

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR.

**SERVICE APPEAL NO. 814/2015**

Date of institution ... 14.07.2015

Date of judgment ... 13.06.2019

Muhammad Rafiq-II (Ex-Accounts Clerk office of the X.E.N, C&W Highway Division Swat, Saidu Sharif)  
R/o Village Ayub Khan Killi Parkhodheri District Mardan. ... (Appellant)

**VERSUS**

1. The Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar.
2. The Secretary, C&W Department, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary, Finance Department, Khyber Pakhtunkhwa, Peshawar.
4. The Secretary, Establishment Department, Khyber Pakhtunkhwa, Peshawar.

... (Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 TO THE EFFECT THAT THE NOTIFICATION NO. FD/SO (FR)/10-22/2014 DATED 20.05.2014, WHEREBY THE PAY SCALES OF MINISTERIAL STAFF I.E. JUNIOR CLERKS, SENIOR CLERKS, ASSISTANTS AND SUPERINTENDENTS ARE UPGRADED, WHILE THE ACCOUNTS-CLERKS, INCLUDING THE APPELLANT, ARE DEPRIVED FROM THE BENEFITS OF UPGRADATION OF PAY SCALE AND THEY ARE KEPT IN THE PREVIOUS PAY SCALE OF BPS-9.

Mr. Muhammad Adam Khan, Advocate.

.. For appellant.

Mr. Kabirullah Khattak, Additional Advocate General

.. For respondents.

MR. MUHAMMAD AMIN KHAN KUNDI

.. MEMBER (JUDICIAL)

MR. AHMAD HASSAN

.. MEMBER (EXECUTIVE)

**JUDGMENT**

MUHAMMAD AMIN KHAN KUNDI, MEMBER: Our this judgment shall disposed of instant service appeal as well as Service Appeal No. 815/2015 titled "Abdul Akbar Versus The Chief Secretary, Government of Khyber

Pakhtunkhwa, Peshawar and three others” as common question of law and facts are involved in both the appeals.

2. Counsel for the appellants and Mr. Kabirullah Khattak, Additional AG for the respondents present. Arguments heard and record perused.


3. Brief facts of both the cases as per service appeals are that the appellants were serving in C&W Department as Accounts Clerks (BPS-9). That the notification no. Fd/so (fr)/10-22/2014 dated 20.05.2014 was issued by the respondent department whereby the pay scales of ministerial staff i.e, Junior Clerks, Senior Clerks, Assistants and Superintendents were upgraded, while the Accounts-Clerks, including the appellants were deprived from the benefits of up-gradation of pay scale and they were kept in the previous pay scale of BPS-9. The appellants filed departmental appeal on 19.03.2015 which were not responded thereafter, the appellants filed Writ Petition before the worthy Peshawar High Court, Peshawar and the said Writ Petition was disposed of vide order dated 14.04.2015 with the direction to the competent authority to decide the petitioner's representation through a well reasoned and speaking order but strictly in accordance with law and rules on the subject, positively, within a period of one month and if the petitioners, even then feel incensed, they may approach the proper forum, if so advised. Hence, the present service appeals on 14.07.2015.


4. At the very outset learned Additional Advocate General for the respondents contended that in the present appeals the matter of up-gradation is involved and the appellants have prayed for up-gradation, therefore, this court has got no jurisdiction to entertain the present appeals. He also relied on 2016 SCMR page 859 in this regard.

*M. Amin*  
13.6.2019

08.04.2019

Appellant in person present. Mr. Ziaullah, DDA alongwith Mr. Zia Ur Rehman, Supdt for respondents present. Appellant, seeks adjournment on the ground that his counsel is not available today. Adjourned. Case to come up for arguments on 13.06.2019 before D.B.

  
(Ahmad Hassan)  
Member

  
(M. Amin Khan Kundi)  
Member

13.06.2019

Counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of three pages placed on file, this court has got no jurisdiction to entertain the present appeal. As such the present service appeal is returned for want of jurisdiction. However, the appellant is at liberty to approach proper forum subject to all legal objections. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
13.06.2019

  
(AHMAD HASSAN)  
MEMBER

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

25.09.2018

Appellant absent. Learned counsel for the appellant is also absent.  
Mr. Muhammad Jan, Deputy District Attorney for the respondents present.  
Adjourned. To come up for arguments on 13.11.2018 before D.B.

  
(Hussain Shah)  
Member

  
(Muhammad Hamid Mughal)  
Member

13.11.2018

Due to retirement of Hon'able Chairman, the Tribunal is  
defunct. Therefore, the case is adjourned for the same on  
28.12.2018 before D.B.

  
Reader

28-12-18

the Bench is incomplete

therefor case is adjourned

to 25-2-2018

  
Reader

25-2-19

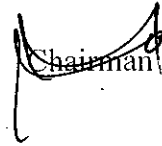
The Bench is incomplete  
therefor case is adjourned to

8-4-2019

15.02.2018


Appellant in person present. Mr. Zia Ullah, DDA for the respondents present. Rejoinder submitted. Appellant seeks adjournment as his counsel is not in attendance. Granted. To come up for arguments on 17.04.2018 before D.B.

  
Member

  
Chairman

17.04.2018

Appellant in person present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Abdur Rahsid Tareen, Admin Officer for the respondents also present. Appellant seeks adjournment on the ground that his counsel is not available today. Adjourned. To come up for arguments on 02.07.2018 before D.B.

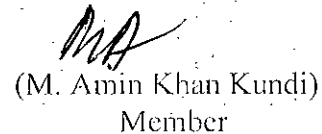
  
(Ahmad/Hassan)  
Member

  
(Muhammad Amin Khan Kundi)  
Member

02.07.2018

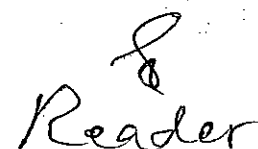
Appellant in person and Addl: AG alongwith Mr. Fazal Amin, Supdt for respondents present. Appellant seeks adjournment. Adjourned. To come up for arguments on 21.08.2018 before D.B.

  
(Ahmad Hassan)  
Member

  
(M. Amin Khan Kundi)  
Member

21-8-2018

Due to Eid-ul Azha vacation  
the case is adjourned to  
25-9-2018

  
Reader

14.04.2017

Counsel for the appellant present. Mr. Abdur Rashid Tareen, Admin Officer alongwith Mr. Ziaullah, Government Pleader for the respondents also present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for rejoinder and arguments on 03.08.2017 before D.B.


  
(Ahmad Hassan)  
Member

  
(Muhammad Amin Khan Kundi)  
Member

03.08.2017


Appellant in person and Asst. AG alongwith Mr. Abdur Rashid Tareen, A.O for the respondents present. Appellant seeks adjournment. Adjourned. To come up for rejoinder and arguments on 08.12.2017 before D.B.

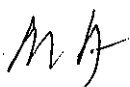
  
Member

  
Chairman

08.12.2017

Appellant in person present. Mr. Muhammad Jan, Deputy District Attorney for the respondents also present. Appellant seeks adjournment as his counsel is not in attendance. Adjourned. To come up for arguments on 15.02.2018 before D.B.

  
(Ahmad Hassan)  
Member (E)

  
(Muhammad Amin Khan Kundi)  
Member (J)

28.4.2016

Appellant in person and Mr. Muhammad Shoaib, Assistant alongwith Addl. A.G for respondents present. Written reply by the respondents submitted. The appeal is assigned to D.B for rejoinder and final hearing for 22.08.2016.

  
Chairman

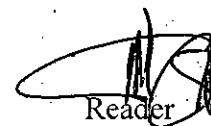
22.08.2016

Appellant in person and Mr. Ziaullah, GP for respondents present. Appellant requested for adjournment. Request accepted. To come up for rejoinder and arguments on 12.12.2016.

Member  Chairman 

12.12.2016

Since 12<sup>th</sup> December, 2016 has been declared as a public holiday an account of 12<sup>th</sup> Rabi-ul-awal. Case is adjourned to 14.04.2017 before D.B.

  
Reader

31.07.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Accounts Clerk in the office of XEN and was entitled to up-gradation alongwith similarly placed employees who were granted up-gradation vide order dated 20.5.2014 while appellant ignored despite entitlement. That the said up-gradation order came into the notice of appellant on 18.3.2015 where-after he preferred departmental appeal on 19.3.2015 followed by service appeal on 14.7.2015.

That the appellant is retired from service who entitled to up-gradation as he was serving at the time of up-gradation of similarly placed employees.

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 29.10.2015 before S.B.

  
Chairman

29.10.2015

Appellant in person and Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 25.2.2016 before S.B.

  
Chairman

25.02.2016

Appellant in person and Mr. Abdur Rashid Tareen, AO alongwith Addl: A.G for respondents present. Written reply not submitted. Requested for further adjournment. To come up for written reply/comments on 28.4.2016 before S.B.

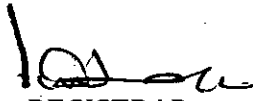


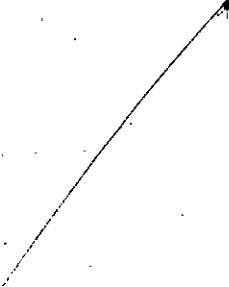
  
Member



Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 814/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	14.07.2015	<p>The appeal of Mr. Muhammad Rafiq presented today by Mr. Muhammad Adam Khan Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p>
2	15.7.15	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>16.7.15</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
3	16.7.2015	<p>None present for appellant. The appeal be relisted for preliminary hearing for 31.7.2015 before S.B.</p> <p style="text-align: right;"> CHAIRMAN</p> 

Before The Service Tribunal, Peshawar.

Service Appeal No. **814** /2015.

**Muhammad Rafiq** v/s **The Chief Secretary etc;**

**INDEX:**

S/No.	Description of documents.	Annex: Nos	from	to
1.	Memo; of Appeal & affidavit.		1	3
2.	<del>Memo; of addresses</del> A			
3.	Copy of Notification.	A	4	-
3.	Depl; Appeal with postal receipts.	B to E	5	- 10
4.	Letter dated 25/07/2014.	F	11	-
5.	Letter of retirement.	G	12	-
6.	Writ Petition and judgement.	H & I	13	- 20
7.	Vakalat Nama.		21	
<b>Total:</b>			21	

**Appellant**

*M. Rafiq*  
**Muhammad Rafiq**

**Through:**

*Admission 14/07/2015*  
**MUHAMMAD ADAM KHAN**

**B.A LLB Advocate**

**High Court Mardan**

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 814 /2015

Muhammad Rafiq -II (Ex-Accounts Clerk office of The X.E.N, C and W Highway Division Swat, SaiduSharif) resident of village Ayubkhan Killi Parkhodheri District Mardan.

.....Appellant

**VERSUS**

G.W.F. Province  
Service Tribunal  
Diary No. 851  
Dated 14-7-2015

1. The Chief Secretary, The Government of KPK, Peshawar.
2. The Secretary, C & W Department, KPK, Peshawar.
3. The Secretary, Finance Department, KPK, Peshawar.
4. The Secretary, Establishment Department, KPK, Peshawar.

..... (Respondents)

APPEAL UNDER SECTION-4 OF THE SERVICE TRIBUNAL ACT- 1974, TO THE EFFECT THAT THE NOTIFICATION NO. FD/SO (FR) / 10-22/2014 DATED 20.05.2014, WHEREBY THE PAY SCALES OF MINISTERIAL STAFF i.e, JUNIOR CLERKS, SENIOR CLERKS, ASSISTANTS AND SUPERINTENDENTS, ARE UPGRADED, WHILE THE ACCOUNT-CLERKS, INCLUDING THE APPELLANT, ARE DEPRIVED FROM THE BENEFITS OF UPGRADATION OF PAY SCALE AND THEY ARE KEPT IN THE PREVIOUS PAY SCALE OF BPS-9.

1. That the Appellant was employed in the C & W Department, as Accounts Clerk (BPS-9).
2. That the post of Accounts Clerk is filled up by promotion from amongst the holders of the post of Senior Clerks.
3. That the post of Assistant is filled-up by promotion from amongst the holders of the post of Accounts Clerk.

Filed to-  
Registrar

14/7/15

4. That the Govt; of KPK (Finance Department) /Respondent No.3, upgraded the pay Scales of ministerial staff vide Notification No. FD/SO(FR)10-22/2014 dated 20.05.2014, upgrading the payscales of Assistant from BPS-9 to BPS-14 and the Junior Clerk from BPS-7 to BPS-11.

(Copy Annexure -'A').

5. That the payscale of Accounts clerk is not upgraded and still kept in BPS-9.
6. That the Appellant came across the aforesaid Notification on 18.03.2015, and preferred departmental Appeal therefrom on 19.03.2015, which is not responded .

(Copies Annexure 'B to E').

7. That the Notification in-question to the aforesaid extent is illegal, based on discrimination and against the principles of natural justice, on the following amongst many other grounds:-

### GROUNDS

- A. that as a result of the impugned notification, the Senior Clerk (BPS-14), when promoted to the post of Accounts Clerk, will adversely repatriate to the payscale BPS-9 instead of raise in pay scale.
- B. That similarly, the Junior Clerk (BPS-11), when promoted to the post of Senior Clerk (BPS-14) and then on promotion to the post of Accounts Clerk, will also repatriate to the payscale in BPS-9.
- C. That the post of Accounts Clerk exclusively exists in the C & W Department, in the Province.
- D. That the post of Accounts Clerk is part and parcel of ministerial staff.
- E. That the post of Assistant is reserved for Accounts Clerks by promotion.
- F. That the Secretary C & W Department / Respondent No. 2, vide letter No.SOE/C&W24-60/2013-A/C dated 25.07.2014 had recommended to Respondent No. 4, for the upgradation of Accounts Clerks. Copy Annexure-F.
- G. That the referred analogy will hamper the benefits of promotion of Senior Clerks, as well as, the Junior Clerks, also.

H. That the Appellant is retired from service on attaining the age of superannuation on 03.04.2015. Copy Annexure-G

I. That the Appellant being the members of the ministerial staff, has the legal right to be treated alike the Assistants, Senior Clerks and the Junior Clerks.

J. That the Appellant had approached the High Court Peshawar for the redress of his remedy in Writ Petition No.1069/2015, which was disposed-off on the grounds of jurisdiction on 14.04.2015. Copies Annexure- H & I.

K. That the appellant seeks permission of this Honourable Tribunal to claim further grounds also.

It is prayed that this August Tribunal may graciously be pleased to accept this Appeal and to direct the Respondents for upgradation of the post of Accounts clerk on the analogy as per other ministerial posts so upgraded, with retrospective effect.

The costs of this Appeal may also be awarded in favour of the Appellant against the Respondents.

Dated: 14/07/2015.

APPELLANT

*M. Rafiq*  
(Muhammad Rafiq)

Through;

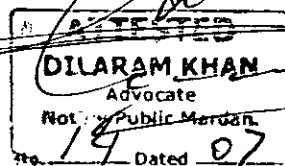
*Adam*  
Muhammad Adam Khan  
Advocate Mardan

**AFFIDAVIT**

I, Muhammad Rafiq /Appellant, do hereby state on solemn affirmation that the contents of this appeal are true and correct to the best of my knowledge and belief

Deponent

*M. Rafiq*  
Muhammad Rafiq



GOVERNMENT OF KHYBER PAKHTUNKHWA  
FINANCE DEPARTMENT  
(REGULATION WING)

Dated Peshawar, the 20-05-2014

PAGE NO. 4

ANNEXURE

**NOTIFICATION**

**NO.FD/SO(FR)10-22/2014** The competent authority has been pleased to accord sanction to the upgradation of pay scales of the following posts, wherever exist, in all the Departments / Offices (except Civil Secretariat) of the Government of Khyber Pakhtunkhwa with immediate effect:

ATTESTED

ADAM KHAN

S. No.	Nomenclature of the post	Existing Scale	Upgraded Scale
1	Superintendent	BS-16	BS-17
2	Assistant	BS-14	BS-16
3	Senior Clerk	BS-09	BS-14
4	Junior Clerk	BS-07	BS-11

- i. The pay of the existing incumbents of the posts shall be fixed in higher pay scales at the stage next above the pay in the lower pay scale.

All the concerned Departments will amend their respective service rules to the same effect in the prescribed manner.

SECRETARY TO GOVT OF KHYBER PAKHTUNKHWA  
FINANCE DEPARTMENT

Endst No. & Date even.

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

1. PS to Additional Chief Secretary, FATA.
2. All Administrative Secretaries Government of Khyber Pakhtunkhwa.
3. Senior Member, Board of Revenue, Khyber Pakhtunkhwa Peshawar.
4. Accountant General, Khyber Pakhtunkhwa, Peshawar.
5. Secretary to Governor, Khyber Pakhtunkhwa, Peshawar.
6. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
7. Secretary Provincial Assembly, Khyber Pakhtunkhwa.
8. All Heads of Attached Departments in Khyber Pakhtunkhwa.
9. Registrar, Peshawar High Court, Peshawar.
10. All Deputy Commissioners, Political Agents, District & Sessions Judges / Executive District Officers in Khyber Pakhtunkhwa.
11. Chairman, Khyber Pakhtunkhwa, Public Service Commission, Peshawar.
12. Registrar, Service Tribunal Khyber Pakhtunkhwa.
13. All the Autonomous and Semi Autonomous Bodies in Khyber Pakhtunkhwa.
14. Secretary to Govt; of Punjab, Sindh and Baluchistan, Finance Department, Lahore, Karachi and Quetta.
15. The District Comptroller of Accounts, Peshawar, Mardan, Kohat, Bannu, Abbottabad, Swat and D.I. Khan.
16. The Senior District Accounts Officer Nowshera, Swabi, Charsadda, Haripur, Mansehra and Dir Lower.
17. The Treasury Officer, Peshawar.
18. All District/Agency Accounts Officers in Khyber Pakhtunkhwa / FATA.
19. PSO to Senior Minister for Finance, Khyber Pakhtunkhwa.
20. PSO to Chief Secretary, Khyber Pakhtunkhwa.
21. Director Local Fund Audit, Khyber Pakhtunkhwa Peshawar.
22. PS to Finance Secretary.
23. PAs to All Additional Secretaries/ Deputy Secretaries in Finance Department.
24. All Section Officers/Budget Officers in Finance Department.
25. Abbas Khan President of Khyber Pakhtunkhwa Civil Secretariat Superintendent, Assistant, Clerk Association with reference to his application No. PR/KPS/SACA/2-1/2013 dated 8-01-2014

(SHAUKAT ULLAH)  
SECTION OFFICER (FR)

مذکورہ متن  
4

Regd AD

P/5

Annexure "B"

*[Handwritten signatures and stamps]*

To

1. The Chief Secretary,  
Govt. of KPK  
Peshawar.
2. The Secretary,  
C & W Department,  
Peshawar.
3. The Secretary,  
Finance Department,  
Govt. KPK,  
Peshawar.

**ATTESTED**  
*[Signature]*  
ADAM KHAN

**ATTESTED**  
*[Signature]*  
ADAM KHAN

THROUGH: PROPER CHANNEL

Sub: REPRESENTATION AGAINST THE NON-UPGRADATION OF  
THE POST OF ACCOUNTS CLERKS.

Sir,

It is submitted that the post of Accounts  
Clerks is not upgraded, while upgrading the other  
ministerial posts including the senior clerks and others  
vide Finance Department, Notification No. FD/SO(FR)10-22/  
2014 dated 20.05.2014.

Contd.....2/-

B

Page - 6

Page-2

It is submitted that the post of Accounts Clerk is filled up by promotion from the post of Senior Clerk.

Through the referred Notification dated 20.5.2014 upgrading the post of Senior Clerk from BPS-9 to BPS-14 and even, the post of Junior Clerk is upgraded from BPS-7 to BPS-11.

But, the post of Accounts Clerk (BPS-9) is not upgraded.

I was promoted from the post of Senior Clerk to the post of Accounts Clerk (BPS-9) vide Office order No. 177-E/1045/CE/CWD dated 01.01.2013.

While, upgrading the Senior Clerk from BPS-9 to BPS-14, the post of Accounts Clerk is still kept in BPS-9.

Resultantly, I am subjected to financial loss. While,

I am at the verge of age of supranuation and will



retire on 03.04.2015, as per Office order No.

1142/66-E dated 27.02.2015.

Moreover the salary of Accounts Clerks is fixed in BPS-14 in the relevant Departments of the other Provinces.

The post of Accounts Clerk is clerical/ministerial in nature.

The Accounts clerks have constitutional right to be treated equally and to be granted BPS-14, with retrospective effect.

It is prayed that the post of Accounts clerk may be upgraded so ~~as~~ that my pay and pension are fixed accordingly.

Yours Obediently,

*M. Rafiq*  
( MUHAMMAD RAFIQ (II)

Accounts Clerk

Office of The XEN C & WD Highway Div:  
Swat.

Address: Parkho Dheri (Ayub Khan Killa)  
Tehsil Takht Bhai Mardan.

Dt: 19.3.2015

ATTESTED  
*Adam Khan*  
ADAM KHAN

NO. 004  
682

For Insurance Notices see reverse.  
Stamps affixed except in case of  
uninsured letters of not more than  
the initial weight prescribed in the  
Post Office Guide or on which no  
acknowledgement is due.

Rs. 80 Ps.  
00

Received a registered\*  
addressed to \_\_\_\_\_

*Handwritten signature* Date Stamp \_\_\_\_\_

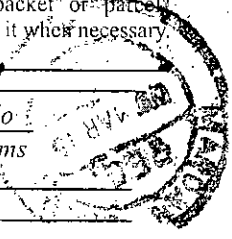
Initials of Receiving Officer \_\_\_\_\_ Write here "letter", "postcard", "packet" or "parcel" with the word "insured" before it when necessary.

Insured for Rs. (in figures) \_\_\_\_\_ (in words) \_\_\_\_\_

If insured.

Insurance fee Rs. 317 Ps. \_\_\_\_\_ (in words) \_\_\_\_\_ Weight \_\_\_\_\_ Kilo \_\_\_\_\_ Grams \_\_\_\_\_

Name and  
address \_\_\_\_\_



ATTESTED  
ADAM KHAN

of sender

No. 683

For Insurance Notices see reverse.  
Stamps affixed except in case of  
uninsured letters of not more than  
the initial weight prescribed in the  
Post Office Guide or on which no  
acknowledgement is due.

Rs. 6 Ps.

Received a registered\*  
addressed to

Date Stamp

Initials of Receiving Office \*Write here "letter", "postcard", "packet" or "parcel"  
with the word "insured" before it when necessary.

Insured for Rs. (in figures) (in words)

Insurance fee Rs. Ps. (in words) Weight Kilo Grams

Name and  
address  
of sender

SECRET

SECRET

SECRET

SECRET

.684

For Insurance Notices see reverse. Stamps affixed except in case of uninsured letters of not more than the initial weight prescribed in the Post Office Guide or on which no acknowledgement is due.

Ps. E  
AD

Received a registered\* addressed to \_\_\_\_\_

Date-Stamp

\*Write here "letter", "postcard", "packet" or "parcel" with the word "insured" before it when necessary.

Initials of Receiving Officer \_\_\_\_\_

Insured for Rs. (in figures) \_\_\_\_\_ (in words) \_\_\_\_\_

Insurance fee Rs. \_\_\_\_\_ Ps. \_\_\_\_\_ (in words) \_\_\_\_\_

Name and address of sender \_\_\_\_\_

Weight \_\_\_\_\_ Kilo \_\_\_\_\_ Gram \_\_\_\_\_



ATTESTED

Adam Khan  
ADAM KHAN

GOVERNMENT OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT

No. SOE/C&WD/24-60/2013 A/C  
Dated Peshawar, the July 25, 2014

Page 11

Annex - F

ATTYSTED  
Adam Khan  
ADAM KHAN

To

The Secretary to  
Govt of Khyber Pakhtunkhwa  
Establishment Department, Peshawar

Subject: Up-gradation of Pay Scale of Account Clerks from BS-09 to BS-11

Dear Sir,

I am directed to refer the E&A Department Notification No.SO(R-IV)E&AD/1-14/2014 dated 12.06.2014 on the subject noted above and to state that Govt of Khyber Pakhtunkhwa has upgraded the clerical (ministerial) posts viz Junior Clerks, Senior Clerks, Assistants and Superintendents vide Finance Department circular No.FD/SO(FR)10-22/2014 dated 20.05.2014.

2. The post of Accounts Clerk (BS-09) which is also a clerical post and exclusively exists in the Public Works Departments of the province i.e. C&W, PHE & Irrigation Departments as regular establishment appearing in the budget grants by the Finance Department has again been left over because in the last up-gradation during 2007 the Senior Clerks were upgraded to BS-09 while the Accounts Clerks were left in their same scale (BS-09) without up-gradation.

3. As the promotion in the Works Departments is carried out from Junior Clerk to Senior Clerk, Senior Clerk to Accounts Clerk, Accounts Clerk to Assistant, Assistant to Superintendent and so on, in light of the service rules in vogue since the inception of Public Works Deptt (s) but in the appointment/recruitment rules of all 03 departments notified in March 2010, the post of Senior Clerk and Accounts Clerk were clubbed being same grade by the Standing Service Rules Committee.

4. Now due to up-gradation of Senior Clerk from BS-09 to BS-14, the Accounts Clerks are left in the same scale i.e. BS-09 which has further created great despondency amongst them on the one hand and on the others by the way of seniority, the Accounts Clerks stand seniors than Senior Clerk. On the up-gradation of post of Senior Clerks from BS-09 to BS-14, the promotion case of Senior Clerk (BS-14) to Accounts Clerk (BS-09), who are in line of promotion is stuck up due to difference in basic pay scales, as a result thereto, the promotion of Junior Clerk to Senior Clerk will also hamper.

5. Similarly the post of Assistant as per recruitment rules is reserved to Accounts Clerk while at present carry BS-09, therefore it has further created anomaly because Senior Clerks carries BS-14.

6. The demand of President Ali Pakistan Clerks Association has been processed and working paper was forwarded to Finance Department for reconsideration by the Up-gradation committee for removing the anomaly (copy enclosed). However in response it has been advised to take up the case with Establishment Department for placing before the High level committee under the chairmanship of Chief Secretary KPK for restructuring/up-gradation of the said post. The working paper is therefore forwarded for further placing before the committee as explained above.

Yours faithfully

(USMAN JAWAN)  
SECTION OFFICER (Estb)

Endst even No. & date

Copy forwarded to the:

1. Section Officer (FR) Finance Department, Peshawar
2. PS to Secretary C&W Department, Peshawar

SECTION OFFICER (FR) (Estb)



P/12

CHIEF ENGINEER (NORTH)  
COMMUNICATION & WORKS DEPARTMENT  
GOVT. OF KHYBER PAKHTUNKHWA, PESHAWAR

No. 1142/66-E

Dated: 27/2/2015

Office Order.

ANNEXURE <sup>"G"</sup>

ATTESTED  
ADAM KHAN

Mr. Muhammad Rafiq (Accounts Clerk BPS-09) S/O Muhammad Ayub attached to C&W High way Division Swat, Shall stand retired from Government Service with effect from 03-04-2015 (A.N) on attaining the age of superannuation (60 years) according to his recorded date of birth 04-04-1955 in Service Book.

Under the provision of the substituted Rule-20 of the Khyber Pakhtunkhwa Civil Servants Revised Leave Rules, 1981, sanction is also hereby accorded to the encashment of lump sum amount equal to 365-days pay in lieu of LPR, out of the leave available at the credit of above named official.

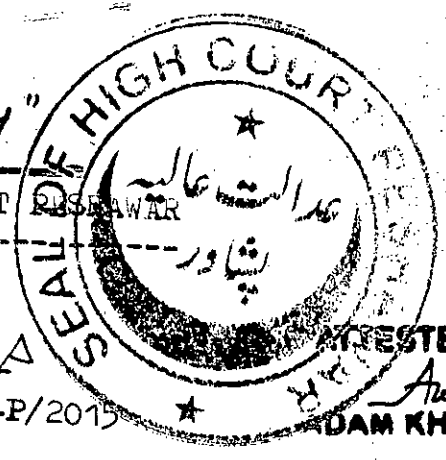
(Engr: Muhammad Ijaz Yousafzai)  
Chief Engineer (North)

Copy forwarded to:-

- 1) The Chief Engineer (Center) C&W Department Peshawar.
- 2) The Superintending Engineer C&W Circle Swat for information to his letter No. 2976/8-E dated 20-02-2015.
- 3) The Executive Engineer C&W Highway Division Swat.
- 4) The District Account Officer Swat.
- 5) The Official Concerned.

Chief Engineer (North)

ANNEXURE  
BEFORE THE PESHAWAR HIGH COURT



W.P. No. 1049 -P/2015

1. Abdul Akbar Accounts Clerk, Office of The XEN  
C & W Highway Division, Mardan.
2. Muhammad Rafiq (II) Accounts Clerk, of The  
XEN C&W Highway Division, Swat, Saidu Sharif.

Petitioners

VERSUS

1. The Chief Secretary The Govt. of KPK Peshawar.
2. The Secretary C & W Department, KPK Peshawar.
3. The Secretary Finance Department KPK Peshawar.
4. The Secretary, Establishment Department,  
KPK, Peshawar.

Respondents

CONSTITUTIONAL PETITION UNDER ARTICLE-199 OF THE  
CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973  
TO THE EFFECT THAT THE NOTIFICATION No. FD/SO(FR)/  
10-22/2014 DATED 20.05.2014, WHEREBY UPGRADING THE

FILED TODAY  
Deputy Registrar  
24 MAR 2015

ATTESTED  
EXAMINER  
Peshawar High Court  
23 APR 2015

Contd.....2/-

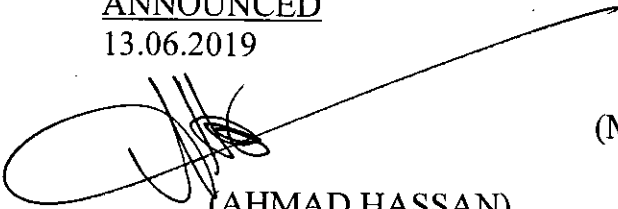


5. Learned counsel for the appellants opposed the contention of learned Additional Advocate General and contended that the appellants are entitled for up-gradation and this court has also jurisdiction to entertain the present appeals and prayed for acceptance of both the appeals.

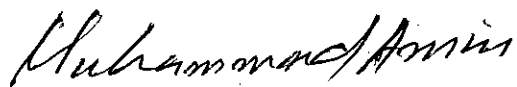
6. Admittedly in the present service appeals the matter of up-gradation is involved and the appellants have prayed for up-gradation. The issue of up-gradation does not form part of the terms and conditions of service of the civil servants, therefore, this court has got not jurisdiction to entertain the present appeals as it was held in 2016 SCMR page 859 that the issue of up-gradation does not fall within terms and conditions of civil servant.

7. In light of the above discussion this court has got no jurisdiction to entertain the present appeals. As such both the appeals are returned for want of jurisdiction. However, the appellants are at liberty to approach proper forum subject to all legal objections. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
13.06.2019



(AHMAD HASSAN)  
MEMBER



(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

PAY SCALES OF MINISTERIAL STAFF i.e. JUNIOR Clerk, Senior  
 CLERK, ASSISTANT AND SUPERINTENDENT, THE INCUMBENTS  
 OF THE POST OF ACCOUNTS CLERK IS DEPRIVED FROM THE  
 BENEFITS OF UPGRADATION OF PAY SCALE AND KEPT IN  
 THE OLD PAY SCALE OF BPS-9, IS WITHOUT LAWFUL  
 AUTHORITY AND OF NO LEGAL EFFECT TO THE AFORESAID  
 EXTENT AND FURTHER DIRECTION TO RESPONDENTS FOR  
 UPGRADATION OF PAY SCALE OF ACCOUNTS CLERK LIKE  
 THE MINISTERIAL STAFF <sup>with</sup> RETROSPECTIVE EFFECT.

-----

Sir,

1. That the Petitioners are employed in the C & W Department, as Accounts Clerk (BPS-9).
2. That the post of Accounts Clerk is filled up by promotion from amongst the holders of the post of Senior Clerks.
3. That the post of Assistant is filled -up by promotion from amongst the holdrs of the post of Accounts Clerk.

ATTESTED

EXAMINER  
 Peshawar High Court

23 APR 2015

FILED TODAY

Deputy Registrar

24 MAR 2015

4. That the Government of Khyber Pakhtoonkhwa (Finance Department) / Respondent No. 3, upgraded the pay Scales of ministerial staff vide Notification No. FD/SO(FR)10-22/2014 dated 20.05.2014, upgrading the pay scale of Assistant from BPS-14 to BPS-16, the Senior Clerk from BPS-9 to BPS-14 and the Junior Clerk from BPS-7 to BPS-11.

COPY ANNEXURE 'A'

5. That Pay Scale of Accounts Clerk is not upgraded and still kept in BPS-9.
6. That the Petitioners represented against the aforesaid Notification, which is unresponded.

COPIES ANNEXURE 'B' AND 'C'

7. That the Notification in-question to the aforesaid extent is without lawful authority and of no legal effect, on the following amongst many other grounds :-

FILED TODAY  
Deputy Registrar  
24 MAR 2015

~~ATTESTED~~  
~~EXAMINER~~  
~~Khyber Pakhtoonkhwa High Court~~  
23 APR 2015

G R O U N D S

- (A) That the Senior Clerk (BPS-14), when promoted to the post of Accounts Clerk, will repatriate <sup>benefits of</sup> to the BPS-9 instead of raise in pay scale.
- (B) That the Junior Clerk (BPS-11) when promoted to the post of Senior Clerk BPS-14 and then to Accounts Clerk will be repatriated <sup>the benefits of</sup> to BPS-9.
- (C) That the post of Accounts <sup>Clerk</sup> exclusively exists in the C & W Department, in the province.
- (D) That the post of Accounts Clerk is also a clerical post and the post of Assistant is reserved for Accounts Clerks by promotion.
- (E) That even in the upgradation during 2007 the Senior Clerks were upgraded from BPS-7 to BPS-9. But, the accounts clerks were left in BPS-9.

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Deputy Registrar  
24 MAR 2015

ATTESTED  
EXAMINER  
Peshawar High Court  
23 APR 2015

(F) That the Secretary C & W Department/Respondent No. 2, vide letter No. SOE/C&W)24-60/2013-A/C dated 25.07.2014 had recommended to Respondent No. 4, for the upgradation of Accounts Clerks.

Copy Annexure 'D'

(G) That the referred anomaly will hamper the promotion of Senior Clerks, as well as, the Junior Clerks, also.

(H) That the Petitioners are at the verge of age of superannuation and they are ordered to be retired on 24.03.2015 and 03.04.2015, respectively.

COPIES ARE ANNEXURE "L & F"

(I) That the Petitioners being the members of the ministerial staff have the constitutional right to be treated alike the Assistants, Senior Clerks and the Junior Clerks in the relevant Department.

FILED TODAY

Dep. Secy. (C&W)

24 MAR 2015

ATTESTED  
27 APR 2015

(J). That the Petitioners seek leave of this Honourable Court to claim further grounds also.

It is prayed that on acceptance of this Petition, the impugned notification, to the extent of not upgrading the post of the Accounts clerk may be declared without lawful authority and of no legal effect, further, directing the Respondents to upgrade the post of Accounts Clerk with retrospective effect.

The costs of this Petition may also be awarded in favour of Petitioners against the Respondents.

*[Handwritten signature]*  
m. Rafiq

Petitioners

Abdul Akbar and Muhammed Rafiq

Through

*[Handwritten signature]*

MUHAMMAD ADAM KHAN  
Advocate Mardan.

MUHAMMAD ADAM KHAN  
B.A LLB Advocate  
High Court Mardan

Dt: 21.03.2015

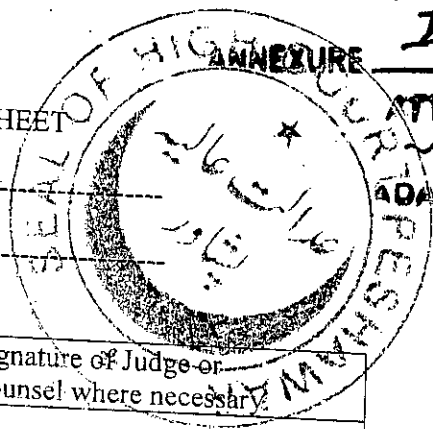
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24 MAR 2015

ATTESTED  
EXAMINER  
23 APR 2015

FORM "A"  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. \_\_\_\_\_



ATTESTED  
*Adam Khan*  
ADAM KHAN

Date of order or proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties or counsel where necessary.
2.	3.
14.04.2015	<p><u>WP No.1069-P/2015 (M).</u></p> <p><u>Present:</u> Mr. Muhammad Adam Khan, Advocate for petitioners.</p> <p>*****</p> <p><b><u>NISAR HUSSAIN KHAN, J.-</u></b> Petitioners seek issuance of an appropriate writ for declaration of Notification No.FD/SO(FR)/10-22/2014, dated 20.05.2014, as discriminatory to the extent of petitioners, who have been kept in BPS-9 by depriving of the up-gradation, with further direction to respondents for up-gradation of pay scale of Accounts Clerk, like other ministerial staff with retrospective effect.</p> <p>2. It is averred in the petition that petitioners are employed as Accounts Clerk (BPS-9) in C&amp;W Department. The Government of KPK (Finance Department) vide Notification No.FD/SO(FR)10-22/2014, dated 20.5.2014, up-graded the pay scales of ministerial staff including the pay scales of the</p>

Altaf Hussain, P.S.

Justice Nisar Hussain Khan & Justice Abdul Latif Khan

**ATTESTED**  
**EXAMINER**  
Peshawar High Court

23 APR 2015

Assistant from BPS-14 to BPS-16, the Senior Clerk from BPS-9 to BPS-14 and the Junior Clerk from BPS-7 to BPS-11. While the pay scale of Accounts Clerk, which is held by the petitioners, has not been up-graded. They are still working in BPS-9. Petitioners have averred in Para-6 of their petition that they have filed the representation against the said Notification before the Competent Authority but the same has not been responded as yet.

3. Since no final order on representation of petitioners has been passed by the Competent Authority as yet, which is still pending disposal, we, without dilating upon merits of the case, deem it proper to direct the Competent Authority to decide the petitioners' representation through a well reasoned and speaking order but strictly in accordance with law and rules on the subject, positively, within a period of one month and if the petitioners, even then feel incensed, they may approach the proper forum, if so advised.

4. With these observations, this writ petition is disposed of.

office  
16/04/15

Announced  
Dated: 14.04.2015. *sd/- Nisat Hussain Khan*  
*sd/- Abdul Latif Khan*

Altaf Hussain, P.S.

Justice

CERTIFIED TO BE TRUE COPY  
Examiner  
Peshawar High Court, Peshawar  
Authorized Under Article 87 of  
The Qanun-e-Shahadat Order 1984  
23 APR 2015



**VAKALAT NAMA**

In the Court of The Service Tribunal, Peshawar.

Service Appeal No. \_\_\_\_\_ of 2015

Muhammad Rafiq

(Petitioner)  
(Plaintiff)  
(Appellant)

**VERSUS**

The Chief Secy; etc.

(Respondent)  
(Defendant)

I/We Muhammad Rafiq the  
above noted Appellant do  
hereby appoint and constitute **Muhammad Adam Khan, Advocate Mardan** as  
Counsel in subject proceedings and authorize him to appear, plead etc., compromise, withdraw or  
refer to arbitration for me/us, as my/our Advocate in the above noted matter, without any liability  
for his default and with the authority to engage/appoint any other Advocate/Counsel at my/our  
behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated: 14.07.2015

**N.W.F.P. Bar Council**

**ADVOCATE**  
High Court

**ADAM KHAN**

No. BC-09-0600

A. Jahan  
Secretary's Signature

Father's Name: BAOSHAN GUL  
Address: VILL. GOJAR GARHI DISTT. MARDAN  
Office Tel: 0931-63013 Res Tel: 0931-63450  
Enrolment Date: 03/08/1978  
Enrolment Date: 13/05/1990  
Place of Practice: MARDAN  
Date of Birth: 04/04/1945  
Blood Group: BAB+VE  
N.I.C. No: 16102-4612619-5

**N.W.F.P. BAR COUNCIL**  
Korachi Market, Satekino Square, Peshawar Phone: 091-252245

M. Rafiq

(Signature of Client)

A. Khan

Accepted

**MUHAMMAD ADAM KHAN**  
B.A LLB Advocate  
High Court, Mardan

Original  
Copy

**BEFORE THE PROVINCIAL SERVICE TRIBUNAL, PESHAWAR**

**Appeal No .814 /2015.**

**Muhammad Rafiq V/S The Chief Secretary etc;**

**Rejoinder on behalf of Appellant:-**

**Pry; Objections:**

1. *incorrect and misconceived .Denied.*
2. *incorrect and misconceived. Denied.*
3. *Incorrect. Denied.*
4. *Incorrect. Denied.*
5. *Incorrect. Denied.*
6. *Incorrect and false. Denied.*
7. *Incorrect and false. Denied.*

**On Facts:-**

- i. *Does not need reply.*
- ii. to iv.) *Needs no reply.*
- v. *Not denied by respondents. Need no reply.*
- vi. *Incorrect .denied.*
- vii. *incorrect. The power conferred on an authority is to be exercised in a judicious manner. Applicant has the right to be treated equally with others.*

**Grounds:-**

- A & B. *Based on Malice. Denied.*
- C To F. *No further Reply.*
- G. *Equal Treatment is the constitutional right of every person.*
- H. *Needs no reply.*
- I. *False and based on malice on the part of Respondents.*
- J. *The denial is based on malice.*

K. False and misleading. Denied.

**It is prayed that on acceptance of the Appeal, the Respondents may be directed to upgrade the post of the Accounts clerk on the analogy as per other ministerial posts so upgraded with costs.**

Dated: 02. 02.2018

Appellant

*M. Rafiq*  
(Muhammad Rafiq)

Through:

*Adam*  
Muhammad Adam Khan  
Advocate Mardan.

**Affidavit**

I Muhammad Rafiq / The Appellant do hereby state on Solmn affirmation that the contents of this Rejoinder, as well as, the memo, of Appeal are true and correct to the best of my knowledge and belief and further that the objection raised by respondent are incorrect, misleading and based on malice.

Deponent

*M. Rafiq*  
(Muhammad Rafiq)

*Adam*  
**ATTESTED**  
**DILARAM KHAN**  
Advocate  
Notary Public Mardan.  
No. 02 Dated 02  
2018