

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. Learned counsel for appellant requested for adjournment. Adjournment granted. To come up for 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. Counsel for the appellant requested for adjournment. Adjourned. 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. Khursheed 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

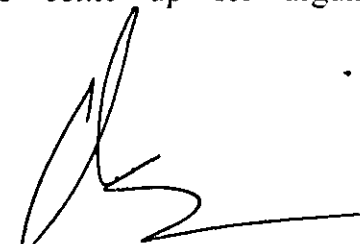
26.7.2016

Counsel for the appellant and M/S Khursheed 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 submitted which is placed on file. To come up for arguments on 01.03.2017.


(MUHAMMAD AAMIR NAZIR)
MEMBER


(ABDUL LATIF)
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. Notice of application for condonation of delay be also issued for the date fixed.

71-P-11


Chairman

26.11.2015


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.

Appellant Deposited
Security & Process Fee →


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. 990/2015

	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 Qari Syed Mohib Ullah Shah 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. 990, 2015

Qazi Syed Mohibullah Shah Applicant/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 15.6.09	'B'	10-11
6.	Copy of Notification dated 13-11-07	'C'	12-13
7.	Copy of certificate	'D'	14
8.	Copy of appointment/promotion order	'E'	15
9.	Vakalat Nama		16

PESHAWAR

-09-2015

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

Appeal No. 990 / 2015

K.P.K. PROVINCE
Service Tribunal
Diary No 1092
Dated 7-7-15

Qazi Syed Mohib Ullah Shah, Director, Physical Education, Government Higher Secondary School, Karak, District Karak 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 15-06-09 MAY KINDLY BE VARIES/MODIFIED AND AS SUCH THE SAME MAY KINDLY BE MADE EFFECTIVE FROM 13-11-2007 INSTEAD OF IMMEDIATE EFFECT. (COPY OF DEPARTMENTAL APPEAL IS ANNEX: 'A')

219/15
Prayer-in-appeal

That on acceptance of this appeal, the order/Notification dated 15-06-2009 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 13-11-2007 instead of immediate effect with all other service benefits. (Copy of the impugned order/Notification dated 15-06-2009 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 ~~marks~~ was declared passed on 2005 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 25-03-91 ⁽²⁻⁰⁷⁻⁸⁹⁾ from (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, malafidely 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.

— 3 —

- 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 EPS-17 (regular) at the time of and in light of the letter/Notification dated 13-11-07 so the impugned Notification dated 15-06-2009 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 15/6/2009

— 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.

Qazi Mohibullah
Appellant

through

Syed Younus Jan

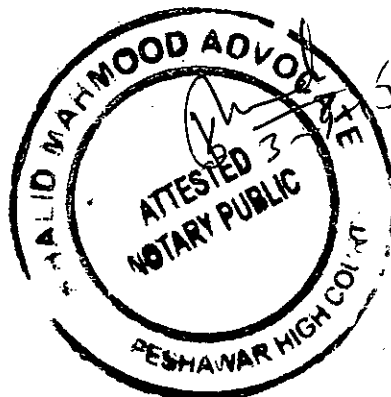
(Syed Younus Jan)
Advocate, High Court,
Peshawar

PESHAWAR

-09-2015

AFFIDAVIT

I, Qazi S. Mohibullah Shah (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.



Qazi Mohibullah
Deponent

5

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. _____ / 2015

Qazi Syed Mohibullah ShahAppellant

Versus

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

ADDRESSES OF THE PARTIES

Appellant

Qazi Syed Mohibullah Shah,
Director Physical Education (D.P.E)
Government Higher Secondary School, Karak
District Karak.

Respondents

1. The Chief Secretary,
Govt. of K.P.K. Civil Secretariat,
Peshawar.

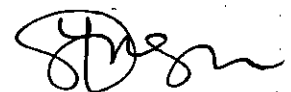
Education

- 2. Secretary Elementary and Secondary Khyber Pakhtoonkhwa
Civil Secretariate Peshawar.
- 3. The Director Elementary and Secondary 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 YONUS JAN)
Advocate Peshawar High Court
Peshawar.

(6)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____/ 2015

Qazi Syed Mohibullah ShahApplicant/Appellant

Versus

The Chief Secretary, Govt. of K.P.K.
and othersRespondents.

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, unconstitutional 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.

3. That the appellant/applicant has got a very good case in his favour therefore, technicalities including the point of limitation(The delay if any) are ignorable.
4. That the appeal of the appellant before this Honourable Tribunal is well within time and strictly in accordance with law contained in Section 4 of the NWFP now Khyber Pakhtunkhwa Service Tribunal Act 1974,
5. That if the delay if any is not condoned the applicant/appellant will suffer an irreparable loss to his seniority, promotion and all other service benefits.
6. That the delay if any has been caused by the delaying tactics of respondents/department and the appellant cannot be held responsible for the same.
7. That in so many similar and identical cases this Honourable Tribunal has ignored the point of limitation and in so many cases has condoned the delay, therefore, in this case also the same point is ignorable/condonable.

It is, therefore, respectfully prayed that on acceptance of this application in the best interest of justice the delay if any in filing departmental appeal may kindly be condoned/ignored and the appeal of the appellant/applicant may kindly be decided on merits. Any other remedy/relief available in the circumstances of the case may also kindly be granted to the applicant/appellant.

Dated 19/2015

Qazi Mohibullah
Applicant/Appellant

Through

Syed Younus Jan
(Syed Younus Jan)

Advocate Peshawar High Court
Peshawar.

8

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____ / 2015

Qazi Syed Mohibullah ShahApplicant/Appellant

Versus

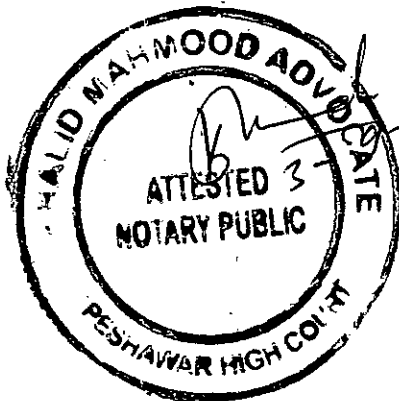
The Chief Secretary, Govt. of K.P.K.
and othersRespondents.

AFFIDAVIT.

I, Qazi S. Mohibullah Shah (Appellant) to hereby solemnly affirm and declare on Oath that the contents of the attach application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal

Dated 19/2015

Qazi Mohibullah
Deponent _____



To

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

Annex "A"
(9)

Subject:- DEPARTMENTAL APPEAL/REPRESENTATION

Through: PROPER CHANNEL

Sir,

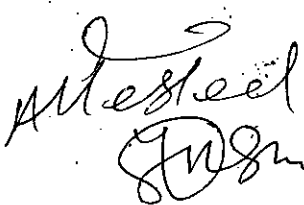
1. That the applicant/appellant is M.A/M.Sc. in Health and Physical Education who ~~was~~ ^{passed in 2005} was declared ~~passed~~ against the post of B.P.E. (BPS-16) vide order dated 25-3-91 (2-7-89)
2. That on 13-11-07 the Govt. of K.P.K. issued a letter/ Notification vide which the posts of D.P.Es. and Librarians were upgraded from BS-16 to BS-17 regular for the existing incumbents who hold Master Degrees in relevant subjects i.e. M.A/M.Sc. in Health & Physical Education in case of appellant/applicant.
3. That in light of the above referred Notification the applicant/appellant is/was highly qualified, fit and thus was quite eligible for the award of BPS-17 regular but has illegally, un-constitutionally and malafidely been ignored for the same relief in light of the above referred letter of the Provincial Government.
4. That now vide order dated 15-06-09 the appellant has been promoted to regular BPS-17 but with immediate effect instead of 13-11-07 i.e. the date of above referred letter.
5. That the appellant/applicant agitated the matter with the authority but of no use, hence this departmental appeal.

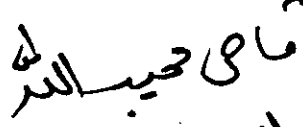
Your goodself is therefore requested Sir, that the letter/notification dated 15-06-09 may kindly be made effective from 13-11-07 and as such the promotion of the appellant/applicant to regular BS-17 may kindly be considered from 13-11-07 instead of immediate effect with all other service benefits.

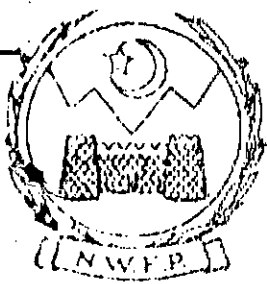
Appellant/Applicant

PESHAWAR

20-05-2015


SYED YOUNUS JAN
M.A.B.L.S. B Ed. - Certificate Sharia Law
Advocate High Court Peshawar
Federal Shariat Court.


Dazi Mahibullah
D.P.E. G.H.S.S. Karak



(1)
GOVERNMENT OF NWFP
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

Dated Peshawar the 15-6-2009.

Annex "B"
10

NOTIFICATION

NO.SO(PE)2-6/E&SE/DPCMEETING/LIB/09: Consequent upon recommendations of the Departmental Promotion Committee, the competent authority is pleased to promote the following Twenty Three (23 Male) & Thirteen (13 Female) DPEs from BS-16 to BS-17 according to their seniority on regular basis with immediate effect:-

MALE DPEs

S.No	Name & Designation of Officers	Place of Posting	Remarks
1.	Mr. Abdul Hameed ADO's (sports) O/O EDO E&SE Lakki	GHSS Langarial Abbottabad.	Against Vacant Post
2.	Mr. Amanullah Khan DPE GHSS Tajazai Lakki	GHSS Tajazai Lakki	Already occupied by him
3.	O.S. Mohibullah Shah DPE GHSS Karak	GHSS Karak	-do-
4.	Muhammad Aslam DPE GHSS Abdul Khel Lakki	GHSS Abdul Khel Lakki	-do-
5.	Mr. Sardar Ali DPE GHSS Ghani Dehri Malakand Dargai	GHSS Ghani Dehri Malakand Dargai	-do-
6.	Muhammad Hashim DPE GHSS No. 3 Peshawar City	GHSS No.3 Peshawar City	-do-
7.	Muhammad Saeed ADO (Sports) EDO E&SE Swabi	GHSS Rhich Bhan Abbottabad	Against Vacant Post
8.	Muhammad Ibrahim ud Din DPE GCPE (M)Karak	GHSS Boi Abbottabad	-do-
9.	Mr. Deedar Khan DPE GHSS Chamkani Peshawar	GHSS Chamkani Peshawar	Already occupied by him
10.	Mr. Abdul Sattar DPE GHSS, Gul Imam Tank	GHSS Gul Imam Tank	-do-
11.	Muhammad Saeed Shah DPE GHSS Kawiu Mansehra	GHSS Kawiu Mansehra	-do-
12.	Mr. Khaki Rehman DPE GEC (M) Mir Ali NWA	GEC (M) Mir Ali NWA	-do-
13.	Mr. Habib Ullah DPE GHSS Dargai Charsadda	GHSS Dargai Charsadda	-do-
14.	Mr. Habibullah DPE GHSS Mamash Khel Bannu	GHSS Mamash Khel Bannu	-do-
15.	Mr. Zahoor Ahmad DPE GHSS Manki Sharif Nowshera	GHSS Manki Sharif Nowshera	-do-
16.	Mr. Lal Bacha DPE GHSS Mansabdar Swabi	GHSS Mansabdar Swabi	-do-
17.	Abdur Rauf DPE GHSS Wadpaga Peshawar	GHSS Wadpaga Peshawar	-do-
18.	Mr. Fakhr Zaman Shah DPE, GHSS Dhand Saghri, Kohat	GHSS Dhand Saghri, Kohat	-do-
19.	Mr. Wali-ur-Rehman DPE, GCPE Karak	GCPE Karak	-do-
20.	Mr. Kamran Ali, DPE GHSS, Nagri Bunair.	GHSS Nagri Bunair	Already occupied by him
21.	Mr. Muhammad Iqbal, DPE GHSS Tehkal Bala Pesh:	GHSS Tehkal Bala Pesh:	-do-
22.	Muhammad Arif DPE, GHSS Bam Khel Swabi	GHSS Bam Khel Swabi	-do-
23.	Mr. Zard Ali Khan DPE GHSS Urmar payan Peshawar	GHSS Urmar payan Peshawar	-do-

M. Farid Muhammad/Kaleem Khan Mahsood/Final Notification/09

(P.T.O.)

Attest
Younus Khan
BYED YOUNUS KHAN
B.A., B.Ed., Certificate Shari Law
Associate High Court Peshawar
Federal Shariat Court.

FEMALE DPEs


S.No	Name & Designation of Officers	Place of Posting	Remarks
1.	Mst. Samina Habib DPE RITE(F) Kohat.	RITE(F) Kohat.	Already occupied by her
2.	Mst. Gul Nar DPE GGHSS Comp: Abbottabad.	GGHSS Comp: Abbottabad.	-do-
3.	Mst. Abida Parveen DPE GGHSS Malakpura Abbottabad	GGHSS Malakpura Abbottabad	-do-
4.	Mst. Robina Shaheen DPE GGHSS S.K.Bala Bannu.	GGHSS S.K.Bala Bannu.	-do-
5.	Mst. Sughra Afandi DPE GGHSS Gujrat Mardan.	GGHSS Gujrat Mardan.	-do-
6.	Mst. Sujhaat Begum DPE GGHSS Takhtbhai Mardan	GGHSS Takhtbhai Mardan	-do-
7.	Mst. Saima Gul DPE GGHSS Topi Swabi	GGHSS Topi Swabi	-do-
8.	Mst. Sadia Hazrat DPE GGHSS Kopar Malakand	GGHSS Kopar Malakand	-do-
9.	Mst. Saira Ilaf DPE GGHSS Abbottabad	GGHSS Abbottabad	-do-
10.	Mst. Dil Afroz DPE GGHSS Utmanzai Charsadda	GGHSS Utmanzai Charsadda	-do-
11.	Mst. Robina Shaheen DPE GGHSS.Katlang Mardan.	GGHSS.Katlang Mardan.	-do-
12.	Mst. Riffat Shaheen DPE GGHSS Garhi Habibullah Mansehra	GGHSS Garhi Habibullah Mansehra	-do-
13.	Mst. Arifa Saleem DPE GGHSS Khairabad Nowshera	GGHSS Khairabad Nowshera	-do-

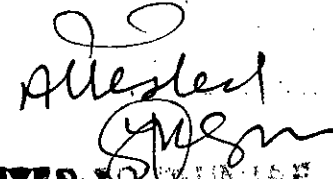
SECRETARY TO GOVT OF NWFP
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

Endst; of even no. & date:

Copy is forwarded to:-

- 1) Secretary to Govt of NWFP, Establishment Department, Peshawar.
- 2) Special Secretary (Regulation), Establishment Department, Govt of NWFP Peshawar.
- 3) Secretary to Govt. of NWFP, Finance Department, Peshawar.
- 4) Director (E&SE) NWFP Peshawar.
- 5) Executive District Officer (E & SE) concerned.
- 6) The Accountant General NWFP.
- 7) District Accounts Officer concerned.
- 8) Deputy Database Administrator (EMIS) Elementary & Secondary Education Peshawar.
- 9) PA to Secretary Elementary & Secondary Edu: Department
- 10) Officer concerned
- 11) Master file


(ARIF JAMIL)
SECTION OFFICER
(PRIMARY)


ADVOCATE
Advocate High Court Peshawar
Federal Shariat Court.

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".

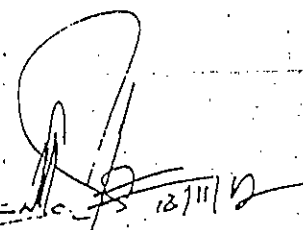
Sd/-

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.)

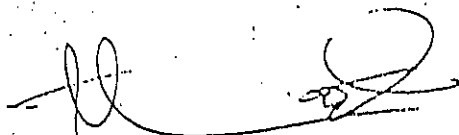
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SYED YOUSUF JAN
B.A., B.Ed. Certificate Exam Lib
Advocate High Court Peshawar
Federal Shariat Court.

13

Endst:No. & Date Even.

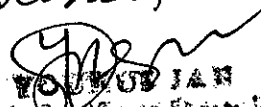
Copy is forwarded to:-

- 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.

Attested



SYED YUNUS JAN
B.A.B.S. B.Ed. Certificate Exam. Sec
Advocate High Court Peshawar
Federal Shariat Court.

GOVERNMENT OF NWFP
SECRETARY TO GOVERNMENT
ESTABLISHMENT DEPARTMENT
PESHAWAR

Serial No. GU 04163

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

Annex 'D'
14

GOMAL UNIVERSITY

DERA ISMAIL KHAN

(N.W.F.P) PAKISTAN



VERIFIED

Controller of Examinations
Gomal University
Dera Ismail Khan
29/5/09

(Session 2004-2005)

QAZI SYED MOHIB ULLAH SHAH, SON of QAZI SYED AMIR SHAH and

a student of COLLEGE OF PHYSICAL EDUCATION, PESHAWAR (PVT)

having passed the prescribed examination in MARCH, 2005

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. 245-Febr-06

Roll No. 1289

RESULT DECL. ON: JULY 15, 2005

Attested

Countersigned

QAZI SYED MOHIB ULLAH SHAH
B.A., B.Ed., Advocate
Advocate High Court Peshawar
Federal Shariat Court.

Vice-Chancellor

Controller of Examinations

Annex "E"
15

OFFICE OF THE DIRECTOR OF EDUCATION (SCHOOLS) N.W.F.P., PESHAWAR.

NOTIFICATION.

In pursuance of the provision contained in Section-3 of the N.W.F.P., Employees on Contract Basis (Regulation of Services) Act, 1989 (NWFP Act No. VIII of 1989), read with Section-4 of the NWFP Employees on Contract Basis (Regulation of Services) (Amendment) Act, 1990 the Services of the following Contract appointees (Later on called adhoc appointees) as Officiating D.P.E./ Librarians (P-16) are hereby regularised with effect from the dates of their taking over charge as mentioned against each:-

S.No.	Name and Designation.	D/C Taking over charge.
1.	M. Qazi Syed Mohibullah Shah D.P.E. Govt: Elementary College (Male) Karak.	02.07.1989.
2.	Asaf Jah, Librarian Govt: Elementary College (Male) Drush (Chitral).	18.09.1989.

CONDITIONS.

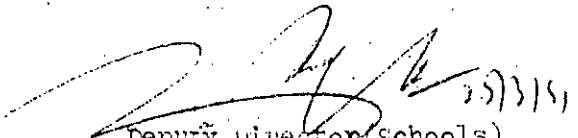
The Inter-se-Seniority of these Civil Servants shall be determined by the Government according to the Service Rules in-vogue.

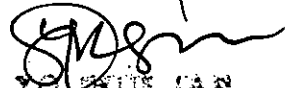
(MUHAMMAD RAFIQ KHAN JALOON)
DIRECTOR OF EDUCATION (SCHOOLS)
N.W.F.P., PESHAWAR.

ENDST: NO. 6464-74 /A-14/D.P.E. Dated 25/3 /1991.

Copy of the above is forwarded for information to the:-

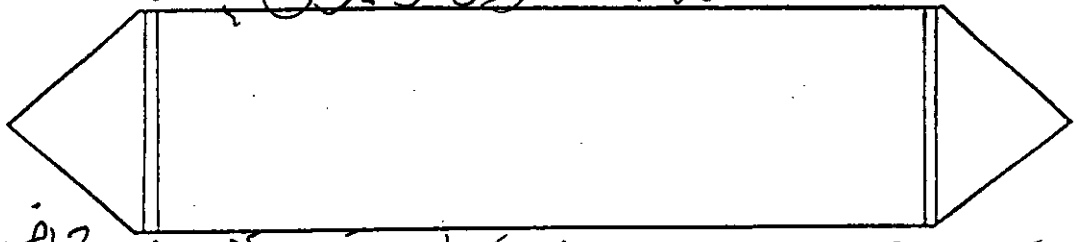
- 1; P.S. to Minister for Education, N.W.F.P., Peshawar.
- 2; Section Officer (Schools) Govt: of NWFP, Edu: Deptt: Peshawar.
- 3; Accountant General, N.W.F.P., Peshawar.
- 4; District Accounts Officers concerned.
- 5; Divisional Director of Edu: (Schools) concerned.
- 6; Principals of Elementary Colleges, concerned.
- 7; Officers concerned.
- 8; P.A. to Director of Education (Schools) N.W.F.P., Peshawar.


Deputy Director (Schools),
For/D.E. (S) NWFP, Peshawar.

Attested


ADVOCATE HIGH COURT PESHAWAR
Federal Shariat Court.

بعدالت KPK سرویس ٹریبونل لاہور



ماہ ستمبر 2015ء منجانب قاضی صاحب اللہ اسلام آباد
قاضی صاحب اللہ اسلام آباد
بنام سید محمد رفیق کٹر سروسز لاہور
ریسٹوریشن

موزخہ 2015-9/04
مقدمہ سرویس ٹریبونل لاہور
دعویٰ
جرم سال 2015ء

باعث تحریر آئندہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام 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 ثالتہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک دروپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی 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 باختیارات حاصل ہوں گے اور اس کا ساختہ
پرداختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ درجاندہ اتوائے مقدمہ کے سبب سے ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

المرقوم 04 ماہ ستمبر 2015ء

بمقام KPK سرویس ٹریبونل لاہور کے لئے منظور ہے۔

Attested

قاضی صاحب اللہ اسلام آباد
قاضی صاحب اللہ اسلام آباد

47

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No: 990/2015

Qazi Syed Mohib Ullah Shah DPE GHSS Karak

.....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 15/6/2009 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.

ON FACTS

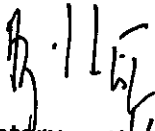
- 1 That Para-I, needs no comments being pertains to the academic & professional qualification of the appellant.
- 2 That Para-2, also needs no comments, being pertains to the service record of the appellant.
- 3 That Para-3 is correct to the extent that the Govt: of Khyber Pakhtunkhwa, vide Notification dated 13/11/2007 has upgraded the DPEs & Librarians from BPS-16to17 (Personal) with the conditions of MA/M. Sc in Health & Physical Education from the recognized University at least in 2nd 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 13/11/2007 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 15/6/2009, 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 15/6/2009 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) :-

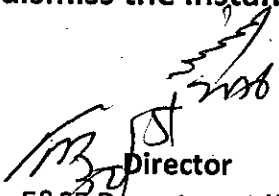
Grounds

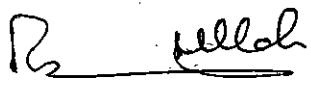
- A Incorrect & denied, the act of the Respondents vide Notification dated 15/6/2009 in favour of the appellant is within legal parameter & is legally competent & is liable to be maintained in favour of the Respondents in the interest of justice.
- B Incorrect & denied. Detailed reply has already been given in the foregoing paras.
- C Incorrect & denied. The appellant has been treated as per law & upgradation policy by the Respondents vide Notification dated 15/6/2009 by promoting them in BPS-17 with immediate effect in the interest of justice.
- D Incorrect & denied. The statement of the appellant is baseless ad 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 15/6/2009, by the Respondents.
- G Incorrect & misleading. The appellant has been treated as per law, rules & criteria vide the impugned Notification dated 15/6/2009, 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.


Secretary 21/6/2016.
E&SE Department Khyber
Pakhtunkhwa, Peshawar
(Respondents No: 1&2)


49

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


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


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

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

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

In re:- Service Appeal No. 990 / 2015

Qazi Mohibullah ShahAppellant

Versus

The Chief Secretary, K.P.K. and othersRespondents.

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

Respectfully submitted:

Replication to the preliminary objections

1-12)

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 from this Hon'ble Tribunal and no dirty hands have been shown or proved each and every facts has been narrated by the appellant in his appeal and all the necessary parties have been arrayed by him in his appeal, no misjoinder 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 and the same is not barred by any law but has been submitted strictly in accordance with laws/Rules. Moreover, being a matter of terms and conditions of service this Hon'ble Tribunal has got a valid jurisdiction.

Replication to the facts.

- 1) Needs no replication.
- 3&4) In these paras the contents of the appeal have been admitted as correct, therefore, need no replication.
- 2&5) The contents of these paras of the reply are incorrect, false and misconceived, hence denied while the contents of these paras of the appeal are correct, true and clear crystal. Moreover, it is submitted that as the matter of non-filing of a departmental appeal is concerned in this regard, it is submitted that firstly this Hon'ble Tribunal may kindly see that whether in light of the law laid down by the august Supreme Court in cases of Hameed Akhtar Niazi Versus The Secretary Establishment Division, Govt. of Pakistan and others reported in 1996 SCMR page 1185 and Tara Chand and others Versus Karachi Water & Sewerage Board Karachi & others in light of the law laid down in these judgments the respondents were legally bound/required to grant the relief to the appellant being a similarly placed person but by not doing so the respondents have not only committed the contempt of court but have also disregard the judgments passed by this Hon'ble Tribunal and therefore have rendered themselves to bear its consequences, secondly as compelled by the Department, the appellant has properly filed a departmental appeal and then this appeal., and even the fact of filing departmental appeal has been stated by the appellant on affidavit and the strong legal presumption would be that the copy of the departmental appeal attached to the instant appeal is sent to the respondents (competent authority) very before and after lapse of a considerable period what action has been taken on the same.

Replication to the grounds

- A-G) The contents of these paras of the reply are incorrect, false, misconceived and 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 as ~~person~~ ^{regular} grade at the

time, and in light of para-1 of the letter/Notification dated 13-11-2007, so the impugned act and omissions of the department/respondents is not only factually incorrect and legally untenable but also is based on the malafide intention of the respondents and is against the principles of natural justice and is neither in accordance with law nor is based on facts or law. The stand of the appellant is neither baseless nor is against the factual position but the act and omission of the respondents is 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, prayed that on acceptance of the above and facts narrated and 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.

Qazi Mohibullah

Appellant

through

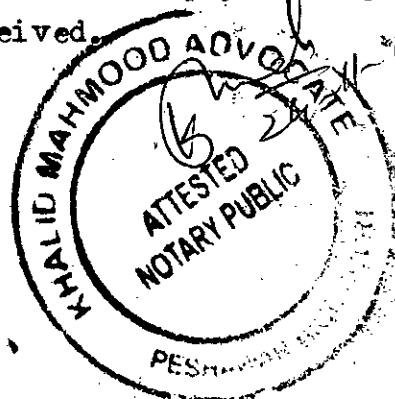
PESHAWAR

23-11-2016

(Syed Younas Jan)
Advocate, Peshawar

AFFIDAVIT/COUNTER AFFIDAVIT

I, Qazi Mohibullah Shah, D.P.E. (the appellant) do hereby solemnly affirm and declare on oath that the contents of this replication are true and correct and clear crystal 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 the respondents are incorrect, false and misconceived.



Qazi Mohibullah
Deponent