


Form-A
FORM OF ORDERSHEET

Court of _____


Case No. 542/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	13.03.2023	<p>As per direction of the Worthy Chairman the present appeal is fixed for preliminary hearing and decision on office objections before touring Single Bench at Swat on _____ Counsel for the appellant be informed accordingly.</p> <p style="text-align: right;"> REGISTRAR</p>

Objections raised by office are still stand therefore, the appeal in hand is returned again to the counsel for the appellant for completion and resubmission within 15 days.

No. 667 /S.T,


Dt. 24/02 /2023.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Kabeer Imam Adv.
High Court Peshawar.

Notes

The objections raised by your kind office has been removed and final order do is available on page 15. Hence all objections are removed & resubmitted again. Hence to be put up before the bench.

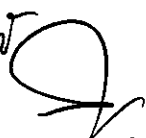

10/3/23

Sir,

objection of this office and reply of counsel for the appellant is submitted for order please.

Humble Chauhan

PH + 9906 7000 6000

13/3/23

13-3-23

The appeal of Mr. Shafiq-ur-Rehman Naib Tehsildar Accountant Dir Upper received today i.e. on 21.02.2023 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- ① Address of respondent no.6 is incomplete which may be completed according to the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- ② Copy of impugned original order is not attached with the appeal.
- x - ③ Copy of departmental appeal against the impugned order is not attached with the appeal which may be placed on it.
- x - ④ Copy of impugned final/appellate order is not attached with the appeal.
- 5- Certificate be furnished that whether any appeal on the subject matter has earlier been filed in this Tribunal.

No. 666 /S.T.

Dt. 23-02 /2023

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Kabeer Imam Adv.
High Court Peshawar.

objections raised by your kind office has been removed as the impugned order of the promotion of the respondent #6 is available on page #13,14, departmental appeal is available on page no 16, ~~there is~~ that no appeal has earlier been filed ~~except~~ except this appeal hence all objection has been removed & submitted again

Kabeer IMAM

23/2/23

0346-9085949

PTO

**BEFORE THE HONBLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR**

In Re S.A. 542 /2023

Shafiq -ur -Rehman Naib Tehsil Accuountant ,Dir Upper
VERSUS

Chief Secretary Khyber Pakhtunkhwa Peshawar and
Others

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Dated: 17-2-2023

Appellant

Through

KABEER IMAM

Advocate High Court
Peshawar.

L

BEFORE THE HONBLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR

In S.A. 542/2023

Shafiq -ur -Rehman Naib Tehsil Accuountant ,Dir Upper

-----(*Appellant*)

VERSUS

1. Chief Secretary Khyber Pakhtunkhwa Peshawar Khyber Pakhtunkhwa at Civil Secretariat Peshawar.
2. Board of revenue Khyber Pakhtunkhwa through Senior Member Board of Revenue Khyber Pakhtunkhwa Peshawar.
3. Senior Member Board of Revenue ° Khyber Pakhtunkhwa Peshawar.
4. Commissioner Malakand Division at Saidu Sharif ,Swat
5. Deputy Commissioner Dir Upper .
6. Farhad Ali S/o Sher Bahadar R/o Wari ,Dir Upper

-----(*Respondents*).

SERVICE APPEAL U/S 04 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT
1974 AGAINST THE IMPUGNED OFFICE
ORDER:2457 DATED UPPER DIR: 16/2/2023
AND OFFICE ORDER DATED 17-2-2023 OF
THE OFFICE OF THE COMMISSIONER
MALAKAND DIVISION SAIDU SHARIF
SWAT, KHYBER PAKHTUNKHWA
PESHAWAR WHEREBY THE DEPARTMENT
PROMOTION COMMITTEE MEETING HAS
APPROVE THE NAME OF THE
RESPONDENT#6 AND THE APPELLANT
WAS NOT BEING CONSIDER FOR
PROMOTION BEING AT THE TOP OF THE
SENIORTY LIST OF PATWARI AND THE
RESPONDENTS BE DIRECTED TO
CONSIDER THE APPELLANT FOR
PROMOTION AS GIRDAWAR/KANANGO

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BEING ELIIBLE AND PROMOTION OF
RESPONDENT#6 BE DECALRE ILLEGAL
AND UNLAWFUL AND AGLANST THE
POLICY BE SUSPENDED

Respectfully Sheweth

1. That the Appellant is performing his duty as Naib Tehsil Accountant (BPS-5) on 01-10-2010.
2. That the appellant was promoted to the post of Patwari in the Mauza Chukiatan ,District upper Dir.
3. That the Appellant is being subject to persistent acts of discrimination on continuous basis and turned to be into shuttle cocks as without observing the policy of promotion as the appellant is the most senior employee in the said department and for the last 4 years the departmental examination for the post of kanango was not conducted, as the appellant has passed the said exam but the result of the said is still officially not declared and the meeting of the DPC is going to be conducted without observing the normal period and just to promote their blue eyed the meeting was held in urgency which is illegal and unlawful .(copy of seniority list annexed)

4. That as the department has going to declared /issued the result within a week and if the said DPC is conducted the fundamental right of the appellant will be violated and the Respondent#5 will promote his near and dear I,e Respondnet#6 which is against law ,unlawful ,illegal and discriminatory and needs to be declared null and void.
5. That this was the background as the Respondent has issued/Called a DPC Meeting just to promote his blue eye ones and issued impugned Notification No. Estt.:2457 dated 16-2-2023, and office order dated 17-2-2023 which is ° illegal, discriminatory, void, and unwarranted manner. (Copies of the impugned office order dated 16-2-2023 and office order dated 17-2-2023 is annexed as annexure "A & B)
6. That besides the above facts the Respondnet#5 has issued a letter dated 2457 dated 16-2-2023 which is against the fundamental rights and highly discriminatory in nature.
7. That feeling aggrieved the appellant preferred departmental appeal but till

dated the appeal is not being decided which is the violation of the transfer and promotion policy.(Copy of the departmental appeal is annexed as annexure)

8. That regarding the said the appellant filed a writ petition #35-M/2023 Dated 19-1-2023 which was being dismissed being premature and non-maintainable (copy of order is annexed herewith)

9. That feeling aggrieved and having no other expeditious remedy available, the Appellant approached this Hon'ble Tribunal for recognition, enforcement and acknowledgment of their fundamental rights upon the following grounds inter alia:-

GROUND:

A. That the Appellant is a naturally born bonafide citizens of the Islamic Republic of Pakistan and is fully and equally, on equality basis, entitled to all basic and fundamental rights as enshrined in the fundamental law of the land, interpreted, guaranteed and enforced by the laws of the land and discrimination alongwith unfettered exercise of discriminatory powers by an authority or

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office is always been deplored, deprecated and depreciated by superior Courts of the land.

B. That the illegal orders for promotion of civil servant is always hazardous and injurious to the Potential and capabilities of the such civil servant /Government servant and has always been depreciated and discouraged by the Superior Courts, being always held as violation to fundamental rights and not solely to the service rights.

C. That the impugned order for calling the DPC by the respondent#4 is highly discriminatory ones and at the same time promoting the junior one instead of the Appellant is illegal and unlawful without any rem and reason and without observing the law on subject while promoting the blue eyed ones is highly discriminatory and void and amount to falling of the bolt from the blue upon the Appellant.

D. That without going in to minute details it would be suffice to mention here that thus only the Appellant were subject to unfettered discrimination and even only on this score the impugned office order to conduct the DPC and order dated 17-2-2023 is void and illegal, unwarranted .

E. That no one can be condemned unheard, nor anyone can be condemned for no wrong.

F. That from every angle and perspective both impugned office orders are illegal, discriminatory, void, unwarranted, vexatious, unlawful and is liable to be cancelled and set aside.

G. That even the appellant authority gives no heed to the departmental appeal and that too without any speaking order and cogent reasons.

H. That any other ground no raised here may graciously be allowed to be raised at the time of arguments.

It is, therefore, most humbly prayed that on acceptance of the instant appeal, the impugned notification NO. Estt.:2457 dated 16-2-2023 and office order dated 17-2-2023 of the office of commissioner Malakand swat may graciously be cancelled and set aside.

Any other relief not specifically asked for may also graciously be extended in favour of

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the Appellant in the circumstances of the case.

Dated: 17-2-2023

Appellant

Through

KABEER IMAM

Advocate High Court
Peshawar.

NOTE:-

The appellant had initially filed writ petition before the August High Court Peshawar as but that was Dismissed being pre-mature to file the instant appeal before this Hon'ble Tribunals.

Advocate.

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BEFORE THE HONBLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR

In Re S.A _____/2023

Shafiq Ur Rehman

VERSUS

Chief Secretary Khyber Pakhtunkhwa Peshawar and
Others

AFFIDAVIT

I, Shafiq Ur Rehman Naib Tehsil Accuountant ,Dir Upper , do hereby solemnly affirm and declare that all the contents of the accompanied appeal is true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this Hon'ble Tribunal.

DEPONENT

Identified By :

KABEER IMAM
Advocate High Court
Peshawar.

BEFORE THE HONBLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

In Re C.M No# _____ / 2023

In Re S.A _____ /2023

Shafiq -ur -Rehman Naib Tehsil Accuountant ,Dir Upper
VERSUS

Chief Secretary Khyber Pakhtunkhwa Peshawar and
Others

APPLICATION FOR SUSPENSION OF THE IMPUGNED OFFICE ORDER NO. NO. Estt.:2457 dated 16-2-2023 AND OFFICE ORDER DATED 17-2-2023 OF THE OFFICE OF COMMISSIONER MALAKAND SWAT WHEREBY THE DPC HAS PROMOTED/APPROVED THE NAME OF THE RESPONDENT#6 BE DECLARE ILLEGAL AND UNLAWFUL AND BE SUSPENDED TILL THE FINAL DISPOSAL OF THE INSTANT APPEAL.

RESPECTFULLY SHEWETH,

1. That the petitioner is filing the accompanying appeal, the contents of which may graciously be considered as integral part and parcel of the instant petition.
2. That prima facie case exist in favour of the Petitioner.
3. That if the impugned notification as mentioned above is not suspended the Petitioner will suffer irreparable loss.

4. That balance of convenience is also lies in favor of Petitioner and his quite sanguine of his success.
5. That in the given circumstances the suspension of operation of the impugned notifications are indispensable.

It is, therefore, most humbly prayed that on acceptance of the instant petition the operation of the impugned notifications as mentioned above may kindly be suspended till the final disposal of the accompanying appeal.

Any other relief not specifically asked for may also graciously be extended in favour of the petitioner in the circumstances of the case.

Dated: 17-2-2023

Appellant / Petitioner

Through

KABEER IMAM

Advocates High Court
Peshawar

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BEFORE THE HONBLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR

In Re C.M No# _____ / 2023

In Re S.A _____ /2023

Shafiq -ur -Rehman Naib Tehsil Accuountant ,Dir Upper

VERSUS

Chief Secretary Khyber Pakhtunkhwa Peshawar and
Others,

AFFIDAVIT

I, Shafiq -ur -Rehman Naib Tehsil Accuountant ,Dir Upper, do hereby solemnly affirm and declare that the contents of the Instant application are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

DEPONENT

Identified By:

KABEER IMAM

Advocate High Court Peshawar

**BEFORE THE HONBLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR**

In Re S.A _____/2023

Shafiq Ur Rehman

VERSUS

Chief Secretary Khyber Pakhtunkhwa Peshawar and
Others

ADDRESSES OF PARTIES

APPELLANT.

Shafiq Ur Rehman Naib Tehsil Accountant.

RESPONDENTS:

1. Chief Secretary Khyber Pakhtunkhwa Peshawar R/o Khyber Pakhtunkhwa at Civil Secretariat Peshawar.
2. Board of revenue Khyber Pakhtunkhwa through Senior Member Board of Revenue Khyber Pakhtunkhwa Peshawar.
3. Senior Member Board of Revenue Khyber Pakhtunkhwa Peshawar.
4. Commissioner Malakand Division at Saidu Sharif ,Swat
5. Deputy Commissioner Dir Upper .
6. Farhad Ali S/o Sher Bahadar R/o Wari ,Dir Upper

Dated: 17/2/2023

Appellant

Through

KABEER IMAM
Advocate High Court
Peshawar.



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**OFFICE OF THE,
DEPUTY COMMISSIONER
UPPER DIR**

No. 2457 /DC/Est/07(Promotion) Dated Upper Dir the 16 /02/2023

To

The Commissioner,
Malakand Division Saidu Sharif, Swat.

Subject:-

DEPARTMENTAL PROMOTION COMMITTEE MEETING.

Memo:

A meeting of the Departmental Promotion Committee is scheduled to be held on Friday 17/02/2023 at 11:00 A.M in the office of undersigned in which the promotion case of Patwari (BPS-09) to the post of Kanungo (BPS-11) will be discussed.

It is therefore, requested that a representative (member) of your good office may be nominated to attend this office on the date and time fixed for the subject meeting please.

Encl: Working paper.


Deputy Commissioner
Upper Dir

Off: 0944880394 & 880104 Fax: 0944-881130

Email address (dedirupper@gmail.com)

B-1 14

MINUTES OF THE MEETING OF THE DEPARTMENTAL PROMOTION COMMITTEE FOR PROMOTION OF PATWARI (BPS-09) TO THE POST OF KANUNGO (BPS-11) OFFICE OF THE DEPUTY COMMISSIONER DIR UPPER.

In order to discuss and finalize the promotion case of Patwari (BPS-09) to post of Kanungo/Girdawar (BPS-11), as mentioned in the working paper, a meeting of the Departmental Promotion Committee was held on 17-02-2023 at 11:00 A.M in the office of the Deputy Commissioner Upper Dir. The following attended the meeting:-

1. Deputy Commissioner Dir Upper.....In chair
2. Add: Deputy Commissioner (G) Dir Upper.....Member
3. Rep: of Commissioner Malakand Division.....Member


During discussion on working paper, it has come into surface that the Patwari at S. No. 1 of the Senior list namely Mr. Shafiqur Rahman has not yet passed the departmental examination of Kanungo which is one of basic criteria for promotion to the post of Kanungo (BPS-11) while the Patwari/candidate Mr. Farhad Ali Khan at S. No. 2 of the Seniority list fulfill the requisite criteria as required under the Rules, for promotion to the said post.

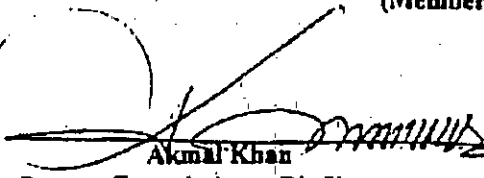
It was brought into the notice of forum that Mr. Shafiqur Rahman Patwari at S. No. 1 of the seniority list has filed a writ petition before the Peshawar High Court Mingora Bench Darul Qaza Swat seeking interim relief and to stop the DPC process on the grounds that as he is senior most official and his result (rechecking) is also awaited. The Honorable Court vide judgment dated 19/01/2023 decided the said writ petition by dismissing the same on the grounds that the said writ petition is pre-mature and non maintainable. Further the Patwari concerned ~~submitted~~ produced an application before the committee by the taking the plea that he has submitted application for re-checking but the certificate has not so far been issued to him by Director Land Records Khyber Pakhtunkhwa. The committee after hearing the stance of the Patwari concerned came to the conclusion that he has no solid proof (documents etc) to strengthen his plea.

Therefore, after examination of the Rules prescribed for the purpose, synopsis, original ACRs, non-involvement certificates and final seniority list of Patwari (BPS-09) as stood on 31/12/2022 and other service record of the Patwaris included in the panel, the committee unanimously recommended that the promotion case of Mr. Shafiqur Rahman Patwari is differed as he is not eligible for the same while Mr. Farhad Ali Khan next senior Patwari is found eligible in light of documents produced before the committee, hence the committee recommended him for promotion to the posts of Kanungo (BPS-11) on regular basis.

The meeting ended with vote of thanks.


Noor-ul-Islam Assistant
Rep: Commissioner Malakand Division
(Member)


Amir Ali Shah
Add: Deputy Commissioner (G) Dir Upper
(Member)


Akmal Khan
Deputy Commissioner Dir Upper
(Chairman)



B@

(15)

**OFFICE OF THE
DEPUTY COMMISSIONER
DIR UPPER**

No. 2531

/DC/Est/07(Promotion)

Dated Upper Dir the 17/02/2023

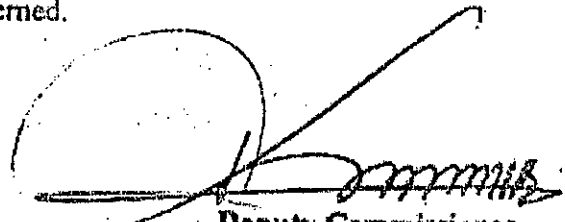
OFFICE ORDER

Consequent upon the recommendation of Departmental Promotion Committee meeting held on 17/02/2023, Mr. Furhad Ali Khan Patwari (BPS-09) of this office is hereby promoted as Kanungo (BPS-11) with immediate effect on regular basis:-

His promotion shall be subject to the following terms and conditions:-

TERMS & CONDITIONS:

- 1) He will be on probation for a period of one year in terms of Section-6 (2) of Khyber Pakhtunkhwa Civil Servant Act, 1973 read with rules 15 of Khyber Pakhtunkhwa Civil Servant, Khyber Pakhtunkhwa (Appointment, Promotion and Transfer) Rules, 1989.
- 2) He will be governed by such Rules & Regulations/Policy which may be prescribed by the Government from time to time.
- 3) He will be received all benefits of (BPS-11) under the Rules.
- 4) He should take charge of his new post within a week time positively.
- 5) Charge report should be submitted to all concerned.


Deputy Commissioner
Upper Dir

Exec No. & Date:-

Copy forwarded to the:-

- 1) Commissioner Malakand Division Saidu Sharif Swat.
- 2) Secretary Board of Revenue Khyber Pakhtunkhwa Peshawar.
For information please
- 3) District Accounts Officer Dir Upper for information and necessary action.
- 4) Assistant Budget Section local office for necessary action.
- 5) Official concerned for information and necessary action.


Deputy Commissioner
Upper Dir



No. 550-53/DC/Estt/19

UPDATED SENIORITY LIST OF PATWARI (BPS-09) IN RESPECT OF DISTRICT DIR UPPER AS IT STOOD ON 31/12/2022

Dated Upper Dir the 10/10/2023

In pursuance of Section 3(1) & (5) of the Civil Servant act, 1973, seniority list of Patwaris (BPS-09) working in the office of the Deputy Commissioner Upper Dir as it stood on 31/12/2022 is hereby notified for information of all concerned:-

S.#	Name of Official	Designation	Qualification	D/O Birth	Domisile	Date of 1 st entry Into Govt Service	Date of appointment as Patwari	Method of appointment	Remarks
01	Shafiq ur Rahman	Patwari	M.A	01/01/1981	Upper Dir	01/10/2010	25/03/2016	Direct	
02	Fahad Ali Khan	-do-	B.A	01/02/1987	Upper Dir	01/10/2010	12/04/2019	-do-	
03	Irshad Farooq	-do-	B.A	01/04/1989	Upper Dir	27/01/2020	27/01/2020	-do-	
04	Umar Farooq	-do-	B.A	01/06/1993	Upper Dir	27/01/2020	27/01/2020	-do-	
05	Taeed Farooq	-do-	M.A	27/07/1994	Upper Dir	27/02/2020	18/09/2020	-do-	
06	Asif Abbas	-do-	FA+DAE	10/04/1989	Upper Dir	01/04/2010	18/09/2020	-do-	
07	Irshad Ahmad	-do-	B.A	04/04/1989	Upper Dir	10/02/2010	18/09/2020	-do-	
08	Riaz Ahmad	-do-	B.A	02/01/1986	Upper Dir	18/09/2020	18/09/2020	-do-	
Tentative seniority for the following									
09	Muhammad Idress	-do-	B.A	01/01/1986	Upper Dir	15/12/2009	21/10/2022	-do-	
10	Shahid Ullah	-do-	M.A	03/01/1995	Upper Dir	21/10/2022	-do-	-do-	
11	Shakeel Ahmad	-do-	M.A	20/01/1992	Upper Dir	-do-	-do-	-do-	
12	Munawar Shah	-do-	Fsc	01/02/1990	Upper Dir	-do-	-do-	-do-	

Deputy Commissioner
Upper Dir



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17

To The Deputy Commissioner,
Dir Upper.

Subject:- APPLICATION FOR PROMOTION TO THE POST OF KANUNGO.

R/Sir.

With humble submission and due respect I want to draw your kind attention to the following:

- 1) It is submitting that I am working as Patwari since 01/10/2010.
- 2) That I am being a senior one and get to be promoted to the vacant post of Kanungo/Girdawar.
- 3) That due to non passing Kanungo examination, I was not yet considered to be promoted to the post of Kanungo and for the last 4 years Departmental examination of Kanungo was not conducted.
- 4) That on 23/09/2019 DPC recommended my promotion case on ACB to the post but due non availability of the Kanungo Certificate, I was not yet promoted.
- 5) That I have applied so many time for the said once but due to anonymous reason the examination was not conducted for the last four(4) years.
- 6) That now the government issued schedule for the said examination to be held on 17/10/2022.
- 7) That one of my junior colleague submitted application for the promotion to the said post which is against the law.

It is therefore, requested that till my examination DPC for the said post may not be conducted so that my right not be deprived and to avoid legal complication/court case in this regard please.

Dated: 03/10/2022

Yours obediently,


Shafiqur Rahman Patwari

Asst
Put up with PPS
A 4/10/22
DPC DCG
4.10.2022

11575
4-10-2022

BEFORE PESHAWAR HIGH COURT, MINGORA
BENCH/ DAR-UL-QAZA SWAT

Writ Petition No 35 -M of 2023

Shafiq Ur Rahman S/O Ubaid Ur Rahman R/O Sour
Pao, P.O & Tehsil Dir, District Dir Upper.....**Petitioner**

VERSUS

1. Secretary Board of Revenue, Khyber Pakhtunkhwa at Peshawar.
2. Commissioner Malakand Division at Saidu Sharif, Swat.
3. Deputy Commissioner Dir Upper.
4. Farhad Ali son of Sher Bahadar resident of Wari, District Dir Upper.

.....Respondents

FILED TODAY
18 JAN 2023
Additional Registrar

WRIT PETITION UNDER ARTICLE 199
OF THE CONSTITUTION OF ISLAMIC
REPUBLIC OF PAKISTAN, 1973.

Respectfully Sheweth,

Brief facts giving raise to petitioner to file the instant appeal are as under;

- 1) That the petitioner was initially recruited as Naib Tehsil Accountant (BPS-05) on 01-10-2010.
- 2) That thereafter the petitioner was promoted Patwari and now-adays the petitioner was service in Mauza Chukiatan, District Dir Upper.

- 3) That as per rules, the petitioner was entitled to be held as Girdawar, because the petitioner was placed in the Seniority list in serial No. 1. (Copy of seniority list is attached herewith as Annexure "A").
- 4) That on the basis of said seniority, one number of post as Girdawar vacant and the respondents No.1 to 3 promoted the respondent No. 4 which is the most junior candidate and the respondent department ignored the petitioner, so, the petitioner filed application before the respondents department for his grievances, but the respondents ignored the petitioner and carrying out the promotion proceedings. (Copies of relevant record & application are attached as annexure "B")
- 5) That the petitioner is entitled to be promoted to the post of Girdawar and declared eligible under the relevant rules & policy, but not willing to issue the promotion order of petitioner, so, the petitioner time & again approached to the concerned authority but they are not willing to redress the grievances of the petitioner, so the petitioner has no other remedy except to file the instant petition inter alia on the following grounds.

GROUND:-

- a. That the act of the respondents as not consider the petitioner for promotion as unlawful, void-ab-initio, against the spirit of law, furthermore the impugned proceedings is suffering from

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18 JAN 2023

Additional Registrar

illegality & irregularity, hence not tenable in the eyes of law.

b. That the act of respondents is violative of Article 25 of the constitution as the respondent No. 4 promoted the junior colleagues of petitioner to the propose but in matter of petitioner, so such act of the respondents is highly discriminatory and against the mandate of fundamental rights guaranteed by the constitution.

c. That the seniority is the continues cause of action which can be agitated at any time so, the petitioner is fit for promotion on the strength of length of service, but the act of respondents toward petitioner is very harsh so, the act of respondents is amount to be contempt on the reasons the respondents have no mandate under the law to ignore the petitioner for the propose promotion.

d. That the act of departmental authority is unlawful, violative of all norms of justice so, the petitioner entitled to promotion without influence extraneous consideration.

e. That the act of the respondents is illegal, against law, facts and violative of the fundamental rights of the petitioner.

f. That as the petitioner was eligible for promotion, because the petitioner place in seniority list is serial No. 1 and the petitioner is the right of

TO BE FILED

13 JAN 1973

Additional Registrar

promotion, but the respondents department without authority & follow rules are going to promoted the respondent No. 4 which is illegal & unlawful, hence not tenable in the eyes of law.

- g. That the petitioner vested rights have been taken away by the Respondents without lawful authority and the same is against fundamental rights safeguarded under the constitution.
- h. That the petitioner has not been dealt with in accordance with law and rules regulating service of the petitioner.
- i. That the act of the respondents is illegal, against law, facts and violative of the fundamental rights of the petitioner.
- j. That further grounds, with leave of this Honorable Court, would be raised at the time of arguments before this Honorable Court.

PRAYER

It is therefore, humbly prayed that, on acceptance of this writ petition:-

- i) That the act of the respondents department may kindly be declared illegal, void-ab-initio, unlawful, illegal and be cancelled.
- ii) That the respondent department may kindly be directed to consider the petitioner for promotion as Girdawar accordance with law, rules and as per seniority.
- iii) That if the respondents issued any promotion impugned order to the other candidate / respondent No. 4 be declared

FILED TODAY

16 JAN 2023

illegal, unlawful & against the rules & policy and may kindly be suspended.

iv) Any other remedy which this august court deems fit and proper in the circumstances may also be very kindly granted.

INTERIM RELIEF:

It is further prayed that the impugned promotion proceedings be suspended as well as the respondent No. 3 may be restrained from promotion to the extent of petitioner and one post for girdawar be vacant for the petitioner till the final disposal of the instant writ petition.

Petitioner

Through Counsel



MUHAMMAD NABI
Advocate, High Court

CERTIFICATE:

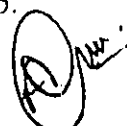
(As per directions of my client) No such like Writ petition has earlier been filed by the petitioner on the subject matter before this Honorable Court.



Counsel

LIST OF BOOKS

1. Constitution Islamic Republic of Pakistan, 1973.
2. Any other law book according to need.



Counsel

FILED TODAY

16 JAN 2023

Additional Registrar

BEFORE PESHAWAR HIGH COURT, MINGORA
BENCH/ DAR-UL-QAZA SWAT

W.P No 35 - M of 2023

Shafiq Ur RahmanPetitioner

VERSUS

Secretary Board of Revenue & othersRespondents

ADDRESSES OF THE PARTIES


PETITIONER

Shafiq Ur Rahman S/O Ubaid Ur Rahman R/O Souri
Pao, P.O & Tehsil Dir, District Dir Upper
CNIC No:15701-4998508-9 Cell No:0344-9663356

RESPONDENTS

1. Secretary Board of Revenue Khyber Pakhtunkhwa at Peshawar.
2. Commissioner Malakand Division at Saidu Sharif, Swat.
3. Deputy Commissioner Dir Upper.
4. Farhad Ali son of Sher Bahadar resident of Wari, District Dir Upper.

Petitioner
Through Counsel


MUHAMMAD NABI
Advocate, High Court

FILED TODAY

13 JAN 2023

Additional Registrar

Annex - F
3 24

BEFORE PESHAWAR HIGH COURT, MINGORA
BENCH/ DAR-UL-QAZA SWAT

W.P No 35- M of 2023

Shafiq Ur RahmanPetitioner

VERSUS.

Secretary Board of Revenue & othersRespondents

AFFIDAVIT

I, Shafiq Ur Rahman (petitioner), do hereby solemnly affirm and declare that the contents of the above titled Writ Petition are true and correct to the best of my knowledge and belief.

Shafiq Ur Rahman

DEPONENT

Identified by

Muhammad Nabi

Muhammad Nabi
Advocate High Court

18 JAN 2023
Additional Registrar

S.No. 183
Certified that the above was verified on Solemn affirmation before me on this 15 day of Jan 2023
by Shafiq ur Rahman
S/o Shafiq ur Rahman who was identified by Muhammad Nabi
Who is personally known to me.

[Signature]
Oath Commissioner
Peshawar High Court
Mingora Bench/Dar-ul-Qaza, Swat.

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JUDGMENT SHEET
PESHAWAR HIGH COURT
MINGORA BENCH
(Judicial Department)

W.P No. 35-M/2023
With Interim Relief

Shafiq-ur-Rahman son of Ubaid-ur-Rahman
(Petitioner)

vs

Secretary Board of KPK and others
(Respondents)

Present: Muhammad Nabi, Advocate for the petitioner.

Respondents are not represented being a motion case.

Date of hearing: 19.01.2023

JUDGMENT

MUHAMMAD IJAZ KHAN, J.- Through the instant writ petition, petitioner has prayed before this Court for the following relief:-

“It is therefore, humbly prayed that on acceptance of the instant writ petition:-

- i) That the act of the respondents department may kindly be declared illegal, void-ab-initio, unlawful, illegal and be cancelled.
- ii) That the respondent department may kindly be directed to consider the petitioner for promotion as Girdawar accordance with law, rules and as per seniority.
- iii) That if the respondents issued and promotion impugned order to the other candidate/respondent No.4 be declared illegal, unlawful and against the rules and policy and may kindly be suspended.

2023

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iv) Any other remedy which this august Court deems fit and proper in the circumstances may also be very kindly granted.

2. Precisely the facts of the case are that petitioner was initially appointed as Naib Tehsil Accountant in BPS-05 on 01.10.2010 and then the petitioner was promoted as *Patwari* and these days he is performing his duty in *Mauza Chukiatan District Dir Upper*. It is further pleaded in the petition that as per the seniority list maintained by the respondents the petitioner is on the top of seniority list and thus he is entitled to be promoted as *Girdawar*. It is further stated that one of the post of the *Girdawar Circle* was lying vacant, however, respondents No. 1 to 3 instead of promoting the petitioner has prepared the working paper of respondent No. 4 namely Farhad Ali, though he is lower on the seniority list than petitioner, therefore, he submitted a departmental appeal to the respondents, however, till filing of the instant petition the same has not been responded, therefore, the petitioner has approached to this Court through the instant petition.

2.03

3. Arguments of learned counsel for the petitioner were heard in detail and the record perused with his able assistance.

4. At the very outset the learned counsel for the petitioner was confronted that admittedly the petitioner is a civil servant and the Departmental Promotion Committee has not yet passed any order effecting his alleged right of promotion, then how at this stage he could approach to this Court for the issuance of the desired relief, his response was that since respondent No. 4 is junior to the petitioner, therefore, his working paper could not be sent and instead respondents are required to send the working paper of the petitioner and as such in view of the above admitted position the petition of the petitioner is pre-mature as yet no order has been passed by the Departmental Promotion Committee or any other authority which is adversely effecting his right of promotion.

2.03/

5. It may be noted that a civil servant cannot claim promotion as a matter of right and it is entirely the prerogative of the provincial government/competent authority to grant

promotion to an employee. It is also relevant to mention here that a civil servant cannot claim promotion as a matter of right unless his case is considered by the Departmental Promotion Committee. In other words the civil servant cannot seek the directions of this Court to direct the competent authority to consider a civil servant for promotion, however, if the competent authority initiate the process of promotion and the Departmental Promotion Committee consider the working papers of various employees and thereafter come to the conclusion that an employee is eligible or ineligible or is unfit for promotion, then in such eventuality such a civil servant can approach to a judicial forum for the redressal of his grievance. It is further relevant to be noted that in case where the Departmental Promotion Committee consider an employee and found him as "ineligible for promotion" then such an aggrieved civil servant can approach to the "Service Tribunal", however, if the Departmental Promotion Committee declares a civil servant as "unfit for promotion" then in such eventuality such an aggrieved civil servant could approach to the High Court, but since in the present case it is an admitted position that the petitioner

2-03/

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has not been considered by the Departmental Promotion Committee till date, therefore, at this stage of the process of promotion the petitioner could neither approach to the Service Tribunal nor to this Court as he is yet to be declared by the Departmental Promotion Committee as eligible or ineligible or unfit for promotion, as the case may be. In the case of Ghulam Abbas vs. Chief Secretary and 2 others reported as 2016 PLC (C.S.) 87, the Hon'ble Apex Court has held that it has not been denied by the petitioner that he was never considered by the Departmental Promotion Committee or the Board for promotion, upon which this could be determined that petitioner was fit to be promoted. The prerequisite to be considered for promotion is the eligibility of the said official and once he crosses this barrier and is considered for promotion, only then the question of fitness would arise. In view of the above, it can safely be held that the case of the petitioner fell within the ambit of determination of eligibility, which for all intents and purposes, is part of terms and conditions of service of a civil servant, therefore, is beyond the powers of judicial review of this Court in view of creation of Administrative Tribunals established

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has not been considered by the Departmental Promotion Committee till date, therefore, at this stage of the process of promotion the petitioner could neither approach to the Service Tribunal nor to this Court as he is yet to be declared by the Departmental Promotion Committee as eligible or ineligible or unfit for promotion, as the case may be. In the case of Ghulam Abbas vs. Chief Secretary and 2 others reported as 2016 PLC (C.S.) 87, the Hon'ble Apex Court has held that it has not been denied by the petitioner that he was never considered by the Departmental Promotion Committee or the Board for promotion, upon which this could be determined that petitioner was fit to be promoted. The prerequisite to be considered for promotion is the eligibility of the said official and once he crosses this barrier and is considered for promotion, only then the question of fitness would arise. In view of the above, it can safely be held that the case of the petitioner fell within the ambit of determination of eligibility, which for all intents and purposes, is part of terms and conditions of service of a civil servant, therefore, is beyond the powers of judicial review of this Court in view of creation of Administrative Tribunals established

Handwritten signature and initials.

Nawab

(D.B.) Hon'ble Mr. Justice Muhammad Naeem Anwar
 Hon'ble Mr. Justice Muhammad Ijaz Khan

28 (31)

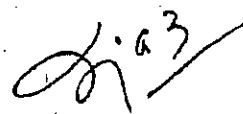
under Article 212 of the Constitution for adjudication on the question of terms and conditions of service of a civil servant. Similarly, in the case of Muhammad Azam vs. Muhammad Tufail and others reported as 2011 SCMR 1871, the Hon'ble Apex Court has also held that the question of eligibility relates primarily to the terms and conditions of the service and their applicability to the civil servant concerned, and, therefore, the Tribunal has jurisdiction, and whereas the question of fitness is a subjective evaluation on the basis of objective criteria where substitution for an opinion of the competent authority is not possible by that of a Tribunal or of a Court and, therefore, the Tribunal has no jurisdiction on the question of fitness.

6. In view of the above discussion, the instant writ petition is premature as well as non-maintainable, which is hereby dismissed, in limine.

Announced
Dt: 19.01.2023



JUDGE



JUDGE

Office
20/01/2023

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OFFICE OF THE DEPUTY COMMISSIONER/DISTRICT COLLECTOR DIR UPPER

No. _____ /DC/Estt

Dated Upper Dir the 25/03/2016

OFFICE ORDER

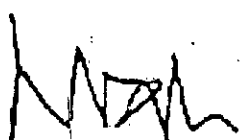
On the recommendation of Secretary to Government of Khyber Pakhtunkhwa Board of Revenue & Estate Department letter No. Estt.VII/DPC/Upper Dir Upper 16299 dated 13/08/2014, Mr. Shafiq-ur-Rahman presently working as Nash Tehsil Accountant (NTA) is hereby appointed/adjusted against the vacant post of Paywan BPS-9) being senior most official in absence of Mr. Manzoor Abbas NTA who is on leave for two year (6290-380-17600) plus usual allowances on temporary basis in the interest of public service.


Deputy Commissioner
Dir Upper

No. 4/01-2 /DC/Estt

Dated Upper Dir the 25/03/2016

- 1) Secretary (Board of Revenue, Revenue & Estate Department) Khyber Pakhtunkhwa Peshawar.
- 2) District Accounts Officer Dir Upper
For information.
- 3) Official concerned


Deputy Commissioner
Dir Upper

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OFFICE OF THE
DEPUTY COMMISSIONER
UPPER DIR

By Estt (Appointments)

Dated Upper Dir the 11/04/2019

MEMO

In the recommendation of Director Land Records, Board of Revenue & Estate Department Khyber Pakhtunkhwa Peshawar, letter No. Estt. Dir Upper Fathad Ali Khan/2923 dated 21-02-2019, Mr. Farhad Ali Khan presently working as Sub Tehsil Office Kanungo (NTOK) is hereby appointed/adjusted against the vacant post of Patwar BPS-09 (11770-730-33670) plus usual allowances in the interest of public service.

Deputy Commissioner
Upper Dir

No. 7844-50 /DC Estt/ Apptt

Copy forwarded to the:-

- 1) Commissioner Malakand Division Saidy Sharif Swat
- 2) Director Land Record, Board of Revenue, Revenue & Estate Department Khyber Pakhtunkhwa Peshawar.
For information please.
- 3) District Officer (F&I) Dir Upper.
- 4) District Account Officer Dir Upper.
- 5) Accountant (Local) Office.
- 6) Assistant Budget Section of local office.
For information and necessary action.
- 7) Official concerned for necessary action.

Deputy Commissioner
Upper Dir

Office: 0944-881364 & 880163 Fax: 0944-881136

Email address: (dd@upperdir.gov.pk)



قیمت: 50 روپے
 Kabeer-042 @ Yahoo.Com
 63236
 ایڈویٹ: کبیر مہا
 بار کونسل / ایسوسی ایشن نمبر: BC-14-4780
 رابطہ نمبر: 03469085949

PESHAWAR BAR ASSOCIATION
 PBA
 PESHAWAR BAR ASSOCIATION
 PESHAWAR BAR ASSOCIATION
 پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب: سر جسٹس نریسول، جسٹس پختونخواہ

Appellant	منجانب:	Promotion	دعویٰ:
			علت نمبر:
			مورخہ:
			جرم:
			تھانہ:
باعث تحریر آنکہ			

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ
 آن مقام کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وہکیل صاحب کو
 راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
 زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز
 دائرہ کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ 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 وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داخستہ منظور و قبول ہوگا
 دوران مقدمہ میں جو خرچہ ہر جانہ اتوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے
 باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سندر ہے



المقام کے لیے منظور ہے۔
 Attested
 نوٹ: اس وکالت نامہ کی کوئی کاپی قابل قبول ہوگی۔
 Attested
 Waqar

المقام کے لیے منظور ہے۔

Handwritten signature