occupied by him
14	Mr. Shamal Khan PET	DPE	GHSS Dara Pezu Lakat	Against the post already occupied by him
15	Mr. Aqal Daraz PET	DPE	GHSS Tough Bala Kohat	Against the post already occupied by him
16	Mr. Azizullah Khan PET	DPE	GHSS Kotgarh D I Khan	Against the post already occupied by him
17	Abdul Majeed Phy: Supervisor	DPE	GEC (M) Peshawar	Against the post already occupied by him
18	Mr. Muhibullah PET	DPE	GHSS Nizampur NSR	Against the post already occupied by him
19	Mr. M. Saeed Shah PET	DPE	GHSS Kawai Mansehra	Against the post already occupied by him
20	Mr. S. Bakht Shah PET	DPE	GHSS Zaida Sawabi	Against the post already occupied by him
21	Mr. Hameedullah Khan PET	DPE	GHSS Dakki D, I, Khan	Against the post already occupied by him
22	Mr. Muhammad Israr PET	DPE	GHSS Bughdad Mardan	Against the post already occupied by him
23	Mr. Naeem Khan PET	DPE	Phy: Edu: Collage Karak	Against the post already occupied by him
24	Mr. Shah Mehmood PET	DPE	GHSS Urmar Payan Pesh:	Against the post already occupied by him
25	Mr. Tali Zar Khan PET	DPE	GHSS Katlang Mardan	Against the post already occupied by him
26	Mr. Rais Khan PET	DPE	GHSS Khashgai NSR	Against the post already occupied by him
27	Mr. Inayat Khan PET	DPE	GHSS Umar Zai Chd:	Against the post already occupied by him
28	Mr. Sardar Khan PET	DPE	GHSS Mayar Mardan	Against the post already occupied by him
29	Mr. Ihtishamud Din PET	DPE	GHSS Bilitang Kohat	Against the post already occupied by him
30	Mr. Abdullah Shah PET	DPE	ADO (Phy:) at EDO (S&L) Tank	Against the post already occupied by him
31	Mr. Rukh Niaz PET	DPE	GHSS Khanis Pui Abbottabad	Against the post already occupied by him
32	Mr. Abdul Ghaffar PET	DPE	GHSS Lal Qilla Dir	Against the post already occupied by him
33	Mr. Gul Badshah PET	DPE	GHSS Hazar Khwani Pesh:	Against the post already occupied by him
34	Mr. Muhammad Safdar PET	DPE	GHSS Deaba Kohat	Against the post already occupied by him
35	Mr. Safdar Jan PET	DPE	GHSS No. 1 Peshawar city	Against the post already occupied by him
35	M. Fazli Rabbi PET	DPE	GHSS Totalai Buner	Against the post already occupied by him
37	Mr. Khaki Rehman PET	DPE	GEC (M) Mir Ali NWA	Against the post already occupied by him
38	Mr. Roshan Akber PET	DPE	GHSS Gandaf Swabi	Against the post already occupied by him
39	Mr. Habibullah PET	DPE	ADO(Phy) at EDO(S&L) Charsadda	Against the post already occupied by him
40	Mr. Lal Marjan PET	DPE	GHSS Shabqadar For. hd:	Against the post already occupied by him
41	Mr. Ahmad Nawaz PET	DPE	ADO(Phy:) at EDO(S&L) Battagram	Against the post already occupied by him
42	Mr. Zar Bahisht Khan PET	DPE	ADO (Phy:) at EDO(S&L) Buner	Against the post already occupied by him
43	Mr. Kiramatullah PET	DPE	GHSS Bogara Karak	Against the post already occupied by him
44	Mr. Satar Khan PET	DPE	GHSS Baghicha Dhari Mardan	Against the post already occupied by him
45	Mr. Rashi Din PET	DPE	GHSS Warana Karak	Against the post already occupied by him
46	S. Fazal Abbas Zaidi PET	DPE	GHSS Utmanzai Charsadda	Against the post already occupied by him
47	Mr. Falak Naz PET	DPE	GHSS Adezai Peshawar	Against the post already occupied by him
48	Mr. Fazli Wahid PET	DPE	GHSS Khanpur Dir	Against the post already occupied by him
49	Mr. Mushtaq Khan PET	DPE	GHSS Wazir Bugh Peshawar	Against the post already occupied by him
50	Mr. Arbab Fawad Khalil PET	DPE	ADO (Phy:) at EDO(S&L) NSR	Against the post already occupied by him

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51	Mr. Habibullah PET	DPE	GEC (M) Dir	Against the post already occupied by him
52	Mr. Mujeebur Rehman PET	DPE	GHSS Shakar Dara Kohat	Against the post already occupied by him
53	Mr. Jehan Alam PET	DPE	ADO (Phy:) at EDO(S&L) Shangla	Against the post already occupied by him
54	Mr. Abdul Qadeer Khan PET	DPE	GHSS, Parova D.I.Khan	Against the post already occupied by him
55	Mr. Chamni Khan PET	DPE	GHSS, Takkar GHSS Mardan	Against the post already occupied by him
56	Mr. Amjad Khan PET	DPE	GHSS Sherpao Charsadda	Against the post already occupied by him
57	Mr. Nikhat ullah PET	DPE	GEC (M) Koika Habibullah FR Banna	Against the post already occupied by him
58	Mr. Farid Zaman C.T.	DPE	Phy:Edu:Collage Karak	Against the post already occupied by him
59	Mr. Ikramullah PET	DPE	GHSS Sirkot Haripur	Against the post already occupied by him
60	Mr. Muhammad Usman PET	DPE	GHSS Muryali D.I.Khan	Against the post already occupied by him
61	Mr. Waris Khan P.T.C.	DPE	GHSS Munda Dir Lower	Against the post already occupied by him
62	Mr. Muhammad Nawaz PET	DPE	GHSS Shabaz Gijari Mardan	Against the post already occupied by him
63	Mr. Ihsan Ullah PET	DPE	GHSS Fatehpur Swat	Against the post already occupied by him
64	Mr. Ashraf Ali Khan PET	DPE	GHSS Ustarzat Kohat	Against the post already occupied by him
65	Mr. Zahoor Zaman P.T.C.	DPE	GHSS Kalam Swat	Against the post already occupied by him
66	Mr. Fateh Sher PET	DPE	GHSS Kabal Swat	Against the post already occupied by him
67	Mr. Muhammad Sharif PET	DPE	GHSS Kot Najibullah H/Pur	Against the post already occupied by him
68	Mr. Said Khan PET	DPE	GHSS Lora Abbottabad	Against the post already occupied by him
69	Mr. Ghulam Hussain PET	DPE	GEC(M) Mardan	Against the post already occupied by him
70	Mr. Ghulam Nabi PET	DPE	GHSS Takh Bhai Mardan	Against the post already occupied by him
71	Mr. Muhammad Gul PET	DPE	GHSS No.2 D.I.Khan	Against the post already occupied by him
72	Mr. Raeesullah P.T.C.	DPE	GHSS Charbagh Swat	Against the post already occupied by him
73	Mr. Nasir Khan PET	DPE	ADO (Phy:) at EDO (S&L)Hangu	Against the post already occupied by him
74	Mr. Zahoor Ahmad PET	DPE	GHSS Jalozai Nowshera	Against the post already occupied by him
75	Mr. Muhammad Haroon PET	DPE	GHSS Ismaila Swabi	Against the post already occupied by him
76	Mr. Muhammad Iqbal PET	DPE	GHSS Turbela T.Ship H/Pur	Against the post already occupied by him
77	Mr. Farmanullah PET	DPE	GHSS Pir Pai Nowshera	Against the post already occupied by him

Note: -  
 1. Charge report should be submitted to all concerned.  
 2. No TA/DA etc: are allowed.

(HAFIZ BAHADAR KHAN)  
 Director Schools & Literacy  
 NWFP Peshawar

Endst No. 3542-3628 1A-14/Promo:/DPE B-16.

Dated Peshawar the 18/2/2003

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

1. Director of Education (FATA) NWFP Peshawar.
2. Director Bureau and Teacher Education NWFP Abbottabad.
3. Accountant General NWFP Peshawar.
4. Executive District Officers (Schools & Literacy) in NWFP.
5. District/Agency Accounts Officers in NWFP.
6. Principal GEC (M) concerned.
7. Principal Govt: College of Physical Education Karak.
8. Principal GHSS concerned.
9. PS to Minister for Education NWFP Peshawar.
10. PS to Secretary Schools & Literacy Department Govt: of NWFP Peshawar.
11. DPE/ADO Physical concerned.
12. PA to Director Schools & Literacy NWFP Peshawar.

18/2/2003

Attested  
 SYED YOUSUF JAN  
 B.A.B.L. B.Ed. Certificate  
 Advocate High Court Peshawar  
 Federal Shariat Court.

Deputy Director Establishment  
 Directorate Schools & Literacy  
 NWFP Peshawar



**BEFORE THE HONORABLE KHYBER PAKHATUNKHWA SERVICE TRIBUNAL PESHAWAR.**

Service Appeal No: 992/2015

**Fazal Wahid DPE, GHSS Chakdara Dir (Lower)**

.....Appellant.

**VERSUS**

**Secretary E&SE Department, Khyber Pakhtunkhwa & others.**

.....Respondents

**JOINT PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENTS No: 1-5.**

Respectfully Sheweth:-

The Respondents submit as under:-

**PRELIMINARY OBJECTIONS.**

- 1 That the Appellant has got no cause of action / locus standi.
- 2 That the instant Service Appeal is badly time barred.
- 3 That the Appellant has concealed material facts from this Honorable Tribunal, hence liable to be dismissed on this score.
- 4 That the Appellant has filed the instant appeal on mala -fide motives.
- 5 That the Appellant has not come to this Honorable Tribunal with clean hands.
- 6 That the Appellant is not entitled for the relief he has sought from this Honorable Tribunal.
- 7 That the instant Service Appeal is against the prevailing law & rules.
- 8 That the instant Appeal is based on mala-fide intentions just to put extra pressure on the Respondents for gaining illegal service benefits.
- 9 That this Honorable Tribunal has got no jurisdiction to adjudicate upon the present service appeal.
- 10 That the appeal is not maintainable in its present form & circumstances of the case.
- 11 That the appeal is bad for mis-joinder & non-joinder of the necessary parties.
- 12 That the instant Appeal is barred by law.
- 13 That the Notifications dated 25/10/2011 is legally competent.
- 14 That the instant Service Appeal is barred by law.
- 15 That the Appellant is not entitled for the grant of promotion wef 13/11/2007.

BEFORE THE K.P.K. SERVICE TRIBUNAL, PESHAWAR.

In Service Appeal No. 992 / 2015

Fazal-e-Wahid .....Appellant

Versus

The Chief Secretary, K.P.K. and others.....Respondents.

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REPLICATION ON BEHALF OF THE APPELLANT TO THE JOINT  
PARA-WISE COMMENTS OF RESPONDENTS NO. 1 TO 5.

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Respectfully submitted:

REPLICATION TO THE PRELIMINARY OBJECTIONS.

1-15) The preliminary objections raised by the respondents in these paras are incorrect, false, misconceived and are based on no evidence, hence denied. Moreover, it is submitted that the appellant has got a valid cause of action/locus standi to challenge the illegal acts and omissions of the respondents. The appeal is well within time, no facts have been concealed by the appellant from this Hon'ble Tribunal and no dirty hands have been shown or proved each and every fact has been narrated by the appellant in his appeal and all the necessary parties have properly been arrayed by him in his appeal, no mis-joinder or non-joinder has been shown or proved by the respondents. No malafide on the part of the appellant has been shown or proved while the same is proved on the part of the respondents. The appeal is maintainable in its present form and in the present circumstances and there could be no other form but in which it has been submitted under the law and the same is not barred by any law but has been submitted strictly in accordance with laws /rules. Moreover, a matter of terms and conditions of service of the appellant therefore, this Hon'ble Tribunal has got a valid jurisdiction in the matter in hand

REPLICATION TO THE FACTS

- 1&2) These paras need no replication.
- 3) In this para the contents of para-3 of the appeal have been admitted as correct, therefore, needs no replication however it is clarified that vide the notification dated 13-11-2007 the posts of D.P.Es. and Librarians were upgraded from BPS-16 to BPS-17 on regular basis and not on personal basis.
- 4) The contents of this para of the reply are incorrect, false misconceived and are based on no evidence, hence denied. Moreover, it is submitted that the appellant being highly qualified and thus is highly eligible for BPS-17 regular from 13-11-2007 i.e. the date of the above referred Notification, but he has illegally un-constitutionally and malafidely been ignored.

REPLICATION TO THE GROUNDS

- A-G) The contents of these paras are incorrect, false, misconceived and are without proof, hence denied. Moreover, it is submitted that as the appellant was highly qualified fit and thus was fully eligible for award of BPS-17(regular) at the time and in the light of the letter/Notification dated 13-11-2007 so the impugned acts and omissions of the respondents/Department ~~has~~ not only factually incorrect and legally untenable but also are based on malafide intentions of the respondents and are against the well-established principles of natural justice which have caused a gross miscarriage of justice to the appellant and the same is neither in accordance with laws/rules nor are based on facts the stand of the appellant is neither baseless nor is against the factual position but the acts and omissions of the respondents are not in legal sphere



and even the appellant has not been treated in accordance with laws/rules and the appellant has got cogent proof/evidence in his favour which he will produce before the Hon'ble Tribunal at the time of arguments.

It is, therefore, humbly prayed that on acceptance of the above and the facts narrated and the grounds mentioned in the appeal, the appeal of the appellant may kindly be accepted and the relief claimed in the appeal may kindly be granted to the appellant. Any other remedy/relief available in the circumstances of the case may also kindly be granted to the appellant.

Appellant

through

(*Syed Younas Jan*)  
Advocate, Peshawar

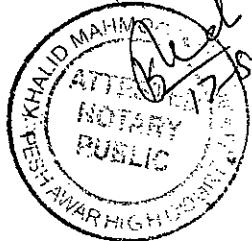
PESHAWAR

-05-2017

AFFIDAVIT/COUNTER AFFIDAVIT

I, Fazal-e-Wahid, D.P.E. GHSS Chakdara District Dir Lower (the appellant) do hereby solemnly affirm and declare on oath that the contents of this replication are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal while the contents of the reply of respondents are incorrect, false, misconceived and are without proof.

*Fazlewahid*  
Deponent



## IN FACTS

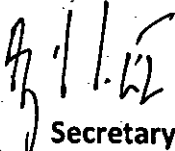
- 1 That Para-I, needs no comments being pertains to the academic & professional qualification of the appellant.
- 2 That Para-2, also needs no comments, being pertains to the service record of the appellant.
- 3 That Para-3 is correct to the extent that the Govt: of Khyber Pakhtunkhwa, vide Notification dated 13/11/2007 has upgraded the DPEs & Librarians from BPS-16 to 17 (Personal) with the conditions of MA/M. Sc in Health & Physical Education from the recognized University at least in 2<sup>nd</sup> Division with the additional conditions that in future all DPEs will be recruited in BPS-17 regular on the basis above said qualification by declaring the DPRE post in BPS-16 as a dying cadre post in the Respondent Department (Copy of the said Notification is attached as Annexure-A).
- 4 That Para-4 is incorrect & misleading on the grounds that the case of the appellant for the grant of promotion from BPS-16 to 17 vide the impugned Notification dated 25/10/2011 with reference to S/No: 3 of the said Notification is the result of the Notification No: SO (PE)/2-6/E&SED/ DPC/LIV/DPE(BPS-16 to 17)/09 dated 13/11/2007, vide which the appellant has been promoted against the BPS-17 (Regular) post by the Respondent Department in the interest of public service & immediate effect with the conditions that the appellant will retain his inter- se-seniority in BPS-17 alongwith his batch mates as in BPS-16 in the Respondent Department, hence the plea of the appellant regarding making the impugned Notification dated 25/10/2011 effective from 13/11/2007 is illegal & without any merits. Hence the instant appeal is liable to be dismissed in favour of the Respondents in the interest of justice on the following grounds inter alia (Copies of the said Notifications are Annex: B&C) :-

## Grounds

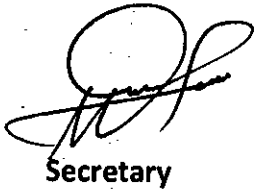
- A Incorrect & denied, the act of the Respondents vide Notification dated 25/10/2011 in favour of the appellant is within legal parameter & is legally competent & is liable to be maintained in favour of the Respondents in the interest of justice.
- B Incorrect & denied. Detailed reply has already been given in the foregoing paras.
- C Incorrect & denied. The appellant has been treated as per law & upgradation policy by the Respondents vide Notification dated 25/10/2011 by promoting them in BPS-17 with immediate effect in the interest of justice.
- D Incorrect & denied. The statement of the appellant is baseless and without any merit & is liable to be struck down in favour of the Respondents.
- E Incorrect & denied. Detailed reply of this ground has already been given in Para-4 of the instant reply, hence needs no further comments.
- F Incorrect & denied. The appellant has been treated as per law, rules & criteria vide the impugned Notification dated 25/10/2011, by the Respondents.
- G Incorrect & misleading. The appellant has been treated as per law, rules & criteria vide the impugned Notification dated 25/10/2011, issued by the Respondents. However, the Respondent seek leave of this Honorable Tribunal to submit additional case law & record at the time of arguments.

**Prayer**

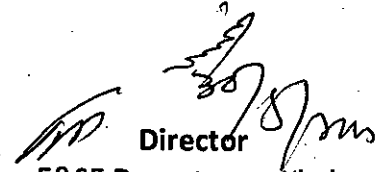
In view of the above made submissions, it is humbly requested that this Honorable Tribunal may very graciously be pleased to dismiss the instant appeal with cost in favour of the respondent Department.

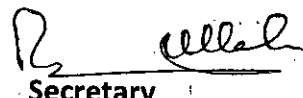

 21/6/2016  
Secretary

E&SE Department Khyber  
Pakhtunkhwa, Peshawar  
(Respondents No: 1&2)

  
Secretary


(Etab: ) Department Khyber  
Pakhtunkhwa, Peshawar.  
(Respondent No: 4 )

  
Director  
E&SE Department Khyber  
Pakhtunkhwa, Peshawar.  
(Respondents No: 3).

  
Secretary  
(Finance) Department Khyber  
Pakhtunkhwa, Peshawar.  
(Respondent No: 5).  


**AFFIDAVIT**

I, Khaista Rehman Asstt: Director (Lit: II) E&SE Department Khyber Pakhtunkhwa, Peshawar do hereby solemnly affirm and declare on oath that the contents of the instant Parawise Comments in the titled Service appeal are true & correct to the best of my knowledge & belief & that nothing has been concealed from the ambit of this Honorable Tribunal.

  
Deponent